# SESSION LAWS

OF

# HAWAII

PASSED BY THE

## TWENTIETH STATE LEGISLATURE

## STATE OF HAWAII

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# REGULAR SESSION

# 2000

Convened on Wednesday, January 19, 2000
and
Adjourned sine die on Tuesday, May 2, 2000

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by the
Revisor of Statutes
State of Hawaii
Honolulu, Hawaii

# PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular Session of 2000. 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As authorized by Section 23G-16.5, Hawaii Revised Statutes, statutory material that is being repealed is bracketed, and new material is indicated by underscoring. However, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.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 5, 2000

# STATE OF HAWAII
# ELECTED OFFICIALS AND LEGISLATIVE OFFICERS

## UNITED STATES CONGRESS

Senate:
Daniel K. Inouye
Daniel K. Akaka

House of Representatives:
Neil Abercrombie
Patsy T. Mink

## STATE EXECUTIVE OFFICERS

Governor of Hawaii ..... Benjamin J. Cayetano
Lieutenant Governor ..... Mazie K. Hirono

## OFFICERS AND MEMBERS OF THE TWENTIETH STATE LEGISLATURE REGULAR SESSION 2000

## SENATE

President ..... Norman Mizuguchi
Vice President ..... Avery B. Chumbley
Clerk ..... Paul T. Kawaguchi

First District—(Hawaii)
Lorraine R. Inouye (D)

Second District—(Hawaii)
David M. Matsuura (D)

Third District—(Hawaii)
Andrew Levin (D)

Fourth District—(Maui/Molokai/Lanai)
Jan Yagi Buen (D)

Fifth District—(Maui)
Joe S. Tanaka (D)

Sixth District—(Maui/Kauai)
Avery B. Chumbley (D)

Seventh District—(Kauai/Niihau)
Jonathan Chun (D)

Eighth District—(Oahu)
Sam Slom (R)

Ninth District—(Oahu)
Matt Matsunaga (D)

Tenth District—(Oahu)
Les Ihara, Jr. (D)

Eleventh District—(Oahu)
Brian T. Taniguchi (D)

Twelfth District—(Oahu)
Carol Fukunaga (D)

Thirteenth District—(Oahu)
Rod Tam (D)

Fourteenth District—(Oahu)
Suzanne N. J. Chun Oakland (D)

Fifteenth District—(Oahu)
Norman Mizuguchi (D)

Sixteenth District—(Oahu)
Norman Sakamoto (D)

Seventeenth District—(Oahu)
David Y. Ige (D)

Eighteenth District—(Oahu)
Randall Iwase (D)

Nineteenth District—(Oahu)
Calvin K. Kawamoto (D)

Twentieth District—(Oahu)
Brian Kanno (D)

Twenty-First District—(Oahu)
Colleen Hanabusa (D)

Twenty-Second District—(Oahu)
Robert Bunda (D)

Twenty-Third District—(Oahu)
Bob Nakata (D)

Twenty-Fourth District—(Oahu)
Marshall Ige (D)

Twenty-Fifth District—(Oahu)
Whitney Anderson (R)

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## HOUSE OF REPRESENTATIVES

Speaker ..... Calvin K.Y. Say
Vice Speaker ..... Marcus R. Oshiro
Clerk ..... Patricia A. Mau-Shimizu

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First District—(Hawaii)
Dwight Y. Takamine (D)

Second District—(Hawaii)
Jerry L. Chang (D)

Third District—(Hawaii)
Eric G. Hamakawa (D)

Fourth District—(Hawaii)
Robert N. Herkes (D)

Fifth District—(Hawaii)
Paul Whalen (R)

Sixth District—(Hawaii)
Jim Rath (R)

Seventh District—(Maui/Molokai/Lanai)
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Eighth District—(Maui)
Joseph M. Souki (D)

Ninth District—(Maui)
Bob Nakasone (D)

Tenth District—(Maui)
David Morihara (D)

Eleventh District—(Maui)
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Hermina M. Morita (D)

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Fourteenth District—(Kauai/Niihau)
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David D. Stegmaier (D)

Sixteenth District—(Oahu)
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Seventeenth District—(Oahu)
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Eighteenth District—(Oahu)
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Brian Y. Yamane (D)

Twentieth District—(Oahu)
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Twenty-First District—(Oahu)
Galen Fox (R)

Twenty-Second District—(Oahu)
Terry Nui Yoshinaga (D)

Twenty-Third District—(Oahu)
Ed Case (D)

Twenty-Fourth District—(Oahu)
Brian Schatz (D)

Twenty-Fifth District—(Oahu)
Kenneth T. Hiraki (D)

Twenty-Sixth District—(Oahu)
Sylvia J. Luke (D)

Twenty-Seventh District—(Oahu)
Lei Ahu Isa (D)

Twenty-Eighth District—(Oahu)
Dennis A. Arakaki (D)

Twenty-Ninth District—(Oahu)
Felipe P. Abinsay, Jr. (D)

Thirtieth District—(Oahu)
Romy M. Cachola (D)

Thirty-First District—(Oahu)
Nathan Suzuki (D)

Thirty-Second District—(Oahu)
Bob McDermott (R)

Thirty-Third District—(Oahu)
Tom Okamura (D)

Thirty-Fourth District—(Oahu)
K. Mark Takai (D)

Thirty-Fifth District—(Oahu)
Noboru Yonamine (D)

Thirty-Sixth District—(Oahu)
Roy M. Takumi (D)

Thirty-Seventh District—(Oahu)
Nestor R. Garcia (D)

Thirty-Eighth District—(Oahu)
Marilyn B. Lee (D)

Thirty-Ninth District—(Oahu)
Ron Menor (D)

Fortieth District—(Oahu)
Marcus R. Oshiro (D)

Forty-First District—(Oahu)
Willie C. Espero (D)[1]

Forty-Second District—(Oahu)
Mark Moses (R)

Forty-Third District—(Oahu)
Michael P. Kahikina (D)

Forty-Fourth District—(Oahu)
Emily J. Auwae (R)

Forty-Fifth District—(Oahu)
Alexander C. Santiago (D)

Forty-Sixth District—(Oahu)
Colleen Meyer (R)

Forty-Seventh District—(Oahu)
Iris Ikeda Catalani (D)

Forty-Eighth District—(Oahu)
Ken Ito (D)

Forty-Ninth District—(Oahu)
Cynthia H. Thielen (R)

Fiftieth District—(Oahu)
David A. Pendleton (R)

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

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[1]Appointed to seat vacated by Paul T. Oshiro.

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## 2000 REGULAR SESSION

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## ACT 1 H.B. NO. 2150

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, 2001, including the 2000 regular session, Twentieth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2000 and 2001 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, 2001, including the 2000 regular session, Twentieth Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2000 and 2001 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 2000 and 2001 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 2000 and 2001 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 17, 2001, 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 17, 2001.

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 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 $2,830,796 or so much thereof as may be necessary to the office of the legislative auditor for the following expenses:

(1) The sum of $2,019,850 for defraying the expenses of the office of the legislative auditor during fiscal year 2000-2001;
(2) The sum of $660,946 for defraying the expenses of the office of the state ethics commission during fiscal year 2000-2001; and
(3) The sum of $150,000 during fiscal year 2000-2001 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 $2,229,349 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 2000-2001 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 $728,892 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 2000-2001.

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:

(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, 2001.

SECTION 10. 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 the legislative broadcast program, including the production and distribution of television broadcasts of legislative proceedings. This appropriation shall take effect upon the approval of this Act and shall be expended by the legislature for the purposes of this section. This appropriation shall not lapse until June 30, 2001.

SECTION 11. As of the close of business on June 30, 2001, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 12. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 13. This Act shall take effect upon its approval.

(Approved February 2, 2000.)

## ACT 2 S.B. NO. 1345

A Bill for an Act Relating to Employment Compensation in the Judiciary.

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

SECTION 1. The purpose of this Act is to amend Act 65, Session Laws of Hawaii 1999, which provided a four per cent increase in judicial salaries for each year over the two-year period beginning July 1, 1999. This Act provides a judicial salary increase of eleven per cent in each of the two referenced years.

SECTION 2. Section 602-2, Hawaii Revised Statutes, is amended to read as follows:

"**§602-2 Salary, supreme court justices.** Effective July 1, 1999, the salary of the chief justice of the supreme court shall be [$98,571] $105,206 a year and the salary of each associate justice of the supreme court shall be [$97,531] $104,096 a year. Effective July 1, 2000, the salary of the chief justice of the supreme court shall be [$102,514] $116,779 a year and the salary of each associate justice of the supreme court shall be [$101,432] $115,547 a year."

SECTION 3. Section 602-52, Hawaii Revised Statutes, is amended to read as follows:

"**§602-52 Salary.** Effective July 1, 1999, the salary of the chief judge of the intermediate appellate court shall be [$94,931] $101,321 a year and the salary of each associate judge shall be [$93,371] $99,656 a year. Effective July 1, 2000, the salary of the chief judge of the intermediate appellate court shall be [$98,728] $112,466 a year and the salary of each associate judge shall be [$97,106] $110,618 a year."

SECTION 4. Section 603-5, Hawaii Revised Statutes, is amended to read as follows:

"**§603-5 Salary of circuit court judges.** Effective July 1, 1999, the salary of each circuit court judge of the various circuit courts of the State shall be [$90,251] $96,326 a year. Effective July 1, 2000, the salary of each circuit court judge of the various circuit courts of the State shall be [$93,861] $106,922 a year."

SECTION 5. Section 604-2.5, Hawaii Revised Statutes, is amended to read as follows:

"**§604-2.5 Salary of district judges.** Effective July 1, 1999, the salary of each district court judge of the various district courts of the State shall be [$85,051] $90,776 a year. Effective July 1, 2000, the salary of each district court judge of the various district courts of the State shall be [$88,453] $100,761 a year.

Whenever the chief justice appoints a district court judge of any of the various district courts of the State to serve temporarily as a circuit court judge of any of the various circuit courts of the State, the judge shall receive per diem compensation for the days on which actual service is rendered based on the monthly rate of compensation paid to a circuit court judge. For the purpose of determining per diem compensation in this section, a month shall be deemed to consist of twenty-one days."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 7. This Act, upon approval, shall take effect retroactive to July 1, 1999.

(Approved February 16, 2000.)

## ACT 3 H.B. NO. 2526

A Bill for an Act Relating to Used Oil.

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

SECTION 1. Section 342J-5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The director may require that applications for such permits shall be accompanied by plans, specifications, and [such other] information as [[]the director[]] deems necessary [in order] for [[]the director[]] to determine whether the proposed or existing hazardous waste management facility will be in compliance with applicable rules and standards.

(c) The director shall issue a permit for any term, not exceeding five years, if the director determines that the applicant and facility have complied with the provisions of this chapter. Each permit shall be reviewed five years after the date of issuance and shall be modified as necessary to assure that the facility and permittee continue to comply with applicable provisions of this chapter. Nothing in this subsection shall preclude the director from reviewing and modifying a permit at any time during its term. Each permit issued under this section shall contain such terms and conditions as the director determines are necessary to protect human health or the environment.

The director may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

(1) There is a violation of any term or condition of the permit;
(2) The permit was obtained by misrepresentation or failure to disclose fully all relevant facts;
(3) There is a change in any circumstance that necessitates a modification, suspension, or revocation of the permit; or
(4) Such is in the public interest.

Public notice shall be given of proposed decisions respecting permit issuance, reissuance, denial, revocation, suspension, substantial modification to a permit requested by a permittee, and modifications to a permit initiated by the director. The director may hold a public hearing before issuing a final decision respecting a permit issuance, reissuance, denial, revocation, suspension, request by a permittee to substantially modify a permit, and any modification to a permit initiated by the

director if the director determines that such a public hearing is in the public interest. The permit notice and public hearing requirements in this section shall not apply to used oil permits as provided for in section 342J-54."

SECTION 2. Section 342J-54, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(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 reasonable conditions that the director may prescribe. The director, on application, shall renew a permit from time to time for a term not exceeding five years if the director determines that it is in the public interest. The director shall not deny an application for the issuance or renewal of a permit without affording the applicant an opportunity for a hearing in accordance with chapter 91.

The director may require a public notice or hearing, or both, for permit issuances, reissuances, denial, revocation, suspension, or substantial modifications to a permit requested by a permittee, or modifications to a permit initiated by the director if the director determines that notice or hearing, or both, are in the public interest.

The director, on the director's own motion or the application of any person, may modify, suspend, or revoke any permit if, after affording the permittee an opportunity for a hearing in accordance with chapter 91, the director determines that:

(1) There is a violation of any condition of the permit;
(2) The permit was obtained by misrepresentation, or 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 emission; or
(4) The modification, suspension, or revocation is in the public interest.

In determining the public interest, the director shall consider the environmental impact of the proposed action, any adverse environmental effects of the proposed action, any adverse environmental effects which cannot be avoided if the action is implemented, the alternatives to the proposed action, the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented, and any other factors which the director may by rule prescribe; provided that any determination of public interest shall promote the optimum balance between economic development and environmental quality."

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 3, 2000.)

# ACT 4 H.B. NO. 2022

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 Obsolete or Unnecessary Provisions.

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

SECTION 1. Section 87-27, Hawaii Revised Statutes, is amended to read as follows:

"**§87-27 Supplemental plan to federal Medicare.** Any other provision of this chapter notwithstanding, the board of trustees shall establish, effective July 1, [[]1966[]], a health [benefit] benefits plan which takes into account benefits available to an employee-beneficiary and spouse under the federal Medicare plan, subject to the following conditions:

(1) There shall be no duplication of benefits payable under federal Medicare but the plan so established by the board shall be supplemental to the federal Medicare plan;

(2) The contribution for voluntary medical insurance coverage under federal Medicare may be paid by the fund, in such manner as the board shall specify, in the case of an employee-beneficiary who is a retired employee, and spouse while the employee-beneficiary is living, including members of the old pension system and after death the employee-beneficiary's spouse provided the spouse qualifies as an employee-beneficiary; provided that the counties, through their respective departments of finance, shall reimburse the fund for any contributions made for county employee-beneficiaries under this paragraph;

(3) The benefits available under the plan, when taken together with the benefits available under the federal Medicare plan [shall], as nearly as is possible, shall approximate the benefits available under the plans set forth in section 87-22. If, for any reason, a situation develops where the benefits available under the supplemental plan and the federal Medicare plan substantially differ from those that would otherwise be available, the board [is authorized to] may correct this inequity to assure substantial equality of benefits;

(4) Notwithstanding any other law to the contrary, all employee-beneficiaries or dependent-beneficiaries who are eligible to enroll in the federal Medicare Part B medical insurance plan shall enroll in that federal plan as a requirement to receive the contributions and to participate in the employee benefit plans described in this chapter. This paragraph shall pertain to retired employees and their spouses and the surviving spouses of deceased retirees and employees killed in the performance of duty; and

(5) The board of trustees shall determine which employee-beneficiaries and dependent-beneficiaries, who are not enrolled in the federal Medicare Part B medical insurance plan, may participate in such other plans as are set forth in section 87-22."

SECTION 2. Section 312-3.7, Hawaii Revised Statutes, is amended to read as follows:

'[[]§312-3.7[]] **Hawaii state library foundation trust fund.** (a) There is established as a separate fund of the Hawaii state library foundation, a Hawaii nonprofit corporation, the Hawaii state library foundation trust fund. All funds contributed to the trust fund, including income and capital gains earned therefrom, shall be used exclusively for state library programs as defined in the articles, bylaws, resolutions, and other instruments executed on behalf of the Hawaii state library foundation or by the state librarian. The trust fund may receive any and all types of private contributions, and the income and capital gains earned by the fund; provided that funds or properties donated for library use and patrons' deposits shall be deposited and accounted for in accordance with rules adopted by the comptroller. The trust fund shall be subject to the following restrictions:

(1) All funds, and the income and capital gains earned by investment of those funds, shall be expended only for the support of state library programs; and

(2) Other restrictions imposed by the legislature with respect to the transfer or appropriation of funds.

(b) Any funds deposited in the trust fund, and any income and capital gains earned therefrom, not used for state library programs, shall be invested in accordance with the provisions of the articles, bylaws, resolutions, or other instruments executed on behalf of the Hawaii state library foundation, and in a manner intended to maximize the rate of return on investment of the fund.

(c) If the trust fund is terminated or the Hawaii state library foundation is dissolved, all funds, including the income and capital gains earned by the investment of funds, shall be distributed in accordance with the articles and bylaws of the Hawaii state library foundation.

(d) The Hawaii state library foundation shall require an annual audit of the trust fund, the results of which shall be submitted to the department of education not more than thirty days after receipt by the foundation. The foundation shall retain for a period of three years, any documents, papers, books, records, and other evidence that is pertinent to the trust fund, and permit inspection or access thereto by the department of education, the state librarian, the department of accounting and general services, state legislators, and the state auditor, or their duly authorized representatives.

(e) The purpose of this section is to create by statute a private charitable trust fund to financially support state library programs. The trust fund shall be subject to the terms and conditions provided in this section. The trust fund shall not be placed in the state treasury and the State shall not administer the fund nor be liable for its operation or solvency. The fund shall be a private charitable trust fund administered by a private trust company as trustee.

[(f) Subsections (a) to (e) shall take effect upon the creation of a Hawaii state library foundation, a tax-exempt, nonprofit foundation that is subject to the terms and conditions provided in this section; provided that this section shall be repealed on June 30, 1995, if the Hawaii state library foundation is not established by this date.]''

SECTION 3. Section 348-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

''(d) The council shall coordinate with other councils within the State including the statewide independent living council, the state planning council on developmental disabilities, the [[]state council on mental health[]], the advisory panel of individuals with disabilities in education, and the state workforce development council. The council shall establish working relationships between the vocational rehabilitation division of the department and other councils and coordinate other functions as deemed appropriate under federal law.''

SECTION 4. Section 348-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The council shall:

(1) Develop and submit jointly with the department a state plan;
(2) Monitor, review, and evaluate the implementation of the state plan;
(3) Coordinate activities with the [ ]state rehabilitation council[ ]; and
(4) Submit to the commissioner of the rehabilitation services administration such periodic reports as are requested."

SECTION 5. Section 425D-102, Hawaii Revised Statutes, is amended to read as follows:

"**§425D-102 Name.** (a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) May not contain the name of a limited partner unless:
   (A) It is also the name of a general partner or the corporate name of a corporate general partner; or
   (B) The business of the limited partnership had been carried on under that name before the admission of that limited partner;
(2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, domestic partnership, domestic limited liability company, or domestic limited liability partnership existing or registered under the laws of this State, any foreign corporation, foreign partnership, foreign limited liability company, or foreign limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter, except that this provision shall not apply if the applicant filed with the director either of the following:
   (A) The written consent of the other partnership or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
   (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.

(b) The director may adopt, amend, and repeal such rules as may be necessary to carry out the purpose of this section."

SECTION 6. Section 431:2-203, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) (1) A person who intentionally or knowingly violates, intentionally or knowingly permits any person[,] over whom the person has authority[,] to violate, or intentionally or knowingly aids any person in violating any insurance rule or statute of this State or any effective order issued by the commissioner, shall be subject to any penalty or fine as stated in this code or the penal code of the Hawaii Revised Statutes.

(2) If the commissioner has cause to believe that any [ ]person has violated any penal provision of this code or[ ] of other [law] laws relating to insurance, the commissioner shall certify the facts of the violation to the public prosecutor of the jurisdiction in which the offense was committed.

(3) Violation of any provision of this code is punishable by a fine of not less than $100 nor more than $10,000 per violation, or by imprisonment for not more than one year, or both, in addition to any other penalty or forfeiture provided herein or otherwise by law.
(4) The terms "intentionally" and "knowingly" have the meanings given in section 702-206(1) and (2)."

SECTION 7. 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 that involves the intentional, knowing, or reckless bodily injury or serious bodily injury of another person, or is a misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, 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 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 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 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] or household members;
(Q) Sexual assault in the second degree;
(R) Sexual assault in the third degree;
(S) A violation of an order issued pursuant to chapter 586.

The court may adopt by rule other criteria in this area."

SECTION 8. Act 93, Session Laws of Hawaii 1999, is amended by amending section 18 to read as follows:

"SECTION 18. This Act shall take effect on July 1, 2000; provided that sections 7, and 9 to 18 shall take effect on [July 1,] June 29, 1999."

SECTION 9. Act 115, Session Laws of Hawaii 1999, is amended by amending the prefatory language in section 5 to read as follows:

"SECTION 5. Chapter 662E, Hawaii Revised Statutes, is amended by amending the chapter title and section 662E-1 to read as follows:"

SECTION 10. Act 122, Session Laws of Hawaii 1999, is amended by amending the prefatory language in section 2 to read as follows:

"SECTION 2. [Section 183D-4,] Section 183D-2, Hawaii Revised Statutes, is amended to read as follows:"

SECTION 11. Act 163, Session Laws of Hawaii 1999, is amended by amending section 26 to read as follows:

"SECTION 26. This Act shall take effect on approval, provided that:

(1) Sections 431:9-B and 431:9-C contained in section 2 of Part I shall become effective on January 1, 2001; and provided further that the twenty-three month period to meet the continuing education requirements shall commence upon the first license renewal of a general agent, subagent, solicitor, designated representative, or nonresident agent after December 31, 2000; and
(2) Part II shall take effect on July 1, 1999; provided further that sections [21 and 22] 20 and 21 shall take effect after all funds that are supposed to be credited to the motor vehicle insurance administration revolving fund and the insurance examiners revolving fund are transferred into the insurance regulation special fund."

SECTION 12. Act 172, Session Laws of Hawaii 1999, is amended by amending the prefatory language in section 2 to read as follows:

"SECTION 2. [Section] Chapter 378, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:"

SECTION 13. Act 174, Session Laws of Hawaii 1999, is amended by amending section 2 to read as follows:

"SECTION 2. The insurance commissioner [shall], prior to [January 1, 2000,] January 1, 2001, shall adopt rules pursuant to chapter 91, Hawaii Revised Statutes, setting forth the respective application, license, and other fees which shall be paid by captive insurance company applicants and licensees."

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 15. This Act shall take effect upon its approval; provided that:
1. Section 8 shall take effect retroactive to June 24, 1999;
2. Sections 9 and 10 shall take effect retroactive to June 25, 1999;
3. Section 11 shall take effect retroactive to June 28, 1999;
4. Section 12 shall take effect retroactive to July 1, 1999; and
5. Section 13 shall take effect retroactive to July 1, 1999.

(Approved April 4, 2000.)

## ACT 5 H.B. NO. 2551

A Bill for an Act Relating to the Correction of the Applicable Fiscal Year for the Appropriation to be Expended by the Department of Health in Section 6 of Act 304, Session Laws of Hawaii 1999.

*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 purpose of this Act is to correct the fiscal year reference in section 6 of Act 304, Session Laws of Hawaii 1999, to permit the appropriation of $5,055,665 from the Hawaii tobacco settlement special fund to the department of health for fiscal year 1999-2000.

SECTION 3. Act 304, Session Laws of Hawaii 1999, is amended by amending section 6 to read as follows:

"SECTION 6. There is appropriated out of the Hawaii tobacco settlement special fund the sum of $5,055,665[,] or so much thereof as may be necessary[,] for fiscal year [1999-2001,] 1999-2000 and the sum of $13,506,527[,] or so much thereof as may be necessary[,] for fiscal year 2000-2001[,] to the department of health to be expended for the purposes specified in section -4, Hawaii Revised Statutes. The sums appropriated shall be expended by the department of health.

Of the appropriation for fiscal [years] year 1999-2000, up to the sum of $1,400,000, and for fiscal year 2000-2001, up to the sum of $3,859,000, shall be transferred to the department of human services to be expended for the children's health insurance program; provided that the amount of moneys to be transferred shall not exceed the amount of moneys needed by the [childrens] children's health insurance program."

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 4, 2000.)

## ACT 6 H.B. NO. 2762

A Bill for an Act Relating to Island Burial Councils.

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

SECTION 1. Section 6E-43.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Department records relating to the location and description of historic sites, including burial sites, if deemed sensitive by a council or the Hawaii historic places review board, [are exempted from the requirements of section 92F-12.] shall be confidential."

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 4, 2000.)

## ACT 7 H.B. NO. 1906

A Bill for an Act Relating to Licensing of Psychologists.

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

SECTION 1. Section 465-1, Hawaii Revised Statutes, is amended by amending the definition of "professional psychology training program" to read as follows:

"'"Professional psychology training program" means a doctoral training program that includes (1) and (2), or (1) and (3) of the following:

(1) Is a planned program of study which reflects an integration of the science and practice of psychology including practica and internship; and

(2) Is designated as a doctoral program in psychology by the Association of State and Provincial Psychology Boards and the National Register of Health Service Providers in Psychology or is accredited by [the American Psychological Association or] the Canadian Psychological Association; or

(3) Is offered in a regionally accredited institution of higher education."

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]:

(A) An American Psychological Association approved program in clinical psychology; or

(B) 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] one year of post doctoral supervised experience in health service in psychology, and:

(A) An internship approved by the American Psychological Association; or

(B) One year of supervised experience in health service in psychology, [of which at least one year is] in 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 a written examination as may be prescribed 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 6, 2000.)

## ACT 8 H.B. NO. 2463

A Bill for an Act Relating to Advanced Practice Registered Nurses Recognition.

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

SECTION 1. Section 457-8.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The board shall grant recognition as an advanced practice registered nurse; provided the nurse has:

(1) A current, unencumbered license as a registered nurse in this State;

(2) An unencumbered license as a registered nurse in all other states in which the nurse has a current and active license;

(3) An unencumbered recognition as an advanced practice registered nurse or similar designation in all other states in which the nurse has a current and active recognition as an advanced practice registered nurse;

[(3)] (4) A master's degree in nursing as specified in rules adopted by the board or a current certification for specialized and advanced nursing practice from a national certifying body recognized by the board; provided that certified nurse midwives shall have current certification from a national certifying body recognized by the board; and

[(4)] (5) Paid appropriate fees."

2. By amending subsection (c) to read:

"(c) Any person who has [been recognized by] a current, unencumbered recognition from the board to practice as an advanced practice registered nurse shall use the title "Advanced Practice Registered Nurse" and the abbreviation "A.P.R.N.", or specialty title and abbreviation in accordance with rules adopted by the board. No other person shall assume the title "nurse" or in any manner imply that the person is a nurse except as defined in section 457-2 or as provided in sections 457-7 and 457-8 or use the abbreviation "A.P.R.N." or any other words,

letter, sign, or device to indicate that the person using the same is an advanced practice registered nurse. Nothing in this section shall preclude a registered nurse who is not recognized by the board as an advanced practice registered nurse and who is currently certified by a national certifying body from using another title designated by certification."

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 6, 2000.)

## ACT 9 H.B. NO. 2464

A Bill for an Act Relating to the Duties of the Board of Nursing.

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

SECTION 1. Section 457-2, Hawaii Revised Statutes, is amended by adding the definition of "telehealth", to read as follows:

"'"Telehealth" means the use of electronic information and telecommunication technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration, to the extent that it relates to nursing."

SECTION 2. Section 457-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other powers and duties authorized by law, the board may:

(1) Adopt, amend, or repeal rules, pursuant to chapter 91, not inconsistent with the law, as may be necessary to enable it to carry into effect this chapter, including the definition of the scope of practice of nursing and the delegation of nursing tasks based upon professional nursing standards[;], which include but are not limited to the standards set forth by national certifying bodies recognized by the board;
(2) Prescribe standards for preparing persons for licensure as practical nurse or registered nurses and for recognition as advanced practice registered nurses under this chapter;
(3) [Provide for] Conduct surveys of educational programs as it may deem necessary[;] and practical;
(4) [Accredit] Approve educational programs [as] that meet the requirements of this chapter and the rules of the board;
(5) Deny or withdraw [accreditation from] approval of educational programs for failure to meet or maintain the standards prescribed [standards;] in this chapter;
(6) [Examine, license, and renew the licenses of] License qualified applicants[;] by examination or endorsement, recognize advanced practice registered nurses, and renew, reinstate, and restore licenses and recognitions;
(7) Conduct hearings upon request of a denied applicant or upon charges calling for discipline of a licensee [or, denial, suspension, or revocation of a license];

(8) Exercise the power to issue subpoenas, compel the attendance of witnesses, and administer oaths to persons giving testimony at hearings;
(9) Cause the prosecution of all persons violating this chapter and incur necessary expenses therefor; [and]
(10) Keep a record of all its proceedings[.];
(11) Provide consultation, conduct conferences, forums, studies, and research on nursing education and practice;
(12) Communicate with national organizations that promote the improvement of the legal standards of practice of nursing for the protection of public health, safety, and welfare;
(13) Authorize the administration of examinations to eligible applicants for licensure as registered nurses or licensed practical nurses, or other examinations required by the board as designated in its rules;
(14) Employ, contract, and cooperate, to the extent allowable by law, with any board-approved organization in the preparation and grading of an appropriate nationally uniform examination; provided the board shall retain sole discretion and responsibility for determining the standard of successful completion of such an examination. When such a national examination is used, access to questions and answers shall be restricted by the board; and
(15) Develop and adopt rules as necessary relating to the practice of nursing in telehealth."

SECTION 3. Section 457-11, Hawaii Revised Statutes, is amended to read as follows:

"**§457-11 Nursing education programs.** (a) An institution desiring to conduct a nursing education program to prepare registered or licensed practical nurses shall apply to the board and submit evidence that:
(1) It is prepared to carry out a program in undergraduate nursing education or a program in the training of nurses as licensed practical nurses, as the case may be; and
(2) It is prepared to meet the standards as shall be established by law and by the board.

(b) A survey of the institution and its undergraduate or practical nursing program shall be made by the executive secretary or other authorized employee of the board, who shall submit a written report of the survey to the board. If, in the opinion of the board, the requirement[1] for an [accredited] approved nursing education program are met, the program shall be [accredited] approved as a nursing education program for registered or licensed practical nurses.

(c) The [accreditation] approval standards shall include qualifications necessary for faculty members of the nursing education program; provided that the standards shall not include a requirement that each individual faculty member receive approval of the board prior to teaching in the program. The qualifications shall be reasonable and relevant to the proper teaching of the practice of nursing. In establishing the qualifications, the board shall consult with the University of Hawaii.

(d) From time to time as deemed necessary by the board, it shall be the duty of the board, through its authorized representative, to survey nursing education programs in the State. Written reports of the surveys shall be submitted to the board. If the board determines that any [accredited] approved nursing education program is not maintaining the standards required by law and by the boards,[2] notice thereof in writing specifying the discrepancies shall be immediately given to the institution conducting the program. A program that[3] fails to correct these conditions to the

satisfaction of the board within a reasonable time shall be discontinued after a hearing held in conformance 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 April 6, 2000.)

**Notes**

1. Prior to amendment "requirements" appeared here.
2. Prior to amendment "board" appeared here.
3. Prior to amendment "which" appeared here.

## ACT 10 H.B. NO. 2486

A Bill for an Act Relating to Chiropractic Licensure Requirements.

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

SECTION 1. 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] fee, 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 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)] (1) Satisfactory proof that the applicant has [completed two years of liberal arts or science study at a university or college;] met the educational requirements prescribed in the rules of the board; provided that [this requirement] these educational requirements shall not apply to applicants having entered an approved chiropractic college on or before October 31, 1955; and

[(3) Evidence of having attended and] (2) Satisfactory proof that the applicant graduated from a chiropractic college accredited by, or recognized as a candidate for accreditation by, any chiropractic college accrediting agency recognized by the United States Department of Education[. Students who have]; provided that the requirements shall not apply to applicants who matriculated in any chiropractic college prior to October 15, 1984[, shall be exempt]."

SECTION 2. Section 442-6, Hawaii Revised Statutes, is amended to read as follows:

**"§442-6 Examinations.** [(a) The board of chiropractic examiners shall schedule examinations at least two times each year. The office of the board shall be in Honolulu.

(b) Each applicant shall be designated by a number instead of the name, so that the applicant's identity will not be disclosed to the examiners until the papers are graded.

(c) The applicant shall be required to pass parts I and II of the National Board of Chiropractic Examiners' written examination and the written clinical competency examination in order to qualify for the state chiropractic examination. The state chiropractic examination shall be designed to ascertain the fitness and qualifications of the applicant to practice chiropractic. The board may contract with professional testing services to prepare, administer, and grade the state chiropractic examination. The state chiropractic examination may include both a practical demonstration and a written examination. A license shall be granted to any applicant who attains a numerical score of seventy-five or higher in all subjects and sections of the state chiropractic examination. Any applicant failing to make the required grade may be reexamined at the next regular examination upon payment of a reexamination fee. Any person seeking licensure under this chapter, including approval to use physiotherapy modalities, shall demonstrate to the satisfaction of the board that the person has received training in the use of physiotherapy modalities at an accredited institution and passed the physiotherapy portion of the National Board of Chiropractic Examiners' examination.] (a) An applicant for licensure who has met the requirements of chapters 436B and 442, the requirements prescribed in the rules of the board, and one of the following requirements shall be licensed:

(1) Successful completion of the National Board of Chiropractic Examiners parts I, II, III, IV, and physiotherapy;

(2) Successful completion of National Board of Chiropractic Examiners parts I, II, III, physiotherapy, and Special Purposes Examination and evidence of licensure in good standing under the laws of another state or states after December 31, 1988; or

(3) Successful completion of National Board of Chiropractic Examiners parts I, II, physiotherapy, and Special Purposes Examination and evidence of licensure in good standing under the laws of another state or states prior to January 1, 1989.

(b) The board may require the National Board of Chiropractic Examiners Special Purposes Examination in circumstances where the board needs to assess a person's fitness to practice chiropractic, including but not limited to:

(1) State-to-state reciprocity or endorsement;

(2) Disciplinary action; or

(3) Licensure lapse, suspension, or revocation.

[(d)] (c) No person licensed to practice chiropractic in this State shall use physiotherapy modalities without receiving approval by the board to do so.

The board shall adopt rules for granting approval for the use of physiotherapy modalities by persons holding valid, current licenses under this chapter on June 4, 1984. The board [may] shall require any licensed chiropractor seeking approval to use physiotherapy modalities and all new applicants for chiropractic licensure to take and pass [a written or practical examination before granting approval to use] the National Board of Chiropractic Examiners physiotherapy [modalities.] examination.

[(e) For each year of actual practice as a licensed chiropractor in another state the applicant shall be given a credit of one-half point up to twenty years maximum to be added to each score for each subject area.]"

SECTION 3. Section 442-7, Hawaii Revised Statutes, is amended to read as follows:

"**§442-7 [Time] Application, scheduling, administration, scoring, and place of examination.** [The board of chiropractic examiners shall give notice of the

time and place of all examinations to be held under this chapter. The notice shall be given in such manner as the board deems expedient and in ample time to allow all candidates to comply with this chapter.] The application requirements and candidate qualifications to take the National Board of Chiropractic Examiners examinations specified in section 442-6, and the scheduling, administration, reexamination, scoring, and place of the examinations required for licensure shall be in accordance with the policies and requirements of the National Board of Chiropractic Examiners, unless otherwise determined and modified by the board. The qualifications for licensure in this State shall be as established in this chapter and chapter 436B and in rules adopted by the board."

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 6, 2000.)

## ACT 11 H.B. NO. 2488

A Bill for an Act Relating to Return of Prescription Drugs.

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

SECTION 1. Section 461-11, Hawaii Revised Statutes, is amended to read as follows:

"**§461-11 Duties of registered pharmacist.** (a) Every registered pharmacist in charge of a pharmacy shall comply with all laws and rules. The pharmacist shall be responsible for the management of the pharmacy[; and every]. Every activity thereof [which] that is subject to this chapter and the rules adopted to implement this chapter shall be under the pharmacist's complete control.

(b) All registered pharmacists shall notify the board of changes of business address within ten days.

(c) Prescription drugs previously dispensed or distributed by a pharmacist may be returned to and redispensed or redistributed by the pharmacist if the prescription drug:

(1) Is in its dispensed, unopened, tamper-evident single user unit;

(2) Has remained at all times in control of a person trained and knowledgeable in the storage and administration of drugs in institutional facilities or supervised living groups using the services of a consultant pharmacist;

(3) Has not been adulterated or misbranded and has been stored under conditions meeting the United States Pharmacopoeia standards;

(4) Is returned and redispensed or redistributed before the expiration date on the unit; and

(5) Does not include any controlled substance under chapter 329."

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 6, 2000.)

# ACT 12 H.B. NO. 2563

A Bill for an Act Relating to the State Fire Council.

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

SECTION 1. Section 132-16, Hawaii Revised Statutes, is amended to read as follows:

"**§132-16 State fire council; composition; functions.** (a) There is established a state fire council which shall be placed within the department of labor and industrial relations for administrative purposes. The state fire council shall consist of the fire chiefs of the counties. The state fire council may appoint an advisory committee to assist it in carrying out its functions under this chapter. The advisory committee may include the heads of the various county building departments, a licensed architect recommended by the Hawaii Society of the American Institute of Architects, a licensed electrical engineer and a licensed mechanical engineer recommended by the Consulting Engineers Council of Hawaii, a representative of the Hawaii Rating Bureau, a representative of the Hawaii firefighters association, representatives of the county fire departments, and such other members of the public as the state fire council may determine can best assist it. The state fire council shall elect a chairperson from among its members.

(b) In addition to adopting a state [model] fire code pursuant to section 132-3, the state fire council shall serve as a focal point through which all applications to the federal government for federal grant assistance for fire-related projects shall be made.

(c) The state fire council may [advise] also:

(1) Appoint advisory committees comprised of representatives from each county fire department to assist in drafting the state fire code and coordinating statewide training, data collection, and contingency planning needs for firefighters; and

(2) Advise and assist the county fire departments where appropriate, may prescribe standard procedures and forms relating to inspections, investigations, and reporting of fires, may approve plans for cooperation among the county fire departments, and may advise the governor and the legislature with respect to fire prevention and protection, life safety, and any other functions or activities for which the various county fire departments are generally responsible."

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

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

(Approved April 6, 2000.)

# ACT 13 H.B. NO. 2761

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Section 249-9.3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(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 county directors of finance shall issue special number plates to any organization in the State that meets the minimum standards and qualifications established under this section. Organizations are authorized to retain the fees collected, less expenses, for the special number plates.

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 establish special design parameters and restrictions on[1] decals or graphic representations affixable to special number plates; provided that the decal shall not be larger than [two and one-half] three inches wide by three inches high."

2. By amending subsection (b) to read:

"(b) For the purposes of this section, the following terms shall have the following meanings:

"Director" unless indicated otherwise by its context, means the county directors of finance.

"Organization" means [an organization of at least one hundred members in good standing that is]:

(1) A not-for-profit organization recognized as such by the Internal Revenue Service and whose primary purpose is to provide the community with specific programs to improve the public's health, education, or general welfare;
(2) A military service veterans group; or
(3) A state or county agency approved by the director[. Any[2] organization includes any]; or
(4) Any school or accredited institution of higher learning or a college or recognized program thereof.

"Special number plate" means a license plate with a decal on its face that represents an organization as defined in this section."

3. By amending subsection (d) to read:

"(d) An organization shall apply for a special number plate with the director on an application form prescribed by the director. The application shall include:

(1) A design of the organization's decal;
(2) A signed notarized statement by an officer or director of the organization that the organization will acquire at least one hundred fifty special number plates; and
(3) The dollar amount the organization plans to raise from each special number plate.

The director shall determine, based on criteria in this section, and the director's discretion, whether an organization's application has been accepted or rejected. The director shall also seek the approval of an organization's decal design from the county chief of police where the application is made.

If the director rejects an application, the director shall state the reasons for the rejection in writing and shall allow the applicant to reapply within a reasonable period after the rejection.

After an organization's application has been approved, [members of the organization] a motor vehicle owner may apply for the organization's special number plate. The director may require [proof of membership of an organization's members in addition to] the completion of a form as prescribed by the director. Special number plates shall be issued only to the registered owner of an applicant motor vehicle."

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 6, 2000.)

**Notes**

1. Prior to amendment "for" appeared here.
2. Prior to amendment "an" appeared here.

## ACT 14

S.B. NO. 2885

A Bill for an Act Relating to Sanitation.

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

SECTION 1. Part III of chapter 322, Hawaii Revised Statutes is repealed.

SECTION 2. Part IV of chapter 322, Hawaii Revised Statutes, is repealed.

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

(Approved April 6, 2000.)

## ACT 15

S.B. NO. 2906

A Bill for an Act Relating to Garment Industry Homework.

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

SECTION 1. Chapter 375, Hawaii Revised Statutes, is repealed.

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

(Approved April 6, 2000.)

## ACT 16

H.B. NO. 2123

A Bill for an Act Relating to Wages and Tips of Employees.

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

SECTION 1. The legislature finds that Hawaii's hotel and restaurant employees may not be receiving tips or gratuities during the course of their employment

from patrons because patrons believe their tips or gratuities are being included in the service charge and being passed on to the employees.

The purpose of this Act is to require hotels and restaurants that apply a service charge for food or beverage services, not distributed to employees as tip income, to advise customers that the service charge is being used to pay for costs or expenses other than wages and tips of employees.

SECTION 2. Section[1] 481B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§481B- Service charge.** Any hotel or restaurant that applies a service charge for the sale of food or beverage services shall distribute the service charge directly to its employees as tip income or clearly disclose to the purchaser of the services that the service charge is being used to pay for costs or expenses other than wages and tips of employees."

SECTION 3. New statutory material is underscored.[2]

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

(Approved April 11, 2000.)

**Notes**

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

## ACT 17 S.B. NO. 2024

A Bill for an Act Relating to Medical Research on Cancer Studies.

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

SECTION 1. While cancer is a reportable disease in Hawaii, the legislature finds that current law is limited because it only requires hospitals, skilled nursing homes, and intermediate care homes to report cancer cases to the Hawaii Tumor Registry. Advances in medicine have allowed for the treatment of many cases outside a hospital setting, such as the dermatologist's office. Yet the law does not require physicians and other health care providers to report cases they diagnose and treat in an out-patient setting to the Hawaii Tumor Registry or hospital-based registries. As a result, the statistics on the incidence rate of cancer in the state are inaccurate due to underreporting.

The purpose of this Act is to improve cancer statistics by requiring cancer cases detected in physician's offices, laboratories, free-standing radiation oncology facilities, and other treatment and pathology facilities to be reported to the Hawaii Tumor Registry or hospital-based registries.

SECTION 2. Section 324-21, Hawaii Revised Statutes, is amended to read as follows:

"**§324-21 Sources of information protected.** (a) Any person, public or private medical facility, or social or educational agency, may provide information, interviews, reports, statements, memoranda, or other data or relevant material relating to individuals with cancer to the Hawaii Tumor Registry. [Such] This

information may be used in the course of any cancer research study approved by the cancer commission of the Hawaii Medical Association.

(b) Hospitals, skilled nursing homes [and], intermediate care homes, free-standing radiation oncology facilities, and other treatment or pathology facilities shall submit a report of any person admitted with or diagnosed as having cancer to the Hawaii Tumor Registry [on a form] or participating hospital registry according to a format approved by the cancer commission of the Hawaii Medical Association. Physicians who diagnose or treat a patient for cancer shall also submit a report to the Hawaii Tumor Registry or participating hospital registry unless the patient has previously been admitted or treated at a hospital, skilled nursing home, intermediate care home, or free-standing radiation oncology facility for that particular cancer. The Hawaii Tumor Registry staff or their representative or hospital-based registry staff may assist [such] the hospitals [and], institutions, treatment or pathology facilities, and physician offices in the preparation of [such report forms.] the reports.

(c) No liability of any kind or character for damages or other relief shall arise or be enforced against any person or organization by reason of having provided the information or material, or by reason of having released or published the findings, conclusions, and summaries of the researchers to advance medical research and medical 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 April 11, 2000.)

## ACT 18 H.B. NO. 2020

A Bill for an Act Relating to Obsolete Laws.

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

SECTION 1. The legislature finds that several laws in the Hawaii Revised Statutes and the Session Laws of Hawaii may now be deemed to be obsolete, or "functus", in that they have accomplished their intended purpose and are now of no further force or effect. These are not laws that have "dropped dead" because of a separate sunset section, for example, that provides for their repeal on a certain date or for their reenactment in a certain form after a section is repealed. Rather, these are laws that have been rendered obsolete by their own terms, such as a sunset provision within the text of the section itself. These sections are repealed by operation of law but are nevertheless considered to be "on the books" because the acts that enacted them were not themselves repealed. Other types of obsolete laws that may continue to be on the books are laws that have been repealed by implication in a court case.

This Act repeals or makes other appropriate amendments to these sections in order to achieve the intent of the legislature and reduce the number of obsolete laws. A statute that remains in the printed text of the Hawaii Revised Statutes from year to year but which has been repealed by operation of law or by implication unnecessarily increases the size of the Hawaii Revised Statutes, thereby adding to production costs. Retention of such a statute may also create some confusion that the law, while repealed, is still retained "on the books". Repealing or amending these sections, as appropriate, therefore assists in the removal of obsolete laws and helps to clarify which laws are of continuing force and effect.

PART I

SECTION 2. Section 2[1] of Act 11, Special Session Laws of 1995, enacted the interagency federal revenue maximization revolving fund, which was subsequently codified as section 29-24, Hawaii Revised Statutes. Both subsection (c) of section 29-24, as well as section 15(3) of Act 11, provided that on June 30, 1999, section 29-24 would be repealed. As such, section 29-24 would have been deemed to be repealed by operation of law on that date.

However, section 28 of Act 160, Session Laws of Hawaii 1999, which became effective on June 29, 1999, deleted section 15(3) of Act 11, one of the two provisions providing for the repeal of section 29-24. Sections 29 and 30 of Act 160 further provide for the use of moneys in the interagency federal revenue maximization revolving fund through fiscal year 2000-2001 by the departments of education and health. While the intent of the 1999 amendment was to make section 29-24 permanent, however, that amendment nevertheless failed to amend section 29-24 itself to remove the automatic repeal date in subsection (c) of that section.

The purpose of this part is therefore to amend section 29-24 by repealing subsection (c) of that section to conform to the intent of the 1999 amendment and remove ambiguity as to whether that section is repealed.

SECTION 3. Section 29-24, Hawaii Revised Statutes, is amended to read as follows:

"**§29-24 Interagency federal revenue maximization revolving fund.** (a) There is established in the state treasury an interagency federal revenue maximization revolving fund into which shall be deposited all funds and proceeds collected from the federal government and third-party payors for 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).

(b) Notwithstanding any other law to the contrary, the comptroller, by contract, may retain the services of certified public accountants and other consultants to pursue and collect federal fund reimbursements, and perform other duties necessary to administer this section. At the option of the comptroller, consultants retained by contract under this subsection may be compensated on:

(1) A fixed-price basis;

(2) An hourly rate basis with or without a fixed cap; or

(3) Through a contingent fee arrangement specified in the contract.

Such compensation shall be payable out of all sums the consultant recovers for the State.

[(c) All unobligated, unencumbered, or unexpended funds remaining in the interagency federal revenue maximization revolving fund as of June 30, 1999, shall revert to the general fund of the State. Upon final disbursement of remaining balances to the general fund on June 30, 1999, the interagency federal revenue maximization revolving fund shall be terminated.

(d)] (c) No later than twenty days prior to the convening of each regular session of the legislature, the comptroller shall submit to the legislature a report including the following information:

(1) Itemized amounts of all federal reimbursements;
(2) Description and amounts of all expenses incurred by the fund;
(3) Method of compensation and amounts of compensation for all certified public accountants and other consultants retained by the comptroller to pursue and collect federal fund reimbursements and perform other duties necessary to administer this section;
(4) Method of determining allocation of funds;
(5) Amounts allocated by the comptroller; and
(6) Fund balances."

PART II

SECTION 4. Subsection (c) of section 87-25.5 provides for the repeal of that section on June 30, 1999. Since that section was never amended to extend its repeal date, section 87-25.5 was repealed by operation of law on that date. Accordingly, the purpose of this part is to repeal section 87-25.5.

SECTION 5. Section 87-25.5, Hawaii Revised Statutes, is repealed.

PART III

SECTION 6. Subsection (g) of section 235-55.9, Hawaii Revised Statutes, provides for the repeal of that section on June 30, 1997. Since that section was never amended to extend its repeal date, section 235-55.9 was repealed by operation of law on that date. Accordingly, the purpose of this part is to repeal section 235-55.9.

SECTION 7. Section 235-55.9, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 8. In the case of Gardens at West Maui v. County of Maui, 90 H. 334, 978 P.2d 772 (1999), the Hawaii supreme court found section 248-2, Hawaii Revised Statutes, to have been repealed by implication. That section allows the council of each county to increase or decrease real property taxes in that county for each tax year and provides for a determination of tax rates.

In 1977, section 248-2 was amended to preclude differential tax rates. However, article VIII, section 3 of the Hawaii Constitution, which expressly transferred to the counties broad powers of real property taxation and which contains no provisions limiting or restricting the tax rate structure determined by the counties, and section 246A-2, Hawaii Revised Statutes, which implemented that constitutional amendment in 1980, were enacted subsequent to the 1977 amendment to section 248-2, thereby fully superseding that section, according to the supreme court. According to the court: "The participants of the 1978 constitutional convention and the 1980 legislature are presumed to have been aware of the 1977 amendment to HRS §248-2 and are therefore presumed to have repealed it by implication." Id., 90 H. at 341.

Because article VIII, section 3 of the Hawaii Constitution and section 246A-2 covered the entire subject of the counties' real property taxation power and embraced the entire law on that matter, section 248-2, by limiting Maui county's real property taxation powers, was found by the court to be in conflict and was repealed

by implication. Accordingly, the purpose of this part is to repeal section 248-2, Hawaii Revised Statutes.

SECTION 9. Section 248-2, Hawaii Revised Statutes, is repealed.

PART V

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

SECTION 11. Statutory material to be repealed is bracketed.[2] New statutory material is underscored.

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

(Approved April 17, 2000.)

**Notes**

1. Section "2" substituted for section "5".
2. Edited pursuant to HRS §23G-16.5.

## ACT 19

H.B. NO. 2457

A Bill for an Act Relating to Veterans Loans.

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

SECTION 1. Chapter 364, Hawaii Revised Statutes, is repealed.

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

(Approved April 17, 2000.)

## ACT 20

H.B. NO. 2495

A Bill for an Act Relating to Education.

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

SECTION 1. Section 302A-1128, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall regulate the courses of study to be pursued in all grades of public schools and classify them by methods the department deems proper; provided that:

(1) The course of study and instruction shall be regulated in accordance with the statewide performance standards established under section 302A-201;
(2) All pupils shall be progressively competent in the use of computer technology; and

(3) The course of study and instruction for the first twelve grades shall enable all students to meet progressive standards of competency in a language in addition to English.

The department shall develop statewide educational policies based on this subsection without regard to chapter 91.

For the purposes of this subsection, the terms "progressively competent in the use of computer technology" and "progressive standards of competency in a language in addition to English" shall be defined by policies adopted by the board[, through rules adopted pursuant to chapter 91, with reference to relevant national or international standards of competency]. [Notwithstanding paragraphs (2) and (3) to the contrary, the] The board[, through rules adopted pursuant to chapter 91,] shall formulate statewide educational policies allowing the superintendent to exempt certain students from the requirements of paragraphs (2) and (3)[.] without regard 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 17, 2000.)

## ACT 21 S.B. NO. 2465

A Bill for an Act Relating to Pornography.

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

SECTION 1. The legislature finds that the Hawaii penal code currently prohibits the act of promoting pornography for minors under section 712-1215, Hawaii Revised Statutes, but makes an exemption for public library staff.

The legislature finds, however, that there is no sound public policy justification for allowing library personnel to engage in that criminal offense. The other exemptions to that offense apply to parents, guardians, or siblings of a minor, or to people acting in loco parentis to the minor, which the public libraries have made clear is not applicable to them.

The legislature further finds that there is no valid concern over prosecution over such material as may be found in such periodicals as National Geographic magazine, which may contain nude photographs, because section 712-1210(7)(a)(ii), Hawaii Revised Statutes, requires material classified as "pornographic for minors" to lack "serious literary, artistic, political, or scientific value" when taken as a whole.

Accordingly, the purpose of this Act is to amend the promoting pornography for minors exemption for public library staff to limit the exemption to those acting within the scope of their employment in order to assure compliance with the Hawaii State Public Library System's policies and guidelines prohibiting the promotion of pornography for minors.

SECTION 2. Section 712-1215, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Subsection (1) does not apply to a parent, guardian, or other person in loco parentis to the minor[,] or to a sibling of the minor, or to a person who commits

any act specified therein in the person's capacity and within the scope of the person's employment as a member of the staff of any public library."

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 19, 2000.)

## ACT 22 S.B. NO. 2527

A Bill for an Act Relating to Condominiums.

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

SECTION 1. The legislature finds that confusion remains concerning whether condominium laws require the board of directors of a condominium association to comply with the notice requirements of section 514A-82(b)(4), Hawaii Revised Statutes, when soliciting proxies in connection with annual meetings. The legislature has repeatedly addressed the issue of proxies over the years in an attempt to ensure that a level playing field exists between individual owners and the board of directors and managing agents. Section 514A-82(b)(4) provides that if a member of the board uses association funds to solicit proxies, the member may not cast any of the proxies for the election or reelection of board members unless the proxy form specifically authorizes such action and the board first posts notice of its intent to solicit proxies in prominent locations within the project at least thirty days prior to the solicitation.

It is the intent of the legislature that this thirty day notice provision apply only to proxies "distributed" by the board if association funds are used.

The legislature also finds that copies, facsimile telecommunications, and other reliable reproductions of proxies should be permitted.

Accordingly, the purpose of this Act is to clarify that a board of directors of a condominium association that distributes proxies using association funds must comply with the thirty day notice requirement and that a copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original.

SECTION 2. Section 514A-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to the requirements of subsection (a), the bylaws shall [provide for:] be consistent with the following provisions:

(1) [The method of removal from office of directors; that at] At any regular or special meeting of the apartment owners, any one or more members of the board of directors may be removed by the apartment owners and successors shall then and there be elected for the remainder of the term to fill the vacancies thus created. The removal and replacement shall be in accordance with all applicable requirements and procedures in the bylaws for the removal and replacement of directors, including[, but not limited to,] any [provisions] provision relating to cumulative voting. If removal and replacement is to occur at a special association meeting, the call for the meeting shall be by the president or by a petition to the secretary or managing agent signed by not less than twenty-five per cent of the apartment owners as shown in the associa-

tion's record of ownership; [and] provided [further] that if the secretary or managing agent shall fail to send out the notices for the special meeting within fourteen days of receipt of the petition, then the petitioners shall have the authority to set the time, date, and place for the special meeting and to send out the notices for the special meeting in accordance with the requirements of the bylaws. Except as otherwise provided [herein,] in this section, the meeting for the removal and replacement from office of directors shall be scheduled, noticed, and conducted in accordance with the bylaws of the association.

(2) The bylaws may be amended at any time by the vote or written consent of sixty-five per cent of all apartment owners; provided that each one of the particulars set forth in this section shall be embodied in the bylaws always; and provided further that any proposed bylaws with the rationale for the proposal may be submitted by the board of directors or by a volunteer apartment owners' committee. If submitted by that committee, [it] the proposal shall be accompanied by a petition signed by not less than twenty-five per cent of the apartment owners as shown in the association's record of ownership. The proposed bylaws, rationale, and ballots for voting on any proposed bylaw shall be mailed by the board of directors to the owners at the expense of the association for vote or written consent without change within thirty days of the receipt of the petition by the board of directors. The vote or written consent required to adopt the proposed bylaw shall not be less than sixty-five per cent of all apartment owners; provided that the vote or written consent must be obtained within one hundred twenty days after mailing. In the event that the bylaw is duly adopted, then the board shall cause the bylaw amendment to be recorded in the bureau of conveyances or filed in the land court, as the case may be. The volunteer apartment owners' committee shall be precluded from submitting a petition for a proposed bylaw that is substantially similar to that which has been previously mailed to the owners within one year after the original petition was submitted to the board. This subsection shall not preclude any apartment owner or voluntary apartment owners' committee from proposing any bylaw amendment at any annual association meeting.

(3) Notices of association meetings, whether annual or special, shall be sent to each member of the association of apartment owners at least fourteen days prior to the meeting[,] and shall contain at least: the date, time, and place of the meeting, the items on the agenda for the meeting, and a standard proxy form authorized by the association, if any.

(4) No resident manager or managing agent shall solicit, for use by the manager or managing agent, any proxies from any apartment owner of the association of owners that employs the resident manager or managing agent, nor shall the resident manager or managing agent cast any proxy vote at any association meeting except for the purpose of establishing a quorum. [No member of a] Any board of directors [who uses] that intends to use association funds to [solicit] distribute proxies, including the standard proxy form referred to in paragraph (3), shall [cast any of these proxy votes for the election or reelection of board members at any association meeting unless the proxy form specifically authorizes the board member to vote for the election or reelection of board directors and the board] first [posts] post notice of its intent to [solicit] distribute proxies in prominent locations within the project at least thirty days prior to its [solicitation] distribution of proxies; provided that if the board receives within seven days of the posted notice a

request by any owner for use of association funds to solicit proxies accompanied by a statement, the board shall mail to all owners either:

(A) A proxy form containing the names of all owners who have requested the use of association funds for soliciting proxies accompanied by their statements; or

(B) A proxy form containing no names, but accompanied by a list of names of all owners who have requested the use of association funds for soliciting proxies and their statements.

The statement shall not exceed one hundred words, indicating the owner's qualifications to serve on the board and reasons for wanting to receive proxies.

(5) 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) The apartment owners shall have the irrevocable right, to be exercised by the board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the operation of the property or for making emergency repairs therein necessary to prevent damage to the common elements or to another apartment or apartments.

(7) An owner shall not act as an officer of an association and an employee of the managing agent employed by the association.

(8) An association's employees shall not engage in selling or renting apartments in the condominium in which they are employed except association-owned units, unless such activity is approved by an affirmative vote of sixty-five per cent of the membership.

(9) The board of directors shall meet at least once a year. Whenever practicable, notice of all board meetings shall be posted by the resident manager or a member of the board in prominent locations within the project seventy-two hours prior to the meeting or simultaneously with notice to the board of directors.

(10) Directors shall not expend association funds for their travel, directors' fees, and per diem, unless owners are informed and a majority approve of these expenses.

(11) Associations at their own expense shall provide all board members with a current copy of the association's declaration, bylaws, house rules, and, annually, a copy of this chapter with amendments.

(12) The directors may expend association funds, which shall not be deemed to be compensation to the directors, to educate and train themselves in subject areas directly related to their duties and responsibilities as directors; provided that the approved annual operating budget shall include these expenses as separate line items. These expenses may include registration fees, books, videos, tapes, other educational materials, and economy travel expenses. Except for economy travel expenses within the State, all other travel expenses incurred under this subsection shall be subject to the requirements of [subsection 514A-82(b)(10).] paragraph (10).

(13) A lien created pursuant to section 514A-90 may be enforced by the association in any manner permitted by law, including nonjudicial or power of sale foreclosure procedures authorized by chapter 667, as that chapter may be amended from time to time.

The provisions of this subsection shall be deemed incorporated into the bylaws of all condominium projects existing as of January 1, 1988, and all condominium projects created after that date."

SECTION 3. Section 514A-83.2, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-83.2 Proxies.** (a) A proxy, to be valid, must:

(1) Be delivered to the secretary of the association of apartment owners or the managing agent, if any, no later than 4:30 p.m. on the second business day prior to the date of the meeting to which it pertains;

(2) Contain at least the name of the association of apartment owners, the date of the meeting of the association of apartment owners, the printed [name and signature of the person or] names and signatures of the persons giving the proxy, the [apartment or] apartments 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.

(b) A proxy shall only be valid for the meeting to which the proxy pertains and its adjournments, may designate any person as proxy, and may be limited as the apartment owner desires and indicates; provided that no proxy shall be irrevocable unless coupled with a financial interest in the unit.

(c) No [officer of a] board of directors or member of the board shall use association funds to solicit proxies[;] except for the distribution of proxies as set forth in section 514A-82(b)(4); provided that this shall not prevent an [officer from exercising the officer's right] individual member of the board from soliciting proxies as an apartment owner under section 514A-82(b)(4).

(d) A copy, facsimile telecommunication, or other reliable reproduction of a proxy may be used in lieu of the original proxy for any and all purposes for which the original proxy could be used; provided that any copy, facsimile telecommunication, or other reproduction shall be a complete reproduction of the entire original proxy.

[(d)] (e) Nothing in this section shall affect the holder of any proxy under a first mortgage of record encumbering an apartment or under an agreement of sale affecting an apartment."

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

SECTION 5. This Act shall take effect upon its approval and shall apply retroactively to all condominium projects existing as of the approval of this Act and to all condominium projects created thereafter.

(Approved April 19, 2000.)

## ACT 23 S.B. NO. 2635

A Bill for an Act Relating to Highways.

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

SECTION 1. Section 264-101, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§264-101[]] Vending from [state] highways prohibited.** [Any] (a) No person shall park or place a vehicle or structure [parked or placed] wholly or partly [within the right-of-way of] on any [state] highway for the purpose of selling the vehicle or structure or of selling therefrom or therein any article, service, or thing, [creates] thereby creating a hazardous condition or [is] a public nuisance [and the] or in reckless disregard of the risk of creating a hazardous condition or public nuisance. The department of transportation may remove or require the immediate removal of the vehicle or structure from the highway.

(b) For the purposes of this section, "highway" means the entire width, including the beam and shoulder of a public highway as defined in section 264-1."

SECTION 2. Section 264-102, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§264-102[]] Penalty.** Any person [parking any vehicle or placing any structure wholly or partly within any state highway for the purpose of selling the vehicle or structure or selling therefrom or therein any article, service, or thing] who violates section 264-101 is guilty of a petty misdemeanor[.] and shall be fined not more than $1,000 or imprisoned not more than thirty days, or both."

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 19, 2000.)

## ACT 24 S.B. NO. 2814

A Bill for an Act Relating to Insurance.

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

SECTION 1. The purpose of this Act is to place certain provisions adopted as Hawaii administrative rules regarding insurance into the Hawaii Revised Statutes. Currently, provisions governing insurance are found both within the Hawaii Revised Statutes and the Hawaii administrative rules.

This Act places portions of current insurance administrative rules properly within the Hawaii Revised Statutes. This Act streamlines insurance administration within the State by consolidating certain regulatory provisions into one location.

The affected administrative rules include: fifteen sections of chapter 16-1 (Proxies, Consents, and Authorizations of Domestic Stock Insurers); two sections of chapter 16-5 (Mass Merchandising of Motor Vehicle Insurance); three sections of

chapter 16-14 (Insurance Holding Company System); and thirteen sections of chapter 16-23 (Motor Vehicle Insurance Law).

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 4 to be appropriately designated and to read as follows:

"PART . PROXIES, CONSENTS, AND AUTHORIZATIONS OF DOMESTIC STOCK INSURERS

**431:4-A Applicability.** This part is applicable to all domestic stock insurers having one hundred or more stockholders; provided that this part shall not apply to any insurer if ninety-five per cent or more of its stock is owned or controlled by a parent or an affiliated insurer and the remaining shares are held by less than five hundred stockholders. A domestic stock insurer that files with the Securities and Exchange Commission forms of proxies, consents, and authorizations complying with the requirements of the Securities Exchange Act of 1934 (title 15 United States Code section 78a), the Securities and Exchange Acts Amendments of 1964 (P.L. 88-467), and Regulation X-14 of the Securities and Exchange Commission adopted thereunder shall be exempt from this part.

**§431:4-B Schedule A: information required in a proxy statement.** (a) When applicable, information in schedule A shall include, among other things:

(1) Whether or not the person giving the proxy has the power to revoke it;
(2) A brief outline of the rights of appraisal of dissenting stockholders;
(3) A statement as to who is making the solicitation;
(4) A description of the interest of persons in the matters to be acted upon;
(5) A statement as to the class of voting stock to be voted at the meeting, the number of shares outstanding, and the number of votes to which each class is entitled;
(6) Detailed information of nominees for directors;
(7) A statement on remuneration and other transactions with management and others;
(8) Information on the insurer's bonus, profit sharing, and other remuneration plans;
(9) Information on the insurer's pension or retirement plan;
(10) Information on the options, warrants, or rights to purchase stock of the insurer;
(11) Information of the title, amount, and description of stock to be authorized or issued;
(12) Detailed information on mergers, consolidations, acquisitions, and other similar matters; and
(13) Detailed information on any asset, capital, or surplus of the insurer.

(b) If action is to be taken with respect to any matter which is not required to be submitted to a vote of stockholders, the schedule shall state the nature of the matter, the reason for the matter being submitted to a vote of the stockholders, and the action intended to be taken by the management in the event of a negative vote on the matter by the stockholders.

(c) If action is to be taken with respect to any amendment of the insurer's charter, by-laws, or other such documents as to which information is not required, the schedule shall briefly state the reasons for and the general effect of the amendment and the vote needed for its approval.

**§431:4-C Schedule B: information to be included in statements filed by or on behalf of a participant other than an insurer in a proxy solicitation in an election contest.** Information in schedule B shall include, among other things:

(1) The name and address of the insurer;
(2) Detailed information about the participant;
(3) The participant's interest in the stock of the insurer;
(4) A description of the time and circumstances in which the participant became involved with the solicitation and the nature and extent of the activities or proposed activities of the participant; and
(5) The date and signature of the participant.

**§431:4-D Proxies, consents, and authorizations.** No domestic stock insurer, or any director, officer, or employee of the insurer, or any other person, shall solicit, or permit the use of the person's name to solicit, by mail or otherwise, any proxy, consent, or authorization with respect to any stock of the insurer in contravention of this part or schedule A in section 431:4-B and schedule B in 431:4-C.

**§431:4-E Schedules and exhibits.** Reporting of the information required in schedule A under section 431:4-B and in schedule B under section 431:4-C, and the exhibit entitled "stockholders information supplement-financial reporting to stockholder" shall be made on forms or in a format approved by the commissioner.

**§431:4-F Disclosure of equivalent information.** Unless proxies, consents, or authorizations with respect to a stock of a domestic insurer, subject to section 431:4-A, are solicited by or on behalf of the management of the insurer from the holders of record of stock of the insurer in accordance with this part and the schedules thereunder prior to any annual or other meeting, the insurer shall file with the insurance commissioner and transmit to all stockholders of record information substantially equivalent to the information that would be required to be transmitted if a solicitation were made.

**§431:4-G Definitions.** As used in this part:

"Solicit" or "solicitation" includes:

(1) Any request for a proxy, whether or not accompanied by or included in a form of proxy;
(2) Any request to execute or not to execute, or to revoke a proxy; or
(3) The furnishing of a proxy or other communication to stockholders under circumstances reasonably calculated to result in the procurement, withholding, or revocation of a proxy.

"Solicit" or "solicitation" does not include:

(1) Any solicitation by a person in respect to stock of which the person is the beneficial owner;
(2) Action by a broker or other person in respect to stock carried in the person's name;
(3) Action in the name of the nominee in forwarding to the beneficial owner of the stock soliciting material received from the company;
(4) Impartially instructing the beneficial owner to forward a proxy to the person, if any, to whom the beneficial owner desires to give a proxy;
(5) Impartially requesting instructions from the beneficial owner with respect to the authority to be conferred by the proxy and stating that a proxy will be given if the instructions are received by a certain date; or
(6) The furnishing of a form of proxy to a stockholder upon the unsolicited request of the stockholder, or the performance by any person of ministerial acts on behalf of a person soliciting a proxy.

''Participant'' or ''participant in a solicitation'' includes:
(1) The insurer;
(2) Any director of the insurer and any proxy for a nominee for whom an election as a director is solicited; or
(3) Any other person acting alone or with one or more other persons, committees, or groups in organizing, directing, or financing the solicitation.

''Participant'' or ''participant in a solicitation'' does not include:
(1) A bank, broker, or dealer who, in the ordinary course of business, lends money or executes orders for the purchase or sale of stock and who is not otherwise a participant;
(2) Any person or organization retained or employed by a participant to solicit stockholders or any person who merely transmits proxy soliciting material or performs ministerial or clerical duties;
(3) Any person employed in the capacity of attorney, accountant, or advertising, public relations, or financial advisor, and whose activities are limited to the performance of the person's duties in the course of the employment of the insurer or any of its subsidiaries or affiliates who is not otherwise a participant;
(4) Any person regularly employed as an officer or employee of the insurer or any of its subsidiaries or affiliates who is not otherwise a participant; or
(5) Any officer, director, or person regularly employed by any other participant, if the officer, director, or employee is not otherwise a participant.

**§431:4-H Information to be furnished to stockholders.** (a) No solicitation shall be made unless the person solicited is concurrently furnished or has previously been furnished with a written proxy statement containing the information required under schedule A pursuant to section 431:4-B.

(b) If the solicitation is made on behalf of the management of the insurer and relates to an annual meeting of stockholders at which directors are to be elected, each proxy statement furnished pursuant to subsection (a) shall be accompanied or preceded by an annual report (in preliminary or final form) to the stockholders containing the financial statements for the last fiscal year as are included in the exhibit entitled ''stockholders information supplement-financial reporting to stockholder''. Subject to these requirements with respect to financial statements, the annual report to stockholders may be in any form deemed suitable by the management.

(c) Two copies of each annual report sent to the stockholders pursuant to this part shall be mailed to the commissioner not later than the date on which the annual report is first sent or given to stockholders or the date on which preliminary copies of solicitation are filed with the commissioner, pursuant to section 431:4-J(a), whichever date is later.

**§431:4-I Requirements as to proxy.** (a) The form of proxy shall:
(1) Indicate in boldface type whether or not the proxy is solicited on behalf of the management;
(2) Provide a specifically designated blank space for dating the proxy; and
(3) Identify clearly and impartially each matter or group of related matters intended to be acted upon, whether proposed by the management or stockholders. No reference need be made to proposals for which discretionary authority is conferred pursuant to subsection (c).

(b) The proxy shall provide a means by which the person solicited may specify by ballot a choice between approval or disapproval of each matter or group

of related matters referred to therein, other than elections to office. A proxy may confer discretionary authority with respect to matters for which no choice is specified if the form of proxy states in boldface type how it is intended to vote the shares or authorization represented by the proxy in each case.

(c) A proxy may confer discretionary authority with respect to other matters which may come before the meeting; provided the persons on whose behalf the solicitation is made are not aware a reasonable time prior to the time the solicitation is made that any other matters are to be presented for action at the meeting and provided that a specific statement to that effect is made in the proxy statement or in the form of a proxy.

(d) No proxy shall confer authority to:

(1) Vote for the election of any person to office for which a bona fide nominee is not named in the proxy statement; or

(2) Vote at any annual meeting other than the next annual meeting (or any adjournment thereof) to be held after the date on which the proxy statement and form of proxy are first sent or given to stockholders.

(e) The proxy statement or form of proxy shall provide, subject to reasonable specified conditions, that the proxy will be voted and that where the person solicited specifies, by means of a ballot provided pursuant to subsection (b), a choice with respect to any matter to be acted upon, the vote will be in accordance with the specification so made.

(f) The information included in the proxy statement shall be clearly presented and the statement made shall be divided into groups according to subject matter, with appropriate headings. All printed proxy statements shall be clearly and legibly presented.

**§431:4-J Material required to be filed.** (a) Two preliminary copies of the proxy statement and form of proxy and any other soliciting material to be furnished to stockholders concurrently therewith shall be filed with the commissioner at least ten days prior to the date final form copies of the material are first sent or given to stockholders, or a shorter period prior to that date as the insurance commissioner may authorize upon a showing of good cause.

(b) Two preliminary copies of any additional soliciting material relating to the same meeting or subject matter to be furnished to stockholders subsequent to the proxy statements shall be filed with the commissioner at least two days (exclusive of Saturdays, Sundays, or legal state holidays) prior to the date copies of this material are first sent or given to stockholders or a shorter period prior to that date as the commissioner may authorize upon a showing of good cause.

(c) Two definitive copies of the proxy statement, final form of proxy, and all other soliciting material, in the form in which the material is furnished to stockholders, shall be filed with, or mailed for filing to, the commissioner not later than the date the material is first sent or given to the stockholders.

(d) Where any proxy statement, form of proxy, or other material filed pursuant to this chapter is amended or revised, two of the copies shall be marked to clearly show the changes.

(e) Copies of replies to inquiries from stockholders requesting further information and copies of communications that only request that forms of proxy theretofore solicited be signed and returned need not be filed pursuant to this part.

(f) Notwithstanding subsections (a) and (b), and section 431:4-O, copies of soliciting material in the form of speeches, press releases, and radio or television scripts may be filed with the commissioner prior to use or publication. Final form copies, however, shall be filed with or mailed for filing to the commissioner as required by subsection (c) not later than the date the material is used or published.

Subsections (a) and (b) and section 431:4-O shall apply to any reprints or reproductions of all or any part of the material.

**§431:4-K False or misleading statements.** No solicitation subject to this part shall be made by means of any proxy statement, form of proxy, notice of meeting, or other communication, written or oral, containing any statement which at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits any material fact necessary in order to make the statements not false or misleading or necessary to correct any statement in any earlier communication with respect to the solicitation of a proxy for the same meeting or subject matter which has become false or misleading.

**§431:4-L Prohibition of certain solicitations.** No person making a solicitation shall solicit any undated or postdated proxy or any proxy which provides that it shall be deemed to be dated as of any date subsequent to the date on which it is signed by the stockholder.

**§431:4-M Election contests; applicability.** This part shall apply to any solicitation by any person or group for the purpose of opposing a solicitation by any person or group with respect to the election or removal of directors at any annual or special meeting of stockholders.

**§431:4-N Filing of information required by schedule B.** (a) No solicitation shall be made by any person, other than the management of an insurer unless at least five business days prior thereto or a shorter period as the commissioner may authorize upon a showing of good cause, there has been filed, with the commissioner, by or on behalf of each participant in the solicitation, a statement in duplicate containing the information specified in schedule B pursuant to section 431:4-C and a copy of any material proposed to be distributed to stockholders in furtherance of the solicitation. Where preliminary copies of any materials are filed, distribution to stockholders shall be deferred until the commissioner's comments have been received and complied with.

(b) Within five business days after a solicitation is made by the management of an insurer, or a longer period as the commissioner may authorize upon a showing of good cause, there shall be filed with the commissioner by or on behalf of each participant in the solicitation, other than the insurer and by or on behalf of each management nominee or director, a statement in duplicate containing the information specified by schedule B under section 431:4-C.

(c) If any solicitation on behalf of the management or any other person has been made, or if proxy material is ready for distribution, prior to a solicitation in opposition thereto, a statement in duplicate containing the information specified in schedule B shall be filed with the commissioner, by or on behalf of each participant in the prior solicitation, other than the insurer, as soon as reasonably practicable after the commencement of the solicitation in opposition thereto.

(d) If, subsequent to the filing of the statements required by subsections (a), (b), and (c), additional persons become participants in a solicitation, there shall be filed with the commissioner, by or on behalf of each person, a statement in duplicate containing the information specified in schedule B under section 431:4-C, within three business days after the person becomes a participant, or longer period as the commissioner may authorize upon a showing of good cause.

(e) If any material change occurs in the facts reported in any statement filed by or on behalf of any participant, an appropriate amendment to the statement shall

be filed within three business days by or on behalf of each respective participant with the commissioner.

(f) Each statement and amendment thereto filed pursuant to this section shall be part of the public files of the commissioner.

**§431:4-O Solicitations prior to furnishing required written proxy statement.** Notwithstanding section 431:4-H(a), a solicitation subject to this part may be made prior to furnishing stockholders a written proxy statement containing the information specified in schedule A under section 431:4-B with respect to the solicitation, provided that:

(1) The statements required by section 431:4-N are filed by or on behalf of each participant in the solicitation;

(2) No form of proxy is furnished to stockholders prior to the time the proxy statement required by section 431:4-H(a) is furnished to such persons. This paragraph shall not apply where a proxy statement then meeting the requirements of schedule A under section 431:4-B has been furnished to stockholders;

(3) At the minimum, the information specified in paragraphs (2) and (3) of the statements required by schedule B under section 431:4-C to be filed by each participant, or an appropriate summary thereof, is included in each communication sent or given to stockholders in connection with the solicitation; and

(4) A written proxy statement containing the information specified in schedule A pursuant to section 431:4-B with respect to a solicitation is sent or given to stockholders at the earliest practicable date.

**§431:4-P Solicitation prior to furnishing required written proxy statement; filing requirements.** Two copies of any soliciting material proposed to be sent or given to stockholders prior to the furnishing of the written proxy statement required by section 431:4-H(a) shall be filed with the commissioner in preliminary form at least five business days prior to the date final form copies of the material are first sent or given to the stockholders, or a shorter period as the commissioner may authorize upon a showing of good cause therefor.

**§431:4-Q Application of this part to annual report.** Notwithstanding section 431:4-H(b) and (c), two copies of any portion of the annual report referred to in section 431:4-H(b), which comments upon or refers to any solicitation subject to this section or to any participant in any solicitation, other than the solicitation by the management, shall be filed with the commissioner as proxy material subject to this part. The portion of the annual report shall be filed with the commissioner in preliminary form at least five business days prior to the date copies of the annual report are first sent or given to stockholders."

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding eight new sections to article 10C to be appropriately designated and to read as follows:

"**§431:10C-A Agreement.** The applicant shall execute and file with the commissioner an agreement in a form prescribed by the commissioner, that if certified as a self-insurer the applicant shall:

(1) Permit the commissioner or an authorized representative to inspect and copy records and provide them copies of records pertaining to the self-insurer's financial condition, processing and payment of claims, and

any other matters pertinent to the administration and enforcement of this article; and

(2) Provide all mandatory benefits required under this article and comply with all requirements of articles 10C and 13, and with the rules and directives of the commissioner, including, but not limited to, those relating to processing and payment of assessments and fees.

**§431:10C-B Surety bond, deposit of security, or proof of financial ability.** An applicant for self-insurance shall:

(1) (A) File with the commissioner and maintain a bond of a surety company authorized to do business in the State, conditioned for the payment of benefits and amounts as would be payable if the applicant were insured under a motor vehicle insurance policy as prescribed in this article. The bond shall be in the form and penal sum acceptable to the commissioner, but in no event shall be less than $300,000, and shall provide that the bond may not be canceled or otherwise terminated until two years have elapsed from the last day the applicant was self-insured, unless the commissioner has given prior written consent. It shall be undertaken and may be enforced in the name of "Commissioner of Insurance, State of Hawaii". The surety company may not cancel the bond for the period of certification; or

(B) Deposit with the commissioner cash or those securities as may be legally purchased for investment by insurance companies under this chapter and evidence satisfactory to the commissioner that there are no unsatisfied judgments against the applicant. As used herein, "cash" includes an irrevocable letter of credit issued by a federally insured financial institution whose principal office is located in this State. Prior to the issuance of a certificate of self-insurance the securities and cash, if appropriate, shall be registered in the name of the "Commissioner of Insurance, State of Hawaii". The deposit shall be held to satisfy claims for personal injury protection benefits and liability coverage as prescribed in this article. The commissioner shall deposit the cash or securities with the director of finance. The applicant shall execute an agreement satisfactory in form to the commissioner with respect to the deposit. The cash or market value of the securities deposited shall be in an amount determined by the commissioner to afford security substantially equivalent to that afforded under a motor vehicle insurance policy, but in no event less than $300,000 and shall provide that the cash or securities shall not be withdrawn until two years have elapsed from the last day the applicant was self-insured, unless the commissioner has given prior written consent; and

(2) Furnish the commissioner satisfactory proof of the applicant's solvency and financial ability to timely pay benefits and amounts as would be payable if the applicant were insured under this article. The commissioner shall consider the assets, liabilities, profit, loss records, and liquidity of the applicant, the number of vehicles involved, the exposure, and other factors appropriate to determining whether the applicant qualifies as a self-insurer.

**§431:10C-C Proof of ability to process and pay claims promptly.** An applicant for self-insurance shall submit proof satisfactory to the commissioner that

the applicant has retained an adjuster licensed under this chapter to provide a complete claims service to process and promptly pay claims in accordance with this article and article 13. During the period that the applicant is self-insured, the applicant shall immediately refer all claims to the adjuster for processing. From time to time, the commissioner may require a self-insurer to show that the self-insurer is continuing to maintain an effective claims service.

**§431:10C-D Issuance of certificate of self-insurance.** The commissioner shall issue a certificate of self-insurance if:

(1) The applicant has provided the bond, cash, or securities and proof of qualification as a self-insurer affording security substantially equivalent to that afforded under a motor vehicle insurance policy; and

(2) The commissioner is satisfied that in case of injury, death, or property damage, any claimant would have the same rights against the self-insurer as the claimant would have had if a motor vehicle insurance policy was applicable.

**§431:10C-E Duty to notify commissioner.** A self-insurer shall notify the commissioner in writing of any change in status of any motor vehicle which is self-insured, such as a transfer, sale, removal from the State, or any additional motor vehicle which the self-insurer desires to self-insure within ten working days after the change is effected.

**§431:10C-F Duration of certification.** A certificate of self-insurance is valid for a period of one year from the date of issuance and may be renewed annually.

**§431:10C-G Revocation of certificate of self-insurance.** The commissioner may revoke a certificate of self-insurance for good cause at any time after providing notice and the opportunity for a hearing in accordance with chapter 91. Failure to comply with this article, rules, orders, or directives of the commissioner, or to pay any lawful fee or assessment is cause for revocation. Upon a revocation, the owner of any self-insured motor vehicle shall not operate or permit operation of the vehicle in the State until the owner has obtained insurance or has received a new certificate of self-insurance from the commissioner.

**§431:10C-H Termination of self-insurer status and withdrawal of security deposit.** (a) A person who terminates the person's status as a self-insurer or whose certificate of self-insurance has been revoked and who obtains a motor vehicle insurance policy for any formerly self-insured motor vehicle or shows that the person does not own any motor vehicle, may apply to the commissioner for the return of the person's security deposit or cancellation of the surety bond.

(b) After a lapse of twenty-four months from termination or revocation of self-insurer status and proof satisfactory to the commissioner that all claims have been fully adjudicated and paid, that all allotments and assessments have been paid, and that the owner has complied with the applicable provisions of this article, rules, orders, and directives of the commissioner, and provisions of the self-insurer's agreement, the commissioner may release the securities deposited or permit the cancellation of the bond."

SECTION 4. Section 431:10C-103, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

"Alternative care provider" means any person providing medical or rehabilitative services in section 431:10C-302(a)(10) to a claimant covered by a motor vehicle insurance policy.

"Anesthetist" means a registered nurse-anesthetist who performs anesthesia services under the supervision of a licensed physician.

"Medical fee schedule" refers to the Medicare Resource Based Relative Value Scale System applicable to Hawaii, entitled "Workers' Compensation Supplemental Medical Fee Schedule"."

SECTION 5. Section 431:10C-105, Hawaii Revised Statutes, is amended to read as follows:

"**§431:10C-105 Self-insurance.** (a) The motor vehicle insurance required by section 431:10C-104 may be satisfied by any owner of a motor vehicle if:

(1) [Such] The owner provides a surety bond, proof of qualifications as a self-insurer, or other securities affording security substantially equivalent to that afforded under a 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;] rules; and

(2) The commissioner is satisfied that in case of injury, death, or property damage, any claimant would have the same rights against [such] the owner as the claimant would have had if a motor vehicle insurance policy had been applicable to [such] the vehicle.

(b) A person desiring to qualify as a self-insurer shall apply to the commissioner on a form or in a format approved by the commissioner pursuant to rules."

SECTION 6. Section 431:10C-107, Hawaii Revised Statutes, is amended to read as follows:

"**§431:10C-107 Verification of insurance: motor vehicles.** (a) Every insurer shall issue to its insureds a motor vehicle insurance identification card for each motor vehicle for which the basic 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 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.

(b) The identification card shall be in the insured motor vehicle at all times and shall be exhibited to a law enforcement officer upon demand.

(c) The identification card shall be resistant to forgery by whatever means appropriate. The commissioner shall approve the construction, form, and design of the identification card to ensure that the card is forgery resistant.

(d) The commissioner shall issue a certificate of self-insurance periodically, as necessary, for use in each motor vehicle insured under section 431:10C-105.

(e) The identification card issued by an insurer shall not be issued for a period exceeding the period for which premiums have been paid or earned; provided that this subsection shall apply only to the first application of a person for a motor vehicle insurance policy and shall not apply to applications for commercial and fleet vehicles."

SECTION 7. Section 431:10C-115, Hawaii Revised Statutes, is amended to read as follows:

"**§431:10C-115 Drivers education fund underwriters fee.** (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 an annual basis by means and at a time to be determined by the commissioner.

(b) The commissioner shall deposit the fees into a special drivers education fund account.

(c) The commissioner shall allocate the fees deposited for each fiscal year in the following manner:

(1) Fifty per cent to the commissioner to be expended for the operation of the drivers education program provided in section [[]286-128(d)[]]; and

(2) Fifty per cent to the director of commerce and consumer affairs for:
   (A) The drivers education program administered by the department of education for high school students; and
   (B) The traffic safety education program established and administered by the department of education pursuant to section 302A-417.

(d) Motor vehicles insured under the joint underwriting plan shall be excluded from the drivers education fund assessment.

[(d)] (e) The commissioner shall adopt rules in accordance with chapter 91 for the execution of this section and the distribution of this fund."

SECTION 8. Section 431:11-102, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

"'"Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller, or any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.

"Statement" means information required to be filed with the commissioner pursuant to sections 431:11-104, 431:11-105, and 431:11-106, and guidelines set forth on a form or in a format approved by the commissioner.

"Ultimate controlling person" means a person who is not controlled by any other person."

SECTION 9. Section 431:11-103, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted [under article 6,] in this chapter, a domestic insurer may also:

(1) Invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries, amounts which do not exceed the lesser of ten per cent of the insurer's assets or fifty per cent of the insurer's surplus as regards policyholders; provided that after the investments, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of the investments, investments in domestic or foreign insurance subsidiaries shall be excluded, and there shall be included:
   (A) Total net moneys or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary,

including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and

(B) All amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

(2) Invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries engaged or organized to engage exclusively in the ownership and management of assets authorized as investments for the insurer; provided that each subsidiary agrees to limit its investments in any asset so that the investments will not cause the amount of the total investment of the insurer to exceed any of the investment limitations specified in [item] paragraph (1) or in [article 6.] this chapter. For the purpose of this subsection, the total investment of the insurer shall include:

(A) Any direct investment by the insurer in an asset[,]; and

(B) The insurer's proportionate share of any investment in an asset by any subsidiary of the insurer, which shall be calculated by multiplying the amount of the subsidiary's investment by the percentage of the ownership of the subsidiary; and

(3) With the approval of the commissioner, invest any greater amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries; provided that after the investment, the insurer's surplus as regards policyholders will be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs."

SECTION 10. Section 431:11-106, Hawaii Revised Statutes, is amended to read as follows:

**"§431:11-106 Standards and management of an insurer within a holding company system.**

(a) (1) Transactions within a holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(A) The terms shall be fair and reasonable;

(B) Charges or fees for services performed shall be reasonable;

(C) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(D) The books, accounts, and records of each party to all transactions shall be [so] maintained so as to clearly and accurately disclose the nature and details of the transactions including the accounting information [as is] necessary to support the reasonableness of the charges or fees to the respective parties; and

(E) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(2) The following transactions involving a domestic insurer and any person in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days prior thereto, or a shorter period

as the commissioner may permit, and the commissioner has not disapproved it within that period:

(A) Sales, purchases, exchanges, loans, or extensions of credit, guarantees, or investments; provided that the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders each as of the thirty-first day of December next preceding; or

(ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the thirty-first day of December next preceding;

(B) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, any affiliate of the insurer making the loans or extensions of credit provided the transactions are equal to or exceed:

(i) With respect to nonlife insurers, the lesser of three per cent of the insurer's admitted assets or twenty-five per cent of surplus as regards policyholders each as of the thirty-first day of December next preceding; or

(ii) With respect to life insurers, three per cent of the insurer's admitted assets as of the thirty-first day of December next preceding;

(C) Reinsurance agreements or modifications thereto in which the reinsurance premium or a change in the insurer's liabilities equals or exceeds five per cent of the insurer's surplus as regards policyholders, as of the thirty-first day of December next preceding, including those agreements which may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(D) All management agreements, service contracts, and all cost-sharing arrangements; and

(E) Any material transactions, specified by [regulation,] rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

Nothing in this section shall be deemed to authorize or permit any transactions which, in the case of an insurer not a member of the same holding company system, would be otherwise contrary to law.

(3) A domestic insurer may not enter into transactions, which are part of a plan or series of like transactions with persons within the holding company system, if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would otherwise occur. If the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise the commissioner's authority under section 431:11-111.

(4) The commissioner, in reviewing transactions pursuant to subsection (a)(2), shall consider whether the transactions comply with the stan-

dards set forth in subsection (a)(1) and whether they may adversely affect the interests of policyholders.

(5) The commissioner shall be notified within thirty days of any investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten per cent of the corporation's voting securities.

(b) (1) No domestic insurer shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until:

(A) Thirty days after the commissioner has received notice of the declaration thereof and has not within the period disapproved the payment; or

(B) The commissioner [shall have] has approved the payment within the thirty-day period.

(2) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding twelve months exceeds the [[]lesser[]] of:

(A) Ten per cent of [such] the insurer's surplus as regards policyholders as of the thirty-first day of December next preceding; or

(B) The net gain from operations of a life insurer, or the net income, if the insurer is not a life insurer, not including realized capital gains, for the twelve-month period ending the thirty-first day of December next preceding.

Extraordinary dividend or distribution shall not include pro rata distributions of any class of the insurer's own securities.

In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward income from the previous two calendar years that has not already been paid out as dividends. This carry-forward shall be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

Notwithstanding any other provisions of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval thereof, and the declaration shall confer no rights upon shareholders until the commissioner has either approved the payment of the dividend or distribution or has not disapproved the payment within the thirty-day period referred to above.

(c) (1) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer shall not thereby be relieved of any obligation or liability which they would otherwise be subject to by law. The insurer shall be managed so as to assure its separate operating identity consistent with this article.

(2) Nothing herein shall preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subsection (a)(1).

(d) For purposes of this article, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

(1) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(2) The extent to which the insurer's business is diversified among the several lines of insurance;
(3) The number and size of risks insured in each line of business;
(4) The extent of the geographical dispersion of the insurer's insured risks;
(5) The nature and extent of the insurer's reinsurance program;
(6) The quality, diversification, and liquidity of the insurer's investment portfolio;
(7) The recent past and projected future trend in the size of the insurer's investment portfolio;
(8) The surplus as regards policyholders maintained by other comparable insurers;
(9) The adequacy of the insurer's reserves; and
(10) The quality and liquidity of investments in affiliates. The commissioner may treat any investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the commissioner's judgment the investment so warrants.

(e) In determining the adequacy and reasonableness of an insurer's surplus, no single factor is necessarily controlling, and the commissioner shall:
(1) Consider the net effect of all of the factors, along with other factors bearing on the financial condition of the insurer;
(2) In comparing the surplus maintained by other insurers, consider the extent to which each of these factors varies among insurers; and
(3) In determining the quality and liquidity of investments in subsidiaries, consider the individual subsidiary and discount or disallow its valuation to the extent warranted by individual investments."

SECTION 11. Section 431:12-105, Hawaii Revised Statutes, is amended to read as follows:

"**§431:12-105 Mass merchandising requirements.** Mass merchandising of insurance and every mass merchandising plan shall be subject to the following conditions:
(1) The insurance offered shall be open to participation by or be available to every employee of the employer who meets the underwriting requirements of the insurer.
(2) The insurance shall be offered without discrimination against any employee as to rates, forms, or coverages. Nothing herein shall preclude the establishment of different classes of risks.
(3) Upon the termination of employment or upon the termination of the mass merchandising agreement, an insured employee shall have the option of continuing the employee's participation in a group policy or the employee's individual policy then in force for a period of one year upon payment of the applicable premium; provided that the employee shall exercise the employee's option within thirty days following the date of [such] the termination. The terms, conditions, and coverages for the one-year period are those that were effective on the date of termination and shall not be more restrictive than those contained in the mass merchandising agreement, the group policy, or the individual policy in force immediately prior to the date of termination.
(4) The insurer shall issue a certificate or other evidence of participation to every member covered under a group policy and a policy of insurance to every member insured under an individual policy.
(5) The insurance offered shall not be contingent upon the purchase of any other insurance, product, or service; nor shall the purchase of any other

insurance, product, or service be contingent upon the purchase of the motor vehicle, property, and casualty insurance offered."

SECTION 12. Section 431:12-115, Hawaii Revised Statutes, is amended to read as follows:

"**§431:12-115 Establishment and maintenance of office.** (a) Every insurer selling insurance on a mass merchandising basis shall establish and maintain at all times an office in the State to conduct the administration of its business and handle claims.

(b) Establishment and maintenance of an office by any licensed general agent of an insurer shall meet the requirements of this section."

SECTION 13. In codifying the new sections added to chapter 431, Hawaii Revised Statutes, by sections 2 and 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designations of these new sections in this Act.

SECTION 14. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

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

(Approved April 19, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 25 S.B. NO. 2877

A Bill for an Act Relating to Child and Adolescent Mental Health.

*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 division for the fiscal period beginning July 1, 1999, and ending June 30, 2000, a critical funding emergency now exists. The program will expend all appropriated general and special funds before the end of the current fiscal year, and the department will be unable to meet its fiscal obligation to provide services to certain emotionally disturbed children and adolescents. The increases in case referrals, services, and court-directed placements are the primary contributing factors to this financial situation. The purpose of this Act is to appropriate additional general and special fund moneys to allow the child and adolescent mental health division to continue to provide services to certain emotionally disturbed children and adolescents.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $17,735,924, or so much thereof as may be necessary for fiscal

year 1999-2000, to be used in support of services provided to certain emotionally disturbed children and adolescents.

SECTION 4. There is appropriated out of the child and adolescent mental health special fund the sum of $378,646, or so much thereof as may be necessary for fiscal year 1999-2000, to be used in support of services provided to certain emotionally disturbed children and adolescents.

SECTION 5. There is appropriated out of the behavioral health administration special fund the sum of $38,866, or so much thereof as may be necessary for fiscal year 1999-2000, to be used in support of services provided to certain emotionally disturbed children and adolescents.

SECTION 6. Provided that of the sums appropriated in Sections 3, 4, and 5 of this Act for the child and adolescent mental health division (HTH 460), a minimum of ten per cent of the funds to be expended for any new treatment or service programs shall be expended by the department of health for the purpose of conducting process and outcome evaluations of these programs; provided further that:

(1) These process and outcome evaluations shall be conducted for the department of health by an independent evaluator;
(2) The department of health shall submit reports of these process and outcome evaluations:
    (A) To the legislature no later than twenty days prior to the convening of the regular session of 2002; and
    (B) To the auditor, at any time, upon the request of the auditor; and
(3) The auditor shall monitor the conduct of these process and outcome evaluations and report its findings and recommendations to the legislature or the department of health, or both, whenever or as deemed necessary.

SECTION 7. The sums appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 8. This Act shall take effect upon its approval.

(Approved April 19, 2000.)

## ACT 26 S.B. NO. 2088

A Bill for an Act Relating to Short-Term Investment of State Moneys.

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

(1) Any bonds or interest-bearing notes or obligations:

(A) Of the State (including state director of finance's warrant notes issued pursuant to chapter 40);
(B) Of the United States;
(C) For which the faith and credit of the United States are pledged for the payment of principal and interest;

(2) [Federal land bank bonds;] Federal Farm Credit System notes and bonds;
(3) Federal Agricultural Mortgage Corporation notes and bonds;
(4) Federal Home Loan Bank notes and bonds;
(5) Federal Home Loan Mortgage Corporation bonds;
(6) Federal National Mortgage Association notes and bonds;
(7) Student Loan Marketing Association notes and bonds;
(8) Tennessee Valley Authority notes and bonds;
[(7)] (9) Securities of a mutual fund whose portfolio is limited to bonds or securities issued or guaranteed by the United States or an agency thereof;
[(8)] (10) Repurchase agreements fully collateralized by any such bonds or securities;
[(9)] (11) Federally insured savings accounts;
[(10)] (12) Time certificates of deposit;
[(11)] (13) Certificates of deposit open account;
[(12)] (14) Repurchase agreements with federally insured banks, savings and loan associations, and financial services loan companies;
[(13)] (15) Student loan resource securities including:
(A) Student loan auction rate securities;
(B) Student loan asset-backed notes;
(C) Student loan program revenue notes and bonds; and
(D) Securities issued pursuant to Rule 144A of the Securities Act of 1933, including any private placement issues;
issued with either bond insurance or overcollateralization guaranteed by the United States Department of Education; provided all insurers maintain a triple-A rating by Standard & Poor's, Moody's, Duff & Phelps, Fitch, or any other major national securities rating agency;
[(14)] (16) Commercial paper with an A1/P1 or equivalent rating by any national securities rating service; and
[(15)] (17) Bankers' acceptances with an A1/P1 or equivalent rating by any national securities rating service;

provided that the investments are due to mature not more than five years from the date of investment. Income derived from those investments shall be a realization of the general fund; provided that income earned from moneys invested by the general funds, special funds, bond funds, and trust and agency funds on an investment pool basis shall be paid into and credited to the respective funds based on the contribution of moneys into the investment pool by each fund. As used in this section, ''investment pool'' means the aggregate of state treasury moneys that are maintained in the custody of the director of finance for investment and reinvestment without regard to fund designation.

(b) Except with respect to an early withdrawal penalty on an investment permitted by this section, the amount of such penalty being mutually agreed at the time of acquisition of such investment, no investment permitted by this section shall require or may in the future require payments by the State, whether unilateral, reciprocal, or otherwise, including margin payments, or shall bear interest at a variable rate which causes or may cause the market price of such investment to fluctuate; provided that such limitation shall not apply to money market mutual funds which:

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

(c) Furthermore, the State shall not acquire any investment or enter into any agreement in connection with the acquisition of any investment or related to any existing investment held by the state, which would require or may in the future require any payment by the State, whether unilateral, reciprocal, or otherwise, such as swap agreements, hedge agreements, or other similar agreements. For purposes of this section, a swap or hedge payment is any payment made by the State in consideration or in exchange for a reciprocal payment by any person, such as a variable rate payment in exchange for a fixed rate payment, a fixed rate payment in exchange for a variable rate payment, a payment when a cap or a floor amount is exceeded, or other similar payment."

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 20, 2000.)

## ACT 27 S.B. NO. 2289

A Bill for an Act Relating to Prepaid Telephone Calling Service.

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

SECTION 1. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§237- Sales of telecommunications services through prepaid telephone calling service.** (a) For the purposes of this section, "prepaid telephone calling service" means the right to exclusively purchase telecommunication services, paid for in advance, that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed.

(b) If the sale or recharge of a prepaid telephone calling service does not take place at the vendor's place of business, it shall be conclusively determined to take place at the customer's shipping address; or if there is no item shipped, then it shall be the customer's billing address.

(c) When a person licensed under this chapter sells prepaid telephone calling services to a licensed retail merchant, jobber, or other licensed seller for purposes of resale, the person shall be taxed as a wholesaler selling tangible personal property. All other sales of prepaid telephone calling services shall be taxed as retail sales of tangible personal property.

(d) For purposes of prepaid telephone calling services only, all such services shall be taxed under this section and shall be in lieu of taxation under chapter 239."

SECTION 2. Section 238-1, Hawaii Revised Statutes, is amended by amending the definition of "property" to read as follows:

""Property" means tangible personal property[,] and prepaid telephone calling services but does not include newspapers or other periodical publications purchased on the subscription plan, issued at stated intervals as frequently as four times a year, and of the class admitted to the United States mails as second class matter under the laws and regulations governing the postal service on January 1, 1965."

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

SECTION 4. This Act shall take effect on September 1, 2000; provided that section 1 of this Act shall apply to gross income and gross proceeds after August 31, 2000, and section 2 of this Act shall apply to all taxes accruing after August 31, 2000.

(Approved April 20, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 28

S.B. NO. 2542

A Bill for an Act Relating to State Bonds.

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

SECTION 1. Chapter 39, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . SECURITY INTERESTS**

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

"Authorizing statute" means any statute which authorizes the issuance of bonds.

"Bonds" means any bonds, notes, and other instruments of indebtedness, or lease, lease purchase, or certificates of participation, or other evidence of indebtedness for which a security interest is granted or a pledge made upon revenue or other property to provide for payment or security.

"Governmental unit" means the State of Hawaii, and any state department, board, commission, officer, authority, agency, public corporation, or instrumentality, or the judiciary.

"Measure" means any act, certificate, resolution, statute, or other enactment authorizing the issuance of bonds or authorizing an indenture with respect to bonds pursuant to an authorizing statute.

**§39- Perfection of a security interest.** Any security interest created by a governmental unit pursuant to any authorizing statute is perfected by the adoption of the measure or measures from the date on which the measure takes effect without the need for any physical delivery, filing, or recording in any office.

§39- **Priority of a security interest.** The priority of any security interest created by a governmental unit shall be governed by the contractural terms set forth in the measure or measures, including the terms of any indenture or any other agreement approved by the measure or measures, adopted by the governmental unit. No security interest having priority over an existing security interest may be created in violation of the terms of an existing measure governing outstanding bonds.

§39- **Enforcement of a security interest.** The terms of any applicable authorizing statute shall govern the enforcement of any security interest to the extent that the authorizing statute contains express provisions relating to enforcement or authorizes a governmental unit to contract with respect to enforcement."

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

(Approved April 20, 2000.)

## ACT 29 S.B. NO. 2563

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:13-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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;

(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;

(F) To terminate, modify coverage, or 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;

(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 [paragraphs] paragraph (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 nonparticipating insurance; provided that any bonus or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the insurer and its policyholders;

(B) In the case of life insurance policies issued on the industrial debit plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expense;

(C) Readjustment of the rate of premium for a group insurance policy based on the loss or expense experience thereunder, at the end of the first or any subsequent policy year of insurance thereunder, which may be made retroactive only for the policy year; 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) Refusing to provide or limiting coverage available to an individual because the individual may have a third-party claim for recovery of damages; provided that:

(A) Where damages are recovered by judgment or settlement of a third-party claim, reimbursement of past benefits paid shall be allowed pursuant to section 663-10; and

(B) This paragraph shall not apply to entities licensed under chapter 386, 431:10C, 432, or 432D;

[(10)] (11) 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;

(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, 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)] (12) 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" means any written communication primarily expressing a grievance.

[(12)] (13) Misrepresentation in insurance applications. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual."

SECTION 2. Section 663-10, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§663-10[]] Collateral sources; protection for liens and rights of subrogation.** In any civil action in tort, the court, before any judgment or stipulation to dismiss the action is approved, shall determine the validity of any claim of a lien against the amount of the judgment or settlement by any person who files timely notice of the claim to the court or to the parties in the action. The judgment entered, or the order subsequent to settlement, shall include a statement of the amounts, if any, due and owing to any person determined by the court to be a holder of a valid lien and to be paid to the lienholder out of the amount of the corresponding special damages recovered by the judgment or settlement. In determining the payment due the lienholder, the court shall deduct from the payment a reasonable sum for the costs and fees incurred by the party who brought the civil action in tort. As used in this section, lien means a lien arising out of a claim for payments made or indemnified from collateral sources, including health insurance or benefits, for costs and expenses arising out of the injury which is the subject of the civil action in tort. If there is a settlement before suit is filed or there is no civil action pending, then any party may petition a court of competent jurisdiction for a determination of the validity and amount of any claim of a lien."

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 20, 2000.)

## ACT 30 S.B. NO. 2742

A Bill for an Act Relating to Pork.

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

SECTION 1. Part III of chapter 148, Hawaii Revised Statutes, is repealed.

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

(Approved April 20, 2000.)

## ACT 31 S.B. NO. 2830

A Bill for an Act Relating to Employment of School Principals and Vice Principals.

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

SECTION 1. Section 302A-605, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§302A-605[]] Principals and [acting principals.] vice-principals.** Principals and [acting principals] vice-principals shall meet the department's certification requirements and shall have served as a teacher for a period of not less than five years[, of which one year must have been served as a teacher or as an exchange principal in the schools of Hawaii]."

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 20, 2000.)

## ACT 32 S.B. NO. 2858

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 91, Session Laws of Hawaii 1999, appropriated a sum of money to the department of human services to provide funds for the medical assistance program under the department's Med-Quest division for the fiscal period beginning July 1, 1999 and ending June 30, 2000.

A critical funding emergency exists. The medical assistance program, also known as the medicaid program and which serves the aged, blind, and disabled population, 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 escalating cost of nursing facility care and the continued rise in the cost of new pharmaceutical drugs are 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 recipients, additional funds are urgently needed.

SECTION 3. There is appropriated or authorized from the sources of funding indicated below the following sums, or so much thereof as may be necessary, for the fiscal year 1999-2000, and to be used for health care payments for aged, blind, and disabled medicaid recipients:

| | |
|---|---|
| General Funds: | $4,075,000 |
| Other Federal Funds: | $4,243,025 |

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

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

(Approved April 20, 2000.)

## ACT 33 S.B. NO. 2942

A Bill for an Act Relating to the General Fund Expenditure Ceiling Reporting Dates.

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

SECTION 1. Section 37-94, Hawaii Revised Statutes, is amended to read as follows:

"**§37-94 Director of finance; duties.** A preliminary estimate of the state growth and expenditure ceiling shall be determined by the director of finance as of August [1] 15 of each year. The final estimate of the state growth and expenditure ceiling to be used by the legislature to make appropriations from the general fund in each year shall be determined by the director of finance as of November [1] 15 of each year. Upon the determination of both the preliminary estimate and the final estimate of the state growth and expenditure ceiling, the director shall inform the governor, chief justice, and the legislature, and shall give, twice in successive weeks, statewide public notice of the state growth and expenditure ceiling and the maximum dollar amount that may be appropriated from the general fund [twice in successive weeks]."

SECTION 2. Section 37-113.1, Hawaii Revised Statutes, is amended to read as follows:

"**§37-113.1 Council on revenues; estimate of total personal income.** The council shall prepare an estimate of the total state personal income for the calendar year in progress and, when necessary, for the next succeeding calendar year for which such income has not been determined or published and shall report the estimate and any revision thereto to the director of finance, the governor, the chief justice, and the legislature each [July 20] August 5 and [October 20.] November 5."

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 20, 2000.)

## ACT 34 S.B. NO. 2947

A Bill for an Act Relating to Disclosure of Tax Information.

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

SECTION 1. 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 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;
(11) The Multistate Tax Commission or its authorized representative; [and]
(12) Members of a limited liability company[.]; and
(13) A person contractually obligated to pay the taxes assessed against another when the latter person is under audit by the department.

Any violation of this subsection shall be a misdemeanor."

SECTION 2. Section 238-13, Hawaii Revised Statutes, is amended to read as follows:

"**§238-13 Other provisions of general excise tax law applicable.** In respect of (1) the examination of books and records and of taxpayers and other persons, (2) procedure and powers upon failure or refusal by a taxpayer to make a return or a proper return, and (3) the general administration of this chapter, the director of taxation shall have all the rights and powers conferred upon the director by the general excise tax law with respect to taxes thereby or thereunder imposed; and, without restriction upon these rights and powers, sections 237-8, 237-30, 237-34, and 237-36 to 237-41 are hereby made applicable to and with respect to the taxes and the taxpayers, tax officers, and other persons, and the matters and things affected or covered by this chapter, insofar as not inconsistent with this chapter, in the same manner, as nearly as may be, as in similar cases covered by the general excise tax law."

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 apply to discussions after the effective date of this Act regarding the assessment of additional taxes.

(Approved April 20, 2000.)

## ACT 35 S.B. NO. 3117

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Section 286-44, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The chief of police of each county or officers of the county police who are permanently assigned to conduct vehicle theft investigations may immediately inspect, during normal business hours or whenever the dealer or dealer's agents or employees are otherwise present, any records required by [chapters] chapter 286, 289, or 445 and any articles described in such records that the police reasonably believe are stolen goods, limited to the purpose of establishing rightful title or registration of vehicles or identifiable vehicle components in order to determine rightful ownership or possession, on the premises of:

(1) Any motor vehicle repair dealer required to be [registered] licensed under chapter 437B; or

(2) Any person licensed pursuant to sections 289-2 and 289-3 to engage in the business of purchasing or selling used motor vehicle parts or accessories, or wrecking, salvaging, or dismantling motor vehicles for the purpose of reselling the parts or accessories thereof.

As used in this section, "identifiable vehicle component" means any component of a motor vehicle, including motor block or part that can be distinguished from other similar components by a serial number or other unique distinguishing number, sign, or symbol. Whenever possible, inspections conducted pursuant to this subsection shall be conducted at a time and in a manner so as to minimize any interference with, or delay of, business operations."

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 20, 2000.)

## ACT 36 S.B. NO. 3192

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 19 be appropriately designated and to read as follows:

"**§431:19- Class 5 companies.** (a) A class 5 company under this article is one that is not a class 1, class 2, class 3, or class 4 company, and acts only as a reinsurer or excess insurer, or both. Notwithstanding any other provision of this article, a class 5 company licensed under this article may reinsure or provide excess insurance, or both, for the risks and lines of insurance approved by the commissioner.

(b) Notwithstanding section 431:19-107(a), reserves for risks located outside of the United States reinsured or insured by a class 5 company, upon approval of the commissioner, may be determined in accordance with the required or approved reserve standards of the country in which the ceding insurer is domiciled or the excess insurance risks are located.

(c) Notwithstanding article 6 of this chapter and section 431:19-110, where the risks reinsured or insured by a class 5 company are located outside of the United States, the class 5 company, upon approval of the commissioner, may invest its funds in accordance with the laws and regulations applicable to insurers or reinsurers domiciled in the jurisdictions in which the risks are located, in proportion to the reserves held for the risks."

SECTION 2. Section 431:19-101, Hawaii Revised Statutes, is amended by amending the definitions of "captive insurance company" and "pure captive insurance company," to read as follows:

""Captive insurance company" means [any pure captive insurance company, risk retention captive insurance company, association captive insurance company, or leased capital facility] a class 1, class 2, class 3, class 4, or class 5 captive insurance company formed or licensed under this article.

"Pure captive insurance company" means any company that only insures or reinsures risks of its parent and affiliated companies."

SECTION 3. Section 431:19-101.3, Hawaii Revised Statutes, is amended to read as follows:

"[[]§431:19-101.3[]] **Classes of captive insurance.** Each captive insurance company formed under this article shall be designated and licensed as one of the following classes of captive insurance companies:

(1) A class 1 company shall be limited to a pure captive insurance company that only writes business as a reinsurer;
(2) A class 2 company shall be limited to a pure captive insurance company that is not a class 1 company;
(3) A class 3 company shall be any company formed under this article as an association captive insurance company or a risk retention captive insurance company; [and]
(4) A class 4 company shall be a leased capital facility formed under this article[.]; and
(5) A class 5 company shall be a reinsurance or excess insurance company formed under section 431:19- ."

SECTION 4. Section 431:19-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) [Minimum] The minimum capital or surplus requirements for captive insurance companies [shall be] are as follows:

(1) Class 1: $100,000;
(2) Class 2: $250,000;
(3) Class 3: $500,000 for risk retention captive insurance companies, and $750,000 for association captive insurance companies; [and]
(4) Class 4: $1,000,000[.]; and
(5) Class 5: An amount as determined by the commissioner on a case by case basis, after giving due regard to the company's business plan, including the nature of the risks insured.

The foregoing requirements do not limit the commissioner's discretionary authority to require a captive insurance company to possess and maintain a greater amount of capital or surplus in order to preserve the solvency of the company, nor do [such] the requirements limit or diminish any other applicable provision of law that may require a captive insurance company to maintain a particular level of capital, surplus, assets, or investments."

SECTION 5. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The statements required to be filed in subsections (a) and (b) shall include but not be limited to actuarially appropriate reserves for[:

(1) Known claims and expenses associated therewith;
(2) Claims incurred but not reported and expenses associated therewith;
(3) Unearned premiums; and
(4) Bad debts, reserves for which shall be shown as liabilities.]

the business underwritten. An actuarial opinion regarding reserves for [known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith] the business underwritten by the company shall be included in the audited statements, except that the actuarial opinion for [captive insurance companies other than pure captive insurance] class 3 companies shall be filed with the annual statement required under subsection (b), on or before March 1 each year. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Assoiation of Insurance Commissioners[.]; provided that all captive insurance companies, other than a class 3 company, may, alternatively, utilize an actuarial opinion prepared by a loss reserve specialist deemed appropriate by the commissioner."

SECTION 6. Section 431:19-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No insurance laws of this State other than those contained in this article, or contained in specific references contained in this section or article, shall apply to captive insurance companies formed under this article.

In addition to this article, 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 shall apply to captive insurance companies other than pure captive insurance companies, unless these other laws are inconsistent with this article or the commissioner by rule, regulation, or order determines, on a case by case basis that these other laws should not apply thereto.

In addition to this article, and except as otherwise provided in this article, article 1, article 2, article 6, article 11, and article 15 of this chapter shall apply to class 5 companies, unless these other laws are inconsistent with this article or the commissioner by rule, regulation, or order determines, on a case by case basis that these other laws should not apply thereto.

In addition to this article and the articles or portions thereof referenced in this section, chapter 431K shall apply to risk retention captive insurance companies licensed under this article."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 8. This Act shall take effect upon its approval.

(Approved April 20, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 37 H.B. NO. 2537

A Bill for an Act Making an Emergency Appropriation for the Adult 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 adult mental health division for the fiscal period beginning July 1, 1999 and ending June 30, 2000, 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 certain adults with serious mental illness. The primary reason for this financial situation is the need to implement additional services and activities to reach compliance with the requirements of the settlement agreement and subsequent orders in United States v. State of Hawaii, Civil Number 91-00137 (DAE).

The purpose of this Act is to appropriate or authorize moneys to prevent the reduction or discontinuance of services to patients at Hawaii State Hospital and to develop and provide necessary community-based services for discharged patients of the Hawaii State Hospital.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $14,039,984, or so much thereof as may be necessary for fiscal year 1999-2000, to be used for services and activities to improve services to patients and former patients of Hawaii State Hospital, and persons committed to the custody of the director of health in penal and civil commitment processes.

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

SECTION 5. From this amount, $250,000 shall be set aside for process and outcome evaluations of new initiatives or programs in HTH 420 and HTH 430 to be conducted by any agency or agencies external to the department of health. The evaluations shall be submitted to the 2001 regular session of the legislature at least twenty days prior to its convening. The auditor shall assist the legislature in assessing the evaluation reports as well as in overseeing the effectiveness and efficiency for the adult mental health programs. The auditor may request progress reports from the department of health from time to time.

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

(Approved April 24, 2000.)

## ACT 38 H.B. NO. 1691

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 237-24.3, Hawaii Revised Statutes, is amended to read as follows:

"**§237-24.3 Additional amounts not taxable.** In addition to the amounts not taxable under section 237-24, this chapter shall not apply to:

(1) Amounts received from the loading, transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of this State. The terms ''agricultural commodity'', ''producer'', and ''produce dealer'' shall be defined in the same manner as they are defined in section 147-1; provided that agricultural commodities need not have been produced in the State;

(2) Amounts received from sales of:
   (A) Intoxicating liquor as the term ''liquor'' is defined in chapter 244D;
   (B) Cigarettes and tobacco products as defined in chapter 245; and
   (C) Agricultural, meat, or fish products grown, raised, or caught in Hawaii, to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state on the shipper's vessels or airplanes;

(3) Amounts received by the manager or board of directors of:
   (A) An association of apartment owners of a condominium property regime established in accordance with chapter 514A; or

(B) A nonprofit homeowners or community association incorporated in accordance with chapter 415B or any predecessor thereto and existing pursuant to covenants running with the land,

in reimbursement of sums paid for common expenses;

(4) Amounts received or accrued from:

(A) The loading or unloading of cargo from ships, barges, vessels, or aircraft, whether or not the ships, barges, vessels, or aircraft travel between the State and other states or countries or between the islands of the State;

(B) Tugboat services including pilotage fees performed within the State, and the towage of ships, barges, or vessels in and out of state harbors, or from one pier to another; and

(C) The transportation of pilots or governmental officials to ships, barges, or vessels offshore; rigging gear; checking freight and similar services; standby charges; and use of moorings and running mooring lines;

(5) Amounts received by an employee benefit plan by way of contributions, dividends, interest, and other income; and amounts received by a nonprofit organization or office, as payments for costs and expenses incurred for the administration of an employee benefit plan; provided that this exemption shall not apply to any gross rental income or gross rental proceeds received after June 30, 1994, as income from investments in real property in this State; and provided further that gross rental income or gross rental proceeds from investments in real property received by an employee benefit plan after June 30, 1994, under written contracts executed prior to July 1, 1994, shall not be taxed until the contracts are renegotiated, renewed, or extended, or until after December 31, 1998, whichever is earlier. For the purposes of this paragraph, "employee benefit plan" means any plan as defined in section 1002(3) of title 29 of the United States Code, as amended;

(6) Amounts received for purchases made with United States Department of Agriculture food coupons under the federal food stamp program, and amounts received for purchases made with United States Department of Agriculture food vouchers under the Special Supplemental Foods Program for Women, Infants and Children;

(7) Amounts received by a hospital, infirmary, medical clinic, health care facility, pharmacy, or a practitioner licensed to administer the drug to an individual for selling prescription drugs or prosthetic devices to an individual; provided that this paragraph shall not apply to any amounts received for services provided in selling prescription drugs or prosthetic devices. As used in this paragraph:

(A) "Prescription drugs" are those drugs defined under section [[]328-1[]] and dispensed by filling or refilling a written or oral prescription by a practitioner licensed under law to administer the drug and sold by a licensed pharmacist under section 328-16 or practitioners licensed to administer drugs; and

(B) "Prosthetic device" means any artificial device or appliance, instrument, apparatus, or contrivance, including their components, parts, accessories, and replacements thereof, used to replace a missing or surgically removed part of the human body, which is prescribed by a licensed practitioner of medicine, osteopathy, or podiatry and which is sold by the practitioner or which is dispensed and sold by a dealer of prosthetic devices; provided that "prosthetic device" shall not mean any auditory, ophthal-

mic, dental, or ocular device or appliance, instrument, apparatus, or contrivance;

(8) Taxes on transient accommodations imposed by chapter 237D and passed on and collected by operators holding certificates of registration under that chapter;

(9) Amounts received as dues by an unincorporated merchants association from its membership for advertising media, promotional, and advertising costs for the promotion of the association for the benefit of its members as a whole and not for the benefit of an individual member or group of members less than the entire membership; [and]

(10) Amounts received by a labor organization for real property leased to:
(A) A labor organization; or
(B) A trust fund established by a labor organization for the benefit of its members, families, and dependents for medical or hospital care, pensions on retirement or death of employees, apprenticeship and training, and other membership service programs.
As used in this paragraph, "labor organization" means a labor organization exempt from federal income tax under section 501(c)(5) of the Internal Revenue Code, as amended[.]; and

(11) Amounts received from foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes."

SECTION 2. Section 237D-3, Hawaii Revised Statutes, is amended to read as follows:

"**§237D-3 Exemptions.** This chapter shall not apply to:

(1) Health care facilities including all such facilities enumerated in section 321-11(10)[.];

(2) School dormitories of a public or private educational institution providing education in grades kindergarten through twelve, or of any institution of higher education[.];

(3) Lodging provided by nonprofit corporations or associations for religious, charitable, or educational purposes; provided that this exemption shall apply only to the activities of the religious, charitable, or educational corporation or association as such and not to any rental or gross rental the primary purpose of which is to produce income even if the income is used for or in furtherance of the exempt activities of such religious, charitable, or educational corporation or association[.];

(4) Living accommodations for persons in the military on permanent duty assignment to Hawaii, including the furnishing of transient accommodations to those military personnel who receive temporary lodging allowances while seeking accommodations in Hawaii or while awaiting reassignment to new duty stations outside the State[.];

(5) Low-income renters receiving rental subsistence from the state or federal governments and whose rental periods are for durations shorter than sixty days[.];

(6) Operators of transient accommodations who furnish accommodations to full-time students enrolled in an institution offering post-secondary education. The director of taxation shall determine what shall be deemed acceptable proof of full-time enrollment. This exemption shall also apply to operators who furnish transient accommodations to students during summer employment[.];

(7) Accommodations furnished without charge such as, but not limited to, complimentary accommodations, accommodations furnished to contract personnel such as physicians, golf or tennis professionals, swimming and dancing instructors, and other personnel to whom no salary is paid or to employees who receive room and board as part of their salary or compensation[.]; and

(8) Accommodations furnished to foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes.''

SECTION 3. Section 238-1,[1] is amended by amending the definition of ''use'' to read as follows:

''''Use'' (and any nounal, verbal, adjectival, 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 or services to be appreciably consumed or not, or the keeping of the property or services for such use or for sale, and shall include the exercise of any right or power over tangible or intangible 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; and
   (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;
(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 237-24.9; [and]
(9) The use of services imported for resale to a foreign customer located outside the State to the extent the services are resold, consumed, or used by that foreign customer outside the State pursuant to section 237-29.53(a)[.]; and
(10) The use of property, services, or contracting imported by foreign diplomats and consular officials who are holding cards issued or authorized by the United States Department of State granting them an exemption from state taxes."

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

SECTION 5. This Act shall take effect on July 1, 2000.

(Approved April 26, 2000.)

**Note**

1. So in original.

## ACT 39 S.B. NO. 2333

A Bill for an Act Relating to Condominiums Property Regimes.

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

SECTION 1. The legislature finds that due to the current economic situation many condominium owners have been unable to meet payments for either their mortgage or maintenance expenses. Mortgagees have lost significant amounts during this period. Homeowners associations have, likewise, lost much during this period. Both are innocent victims of these economic times. Homeowners associations and mortgage lenders have participated in many hearings and discussions with the legislature over the years. Attempts to find a solution have been hampered because both parties are innocent victims. While a solution has been elusive, this Act goes a long way toward resolving the issue in a creative and fair manner.

This Act allows for the assessment of purchasers of delinquent units for unpaid common expenses by the homeowners association. The assessment is limited to the amount accrued within six months up to $1,800. In order to make the assessment, homeowners associations must file a notice of lien against the delinquent apartment before the purchaser acquires title. This is only fair, providing the purchaser with actual notice of the total amount of the delinquencies.

This Act is a comprehensive and reasonable solution to a thorny issue.

SECTION 2. Section 514A-90, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-90 Priority of lien.** (a) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment constitute a lien on the apartment prior to all other liens, except:

(1) Liens for taxes and assessments lawfully imposed by governmental authority against the apartment; and

(2) All sums unpaid on any mortgage of record that was recorded prior to the recordation of a notice of a lien by the association of apartment owners, and costs and expenses including attorneys' fees provided in such mortgages.

The lien of the association of apartment owners may be foreclosed by action or by nonjudicial or power of sale foreclosure procedures set forth in chapter 667, by the managing agent or board of directors, acting on behalf of the association of apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in the foreclosure shall be entitled to the appointment of a receiver to collect the rental owed. The managing agent or board of directors, acting on behalf of the association of apartment owners, unless prohibited by the declaration, may bid on the apartment at foreclosure sale, and acquire and hold, lease, mortgage, and convey the apartment. Action to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the unpaid common expenses owed.

(b) [Where] Except as provided in subsection (g), when the mortgagee of a mortgage of record or other purchaser of an apartment obtains title to the apartment as a result of foreclosure of the mortgage, the acquirer of title and the acquirer's successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to the apartment which became due prior to the acquisition of title to the apartment by the acquirer. The unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the apartment owners, including the acquirer and the acquirer's successors and assigns. The mortgagee of record or other purchaser of the apartment shall be deemed to acquire title and shall be required to pay the apartment's share of common expenses and assessments beginning:

(1) Thirty-six days after the order confirming the sale to the purchaser has been filed with the court;

(2) Sixty days after the hearing at which the court grants the motion to confirm the sale to the purchaser; or

(3) Upon the recording of the deed,

whichever occurs first.

(c) No apartment owner shall withhold any assessment claimed by the association. An apartment owner who disputes the amount of an assessment may request a written statement clearly indicating:

(1) The amount of common expenses included in the assessment, including the due date of each amount claimed;

(2) The amount of any penalty, late fee, lien filing fee, and any other charge included in the assessment;

(3) The amount of attorneys' fees and costs, if any, included in the assessment;

(4) That under Hawaii law, an apartment owner has no right to withhold assessments for any reason;

(5) That an apartment owner has a right to demand mediation or arbitration to resolve disputes about the amount or validity of an association's assessment, provided the apartment owner immediately pays the assessment in full and keeps assessments current; and

(6) That payment in full of the assessment does not prevent the owner from contesting the assessment or receiving a refund of amounts not owed.

Nothing in this section shall limit the rights of an owner to the protection of all fair debt collection procedures mandated under federal and state law.

(d) An apartment owner who pays an association the full amount claimed by the association may file in small claims court or require the association to mediate to resolve any disputes concerning the amount or validity of the association's claim. If the apartment owner and the association are unable to resolve the dispute through mediation, either party may file for arbitration under part VII; provided that an apartment owner may only file for arbitration if all amounts claimed by the association are paid in full on or before the date of filing. If the apartment owner fails to keep all association assessments current during the arbitration, the association may ask the arbitrator to temporarily suspend the arbitration proceedings. If the apartment owner pays all association assessments within thirty days of the date of suspension, the apartment owner may ask the arbitrator to recommence the arbitration proceedings. If the owner fails to pay all association assessments by the end of the thirty-day period, the association may ask the arbitrator to dismiss the arbitration proceedings. The apartment owner shall be entitled to a refund of any amounts paid to the association which are not owed.

(e) As an alternative to foreclosure proceedings under subsection (a), where an apartment is owner-occupied, the association of apartment owners may authorize its managing agent or board of directors to, after sixty days' written notice to the apartment owner and to the apartment's first mortgagee of the nonpayment of the apartment's share of the common expenses, terminate the delinquent apartment's access to the common elements and cease supplying a delinquent apartment with any and all services normally supplied or paid for by the association of apartment owners. Any terminated services and privileges shall be restored upon payment of all delinquent assessments.

(f) Before the board of directors or managing agent may take the actions permitted under subsection (e), the board must adopt a written policy providing for such actions and have the policy approved by a majority vote of the apartment owners at an annual or special meeting of the association or by the written consent of a majority of the apartment owners.

(g) Subject to this subsection, and subsections (h) and (i), the board of an association of apartment owners may specially assess the amount of the unpaid regular monthly common assessments for common area expenses against a person who, in a judicial or non-judicial power of sale foreclosure, purchases a delinquent apartment; provided that:

(1) A purchaser who holds a mortgage on a delinquent apartment that was recorded prior to the filing of a notice of lien by the association of apartment owners and who acquires the delinquent apartment through a judicial or non-judicial foreclosure proceeding, including purchasing the delinquent apartment at a foreclosure auction, shall not be obligated to make, nor be liable for, payment of the special assessment as provided for under this subsection; and

(2) A person who subsequently purchases the delinquent apartment from the mortgagee referred to in paragraph (1) shall be obligated to make, and shall be liable for, payment of the special assessment provided for under this subsection; provided that the association of apartment owners has filed a notice of lien against the delinquent apartment for the unpaid assessments for common area expenses which form the basis of the special assessment, prior to the subsequent purchaser's acquisition of title to the delinquent apartment.

(h) The amount of the special assessment assessed under subsection (g) shall not exceed the total amount of unpaid regular monthly common assessments that were assessed during the six months immediately preceding the completion of the judicial or non-judicial power of sale foreclosure, and for which the association of apartment owners had filed a notice of lien against the delinquent apartment pursuant to subsection (g)(2). In no event shall the amount of the special assessment exceed the sum of $1,800.

(i) For purposes of subsections (g) and (h), the following definitions shall apply:

(1) "Completion" means:

(A) In a non-judicial power of sale foreclosure, when the affidavit required under section 667-5 is filed; and

(B) In a judicial foreclosure, when a purchaser is deemed to acquire title pursuant to subsection (b).

(2) "Regular monthly common assessments" shall not include:

(A) Any other special assessment, except for a special assessment imposed on all apartments as part of a budget adopted pursuant to section 514A-83.6;

(B) Late charges, fines, or penalties;

(C) Interest assessed by the association of apartment owners;

(D) Any lien arising out of the assessment; or

(E) Any fees or costs related to the collection or enforcement of the assessment, including attorneys' fees and court costs."

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, 2003; provided that section 514A-90, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act.

(Approved April 26, 2000.)

## ACT 40 H.B. NO. 1761

A Bill for an Act Relating to Motor Carriers.

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

SECTION 1. Section 271-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be a misdemeanor for any person, including a person who is exempt under section 271-5, to advertise as a motor carrier of passengers or property, unless the person holds a valid certificate or permit required by this chapter as to the classification so advertised. The term "advertise", as used in this section, includes: the issuance of any card, sign, or device to any person, or the causing, permitting, or allowing of any sign or marking on or in any building or motor vehicle, or the advertising in any newspaper, magazine, or advertising other than in-column listings in any directory, or the commercial broadcasting by airwave transmission[.], or any and all communications media."

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

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

(Approved April 26, 2000.)

## ACT 41 H.B. NO. 1762

A Bill for an Act Relating to Motor Carriers.

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

SECTION 1. 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 fails or refuses to comply with any provision of this chapter, or any rule, requirement, or order thereunder, and any [shipper or consignee] person located in this State, or any officer, agent, employee, or representative of any such [shipper or consignee,] person, who engages 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 offense; and

(2) In the case of a continuing violation, not less than $50 and not more than $500 for each additional day during which the failure or refusal 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 26, 2000.)

## ACT 42 H.B. NO. 1836

A Bill for an Act Repealing Section 327E-13(g), Hawaii Revised Statutes.

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

SECTION 1. Section 327E-13, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§327E-13[]] Effect of this chapter.** (a) This chapter shall not create a presumption concerning the intention of an individual who has not made or who has revoked an advance health-care directive.

(b) Death resulting from the withholding or withdrawal of health care in accordance with this chapter shall not for any purpose constitute a suicide or homicide or legally impair or invalidate a policy of insurance or an annuity providing a death benefit, notwithstanding any term of the policy or annuity to the contrary.

(c) This chapter shall not authorize mercy killing, assisted suicide, euthanasia, or the provision, withholding, or withdrawal of health care, to the extent prohibited by other statutes of this State.

(d) This chapter shall not authorize or require a health-care provider or institution to provide health care contrary to generally accepted health-care standards applicable to the health-care provider or institution.

(e) This chapter shall not authorize an agent or surrogate to consent to the admission of an individual to a psychiatric facility as defined in chapter 334, unless the individual's written advance health-care directive expressly so provides.

(f) This chapter shall not affect other statutes of this State governing treatment for mental illness of an individual involuntarily committed to a psychiatric facility.

[(g) This chapter shall not apply to a patient diagnosed as pregnant by the attending physician.]''

SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved April 26, 2000.)

## ACT 43 H.B. NO. 1982

A Bill for an Act Relating to Uniform Disclaimer of Property Interests 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 DISCLAIMER OF PROPERTY INTERESTS ACT

§ **-1 Short title.** This chapter may be cited as the ''Uniform Disclaimer of Property Interests Act (1999)''.

§ **-2 Definitions.** In this chapter:

''Disclaimant'' means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made.

''Disclaimed interest'' means the interest that would have passed to the disclaimant had the disclaimer not been made.

''Disclaimer'' means the refusal to accept an interest in or power over property.

''Fiduciary'' means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person.

''Jointly held property'' means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property.

''Person'' means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

''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 an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state.

''Trust'' means:

(A) An express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(B) A trust created pursuant to a statute, judgment, or decree which requires the trust to be administered in the manner of an express trust.

§ -3 **Scope.** This chapter applies to disclaimers of any interest in or power over property, whenever created.

§ -4 **Chapter supplemented by other law.** (a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this chapter.

§ -5 **Power to disclaim; general requirements; when irrevocable.** (a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by another statute of this State or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c) To be effective, a disclaimer must be in a writing or other record, declare the disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in section -12. In this subsection, ''record'' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when it is delivered or filed pursuant to section -12 or when it becomes effective as provided in sections -6 through -11, whichever occurs later.

(f) A disclaimer made under this chapter is not a transfer, assignment, or release.

§ -6 **Disclaimer of interest in property.** (a) In this section:

(1) ''Time of distribution'' means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(2) ''Future interest'' means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation.

(b) Except for a disclaimer governed by section -7 or -8, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death.

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general.

(3) If the instrument does not contain a provision described in paragraph (2), the following rules apply:

(A) If the disclaimant is an individual, the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution. However, if, by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution.

(B) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist.

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

§ -7 **Disclaimer of rights of survivorship in jointly held property.** (a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(1) A fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(2) All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) A disclaimer under subsection (a) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

§ -8 **Disclaimer of interest by trustee.** If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

§ -9 **Disclaimer of power of appointment or other power not held in fiduciary capacity.** If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power.

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

§ -10 **Disclaimer by appointee, object, or taker in default of exercise of power of appointment.** (a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

§ -11 **Disclaimer of power held in fiduciary capacity.** (a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

§ -12 **Delivery or filing.** (a) In this section, ''beneficiary designation'' means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) An annuity or insurance policy;
(2) An account with a designation for payment on death;
(3) A security registered in beneficiary form;
(4) A pension, profit-sharing, retirement, or other employment-related benefit plan; or
(5) Any other nonprobate transfer at death.

(b) Subject to subsections (c) through (l), delivery of a disclaimer may be effected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) A disclaimer must be delivered to the personal representative of the decedent's estate; or
(2) If no personal representative is then serving, it must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) A disclaimer must be delivered to the trustee then serving, or if no trustee is then serving, to the personal representative of the decedent's estate; or
(2) If no personal representative is then serving, it must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust:

(1) A disclaimer must be delivered to the trustee then serving;
(2) If no trustee is then serving, it must be filed with a court having jurisdiction to enforce the trust; or
(3) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, it must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer must be delivered to the person obligated to distribute the interest.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created:

(1) The disclaimer must be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment:

(1) The disclaimer must be delivered to the holder, the personal representative of the holder's estate or to the fiduciary under the instrument that created the power; or

(2) If no fiduciary is then serving, it must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

§ -13 **When disclaimer barred or limited.** (a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) The disclaimant accepts the interest sought to be disclaimed;

(2) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(3) A judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(e) A disclaimer is barred or limited if so provided by law other than this chapter.

(f) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

§ -14 **Tax qualified disclaimer.** Notwithstanding any other provision of this chapter, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to the provisions of Title 26 of the United States Code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

§ -15 **Recording of disclaimer.** If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be

filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

§ -16 **Application to existing relationships.** Except as otherwise provided in section -13, an interest in or power over property existing on the effective date of this chapter as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after the effective date of this chapter."

SECTION 2. Section 553A-18, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A person nominated under section 553A-3 or designated under section 553A-9 as custodian may decline to serve by delivering a valid renunciation pursuant to [section 560:2-801] chapter to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under section 553A-3, the person who made the nomination may nominate a substitute custodian under section 553A-3; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under section 553A-9(a). The custodian so designated has the rights of a successor custodian."

SECTION 3. Section 560:2-801, Hawaii Revised Statutes, is repealed.

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

SECTION 5. This Act shall take effect on July 1, 2000.

(Approved April 26, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 44 H.B. NO. 2479

A Bill for an Act Relating to Motor Vehicle Express Warranty Enforcement (Lemon Law).

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

SECTION 1. Section 481I-2, Hawaii Revised Statutes, is amended by amending the definition of "collateral charges" to read:

"'"Collateral charges" means those additional charges to a consumer wholly incurred as a result of the acquisition of the motor vehicle. For the purposes of this chapter, collateral charges include[,] but are not limited to[,] finance and interest charges, manufacturer-installed or agent-installed items, general excise tax, license and registration fees, title charges, and similar government charges."

SECTION 2. Section 481I-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If the manufacturer, its agents, distributors, or authorized dealers are unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use, market value, or safety of the motor vehicle after a reasonable number of documented attempts, then the manufacturer shall provide the consumer with a replacement motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the following: the full purchase price including but not limited to charges for undercoating, dealer preparation, transportation [and], installed options, and all collateral and incidental charges, [excluding finance and interest charges,] and less a reasonable offset for the consumer's use of the motor vehicle.

If either a replacement motor vehicle or a refund is awarded, an "offset" may be made for damage to the vehicle not attributable to normal wear and tear, if unrelated to the nonconformity. If a replacement motor vehicle is awarded, a reasonable offset shall be made for the use of the motor vehicle and an additional offset may be made for loss to the fair market value of the vehicle resulting from damage beyond normal wear and tear, unless the damage resulted from the nonconformity. When the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for the general excise tax, and license and registration fees. Refunds made pursuant to this subsection shall be deemed to be refunds of the sales price and treated as such for purposes of section 237-3. Refunds shall be made to the consumer and lienholder, if any, as their interests may appear on the records of ownership. If applicable, refunds shall be made to the lessor and lessee pursuant to rules adopted by the department of commerce and consumer affairs."

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 26, 2000.)

## ACT 45 H.B. NO. 2511

A Bill for an Act Relating to Long-Term Care.

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

SECTION 1. Section 346D-8, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§346D-8[]] Personnel exempt.** [Personnel employed for the program shall not be subject to chapters 76 and 77. The terms of service for these personnel shall begin on July 1, 1983, or as soon thereafter as deemed appropriate by the department of human services.] The department of human services may employ civil service and non-civil service personnel to service the waiver programs. The personnel employed for the waiver programs may be exempt from chapters 76 and 77, as deemed appropriate by the department of human services."

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

SECTION 3. This Act shall take effect on _____.[1]

(Approved April 26, 2000.)

Note

1. So in original.

# ACT 46

H.B. NO. 2554

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-33, Hawaii Revised Statutes, is amended to read as follows:

"**§386-33 Subsequent injuries that would increase disability.** (a) Where prior to any injury an employee suffers from a previous permanent partial disability already existing prior to the injury for which compensation is claimed, and the disability resulting from the injury combines with the previous disability, whether the previous permanent partial disability was incurred during past or present periods of employment, to result in a greater permanent partial disability or in permanent total disability or in death, then weekly benefits shall be paid as follows:

(1) In cases where the disability resulting from the injury combines with the previous disability to result in greater permanent partial disability the employer shall pay the employee compensation for the employee's actual permanent partial disability but for not more than one hundred four weeks; the balance if any of compensation payable to the employee for the employee's actual permanent partial disability shall thereafter be paid out of the special compensation fund; provided that in successive injury cases where the claimant's entire permanent partial disability is due to more than one compensable injury, the amount of the award for the subsequent injury shall be offset by the amount awarded for the prior compensable injury;

(2) In cases where the disability resulting from the injury combines with the previous disability to result in permanent total disability, the employer shall pay the employee for one hundred four weeks and thereafter compensation for permanent total disability shall be paid out of the special compensation fund; and

(3) In cases where the disability resulting from the injury combines with the previous disability to result in death the employer shall pay weekly benefits in accordance with sections 386-41 and 386-43 but for not more than one hundred four weeks; the balance of compensation payable under those sections shall thereafter be paid out of the special compensation fund.

(b) Notwithstanding subsection (a), [in the case of permanent total disability or death,] where the director or the appellate board determines that the previous permanent partial disability amounted to less than that necessary to support an award of thirty-two weeks of compensation for permanent partial disability, there shall be no liability on the special compensation fund[,] and the employer shall pay the employee or the employee's dependents full compensation for the employee's permanent partial or total disability or death.

(c) [Subsections (a) and (b) shall apply in all cases where the work injury occurs on or after May 15, 1982, and combines with a previous disability to result in a greater permanent partial disability or in permanent total disability or in death.] Effective July 1, 1995, subsection (a)(1), as amended, shall apply in all cases in which the work injury occurs on or after July 1, 1995, and combines with a previous

disability from a compensable injury to result in a greater permanent partial disability."

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

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

(Approved April 26, 2000.)

## ACT 47 H.B. NO. 2570

A Bill for an Act Relating to the Boating Special Fund.

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

SECTION 1. Chapter 36, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§36- Transfer from boating special fund.** Notwithstanding any law to the contrary, including section 36-27, there shall be deducted from time to time by the director of finance for the purpose of defraying the prorated estimate of central service expenses of government in relation to the boating special fund, five per cent of all receipts and deposits in the boating special fund after subtracting therefrom any amounts pledged, charged, or encumbered for the payment of bonds or interest thereon during the time period for which the deduction is to be made. The deductions shall be transferred to the general fund of the State and shall become general realizations of the State.

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

(1) Amounts that are so pledged, charged, or encumbered; and

(2) Amounts required by law to be paid from the boating special fund into the general fund of the State to reimburse the general fund for bond requirements for general obligation bonds issued for boating facility purposes.

The chairperson of the board of land and natural resources shall cooperate with the director of finance in effecting the transfer."

SECTION 2. New statutory material is underscored.[1]

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved April 26, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 48 H.B. NO. 2646

A Bill for an Act Relating to Trusts and Estates.

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

SECTION 1. Section 554A-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A trustee has the power, subject to subsections (a) and (b):

(1) To collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made;
(2) To receive additions to the assets of the trust;
(3) To continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;
(4) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;
(5) To deposit trust funds in a bank;
(6) To acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;
(7) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, to raze existing or erect new party walls or buildings;
(8) To subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;
(9) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;
(10) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;
(11) To grant an option involving disposition of a trust asset, or to take an option for the acquisition of any asset;
(12) To vote a security, in person or by general or limited proxy;
(13) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;
(14) To sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization, consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;
(15) To hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;
(16) To insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(17) To borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(18) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(19) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(20) To allocate items of income or expense to either trust income or principal, as provided by chapter 557, the Revised Uniform Principal and Income Act, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(21) To pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;

(22) To effect distribution of money and property (that may be made in kind on a pro rata or non-pro rata basis), in divided or undivided interests, and to adjust resulting differences in valuation;

(23) To employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in performance of the trustee's administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(24) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of trustee duties; [and]

(25) To execute and deliver all instruments which will accomplish or facilitate the exercise of the powers vested in the trustee[.]; and

(26) To divide, sever, or separate a single trust into two or more separate trusts for administration or tax purposes, including the allocation of the generation-skipping transfer exemption; provided the terms of the new trust provide, in the aggregate, for the same succession of interests and beneficiaries as are provided in the original trust."

SECTION 2. Section 560:2-707, Hawaii Revised Statutes, is amended to read as follows:

"**§560:2-707 Survivorship with respect to future interests under terms of trust; substitute takers.** (a) Definitions. In this section:

"Alternative future interest" means an expressly created future interest that can take effect in possession or enjoyment instead of another future interest on the happening of one or more events, including survival of an event or failure to survive an event, whether an event is expressed in condition-precedent, condition-subsequent, or any other form. A residuary clause in a will does not create an alternative future interest with respect to a future interest created in a nonresiduary devise in the

will, whether or not the will specifically provides that lapsed or failed devises are to pass under the residuary clause.

"Beneficiary" means the beneficiary of a future interest and includes a class member if the future interest is in the form of a class gift.

"Class member" includes an individual who fails to survive the distribution date but who would have taken under a future interest in the form of a class gift had the individual survived the distribution date.

"Distribution date", with respect to a future interest, means the time when the future interest is to take effect in possession or enjoyment. The distribution date need not occur at the beginning or end of a calendar day, but can occur at a time during the course of a day.

"Future interest" includes an alternative future interest and a future interest in the form of a class gift.

"Future interest under the terms of a trust" means a future interest that was created by a transfer creating a trust or to an existing trust or by an exercise of a power of appointment to an existing trust, directing the continuance of an existing trust, designating a beneficiary of an existing trust, or creating a trust.

"Surviving beneficiary" or "surviving descendant" means a beneficiary or a descendant who neither predeceased the distribution date nor is deemed to have predeceased the distribution date under section 560:2-702.

(b) Survivorship required; substitute gift. A future interest under the terms of a trust executed after January 1, 1997 is contingent on the beneficiary's surviving the distribution date. If a beneficiary of a future interest under the terms of a trust fails to survive the distribution date, the following apply:

(1) Except as provided in paragraph (4), if the future interest is not in the form of a class gift and the deceased beneficiary leaves surviving descendants, a substitute gift is created in the beneficiary's surviving descendants. They take by representation the property to which the beneficiary would have been entitled had the beneficiary survived the distribution date;

(2) Except as provided in paragraph (4), if the future interest is in the form of a class gift, other than a future interest to "issue", "descendants", "heirs of the body", "heirs", "next of kin", "relatives", or "family", or a class described by language of similar import, a substitute gift is created in the surviving descendants of any deceased beneficiary. The property to which the beneficiaries would have been entitled had all of them survived the distribution date passes to the surviving beneficiaries and the surviving descendants of the deceased beneficiaries. Each surviving beneficiary takes the share to which the surviving beneficiary would have been entitled had the deceased beneficiaries survived the distribution date. Each deceased beneficiary's surviving descendants who are substituted for the deceased beneficiary take by representation the share to which the deceased beneficiary would have been entitled had the deceased beneficiary survived the distribution date. For the purposes of this paragraph, "deceased beneficiary" means a class member who failed to survive the distribution date and left one or more surviving descendants;

(3) For the purposes of section 560:2-701, words of survivorship attached to a future interest are not, in the absence of additional evidence, a sufficient indication of an intent contrary to the application of this section. Words of survivorship include words of survivorship that relate to the distribution date or to an earlier or an unspecified time, whether those words of survivorship are expressed in condition-precedent, condition-subsequent, or any other form;

(4) If a governing instrument creates an alternative future interest with respect to a future interest for which a substitute gift is created by paragraph (1) or (2), the substitute gift is superseded by the alternative future interest only if an expressly designated beneficiary of the alternative future interest is entitled to take in possession or enjoyment.

(c) More than one substitute gift; which one takes. If, under subsection (b), substitute gifts are created and not superseded with respect to more than one future interest and the future interests are alternative future interests, one to the other, the determination of which of the substitute gifts takes effect is resolved as follows:

(1) Except as provided in paragraph (2), the property passes under the primary substitute gift;

(2) If there is a younger-generation future interest, the property passes under the younger-generation substitute gift and not under the primary substitute gift;

(3) In this subsection:

"Primary future interest" means the future interest that would have taken effect had all the deceased beneficiaries of the alternative future interests who left surviving descendants survived the distribution date.

"Primary substitute gift" means the substitute gift created with respect to the primary future interest.

"Younger-generation future interest" means a future interest that:

(A) Is to a descendant of a beneficiary of the primary future interest;

(B) Is an alternative future interest with respect to the primary future interest;

(C) Is a future interest for which a substitute gift is created; and

(D) Would have taken effect had all the deceased beneficiaries who left surviving descendants survived the distribution date except the deceased beneficiary or beneficiaries of the primary future interest.

"Younger-generation substitute gift" means the substitute gift created with respect to the younger-generation future interest.

(d) If no other takers, property passes under residuary clause or to transferor's heirs. Except as provided in subsection (e), if, after the application of subsections (b) and (c), there is no surviving taker, the property passes in the following order:

(1) If the trust was created in a nonresiduary devise in the transferor's will or in a codicil to the transferor's will, the property passes under the residuary clause in the transferor's will; for purposes of this section, the residuary clause is treated as creating a future interest under the terms of a trust;

(2) If no taker is produced by the application of paragraph (1), the property passes to the transferor's heirs under section 560:2-711.

(e) If no other takers and if future interest created by exercise of power of appointment. If, after the application of subsections (b) and (c), there is no surviving taker and if the future interest was created by the exercise of a power of appointment:

(1) The property passes under the donor's gift-in-default clause, if any, which clause is treated as creating a future interest under the terms of a trust; and

(2) If no taker is produced by the application of paragraph (1), the property passes as provided in subsection (d). For purposes of subsection (d), "transferor" means the donor if the power was a nongeneral power and means the donee if the power was a general power.

(f) Notwithstanding the foregoing, if a revocable inter vivos trust terminates on the death of the settlor of the trust and all the assets are to be distributed outright, sections 560:2-603 and 560:2-604 shall determine whether a gift has lapsed and who shall receive the property."

SECTION 3. Section 560:3-905, Hawaii Revised Statutes, is amended to read as follows:

"**§560:3-905 Penalty clause for contest.** A provision in a will or trust purporting to penalize any interested person for contesting the will or trust or instituting other proceedings relating to the probate or trust estate is unenforceable if probable cause exists for instituting proceedings."

SECTION 4. 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 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.] When any real or personal property remains in the hands of the personal representative or trustee, after payment in the order specified in section 560:3-805, and no heirs, devisees, or claimants of the decedent, or beneficiaries of a trust, entitled to the property, can be located after reasonable search and inquiry, the personal representative or trustee, at the filing of the petition for final accounts, or termination of the trust, shall report the fact to the court, which shall forthwith enter an order authorizing the transfer of the property to the state director of finance, and the personal representative or trustee shall immediately transfer the property to the director of finance for disposition as provided in chapters 523A and 665, whichever is appropriate. The state director of finance, at any time, may authorize the payment out of the general funds of any amount so forwarded to any person who establishes to the satisfaction of the director of finance that the person is legally entitled as an heir, devisee, or claimant of the decedent, or a beneficiary of a trust, and the person shall be entitled to receive the amount out of any moneys in the general revenues of the State not otherwise appropriated, upon warrant drawn by the state comptroller."

SECTION 5. Section 560:3-916, Hawaii Revised Statutes, is amended to read as follows:

"**§560:3-916 Apportionment of estate taxes.** (a) For purposes of this section:

"Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this State.

"Fiduciary" means personal representative or trustee.

"Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency.

"Person interested in the estate" means any person entitled to receive, or who has received, from a decedent or by reason of the death of a decedent any property or interest therein included in the decedent's estate. It includes a personal representative, conservator, and trustee.

"State" means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

"Tax" means the federal estate tax and the additional inheritance tax imposed by Hawaii and interest and penalties imposed in addition to the tax.

(b) Except as provided in subsection [(i)] (j) and, unless the will otherwise provides, the tax shall be apportioned among all persons interested in the estate. The apportionment is to be made in the proportion that the value of the interest of each person interested in the estate bears to the total value of the interests of all persons interested in the estate. The values used in determining the tax are to be used for that purpose. If the decedent's will directs a method of apportionment of tax different from the method described in this chapter, the method described in the will controls.

(c) The expenses reasonably incurred by any fiduciary and by other persons interested in the estate in connection with the determination of the amount and apportionment of the tax shall be apportioned as provided in subsection (b) and charged and collected as a part of the tax apportioned. If the court finds it is inequitable to apportion the expenses as provided in subsection (b), it may direct apportionment equitably.

[(c)] (d) (1) The court in which venue lies for the administration of the estate of a decedent, on petition for the purpose may determine the apportionment of the tax;

(2) If the court finds that it is inequitable to apportion interest and penalties in the manner provided in subsection (b), because of special circumstances, it may direct apportionment thereof in the manner it finds equitable;

(3) If the court finds that the assessment of penalties and interest assessed in relation to the tax is due to delay caused by the negligence of the fiduciary, the court may charge the fiduciary with the amount of the assessed penalties and interest;

(4) In any action to recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter the determination of the court in respect thereto shall be prima facie correct.

[(d)] (e) (1) The personal representative or other person in possession of the property of the decedent required to pay the tax may withhold from any property distributable to any person interested in the estate, upon its distribution to that person, the amount of tax attributable to that person's interest. If the property in possession of the personal representative or other person required to pay the tax and distributable to any person interested in the estate is insufficient to satisfy the proportionate amount of the tax determined to be due from the person, the personal representative or other person required to pay the tax may recover the deficiency from the person interested in the estate. If the property is not in the possession of the personal representative or the other person required to pay the tax, the personal representative or the other person required to pay the tax may recover from any person interested in the estate the amount of the tax apportioned to the person in accordance with this chapter;

(2) If property held by the personal representative is distributed prior to final apportionment of the tax, the distributee shall provide a bond or other security for the apportionment liability in the form and amount prescribed by the personal representative.

[(e)] (f) (1) In making an apportionment, allowances shall be made for any exemptions granted, any classification made of persons interested in the estate and for any deductions and credits allowed by the law imposing the tax;

(2) Any exemption or deduction allowed by reason of the relationship of any person to the decedent or by reason of the purposes of the gift inures to the benefit of the person bearing such relationship or receiving the gift; but if an interest is subject to a prior present interest which is not allowable as a deduction, the tax apportionable against the present interest shall be paid from principal;

(3) Any deduction for property previously taxed and any credit for gift taxes or death taxes of a foreign country paid by the decedent or the decedent's estate inures to the proportionate benefit of all persons liable to apportionment;

(4) Any credit for inheritance, succession or estate taxes or taxes in the nature thereof applicable to property or interests includable in the estate, inures to the benefit of the persons or interests chargeable with the payment thereof to the extent proportionately that the credit reduces the tax;

(5) To the extent that property passing to or in trust for a surviving spouse or reciprocal beneficiary or any charitable, public or similar purpose is not an allowable deduction for purposes of the tax solely by reason of an inheritance tax or other death tax imposed upon and deductible from the property, the property is not included in the computation provided for in subsection (b) [hereof], and to that extent no apportionment is made against the property. The sentence immediately preceding does not apply to any case if the result would be to deprive the estate of a deduction otherwise allowable under section 2053(d) of the Internal Revenue Code of 1986, as amended, of the United States, relating to deduction for state death taxes on transfers for public, charitable, or religious uses.

[(f)] (g) No interest in income and no estate for years or for life or other temporary interest in any property or fund is subject to apportionment as between the temporary interest and the remainder. The tax on the temporary interest and the tax, if any, on the remainder is chargeable against the corpus of the property or funds subject to the temporary interest and remainder.

[(g)] (h) Neither the personal representative nor other person required to pay the tax is under any duty to institute any action to recover from any person interested in the estate the amount of the tax apportioned to the person until the expiration of the three months next following final determination of the tax. A personal representative or other person required to pay the tax who institutes the action within a reasonable time after the three-month period is not subject to any liability or surcharge because any portion of the tax apportioned to any person interested in the estate was collectible at a time following the death of the decedent but thereafter became uncollectible. If the personal representative or other person required to pay the tax cannot collect from any person interested in the estate the amount of the tax apportioned to the person, the amount not recoverable shall be equitably apportioned among the other persons interested in the estate who are subject to apportionment.

[(h)] (i) A personal representative acting in another state or a person required to pay the tax domiciled in another state may institute an action in the courts of this State and may recover a proportionate amount of the federal estate tax, of an estate tax payable to another state or of a death duty due by a decedent's estate to another state, from a person interested in the estate who is either domiciled in this State or who owns property in this State subject to attachment or execution. For the purposes of the action the determination of apportionment by the court having jurisdiction of the administration of the decedent's estate in the other state is prima facie correct.

[(i)] (j) If the liabilities of persons interested in the estate as prescribed by this chapter differ from those which result under the federal estate tax law, the

liabilities imposed by the federal law will control and the balance of this section shall apply as if the resulting liabilities had been prescribed herein."

SECTION 6. Section 560:3-1201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, chose in action, or other intangible personal property belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing the debt, obligation, stock, chose in action, or other intangible personal property to a person or persons claimed to be the successor or successors of the decedent or to the department of human services where the department has paid for the decedent's burial pursuant to section 346-15, upon being presented a death certificate for the decedent and an affidavit made by or on behalf of the claimed successor or successors or the department of human services stating that:

(1) The gross value of the decedent's estate in this State does not exceed [$60,000;] $100,000; except that any motor vehicles registered in the decedent's name may be transferred regardless of value pursuant to this section;
(2) No application or petition for the appointment of a personal representative is pending or has been granted in this State; and
(3) (A) The claimed successor or successors are entitled to the property and explaining the relationship of the claimed successor or successors to the decedent; or
    (B) The department of human services has paid for the decedent's burial.

The affidavit of the department of human services shall have priority over any other claim presented pursuant to this section."

SECTION 7. Section 560:3-1205, Hawaii Revised Statutes, is amended to read as follows:

"**§560:3-1205 Estates of [$60,000] $100,000 or less; clerk of court to administer.** If a person dies leaving property in this State of a total value not exceeding [$60,000,] $100,000 and a personal representative of the estate has not been appointed in the State, the clerk of the court of the judicial circuit in which the decedent was residing or domiciled at the time of the decedent's death or left property may, upon the verified petition of the clerk or of any interested person, obtain an order authorizing the clerk to administer the estate, and, as the personal representative, the clerk shall collect and receive the property and administer the same. The order may be made without notice or hearing, at the discretion of the court. Except as otherwise specifically required or authorized by law or where the clerk may be interested as an heir, or devisee, no clerk of any court shall act as personal representative of any estate where the value of the same is in excess of [$60,000.] $100,000. No fees shall be allowed the clerk, except as set forth in section 560:3-1211."

SECTION 8. Section 560:3-1211, Hawaii Revised Statutes, is amended to read as follows:

"**§560:3-1211 Exemption from costs.** All proceedings under this part shall be free from all costs of court, except that the clerk may charge the actual expenses for advertising the notice specified in section 560:3-1206, the advertising, posting, or service fees required in carrying out any order of the court, including orders

relating to the sale of real or personal property, and any expenses reasonably necessary for the preservation, disposal, distribution, and administration of the estate, together with a fee of three per cent of the market value of the first [$60,000] $100,000 in the gross estate, the fee to be paid into the treasury of the State as a government realization from any available assets of the estate; provided that if the administration is completed by another personal representative on account of the size of the estate or for any other reason, no fee shall be charged by the clerk."

SECTION 9. Section 560:3-1212, Hawaii Revised Statutes, is amended to read as follows:

"**§560:3-1212 Estates of persons leaving no known relatives.** Every coroner or medical examiner who is called to investigate the death of any person leaving no known spouse or reciprocal beneficiary, issue, parent, grandparent, or issue of grandparents over the age of majority in the State, shall take immediate charge of the decedent's personal effects and if in the discretion of the coroner the value of such personal effects is in excess of $2,500, forthwith deliver them to the clerk of the court of the judicial circuit in which such decedent died.

If after ten days no person appears, competent to initiate appropriate probate proceedings, the clerk shall administer the estate pursuant to the provisions of this part; provided that if the decedent's estate is of a value exceeding [$60,000] $100,000, the clerk shall notify the judge of the circuit having charge of the probate calendar, and shall petition for the appointment of a personal representative of such estate other than the clerk. In the meantime the clerk may take such steps as may be appropriate to preserve and conserve the real and personal property of the decedent. All expenses in connection with the taking possession, care, and conservation of the property and with such proceedings shall be proper charges against the estate of the decedent. The corporation counsel or county attorney of each county shall advise, assist, and represent as far as necessary any of such officers in the performance of any act or the institution or prosecution of any proceeding required by this section. If the decedent's estate is of a value not exceeding $2,500 and the decedent has no known relatives or whose relatives have failed to indicate any means of disposition of the estate, then the coroner or medical examiner having custody of the property shall dispose of the property in an appropriate manner, which may be any one of the following or a combination thereof:

(1) Where the estate consists only of money and is not in excess of $2,500 and expenditures have been made in connection with such death, to reimburse the appropriate city and/or county office that made the disbursement to defray said expenses;

(2) Where the estate consists of cash or personal belongings of monetary value, or both, not exceeding $2,500, to liquidate the personal belongings and apply the proceeds, together with the cash, if the total does not exceed $2,500, in accordance with paragraph (1);

(3) Where the assets in the estate are of no monetary value (unsalable) and in the best judgment and discretion of the coroner or medical examiner can be used by some charitable institution, to donate the assets to whatever charitable institution is willing and able to pick up the assets in question;

(4) Where the assets have no value whatsoever or are in such condition that, in the best judgment and discretion of the coroner or medical examiner, a charitable institution cannot use the properties, or will not receive the properties, to destroy the same in any manner the coroner or medical examiner sees fit; and

(5) If under paragraphs (1) and (2), there are assets remaining, then the coroner or medical examiner shall forthwith forward the same to the state director of finance for disposition as provided in chapter 523A."

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

SECTION 12. This Act shall take effect on July 1, 2000.

(Approved April 26, 2000.)

## ACT 49 H.B. NO. 2846

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. The legislature finds that condominium governing documents, and condominium apartment leases or ground leases, contain inconsistencies and ambiguities concerning responsibility for lease rent renegotiation that have become the source of disputes and litigation between associations and their members, and between association members. The legislature further finds that the condominium association is best equipped to conduct these lease rent renegotiations, but that costs should be borne only by those association members whose apartments are in leasehold at that time.

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§514A- Lease rent renegotiation.** (a) Notwithstanding any provision in the declaration or bylaws of any property subject to this chapter, any lease or sublease of the property or of an apartment, or an undivided interest in the land to an apartment owner, whenever any lease or sublease of the property, an apartment, or an undivided interest in the land to an apartment owner provides for the periodic renegotiation of lease rent thereunder, the association of apartment owners shall represent the apartment owners in all negotiations and proceedings, including but not limited to appraisal or arbitration, for the determination of lease rent as a common expense of the association.

(b) If some, but not all of the apartment owners have purchased the leased fee interest appurtenant to their apartments, all costs and expenses of the renegotiation shall be assessed to the remaining lessees in the same proportion that the common interest appurtenant to each lessee's apartment bears to the common interest appurtenant to all lessees' apartments. The unpaid amount of this assessment shall constitute a lien upon the lessee's apartment, which may be collected in accordance with sections 514A-90 and 514A-94 in the same manner as an unpaid common expense."

SECTION 3. New statutory material is underscored.[1]

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

(Approved April 26, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 50

H.B. NO. 2895

A Bill for an Act Relating to Environmental Impact Statements.

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

SECTION 1. The legislature finds that there is a need to clarify that the preparation of environmental assessments or environmental impact statements should identify and address effects on Hawaii's culture, and traditional and customary rights.

The legislature also finds that native Hawaiian culture plays a vital role in preserving and advancing the unique quality of life and the "aloha spirit" in Hawaii. Articles IX and XII of the state constitution, other state laws, and the courts of the State impose on government agencies a duty to promote and protect cultural beliefs, practices, and resources of native Hawaiians as well as other ethnic groups.

Moreover, the past failure to require native Hawaiian cultural impact assessments has resulted in the loss and destruction of many important cultural resources and has interfered with the exercise of native Hawaiian culture. The legislature further finds that due consideration of the effects of human activities on native Hawaiian culture and the exercise thereof is necessary to ensure the continued existence, development, and exercise of native Hawaiian culture.

The purpose of this Act is to:

(1) Require that environmental impact statements include the disclosure of the effects of a proposed action on the cultural practices of the community and State; and

(2) Amend the definition of "significant effect" to include adverse effects on cultural practices.

SECTION 2. Section 343-2, Hawaii Revised Statutes, is amended by amending the definitions of "environmental impact statement" or "statement" and "significant effect", to read as follows:

"'"Environmental impact statement" or "statement" means an informational document prepared in compliance with the rules adopted under section 343-6 and which discloses the environmental effects of a proposed action, effects of a proposed action on the economic [and] welfare, social welfare, and cultural practices of the community and State, effects of the economic activities arising out of the proposed action, measures proposed to minimize adverse effects, and alternatives to the action and their environmental effects.

The initial statement filed for public review shall be referred to as the draft statement and shall be distinguished from the final statement which is the document that has incorporated the public's comments and the responses to those comments. The final statement is the document that shall be evaluated for acceptability by the respective accepting authority.

"Significant effect" means the sum of effects on the quality of the environment, including actions that irrevocably commit a natural resource, curtail the range of beneficial uses of the environment, are contrary to the State's environmental policies or long-term environmental goals as established by law, or adversely affect

the economic [or] welfare, social welfare[.], or cultural practices of the community and 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 April 26, 2000.)

## ACT 51 H.B. NO. 2996

A Bill for an Act Relating to Agricultural Loans.

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

SECTION 1. The legislature finds that a substantial number of individuals and families are undertaking agricultural production on a part-time basis to supplement earnings obtained from full-time employment by one or more members of the household. In many instances, the individual and family are dependent upon farm earnings to make ends meet and provide other amenities for the family. With the uncertainties involved in farming, such as market demand, prices, government regulations, and weather, these people find that they are not able to leave the security of a steady income provided by their full-time employment and the benefits provided by their employer, especially medical coverage. Many part-time farmers want to expand their farm production as their limited operations are profitable.

Current government programs are tailored for full-time farming, consequently leaving these entrepreneurial and hard-working individuals with limited avenues for funding their operation. A loan program to assist part-time farmers would not only enable these individuals to expand their farming enterprise, but would increase the export potential of certain crops, as many part-time farmers are nurturing crops that are exportable. Exportable crops include fruits (papayas), ornamentals (orchids for cut flower and potted plants, and certified potted foliage), and plants with pharmaceutical qualities (awa root). Moreover, increasing exports would be beneficial to the state economy.

Farming activities today are increasingly being undertaken by recent immigrants to the State. Many of these immigrants are already skilled in farming techniques and have taken up farming as a livelihood. These immigrants are the ''new wave'' of farmers, as older farming generations are ceasing their farming activities, and turning their farmland into more profitable urban investments.

The legislature also finds that diversified agriculture is undergoing a significant period of transition and is a dynamic growth industry. With the closures of most of the State's sugar plantations, prime agricultural land, water, and an agriculturally-oriented labor force are now available for diversified agricultural development and expansion. As diversified agriculture grows, there will be a greater need to utilize and market the expected increase in agricultural production.

One of the primary ways to utilize the increase in production is through further development of value-added products. Processing and manufacturing present unlimited opportunities to sell agricultural products to vast export markets. Unlike fresh agricultural products, processed products are not restricted in shipment to export markets by quarantine regulations pertaining to pests, such as fruit flies. In addition, processed agricultural products are generally less perishable, allowing for greater ease in transport and shipment. A strong link exists between the production

of agricultural products at the farm and the processing and marketing of those products. Just as there is a need for financing for farm enterprises, a need for financing also exists for the processing and manufacturing of agricultural products.

The purpose of this Act is to expand the agricultural loan program by:

(1) Reducing state residency requirements for permanent resident aliens seeking financing under the State's agricultural loan program; and

(2) Enabling qualified part-time farmers, and food manufacturers located in the State who use Hawaii-grown agricultural products, to obtain loans under the agricultural loan program.

SECTION 2. Section 155-1, Hawaii Revised Statutes, is amended to read as follows:

"**§155-1 Definitions.** Whenever used in this chapter:

[(1) "Farm land" means land in the State used for agricultural purposes, including general farming, cane growing, fruit growing, flower growing, grazing, dairying, the production of any form of livestock or poultry, and any other form of agricultural activity. It includes land required for an adequate farm dwelling and other essential farm buildings, roads, wasteland.

(2) "Qualified farmer" means a person of proven farming ability who operates the person's own farm on land owned by the person in fee or on land rented or leased from others and who is presently devoting, has recently devoted, or intends to devote most of the person's time or who derives a major portion of the person's net cash income from direct participation in farming in its broadest sense. It includes Hawaii partnerships controlled to the extent of seventy-five per cent by persons who would qualify individually and would meet the eligibility requirements of section 155-10. It also includes small corporations where at least seventy-five per cent of each class of stock issued by the corporation is owned by persons who qualify individually and would meet the eligibility requirements of section 155-10 and where seventy-five per cent of the directors are qualified farmers. It also includes corporations incorporated in the State primarily for agricultural production purposes; actively engaged in agricultural production for a minimum of two years; and with at least seventy-five per cent of each class of stock owned by residents of this State.

(3) "New farmer program" means a new farm enterprise for qualified new farmers, including persons who are displaced from employment in an agricultural production enterprise, college graduates in agriculture, community college graduates in agriculture, and members of the Hawaii Young Farmer Association and Future Farmer of America graduates with farming projects, persons who have not less than two years' experience as part-time farmers, persons who have been farm tenants or farm laborers, or other individuals who have for the two years last preceding their application obtained the major portion of their income from farming operations, and persons who by reason of ability, experience, and training as vocational trainees are likely to successfully operate a farm, who otherwise meet the eligibility requirements of section 155-10.

(4) "Cooperative" means a nonprofit association of farmers organized under chapter 421.

(5) "Mortgage" includes [such][1] classes of liens on farm land and other authorized security as are approved by the department of agriculture and the credit instruments secured thereby.

(6) "Private lender" includes banks, savings and loan associations, credit unions, mortgage companies, and other qualified companies whose business includes the making of loans in the State.]

"Cooperative" means a nonprofit association of farmers organized under chapter 421.

"Farm land" means land used for agricultural purposes, including general farming, cane growing, fruit growing, flower growing, grazing, dairying, the production of any form of livestock or poultry, and any other form of agricultural activity. It includes land required for an adequate farm dwelling and other essential farm buildings, roads, and wasteland.

"Food manufacturers" means entities that process Hawaii-grown agricultural products or that utilize Hawaii-grown agricultural products as an ingredient in the manufacturing process. Processed and manufactured agricultural food products include items such as chips, dairy products, guava and papaya puree, macadamia nut products, fruit drinks, juices, nectars, jams, jellies, packaged coffee, processed vegetables, freeze-dried and fresh poi, processed meat products, cookies, and candies.

"Mortgage" includes classes of liens on farm land and other authorized security as are approved by the department of agriculture and the credit instruments secured thereby.

"New farmer program" means a new farm enterprise for qualified new farmers, including persons who are:

(1) Displaced from employment in an agricultural production enterprise;

(2) College graduates in agriculture;

(3) Community college graduates in agriculture;

(4) Members of the Hawaii Young Farmer Association and Future Farmer of America graduates with farming projects;

(5) Persons who have not less than two years' experience as part-time farmers;

(6) Persons who have been farm tenants or farm laborers;

(7) Other individuals who for the two years last preceding their application have obtained the major portion of their income from farming operations; and

(8) Persons who by reason of ability, experience, and training as vocational trainees are likely to successfully operate a farm, who otherwise meet the eligibility requirements of section 155-10.

"Part-time farmer" means a person of proven farming ability who:

(1) Has been operating the person's farm for at least two years on land owned by the person in fee or on land rented or leased from others;

(2) Is presently devoting a portion of the person's time to farming; and

(3) Derives between twenty-five to fifty per cent of the person's net cash income from direct participation in farming in its broadest sense.

"Private lender" includes banks, savings and loan associations, credit unions, mortgage companies, and other qualified companies whose business includes the making of loans in the State.

"Qualified farmer" means a person of proven farming ability who operates the person's own farm on land owned by the person in fee or on land rented or leased from others and who is presently devoting, has recently devoted, or intends to devote most of the person's time or who derives a major portion of the person's net cash income from direct participation in farming in its broadest sense. It includes:

(1) Hawaii partnerships controlled to the extent of seventy-five per cent by persons who would qualify individually and would meet the eligibility requirements of section 155-10;

(2) Small corporations where at least seventy-five per cent of each class of stock issued by the corporation is owned by persons who qualify individually and would meet the eligibility requirements of section 155-10 and where seventy-five per cent of the directors are qualified farmers; and

(3) Corporations incorporated in the State primarily for agricultural production purposes; actively engaged in agricultural production for a minimum of two years; and with at least seventy-five per cent of each class of stock owned by residents of this State."

SECTION 3. Section 155-2, Hawaii Revised Statutes, is amended to read as follows:

"**§155-2 Objectives.** One of the objectives of the department of agriculture shall be to promote the agricultural development of the State by stimulating, facilitating, and granting loans to qualified farmers[.] and food manufacturers.

The department shall encourage the growth, development, and [well being] well-being of agriculture in the State by [maximizing]:

(1) Maximizing the use of limited state funds and resources in encouraging development of new farmers and new crops; [assisting]

(2) Assisting qualified farmers and food manufacturers with loans; [encouraging]

(3) Encouraging private lenders to make loans to qualified farmers and food manufacturers directly, or in cooperation, or in participation with the State; and [providing]

(4) Providing relief to farmers in times of emergencies.

The department shall also establish standards and criteria pursuant to which loans may be provided to qualified farmers and food manufacturers who cannot secure credit from other sources at reasonable rates and terms. Any assessment of the program shall consider its purpose and intent [which] that involves credit risk beyond that of banks and other private lenders, and [such] the assessment shall be based on standards of similar programs."

SECTION 4. Section 155-4, Hawaii Revised Statutes, is amended 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 pri-

vate 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 and food manufacturers by private lenders under section 155-5;

(7) Participate in loans made to qualified farmers and food manufacturers by private lenders under section 155-6;

(8) Make direct loans to qualified farmers and food manufacturers under section 155-8;

(9) Borrow money for loan purposes;

(10) Assign and sell mortgages;

(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;

(12) Sue and be sued in the name of the "State of Hawaii";

(13) Exercise [such] incidental powers as are deemed necessary or requisite to fulfill its duty in carrying out the purposes of this chapter;

(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

(15) Adopt rules pursuant to chapter 91 necessary for the purpose of this chapter."

SECTION 5. Section 155-5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The department of agriculture may insure up to ninety per cent of the principal balance of a loan, plus interest due thereon, made to a qualified farmer [or], qualified new farmer, or qualified food manufacturer by a private lender who is unable to otherwise lend the applicant sufficient funds at reasonable rates; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on loans insured under this section and section 155-6 exceed $10,000,000.

(b) Loans insured under this section shall be limited by the provisions of sections 155-9 through 155-13 for purposes of class "A" through class "F"[.]; provided that class "E" loans to food manufacturers shall not be subject to section 155-10."

SECTION 6. Section 155-5.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) The department of agriculture may guarantee up to ninety per cent of the principal balance of a loan, plus interest due thereon, made to a qualified farmer, qualified food manufacturer, or cooperative by a private lender; provided that at no time shall the aggregate amount of the State's liability, contingent or otherwise, on loans guaranteed under this section[, section] and sections 155-5, [and section] 155-6, and 155-6.5 exceed $10,000,000.

(b) Loans guaranteed under this section shall be limited by the provisions of sections 155-9 through 155-13 for purposes of [class] classes "A", "B", "C", and

"E"[.]; provided that class "E" loans to food manufacturers shall not be subject to section 155-10. No class "D" and "F" loans shall be made under this section."

SECTION 7. Section 155-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) 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, or qualified food manufacturer by a private lender who is unable otherwise to lend the applicant sufficient funds at reasonable rates.

(b) Participating loans under this section shall be limited by sections 155-9 to 155-13 for purposes of class "A" through class "F", the department's share not to exceed the maximum amounts specified therefor[.]; provided that class "E" loans to food manufacturers shall not be subject to section 155-10."

SECTION 8. Section 155-6.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The department of agriculture, for a fee, may underwrite and service loans for cooperating private lenders and government loan programs providing loan funds to qualified farmers[.] and qualified food manufacturers. All fees shall be deposited into the agricultural loan reserve fund."

2. By amending subsection (c) to read:

"(c) Loans underwritten or serviced under this section shall be limited by sections 155-1 and 155-9 to 155-12[.]; provided that class "E" loans to food manufacturers shall not be subject to section 155-10. No class "D" and "F" loans shall be underwritten or serviced under this section."

SECTION 9. Section 155-8, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) The department of agriculture may make loans directly to qualified farmers [or], qualified new farmers, or qualified food manufacturers who are unable to obtain sufficient funds at reasonable rates from private lenders either independently or under sections 155-5, 155-5.5, and 155-6.

(b) Loans made under this section shall be limited by sections 155-9 to 155-13[.]; provided that class "E" loans to food manufacturers shall not be subject to 155-10.

(c) Loans made under this section shall bear simple interest on the unpaid principal balance, charged on the actual amount disbursed to the borrower. The interest rate on loans of [classes] class "A", "B", "C", [and] "E", and "G" shall be at a rate of one per cent below the prime rate or at a rate of seven and one-half per cent a year, whichever is less. For purposes of this subsection, the prime rate shall be determined on January 1 and July 1 of each year, and shall be the prime rate charged by the two largest banks in the State identified by the department of commerce and consumer affairs. If the prime rates of the two largest banks are different, the lower prime rate of the two shall apply. The interest rate on class "F" loans shall be six per cent a year. If the money loaned is borrowed by the department, then the interest on loans of [such] the classes shall be the rate as determined above or one per cent over the cost to the State of borrowing the money, whichever is greater. Interest on class "D" loans shall not be less than three per cent a year."

SECTION 10. Section 155-9, Hawaii Revised Statutes, is amended to read as follows:

"**§155-9 Classes of loans; purposes, terms, eligibility.** (a) Loans made under this chapter shall be for the purposes and in accordance with the terms specified in classes "A" through "F" in this section and shall be made only to applicants who meet the eligibility requirements specified therein and except as to class "B" loans to associations and class "E" loans, the eligibility requirements specified in section 155-10. The maximum amount of a loan for class "A", "C", "D", and "F" loans to an individual applicant shall also apply to any loan application submitted by a partnership, corporation, or other entity, and for the purpose of determining whether the maximum loan amount to any individual will be exceeded, outstanding loans to any partnership, corporation, or other entity [in which such] that the individual has a legal or equitable interest in excess of twenty per cent shall be taken into account.

(b) Class A: Farm ownership and improvement loans shall provide for:

(1) The purchase or improvement of farm land;

(2) The purchase, construction, or improvement of adequate farm dwellings, and other essential farm buildings; and

(3) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed $400,000 and for a term not to exceed forty years. To be eligible, the applicant shall (A) 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 farming operations; and (B) have or be able to obtain the operating capital, including livestock and equipment, needed to successfully operate the applicant's farm.

(c) Class B: Soil and water conservation loans shall provide for:

(1) Soil conservation practices;

(2) Water development, conservation, and use;

(3) Drainage; and

(4) The liquidation of indebtedness incurred for any of the foregoing purposes.

The loans shall be for an amount not to exceed $35,000 to an individual or $200,000 to an association and shall be for a term not to exceed twenty years for a loan to an individual and forty years to an association. To be eligible, an individual applicant shall have sufficient farm and other income to pay for farm operating and living expenses and to meet payments on the applicant's existing debts, including the proposed soil and water conservation loan. An association, to be eligible, shall be a nonprofit organization primarily engaged in extending services directly related to the purposes of the loan to its members, and at least sixty per cent of its membership shall meet the eligibility requirements specified in section 155-10.

(d) Class C: Farm operating loans shall be for the purpose of carrying on and improving a farming operation, including:

(1) The purchase of farm equipment and livestock;

(2) The payment of production and marketing expenses including materials, labor, and services;

(3) The payment of living expenses;

(4) The liquidation of indebtedness incurred for any of the foregoing purposes; and

(5) The exportation of crops and livestock.

The loans shall be for an amount not to exceed $400,000 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 farming operations.

Qualified farmers affected by state eradication programs may also be eligible for loans under this subsection. Loans made for rehabilitation from eradication

programs shall be subject to the terms of class "C" loans; provided that the interest rate shall be three per cent a year and the requirements in section 155-3 shall be waived and paragraph (4) shall not apply.

(e) Class D: Emergency loans shall be for the purpose of providing relief and rehabilitation to qualified farmers without limit as to purpose:

(1) In areas stricken by extraordinary rainstorms, windstorms, droughts, tidal waves, earthquakes, volcanic eruptions, and other natural catastrophes;
(2) On farms stricken by livestock disease epidemics and crop blights;
(3) On farms seriously affected by prolonged shipping and dock strikes;
(4) During economic emergencies caused by overproduction, excessive imports, and the like; and
(5) During other emergencies as determined by the board of agriculture.

The maximum amounts and period for the loans shall be determined by the board of agriculture; provided that the board shall require that any settlement or moneys received by qualified farmers 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.

(f) Class E: Loans to farmers' cooperatives [and], corporations, and food manufacturers shall provide credit to [farmers' cooperative associations and corporations] entities engaged in marketing, purchasing, and processing, and providing farm business services, including:

(1) Facility loans to purchase or improve land, building, and equipment for an amount not to exceed $500,000 and a term not to exceed twenty years;
(2) Operating loans to finance inventories of supplies[,] and materials, warehousing, and shipping commodities, extension of consumer credit to justified farmer-members, and other normal operating expenses for an amount not to exceed $300,000 and a term not to exceed seven years; and
(3) The exportation of crops and livestock.

To be eligible, a farmers' cooperative or corporation shall have a majority of its board of directors and a majority of its membership as shareholders who meet the eligibility requirements of section 155-10 and who devote most of their time to farming operations, and the facility loans shall be for an amount not to exceed $500,000 or eighty per cent of the cost of the project, whichever is the lesser.

To be eligible, a food manufacturer shall be licensed to do business in the State, and the controlling interest of the entity shall possess a minimum of two years of relevant processing or manufacturing experience as acceptable to the department of agriculture. The entity shall process Hawaii-grown agricultural products or use Hawaii-grown agricultural products as an ingredient in the manufacturing process. Facility loans shall be for an amount not to exceed $500,000 or eighty per cent of the cost of the project, whichever is the lesser. The requirements in section 155-10 shall be waived for food manufacturing loans; however, the entity shall be a sound credit risk with the ability to repay the money borrowed.

(g) Class F: Loans for new farmer programs shall provide for costs of a new farm enterprise for qualified new farmers:

(1) Initial loans made under this class shall be for purposes and in accordance with the terms specified in [classes] class "A" and "C" only, and shall be made only for full-time farming. The loans shall be made for an amount not to exceed $100,000 or eighty-five per cent of the cost of the project, whichever is the lesser;

(2) Any subsequent loan shall be made from classes "A" to "D", respectively, depending upon the purpose for which the loan funds are used; and

(3) Borrowers shall comply with [such] special term loan agreements as may be required by the department and shall take [such] special training courses as the department deems necessary.

(h) Class G: Loans to part-time farmers shall be for farm improvement and operating purposes for carrying on and improving farming operations, including loans for:

(1) The purchase, construction, and improvement of farm production and growing structures;

(2) The purchase of farm equipment or livestock; and

(3) The payment of production and marketing expenses, including materials, labor, and services.

The liquidation of indebtedness incurred for any of the purposes under this subsection and for living expenses shall not be authorized purposes. Each loan shall be for an amount not to exceed $25,000 and for a term not to exceed ten years."

SECTION 11. Section 155-10, Hawaii Revised Statutes, is amended to read as follows:

"**§155-10 General eligibility requirements for loans.** To be eligible for loans under this chapter, an applicant shall be:

(1) A qualified farmer, [or] a person under the new farmer program[;], or a part-time farmer;

(2) A citizen of the United States who has resided in the State for at least three years, or any permanent resident alien who has resided in the State for at least [five] three years; provided that this requirement shall not apply to applicants for class "D" loans who otherwise qualify. In the case of partnerships and corporations, the residence requirement must be met by seventy-five per cent of the members or stockholders;

(3) A sound credit risk with the ability to repay the money borrowed; and

(4) Willing to carry out recommended farm management practices."

SECTION 12. Section 155-11, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Loans made under this chapter [shall] may be secured by duly recorded first mortgages upon the following property within the State:

(1) Fee simple [farm] land;

(2) Leaseholds of [farm] land where the lease has an unexpired term at least two years longer than the term of the loan;

(3) Crops, livestock, and equipment; and

(4) Other chattels."

2. By amending subsection (e) to read:

"(e) In case of the sale or transfer of the mortgaged land or goods [in which] that the department has a security interest, as that term is defined in section 490:1-201(37), the department may permit the mortgage or encumbrance to be assumed by the purchaser. In case of the death of the borrower, the borrower's heir or heirs, or the borrower's legal representative or representatives, shall have the option within six months of the death to assume the mortgage of the deceased. The department or its agents may, pending the exercise of the option and pending possession being taken by the heirs or representatives, take possession of all mortgaged property and carry on the [agricultural] operation connected therewith, and the expense of the

same shall be added to the principal due upon the mortgage to bear interest at the applicable rate."

SECTION 13. Section 155-12, Hawaii Revised Statutes, is amended to read as follows:

"**§155-12 Conditions.** Every borrower who is granted a loan under this chapter shall comply with the following conditions:

(1) Expend no portion of the borrower's loan for purposes other than those sanctioned by the department of agriculture[.];
(2) Carry out recommended [farm] management practices, including the keeping of proper records[.];
(3) Not sell or otherwise dispose of the mortgaged property except on written consent of the lender, and except upon [such] conditions as may be prescribed in writing by the lender[.];
(4) Undertake to pay, when due, all taxes, liens, judgments, or assessments [which] that may be lawfully assessed against the property mortgaged, together with the costs and expense of any foreclosure of [such] the mortgage[.];
(5) Keep insured to the satisfaction of the department all buildings and other insurable property covered by the mortgage. Insurance shall be made payable to the mortgagee as its interests may appear at the time of the loss. At the option of the lender, and subject to the general regulations of the department, sums so received may be used to pay for reconstruction of the buildings destroyed, or for decreasing the amount of the indebtedness[.];
(6) Keep buildings in good repair; provide proper care for improvements, stock, and implements; keep land free from noxious weeds; and practice good systems of husbandry[.];
(7) All of the above conditions shall be held and construed to be a provision of any mortgage executed by virtue of this chapter whether appearing as a provision of the mortgage or not[.]; and
(8) If the borrower is in default in respect to the above conditions, or any other conditions, or any other condition or covenant of the mortgage, the whole of the loan shall, at the option of the lender become due and payable forthwith. The lender may, with or without notice, take possession of the mortgaged property pending a foreclosure and may carry on [agricultural] the business pursuits upon the mortgaged premises, expending all reasonable sums therefor. [Such] The sums shall be a lien on the mortgaged premises and be recoverable in any foreclosure proceedings or otherwise. The lender may foreclose the mortgage by any method provided for by law."

SECTION 14. Section 171-14.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any other law to the contrary notwithstanding, to be eligible to bid in an auction for agricultural or pasture leases, a potential bidder shall be a bona fide individual farmer or a nonindividual farm concern:

(1) Who has spent not less than two years, full-time, in farming operations; [or]
(2) Who is an owner-operator of an established farm conducting a substantial farming operation; [or]
(3) Who for a substantial period of the individual's adult life resided on a farm and depended on farm income for a livelihood; [or]

(4) Who is an individual who has been a farm tenant or farm laborer or other individual, who has for the two years last preceding the auction obtained the major portion of their income from farming operations; [or]
(5) Is an individual with a college degree in agriculture; [or]
(6) Is an individual who by reason of ability, experience, and training as a vocational trainee is likely to successfully operate a farm; [or]
(7) Who has qualified for and received a commitment for a loan under the Bankhead-Jones Farm Tenant Act as amended, or as may hereafter be amended, for the acquisition of a farm; [or]
(8) Who is an individual who is displaced from employment in an agricultural production enterprise; [or]
(9) Who is a member of the Hawaii Young Farmer Association or a Future Farmer of America graduate with two years of training with farming projects; [or]
(10) Who possesses the qualifications under the new farmer program pursuant to section [155-1(3)] 155-1; or
(11) Who possesses [such] other qualifications as the board of land and natural resources may prescribe pursuant to section 171-6 and this section."

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 April 26, 2000.)

**Note**

1. So in original.

## ACT 52 H.B. NO. 2997

A Bill for an Act Relating to Aquaculture Loans.

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

SECTION 1. 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", "C", and "D" in paragraph (1), (2), (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] $400,000 and for a term not to exceed forty years. To be eligible the applicant shall:

(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; 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] $400,000 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] $500,000 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] $300,000 and a term not to exceed [three] seven 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 catastrophes;

(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 emer-

gency declared under this section shall first be applied to the repayment of an emergency loan made 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 April 26, 2000.)

## ACT 53

S.B. NO. 887

A Bill for an Act Relating to Judges for the Circuit Court.

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

SECTION 1. Section 603-4, Hawaii Revised Statutes, is amended to read as follows:

"**§603-4 Other circuits, judges.** The circuit court of the fifth circuit shall consist of [one judge,] two judges, who shall be styled as first and second judge, respectively, and each as a judge of the circuit court of the fifth circuit. The circuit court of the second circuit shall consist of three judges, who shall be styled as first, second, and third judge, respectively, and each as a judge of the circuit court of the second circuit. The circuit court of the third circuit shall consist of three judges, who shall be styled as first, second, and third judge, respectively, and each as a judge of the circuit court of the third circuit."

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

SECTION 3. This Act shall take effect on July 1, 1999.[1]

(Approved April 26, 2000.)

**Note**

1. So in original.

## ACT 54

S.B. NO. 914

A Bill for an Act Relating to Vote Count.

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

SECTION 1. Section 11-151, Hawaii Revised Statutes, is amended to read as follows:

"**§11-151 Vote count.** Each contest or question on a ballot shall be counted independently as follows:

(1) If the votes cast in a contest or question are equal to or less than the number to be elected or chosen for that contest or question, the votes for that contest or question shall be counted[.];

(2) If the votes cast in a contest or question exceed the number to be elected or chosen for that contest or question, the votes for that contest or question shall not be counted[.]; and

(3) If a contest or question requires a majority of the votes for passage, any blank, spoiled, or invalid ballot shall not be tallied for passage or as votes cast except that such ballots shall be counted as votes cast in ratification of a constitutional amendment[.] or a question for a constitutional convention."

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

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

(Approved April 26, 2000.)

## ACT 55 S.B. NO. 2005

A Bill for an Act Relating to Public Lands.

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

SECTION 1. The legislature recognizes the unique and critical situation facing resort area lessees on Banyan Drive in Hilo, Hawaii. With the majority of the leases expiring in 2015, these lessees are faced with the uncertainty of continued tenancy. Under the current laws, as the end of the lease term nears, the lessees will have fewer incentives to make major investments in improvements to their infrastructure and ensure the long-term maintenance of their facilities. As a result, deterioration of the infrastructure is likely to occur.

Under this Act, one group of lessees would be exempted from the overall public policy of making public lands available to the highest qualified bidder at auctions. The legislature finds that except under rare circumstances, state leases have a maximum term of sixty-five years. Upon the expiration of leases, the property is made available to bidders via public auction. This method ensures maximum revenue generation for the beneficiaries of the public land trust. The legislature believes, however, that in this specific and unique case, an exception to this public policy is justified for the Banyan Drive lessees.

This exception is based on the fact that the State owns virtually the entire Banyan Drive resort area, which represents, approximately eighty per cent of total overnight accommodations in east Hawaii. Banyan Drive is an integrated resort area. All of the existing structures were built as hotels although not all are in hotel use at this time. It is important that the entire Banyan area be maintained as a resort area. Because the State controls so much of the hotel space in east Hawaii, the State has a responsibility to ensure that its actions will not have a harmful impact on the larger community as a whole. Should the State allow the Banyan Drive resort area to deteriorate, including the structures not currently used directly for hotel purposes, if and when the tourism market rebounds, east Hawaii will not be in a position to respond promptly with adequate hotel space. The negative impact would magnify as ancillary industries, dependent on the tourist market, would also suffer. Furthermore, approximately five hundred direct resort jobs would be affected, as well as many other indirect jobs.

The legislature finds that while an exception is justified regarding the public policy of making public lands available to the highest bidder, the legislature strongly

feels that the lessees should not be subsidized. It is the intention of the legislature to support the efforts of the State and the county of Hawaii and provide an opportunity for the tourism market to rebound in east Hawaii by ensuring that hotel rooms will still be available. If the current downturn reflects a more long-term structural shift in the east Hawaii tourism market, then the State should see the resort market adjust, including the possibility that the Banyan Drive properties be put to other uses.

The legislature further finds that prudent land management dictates that an exception be made in this specific case. As the landowner of virtually the entire Banyan Drive resort area, the State has an interest in preserving the significant value of these assets as the resort and other facilities represent millions of dollars worth of improvements on state land. Should the State allow these assets to deteriorate, the land value will decrease, thus lowering the value of all state land in the area.

The legislature believes that resort area use is the highest and best use of these properties at this time. Due to the downturn in the tourism market, demand is very weak for these leases as evidenced by the lack of interest shown in the one vacant lot where the former Orchid Isle Hotel once stood. As such, it would be unwise to force these leases into auction and risk deterioration of the improvements and loss of income should the existing lessees decide not to continue.

Lastly, the legislature finds that the state and county governments are actively attempting to develop east Hawaii as a visitor destination area marketed, among other things, around the University of Hawaii, astronomy, geology/volcanoes, eco-tourism, and culture and the arts.

The purpose of this Act is to stimulate tourism in east Hawaii by creating incentives for reinvestment in the resort and other infrastructure of the Banyan Drive resort area in Hilo, Hawaii. This Act authorizes the board of land and natural resources to issue new leases to existing lessees of the Banyan Drive resort area as an integral part of preserving and enhancing the tourism base of east Hawaii.

This Act affects fifteen total leases in the Banyan Drive resort area. Of these fifteen leases, there are ten leases covering three resort facilities (Naniloa, Hilo Bay, and Hilo Hawaiian), three leases for each of three apartment/condominium facilities (Country Club, Bayview Banyan, and Reed's Bay), one golf course lease, and one restaurant lease.

SECTION 2. Notwithstanding any law to the contrary, the department of land and natural resources is authorized to issue new leases to the existing Banyan Drive lessees, subject to the following:

(1) New leases shall contain those conditions deemed appropriate by the department to carry out the purposes of this Act;

(2) The department shall develop a process to ensure that the assumption of no market demand for the leases holds true. As such, the department may issue a request for proposal or other means to ensure that a fair, open, and competitive process is used to determine competition. This process shall take into account the current fair market value of the tenant-owned improvements under the terms of the existing lease. The current fair market value shall be negotiated and agreed to between the lessee and the lessor. If the current fair market value is agreed upon, the department may initiate a request for proposal process to reveal whether there are other entities seriously interested in obtaining the lease. If this process shows a willing and able bidder, the department shall go out for auction with the understanding that the successful bidder shall pay the existing lessee the current fair market value in full at closing. If there are no qualified entities, or if the lessee is the successful bidder, then a new lease may be issued to the existing lessee for a term not to exceed fifty-five years; and

(3) If a new lease is issued, then the following may be contained in the lease:
   (A) Fair market rent, excluding tenant improvements;
   (B) Percentage rent where gross receipts exceed a certain level;
   (C) Assignment premium; and
   (D) Requirements to substantially improve the property.

SECTION 3. It is the expressed intent of this Act that the legislature not interfere with market forces by subsidizing these resort area uses to ensure that the State is receiving a fair return from public lands and that investment is made into the infrastructure associated with the leases.

SECTION 4. The lands eligible for lease under section 2 of this Act shall be limited to those existing fifteen state leases with infrastructure located in the Banyan Drive resort area.

SECTION 5. All costs for the issuance of a new lease, including determining the current fair market value and the request for proposals, shall be paid for by lessees interested in acquiring new leases.

SECTION 6. This Act shall take effect on July 1, 2000, and shall be repealed on July 1, 2005.

(Approved April 26, 2000.)

## ACT 56

S.B. NO. 2205

A Bill for an Act Relating to Nonprofit Corporations.

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

SECTION 1. Chapter 415B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§415B- Private foundations; tax-exempt status.** No nonprofit corporation which is a private foundation, as defined in section 509(a) of the Code shall:
(1) Engage in any act of self-dealing, as defined in section 4941(d) of the Code;
(2) Retain any excess business holdings, as defined in section 4943(c) of the Code;
(3) Make any investments in such manner as to subject it to tax under section 4944 of the Code; and
(4) Make any taxable expenditures, as defined in section 4945(d) of the Code.

Each nonprofit corporation which is a private foundation as defined in section 509 of the Code shall distribute, for the purpose specified in its charter of incorporation, such amounts at such time and in such manner as shall be required so as not to subject it to tax under section 4942 of the Code.

Nothing in this section shall impair the rights and powers of the courts, the attorney general, or the director of commerce and consumer affairs of this State with respect to any corporation.

References in this section to sections of the Code are to sections of the Internal Revenue Code of 1986, as amended."

SECTION 2. New statutory material is underscored.[1]

SECTION 3. This Act shall take effect upon its approval and shall be applied retroactively to July 1, 1987.

(Approved April 26, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 57 S.B. No. 2426

A Bill for an Act Relating to Crime Victim Compensation.

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

SECTION 1. During the past decade communities across the nation have experienced the horrifying impact of crimes of mass violence. The World Trade Center bombing, Olympic park shooting, Columbine High School shooting, and the Xerox shooting horrified the nation and left surviving family members, witnesses, other individuals present at the crime scene, and the community emotionally traumatized. In response to these tragedies, the federal Office for Victims of Crime has developed the Reserve Fund. The program makes federal funding available to state crime victim compensation programs to pay for mental health counseling for victims of mass violence.

Hawaii was unable to accept federal Office for Victims of Crime Reserve Fund funds after the recent Xerox incident because there is no statutory authorization of compensation for mental health counseling for surviving family members, witnesses, or individuals who were present at the scene of an incident of mass violence.

The legislature finds that survivors of mass violence need access to mental health services. The legislature further finds that, in order to qualify for federal Office for Victims of Crime Reserve Fund funding, it is necessary to amend chapter 351, Hawaii Revised Statutes, to allow compensation for mental health counseling to survivors of mass violence.

SECTION 2. Section 351-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"<u>"Mass casualty incident" means an incident with multiple victims killed during a continuous course of criminal conduct;</u>"

SECTION 3. Section 351-2, Hawaii Revised Statutes, is amended by amending the definition of "relative" to read as follows:

"<u>"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[;], niece, nephew, or person residing in the same dwelling unit as the victim;</u>"

SECTION 4. Section 351-31, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In the event any private citizen is injured or killed by any act or omission of any other person coming within the criminal jurisdiction of the State after June 6, 1967, or any state resident is injured or killed by any act or omission of any other person after July 1, 1989, in another state, which act or omission is within

the description of the crimes enumerated in section 351-32, or any resident of this State who is injured or killed by an act of terrorism occurring outside the United States, as defined in Title 18 United States Code section 2331, the commission in its discretion, upon an application, may order the payment of compensation in accordance with this chapter:

(1) To or for the benefit of the victim;

(2) To any person responsible for the maintenance of the victim, [where] if that person has suffered pecuniary loss or incurred expenses as a result of the victim's injury or death;

(3) In the case of the death of the victim, to or for the benefit of any one or more of the dependents of the deceased victim; [or]

(4) To any person who has incurred expenses on account of hospital, medical, funeral, and burial expenses as a result of the deceased victim's injury and death[.]; or

(5) In cases involving a mass casualty incident, for mental health services to or for the benefit of:

(A) A relative of the deceased victim;

(B) A witness to the mass casualty; or

(C) An individual engaged in business or educational activities at the scene of the mass casualty incident;

provided that compensation to a victim shall have priority over compensation to a relative, a witness, or another individual under this paragraph, and provided further that this paragraph shall not apply to a member of a public or private agency responding to or providing services as a result of a mass casualty incident."

SECTION 5. Section 351-33, Hawaii Revised Statutes, is amended to read as follows:

"**§351-33 Award of compensation.** The commission may order the payment of compensation under this part for:

(1) Expenses actually and reasonably incurred during the period of the injury or death of the victim;

(2) Loss to the victim of earning power as a result of total or partial incapacity;

(3) Pecuniary loss to the dependents of the deceased victim;

(4) Pain and suffering to the victim; [and]

(5) Any other pecuniary loss directly resulting from the injury or death of the victim [which] that the commission determines to be reasonable and proper[.]; and

(6) Expenses actually and reasonably incurred for mental health services in the case of a mass casualty incident."

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 26, 2000.)

# ACT 58 S.B. NO. 2470

A Bill for an Act Relating to Education.

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

SECTION 1. Section 202-2, Hawaii Revised Statutes, is amended to read as follows:

"**§202-2 Duties of council.** The workforce development council shall:

(1) 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;

(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;

(5) Define those areas of unmet workforce and economic development needs and describe how private and public agencies can coordinate their efforts and collaborate with each other to address those needs;

(6) Recommend to the governor and the legislature, state policies and funding priorities based on local community input that it believes should be adopted by the state government in meeting its workforce development responsibilities to:
   (A) Establish a workforce development system in the State in which resources are pooled and programs are coordinated and streamlined;
   (B) Encourage a program of useful research into the State's workforce requirements, development, and utilization; and
   (C) Support recommended workforce policies that promote economic development, diversification, and well-being of the people in this State;

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] career and technical education;

(7) Create public awareness and understanding of the State's workforce development plans, policies, programs, and activities, and promoting them as economic investments;
(8) Submit reports of its activities and recommendations to the governor and the legislature at least once a year;
(9) Evaluate the state workforce development plan in terms of how its purposes, goals, and objectives have been carried out throughout the State;
(10) Provide technical assistance to local workforce development boards and other similar organizations;
(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;
(12) In accordance with the federal Workforce Investment Act of 1998, Public Law 105-220, assist the governor in the following functions:
  (A) The development of the State's plan for the use of federal workforce investment funds, which is required under Public Law 105-220;
  (B) The development and continuous improvement of the statewide and local workforce investment systems described in subtitle B of Public Law 105-220, and the one-stop delivery systems described in section 134(c) of Public Law 105-220, including:
    (i) The development of linkages referred to in Public Law 105-220, to assure coordination and non-duplication among the programs and activities in section 121(b) of Public Law 105-220; and
    (ii) The review of plans prepared by local workforce investment boards for the use of federal workforce investment funds which is required under Public Law 105-220;
  (C) Commenting at least once annually on the measures taken pursuant to section 122(c)(16) of the Carl D. Perkins Vocational and [Applied Technology] Technical Education Amendments of 1998, Public Law 105-332;
  (D) The designation of local areas as required in section 116 of Public Law 105-220;
  (E) The development of allocation formulas for the distribution of funds for adult employment and training activities and youth activities to local areas as permitted under sections 128(b)(3)(B)(i) and 133(b)(3)(B)(i) of Public Law 105-220;
  (F) The development and continuous improvement of comprehensive state performance measures, including state-adjusted levels of performance, to assess the effectiveness of the workforce investment activities in the State as required under section 136(b)(1) of Public Law 105-220;
  (G) The preparation of the annual report to the United States Secretary of Labor described in section 136(d)(1) of Public Law 105-220;
  (H) The development of the statewide employment statistics system described in section 15(e) of the Wagner-Peyser Act; and
  (I) The development of an application for an incentive grant under section 503 of Public Law 105-220; and
(13) Act as the designated state entity to conduct activities relating to occupational and employment information for vocational and technical

education programs in compliance with section 118 [ ]of[ ] the Carl D. Perkins Vocational and [Applied Technology] Technical Education Amendments of 1998, Public Law 105-332."

SECTION 2. Chapter 305A, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

"[ ]CHAPTER 305A
[VOCATIONAL] CAREER AND TECHNICAL EDUCATION UNDER FEDERAL AID[ ]"

2. By amending sections 305A-2 to 305A-4 to read:

"[ ]§305A-2[ ] **State board for [vocational] career and technical education.** The board of regents of the University of Hawaii is designated as the state board for [vocational] career and technical education. The chairperson of the board of regents is designated as the chairperson of the board for [vocational] career and technical education and the president of the University of Hawaii, its administrative officer.

[ ]§305A-3[ ] **Board's power and authority.** The board may cooperate with the United States Department of Health, Education and Welfare in the administration of the provisions of the Acts of Congress mentioned in section 305A-1, and do all things necessary to entitle the State to receive the benefits of each of the respective funds appropriated by such Acts; represent the State in any and all matters arising out of or connected with the administration of such Acts of Congress insofar as the same shall apply to the State; represent the State in any or all matters in reference to the expenditure, distribution, and disbursements of moneys received from such acts; designate such colleges, schools, departments, or classes as may be entitled to participate in the benefits of moneys received from the appropriations made in such Acts as in its judgment and discretion will best subserve the interests of [vocational] career and technical education in the State and carry out the spirit, purposes, and provisions of such Acts of Congress; establish and determine by general regulations, the qualifications to be possessed by persons teaching agricultural, trade, industrial, and home economics subjects in the colleges or schools coming under the provisions of such Acts of Congress in the State; and enforce rules and regulations concerning the granting of certificates and licenses to such teachers and to certificate such teachers. The board may delegate some of its responsibilities relating to the establishment of qualifications for and certification or licensing of [vocational] career and technical teachers. The board shall make an annual report to the governor describing the conditions and progress of [vocational] career and technical education during the year and include therein an itemized statement showing the receipts and expenditures of all moneys used in connection with such education.

§305A-4 **[Vocational] Career and technical education coordinating advisory council.** There is established a [vocational] career and technical 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:

(1) Three shall be appointed from the board of regents of the University of Hawaii by the chairperson of that body;

(2) Three shall be appointed from the board of education by the chairperson of that body; and
(3) Three shall be appointed from the workforce development council by that council.

Of the three members appointed from the 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 3. Section 373C-11, Hawaii Revised Statutes, is amended to read as follows:

"**§373C-11 Occupational information coordinating committee, establishment.** The Hawaii state occupational information coordinating committee is established and shall be composed of representation from at least the state board for [vocational] career and technical education, the department of labor and industrial relations, the state employment and training council, the state vocational rehabilitation agency, the department of education, and the University of Hawaii. Membership shall not be restricted to these agencies, but shall not exceed twenty-five members with one member per agency. Members shall be appointed by the administrators or directors of these agencies. The committee shall be placed in the department of labor and industrial relations for administrative purposes only."

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

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

(Approved April 26, 2000.)

## ACT 59 S.B. NO. 2477

A Bill for an Act Relating to the Trustees of the Office of Hawaiian Affairs.

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

SECTION 1. Section 13D-2, Hawaii Revised Statutes, is amended to read as follows:

"**§13D-2 Qualifications of board members.** No person shall be eligible for election or appointment to the board unless the person is[:] Hawaiian and is: (1) qualified and registered to vote under the provisions of section 13D-3, and (2) where residency on a particular island is a requirement, a resident on the island for which seat the person is seeking election or appointment. No member of the board shall hold or be a candidate for any other public office under the state or county governments in accordance with Article II, section 7 of the Constitution of the State; nor shall a person be eligible for election or appointment to the board if that person is also a candidate for any other public office under the state or county governments. The term "public office", for purposes of this section, shall not include notaries public, reserve police officers, or officers of emergency organizations for civilian defense or disaster, or disaster relief."

SECTION 2. Section 13D-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No person shall be eligible to register as a voter for the election of board members unless the person meets the following qualifications:

[(1) The person is Hawaiian;

(2)] (1) The person has attained the age of eighteen years or will have attained such age within one year of the date of the next election of board members; and

[(3)] (2) The person is otherwise qualified to register to vote in 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 April 26, 2000.)

## ACT 60 H.B. NO. 536

A Bill for an Act Relating to Human Services.

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

SECTION 1. Over ten years ago, the legislature had the foresight to recognize the importance of early childhood education and care. Act 367, Session Laws of Hawaii 1989, required the department of education to plan for voluntary statewide early education to be delivered by private providers whenever possible. The department was to adopt standards for curriculum, facilities, teacher training, and methods for encouraging the involvement of parents and guardians. Additionally, provisions were made for parents and guardians who opt for home care to utilize early childhood education resources.

Current research findings validate the legislature's wisdom. Recent research reveals that infants' brains develop earlier and more rapidly than previously understood, and that the early years of a child are most crucial in the child's cognitive, emotional, social, and physical development. A growing body of research indicates that good early childhood education and care programs can lead to school success, reduced delinquency and crime, and better job opportunities and productivity in both the short- and long-term.

Additionally, neuroscience research in early brain development, as well as studies in early child development, affirm not only the tremendous opportunities for

preventive work with children and families, but also the predictable, costly consequences of not doing so.

The legislature finds that the good beginnings alliance, established by Act 77, Session Laws of Hawaii 1997, is a public-private partnership charged with the responsibility to improve early childhood outcomes through the development of quality early childhood education and care and related family support services. Specifically, the good beginnings alliance must 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. The good beginnings alliance is a demonstration project and is scheduled to be repealed on June 30, 2001.

The legislature further finds that H.C.R. No. 120, 1998, established a joint legislative committee on early childhood education and care to encourage the development and implementation of policies that integrate early childhood education, care, protection, and health services.

After two years of discussions and presentations on the status of the statewide early childhood education and care system, the joint legislative committee found that the components of a quality system of care are in place, and that the good beginnings alliance is truly the link and focal point for policy development, disbursement of public funds, and implementation of early childhood community plans. The joint legislative committee recommended that, among other things, the legislature make the good beginnings alliance a permanent coordinating structure that cuts across existing social service systems to coordinate early childhood services for families with young children.

The legislature believes that through the good beginnings alliance, it will be able to continue to monitor the development of a coordinated system that is dedicated to enhancing and developing early childhood education and care services.

The purpose of this Act is to:

(1) Extend the life of the good beginnings alliance to 2010;
(2) Expand the membership of the interdepartmental council; and
(3) Expand the representation of the good beginnings alliance board of directors.

SECTION 2. Act 77, Session Laws of Hawaii 1997, is amended as follows:

1. By amending subsection (a) of section -2 of the chapter established in section 2 of the Act to read:

"(a) A corporation may qualify under section -1[,]; provided that the board of directors of the corporation shall consist of not more than [nine] fourteen 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[.];
(7) One member representing the University of Hawaii;
(8) One member representing the American Academy of Pediatrics;
(9) One member representing the early intervention community;

(10) One member representing an early childhood resource and referral agency; and

(11) One member representing head start."

2. By amending section -4 of the chapter established in section 2 of the Act to read:

"§ **-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;
(7) One member from the general business community; and
(8) One member from the general philanthropic community,

to serve as members of the interdepartmental council. The governor's special assistant for children and youth shall serve as the presiding chairperson."

SECTION 3. Act 77, Session Laws of Hawaii 1997, is amended by amending section 3 to read as follows:

"SECTION 3. This Act shall take effect upon its approval and shall be repealed on June 30, [2001] 2010."

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 27, 2000.)

## ACT 61 H.B. NO. 1387

A Bill for an Act Relating to Nurses.

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

SECTION 1. Section 457-3, Hawaii Revised Statutes, is amended to read as follows:

"**§457-3 State board of nursing; appointment; term of office[; removal from office].** The board shall consist of nine members[, five of whom] as follows:

(1) Six shall be registered nurses, [two] one of whom shall be recognized as an advanced practice registered nurse in this State;
(2) One shall be a licensed practical [nurses] nurse; and [two of whom]
(3) Two shall be public members[; provided that at the first vacancy of a registered nurse member of the board after July 5, 1994 and thereafter, at least one of the registered nurses shall meet the requirements for recognition as an advanced practice registered nurse set out in this chapter].

Both nursing education and direct providers of nursing services shall be represented on the board. The term of office for members of the board shall be three years. No member shall be appointed to more than two consecutive terms or serve more than six consecutive years. Six members of the board shall be residents of the city and county of Honolulu and three shall be residents of counties other than the city and county of Honolulu."

SECTION 2. The licensed practical nurses who are members of the board on the effective date of this Act shall be allowed to complete their respective terms.

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 27, 2000.)

## ACT 62 H.B. NO. 1757

A Bill for an Act Relating to Highway Safety.

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

SECTION 1. Section 291-3.1, Hawaii Revised Statutes, is amended to read as follows:

"**§291-3.1 Consuming or possessing intoxicating liquor while operating motor vehicle or moped.** (a) No person shall consume any intoxicating liquor while operating a motor vehicle or moped upon any public street, road, or highway.

(b) No person shall possess, while operating a motor vehicle or moped upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed.

(c) [This section shall not apply to the living quarters of a trailer or camper.

(d)] Any person violating this section shall be fined not more than $2,000 or imprisoned not more than thirty days, or both."

SECTION 2. Section 291-3.2, Hawaii Revised Statutes, is amended to read as follows:

"**§291-3.2 Consuming or possessing intoxicating liquor while a passenger in a motor vehicle.** (a) No person shall consume any intoxicating liquor while a passenger in any motor vehicle or on any moped upon any public street, road, or highway.

(b) No person shall possess, while a passenger in a motor vehicle or on a moped upon any public street, road, or highway, any bottle, can, or other receptacle containing any intoxicating liquor which has been opened, or a seal broken, or the contents of which have been partially removed.

[(c) This section shall not apply to the living quarters of a trailer or camper.

(d)] (c) Any person violating this section shall be guilty of a petty misdemeanor."

SECTION 3. Section 291-3.3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Subsection (a) [of this section] shall not apply to a recreational or other vehicle not having a separate trunk compartment[, or to the living quarters of a trailer or camper]."

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 27, 2000.)

## ACT 63 H.B. NO. 2005

A Bill for an Act Relating to Reverse Mortgages.

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

SECTION 1. Section 506-10, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§506-10[]] Reverse mortgage loan.** (a) Prior to accepting an application for a reverse mortgage loan, a lender shall refer every borrower to counseling from an organization that is a housing counseling agency approved by the United States Department of Housing and Urban Development, and shall receive certification from the counselor that the borrower has received counseling. The certificate [must] shall be signed by the borrower and the counselor and include the date of counseling, the name, address, and telephone number of both the borrower and the organization providing counseling, and shall be maintained by the holder of the reverse mortgage throughout the term of the reverse mortgage loan.

(b) A lender that fails to comply with the requirements of subsection (a) shall be deemed to have engaged in an unfair method of competition or unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2.

(c) [Reverse] As used in this section, "reverse mortgage loan" means a loan [made to a] that:

(1) Is a nonrecourse loan [borrower] wherein the committed principal amount is secured by a mortgage on residential property owned by the borrower [and which is due];

(2) Is due upon sale of the property securing the loan, or upon the death of the last surviving borrower, or upon the borrower terminating use of the real property as [the] a principal residence, or upon the borrower's default[.];

(3) Provides cash advances to the borrower based upon the equity or the value in the borrower's owner-occupied principal residence;

(4) Requires no payment of principal or interest until the entire loan becomes due and payable; and

(5) Is made by a lender licensed or chartered under state or federal law.

For purposes of this section, "reverse mortgage loan" [does] shall not include [loans:] a loan:

(1) Insured by the United States Department of Housing and Urban Development;

(2) Intended for sale to the Federal National Mortgage Association (also known as "Fannie Mae") or to the Federal Home Loan Mortgage Corporation (also known as "Freddie Mac"); or

(3) For which mortgage counseling is required under other state or federal laws.

(d) No person other than a state chartered or licensed, or federally chartered or licensed, lender shall offer reverse mortgage loans."

SECTION 2. This Act shall apply to any transaction made after April 25, 1999.

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 27, 2000.)

## ACT 64 H.B. NO. 2148

A Bill for an Act Relating to Motorcycle and Motor Scooter Insurance.

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

SECTION 1. Section 431:10G-108, Hawaii Revised Statutes, is amended to read as follows:

"**§431:10G-108 Penalties.** Any person who violates this article shall be subject to a citation by the police and shall be subject to a nonsuspendable fine of not less than $100 nor more than $1,000, thirty days imprisonment, a one year driver's license suspension, or any combination thereof, for each violation.

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:

(1) Any operator of a motorcycle or motor scooter owned by another person if the operator's own insurance covers such driving;

(2) Any operator of a motorcycle or motor scooter owned by that person's employer during the normal scope of that person's employment; or

(3) Any operator of a borrowed motorcycle or motor scooter if the operator holds a reasonable belief that the subject vehicle is insured."

SECTION 2. New statutory material is underscored.

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

(Approved April 27, 2000.)

## ACT 65 H.B. NO. 2158

A Bill for an Act Relating to Motor Vehicle Insurance.

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

SECTION 1. Section 431:10C-103.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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, advanced practice nursing recognized pursuant to chapter 457, dental, optometric, chiropractic, ambulance, prosthetic services, medical equipment and supplies, products and accommodations furnished, x-ray, psychiatric, physical therapy pursuant to prescription by a medical doctor, occupational therapy, rehabilitation, and therapeutic massage by a licensed massage therapist when prescribed by a medical doctor."

SECTION 2. New statutory material is underscored.

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

(Approved April 27, 2000.)

## ACT 66 H.B. NO. 2216

A Bill for an Act Relating to Uninsured Motor Vehicles.

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

SECTION 1. Section 431:10C-103, Hawaii Revised Statutes, is amended by amending the definition of "uninsured motor vehicle" to read as follows:

""Uninsured motor vehicle" means any of the following:

(1) A motor vehicle for which there is no bodily injury liability insurance or self-insurance applicable at the time of the accident; or

(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]."

SECTION 2. Statutory material to be repealed is bracketed.

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

(Approved April 27, 2000.)

# ACT 67 H.B. NO. 2219

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 19 to be appropriately designated and to read as follows:

"**§431:19- Confidential treatment.** (a) All nonpublic financial information of a captive insurance company, its parent, or the parent's member organizations, or a risk retention captive insurance company, disclosed to the commissioner pursuant to this article shall be given confidential treatment and shall not be made public by the commissioner without the prior written consent of the captive insurer, its parent company, or the member organization, or risk retention captive insurer to which it pertains.

(b) The commissioner may disclose nonpublic financial information of a captive insurance company, its parent, or the parent's member organizations, or a risk retention captive insurance company, to insurance departments of other states without prior consent of the captive insurer, its parent company, or the parent's member organization, or the risk retention captive insurer to which it pertains.

(c) In the event the commissioner determines that the interest of the policyholders, shareholders, or the public will be served by making the information public, then after giving the captive insurance company and its parent or the parent's member organizations, or the risk retention captive insurer that would be affected thereby, three days notice of intent, the commissioner may make public all or any part of the nonpublic financial information in a manner that the commissioner deems appropriate.

(d) For purposes of this section:

"Equity securities" means:

(1) A share in a corporation, whether or not transferable or denominated a "stock", or similar security evidencing an ownership interest in the person;
(2) The interest of a limited partner in a limited partnership;
(3) The interest of a partner in a partnership, including a joint venture; or
(4) A warrant or right, other than a right to convert, to purchase, sell, or subscribe to a share, security, or interest of a kind specified in paragraph (1), (2), or (3).

"Nonpublic financial information" means information regarding a person's financial condition that prior to disclosure to the commissioner pursuant to this article is not a public record as defined in rule 1001(5) of section 626-1; provided that in the case of a person whose equity securities are collectively owned and held by thirty-six or more persons, "nonpublic financial information" does not include financial information disclosed to owners and holders of equity securities."

SECTION 2. 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 <u>other than a class 3 captive insurance company</u> shall submit to the commissioner a statement of financial condition written according to generally accepted accounting principles<u>, or other comprehensive basis of accounting as may be deemed appropriate by the commissioner,</u> and audited by an independent certified public accountant<u>, or other qualified professional as deemed appropriate by the commissioner,</u> on or before the last day of the sixth month following the end of the company's fiscal year.

(b) Each [captive insurance company that is not a pure] class 3 captive insurance company shall annually file with the commissioner the following:

(1) Annual statement and audit:

(A) On or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an annual statement 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. The reported information shall be verified by oaths of at least two of the captive's principal officers;

(B) On or before June 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, 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;

(C) The annual statement and audit shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practice and procedures prescribed by the National Association of Insurance Commissioners' practices and procedures manuals. Each risk retention group shall also comply with section 431:3-302; and

(2) On or before each March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, a risk-based capital report in accordance with section 431:3-402; provided that a class 3 [association] captive insurance [companies and class 4 captive insurance companies] company shall not be required to file [their] risk-based capital reports with the National Association of Insurance Commissioners."

SECTION 3. Section 431:19-102.5, Hawaii Revised Statutes, is repealed.

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

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

(Approved April 27, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 68 H.B. NO. 2220

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. The purpose of this Act is to create a mechanism by which captive insurance companies formed as stock, mutual corporations or captive reciprocal insurers and domiciled in the State under article 19 of the insurance code may be converted to or merged with or into another form of captive insurer.

SECTION 2. Chapter 431, article 19, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§431:19- Conversion or merger of captive insurers.** (a) Subject to this section, a captive insurance company domiciled in the State may be converted into, or merged with, a different form of captive insurer under this article.

(b) A plan of conversion or merger shall be submitted to and be approved by the commissioner in advance of the proposed conversion or merger. The commissioner shall not approve the plan unless:

(1) The commissioner finds that it is fair, equitable, and consistent with law;

(2) The plan has been approved:

(A) In the case of a stock corporation, by at least two-thirds of the shares entitled to vote at a duly called regular or special meeting of the shareholders at which a quorum is present, or by unanimous written consent of the shareholders; or

(B) In the case of a mutual insurer, by at least two-thirds of the voting interest of the members of the mutual insurer at a duly called regular or special meeting of the membership at which a quorum is present, or by unanimous written consent of the members of the mutual insurer; or

(C) In the case of a reciprocal insurer, by at least two-thirds of the voting interest of the subscribers of the reciprocal insurer at a duly called meeting of the subscribers of the reciprocal insurer, or by unanimous written consent of the subscribers;

(3) The plan provides for:

(A) The conversion of existing stockholder, member, or subscriber interests into equal or proportionate interests in the new converted or merged insurer, or such other method and basis for the conversion of the stockholder, member, or subscriber interests that is fair and equitable;

(B) The purchase or other disposition of the shares of any nonconsenting shareholder of a stock insurer or the policyholder interest of any nonconsenting member of a mutual insurer or the subscriber surplus account interest, if any, of a subscriber of a reciprocal insurer, in accordance with either an agreement with any nonconsenting stockholder, member, or subscriber or with the existing articles or bylaws of the insurer relating to the buyback buyout, or the termination of the stockholder, member, or subscriber interests, if any, or if no such provisions exist, then in accordance with the laws of this State relating to the rights of dissenting shareholders; and

(C) The novation, assignment, transfer, run-off, or other disposition of in force policies insuring any nonconsenting shareholder, member, or subscriber;

(4) The conversion or merger will leave the resulting converted insurer or surviving insurer of the merger with capital or surplus funds reasonably adequate to preserve the security of its policyholders and an ability to continue to transact business in the classes of insurance in which it is then authorized to transact; and

(5) The commissioner finds that the conversion or merger will promote the general good of the State.

(c) After approval of the plan of conversion or merger by the commissioner, the converting or merging insurer shall file with the director of commerce and

consumer affairs, appropriate articles of amendment or articles of merger, as the case may be; provided that in the case of the conversion of a reciprocal insurer to a stock or mutual insurer, the existing reciprocal insurer shall file articles of incorporation in order to commence the corporate existence of the company in the form of a stock or mutual insurer. Documents filed with the director of commerce and consumer affairs pursuant to this subsection shall comply with all applicable requirements for such documents as may be contained in this article and chapter 415 or 415B.

(d) Where a stock or mutual insurer converts to a reciprocal insurer or merges with a reciprocal insurer in which the reciprocal insurer will be the surviving company, the stock or mutual insurer shall include in its articles of amendment the fact of the conversion to, or merger with, a reciprocal and that the resulting or surviving entity shall be a reciprocal insurer under the continued jurisdiction of the commissioner, the effective date of the conversion of merger, and the name of the agent for service of process of the converted or surviving reciprocal insurer.

(e) In the case of the merger of two reciprocal insurers, no articles of amendment, merger, or incorporation shall be required to be filed with the director of commerce and consumer affairs, and the merger shall be effective upon the effective date approved by the commissioner pursuant to the plan of merger filed with and approved by the commissioner.

(f) Notwithstanding that the corporate existence of a stock or mutual insurer which converts to, or merges with, a reciprocal insurer may cease, in all cases of a conversion or merger pursuant to this section, and unless otherwise provided in the approved plan of conversion or merger, the converted insurer or the surviving company of the merger shall assume and succeed to all of the obligations and liabilities of the pre-conversion insurer or the respective merging insurers and shall be held liable to pay and discharge all such debts and liabilities and perform such obligations in the same manner as if they had been incurred or contracted by the converted or surviving merged insurer.

(g) An alien or foreign insurer may be a party to a merger under this section provided that the surviving company shall otherwise qualify and be approved by the commissioner as a captive insurance company under this article. For purposes of chapters 415 and 415B, an alien stock or mutual insurer subject to this section shall be considered a foreign corporation.

(h) This section shall not supersede section 431:19-102, and shall not apply to redomestications or conversions of captive insurers under section 431:19-102.4."

SECTION 3. New statutory material is underscored.[1]

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

(Approved April 27, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 69 H.B. NO. 2289

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. The purpose of this Act is to make worker's compensation claims review consistent with the physical therapist practice law and with other insurance claims review practice.

SECTION 2. Section 386-1, Hawaii Revised Statutes, is amended by amending the definitions of "medical care", "medical services", or "medical supplies", to read as follows:

"Medical care", "medical services", or "medical supplies" means every type of care, treatment, surgery, hospitalization, attendance, service, and supplies as the nature of the work injury requires, and includes such care, services, and supplies rendered or furnished by a licensed or certified physician, dispensing optician, physical therapist, physical therapist assistant as recognized pursuant to 461J-3(e), nurse, advanced practice registered nurse as recognized pursuant to chapter 457, or masseur."

SECTION 3. New statutory material is underscored.

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

(Approved April 27, 2000.)

## ACT 70

H.B. NO. 2349

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10C to be appropriately designated and to read as follows:

"**§431:10C- Additional civil liability.** An insurer whose insured causes death or injury to another person, and that is not entitled to the reduction provided in section 431:10C-301.5, shall be entitled to recover the amount of the covered loss deductible that would have applied from the insured whose conduct resulted in inapplicability of the covered loss deductible."

SECTION 2. New statutory material is underscored.[1]

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

(Approved April 27, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 71

H.B. NO. 2403

A Bill for an Act Relating to Aquaculture.

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

SECTION 1. Chapter 148D, Hawaii Revised Statutes, is repealed.

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

(Approved April 27, 2000.)

# ACT 72 H.B. NO. 2443

A Bill for an Act Relating to High Technology Development Corporation.

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

SECTION 1. Chapter 206M, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

## "PART II. SPECIAL FACILITY REVENUE BONDS

**§206M- Definitions.** As used in this part, unless the context clearly requires otherwise:

"Special facility" means one or more buildings, structures, or facilities and the land thereof located in an industrial park for the high technology industry, including, without limitation, facilities for technology research, development, support, processing, and manufacturing, which are the subject of a special facility lease.

"Special facility lease" includes a contract, lease, or other agreement, or any combination thereof, the subject matter of which is the same special facility.

"Special facility revenue bonds" means all bonds, notes, and other instruments of indebtedness of the State issued pursuant to this part and part III of chapter 39.

**§206M- Powers.** In addition to any other powers granted to the development corporation by law, the development corporation may:

(1) With the approval of the governor, and without public bidding, enter into a special facility lease or an amendment or supplement thereto whereby the development corporation agrees to acquire, construct, improve, install, equip, and develop a special facility solely for the use by another party to a special facility lease;

(2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield the amount of the cost of any acquisition, construction, improvement, installation, equipping, and development of any special facility, including, subject to paragraph (6) the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this section shall not exceed $100,000,000;

(3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this refunding purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds that may be issued as provided in paragraph (2);

(4) Perform and carry out the terms and provisions of any special facility lease;

(5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, improve, install, equip or develop any special facility, or accept the assignment of any contract therefor entered into by the other party to the special facility lease;

(6) Construct any special facility on land owned by the State; provided that no funds derived herein shall be expended for land acquisition; and

(7) Agree with the other party to the special facility lease whereby any acquisition, construction, improvement, installation, equipping, or development of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person. Neither the undertaking by the other person nor the acceptance by the development corporation of a contract theretofore entered into by the other person therefor, shall be subject to chapter 103D.

**§206M- Findings and determinations for special facility leases.** The development corporation shall not enter into any special facility lease unless the development corporation, at or prior to the entering into of the special facility lease, shall find and determine:

(1) That the building, structure, or facility that is to be the subject of the special facility lease shall not be used to provide services, commodities, supplies or facilities that are then adequately being made available otherwise in the State;

(2) That the use or occupancy of the building, structure, or facility under the special facility lease would not result in the reduction of the revenues derived from the industrial parks or other properties of the development corporation to an amount below the amount required to be derived therefrom by section 39-61; and

(3) That the entering into of the special facility lease would not be in violation of or result in a breach of any covenant contained in any resolution or certificate authorizing any bonds of the State then outstanding.

**§206M- Special facility lease.** (a) In addition to the conditions and terms set forth in this part, any special facility lease entered into by the development corporation shall at least contain provisions obligating the other party to the special facility lease:

(1) To pay to the development corporation during the initial term of the special facility lease, whether the special facility is capable of being used or occupied or is being used or occupied by the other party, a rental or rentals at the time or times and in the amount or amounts that will be sufficient to:
   (A) Pay the principal and interest on all special facility revenue bonds issued for the special facility;
   (B) Establish or maintain any reserves for these payments; and
   (C) Pay all fees and expenses of the trustees, paying agents, transfer agents, and other fiscal agents for the special facility revenue bonds issued for the special facility;

(2) To pay to the development corporation:
   (A) A ground rental, equal to the fair market rental of the land, if the land on which the special facility is located was not acquired from the proceeds of the special facility revenue bonds; or
   (B) A properly allocable share of the administrative costs of the development corporation in carrying out the special facility lease and administering the special facility revenue bonds issued for the special facility if the land was acquired from the proceeds of the special facility revenue bonds;

(3) To either operate, maintain, and repair the special facility and pay the costs thereof or to pay to the development corporation all costs of operation, maintenance, and repair of the special facility;

(4) To:

(A) Insure, or cause to be insured, the special facility under builder's risk insurance (or similar insurance) in the amount of the cost of construction of the special facility to be financed from the proceeds of the special facility revenue bonds;

(B) Procure and maintain, or cause to be procured or maintained, to the extent commercially available, a comprehensive insurance policy providing protection and insuring the development corporation and its officers, agents, servants, and employees (and so long as special facility revenue bonds are outstanding, the trustee) against all direct or contingent loss or liability for damages for personal injury or death or damage to property, including loss of use thereof, occurring on or in any way related to the special facility or occasioned by reason of occupancy by and the operations of the other person upon, in and around the special facility;

(C) Provide all risk casualty insurance, including insurance against loss or damage by fire, lightning, flood, earthquake, typhoon, or hurricane, with standard extended coverage and standard vandalism and other malicious mischief endorsements; and

(D) Provide insurance for workers' compensation and employers' liability for personal injury or death or damage to property (the other party may self-insure for workers' compensation if permitted by law); provided that all policies with respect to loss or damage of property including fire or other casualty and extended coverage and builder's risk shall provide for payments of the losses to the development corporation, the other party or the trustee for the special facility revenue bonds as their respective interests may appear; and provided further that the insurance may be procured and maintained as part of or in conjunction with other policies carried by the other party; and provided further that the insurance shall name the development corporation, and so long as any special facility revenue bonds are outstanding, the trustee, as additional insured; and

(5) Indemnify, save, and hold the development corporation, the trustee, and their respective agents, officers, members, and employees harmless from and against all claims and actions and all costs and expenses incidental to the investigation and defense thereof, by or on behalf of any person, firm, or corporation, based upon or arising out of the special facility or the other party's use and occupancy thereof, including, without limitation, from and against all claims and actions based upon and arising from any:

(A) Condition of the special facility;

(B) Breach or default on the part of the other party in the performance of any of the party's obligations under the special facility lease;

(C) Fault or act of negligence of the other party or the party's agents, contractors, servants, employees, or licensees; or

(D) Accident to or injury or death of any person or loss of or damage to any property occurring in or about the special facility, including any claims or actions based upon or arising by reason of the negligence or any act of the other party.

Any moneys received by the development corporation pursuant to paragraphs (2) and (3) shall be paid into the high technology special fund and shall not be nor be deemed to be revenues of the special facility.

(b) The term and all renewals and extensions of the term of any special facility lease (including any amendments or supplements thereto) shall not extend beyond the lesser of the reasonable life of the special facility that is the subject of the special facility lease, as estimated by the development corporation at the time of the entering into thereof, or thirty years.

(c) Any special facility lease entered into by the development corporation shall be subject to chapter 171 and shall contain other terms and conditions that the development corporation deems advisable to effectuate the purposes of this part.

**§206M- Special facility revenue bonds.** All special facility revenue bonds authorized to be issued under this part shall be issued pursuant to part III of chapter 39, except as follows:

(1) No revenue bonds shall be issued unless at the time of issuance, the development corporation has entered into a special facility lease with respect to the special facility for which the revenue bonds are to be issued;

(2) The revenue bonds shall be issued in the name of the development corporation and not in the name of the State;

(3) No further authorization of the legislature shall be required for the issuance of the special facility revenue bonds, but the approval of the governor shall be required for the issuance;

(4) The revenue bonds shall be payable solely from and secured solely by the revenues derived by the development corporation from the special facility for which they are issued;

(5) The final maturity date of the revenue bonds shall not be later than either the estimated life of the special facility for which the revenue bonds are issued or the expiration of the initial term of the special facility lease;

(6) If deemed necessary or advisable by the development corporation, or to permit the obligations of the other party to the special facility lease to be registered under the U.S. Securities Act of 1933, the development corporation, with the approval of the director of finance, may appoint a national or state bank within or without the State to serve as trustee for the holders of the revenue bonds and may enter into a trust indenture or trust agreement with the trustee. The trustee may be authorized by the development corporation to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued and to apply the revenues to the payment of the principal and interest on the revenue bonds. In the event that any trustee shall be appointed, any trust indenture or trust agreement entered into by the development corporation with the trustee may contain the covenants and provisions authorized by part III of chapter 39 to be inserted in a resolution adopted or certificate issued, as though the words "resolution" or "certificate" as used in that part read "trust indenture or trust agreement".

The covenants and provisions shall not be required to be included in the resolution or certificate authorizing the issuance of the revenue bonds if included in the trust indenture or trust agreement. Any resolution or certificate, trust indenture, or trust agreement adopted, issued, or entered into by the development corporation pursuant to this part may also contain any provisions required for the qualification thereof under the U.S. Trust Indenture Act of 1939. The development corporation may pledge and assign to the trustee the special facility lease and the

rights of the development corporation including the revenues thereunder;

(7) If the development corporation, with the approval of the director of finance, shall have appointed or shall appoint a trustee for the holders of the revenue bonds, then notwithstanding the provisions of section 39-68, 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 the revenue bonds, or may elect to limit the functions the director of finance shall perform as the fiscal agent. The development corporation, with the approval of the director of finance, may appoint the trustee to serve as the fiscal agent, and may authorize and empower the trustee to perform the functions with respect to payment, purchase, registration, transfer, exchange, and redemption, that the development corporation may deem necessary, advisable, or expedient, including, without limitation, the holding of the revenue bonds and coupons, if any, that have been paid and the supervising and conducting of the destruction thereof in accordance with sections 40-10 and 40-11. Nothing in this paragraph shall be a limitation upon or construed as a limitation upon the powers granted in paragraph (6) to the development corporation with the approval of the director of finance to appoint the trustee, or granted in sections 36-3, 39-13, and 39-68 to the director of finance to appoint the trustee or others, as fiscal agents, paying agents, and registrars for the revenue bonds or to authorize and empower the fiscal agents, paying agents, and registrars to perform the functions referred to in paragraph (6) and sections 36-3, 39-13, and 39-68, it being the intent of this paragraph to confirm that the director of finance may elect not to serve as fiscal agent for the revenue bonds or may elect to limit the functions the director of finance shall perform as the fiscal agent, that the director of finance may deem necessary, advisable, or expedient;

(8) The development corporation may sell the revenue bonds either at public or private sale;

(9) If no trustee is appointed to collect, hold, and administer the revenues derived from the special facility for which the revenue bonds are issued, the revenues shall be held in a separate account in the treasury of the State, separate and apart from the high technology special fund, to be applied solely to the carrying out of the resolution, certificate, trust indenture, or trust agreement authorizing or securing the revenue bonds;

(10) If the resolution, certificate, trust indenture, or trust agreement provides that no revenue bonds issued thereunder shall be valid or obligatory for any purpose unless certified or authenticated by the trustee for the holders of the revenue bonds, the signatures of the officers of the State upon the bonds required by section 39-56 may be facsimiles of their signatures;

(11) Proceeds of the revenue bonds may be used and applied by the development corporation to reimburse the other party to the special facility lease for all preliminary costs and expenses, including architectural and legal costs; and

(12) If the special facility lease requires the other party to operate, maintain, and repair the special facility that is the subject of the lease, at the other party's expense, the requirement shall constitute compliance by the development corporation with section 39-61(a)(2), and none of the revenues derived by the development corporation from the special

facility shall be required to be applied to the purposes of section 39-62(2). Sections 39-62(4), 39-62(5), and 39-62(6) shall not apply to the revenues derived from a special facility lease."

SECTION 2. Chapter 206M, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designed and to read as follows:

"**§206M- Federal tax-exempt status.** Special purpose revenue bonds issued pursuant to this chapter, to the extent practicable, shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes (except as certain minimum taxes, environmental taxes, or other federal taxes or tax consequences may apply). The development corporation may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this chapter shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes."

SECTION 3. Chapter 206M, Hawaii Revised Statutes, is amending by amending the title in part II to read as follows:

"**[[PART II.]] PART III. HAWAII SOFTWARE SERVICE CENTER**"

SECTION 4. Section 206M-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "bonds" to read:

""'Bonds" [means special purpose revenue bonds issued under this chapter and shall include] or "special purpose revenue bonds" mean bonds, notes, and other instruments of indebtedness[, and refunding bonds.] of the State issued pursuant to this part."

2. By amending the definition of "high technology" to read:

""'High technology" means [emerging] industries [which] that are technology-intensive, including but not limited to electronics [and], biotechnology[.], software, computers, telecommunications, and other computer-related technologies."

3. By amending the definition of "industrial park" to read:

""'Industrial park" means a tract of real property determined by the board as being suitable for use as building sites for projects by [a group of enterprises engaged in] one or more industrial, processing, or manufacturing enterprises [for] engaged in high technology, including research, training, technical analyses, software development, and pilot plant or prototype product development, and may include the installation of improvements to [such] the tract incidental to the use of real property as an industrial park, such as water, sewer, sewage and waste disposal, and drainage facilities, sufficient to adequately service projects in the industrial park, and provision of incidental transportation facilities, power distribution facilities, and communication facilities. Industrial parks shall not include any buildings or structures of any kind except for buildings or structures incidental to improvements to the industrial park."

4. By amending the definition of "project" to read:

""'Project" means [any combination of land and buildings and other improvements thereon for use in industrial, processing, or manufacturing enterprises for high technology which are located in an industrial park and acquired, constructed, reconstructed, rehabilitated, improved, altered, or repaired by or on behalf of the development corporation.] the acquisition, construction, improvement, instal-

lation, equipping, and development of any combination of land, buildings, and other improvements thereon, including, without limitation, parking facilities for use of, or to assist a high technology industrial, manufacturing, or processing enterprise located within or without an industrial park, including, without limiting the generality of the foregoing, machinery, equipment, furnishings, and apparatus that shall be deemed necessary, suitable, or useful to the enterprise."

5. By amending the definition of "project agreement" to read:

""Project agreement" means [any lease, sublease, loan agreement, conditional sale agreement, or other similar financing contract or agreement, or any combination thereof entered into under this chapter by the development corporation, including the financing from the proceeds of bonds of a project or an industrial park.] any agreement entered into under this chapter by the development corporation with a qualified person to finance, construct, operate, or maintain a project or an industrial park from the proceeds of special purpose revenue bonds, or to lend the proceeds of special purpose revenue bonds to assist a high technology industrial, manufacturing, or processing enterprise, including, without limitation, any lease, sublease, loan agreement, conditional sale agreement, or other similar financing contract or agreement, or any combination thereof."

6. By amending the definition of "qualified person" to read:

""Qualified person" means any individual, firm, partnership, corporation, association, cooperative, or other legal entity, governmental body or public agency, or any combination [or association] of the foregoing, possessing the competence, expertise, experience, and resources, including financial, personnel, and tangible resources, required for the purposes of a project and [such] other qualifications as may be deemed desirable by the development corporation in administering this chapter and which enters into a project agreement with the development corporation."

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

"(a) There is established the high technology development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The development corporation shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the development corporation shall be to facilitate the growth and development of the commercial high technology industry in Hawaii. Its duties shall include, but not be limited to:

(1) Developing [developing] industrial parks as high technology innovation centers and [the] developing or assisting with the development of projects within or outside of industrial parks; [providing]
(2) Providing financial and other support and services to Hawaii-based high technology companies; [collecting]
(3) Collecting and analyzing information on the state of commercial high technology activity in Hawaii; [promoting]
(4) Promoting and marketing Hawaii as a site for commercial high technology activity; and [providing]
(5) Providing advice on policy and planning for technology-based economic development."

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

"(e) The board shall appoint a management advisory committee for each industrial park and related project or projects governed by the board. Each committee shall have five members, who shall serve without compensation but may be

reimbursed for expenses incurred in the performance of their duties. The members shall be drawn from fields of activity related to each [project or park.] industrial park and related project or projects."

SECTION 7. Section 206M-3, Hawaii Revised Statutes, is amended to read as follows:

"**§206M-3 Powers, generally.** The development corporation shall have all the powers necessary to carry out its purposes, including the following powers:

(1) To sue and be sued;

(2) To have a seal and alter the same at its pleasure;

(3) To make and execute, enter into, amend, supplement, and carry out contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter, including, [subject to] with the approval of the governor, a project agreement, or an amendment or supplement to an existing project agreement, with a qualified person, and [any other] to enter into and carry out any agreement whereby the obligations of a qualified person under a project agreement shall be unconditionally guaranteed or insured by, or the performance thereof assigned to, or guaranteed or insured by, a person or persons other than the qualified person; and to [grant options or renew any project agreement entered into by it in connection with any project or industrial park, on terms and conditions as it deems advisable;] extend or renew any project agreement or any other agreement related thereto; provided that any such renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor;

(4) To make and alter bylaws for its organization and internal management;

(5) To adopt rules under chapter 91 necessary to effectuate this chapter in connection with industrial parks, projects, multi-project programs, and the operations, properties, and facilities of the development corporation;

(6) Through its chief executive officer, to appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;

(7) To prepare or cause to be prepared development plans for industrial parks;

(8) To acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and to assign, exchange, transfer, convey, lease, sublease, or encumber any project, including by way of easements;

(9) To [construct, reconstruct, rehabilitate, improve, alter, or repair,] acquire, construct, improve, install, equip, or develop or provide for the [construction, reconstruction, rehabilitation, improvement, alteration, or repair] acquisition, construction, improvement, installation, equipping, or development of any project and to designate a qualified person as its agent for such purpose, and to own, hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;

(10) To arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishing of improvements, the acquisition

of property or property rights, or the furnishing of property or services in connection with an industrial park[;] or project;

(11) To prepare or cause to be prepared plans, specifications, designs, and estimates of cost for the acquisition, construction, reconstruction, [rehabilitation,] improvement, [alteration, or repair] installation, equipping, development, or maintenance of any project or industrial park, and from time to time to modify [such] the plans, specifications, designs, or estimates;

(12) To engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

(13) To procure insurance against any loss in connection with its property and other assets and operations in [such] amounts and from [such] insurers as it deems desirable;

(14) To accept and expend gifts or grants in any form from any public agency or from any other source;

(15) To issue special purpose revenue bonds and refunding special purpose revenue bonds pursuant to and in accordance with this chapter in [such] principal amounts as may be authorized from time to time by law to finance or refinance the cost of a project, singly or as part of a multi-project program, or an industrial park as authorized by law and to provide for the security thereof as permitted by this chapter;

(16) To lend or otherwise apply the proceeds of the bonds issued for a project or an industrial park either directly or through a trustee [or] to a qualified person for use and application by the qualified person in the acquisition, construction, improvement, installation, [or modification] equipping, or development of a project or industrial park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;

(17) As security for the payment of the principal of, premium, if any, and interest of the special purpose revenue bonds issued for a project to:

(A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the development corporation under the project agreement for the project for which the bonds are issued;

(B) Pledge and assign the interest and rights of the development corporation under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;

(C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the development corporation with respect to the project; or

(D) Any combination of the foregoing;

[(17)] (18) With or without terminating a project agreement, to exercise any and all rights provided by law for entry and re-entry upon or take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement, including any action at law or in equity for the purpose of effecting its rights of entry or re-entry or obtaining possession of the project or for the payments of rentals, user taxes, or charges, or any other sum due and payable by the qualified person to the development corporation pursuant to the project agreement;

[(18)] (19) To enter into arrangements with qualified county development entities whereby the board would provide financial support to qualified projects proposed;

[(19)] (20) To create an environment in which to support high technology economic development, including but not limited to: [supporting]
(A) Supporting all aspects of technology-based economic development; [developing]
(B) Developing instructive programs, identifying issues and impediments to the growth of high technology industry in Hawaii; and [providing]
(C) Providing policy analysis and information important to the development of high technology industries in Hawaii;

[(20)] (21)[1] To develop programs that support start-up and existing high technology companies in Hawaii and to attract new companies to relocate to or establish operations in Hawaii by assessing the needs of these companies and providing the physical and technical infrastructure to support their operations;

[(21)] (22) To coordinate its efforts with other public and private agencies involved in stimulating technology-based economic development in Hawaii, including but not limited to: [the]
(A) The department of business, economic development, and tourism; [the]
(B) The Pacific international center for high technology research; and [the]
(C) The office of technology transfer and economic development of the University of Hawaii;

[(22)] (23) To promote and market Hawaii as a site for commercial high technology activity;

[(23)] (24) To provide advice on policy and planning for technology-based economic development; and

[(24)] (25) To do any and all things necessary or [proper] convenient to carry out [the] its purposes [of] and exercise the powers given and granted in this chapter."

SECTION 8. Section 206M-4, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-4[]] Compliance with state and local law.** The issuance of special purpose revenue bonds with respect to any project or industrial park under this chapter shall not relieve any qualified person or other user of [such] the project or industrial park from the laws, ordinances, and rules of the State or any political subdivision thereof, or any department or board thereof with respect to the construction, operation, and maintenance of any project or industrial park, or zoning laws or regulations, obtaining of building permits, compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project or industrial park, and [such] the laws shall be applicable to [such] the qualified person or [such] the other user to the same extent they would be if the costs of the project or industrial park were directly financed by the qualified person."

SECTION 9. Section 206M-5, Hawaii Revised Statutes, is amended to read as follows:

"**§206M-5 Development rules.** Whenever the proceeds of special purpose revenue bonds are used to finance the cost of [a project,] an industrial park, the board shall adopt rules under chapter 91 to be followed during the course of the development of any industrial park, which are to be known as development rules in

connection with health, safety, building, planning, zoning, and land use. The rules, upon final adoption of a development plan for an industrial park, shall supersede all other inconsistent ordinances and rules relating to the use, zoning, planning, and development of land and construction thereon within the industrial park. Rules adopted under this section shall follow existing law, rules, ordinances, and regulations as closely as is consistent with standards meeting minimum requirements of good design, pleasant amenities, health, safety, and coordinated development. The corporation shall establish policies and procedures for monitoring and ensuring that the operation of the industrial park complies with these development rules and may establish fines and penalties or take any other means available under the law to eliminate any noncomplying action."

SECTION 10. Section 206M-6, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-6[]] Use of public lands.** The governor may set aside available public lands to the development corporation for the purposes specified in this chapter; provided that [such] the setting aside would not impair any covenant between the State or any department or board thereof and holders of [revenue] any bonds issued by the State or such department or board thereof. The development corporation also may lease available state lands from the department of land and natural resources."

SECTION 11. Section 206M-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The development corporation shall not enter into any project agreement with respect to any project or industrial park unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance [such project or industrial park] a project or projects, an industrial park or industrial parks, or a multi-project program pursuant to section 206M-9, and the development corporation has thereafter found and determined either that:

(1) The qualified person is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through [such] the project, or otherwise; or
(2) The obligations of the qualified person under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through [such] the project or otherwise."

SECTION 12. Section 206M-8, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-8[]] Project agreement.** (a) No special purpose revenue bonds shall be issued unless at the time of issuance the development corporation shall have entered into a project agreement with respect to the project or industrial park for the financing of which [such] the special purpose revenue bonds are to be issued. Any project agreement entered into by the development corporation with a qualified person shall contain provisions unconditionally obligating [such] the qualified person [to]:

(1) To pay the development corporation during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project or industrial park to which [such] the project agreement relates is used or occupied by the qualified person, at [such]

the time or times and in [such] the amount or amounts that will be at least sufficient:

[(1)] (A) To pay the principal of, and premium, if any, and interest on all special purpose revenue bonds issued to finance the cost of the project, or an allocable portion of the special purpose revenue bonds issued to finance the industrial park, as the case may be, as and when the special purpose revenue bonds become due, including upon any required redemption thereof;

[(2)] (B) To establish or maintain [such] the reserves, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds, or an allocable portion of [such] the reserves, if less than all of the proceeds of the special purpose revenue bonds are utilized for [such] the qualified person;

[(3)] (C) To pay the fees and expenses of the paying agents and trustees for the special purpose revenue bonds, or an allocable portion of [such] the fees and expenses, if less than all of the proceeds of the special purpose revenue bonds are utilized for [such] the qualified person; and

[(4)] (D) To pay the expenses incurred by the development corporation in administering the special purpose revenue bonds or in carrying out the project agreement, or an allocable portion of [such] the expenses, if less than all of the proceeds of [such] the special purpose revenue bonds are utilized for [such] the qualified person[.]; and

(2) To operate, maintain, and repair the project as long as the project is used as provided in the project agreement and to pay all costs of the operation, maintenance, and repair.

(b) The development corporation in determining the cost of any project, may also include the following:

(1) Financing charges, fees, and expenses of any trustee and paying agents or special purpose revenue bonds issued to pay the cost of the project;

(2) Interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed from the proceeds of the bonds accruing or incurred prior to and during the estimated period of construction and for not exceeding twelve months thereafter;

(3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;

(4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;

(5) Other expenses incidental to determining the feasibility or practicability of the project;

(6) Administration expenses;

(7) Legal, accounting, consulting, and other special service fees;

(8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and

(9) Other costs, commissions, and expenses incidental to the acquisition, construction, improvement, installation, equipping, or development of the project, the financing, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of the bonds.

[(b)] (c) Any project agreement entered into by the development corporation may contain [such] provisions as the development corporation deems necessary or desirable to obtain or permit the participation of the state and federal government in the project or industrial park or in the financing of the cost thereof.

[(c)] (d) A project agreement also shall provide that the development corporation shall have all rights and remedies generally available at law or in equity

to re-enter and take possession of a project upon the breach or default by a qualified person of any term, condition, or provision of a project agreement.

(e) Each qualified person with a project agreement with the development corporation shall allow the development corporation full access to the qualified person's financial records. Upon the request of the development corporation for the examination of any financial records, the qualified person shall allow the development corporation to examine the requested records within a reasonably prompt time from the date of the request. If the development corporation requests copies of the records, the qualified person shall provide the copies.

(f) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this chapter, the development corporation shall require each qualified person with a project agreement with the development corporation to make available to the public all relevant financial records that pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(g) Each qualified person with a project agreement with the development corporation shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on the creation of new jobs and potential effect on tax receipts. The format of and method for determining the estimates shall be established by the development corporation and shall be uniform for each qualified person.

(h) To promote public understanding of the role played by special purpose revenue bonds in providing benefits to the general public, the development corporation shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (g).

(i) The development corporation shall adopt rules under chapter 91 for the purposes of this section.

(j) Moneys received by the development corporation pursuant to subsection [(a)(4)] (a)(1)(D) shall not be, nor be deemed to be, revenues or receipts derived under the project agreement which may be pledged as security for special purpose revenue bonds and shall be paid [to the development corporation free and clear of any lien.] into the high technology special fund.

A qualified person may comply with the unconditional obligation to make payments required by subsection (a), if [such] the obligations are unconditionally guaranteed or insured by, or the performance thereof assigned to, or guaranteed or insured by, a person or persons other than the qualified person [which] who is satisfactory to the development corporation."

SECTION 13. Section 206M-9, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-9[] Bonds;] Issuance of special purpose revenue bonds; bond anticipation notes[.]; refunding bonds.** (a) In addition to the other powers that it may have, the development corporation may issue special purpose revenue bonds to finance, in whole or in part, the costs of projects of, for, or to loan the proceeds of the bonds to assist qualified persons. All revenue bonds issued under this chapter are special purpose revenue bonds and part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the development corporation and not in the name of the State.

The legislature finds and determines that the exercise of the powers vested in the development corporation by this chapter constitutes assistance to a high technology industrial, manufacturing, or processing enterprise and that the issuance of special purpose revenue bonds to finance facilities of, for, or to loan the proceeds of the bonds to assist qualified persons, is in the public interest.

[(a)] (b) The development corporation, with the approval of the governor, may issue special purpose revenue bonds for each single project or industrial park or multi-project program [which] that has been authorized by the legislature by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of [such] the special purpose revenue bonds is in the public interest. [Bonds] Special purpose revenue bonds shall be issued in [such] principal amounts as may be authorized from time to time by law and at [such] the time or times as the development corporation deems necessary and advisable to finance the cost of a project [or], industrial park, or multi-project program as authorized by law. With respect to the financing of a multi-project program with the proceeds of special purpose revenue bonds, the legislature may authorize the issuance from time to time in one or more series by the development corporation, in each case with the approval of the governor, of special purpose revenue bonds in the aggregate principal amount and during the period as the legislature shall provide. The principal of, premium, if any, and interest on [such] the special purpose revenue bonds shall be payable:

(1) Exclusively from the revenues and receipts derived or to be derived by the development corporation under project agreements or from [such] the revenues and receipts together with any grant from the government in aid of the project or industrial park financed from the proceeds of [such] the bonds;

(2) Exclusively from the revenues and receipts derived or to be derived by the development corporation from a particular project agreement, whether or not the project or industrial park to which it relates is financed in whole or in part with the proceeds of the special purpose revenue bonds; or

(3) From revenues and receipts derived or to be derived by the development corporation generally.

Neither the board members nor any person executing the special purpose revenue bonds shall be liable personally on the bonds by reason of the issuance thereof.

All special purpose revenue bonds of the same issue (or, in the case of an authorized issue for a multi-project program, series), subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project for which the bonds have been issued, over and ahead of all special purpose revenue bonds of the issue (or series) payable from the revenues which may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the development corporation may reserve the right and privilege to subsequently issue additional series of special purpose revenue bonds, from time to time, payable from the revenues derived from the project agreement on a parity with the issue or series of special purpose revenue bonds theretofore issued, and the subsequently issued series of special purpose revenue bonds may be secured, without priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this chapter.

[(b) Bonds] (c) Special purpose revenue bonds issued pursuant to this chapter may be in one or more issues and in one or more series within an issue and shall be further authorized pursuant to resolution of the board. The special purpose revenue bonds shall be dated, shall bear interest at [such] the rate or rates, shall mature at [such] the time or times not exceeding forty years from their date or dates, shall have [such] the rank or priority, and may be made redeemable before maturity at the option of the development corporation, at [such] the price or prices and under [such] the terms and conditions, all as may be determined by the development corporation.

The development corporation shall determine the form of the special purpose revenue bonds, including interest coupons, if any, to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and, subject to the approval of the [state] director of finance, the place or places of payment of principal and interest, which may be at any bank or trust company approved by the [state] director of finance within or without the State.

The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the development corporation may determine, and provisions may be made for the registration of coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of special purpose revenue bonds registered as to both principal and interest. Subject to the approval of the [state] director of finance, the development corporation may sell special purpose revenue bonds in such manner, either at public or private sale, and for such price as it may determine.

[(c)] (d) Prior to the preparation of definitive special purpose revenue bonds, the development corporation may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when [such] the bonds have been executed and are available for delivery.

[(d)] (e) Should any special purpose revenue bond issued under this chapter or any coupon appertaining thereto become mutilated, lost, stolen, or destroyed, the development corporation may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of [such] the mutilated bond or coupon, or in lieu of and in substitution for [such] the lost, stolen, or destroyed bond or coupon. [Such] The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon:

(1) [has] Has paid the reasonable expenses and charges in connection therewith[,];

(2) [in] In the case of a lost, stolen, or destroyed bond or coupon, has filed with the development corporation or its fiduciary evidence satisfactory to the development corporation or its fiduciary that [such] the bond or coupon was lost, stolen, or destroyed and that the holder was the owner thereof[,]; and

(3) [has] Has furnished indemnity satisfactory to the development corporation.

[(e)] (f) The development corporation in its discretion may provide that CUSIP identification numbers shall be printed on [such] the special purpose revenue bonds. If [such] the numbers are imprinted on [such] the bonds:

(1) [no] No such number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted[,]; and

(2) [no] No liability shall attach to the development corporation or any officer or agent thereof, including any fiscal agent, paying agent, or registrar for [such] the bonds by reason of [such] the numbers or any use made thereof, including any use thereof made by the development corporation, any such officer, or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use. The development corporation in its discretion may require that all costs of obtaining and imprinting [such] the numbers shall be paid by the purchaser of [such] the bonds. For the purposes of this subsection, the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

[(f)] (g) Whenever the development corporation has authorized the issuance of special purpose revenue bonds under this chapter, special purpose revenue bond anticipation notes of the development corporation may be issued in anticipation of the issuance of [such] the bonds and of the receipt of the proceeds of sale thereof, for the purposes for which [such] the bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the development corporation, and the maximum principal amount of [such] the notes shall not exceed the authorized principal amount of [such] the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the moneys, rates, charges, and other revenues from which would be payable and by which would be secured [such] the bonds; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of [such] the bonds, the maximum amount of bonds that has been authorized in anticipation of which the notes are issued shall be reduced by the amount of notes paid in [such] this manner. The authorization, issuance, and the details of [such] the notes shall be governed by this chapter with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this subsection, shall mature within five years from the date of the original note.

[(g) In order to] (h) To secure the payment of any of the special purpose revenue bonds issued pursuant to this chapter, and interest thereon, or in connection with [such] the bonds, the development corporation shall have the power as to [such] the bonds:

(1) To pledge all or any part of the revenues and receipts derived or to be derived by the development corporation as provided in this chapter to the punctual payment of special purpose revenue bonds issued with respect to the project or industrial park financed from the proceeds thereof, and interest thereon, and to covenant against thereafter pledging any such revenues and receipts to any other bonds or any other obligations of the development corporation for any other purpose, except as otherwise stated in the proceedings providing for the issuance of special purpose revenue bonds permitting the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon such [moneys, rates, charges, and other] revenues[.] and receipts;

(2) To pledge and assign the interest and right of the development corporation under any project agreement and other agreements related to a project or industrial park, and the rights, duties, and obligations of the development corporation thereunder, including the right to receive revenues and receipts thereunder[.];

(3) To pledge or assign all or any part of the proceeds derived by the development corporation from proceeds of insurance or condemnation awards[.];

(4) To covenant as to the use and disposition of the proceeds from the sale of [such] the special purpose revenue bonds[.];

(5) To covenant to set aside or pay over reserves and sinking funds for [such] the special purpose revenue bonds and as to the disposition thereof[.];

(6) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default", the terms and conditions upon which any or all of [such] the bonds shall become or may be declared due before maturity, and as to the terms and conditions upon which [such] the declaration and its consequences may be waived[.];

(7) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by [it] the development corporation of any covenant, condition, or obligation[.];

(8) Subject to the approval of the [state] director of finance, to designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture, trust agreement, or indenture of mortgage with [such] the trustee. The trustee may be authorized by the development corporation to receive and receipt for, hold, and administer the proceeds of [such] the special purpose revenue bonds and to apply the proceeds to the purposes for which [such] the special purpose revenue bonds are issued, or to receive and receipt for, hold, and administer the revenues and receipts derived or to be derived by the development corporation under a project agreement or other agreement related to a project or industrial park, and to apply such revenues and receipts to the payment of the principal of and interest on [such] the special purpose revenue bonds, or both, and any excess revenues and receipts to the payment of expenses incurred by the development corporation in administering [such] the special purpose revenue bonds or in carrying out [such] the project agreement or other agreement. If the trustee shall be appointed, any trust indenture, trust agreement, or indenture of mortgage entered into by the development corporation with the trustee may contain whatever covenants and provisions as may be necessary, convenient, or desirable in order to secure [such] the special purpose revenue bonds. The development corporation may pledge and assign to the trustee the interest of the development corporation under a project agreement and other agreements related thereto and the rights, duties, and obligations of the development corporation thereunder, including the right to receive revenues and receipts thereunder. The development corporation may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds, and may authorize and empower the trustee to perform [such] the functions with respect to [such] the payment, purchase, registration, transfer, exchange, and redemption, as the development corporation may deem necessary, advisable, or expedient, including, without limitation, the holding of the special purpose revenue bonds and coupons [which] that have been paid and the supervision of the destruction thereof in accordance with law[.];

(9) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties[.];

(10) To invest or provide for the investment of the proceeds of special purpose revenue bonds and revenues and receipts derived by the development corporation in [such] the securities and in such manner as it deems proper[.]; and

(11) To make such covenants and do any and all acts and things as may be necessary, convenient, or desirable in order to secure [such] the special purpose revenue bonds, notwithstanding that [such] the covenants, acts, or things may not be enumerated in this chapter.

No holder or holders of special purpose revenue bonds issued under this chapter shall ever have the right to compel any exercise of the taxing power of the State or any political subdivision of the State to pay [such] the special purpose

revenue bonds or the interest thereon and no moneys other than the revenues pledged to [such] the special purpose revenue bonds shall be applied to the payment thereof.

[(h) Bonds] (i) Special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor any or all of the persons whose signatures appear thereon shall have ceased to be officers of the development corporation. The special purpose revenue bonds shall contain a recital that they are issued pursuant to this chapter which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

[(i)] (j) Subject to authorization by an act enacted by the legislature by an affirmative vote of two-thirds of the members to which each house is entitled, the development corporation may issue special purpose revenue bonds for the purpose of refunding special purpose revenue bonds then outstanding and issued under this chapter whether or not [such] the outstanding special purpose revenue bonds have matured or are then subject to redemption. The development corporation may issue special purpose revenue bonds for the combined purposes of:

(1) [financing] Financing or refinancing the cost of a project or industrial park, or the improvement or expansion thereof[,]; and

(2) [refunding] Refunding special purpose revenue bonds [which] that shall theretofore have been issued under this chapter and then shall be outstanding, whether or not [such] the outstanding bonds have matured or then are subject to redemption.

Nothing in this subsection shall require or be deemed to require the development corporation to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded [which] that were issued, in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any proceeding authorizing the issuance thereof, or, if the development corporation elects to redeem or prepay any such bonds, to redeem or prepay as of any particular date or dates. The issuance of [such] the special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the development corporation with respect to the bonds, shall be governed by the foregoing provisions of this chapter insofar as the same may be applicable.

(k) If special purpose revenue bonds issued pursuant to this chapter are issued bearing interest at a rate or rates which vary from time to time and with a right of holders to tender the bonds for purchase, the development corporation may contract for such support facility or facilities and remarketing arrangements as are required to market the special purpose revenue bonds to the greatest advantage of the development corporation upon such terms and conditions as the development corporation deems necessary and proper.

The development corporation may enter into contracts or agreements with the entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the development corporation under the contract or agreement on an annual basis shall be payable solely from the revenue and receipts of the project agreement and any obligation issued or arising pursuant to the terms of the contract or agreement in the form of special purpose revenue bonds, notes, or other evidences of indebtedness shall only arise at such time as either:

(1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of special purpose revenue bonds issued pursuant to this chapter; or

(2) A like principal amount of the issue or series of special purpose revenue bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility."

SECTION 14. Section 206M-10, Hawaii Revised Statutes, is amended to read as follows:

"**§206M-10 Authorization for loans; loan terms and conditions; loan procedure.** (a) Notwithstanding any law to the contrary, the [state] director of finance is authorized, with the approval of the governor, to make loans up to the aggregate sum of $1,000,000, or so much thereof as may be necessary, to the development corporation. The loans shall be made from the state general fund moneys which are in excess of the amounts necessary for immediate state requirements, and shall be used for the purpose of paying administrative and other costs associated with the development of industrial parks and other projects and activities that encourage the growth of the high technology industry in Hawaii.

(b) The development corporation, to the extent moneys become available from bond proceeds or otherwise, shall repay the general fund the principal amount of any loan made by the [state] director of finance. No interest shall be required for any such loan.

(c) Loans authorized by this section shall be drawn upon by the development corporation from time to time upon at least five days notice to the [state] director of finance and upon the filing with the [state] director of finance of a certificate of the chairperson of the board setting forth the amount being borrowed, the names of the persons, firms, or corporations to which moneys will be paid from the proceeds of such borrowing and the amount to be paid to each. In addition, the chairperson of the board shall file with the [state] director of finance a copy of the resolution or resolutions of the board approving contracts for services which will be paid from the proceeds of the borrowing."

SECTION 15. Section 206M-11, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-11[] Bonds] Special purpose revenue bonds not a general or moral obligation of State.** No holder or holders of special purpose revenue bonds issued under this chapter shall ever have the right to compel any exercise of the taxing power of the State to pay [such] the bonds or the interest thereon and no moneys other than the revenues pledged to [such] the bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this chapter shall recite in substance that [such] the bond, including interest thereon, is not a general or moral obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that [such] the bond is not secured, directly or indirectly, by the full faith and credit or the general credit of the State or by revenues or taxes of the State other than the revenues specifically pledged thereto."

SECTION 16. Section 206M-12, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-12[] Bonds] Special purpose revenue bonds exempt from taxation.** [Bonds] Special purpose revenue bonds and the income therefrom issued pursuant to this chapter shall be exempt from all state taxation, except inheritance, transfer, and estate taxes."

SECTION 17. Section 206M-13, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-13[] Bonds] Special purpose revenue bonds as legal investments and lawful security.** [Bonds] The special purpose revenue bonds issued pursuant to this chapter shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. [Such] The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State [or] and any and all public funds of counties or other political corporations or subdivisions of the State, and [such] the bonds shall be lawful and sufficient security for [such] the deposits to the extent of their value when accompanied by all unmatured coupons, if any, appertaining thereto."

SECTION 18. Section 206M-14, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-14[]] Status of special purpose revenue bonds under the Uniform Commercial Code.** Notwithstanding any of the provisions of this chapter or any recital in any special purpose revenue bond issued under this chapter, all such special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration."

SECTION 19. Section 206M-15, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-15[]][2] High technology research and development loans and grants.** (a) All moneys necessary to carry out the purposes of this section shall be allocated by the legislature through appropriations out of the state general fund. The development corporation shall include in its budgetary request for the upcoming fiscal period, the amounts necessary to effectuate the purposes of this section. All moneys, interest charges, and other fees collected by the development corporation under this section shall be deposited to the credit of the state general fund. In making any expenditure under this section, the development corporation shall analyze each funding request to determine whether the project to be undertaken will be economically viable and beneficial to the State.

(b) The development corporation may provide grants [of up to fifty] not exceeding the lesser of:

(1) Fifty per cent of the federal [grant up to] small business innovation research phase I award or contract; or

(2) $25,000 to each business in Hawaii that receives a federal small business innovation research phase I award or contract from any participating federal agency,[3]

subject to the availability of funds.

(c) The development corporation shall adopt rules pursuant to chapter 91 that:

(1) Specify the qualifications for eligibility of grant applicants;

(2) Establish priorities in determining eligibility in the event that insufficient funds are available to fund otherwise qualified applicants; and

(3) Give preference to all qualified businesses receiving their first award in one fiscal year over multiple award grantees.

The development corporation may adopt any other rules pursuant to chapter 91 necessary for the purposes of this section.

(d) If funds appropriated for the purpose of making grants under this section are inadequate to satisfy all qualified requests, the development corporation shall apply for funds to be transferred from the Hawaii capital loan revolving fund to provide the grants in accordance with subsection (b). The amount of any single transfer of funds shall not exceed $100,000, and the development corporation shall transfer the entire amount back to the Hawaii capital loan revolving fund within twelve months of receiving the funds. No more than one fund transfer shall be outstanding at any one time. The director of business, economic development, and tourism may transfer funds from the Hawaii capital loan revolving fund to the [high technology research and] development corporation upon request to carry out the purposes of this section. Transfers of funds shall be made without any charges or fees."

SECTION 20. Section 206M-15.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-15.5[]] High technology special fund.** There is established in the state treasury a fund to be known as the high technology special fund, into which shall be deposited, except as otherwise provided by section 206M-17, all moneys and fees from tenants, qualified persons, or other users of the development corporation's industrial parks, projects, other leased facilities, and other services and publications. All moneys in the fund are [hereby] appropriated for the purposes of and shall be expended by the development corporation for the operation, maintenance, and management of its industrial parks, projects, facilities, services, and publications[.], and to pay the expenses in administering the special purpose revenue bonds of the development corporation or in carrying out its project agreements."

SECTION 21. Section 206M-16, Hawaii Revised Statutes, is amended to read as follows:

"**§206M-16 Exemption of development corporation from taxation and competitive bidding.** (a) All revenues and receipts derived by the development corporation from any project or industrial park or under a project agreement or other agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the development corporation in any project or industrial park shall also be exempt from all state and county taxation. Except as otherwise provided by law, the interest of a qualified person or other user of a project or industrial park under a project agreement or other agreements related to a project or industrial park shall not be exempt from taxation to a greater extent than it would be if the costs of the project or industrial park were directly financed by the qualified person or user.

(b) The development corporation shall not be subject to any requirement of law for competitive bidding for project agreements, construction contracts, lease and sublease agreements, or other contracts unless a project agreement with respect to a project or industrial park [otherwise] shall so require."

SECTION 22. Section 206M-17, Hawaii Revised Statutes, is amended to read as follows:

"**§206M-17 Revenue bond fund accounts.** The development corporation shall establish separate special funds in accordance with section 39-62 for the deposit of the proceeds of special purpose revenue bonds and special facility revenue

bonds authorized under this [chapter.] part and part II respectively. The development corporation shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

(1) To pay when due all special purpose revenue bonds and special facility revenue bonds, premiums, if any, and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and

(2) To the extent not paid by the qualified person to provide for all expenses of administration, operation, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the development corporation shall not transfer the revenues derived from the project agreement to the high technology special fund of the State."

SECTION 23. Section 206M-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The development corporation shall have the authority to copyright software applications and programs developed for state use with public funds and to license their subsequent sale and distribution; provided that this authority shall be subject to the terms and conditions of a contract to license between the development corporation and the affected state departments or agencies that developed the software applications or programs [.]; and provided further that the authority shall not apply to software applications and programs developed by or on behalf of private sector qualified persons for which the development corporation has issued special purpose revenue bonds under this chapter or otherwise provided financing. Any copyright arising from center activities shall belong to the State and any revenues generated by licenses and subsequent sale and distribution of copyrighted software shall be deposited into the general fund unless otherwise stipulated in a licensing agreement."

SECTION 24. Statutory material to be repealed is bracketed. New statutory material is underscored.[4]

SECTION 25. This Act shall take effect upon its approval.

(Approved April 27, 2000.)

**Notes**

1. "(21)" should be underscored.
2. So in original.
3. Comma should be underscored.
4. Edited pursuant to HRS §23G-16.5.

## ACT 73 H.B. NO. 2474

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding to article 2 a new section to be appropriately designated and to read as follows:

"**§431:2- Criminal convictions.** (a) Any person who is engaged in the business of insurance or who is about to engage in the business of insurance in this

State and who has been convicted of any felony shall request the commissioner's written consent to engage in the business of insurance.

(b) After receipt of the request, the commissioner, in writing, may:

(1) Consent to the person engaging in the business of insurance;

(2) Provide a limited consent; or

(3) Deny the individual the privilege of engaging in the business of insurance.

(c) Any person who fails to submit the request as required by this section and who engages in the business of insurance without the written consent of the commissioner shall be in violation of this chapter and subject to the fines and penalties provided under this chapter.

(d) The commissioner may prescribe the format and content of the form used to request the commissioner's written consent to engage in the business of insurance."

SECTION 2. New statutory material is underscored.[1]

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

(Approved April 27, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 74 H.B. NO. 2475

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 432, Hawaii Revised Statutes, is amended by adding to article 1 a new section to be appropriately designated and to read as follows:

"**§432:1- Reserve credit for reinsurance.** Any society that takes credit for reserves on risks ceded to a reinsurer shall be subject to provisions of chapter 431 related to credit for reinsurance."

SECTION 2. Chapter 432D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§432D- Reserve credit for reinsurance.** Any health maintenance organization that takes credit for reserves on risks ceded to a reinsurer shall be subject to provisions of chapter 431 related to credit for reinsurance."

SECTION 3. Section 432:1-404, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each society shall file with the commissioner annually, on or before April 30 in each year, a statement under oath, and in such form and detail as the commissioner shall [prescribe. Those societies promising or offering to pay death, sick, disability, or other benefits shall set forth in the statement the following:

(1) The total business transacted and the amount of gross receipts received by the society during the year ending December 31 last preceding;

(2) The resources and liabilities of the society at the close of business on December 31;

(3) The receipts and expenditures; and
(4) The computation of the loss or gain of the society during the calendar year.]

prescribe; provided that any association or society organized and operating as a nonprofit medical indemnity or hospital service association shall file a report with the commissioner covering the preceding calendar year and verified by at least two principal officers. The report shall comply with sections 431:3-301 and 431:3-302. The commissioner may prescribe the forms on which the report is to be filed.

In addition, any association or society organized and operating as a nonprofit medical indemnity or hospital service association annually shall file with the commissioner the following by the dates specified:

(1) An audit, by an independent, certified public accountant or an accounting firm designated by the association or society, of the financial statements, reporting the financial condition and results of operations of the association or society on or before June 1, or a later date as the commissioner upon request or for cause may specify. The association or society, on an annual basis and prior to the commencement of the audit, shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit. The commissioner may disapprove the association's or society's designation within fifteen days of receipt of the association's or society's notice, and the association or society shall be required to designate another independent certified public accountant or accounting firm. The audit required in this paragraph 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; and
(2) A description of the available grievance procedures, the total number of grievances handled through those procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances on or before April 30."

SECTION 4. Section 432D-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every health maintenance organization shall file annually, on or before [March 1,] April 30, [file] a report verified by at least two principal officers [with the commissioner] covering the preceding calendar year. Each health maintenance organization shall file quarterly[,] with the commissioner, on or before the forty-fifth day after each quarter, a copy of its quarterly report verified by at least two principal officers [with the commissioner]. These reports shall comply with sections 431:3-301 and 431:3-302. The commissioner may prescribe [on which] the forms on which the reports are to be filed. In addition, the health maintenance organization annually shall file with the commissioner the following by the dates specified:

(1) An audit, by [a designated] an independent certified public accountant or an accounting firm designated by the health maintenance organization of the financial statements, reporting the financial condition and results of operations of the health maintenance organization on or before June 1, or [such] a later date as the commissioner upon request or for cause may specify. The health maintenance organization, on an annual basis and prior to the commencement of the audit, shall notify the commissioner in writing of the name and address of the person or firm retained to conduct the annual audit. The commissioner may disapprove the health maintenance organization's designation within

fifteen days of receipt of the health maintenance organization's notice, and the health maintenance organization shall be required to designate another independent certified public accountant or accounting firm[;]. The audit required in this paragraph 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;

(2) A list of the providers who have executed a contract that complies with section 432D-8(d) on or before [March 1;] April 30; and

(3) A description of the available grievance procedures, the total number of grievances handled through those procedures, a compilation of the causes underlying those grievances, and a summary of the final disposition of those grievances on or before [March 1.] April 30."

SECTION 5. Section 432D-7, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432D-7[]] Investments.** All investments permitted under this section or section 432D-3(a)(1) can be considered as admitted assets in determination of net worth; provided that these investments are in compliance [with rules adopted by the commissioner. With the exception of investments made in accordance with section 432D-3(a)(1), the funds of a health maintenance organization shall be invested only as permitted by rules adopted by the commissioner pursuant to chapter 91.] with article 6 of chapter 431."

SECTION 6. Section 432D-22, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§432D-22[]] Acquisition of control of or merger of a health maintenance organization.** No person may make a tender for or a request or invitation for tenders of, enter into an agreement to exchange securities for, or acquire in the open market or otherwise, any voting security of a health maintenance organization or enter into any other agreement if, after the consummation thereof, that person [would], directly or indirectly, or by conversion or by exercise of any right to acquire, would be in control of the health maintenance organization, and no person may enter into an agreement to merge or consolidate with or otherwise to acquire control of a health maintenance organization, unless, at the time any offer, request, or invitation is made or any agreement is entered into, or prior to the acquisition of the securities if no offer or agreement is involved, the person has filed with the commissioner and has sent to the health maintenance organization[,] information required by section [431:11-103(a)(1), (2), (3), (4), (5), and (12)] 431:11-104 and the offer, request, invitation, agreement, or acquisition has been approved by the commissioner. Approval by the commissioner shall be governed by section 431:11-104(d)[.]; provided that if no action is taken by the commissioner within thirty days, the offer, request, invitation, agreement, or acquisition shall be deemed approved."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 8. This Act shall take effect upon its approval.

(Approved April 27, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 75 H.B. NO. 2482

A Bill for an Act Relating to Control Share Acquisitions.

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

Section 1. Section 415-171, Hawaii Revised Statutes, is amended by amending the definition of "control share acquisition" to read as follows:

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

(1) Before, or pursuant to an agreement entered into before the effective date of this part;
(2) By a donee pursuant to an inter vivos gift not made to avoid this part or by a distributee as defined in chapter 560;
(3) Pursuant to a security agreement not created to avoid this part;
(4) [Under chapter 417E, if the issuing public corporation is a party to the transaction; or] Pursuant to a merger or share exchange executed in accordance with applicable law, if the issuing public corporation is a party to the plan of merger or share exchange;
(5) From the issuing public corporation[.];
(6) That is approved by resolution of the board of directors of the issuing public corporation before the acquisition occurs; or
(7) That the board of directors of the issuing public corporation determines, by resolution before the acquisition occurs, is not a control share acquisition."

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

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved April 27, 2000.)

## ACT 76 H.B. NO. 2487

A Bill for an Act Relating to Financing the Hawaii Hurricane Relief Fund.

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

SECTION 1. Section 431P-5.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§431P-5.5[]] Accumulation of $500,000,000 in funds and commitments.** (a) Upon written confirmation from the insurance commissioner that the director of finance has secured $500,000,000, in the aggregate, in the form of:

(1) Commitments from either the federal government or an agency of the federal government or a financial institution;

(2) Revenue bonds[;] other than those issued or to be issued in response to the occurrence of a covered event; or

(3) A combination of the commitments or bonds;

the Hawaii hurricane relief fund shall:

(1) Control or freeze rates; and

(2) [Begin] Continue accumulating premiums from policies of hurricane property insurance[,] and the special mortgage recording fee, [the 3.75 per cent annual assessment on insurance companies' property and casualty premiums, and the interest thereon,] net of any [required] reinsurance payments, operating expenses and funds necessary for the development of a comprehensive loss reduction plan.

(b) When the balance of the net moneys accumulated totals $500,000,000, the Hawaii hurricane relief fund [shall] may notify the insurance commissioner of that fact. The insurance commissioner, in turn, [shall] may order, following the receipt of the notice, a reduction in the rates for policies of hurricane property insurance.

(c) In the event of a loss from a covered event, the net moneys accumulated shall be used to [reduce the commitments and bonds described under subsection (a). The commitments, plus bonds, plus the net moneys accumulated shall be used to settle claims in the event of a covered event in an amount not exceeding $500,000,000 in the aggregate, per covered event.] settle claims and pay current and ongoing expenses of the Hawaii hurricane relief fund. The net accumulated moneys, commitments, and bonds described in subsection (a)(2) shall be used only in the event losses from a covered event exceed the assessment pursuant to section 431P-5(b)(8)(B).

(d) In the event the balance of the net accumulated moneys falls below $400,000,000, the Hawaii hurricane relief fund shall establish rates, subject to the approval of the insurance commissioner, necessary to replenish the account balance to $500,000,000[.] as promptly as reasonably practicable. The director of finance shall seek to arrange [for] additional commitments whenever the account balance falls below $400,000,000.

(e) The Hawaii hurricane relief fund shall be exempt from paying all taxes and fees levied by the State on other insurers."

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 27, 2000.)

## ACT 77 H.B. NO. 2505

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

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

SECTION 1. Section 201G-195, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its bonds. Notwithstanding any other law to the contrary, project loans may be made available for housing projects

on Hawaiian home lands pursuant to the Hawaiian Homes Commission Act, 1920, as amended."

SECTION 2. New statutory material is underscored.

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

(Approved April 27, 2000.)

## ACT 78 H.B. NO. 2507

A Bill for an Act Relating to the Permanent Plan Hearing.

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

SECTION 1. Section 587-73, Hawaii Revised Statutes, is amended to read as follows:

"**§587-73 Permanent plan hearing.** (a) At the permanent plan hearing, the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including but not limited to the report or reports submitted pursuant to section 587-40, and determine whether there exists clear and convincing evidence that:

(1) The child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 are not presently willing and able to provide the child with a safe family home, even with the assistance of a service plan;

(2) It is not reasonably foreseeable that the child's legal mother, legal father, adjudicated, presumed, or concerned natural father as defined under chapter 578 will become willing and able to provide the child with a safe family home, even with the assistance of a service plan, within a reasonable period of time which shall not exceed two years from the date upon which the child was first placed under foster custody by the court;

(3) The proposed permanent plan will assist in achieving the goal which is in the best interests of the child; provided that the court shall presume that:

(A) It is in the best interests of a child to be promptly and permanently placed with responsible and competent substitute parents and families in safe and secure homes; and

(B) The presumption increases in importance proportionate to the youth of the child upon the date that the child was first placed under foster custody by the court; and

(4) If the child has reached the age of fourteen, the child [is supportive of the permanent plan.] consents to the permanent plan, unless the court, after consulting with the child in camera, finds that it is in the best interest of the child to dispense with the child's consent.

(b) If the court determines that the criteria set forth in subsection (a) are established by clear and convincing evidence, the court shall order:

(1) That the existing service plan be terminated and that the prior award of foster custody be revoked;

(2) That permanent custody be awarded to an appropriate authorized agency;

(3) That an appropriate permanent plan be implemented concerning the child whereby the child will:
   (A) Be adopted pursuant to chapter 578; provided that the court shall presume that it is in the best interests of the child to be adopted, unless the child is or will be in the home of family or a person who has become as family and who for good cause is unwilling or unable to adopt the child but is committed to and is capable of being the child's guardian or permanent custodian;
   (B) Be placed under guardianship pursuant to chapter 560; or
   (C) Remain in permanent custody until the child is subsequently adopted, placed under a guardianship, or reaches the age of majority, and that such status shall not be subject to modification or revocation except upon a showing of extraordinary circumstances to the court;

(4) That such further orders as the court deems to be in the best interests of the child, including, but not limited to, restricting or excluding unnecessary parties from participating in adoption or other subsequent proceedings, be entered; and

(5) Until adoption or guardianship is ordered, that each case be set for a permanent plan review hearing not later than one year after the date that a permanent plan is ordered by the court, or sooner if required by federal law, and thereafter, that subsequent permanent plan review hearings be set not later than each year, or sooner if required by federal law; provided that at each permanent plan review hearing, the court shall review the existing permanent plan and enter such further orders as are deemed to be in the best interests of the child.

(c) If the court determines that the criteria set forth in subsection (a) are not established by clear and convincing evidence, the court shall order that:

(1) The permanent plan hearing be continued for a reasonable period of time not to exceed six months from the date of the continuance or the case be set for a review hearing within six months;

(2) The existing service plan be revised as the court, upon such hearing as the court deems to be appropriate and after ensuring that the requirement of section 587-71(h) is satisfied, determines to be in the best interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order;

(3) The authorized agency submit a written report pursuant to section 587-40; and

(4) Such further orders as the court deems to be in the best interests of the child be entered.

(d) At the continued permanent plan hearing, the court shall proceed pursuant to subsections (a), (b), and (c) until such date as the court determines that:

(1) There is sufficient evidence to proceed pursuant to subsection (b); or

(2) The child's family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, upon which determination the court may:
   (A) Revoke the prior award of foster custody to the authorized agency and return the child to the family home;
   (B) Terminate jurisdiction;
   (C) Award family supervision to an authorized agency;
   (D) Order such revisions to the existing service plan as the court, upon such hearing as the court deems to be appropriate and after ensuring that the requirement of section 587-71(h) is satisfied, determines to be in the best interests of the child; provided that a

copy of the revised service plan shall be incorporated as part of the order;

(E) Set the case for a review hearing within six months; and

(F) Enter such further orders as the court deems to be in the best interests of the child.

[(e) The court shall order a permanent plan for the child within three years of the date upon which the child was first placed under foster custody by the court, if the child's family is not willing and able to provide the child with a safe family home, even with the assistance of a service plan.]''

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

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved April 27, 2000.)

## ACT 79 H.B. NO. 2510

A Bill for an Act Relating to Foster Board Allowances for Students.

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

SECTION 1. Section 346-17.4, Hawaii Revised Statutes, is amended to read as follows:

**''§346-17.4 Foster board allowances for students.** (a) Any eligible foster child shall be eligible for foster board allowances after reaching the age of majority and the foster board payments for that person shall be paid to an accredited institution of higher learning or to the person's foster parents, provided that:

(1) The person is twenty-one years old or younger;

(2) The person is attending or has been accepted to attend an accredited institution of higher learning on a full-time basis, or on a part-time basis for the first academic year, if approved by the director upon such terms and conditions as the director deems appropriate; and

(3) The person has continued to reside in the foster home wherein the person reached the age of majority, or has continued to be accepted as a member of the foster family and be under the guidance and support of the foster family.

(b) Reimbursement to foster parents for the former foster child's maintenance cost up to the maximum allowable board amount shall be made retroactive to the person's entry into an accredited institution of higher learning on a full-time basis, but no earlier than July 1, 1987, or on a part-time basis for the first academic year, but no earlier than July 1, 1999.

(c) Foster board allowances may be applied to costs incurred in undertaking full-time studies or part-time studies for the first academic year, if approved by the director upon such terms and conditions as the director deems appropriate, at an institution of higher learning.

(d) The department's standards relating to income resources of the foster child shall be applicable to this section.

(e) For the purposes of this section, the term ''eligible foster child'' means a child who has been placed into foster care by the family court pursuant to chapter 587.''

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved April 27, 2000.)

## ACT 80 H.B. NO. 2512

A Bill for an Act Relating to Financial Assistance Payments.

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

SECTION 1. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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 <u>increase or</u> 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 funds;
(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."

SECTION 2. New statutory material is underscored.

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

(Approved April 27, 2000.)

# ACT 81

H.B. NO. 2519

A Bill for an Act Relating to Flexible Spending Accounts.

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

SECTION 1. Chapter 78, Hawaii Revised Statutes, is amended by adding to part II a new section to be appropriately designated and to read as follows:

"**§78- Flexible spending accounts.** (a) As used in this section:

(1) "Contributions" means the employee pretax compensation reductions contributed to the plan; and

(2) "Flexible spending accounts" and the "plan" mean a flexible spending accounts plan for state employees authorized by section 125 of the Internal Revenue Code of 1986, as amended, and established in accordance with this part.

(b) In addition to any other powers and duties authorized by law, the department or agency charged with administration of the flexible spending accounts may enter into all contracts necessary to establish, administer, or maintain the plan.

(c) The contributions, interest earned, and forfeited participant balances of the plan shall be held in trust for the benefit of the participants and the plan. The department or agency charged with administration of the plan may hold these funds in trust outside the state treasury.

(d) The contributions, interest earned, and forfeited participant balances shall not be subject to the general creditors of the State.

(e) The interest earned and forfeited participant balances shall be used to defray participant fees and other administrative costs as determined by the department or agency charged with administration of the plan."

SECTION 2. New statutory material is underscored.[1]

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

(Approved April 27, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 82

H.B. NO. 2524

A Bill for an Act Relating to Prophylactics.

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

SECTION 1. Section 321-115, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [No person shall publicly vend prophylactics in mechanical coin-operated machines unless the person shall have obtained a permit from the department of health.] The department of health [shall] may adopt rules and charge fees to regulate the sale of prophylactics through vending machines and require that they be stocked with adequately labeled and scientifically approved devices only."

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

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

(Approved April 27, 2000.)

## ACT 83 H.B. NO. 2525

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 as follows:

1. By adding four new definitions to be appropriately inserted and to read:

"'"Certificate of medical necessity" means the United States Department of Health and Human Services, Health Care Financing Administration's FORM HCFA 484, which identifies the patient-recipient, the supplier, and the prescriber of medical services and establishes an estimated length of time of need for equipment or therapy, or both, to treat the ailment indicated by the diagnosis codes listed thereon.

"Medical oxygen" means the prescription drug oxygen.

"Medical oxygen distributor" means any person, including a prescription drug wholesale distributor, who distributes or dispenses medical oxygen pursuant to a prescription.

"Nonprescription drug", "over-the-counter drug", or "nonlegend drug", means any packaged, bottled, or nonbulk chemical, drug, or medicine that may be lawfully sold without a practitioner's order."

2. By amending the definition of "drug" to read:

"'"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[)] or clothing) 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.] paragraph (1), (2), or (3); provided that the term "drug" shall not include devices or their components, parts or accessories, cosmetics, or liquor as defined in section 281-1."

3. By amending the definition of "prescription drug" to read:

"'"Prescription drug" means [any]:

(1) Any drug required by federal or state statutes, regulations, or rules to be dispensed only [by] upon a prescription, including finished dosage forms and active ingredients subject to section 328-16 or section 503(b) of the Federal Act[.]; or

(2) Any drug product compounded or prepared pursuant to a practitioner's order."

SECTION 2. Section 328-16, Hawaii Revised Statutes, is amended to read as follows:

"**§328-16 Drugs limited to dispensing on prescription.** (a) A prescription drug shall be dispensed only if its label bears the following:

(1) The name, business address, and telephone number of the seller. 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 of the prescription;
(4) The date of the prescription or of its filling;
(5) The name of the practitioner if the seller is not the practitioner;
(6) The name, strength, and quantity of the drug;
(7) The date the potency of the drug expires if the date is available from the manufacturer or principal labeler;
(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] a 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 sample or medical oxygen contrary to this subsection shall be deemed to be an act 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 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.] pursuant to a valid prescription;

(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;

(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;] By a medical oxygen distributor pursuant to a valid prescription or valid certificate of medical necessity; provided that the drug to be dispensed is medical oxygen; or

(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].

(c) A valid prescription may be communicated in writing, orally, by facsimile, or by electronic transmission, and shall include the following information:

(1) The date of issuance;

(2) The authorization of the practitioner noted as follows:

(A) Written prescriptions shall include the original signature of the practitioner;

(B) Oral prescriptions shall be promptly reduced to writing by the pharmacist, pharmacist intern, or medical oxygen distributor, and shall include the practitioner's oral code designation; and

(C) Facsimile or electronic prescriptions shall be traceable to the prescribing practitioner;

(3) The practitioner's name and business address;

(4) The name, strength, and quantity of the drug to be dispensed, and specific directions for the drug's use;

(5) 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 or medical oxygen distributor filling the prescription has the address on file;

(6) The room number and route of administration, if the patient is in an institutional facility; and

(7) 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 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:

(A) The prescription is refilled only once during the three-month period;

(B) The refill does not exceed a thirty-day supply of the drug;

(C) The refill does not provide any amount of the drug fifteen months beyond the date the original prescription was written;

(D) In the case of medical oxygen, the duration of therapy indicated on a valid certificate of medical necessity shall supersede any limitations or restrictions on refilling; and

(E) The provisions of subparagraphs (A) to (D) shall apply only to pharmacies and medical oxygen distributors practicing in the State.

[(4) By refilling any] (d) Any written or oral prescription may be refilled by the pharmacy and a written or oral prescription for medical oxygen may be refilled by the medical oxygen distributor if that refilling is authorized by the practitioner either:

[(A)] (1) In the original prescription; or

[(B)] (2) By oral order, which shall be reduced promptly to writing and filed by the receiving pharmacist [or], pharmacy intern[.], or medical oxygen distributor.

[(c)] (e) For the purposes of this section, a "prescription drug" is a drug intended for use by a person [which] that:

(1) Is a 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; 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.

[(d)] (f) Any drug other than medical oxygen dispensed by filling or refilling a [written or oral] prescription of a practitioner 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:

(1) The name and address of the pharmacy;

(2) The serial number and the date of the prescription or of its filling;

(3) The name of the practitioner; and

(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] subsection (a) [and], (b) [of this section.], (c), or (d).

[(e)] (g) The director of health, [may,] by [regulation,] rule, may remove drugs subject to sections 328-15(4) and 328-17 from the requirements of [subsections] subsection (a)[and], (b) [of this section], (c), or (d) when such requirements are not necessary for the protection of the public health. Drugs removed from the

prescription requirements of the Federal Act by regulations issued thereunder may also, by [regulations] rules issued by the director, be removed from the requirements of [subsections] subsection (a)[and], (b) [of this section.], (c), or (d).

[(f)] (h) A drug [which] that is subject to [subsections] subsection (a)[and], (b) [of this section], (c), or (d) shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal law prohibits dispensing without prescription[,]", or "Caution: State law prohibits dispensing without prescription[.]". A drug to which [subsections] subsection (a) [and], (b) [of this section do], (c), or (d) does not apply, shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

[(g)] (i) Nothing in this section shall be construed to relieve any person from any requirement, prescribed by or under authority of law with respect to drugs now included or [which] that may hereafter be included within the classifications of [narcotic drugs or marijuana] controlled substances as defined in the applicable federal and state laws relating to [narcotic drugs and marijuana.] controlled substances.

(j) Oral code numbers or designations shall be issued by the department of public safety, pursuant to applicable laws and rules."

SECTION 3. Section 328-17.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§328-17.5[]] Principal labeler responsibility under recall of drug.** Whenever the manufacturer of a drug voluntarily recalls the drug or the Federal Food and Drug Administration or a court orders the recall of a drug, the principal labeler of the drug shall remove the drug from all pharmacies, prescriber offices, medical oxygen distributors, distributors of non-prescription drugs, and health care facilities."

SECTION 4. Section 328-17.6, Hawaii Revised Statutes, is amended to read as follows:

"**§328-17.6 Out-of-state prescriptions.** (a) An out-of-state practitioner may [make] issue a written or [orally-ordered] oral prescription within the confines of the practitioner's license and in accordance with Hawaii laws and rules. [The prescription may either be filled one time or refilled one time, but not both; provided that:

(1) The prescription filled or refilled pursuant to this section shall be limited to not more than a thirty-day supply of any drug; and
(2) If orally-ordered, the] An oral prescription shall be personally [ordered] communicated by [an] the out-of-state practitioner and received only by a pharmacist[.]; provided that a medical oxygen order may be received by a medical oxygen distributor.

(b) An out-of-state pharmacy may transfer prescription information for refilling purposes and an out-of-state medical oxygen distributor may transfer prescription information for the purpose of refilling a medical oxygen order.

[(b)] (c) Any pharmacist or medical oxygen distributor who fills or refills a prescription from an out-of-state [prescription] practitioner shall:

(1) Note the following on the [pharmacist's] prescription record: the out-of-state practitioner's full name, address, and telephone number[, and Drug Enforcement Administration registration number; provided that the Drug Enforcement Administration registration number shall be required only for original fills communicated via telephone or facsimile];

(2) Be responsible for validating [the authenticity of the out-of-state practitioner's Drug Enforcement Administration registration number;] and verifying the practitioner's prescriptive authority by virtue of a valid out-of-state license, a Drug Enforcement Administration registration number, or other measures as appropriate; and

(3) Demand proper identification from the person whose name appears on the prescription prior to filling the prescription, in addition to complying with any identification procedures established by the department for filling and refilling an out-of-state prescription.

[(c)] (d) Before refilling [an] a transferred out-of-state prescription, a pharmacist or medical oxygen distributor [receiving transferred prescription information] shall:

(1) Advise the person whose name appears on the prescription that the prescription on file at the originating out-of-state pharmacy or medical oxygen distributor may be canceled [before the pharmacist can refill the prescription]; and

(2) Record all information required to be on a prescription, including[, but not limited to]:

(A) The date of issuance of the original prescription;

(B) The number of refills authorized on the original prescription;

(C) The date the original prescription was dispensed;

(D) The number of valid refills remaining and the date of the last refill;

(E) The out-of-state pharmacy's or out-of-state medical oxygen distributor's name[,] and address,[and Drug Enforcement Administration registration number,] and the original prescription number or control number from which the prescription information was transferred; and

(F) The name of the transferor pharmacist[.] or the medical oxygen distributor's agent.

[(d)] (e) A pharmacist or medical oxygen distributor who fills or refills an out-of-state prescription shall be responsible if the prescription is not written in the form prescribed by Hawaii laws and rules.

[(e)] (f) [The pharmacist shall follow all labeling procedures established by the department for filling and refilling an out-of-state prescription. The] An out-of-state prescription shall be appropriately identified as "Out-of-State Filled" or "Out-of-State Refilled[,]", and shall state the date of filling or refilling and the local address of the person whose name appears on the prescription.

[(f)] (g) All transferred prescriptions shall be maintained for a period of five years from the date of filling or refilling. Filled out-of-state prescriptions shall be kept in a special file for five years. The department may establish additional recordkeeping and reporting procedures for filled and refilled out-of-state prescriptions.

[(g)] (h) This section shall not apply to prescriptions for controlled substances and habit forming drugs."

SECTION 5. Section 328-17.7, Hawaii Revised Statutes, is amended to read as follows:

"**§328-17.7 Record of prescriptions.** Every practitioner [or], pharmacist, or medical oxygen distributor, 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 practitioner's or pharmacist's books the prescription written out in full, with the date thereof, with the practitioner's or pharmacist's own

name appended thereto, or the name of the practitioner who prescribed the same, and the person to whom the same was delivered.] prescribed drug to a patient or a patient's agent shall maintain records that identify:

(1) The specific drug product;
(2) The prescribing practitioner;
(3) The patient;
(4) The date of prescribing or filling; and
(5) The name of the practitioner, pharmacist, or medical oxygen distributor dispensing the drug.

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 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] prescription records shall be subject at all times to the inspection of the director of health or the director's agent."

SECTION 6. Section 461-1, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

""Medical oxygen" means the prescription drug oxygen.

"Medical oxygen distributor" means any person, including a prescription drug wholesale distributor, who distributes or dispenses medical oxygen pursuant to a prescription.

"Prescription drug" means any drug dispensed, distributed, or sold pursuant to a practitioner's order."

2. By amending the definition of "cosmetics" to read:

""Cosmetics", which includes "soap", "dentifrice", and "toilet article", means:

(1) [articles] Articles intended to be rubbed, poured, or sprinkled on, introduced into, or otherwise applied to the human body, or any part thereof, for cleansing, beautifying, or promoting attractiveness; and
(2) [articles] Articles intended for use as a component of any such articles."

3. By amending the definition of "drug" to read:

""Drug" means:

(1) [articles] 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[,];
(2) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or animals; [and (2) articles]
(3) Articles (other than food or clothing) intended to affect the structure or any function of the body of human beings or animals; and [(3) articles]
(4) Articles intended for use as a component of any articles specified in [clause] paragraph (1), [or] (2), or (3), above; provided that the term "drug" shall not include [patent medicines, electrical or mechanical devices,] devices or their components, parts, or accessories, cosmetics, [and] or liquor as defined in section 281-1."

4. By amending the definition of "pharmacy" to read:

""Pharmacy" means every store, shop, or place [where]:

(1) Where prescription drugs are dispensed or sold at retail, or displayed for sale at retail; [or]
(2) [where physicians] Where practitioners' prescriptions or drug preparations are compounded; [or]
(3) [which] That has upon it [or], displayed within it, or affixed to or used in connection with it, a sign bearing the [word or] words "pharmacist",

"pharmacy", "apothecary", "drug store", "druggist", "drugs", "medicines", "medicine store", "drug sundries", "remedies", or any [word or] words of similar or like import; or

(4) [any store or shop or other place with respect to which] Where any of the above words or combination of words are used in any advertisement.

The term "pharmacy" shall not include any medical oxygen distributor."

5. By repealing the definition of "patent medicine".

["'"Patent medicine" means any packaged, bottled, or nonbulk chemical, drug, or medicine, when identified by and sold under a trademark, trade name, or other trade symbol privately owned or registered in the United States Patent Office, or registered as provided by the laws of the State, and [which] that[1] is labeled with directions for use, and bears the name and address of the manufacturer or distributor; provided that the chemical, drug, or medicine meets the requirements of the pure food and drug laws of the United States and the State. "Patent medicine" shall not include therapeutic vitamins when used either alone, or in combination with other drugs."]

SECTION 7. Section 461-15, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be unlawful:

(1) For any person to sell or offer for sale at public auction, or to sell or offer for sale at private sale in a place where public auctions are conducted, any prescription drugs without first obtaining a permit from the board of pharmacy to do so;

(2) For any person to [in any manner] distribute or dispense samples of any prescription drugs [or medical supplies] without first obtaining a permit from the board to do so; provided that nothing in this paragraph shall interfere with the furnishing of samples or drugs directly to physicians, druggists, dentists, veterinarians, and optometrists for use in their professional practice;

(3) For wholesalers to sell, distribute, or dispense any prescription drug, except to a pharmacist, physician, dentist, veterinarian, or optometrist who is allowed to use pharmaceutical agents under chapter 459 or to a generally recognized industrial, agricultural, manufacturing, or scientific user of drugs for professional or business purposes; provided that it shall be unlawful for wholesalers to sell, distribute, or dispense any prescription pharmaceutical agent [which] that is not listed under section [459-15] 459-7.4(c) to any optometrist;

(4) For any wholesale prescription drug distributor to sell or distribute medical oxygen except to a:

(i) Licensed practitioner with prescriptive authority;

(ii) Pharmacist;

(ii)[1] Medical oxygen distributor;

(iii) Patient or a patient's agent pursuant to a prescription; or

(iv) Emergency medical services for administration by trained personnel for oxygen deficiency and resuscitation;

(5) For any medical oxygen distributor to supply medical oxygen pursuant to a prescription order, to a patient or a patient's agent, without first obtaining a permit from the board to do so; and

[(4)] (6) For any person, as principal or agent, to conduct or engage in the business of preparing, manufacturing, compounding, packing, or repacking any drug without first obtaining a permit from the board to do so; and

[(5)] (7) For any out-of-state pharmacy or entity engaging in the practice of pharmacy, in any manner to distribute, ship, mail, or deliver prescription drugs or devices into the State without first obtaining a permit from the board; provided that the applicant shall:

(A) Provide the location, names, and titles of all principal corporate officers;

(B) Attest that the applicant or any personnel of the applicant has not been found in violation of any state or federal drug laws, including the illegal use of drugs or improper distribution of drugs;

(C) Submit verification of a valid unexpired license, permit, or registration in good standing to conduct the pharmacy in compliance with the laws of the home state and agree to maintain in good standing [such] the license, permit, or registration; and

(D) Have in its employ a registered pharmacist whose registration is current and in good standing."

SECTION 8. Section 461-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board shall collect application, license, and permit fees for each permit to operate a pharmacy or for each license to operate as a wholesale prescription drug distributor and a fee for the issuance of a permit in accordance with section 461-15(a)(1), [(4), and] (5)[.], (6) and (7)."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved April 27, 2000.)

**Note**

1. So in original.

## ACT 84 H.B. NO. 2528

A Bill for an Act Relating to Safe Drinking Water.

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

SECTION 1. Section 340E-8, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) Any person who violates section 340E-7 shall be administratively or civilly penalized not more than $25,000 per day [of] for each violation.

(b) Any person who wilfully violates section 340E-7(g) shall be criminally fined not more than $25,000 per day [of] for each violation and may be imprisoned for not more than three years."

2. By amending subsection (e) to read:

"(e) Any person who violates section 340E-6 shall be administratively or civilly penalized not more than $25,000 per day for each violation."

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 27, 2000.)

## ACT 85 H.B. NO. 2584

A Bill for an Act Relating to the Fuel Tax.

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

SECTION 1. The "slice waste and tape", or "SWAT", regulatory reform initiative within the lieutenant governor's office is designed to improve state government by eliminating null and void, unnecessary, ineffective, and overly complex administrative rules that deter economic development and hamper government efficiency. The intent of this initiative is to reduce the burden of government regulation and minimize its negative effects on Hawaii's residents, businesses, the economy, and government operations. Strategies to achieve these objectives include such measures as improving public access to rules, eliminating null and void rules and unnecessary regulation, and reviewing and overhauling the rulemaking process.

The purpose of this Act is to implement one of the lieutenant governor's initiatives to eliminate unnecessary regulation. Currently, section 243-10, Hawaii Revised Statutes, requires distributors to submit information that is no longer used by the department of taxation. Amending this section to repeal these unnecessary reporting requirements will help reduce the filing burden and help simplify the department's reporting requirements and form.

SECTION 2. Section 243-10, Hawaii Revised Statutes, is amended to read as follows:

"**§243-10 Statements and payments.** Each distributor and each person subject to section 243-4(b), on or before the last day of each calendar month, shall file with the director of taxation, on forms prescribed, prepared, and furnished by the director, a statement, authenticated as provided in section 231-15, showing separately for each county and for the island of Lanai and the island of Molokai within which and whereon fuel is sold or used during each preceding month of the calendar year, the following:

(1) The total number of gallons of fuel refined, manufactured, or compounded by the distributor or person within the State and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;

[(2) The total number of gallons of fuel imported by the distributor or person and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;

(3)] (2) The total number of gallons of fuel acquired by the distributor or person during the month from persons not subject to the tax on the transaction or only subject to tax thereon at the rate of 1 cent per gallon, as the case may be, and sold or used by the distributor or person, and if for ultimate use in another county or on either island, the name of that county or island;

[(4)] (3) The total number of gallons of fuel sold by the distributor or person to the United States or any department or agency thereof, or to any

other person or entity, or used in any manner, the effect of which sale or use is to exempt the fuel from the tax imposed by this chapter;

[(5) The total number of gallons of fuel on hand in the distributor's or person's possession in all of the counties and on the island of Lanai and on the island of Molokai at the beginning of the month, the total number of gallons thereof refined, manufactured, produced, compounded by the distributor or person, or acquired from persons not subject to the tax on such transaction, or only subject to tax thereon at the rate of 1 cent per gallon, as the case may be, or imported during the month, and the total number of gallons thereof on hand in the distributor's or person's possession at the end of the month;] and

[(6)] (4) Additional information relative to the acquisition, purchase, manufacture, or importation into the State, and the sale, use, or other disposition, of diesel oil by the distributor or person during the month, as the department of taxation by rule shall prescribe.

At the time of submitting the foregoing report to the department, each distributor and person shall pay the tax on each gallon of fuel (including diesel oil) sold or used by the distributor or person in each county and on the island of Lanai and the island of Molokai during the preceding month, as shown by the statement and required by this chapter; provided that the tax shall not apply to any fuel exempted and so long as the same is exempted from the imposition of the tax by the Constitution or laws of the United States; and the tax shall be paid only once upon the same fuel; provided further that a licensed distributor shall be entitled, in computing the tax the licensed distributor is required to pay, to deduct from the gallons of fuel reported for the month for each county or for the island of Lanai or the island of Molokai, as the case may be, one gallon for each ninety-nine gallons of like liquid fuel sold by retail dealers in that county or on that island during the month, as shown by certificates furnished by the retail dealers to the distributor and attached to the distributor's report. All taxes payable for any month shall be delinquent after the expiration of the last day of the following month.

Statements filed under this section concerning the number of gallons of fuel refined, manufactured, compounded, imported, sold or used by the distributor or person are public records."

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

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

(Approved April 27, 2000.)

## ACT 86 H.B. NO. 2615

A Bill for an Act Relating to Hazardous Materials.

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

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by amending the title of part XII to read as follows:

**"PART XII. TRANSPORTATION OF HAZARDOUS MATERIALS[, HAZARDOUS WASTE, INFECTIOUS SUBSTANCES, AND MEDICAL WASTE]"**

SECTION 2. Section 286-221, Hawaii Revised Statutes, is amended to read as follows:

**"§286-221 Definitions.** As used in this part, unless the context otherwise requires:

["Extremely hazardous substance" means for transportation purposes, chemicals transported in commerce that could cause serious health effects following short-term exposure from accidental releases and which are listed in Part 355 of Title 40 of the Code of Federal Regulations.]

"Hazardous material" means a substance or material[, including a hazardous substance,] which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated. The term includes hazardous substances, hazardous wastes, infectious substances, medical wastes, marine pollutants, elevated temperature materials, and materials that meet the defining criteria for hazard classes and divisions in title 49, Code of Federal Regulations, part 173.

"Hazardous materials incident" means an occurrence or likely occurrence or potential of a spill, release, leakage, dumping, or loss of control of [an extremely hazardous substance, hazardous substance,] a hazardous material[, hazardous waste, infectious substance, or medical waste] during the course of transportation in commerce including loading, unloading, or temporary storage.

"Hazardous substance" means [for transportation purposes, shipments of particular quantities of hazardous substances that are significant enough to be a substantial threat to public health and the environment, and which are listed in Part 172 of Title 49 of the Code of Federal Regulations.] any material, including its mixtures and solutions, defined under title 49, Code of Federal Regulations, part 171.

"Hazardous waste" means any material designated in [Part 261 of Title 40 of the] title 40, Code of Federal Regulations, part 261 and which are subject to the hazardous waste manifest requirements of [Part 262 of Title] title 40, Code of Federal Regulations[.], part 262.

"Infectious substance" means a viable microorganism, or its toxin, which causes or may cause disease in humans and animals[.], or which is further described as an infectious substance in title 49, Code of Federal Regulations, part 173.

"Medical waste" means for transportation purposes, shipments of medical waste material generated in the diagnosis, treatment, or immunization of human beings and animals, in research pertaining thereto, in the production or testing of biologicals, or which are further described as regulated medical waste in [Part 173 of Title] title 49, Code of Federal Regulations[.], part 173.

["Transportation-related release" means a release of a hazardous material, hazardous substance, extremely hazardous substance, hazardous waste, infectious substance, or medical waste that occurs during the course of transportation in commerce including storage incidental to transportation while under active shipping papers or manifests and which has not reached the ultimate consignee.]"

SECTION 3. Section 286-222, Hawaii Revised Statutes, is amended to read as follows:

"**§286-222 General powers.** (a) The department of transportation may regulate the transportation of hazardous materials[, hazardous waste, hazardous substances, infectious substances, and medical waste] by motor carrier in commerce.

(b) The department shall annually adopt the hazardous [materials] material regulations established by the United States Department of Transportation and published in [Title] title 49 [of the], Code of Federal Regulations, [Parts] parts 107, 171 to 173, inclusive, and [Parts] parts 177, 178, and 180. All other rules adopted by the State and political subdivisions thereof shall be consistent therewith.

(c) Any hazardous material[, including hazardous substances and hazardous waste, and any infectious substance or medical waste,] which meets the federal and state criteria of a hazardous material[, infectious substance, or medical waste] must be handled and transported according to the appropriate requirements of the federal hazardous materials regulations and the additional requirements in this part."

SECTION 4. Section 286-223, Hawaii Revised Statutes, is amended to read as follows:

"**§286-223 Scope.** (a) The federal rules establish minimum standards and must be complied with when transporting a hazardous material[, hazardous waste, hazardous substance, infectious substance, or medical waste] by motor carrier in commerce.

[(b) For purpose of clarity and conformance with the rules established for describing hazardous materials on shipping papers and simplicity in hazardous materials incident reporting, hazardous substances and extremely hazardous substances as previously defined, shall be reported as hazardous materials.

(c)] (b) Transport shall be deemed to include any operation incidental to the whole course of carriage by motor carrier from shippers point of origin to final destination[.], including storage incidental to transportation while under active shipping papers and prior to the hazardous material reaching the ultimate consignee.

[(d)] (c) No person shall transport any hazardous material[, hazardous waste, hazardous substance, infectious substance, or medical waste] outside the confines of the person's facility or other location of storage or use, or offer or deliver any hazardous materials[, hazardous waste, hazardous substances, infectious substances, or medical waste] to a motor carrier for transportation in commerce, nor shall any motor carrier accept any hazardous materials[, hazardous waste, hazardous substances, infectious substances, or medical waste] for transport, without compliance with the applicable requirements of the hazardous [materials] material rules adopted by the department, including those relating to packaging of hazardous materials[, hazardous waste, hazardous substances, infectious substances, and medical waste], marking and labeling of packages, preparation and carriage of shipping papers or manifests, handling, loading, and unloading packages, placarding of the transporting vehicle, training of employees, inspection of motor carrier vehicles, and motor carrier accident and hazardous materials incident reporting.

[(e)] (d) No person in the course of transportation in commerce, shall spill, dump, deposit, or cause the release of a hazardous material[, hazardous waste, hazardous substance, infectious substance, or medical waste] upon a public highway, street, or the surrounding or connecting property, including but not limited to, storm drains, gutters, harbors, waterways, canals, lakes, and ocean shorelines, without immediately taking action to stop the spread of the material or remove the same or cause the same to be removed. If such person fails to comply with this subsection, the governmental agency responsible for the maintenance of the highway, street, or property on which the material was deposited may remove such materials and collect, by civil action, if necessary, the actual cost of the removal

operation and repair of damage to the affected facility or property from the person responsible as stated in this subsection.

[(f) Owners or operators of a facility from which there is a transportation-related release are subject to the hazardous materials transportation incident reporting requirements of this part.

(g) A copy of any written report required under this part shall be submitted to the director of transportation within fifteen days of the reported incident.]"

SECTION 5. Section 286-224, Hawaii Revised Statutes, is amended to read as follows:

"**§286-224 Inspections.** (a) Any shipment or transport of hazardous materials[, hazardous waste, hazardous substances, infectious substances, or medical waste,] by motor vehicle in commerce of which vehicle placarding or a shipping paper or manifest is required by the hazardous materials regulations adopted by the State, is subject to inspection by persons appointed by the director of transportation to enforce the safe transportation of hazardous materials[, hazardous waste, hazardous substances, infectious substances, and medical waste] in commerce and by those state and county officers charged with the enforcement of laws and ordinances adopted pursuant to this part.

(b) All carriers and persons that use a highway or street to transport hazardous materials[, hazardous waste, hazardous substances, infectious substances, or medical waste] in commerce shall afford the director of transportation, persons designated by the director, and those persons designated by the county executive officers, reasonable opportunity to enter and inspect freight containers, and motor vehicles, to review and document deficiencies on shipping papers and manifests, and to inspect other places incidental to the transshipment of hazardous materials[, hazardous waste, hazardous substances, infectious substances, and medical waste] by motor carrier vehicles."

SECTION 6. Section 286-225, Hawaii Revised Statutes, is amended to read as follows:

"**§286-225 Hazardous materials incident reporting.** (a) Any employee of the motor carrier, the driver, handlers, and loaders, and any employees of state and county governments shall report [incidents involving] hazardous materials[, hazardous waste, infectious substances, and medical waste] incidents as follows:

(1) Upon becoming aware of or observing the potential or actual spill, leakage, or loss of control of a hazardous material, [hazardous waste, or hazardous substance,] shall immediately, or as soon as possible, notify the nearest police or fire department and make a report of the situation. This incident reporting requirement does not relieve a carrier or shipper of the responsibility to notify the United States Department of Transportation, state department of health, or local emergency planning committee of certain hazardous materials incidents.

(2) Whenever an infectious substance shipment is lost, stolen, or suspected or known to be leaking from its containment packaging, shall immediately, or as soon as possible, notify the state department of health, and the Centers for Disease Control in Atlanta, Georgia, and make a report of the situation.

(3) Spillage or loss of control of a regulated medical waste shipment in commerce shall be reported immediately, or as soon as possible to the state department of health.

(b) Whenever possible, the incident report should include [the]:

(1) The name and telephone number of the person calling in the report[, the];
(2) The name of the carrier[, type];
(3) Type of vehicle involved[, injuries];
(4) Injuries or fatalities connected with the incident, if any[, the];
(5) The location and time of the incident[, the];
(6) The duration of a chemical release into the environment, if known[, a];
(7) A description of hazards involved to include the chemical name or identity of any substance released[, hazardous];
(8) Hazardous materials classification, markings, and information on labels and placards affixed on packages, containers or vehicles[,]; and [emergency]
(9) Emergency actions taken including evacuation to minimize hazardous effects to public health, safety, and property.

(c) A copy of any written notification required under title 49, Code of Federal Regulations, part 171 shall be provided to the state director of transportation."

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 27, 2000.)

## ACT 87 H.B. NO. 1884

A Bill for an Act Relating to Energy.

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

SECTION 1. New and improved technologies have made it possible for small-scale renewable energy systems to be put into use safely and reliably by customer-generators, such as homeowners and small businesses. The legislature recognizes the advantages of net metering in furthering the use of renewable energy systems in the State, thereby enhancing economic growth in the State, offsetting Hawaii's reliance on imported fossil fuels, and encouraging private investment in renewable energy resources.

Net metering allows consumers to offset the cost of electricity they buy from a utility by selling renewable electric power generated at their homes or businesses. In essence, a customer's electric meter can run both forward and backward in the same metering period, and the customer is only charged for the net amount of power used.

The legislature believes that the development and use of net energy metering can also reap significant environmental benefits to the State.

The legislature finds that a renewable energy demonstration project has been established in the department of education. As part of this project, photovoltaic systems and energy storage devices will be installed in selected public schools. In order to measure net electricity flow, the participating public schools may use single, reversible, non-time-differentiated meters.

The legislature further finds that this demonstration project represents an ideal opportunity for the State to gather important data on the use of net metering. Therefore, the purpose of this Act is to direct the public utilities commission to

gather data for implementing a net metering program by studying its use in the department of education's renewable energy demonstration project.

SECTION 2. The public utilities commission shall conduct a study on the feasibility of implementing a net metering program in this state. As part of this study, the public utilities commission shall gather data on the department of education's use of net metering in its renewable energy demonstration project.

The data shall include:

(1) Historical data for a one-year period, including real-time electricity production and use, and net use and consumption by the time of day;
(2) Metering methods;
(3) A rate structure, including the net change in electricity rates for different classes of ratepayers;
(4) Interconnection and safety issues;
(5) The impact of net metering on overall electric utility income and profitability;
(6) The advantages of net metering, including deferred capacity, value of energy, reduction of fossil fuel use, and power quality issues;
(7) A cost-benefit analysis;
(8) The disadvantages of net metering, including revenue losses for utilities;
(9) Other technologies that are pertinent to the project; and
(10) Other state jurisdictions that are pertinent to Hawaii's situation and that have adopted some type of net metering provision, either through law or administrative rule.

The department of education shall assist the public utilities commission in its study by sharing its information on net metering.

SECTION 3. The public utilities commission shall submit the following reports on the actions taken, status, and recommendations with regard to its net metering study:

(1) An interim report to the legislature no later than twenty days before the convening of the regular session of 2001; and
(2) A final report to the legislature no later than twenty days before the convening of the regular session of 2002.

SECTION 4. This Act shall take effect _____[1] and shall be repealed two years from its effective date.

(Approved April 28, 2000.)

**Note**

1. So in original.

## ACT 88 H.B. NO. 2066

A Bill for an Act Relating to the University of Hawaii Facilities Use Revolving Fund.

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

SECTION 1. The legislature finds that while the authority of the board of regents of the University of Hawaii to sell and lease land is well-established, there is no special or revolving fund designated for the deposit of revenues derived from

such transactions. This Act will assist the university in expanding and strengthening its revenue base by allowing it to generate income from the lease or sale of real property owned by the university. Because the ceded land rights of the office of Hawaiian affairs applies to all ceded lands, regardless of ownership, the legislature does not intend for this Act to diminish these rights in any way.

The purpose of this Act is to authorize the deposit of revenues derived from the sale or lease of University of Hawaii real property into the existing University of Hawaii facilities use revolving fund.

SECTION 2. Section 304-8.957, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:

"**[[]§304-8.957[]] University of Hawaii real property and facilities use revolving fund.** (a) There is established the University of Hawaii real property and facilities use revolving fund, into which shall be deposited all revenues collected by the university for the use of university real property and facilities, except as otherwise provided by law. The board of regents may establish prices, fees, and charges, including those for the sale, lease, or use of university real property and facilities, which include land, buildings, grounds, furnishings, and equipment[.]; provided that the university shall comply with all statutory and common law requirements in the disposition of ceded lands. The board of regents shall be exempt from the public notice and public hearing requirements of chapter 91 in establishing and amending the fees and charges. The university may establish separate accounts within the revolving fund for major program activities. Funds deposited into the revolving fund accounts shall be expended to pay the costs of operating university facilities, including maintenance, administrative expenses, salaries, wages, and benefits of employees; contractor services, supplies, security, furnishings, equipment, janitorial services, insurance, utilities, and other operational expenses. Revenues not expended as provided in this section may be transferred to other university funds to be invested or expended for the administrative or overhead costs of the university. All expenditures from this fund shall be subject to appropriation."

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

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

(Approved May 2, 2000.)

## ACT 89 H.B. NO. 2409

A Bill for an Act Making an Emergency Appropriation for the Department of Accounting and General Services, Information and Communication Services 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 general funds were appropriated for the information processing services program for the period beginning July 1, 1999, through June 30,

2000, a critical funding emergency exists. In order to address an over collection of federal reimbursements during fiscal years 1996-1997 and 1997-1998, the billing of federal-funded programs for information technology services by the information and communication services division will be limited in fiscal year 1999-2000. As a result of this reduction in revenues and due to increased operating expenses, the program will realize an operating budget deficit of $800,000 in fiscal year 1999-2000. To meet the existing fiscal obligations required to provide continued information processing services for state agencies, the program will spend all available funds prior to the end of the current fiscal year.

The purpose of this Act is to appropriate funds to address the budget deficit while preventing the deletion of selected statewide information technology services.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $800,000 or so much thereof as may be necessary for fiscal year 1999-2000 to be used in support of the State's information processing services program.

SECTION 4. The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 5. The department of accounting and general services shall pursue action against the consultant who made the over-collection and hold the consultant accountable for the resulting loss. The department shall report to the legislature no later than twenty days before the regular session of 2001, on the action taken and results.

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

(Approved May 2, 2000.)

## ACT 90 H.B. NO. 2760

A Bill for an Act Relating to the College Savings Program.

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

SECTION 1. Section 256-1, Hawaii Revised Statutes, is amended as follows:

(1) By adding a new definition to be appropriately inserted and to read as follows:

"<u>"Eligible educational institution" means an institution defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.</u>"

(2) By amending the definitions of "account owner" and "nonqualified withdrawal" to read as follows:

"<u>"Account owner" means the individual who enters into a tuition savings agreement pursuant to this chapter and as defined under the [final regulations adopted by the Internal Revenue Service.] proposed income tax regulations, sections 1.529-1 to 1.529-6 or the final regulations relating to section 529 of the Internal Revenue Code of 1986, as amended, whichever is applicable, including any amendments or supplements thereto.</u>

"Nonqualified withdrawal" means a withdrawal from an account that is not:

(1) [A qualified withdrawal;] <u>Used for qualified higher education expenses of the designated beneficiary;</u>

(2) [A withdrawal made as the result] Made on account of the death or disability of the designated beneficiary [of an account]; or

(3) [A withdrawal made] Made on the account of a scholarship[.] (or allowance or payment described in section 135(d)(1)(B) or (C) of the Internal Revenue Code of 1986, as amended) received by the designated beneficiary, to the extent the withdrawal does not exceed the amount of the scholarship, allowance, or payment."

(3) By deleting the definition "institution of higher education".

["'"Institution of higher education" means an institution defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation."']

SECTION 2. Section 256-3, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§256-3[]] Functions and powers of the director of finance.** (a) The director of finance shall implement the program under the terms and conditions established by this chapter. The director of finance may make changes to the program as required for participants to obtain or maintain the federal [income] tax benefits or treatment provided by section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(b) The director of finance may enter into tuition savings agreements with account owners pursuant to this chapter.

[(b)] (c) The director of finance may implement the program through the use of financial organizations as account depositories and managers. Under the program, individuals may establish accounts directly with an account depository.

[(c)] (d) The director of finance may solicit proposals from financial organizations to act as [depositories and managers of the] program[.] managers. Financial organizations submitting proposals shall describe the investment [instrument] instruments that will be held in accounts. The director of finance shall select as program [depositories and] managers the financial organizations[,] from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this State, based on the following factors:

(1) The financial stability and integrity of the financial organization;
(2) The safety of the investment [instrument] instruments being offered;
(3) The ability of the investment [instrument] instruments to track the expected increasing costs of higher education;
(4) The ability of the financial organization to satisfy recordkeeping and reporting requirements;
(5) The financial organization's plan for promoting the program and the resources it is willing to allocate to promote the program;
(6) The fees, if any, proposed to be charged to persons for opening accounts;
(7) The minimum initial deposit and minimum contributions that the financial organization will require;
(8) The ability of financial organizations to accept electronic withdrawals, including payroll deduction plans; and
(9) Other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses to operate the program.

[(d)] (e) The director of finance may enter into a management contract of up to ten years with a financial organization. [The financial organization shall provide only one type of investment instrument.] The management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of section 256-4 and to manage the program to qualify it as a qualified state tuition plan under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation;
(2) Keep adequate records of each account, keep each account segregated from each other account, and provide the director of finance with the information necessary to prepare the statements required by section 256-4;
(3) Compile information contained in statements required to be prepared under section 256-4 and provide the compilations to the director of finance;
(4) If there is more than one program manager, provide the director of finance with the information necessary to determine compliance with section 256-4;
(5) Provide the director of finance or designee access to the books and records of the program manager to the extent needed to determine compliance with the contract;
(6) Hold all accounts for the benefit of the account owner;
(7) Be audited at least annually by a firm of independent certified public accountants selected by the program manager, and provide the results of the audit to the director of finance; [and]
(8) Provide the director of finance with copies of all regulatory filings and reports related to the program made by it during the term of the management contract or while it is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the director of finance, the results of any periodic examination of the manager by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports may not be disclosed under applicable law or the rules of the commission[.]; and
(9) Undertake to provide the information required by rule 15c2-12(b)(5) under the Securities Exchange Act of 1934 pursuant to a continuing disclosure certificate for the benefit of the account owners.

[(e)] (f) The director of finance may select more than one financial organization and investment instrument for the program [when the Internal Revenue Services has provided guidance that giving a contributor the choice of two or more investment instruments under a state program will not cause the program to fail to qualify for favorable tax treatment under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation].

[(f)] (g) The director of finance may require an audit to be conducted of the operations and financial position of the program [depository and] manager at any time if the director of finance has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program [depository or] manager.

[(g)] (h) During the term of any contract with a program manager, the director of finance shall conduct an examination of the manager and its handling of accounts. The examination shall be conducted at least biennially if the manager is not otherwise subject to periodic examination by the commissioner of financial institutions, the Federal Deposit Insurance Corporation, or other similar entity.

[(h) If selection of a financial organization as a program manager or depository is not renewed, after the end of the term:
(1) Accounts previously established and held in investment instruments at the financial organization may be terminated;
(2) Additional contributions may be made to the accounts;

(3) No new accounts may be placed with the financial organization; and
(4) Existing accounts held by the depository shall remain subject to all oversight and reporting requirements established by the director of finance.

If the director of finance terminates a financial organization as a program manager or depository, the director of finance shall take custody of accounts held by the financial organization and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.]

(i) The director of finance may establish a nominal fee for an application for a college account.

(j) The director of finance may enter into contracts for the services of consultants for rendering professional and technical assistance and advice and any other contracts that are necessary and proper for the implementation of the program.

(k) The director of finance may adopt rules to implement the program pursuant to chapter 91."

SECTION 3. Section 256-4, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§256-4[]] Program requirements; college account.** (a) A college account may be opened by any person who desires to save money for the payment of the qualified higher education expenses on behalf of a designated beneficiary. The person shall be considered the account owner as defined in section 256-1. An application for an account shall be in the form prescribed by the program and shall contain the following:

(1) The name, address, and social security number or employer identification number of the account owner;
(2) The designation of a beneficiary;
(3) The name, address, and social security number of the designated beneficiary;
(4) A certification relating to no excess contributions; and
(5) Other information as the program may require.

(b) Only the account owner may make contributions to the account after the account is opened.

(c) Contributions to accounts may be made only in cash.

(d) An account owner may withdraw all or part of the balance from an account on sixty days' notice or a shorter period as may be authorized under rules governing the program. The rules shall include provisions to generally enable the determination of whether a withdrawal is a nonqualified withdrawal or a qualified withdrawal. The rules may require one or more of the following:

(1) An account owner seeking to make a qualified withdrawal shall provide certifications of qualified higher education expenses and other information required to comply with section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation;
(2) Withdrawals not meeting the requirements of this section shall be treated as nonqualified withdrawals by the program manager, and if the withdrawals are subsequently deemed qualified withdrawals within a reasonable time period as specified by the director of finance, the account owner shall seek any refund of penalties directly from the program.

(e) An account owner may change the designated beneficiary of an account to an individual who is a member of the family of the prior designated beneficiary. An account owner may transfer all or a portion of an account to another college

account, the designated beneficiary of which is a member of the same family, as defined in section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation, as the beneficiary of the initial account. Changes in designated beneficiaries and transfers under this section shall not be permitted if they constitute excess contributions.

(f) In the case of any nonqualified withdrawal from an account, an amount equal to ten per cent (or that rate imposed under final regulations adopted by the Internal Revenue Service) of the portion of the withdrawal constituting income as determined in accordance with the principles of section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation, shall be [withheld] collected as a penalty and paid to the college savings program trust fund[.], as provided under section 529 of the Internal Revenue Code of 1986, as amended, successor legislation, or any guidance issued by the Internal Revenue Service.

(g) The percentage of the penalty described in subsection (f) may be increased if the director of finance determines that the amount of the penalty must be increased to constitute a greater than de minimis penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

(h) The percentage of the penalty described in subsection (f) may be decreased by rule if it is determined [that:

(1) The] the penalty is greater than the amount required to constitute a greater than de minimis penalty for purposes of qualifying the program as a qualified state tuition program under section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation[; and

(2) The penalty, when combined with other revenue generated under this chapter, is producing more revenue than is required to cover the costs of operating the program and recover any prior costs not previously recovered].

[(i) If an account owner makes a nonqualified withdrawal and no penalty amount is withheld pursuant to subsection (f), or the amount withheld was less than the amount required to be withheld under subsection (f) for nonqualified withdrawals, the account owner shall pay the unpaid portion of the penalty to the program. The unpaid portion shall be paid on the date that the account owner files the account owner's state or federal income tax return, whichever is filed earlier, for the taxable year of the withdrawal. If the account owner does not file a return, the unpaid portion shall be paid on the date that the earlier return is due. Authorized extensions to filing returns may be taken into account in determining the date for paying the unpaid portion.

(j)] (i) The program shall provide separate accounting for each designated beneficiary.

[(k)] (j) No account owner or designated beneficiary of any account shall be permitted to direct the investment of any contributions to an account or the earnings on it.

[(l)] (k) Neither an account owner nor a designated beneficiary shall use an interest in an account as security for a loan. Any pledge of an interest in an account shall be of no force and effect.

[(m)] (l) Contributions on behalf of a designated beneficiary in excess of those necessary to provide for the qualified higher education expenses of the designated beneficiary shall not be allowed. The prohibition on excess contributions shall conform to section 529 of the Internal Revenue Code of 1986, as amended, or successor legislation.

[(n)] (m) If there is any distribution from an account to any individual or for the benefit of any individual during a calendar year, the distribution shall be reported

to the Internal Revenue Service and the account owner, the designated beneficiary, or the distributee, to the extent required by federal law or regulation.

Statements shall be provided to each account owner at least once each year within sixty days after the end of the twelve-month period to which they relate. The statement shall identify the contributions made during a preceding twelve-month period, the total contributions made to the account through the end of the period, the value of the account at the end of the period, distributions made during the period, and any other information that the director of finance requires to be reported to the account owner.

Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax law.

[(o)] (n) A local government or organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or successor legislation, may open and become the account owner of an account to fund scholarships for persons whose [[]identity[]] shall be determined upon disbursement. Any account opened pursuant to this subsection is not required to comply with the condition set forth in subsection (a) that a beneficiary be designated when an account is opened, and each individual who receives an interest in the account as a scholarship shall be treated as a designated beneficiary.

[(p)] (o) An annual fee may be imposed upon the account owner for the maintenance of the account.

[(q) A qualified withdrawal may be made only after at least three calendar years have elapsed from the time an account is opened.] (p) A minimum length of time as determined by the director of finance may be required of the account before distributions for qualified higher education can be made.

[(r)] (q) The program shall disclose in writing the following information to each account owner and prospective account owner of a college account:

(1) The terms and conditions for purchasing a college account;
(2) Any restrictions on the substitution of beneficiaries;
(3) The person or entity entitled to terminate the tuition savings agreement;
(4) The period of time during which a beneficiary may receive benefits under the tuition savings agreement;
(5) The terms and conditions under which money may be wholly or partially withdrawn from the program, including any reasonable charges and fees that may be imposed for withdrawal; and
(6) The probable tax consequences associated with contributions to and distributions from accounts."

SECTION 4. Section 256-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Nothing in this chapter shall create or be construed to create any obligation of the director of finance, the State, or any agency or instrumentality of the State to guarantee for the benefit of any account owner or designated beneficiary with respect to:

(1) The rate of interest or other return on any account; [or]
(2) The payment of interest or other return on any account[.]; or
(3) The repayment of the principal of any account.

The director of finance shall provide by rule that every tuition savings agreement, contract, application, deposit slip, or other similar document that may be used in connection with a contribution to an account clearly indicate that the account is not insured by the State and neither the principal deposited nor the investment return is guaranteed by the State."

SECTION 5. Section 256-6, Hawaii Revised Statutes, is amended to read as follows:

"[[]§256-6[]] **College savings program trust fund.** (a) There is established the college savings program trust fund. The director of finance shall have custody of the fund. All payments from the fund shall be made in accordance with this chapter.

(b) The fund shall consist of a trust account and an operating account. The trust account shall include amounts received by the college savings program pursuant to tuition savings agreements, administrative charges, fees, and all other amounts received by the program from other sources, and interest and investment income earned by the fund. The director of finance, from time to time, shall make transfers from the trust account to the operating account for the immediate payment of obligations under tuition savings agreements, operating expenses, and administrative costs of the college savings program. [Administrative costs shall be paid out of the operating account.]

(c) The director of finance, as trustee, shall invest the assets of the fund in securities that constitute legal investments under state laws relating to the investment of trust fund assets by trust companies, including those authorized by article 8 of chapter 412. Trust fund assets shall be kept separate and shall not be commingled with other assets, except as provided in this chapter. The director of finance may enter into contracts to provide for investment advice and management, custodial services, and other professional services for the administration and investment of the program. [Administrative fees, costs, and expenses, including investment fees and expenses, shall be paid from the assets of the fund.]

(d) The director of finance shall provide for the administration of the fund, including maintaining participant records and accounts, and providing annual audited reports. The director of finance may enter into contracts for administrative services, including reports.

(e) All administrative fees, costs, and expenses, including investment fees and expenses, shall be paid from the operating account of the fund and, notwithstanding any other law to the contrary, may be made without appropriation or allotment."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 2, 2000.)

## ACT 91 H.B. NO. 1491

A Bill for an Act Relating to Subpoenas.

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

Part I.

SECTION 1. Section 803-47.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) (1) A provider of electronic communication or remote computing services may disclose a record or other information pertaining to a sub-

scriber or customer of such service (other than the contents of any electronic communication) to any person other than a governmental entity.

(2) A provider of electronic communication or remote computing services shall disclose a record or other information pertaining to a subscriber or customer of such service (other than the contents of an electronic communication) to a governmental entity only when:
[(A) Presented with a grand jury subpoena;
(B)] (A) Presented with a search warrant;
[(C)] (B) Presented with a court order for such disclosure; [or
(D)] (C) The consent of the subscriber or customer to such disclosure has been obtained[.]; or
(D) Presented with an administrative subpoena issued pursuant to section 28-2.5 or a grand jury or trial subpoena, which seeks the disclosure of information concerning electronic communication, including but not limited to the name, address, local and long distance telephone toll billing records, telephone number or other subscriber number or identity, length of service of a subscriber to or customer of the service, and the types of service utilized by the subscriber or customer.

(3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer."

Part II.

SECTION 2. Section 323C-38, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) This section shall not apply in a case in which the protected health information sought under the discovery request or subpoena is:
(1) Nonidentifiable health information; [and] or
(2) Related to a party to the litigation whose medical condition is at issue."

SECTION 3. Act 87, Session Laws of Hawaii 1999, section 4, is amended by amending subsection (a)[1] to read as follows:

"SECTION 4. Section 622-52, Hawaii Revised Statutes, is amended to read as follows:

**§622-52 Subpoena duces tecum for medical records, compliance.** (a) [Whenever a subpoena duces tecum is served upon the custodian of medical records or other qualified witness from a medical facility, in an action or other proceeding on a claim for personal injuries in which the custodian or the custodian's employer is neither a party to the action or proceeding nor is it alleged that the claim arose at the medical facility, and such subpoena requires the production in court, or before an officer, board, commission, or tribunal, of all or any part of the medical records of a patient who is or has been cared for or treated at the medical facility, it shall be sufficient compliance therewith if the custodian or other qualified witness within five days after receipt of such subpoena, delivers by registered or certified mail or by messenger a true and correct copy (which may be by any method described in rule 1001(4), Hawaii rules of evidence) of all the medical records described in such subpoena to the clerk of the court or the clerk's deputy authorized to issue it, together with the affidavit described in section 622-53.] Except as provided by section 323C-38(c), [A] a subpoena duces tecum or discovery request for protected health

information is valid only if accompanied by either a court order, or a written authorization signed in accordance with section 323C-23.[2] An order issued under this section shall:

(1) Provide that the protected health information involved is subject to court protection;
(2) Specify to whom the information may be disclosed;
(3) Specify that the information may not be disclosed or used except as provided in the order; and
(4) Meet any other requirements that the court determines are needed to protect the confidentiality of the information.''''

Part III.

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

SECTION 5. This Act shall take effect upon its approval; provided that Part II of this Act shall take effect on July 1, 2000.

(Approved May 16, 2000.)

**Notes**

1. So in original.
2. "323C" should be underscored.

## ACT 92 H.B. NO. 2129

A Bill for an Act Relating to Pawn Brokers and Secondhand Dealers.

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

SECTION 1. Section 486M-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"""Government issued identification" means:

(1) A passport issued by the United States of America;
(2) A drivers license issued pursuant to any state or District of Columbia law;
(3) An identification card issued by any state or local government or the Bureau of Indian Affairs; or
(4) An identification card issued by any branch of the Armed Forces of the United States of America."

SECTION 2. Section 486M-2, Hawaii Revised Statutes, is amended to read as follows:

"**§486M-2 Record of transactions.** Every dealer, or the agent, employee, or representative of the dealer shall, immediately upon receipt of any article, record the following information, on a form authorized by the chief of police in each county:

(1) The name and address of the dealer;
(2) The name, residence address, date of birth, and the age of the person from whom the article was received;
(3) The date and time the article was received by the dealer;
(4) The signature of the person from whom the article was received;

(5) The Hawaii drivers[1] license number, or if the person does not possess a Hawaii drivers[1] license, the number of and description of any government issued identification which bears a photograph of the person from whom the article was received;
(6) A complete and accurate description of the article received, including all markings, names, initials, and inscriptions;
(7) A reasonable estimate of the fineness and weights of the precious and semiprecious metals and precious and semiprecious gems received; and
(8) The price paid by the dealer for each article.

Upon request and at the discretion of the chief of police of each county, copies of all completed forms required by this section shall be surrendered, mailed, or electronically inputted and transmitted via modem or by facsimile transmittal to the chief of police or to the chief of police's authorized representative. The method of submittal to the chief of police shall be at the option of the dealer."

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.

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

(Approved May 16, 2000.)

**Note**

1. Prior to amendment "driver's" appeared here.

## ACT 93 H.B. NO. 2471

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

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

SECTION 1. Section 431:16-102, Hawaii Revised Statutes, is amended to read as follows:

"**§431:16-102 Purpose.** The purpose of this part is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and, to [avoid] the extent provided in this part, to minimize financial loss to claimants or policyholders because of the insolvency of an insurer[, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of such protection among insurers]."

SECTION 2. Section 431:16-103, Hawaii Revised Statutes, is amended to read as follows:

"**§431:16-103 Scope.** This part shall apply to all types of direct insurance, but shall not [be applicable] apply to the following:
(1) Life, annuity, health, or disability insurance;
(2) Mortgage guaranty, financial guaranty, or any other forms of insurance offering protection against investment risks;
(3) Fidelity or surety bonds, or any other bonding obligations;

(4) Credit [life or credit disability] insurance[;], vendors' single interest insurance, collateral protection insurance, or any similar insurance protecting the interests of a creditor arising out of a creditor-debtor transaction;

(5) Insurance of warranties or service contracts[;], including insurance that provides for the repair, replacement, or service of goods or property, for indemnification for the repair, replacement, or service for the operational or structural failure of the goods or property due to a defect in materials, artisanship, or normal wear and tear, or for reimbursement for the liability incurred by the issuer of agreements or service contracts that provide those benefits;

(6) Title insurance;

(7) Ocean marine insurance; [and]

(8) Any transaction or combination of transactions between a person[,] (including affiliates of [such] the person[,]) and an insurer[,] (including affiliates of [such] the insurer[, which]) that involves the transfer of investment or credit risk unaccompanied by transfer of insurance risk[.]; or

(9) Any insurance provided by or guaranteed by government."

SECTION 3. Section 431:16-104, Hawaii Revised Statutes, is amended to read as follows:

"**§431:16-104 Construction.** This [code] part shall be [liberally] construed to effect the purpose under section 431:16-102 which will constitute an aid and guide to interpretation."

SECTION 4. Section 431:16-105, Hawaii Revised Statutes, is amended to read as follows:

"**§431:16-105 Definitions.** As used in this [code:] part:

[(1) Affiliate] "Affiliate" means a person who, directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with an insolvent insurer on December 31 of the year [next] immediately preceding the date the insurer becomes an insolvent insurer.

[(2) Association] "Association" means the Hawaii [Insurance Guaranty Association] insurance guaranty association created under section 431:16-106.

[(3) Claimant] "Claimant" means any insured making a first-party claim or any person instituting a liability claim; provided that no person who is an affiliate of the insolvent insurer may be a claimant.

[(4) Control] "Control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten per cent or more of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact.

[(5) Covered claim means] "Covered claim":

(1) Means an unpaid claim, including one for unearned premiums, submitted by a claimant, [which] that arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to

which this part applies issued by an insurer, if [such] the insurer becomes an insolvent insurer after July 1, [1988] 2000, and:

(A) The claimant or insured is a resident of this State at the time of the insured event[,]; provided that for entities other than an individual, the residence of a claimant [or], insured, or policyholder is the state in which its principal place of business is located at the time of the insured event; or

[(B) The property from which the claim arises is permanently located in this State.

Covered claim shall not include any amount awarded as punitive or exemplary damages; sought as a return of premium under any retrospective rating plan; or due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise.]

(B) The claim is a first party claim for damage to property with a permanent location in this State; and

(2) Shall not include:

(A) Any amount awarded as punitive or exemplary damages;

(B) Any amount sought as a return of premium under any retrospective rating plan;

(C) Any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise;

(D) Any first party claims by an insured whose net worth exceeds $25,000,000 on December 31 of the year prior to the year in which the insurer becomes an insolvent insurer; provided that an insured's net worth on that date shall be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis; or

(E) Any first party claims by an insured who is an affiliate of the insolvent insurer.

[(6) Insolvent insurer] "Insolvent insurer" means an insurer licensed to transact insurance in this State, either at the time the policy was issued or when the insured event occurred, and [determined to be insolvent by a court of competent jurisdiction.] against whom a final order of liquidation has been entered after the effective date of this Act with a finding of insolvency by a court of competent jurisdiction in the insurer's state of domicile.

[(7) Member insurer] "Member insurer" means any person who:

[(A)] (1) Writes any kind of insurance to which this part applies under section 431:16-103, including the exchange of reciprocal or interinsurance contracts; and

[(B)] (2) Is licensed to transact insurance in this State.

An insurer shall cease to be a member insurer effective on the day following the termination or expiration of its certificate of authority to transact the kinds of insurance to which this part applies. However, the insurer shall remain liable as a member insurer for any and all obligations, including obligations for assessments levied either prior to or after the termination or expiration of its certificate of authority, even though the insurer became insolvent before the termination or expiration of its certificate of authority.

[(8) Net direct written premiums] "Net direct written premiums" means direct gross premiums written in this State on insurance policies to which this part applies, less return premiums thereon and dividends paid or credited to policyholders on such direct business. Net direct written premiums [does] do not include premiums on contracts between insurers or reinsurers.

[(9) Person] "Person" means any individual, corporation, partnership, association, or voluntary organization."

SECTION 5. Section 431:16-106, Hawaii Revised Statutes, is amended to read as follows:

"**§431:16-106 Creation of association.** [(a)][1] There is created a nonprofit unincorporated legal entity to be known as the Hawaii [Insurance Guaranty Association.] insurance guaranty association. All insurers defined as member insurers in section [431:16-105(7)] 431:16-105 shall be and remain members of the association as a condition of their authority to transact the business of insurance in this State. The association shall perform its function under a plan of operation established and approved under section 431:16-109 and shall exercise its powers through a board of directors established under section 431:16-107.

[(b) All meetings and records of the board of directors shall be open to all member insurers except for those meetings and records pertaining to the solvency, liquidation, rehabilitation, or conservation of any member insurer deemed confidential. A member insurer shall provide written designation of its representative or representatives to the board meetings.]"

SECTION 6. Section 431:16-107, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies on the board shall be filled for the remaining period of the term by a majority vote of the remaining board members subject to the approval of the commissioner. [If no members are selected within sixty days after July 1, 1988, the commissioner may appoint the initial members of the board of directors.]"

SECTION 7. Section 431:16-108, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The association shall:

(1) Be obligated to the extent of the covered claims existing prior to the [determination of insolvency, which the insolvent insurer would have been legally obligated to pay but for its insolvency,] order of liquidation and arising within thirty days after the [determination of insolvency,] order of liquidation, or before the policy expiration date if less than thirty days after the [determination,] order of liquidation, or before the insured replaces the policy or causes its cancellation, if the [insurer] insured does so within thirty days of the [determination, but the obligation shall include only that amount of each covered claim which is less than $300,000, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy.] order of liquidation. The obligation shall be satisfied by paying to the claimant an amount as follows:

(A) The full amount of a covered claim for benefits under a workers' compensation insurance coverage;

(B) An amount not exceeding $10,000 per policy for a covered claim for the return of unearned premium; or

(C) An amount not exceeding $300,000 per claim for all other covered claims.

In no event shall the association be obligated to a policyholder or claimant in an amount in excess of the stated policy limit of the insolvent insurer under the policy from which the claim arises[;]. Notwithstanding any other provisions of this part, a covered claim shall not include a claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer. Any obligation of the association to defend an insured shall cease upon the association's payment or tender of an amount equal to the lesser of the association's covered claim obligation limit or the applicable policy limit;

(2) Be deemed the insurer, but only to the extent of its obligation on covered claims and to that extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent[;], including but not limited to the right to pursue and retain salvage and subrogation recoverable on covered claim obligations to the extent paid by the association;

(3) Assess insurers amounts necessary to pay the obligations of the association under [subsection (a)] paragraph (1) subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and the cost of examinations under section 431:16-113, and other expenses authorized by this part. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year bears to the net direct written premiums of all member insurers for the preceding calendar year. Each member insurer shall be notified of the assessment not later than thirty days before it is due. No member insurer may be assessed in any year an amount greater than two per cent of that member insurer's net direct written premiums for the preceding calendar year. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order that it may deem reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. However, during the period of deferment, no dividends shall be paid to shareholders or policyholders. Deferred assessments shall be paid when the payment will not reduce capital or surplus below required minimums. Payments shall be refunded to those companies receiving larger assessments by virtue of the deferment, or at the election of the companies, credited against future assessments. Each member insurer may set off against any assessment payments authorized by the administrator of the association to be made on covered claims and expenses incurred in the payment of the claims by the member insurer;

(4) Investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which [such] the settlements,

releases, and judgments may be properly contested[;]. The association may appoint or substitute and direct legal counsel retained under liability insurance policies for the defense of covered claims;

(5) Notify the persons as the commissioner directs under section 431:16-ll0(b)(l);

(6) Handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but the designation may be declined by a member insurer;

(7) Reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and [shall] pay the other expenses of the association authorized by this [code;] part; and

(8) Have the authority, notwithstanding sections 43l:10C-ll0 and 43l:10C-111, to cancel all policies issued by an insolvent insurer. [All] Covered claims under these policies shall be [covered] paid by the association in an amount not to exceed the [state] stated policy limit of the insolvent insurer under the policy from which the claim arises[.], or as provided under paragraph (1)(A) to (C), whichever is less."

SECTION 8. Section 431:16-109, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The plan of operation shall:

(1) Establish the procedures whereby all the powers and duties of the association under section 431:16-108 [will] shall be performed;

(2) Establish procedures for handling assets of the association;

(3) Establish procedures for the disposition of liquidating dividends or other moneys received from the estate of the insolvent insurer;

[(3)] (4) Establish the amount and method of reimbursing members of the board of directors under section 431:16-107(c);

[(4)] (5) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of the claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator;

[(5)] (6) Establish regular places and times for meetings of the board of directors;

[(6)] (7) Establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

[(7)] (8) Provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner within thirty days after the action or decision;

[(8)] (9) Establish the procedures whereby selections for the board of directors will be submitted to the commissioner; and

[(9)] (10) Contain additional provisions necessary or proper for the execution of the powers and duties of the association."

SECTION 9. Section 431:16-110, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The commissioner shall:

(l) Notify the association of the existence of an insolvent insurer not later than three days after the commissioner receives notice of the determi-

nation of the insolvency. The association shall be entitled to a copy of a complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that the complaint is filed with a court of competent jurisdiction.

(2) Upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer."

2. By amending subsection (c) to read:

"(c) Any final action or order of the commissioner under this [code] part shall be subject to judicial review by the circuit court of the first judicial circuit."

SECTION 10. Section 431:16-111, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Any person recovering under this [code] part shall be deemed to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of this part shall cooperate with the association to the same extent as [such] that person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except [such] any causes of action [as] that the insolvent insurer would have had if [such] those sums had been paid by the insolvent insurer and except as provided in subsection (b). In the case of an insolvent insurer operating as an assessable mutual company on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of the insureds to the receiver, liquidator, or statutory successor for unpaid assessment."

2. By amending subsection (c) to read:

"(c) The association and a similar organization in another state shall be recognized as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered claims as determined under this part or similar laws in other states and shall receive dividends and any other distributions at the priority set forth in section 431:15-332. The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by determinations of covered claim eligibility under this part and by settlements of [covered] claims by the association or a similar organization in another state[.] to the extent the determinations or settlements satisfy obligations of the association. The receiver shall not be bound in any way by the determinations or settlements to the extent there remains a claim against the insolvent insurer. The court having jurisdiction shall grant such claims priority equal to that to which the claimant would have been entitled in the absence of this part against the assets of the insolvent insurer."

SECTION 11. Section 431:16-112, Hawaii Revised Statutes, is amended to read as follows:

"**§431:16-112 [Nonduplication of recovery.] Exhaustion of other coverage.** (a) Any person having a claim against an insurer whether or not the insurer is a member insurer under any provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first the person's rights under [such] the policy. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under [such] the insurance policy. If there are any other policies issued by an insolvent insurer applicable to the covered claim, then all such policies must first be exhausted before any claim can be deemed a covered claim subject to being covered by the association.

[(b) Any person having a claim or legal right of recovery under any governmental insurance or guaranty program which is also a covered claim, shall be required to exhaust first the person's right under such program. Any amount payable on a covered claim under this part shall be reduced by the amount of any recovery under such insurance or program.

(c)] (b) Any person having a claim [which] that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if the claim is a first-party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property[, and if it is]. For a workers' compensation claim, the person shall seek recovery first from the association of the residence of the claimant. Any recovery under this part shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent."

SECTION 12. Section 431:16-113, Hawaii Revised Statutes, is amended to read as follows:

"**§431:16-113 Prevention of insolvencies.** To aid in the detection and prevention of insurer insolvencies: [(a) The board of directors may, upon majority vote:

(1) Make recommendations to the commissioner for the detection and prevention of insurer insolvencies; and

(2) Respond to requests by the commissioner to discuss and make recommendations regarding the status of any member insurer whose financial condition may be determined by the commissioner to be hazardous to policyholders or the public. Such recommendations shall not be considered public documents.

(3) The board of directors may, upon majority vote, request that the commissioner order an examination of any member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within thirty days of the receipt of such request, the commissioner shall begin the examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the commissioner designates. The cost of such examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the commissioner from reporting to the board of directors when the commissioner has reasonable cause to believe that any member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

(b) The board of directors may, at the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of such insolvency, based on the information available to the association and submit such report to the commissioner.]

(1) The board of directors, upon majority vote, may make recommendations to the commissioner on matters generally related to improving or enhancing regulation for solvency; and

(2) At the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, the board of directors may prepare a report on the history and causes of the insolvency, based on the information available to the association, and submit the report to the commissioner."

SECTION 13. Section 431:16-116, Hawaii Revised Statutes, is amended to read as follows:

"**§431:16-116 Immunity.** There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer, the association or its agents or employees, the board of directors, any person serving as an alternate or substitute representative of any director, or the commissioner or the commissioner's representatives for any action taken or any failure to act by them in the performance of their powers and duties under this part."

SECTION 14. Section 431:16-117, Hawaii Revised Statutes, is amended to read as follows:

"**§431:16-117 Stay of proceedings.** (a) All proceedings in which the insolvent insurer is a party, or is obligated to defend a party in any court in this State, subject to waiver by the association in specific cases involving covered claims, shall be stayed for up to six months, and [such] any additional time thereafter as may be determined by the court, from the date the insolvency is determined or an ancillary proceeding is instituted in the State, whichever is later, to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment or under any decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured, the association, either on its own behalf or on behalf of [such] the insured, may apply to have such judgment, order, decision, verdict, or finding set aside by the same court, administrator, or other entity that made [such] the judgment, order, decision, verdict, or finding and shall be permitted to defend [such] the claim on the merits.

(b) The liquidator, receiver, or statutory successor of an insolvent insurer covered by this part shall permit access by the board or its authorized representative to [such of] the insolvent insurer's claim records[, and may permit access to such other records which] that are necessary for the board in carrying out its functions under this part with regard to covered claims. In addition, the liquidator, receiver, or statutory successor shall provide the board or its representative with copies of [such] those records upon the request by the board and at the expense of the board."

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 May 16, 2000.)

**Note**

1. So in original.

# ACT 94 H.B. NO. 2485

A Bill for an Act Relating to Exemptions for Psychologist Licensure.

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

SECTION 1. Section 465-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) This chapter shall not apply to:

(1) Any person teaching, lecturing, consulting, or engaging in research in psychology insofar as the activities are performed as part of or are dependent upon employment in a college or university; provided that the person shall not engage in the practice of psychology outside the responsibilities of the person's employment;

(2) Any person who performs any, or any combination of the professional services defined as the practice of psychology under the direction of a licensed psychologist in accordance with rules adopted by the board; provided that the person may use the term "psychological assistant", but shall not identify the person's self as a psychologist or imply that the person is licensed to practice psychology;

(3) Any person employed by a local, state, or federal government agency in a school psychologist or psychological examiner position, or a position that does not involve diagnostic or treatment services, but only at those times when that person is carrying out the functions of such government employment;

(4) Any person who is a student of psychology, a psychological intern, or a resident in psychology preparing for the profession of psychology under supervision in a training institution or facility and who is designated by a title as "psychology trainee", "psychology student", "psychology intern", or "psychology resident", that indicates the person's training status; provided that the person shall not identify the person's self as a psychologist or imply that the person is licensed to practice psychology;

(5) Any person who is a member of another profession licensed under the laws of this jurisdiction to render <u>or advertise</u> services, <u>including psychotherapy,</u> within the scope of practice as defined in the statutes <u>or rules</u> regulating the person's professional practice; provided that, <u>notwithstanding section 465-1,</u> the person does not represent the person's self to be a psychologist or <u>does not represent that the person is</u> licensed to practice psychology[, as defined in this chapter];

(6) Any person who is a member of a mental health profession not requiring licensure; provided that the person functions only within the person's professional capacities; and provided further that the person does not represent the person to be a psychologist, or the person's services as psychological; or

(7) Any person who is a duly recognized member of the clergy; provided that the person functions only within the person's capacities as a member of the clergy; and provided further that the person does not represent the person to be a psychologist, or the person's services as psychological."

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

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

(Approved May 16, 2000.)

## ACT 95 H.B. NO. 2649

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-5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§507D-5[]] Liens against public officers and employees.** (a) Any claim of lien against a federal, state, or county officer or employee based on the performance or nonperformance of that officer's or employee's duties shall designate in the pleading header that the claim is directed to a federal, state, or county officer or employee, and shall be invalid unless accompanied by a [specific] certified order from a state or federal court of competent jurisdiction authorizing the filing of such lien [or unless a specific statute authorizes the filing of such lien].

(b) The registrar shall not accept for filing a claim for nonconsensual common law lien unless the claim is accompanied by a certified state or federal court order authorizing the filing of the lien."

SECTION 2. Section 507D-7, Hawaii Revised Statutes, is amended to read as follows:

"**§507D-7 Expungement of invalid lien; penalties; sanctions for frivolous filings.** (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 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. Proceedings under this subsection shall not preclude a person from proceeding under subsection (a) or section 507D-4 and recovering damages, penalties, costs, and attorneys' fees.

(c) Any person who knowingly submits for filing an invalid court order in support of a nonconsensual common law lien against a federal, state, or county officer or employee, shall be guilty of tampering with a government record under section 710-1017.

[(c)] (d) Nothing in this chapter shall inhibit or preclude any party in interest from seeking any other common law, statutory, or other equitable remedy."

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 May 16, 2000.)

## ACT 96

S.B. NO. 1095

A Bill for an Act Relating to Hunting.

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

SECTION 1. Act 254, Session Laws of Hawaii 1997, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect upon its approval; provided that this Act is repealed on June 30, [2000,] 2002, and sections 134-5 and 134-9, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act."

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

SECTION 3. This Act shall take effect on June 29, 2000.

(Approved May 16, 2000.)

## ACT 97

S.B NO. 2849

A Bill for an Act Relating to Review Hearings.

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

SECTION 1. Section 587-72, Hawaii Revised Statutes, is amended to read as follows:

"**§587-72 Review hearings.** (a) Except for good cause shown, the court shall set each case for review hearing not later than six months after the date that a service plan is ordered by the court and, thereafter, the court shall set subsequent review hearings at intervals of no longer than six months until the court's jurisdiction has been terminated or the court has ordered a permanent plan and has set the case for a permanent plan review hearing; the court may set a case for a review hearing upon the motion of a party at any time if the hearing is deemed by the court to be in the best interests of the child.

(b) Notice of review hearings shall be served upon the parties and upon the present foster parent or parents, each of whom shall be entitled to participate in the proceedings as a party. Notice of the review hearing shall be served by the department upon the present foster parent or parents no less than forty-eight hours before the scheduled hearing. No hearing shall be held until the foster parent or parents are served. For purposes of this subsection, notice to foster parents may be effected by hand delivery or by regular mail; and may consist of the last court order, if it includes the date and time of the hearing.

(c) Upon each review hearing the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including but not limited to the report submitted pursuant to section 587-40, and:

(1) Determine whether the child's family is presently willing and able to provide the child with a safe family home without the assistance of a service plan and, if so, the court shall terminate jurisdiction;

(2) Determine whether the child's family is presently willing and able to provide the child with a safe family home with the assistance of a service plan and, if so, the court shall return the child or continue the placement of the child in the child's family home under the family supervision of the appropriate authorized agency;

(3) If the child's family home is determined, pursuant to subsection (c)(2) not to be safe, even with the assistance of a service plan, order that the child remain or be placed under the foster custody of the appropriate authorized agency;

(4) Determine whether the parties have complied with, performed, and completed every term and condition of the service plan that was previously court ordered;

(5) Order revisions to the existing service plan, after satisfying section 587-71(h), as the court, upon a hearing that the court deems to be appropriate, determines to be in the best interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order;

(6) Enter further orders as the court deems to be in the best interests of the child;

(7) Determine whether aggravated circumstances are present and, if so, the court shall set the case for a show cause hearing as the court deems appropriate within thirty days. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing; and

(8) If the child has been residing outside the family home for twelve consecutive months[,] <u>from the initial date of entry into out-of-home care,</u> set the case for a show cause hearing as deemed appropriate by the court. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing.

(d) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall:

(1) Make a finding that the parties understand that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and

(2) Set the case for a review hearing within six months.

(e) If the child has been residing outside of the family home for an aggregate of fifteen out of the most recent twenty-two months[,] from the initial date of entry into out-of-home care, the department shall file a motion to set the matter for a permanent plan hearing unless:

(1) The department has documented in the safe family home guidelines prepared pursuant to section 587-25(a), a compelling reason why it would not be in the best interests of the child to file a motion; or

(2) The State has not provided to the family of the child, consistent with the time period in the service plan, such services as the department deems necessary for the safe return of the child to the family home;

provided that nothing in this section shall prevent the department from filing such a motion to set a permanent plan hearing if the department has determined that the criteria in section 587-73(a) are present."

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

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved May 16, 2000.)

## ACT 98 S.B NO. 2930

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. Section 329-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

[(1) Acetylmethadol;
(2) Allylprodine;
(3) Alphacetylmethadol;
(4) Alphameprodine;
(5) Alphamethadol;
(6) Alpha-Methylfentanyl;
(7) Benzethidine;
(8) Betacetylmethadol;
(9) Betameprodine;
(10) Betamethadol;
(11) Betaprodine;
(12) Clonitazene;
(13) Dextromoramide;
(14) Diampromide;
(15) Diethylthiambutene;
(16) Difenoxin;
(17) Dimenoxadol;
(18) Dimepheptanol;
(19) Dimethylthiambutene;

(20) Dioxaphetyl butyrate;
(21) Dipipanone;
(22) Ethylmethylthiambutene;
(23) Etonitazene;
(24) Etoxeridine;
(25) Furethidine;
(26) Hydroxypethidine;
(27) Ketobemidone;
(28) Levomoramide;
(29) Levophenacylmorphan;
(30) Morpheridine;
(31) Noracymethadol;
(32) Norlevorphanol;
(33) Normethadone;
(34) Norpipanone;
(35) Para-fluorofentanyl;
(36) Phenadoxone;
(37) Phenampromide;
(38) Phenomorphan;
(39) Phenoperidine;
(40) Piritramide;
(41) Proheptazine;
(42) Properidine;
(43) Propiram;
(44) Racemoramide;
(45) Tilidine;
(46) Trimerperidine;
(47) N-[1-(1-methyl-2-phenyl)ethyl-4-piperidyl]-N-phenylacetamide (acetyl-alpha-methylfentanyl);
(48) N-[1($^{1}$-1-methyl-2-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (alpha-methylthiofentanyl);
(49) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl);
(50) N-[1-(2-hydroxy-2-phenyl)ethyl-4-piperidyl]-N-phenylpropanamide (beta-hydroxyfentanyl);
(51) N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanahide beta-hydroxy-3-methylfentanyl);
(52) N-[3-methyl-1-(2-(2-thienyl)ethyl-4-piperidyl]-N-phenylpropanamide (3-methylthiofentanyl);
(53) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl);
(54) N-phenyl-N-[1-(2$^{2}$thienyl)ethyl-4-piperidinyl]-propanamide (thiofentanyl);
(55) 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP);
(56) 1-(2 phenylethyl)-4-phenyl-4-acetoxypiperidine (PEPAP);
(57) 3-Methylfentanyl.]
(1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
(2) Acetylmethadol;
(3) Allylprodine;
(4) Alphacetylmethadol (except levo- alphacetylmethadol also known as LAAM);
(5) Alphameprodine;
(6) Alphamethadol;

(7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide; 1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl) ethyl-4-piperdinyl]-N-phenylpropanamide);
(9) Benzethidine;
(10) Betacetylmethadol;
(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide;
(12) Beta-hydroxy-3-methylfentanyl (N-[1-(2- hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide);
(13) Betameprodine;
(14) Betamethadol;
(15) Betaprodine;
(16) Clonitazene;
(17) Dextromoramide;
(18) Diampromide;
(19) Diethylthiambutene;
(20) Difenoxin;
(21) Dimenoxadol;
(22) Dimepheptanol;
(23) Dimethylthiambutene;
(24) Dioxaphetyl butyrate;
(25) Dipipanone;
(26) Ethylmethylthiambutene;
(27) Etonitazene;
(28) Etoxeridine;
(29) Furethidine;
(30) Hydroxypethidine;
(31) Ketobemidone;
(32) Levomoramide;
(33) Levophenacylmorphan;
(34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylpropanamide);
(35) 3-methylthiofentanyl (N-[3-methyl-1-(2-thienyl) ethyl-4-piperidinyl]-N-phenylpropanamide);
(36) Morpheridine;
(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
(38) Noracymethadol;
(39) Norlevorphanol;
(40) Normethadone;
(41) Norpipanone;
(42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide;
(43) PEPAP (1-(-2-phenethyl)-4-phenyl-4-acetoxypiperidine;
(44) Phenadoxone;
(45) Phenampromide;
(46) Phenomorphan;
(47) Phenoperidine;
(48) Piritramide;
(49) Proheptazine;
(50) Properidine;
(51) Propiram;
(52) Racemoramide;

(53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl) ethyl-4-piperidinyl]-propanamide);
(54) Tilidine; and
(55) Trimeperidine."

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) Isomethadone;
(12) Levo-alphacetylmethadol (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) Oxycodone;
[(19)] (20) Pethidine;
[(20)] (21) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
[(21)] (22) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
[(22)] (23) Pethidine-Intermediate-C, 1-methyl-4 phenylpiperidine-4-carboxylic acid;
[(23)] (24) Phenazocine;
[(24)] (25) Piminodine;
[(25)] (26) Racemethorphan;
[(26)] (27) Racemorphan;
[(27)] (28) Sufentanil."

SECTION 3. Section 329-16, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Hallucinogenic substances, including but not limited to:

[(1) Dronabinol (synthetic), in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product; and
(2)] Nabilone."

SECTION 4. Section 329-18, Hawaii Revised Statutes, is amended to read as follows:

"**§329-18 Schedule III.** (a) The controlled substances listed in this section are included in schedule III.

(b) Stimulants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substance listed in schedule II, and any other drug of the quantitative composition or which is the same except that it contains a lesser quantity of controlled substances;
(2) Benzphetamine;
(3) Chlorphentermine;
(4) Clortermine;
(5) Mazindol;
(6) Phendimetrazine.

(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation 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 that contains any quantity of a derivative of barbituric acid or any salt thereof;
(4) Chlorexadol;
(5) Ketamine hydrochloride;
(6) Lysergic acid;
(7) Lysergic acid amide;
(8) Methyprylon;
(9) Sulfondiethylmethane;
(10) Sulfonethylmethane;
(11) Sulfonmethane;
(12) Tiletamine/Zolazepam (Telazol).

(d) Nalorphine.

(e) 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 of morphine or any of its salts, per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(f) The department of public safety may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(g) Any anabolic steroid. The term "anabolic steroid" means any drug or hormonal substance chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes:

(1) Boldenone;
(2) Clostebol (4-Chlorotestosterone);
(3) Dehydrochlormethyltestosterone;
(4) Dihydrotestosterone (4-dihydrotestosterone);
(5) Drostanolone;
(6) Ethylestrenol;
(7) Fluoxymesterone;
(8) Formebolone (Formyldienolone);
(9) Mesterolone;
(10) Methandranone;
(11) Methandriol;
(12) Methandrostenolone (Methandienone);
(13) Methenolone;
(14) Methyltestosterone;
(15) Mibolerone;
(16) Nandrolone;
(17) Norethandrolone;
(18) Oxandrolone;
(19) Oxymesterone;
(20) Oxymetholone;
(21) Stanolone (Dihydrotestosterone);
(22) Stanozolol;
(23) Testolactone;
(24) Testosterone;

(25) Trenbolone; and

(26) Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth, except the term "anabolic steroid" does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for nonhuman administration. If any person prescribes, dispenses, or distributes an anabolic steroid intended for administration to nonhuman species for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

(h) Hallucinogenic substances, including but not limited to: Dronabinol (synthetic), in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product."

SECTION 5. Section 329-20, Hawaii Revised Statutes, is amended to read as follows:

"**§329-20 Schedule IV.** (a) The controlled substances listed in this section are included in schedule IV.

(b) Depressants. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a depressant effect on the central nervous system:

(1) Alprazolam;
(2) Barbital;
(3) Bromazepam;
(4) Butorphanol;
(5) Camazepam;
(6) Carisoprodol;
(7) Chloral betaine;
(8) Chloral hydrate;
(9) Chlordiazepoxide;
(10) Clobazam;
(11) Clonazepam;
(12) Clorazepate;
(13) Clotiazepam;
(14) Cloxazolam;
(15) Delorazepam;
(16) Diazepam;
(17) Estazolam;
(18) Ethchlorvynol;
(19) Ethinamate;
(20) Ethyl loflazepate;
(21) Fludiazepam;
(22) Flunitrazepam;
(23) Flurazepam;
(24) Halazepam;
(25) Haloxazolam;
(26) Ketazolam;
(27) Loprazolam;
(28) Lorazepam;
(29) Lormetazepam;
(30) Mebutamate;
(31) Medazepam;

(32) Meprobamate;
(33) Methohexital;
(34) Methylphenobarbital (mephorbarbital);
(35) Midazolam;
(36) Nimetazepam;
(37) Nitrazepam;
(38) Nordiazepam;
(39) Oxazepam;
(40) Oxazolam;
(41) Paraldehyde;
(42) Petrichloral;
(43) Phenobarbital;
(44) Pinazepam;
(45) Prazepam;
(46) Quazepam;
(47) Temazepam;
(48) Tetrazepam;
(49) Triazolam;
(50) Zolpidem.

(c) Fenfluramine. Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

[(1)] Fenfluramine.

(d) Stimulants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Diethylpropion;
(2) Phentermine;
(3) Pemoline (including organometallic complexes and chelates thereof).

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts:

[(1) Dextropropoxyphene;
(2)] Pentazocine.

(f) The department of public safety may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) or any stimulant listed in subsection (d) from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant or stimulant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the degree of danger or probable danger of the substances which have a depressant or stimulant effect on the central nervous system.

(g) 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 calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than one milligram of difenoxin and not less than twenty-five micrograms of atropine sulfate per dosage unit (modafinil); and
(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).''

SECTION 6. 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 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 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;] or attempt to obtain any controlled substance or procure or attempt to procure the administration of any controlled substance:

(A) By fraud, deceit, misrepresentation, embezzlement, theft;

(B) By the forgery or alteration of a prescription or of any written order;

(C) By furnishing fraudulent medical information or the concealment of a material fact; or

(D) By the use of a false name, patient identification number, or the giving of false address;

(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;

(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 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'[3] employment; or

(7) To make, distribute, possess, or sell any prescription form, whether blank, faxed, computer generated, photocopied, or reproduced in any other manner without the authorization of the licensed practitioner."

SECTION 7. Section 329-69, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§329-69[]] Subpoena powers.** Subject to the privileges which witnesses have in the courts of this State, the director of public safety or the director's designated subordinate is empowered pursuant to and in accordance with the rules of court to subpoena witnesses, examine them under oath and require the production of books, papers, documents or objects where the director of public safety reasonably believes the information sought is relevant or material to enforcement of this [part.] chapter. Books, papers, documents, or objects obtained pursuant to exercise of these powers may be retained by the director of public safety or the director's designate for [a reasonable period of time] forty-eight hours for the purpose of examination, audit, copying, testing, or photographing. Upon application by the director of public safety,

obedience to the subpoenas may be enforced by the circuit court in the county where the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of a circuit court."

SECTION 8. Statutory material to be repealed is bracketed, except bracketed material contained within the name of the new substances listed in section 329-14(b), Hawaii Revised Statutes, in section 1 of this Act is not to be repealed. New statutory material is underscored.

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

(Approved May 16, 2000.)

**Notes**

1. So in original.
2. Prior to amendment hyphen appeared here.
3. Prior to amendment "person's" appeared here.

## ACT 99 H.B. NO. 1925

A Bill for an Act Relating to Elections.

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

SECTION 1. Section 11-194, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Each candidate who files nomination papers for office with the chief election officer or county clerk shall file an organizational report within [five] ten days of filing."

SECTION 2. Section 11-196, Hawaii Revised Statutes, is amended to read as follows:

"**§11-196 Organizational report, candidate's committee.** (a) The organizational report shall include:

(1) The name and address of the candidate or individual, or committee, [or party] filing the report[;], including web page address, if any;
(2) The name, address, office sought, district, and party affiliation, of each candidate or individual whom the committee or party is supporting;
(3) The names and addresses of the campaign treasurer and deputies together with the treasurer's written acceptance of appointment;
(4) The names and addresses of the campaign chairperson and deputy campaign chairperson together with the campaign chairperson's written acceptance of appointment;
(5) A list of all banks, safety deposit boxes, or other depositories used with each applicable account number; and
(6) The amount, name, and address, of each donor who has contributed an aggregate amount of more than $100 since the last election applicable to the office being sought [or to the ballot issue or question] and the amount and date of deposit of each such contribution[; and
(7) In the case of a report by a committee or party supporting or opposing a ballot question or issue, all of the information described in paragraphs (2) to (6) and a description of the question or issue].

(b) Any change in information submitted in the organizational report with the exception of subsection (a)(6) shall be reported no later than 4:30 p.m. on the tenth calendar day after such change is brought to the attention of the candidate, committee, [party,] or campaign treasurer."

SECTION 3. Section 11-200, Hawaii Revised Statutes, is amended to read as follows:

"**§11-200 Campaign contributions; restrictions against transfer.** (a) A candidate, campaign treasurer, or candidate's committee shall not receive any contributions or receive or make any transfer of money or anything of value:

(1) For any purpose other than that directly related:
   (A) In the case of the candidate, to the candidate's own campaign; or
   (B) In the case of a campaign treasurer or candidate's committee, to the campaign of the candidate, question, or issue with which they are directly associated; or
(2) To support the campaigns of candidates other than the candidate for whom the funds were collected or with whom the campaign treasurer or candidate's committee is directly associated; or
(3) To campaign against any other candidate not directly opposing the candidate for whom the funds were collected or with whom the campaign treasurer or candidate's committee is directly associated.

(b) Any provision of law to the contrary notwithstanding, a candidate, campaign treasurer, or candidate's committee, as a contribution[, may]:

(1) May purchase from its campaign fund not more than two tickets for each event held by another candidate, committee, or party whether or not the event constitutes a fundraiser as defined in section 11-203[.];
(2) May use campaign funds for any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office, as the term is used in section 11-206(c), Hawaii Revised Statutes; and
(3) May make contributions from its campaign fund to any community service, educational, youth, recreational, charitable, scientific, or literary organization, provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a), Hawaii Revised Statutes.

[(b)] (c) This section shall not be construed to prohibit a party from supporting more than one candidate.

[(c)] (d) This section shall not be construed to prohibit a candidate for the office of governor or lieutenant governor from supporting a co-candidate in the general election.

[(d)] (e) This section shall not be construed to prohibit a candidate from making contributions to the candidate's party so long as that contribution is not earmarked for another candidate."

SECTION 4. Section 11-204, Hawaii Revised Statutes, is amended by amending subsection (e) as follows:

"(e) Any candidate, candidate's committee, or committee that receives in the aggregate more than the applicable limits set forth in this section in any primary, initial special, special, or general election from a person, shall be required to do one of the following:

(1) Regardless of whether the excess donation was inadvertently made, to transfer an amount equal to any excess over the limits established in this section to the Hawaii election campaign fund within thirty days of receipt of the contribution, and in any event, no later than thirty days upon the receipt by a candidate, candidate's committee, or committee, of notification from the commission[.] ; or

(2) If the excess donation was inadvertently made, to return to the donor any excess over the limits established in this section and to notify the commission within thirty days of receipt of the contribution.

A candidate, candidate's committee, or committee who complies with this subsection prior to the initiation of prosecution shall not be subject to any penalty under section 11-228."

SECTION 5. Section 11-206, Hawaii Revised Statutes, is amended by amending subsection (c) to[1] as follows:

"(c) Such contributions may be used after a general or special election for any fundraising activity, for:

(1) [any] Any other politically related activity sponsored by the candidate[, for];

(2) [any] Any ordinary and necessary expenses incurred in connection with the candidate's duties as a holder of an elected state or county office[,]; or [for]

(3) [any] Any contribution to any community service, educational, youth, recreational, charitable, scientific, or literary organization, [or any other organization which the commission, by rules adopted pursuant to chapter 91, deems appropriate.] provided that in any election cycle, the total amount of all contributions from campaign funds and surplus funds shall be no more than the maximum amount that one person or other entity may contribute to that candidate pursuant to section 11-204(a), Hawaii Revised Statutes."

SECTION 6. Section 11-218, Hawaii Revised Statutes, is amended to read as follows:

"**§11-218 Candidate funding; amounts available.** (a) The maximum amount of public funds available to a candidate for the office of governor, lieutenant governor, or mayor in any election [year] shall not exceed [one-fifth or twenty] ten per cent of the total expenditure limit for each election as established for each office listed in this subsection pursuant to section 11-209.

(b) For the office of state senator, state representative, county council member, and prosecuting attorney, the maximum amount of public funds available to a candidate in any election [year] shall be [thirty] fifteen per cent of the total expenditure limit for each election as established for each office listed in this subsection pursuant to section 11-209.

(c) For the board of education and all other offices, the maximum amount of public funds available to a candidate shall not exceed $100 in any election year.

(d) [The total amount of public funds for a primary, special primary, or general election to which a candidate is entitled to receive under section 11-221 shall not exceed fifty per cent of the maximum amount of public funds available for the candidate's respective office.] Each candidate who qualified for the maximum amount of public funding in any primary or special primary election and who is a candidate for a subsequent general election shall [upon application] apply with the commission to be [entitled] qualified to receive [up to fifty per cent of the balance] the maximum amount of public funds [available to such candidate.] as provided in

this section for the respective election. For purposes of this section qualified means meeting the qualifying campaign contribution requirements of section 11-219."

SECTION 7. Section 11-228, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections 11-193(a)(5) and [[]11-215(c)[]]."

SECTION 8. Section 11-229, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The provisions of this section shall not apply to any person who, prior to the commencement of proceedings under this section, has paid or agreed to pay the penalties prescribed by sections 11-193(a)(5) and [[]11-215(c)[]]."

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect on November 8, 2000.

(Approved May 19, 2000.)

**Note**

1. So in original.

## ACT 100 H.B. NO. 1457

A Bill for an Act Relating to the Traffic Code.

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

SECTION 1. Section 291C-131, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) [Violations] Violation of this section shall be considered an offense as defined in section 701-107(5), shall not be subject to the provisions of chapter 291D, and shall subject the owner or driver of the vehicle, or both, to the following penalties without possibility of probation or suspension of sentence:

(1) For a first violation, by[:
   (A) Suspension of the vehicle registration or suspension of the license of the driver, or both, for five working days;
   (B) A] a fine of not less than $250 and not more than $500.
(2) For a second violation involving a vehicle or driver previously cited under this section[,] within one year:
   (A) Suspension of the vehicle registration or suspension of the license of the driver, or both, for not less than five working days but not more than ten working days; and
   (B) A fine of not less than $500 and not more than $750.
(3) For a third or subsequent violation involving a vehicle or driver previously cited under this section within one year:
   (A) Suspension of the vehicle registration or suspension of the license of the driver, or both, for a period of thirty calendar days; and
   (B) A fine of not less than $750 and not more than $1,000.

In imposing a fine under this subsection, the court, in its discretion, may apportion payment of the fine between the driver of the vehicle and the owner of the vehicle according to the court's determination of the degree of fault for the violation.

For the purposes of this subsection, a truck-trailer combination and tractor-semitrailer combination, as they are defined in section 286-2, shall be considered as one vehicle."

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

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved May 21, 2000.)

## ACT 101 H.B. NO. 2513

A Bill for an Act Relating to Unclaimed Corpses.

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

SECTION 1. Pursuant to section 27-1, Hawaii Revised Statutes, the burial or disposal of unclaimed corpses is identified as a state function. The department of human services, as provided by section 346-15, Hawaii Revised Statutes, has authority to pay for burial services, including cremation.

The purpose of this Act is to:

(1) Require the cremation of unclaimed corpses;
(2) Place the responsibility for authorizing cremation of unclaimed corpses upon the department of human services; and
(3) Provide immunity from liability arising from such cremations for the department and any person or public or private agency acting upon authorization by the department.

SECTION 2. Section 346-15, Hawaii Revised Statutes, is amended to read as follows:

"**§346-15 Burial of deceased public assistance recipients or unclaimed corpses.** (a) The department of human services may bear the cost of the burial of deceased public assistance recipients or unclaimed corpses. Burial services include the customary mortuary, crematory, cemetery, and other services essential in providing a dignified burial.

(b) The department may pay for mortuary and crematory services[,] to be furnished by any licensed provider of mortuary and crematory services. Mortuary and crematory payments shall be made to the extent of cost, or in the sum of $400, whichever is less.

(c) The department may pay for cemetery services, to be furnished by any licensed provider of cemetery services. Cemetery payments shall be made to the extent of cost, or in the sum of $400, whichever is less.

(d) In cases where the decedent is survived by relatives, the relatives shall be permitted to make their own arrangements for the burial or cremation of their deceased relative.

(e) The person making an application for funeral payments under the department's funeral payment program, on behalf of a deceased medical or financial assistance recipient or for an unclaimed corpse, shall have sixty days from the date

of death of the deceased to submit the application for funeral payments to the department.

(f) All unclaimed corpses shall be cremated. The department of human services shall authorize the cremation of unclaimed corpses.

(g) A person or public or private agency, including the department of human services, shall not be liable for any damage or subject to criminal prosecution for any act done pursuant to and in compliance with this section.

(h) For the purposes of this section, "unclaimed corpse" means the remains of any deceased person for whom no one has assumed responsibility for disposition of the body within five working days, excluding weekends, from the date of death and about whom the department and the respective county medical examiner or coroner have no actual knowledge of a legally responsible party.

[(f)] (i) The department shall adopt rules pursuant to chapter 91 for purposes of administering and implementing this section."

SECTION 3. Section 327-31, Hawaii Revised Statutes, is amended to read as follows:

"**§327-31 Medical, etc., use of unclaimed bodies authorized.** A university, hospital, or institution within the State authorized to teach and conduct research in medicine, anatomy, or surgery or having a medical preparatory or medical graduate course of instruction may receive from the department of health the unclaimed body of any person required to be buried or cremated at public expense and to use any such body for medical education and research purposes."

SECTION 4. Section 841-10, Hawaii Revised Statutes, is amended to read as follows:

"**§841-10 Decent burial.** When any coroner or deputy coroner takes an inquest upon the dead body of a stranger or indigent person or, being called for that purpose, does not think it[1] necessary, on view of the body, that any inquest should be taken, the coroner or deputy coroner shall cause the body to be decently buried[.] or cremated. A burial-transit permit authorizing a burial or cremation shall be secured from the local agent of the department of health by the person in charge of such burial[.] or cremation."

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

SECTION 6. This Act shall take effect on July 1, 2000.

(Approved May 21, 2000.)

**Note**

1. Prior to amendment "is" appeared here.

# ACT 102 H.B. NO. 2514

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 there is a need to clarify the law with respect to the interests of the department of human services when it asserts its claims pursuant to sections 346-15 and 346-37(a), Hawaii Revised Statutes.

The purpose of this Act is to clarify the priority of the department's claims to the estates of recipients pursuant to sections 346-15 and 346-37, Hawaii Revised Statutes, through the collection of personal property by affidavit in part 12 of article III of the Uniform Probate Code, chapter 560, Hawaii Revised Statutes.

SECTION 2. Section 560:3-805, Hawaii Revised Statutes, is amended to read as follows:

"**§560:3-805 Classification of claims.** (a) If the applicable assets of the estate are insufficient to pay all claims in full, the personal representative shall make payment in the following order:

(1) Costs and expenses of administration;
(2) Reasonable funeral expenses[;] including any claim by the department of human services pursuant to section 346-15;
(3) Debts and taxes with preference under federal law;
(4) Reasonable and necessary medical and hospital expenses of the last illness of the decedent, including compensation of persons attending the decedent[;] and any claim by the department of human services pursuant to section 346-37 for expenses of the last illness of the decedent;
(5) Debts and taxes with preference under other laws of this State; [and]
(6) Any other claim against the estate pursuant to section 346-37; and
[(6)] (7) All other claims.

(b) No preference shall be given in the payment of any claim over any other claim of the same class, and a claim due and payable shall not be entitled to a preference over claims not due."

SECTION 3. Section 560:3-1201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person indebted to the decedent or having possession of tangible personal property or an instrument evidencing a debt, obligation, stock, chose in action, or other intangible personal property belonging to the decedent shall make payment of the indebtedness or deliver the tangible personal property or an instrument evidencing the debt, obligation, stock, chose in action, or other intangible personal property to a person or persons claimed to be the successor or successors of the decedent or to the department of human services where the department has [paid for the decedent's burial pursuant to section 346-15,] a claim against the estate pursuant to section 346-15 or 346-37, upon being presented a death certificate for the decedent and an affidavit made by or on behalf of the claimed successor or successors or the department of human services stating that:

(1) The gross value of the decedent's estate in this State does not exceed $60,000; except that any motor vehicles registered in the decedent's name may be transferred regardless of value pursuant to this section;
(2) No application or petition for the appointment of a personal representative is pending or has been granted in this State; and

(3) (A) The claimed successor or successors are entitled to the property and explaining the relationship of the claimed successor or successors to the decedent; or

(B) The department of human services has [paid for the decedent's burial.] a claim against the estate pursuant to section 346-15 or 346-37.

The affidavit of the department of human services shall have priority over any other claim presented pursuant to this section."

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

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

(Approved May 22, 2000.)

## ACT 103 H.B. NO. 2555

A Bill for an Act Relating to Workers' Compensation Special Compensation Fund Expenses.

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

SECTION 1. Section 386-155, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§386-155[] Litigation expenses.]** **Expenses.** All litigation expenses, including but not limited to court costs, attorneys' fees, and witness fees incurred by the director in preparation, prosecution, or defense of any action brought on behalf of or against the special compensation fund shall be paid from the fund. Administrative expenses for the protection and preservation of the special compensation fund shall also be paid from the fund."

SECTION 2. There is appropriated out of the special compensation fund of the State of Hawaii the sum of $282,595 or so much thereof as may be necessary for fiscal year 2000-2001 to carry out the purpose of the special compensation fund, including the hiring of six full-time equivalent permanent positions subject to chapters 76 and 77, Hawaii Revised Statutes.

SECTION 3. The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

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

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

(Approved May 22, 2000.)

# ACT 104 H.B. NO. 2559

A Bill for an Act Relating to the Hawaii Workforce Development Council.

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

SECTION 1. Section 202-1, Hawaii Revised Statutes, is amended to read as follows:

"**§202-1 Council; appointment; tenure.** The advisory commission on employment and human resources is hereby constituted as the workforce development council. The council shall also fulfill the functions of the state workforce investment board for purposes of the federal Workforce Investment Act of 1998, Public Law No.[1] 105-220.

[The] Except for the ex officio members or their designees, the council members shall be appointed for four-year staggered terms as provided for in section 26-34. The governor shall appoint the chairperson of the council[.] and the two mayors to the council. The council shall be composed of [twenty-nine] thirty-one members. The members shall be selected on the basis of their interest in and knowledge of 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[,] or their designees, as ex officio voting members;
(2) [Fifteen] Sixteen private sector representatives from business, including at least one member from each of the four county workforce development boards;
(3) One representative from a community-based native Hawaiian organization that operates workforce development programs;
(4) Two representatives from labor;
(5) Four members of the legislature, two from each house, appointed by the appropriate presiding officer of each house[;], as ex officio voting members; [and]
(6) Two mayors or their [representatives.] designees, as ex officio voting members; and
(7) The governor or the governor's designee.

The members shall serve without compensation but shall be entitled to travel expenses when actually engaged in business relating to the work of the council."

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

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

(Approved May 22, 2000.)

**Note**

1. "No." should be underscored.

# ACT 105

H.B. NO. 1939

A Bill for an Act Relating to Kahoolawe Island Reserve Commission.

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

SECTION 1. Section 28-8.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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) By the auditor;
(14) By the office of ombudsman;
(15) By the insurance division;
(16) By the University of Hawaii; [or]
(17) By the Kahoolawe island reserve commission; or
[(17)] (18) 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."

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

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

(Approved May 22, 2000.)

# ACT 106 H.B. NO. 2490

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. 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[.]; and
(8) Granting extensions of credentials on a case-by-case basis pursuant to section 302A-805."

SECTION 2. 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, 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, if the credential holder continues to satisfy the board's credentialing standards and actively pursues appropriate licensing. For the 2000-2001 and 2001-2002 school years only, the board may, on a case-by-case basis, extend a credential for one year, but no more than twice for any credential holder; provided that the individual seeking an extension meets the following requirements and submits a written request to the board consisting of:

(1) Copies of the department's form C with supporting documents that demonstrate active pursuit of and satisfactory progression in license requirements;
(2) Documentation of extenuating circumstances that explain the need for an extension or lack of availability of programs and courses required for licensing;
(3) Narrative evaluation from current and past school principals documenting teaching performance according to the board's performance standards;

(4) Submittal of the credential holder's proposed action plan to meet all licensing standards;
(5) Documentation of passing scores for basic skills tests or documented evidence, which the individual maintains, of concerted effort to pass the basic skills test, beyond mere retaking of the test; and
(6) Documentation of passing scores for applicable subject matter content tests unless the subject matter is integrated into the teacher preparation program.

(b) The board shall consider the following in granting any extension:
(1) The diligence with which the credential holder has pursued licensing;
(2) The extenuating circumstances and the extent to which the individual has been subjected to constraints beyond the individual's control to the timely completion of all licensing requirements;
(3) Evidence of strong teaching performance according to the board's performance standards; and
(4) Likelihood of successful implementation of the credential holder's proposed action plan."

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

SECTION 4. This Act shall take effect upon its approval; provided that on June 30, 2002, this Act shall be repealed and sections 302A-803 and 302A-805, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act.

(Approved May 22, 2000.)

## ACT 107 H.B. NO. 2501

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 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[1] 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,] rule adopted by the department, 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 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 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 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval by the governor of the State of Hawaii with the consent of the United States.

(Approved May 22, 2000.)

**Note**

1. Prior to amendment "one" appeared here.

## ACT 108 H.B. NO. 2506

A Bill for an Act Relating to Prospective Adoptive Parents.

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

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§346- Prospective adoptive parents; standards and home studies.** (a) The department shall develop standards to assure the reputable and responsible character of prospective adoptive parents as defined in this chapter.

(b) The department shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are seeking to become adoptive parents. These procedures shall include but not be limited to criminal history record checks. The Hawaii criminal justice data center may charge a reasonable fee for criminal history record checks performed by the Federal Bureau of Investigation.

(c) Except as otherwise specified, any person who seeks to become an adoptive parent shall meet all standards and requirements as established by the department and shall be required to provide to the department:

(1) A sworn statement indicating whether or not the person has ever been convicted of an offense for which incarceration is a sentencing option, and the details thereof;
(2) Written consent for the department to conduct a criminal history record check as provided in subsection (b) and to obtain other information for verification; and
(3) Permission to be fingerprinted for the purpose of the Federal Bureau of Investigation criminal history record check.

Information obtained pursuant to subsection (b) and this subsection shall be used exclusively by the department for the purpose of determining whether or not a person is suitable to be an adoptive parent. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(d) The department may deny a person's application to adopt a child or children if either of the prospective adoptive parents was convicted of an offense for which incarceration is a sentencing option, and if the department finds by reason of the nature and circumstances of the crime that either of the prospective adoptive parents poses a risk to the health, safety, or well-being of the child or children. Such denial may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91.

(e) The department may authorize or contract for home studies of prospective adoptive parents for children under the department's custody by experienced social workers with specialized adoption experience.

(f) For the purposes of this section, "criminal history record check" means an examination or search for evidence of an individual's criminal history by means of:

(1) A search of the individual's fingerprints in the Federal Bureau of Investigation criminal history record files and, if found, an analysis and any other information available pertaining thereto; and
(2) A criminal history record check conducted by the Hawaii criminal justice data center."

SECTION 2. Section 346-16, Hawaii Revised Statutes, is amended by adding to subsection (a) a new definition to be appropriately inserted and to read as follows:

"<u>"Prospective adoptive parents" means a person, or persons who are married to each other, applying with the department to adopt a child or children.</u>"

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect on July 1, 2000.

(Approved May 22, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 109

H.B. NO. 2521

A Bill for an Act Relating to School Health Requirements.

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

SECTION 1. Section 302A-1154, Hawaii Revised Statutes, is amended to read as follows:

"**§302A-1154 Immunization upon entering school; tuberculosis clearance.** (a) No child shall attend any school in the State unless the child presents to the appropriate school official [certification from a licensed physician or advanced practice registered nurse stating] documentation satisfactory to the department of health that the child has received immunizations against communicable diseases as required by the department of health.

(b) No child shall be admitted to attend any school for the first time in the State unless the child presents to the appropriate school official [certification from a licensed physician, advanced practice registered nurse, or other authorized personnel stating] documentation satisfactory to the department of health that the child has [received a tuberculin test or x-ray] been examined and tested according to the rules of the department, and is free from tuberculosis in a communicable form."

SECTION 2. 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] documentation from a licensed physician, advanced practice registered nurse, or an authorized representative of the department of health stating that the child is in the process of receiving the required immunizations. Further [certification] documentation showing that the required immunizations have been completed [must] shall 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] documentation 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 3. Section 302A-1159, Hawaii Revised Statutes, is amended to read as follows:

"**§302A-1159 Physical examination required.** No child shall be admitted to any school for the first time in the State unless the child presents to the appropriate school official a [certification] report from a licensed physician or advanced practice registered nurse [stating that the child has undergone] of the results of a physical examination[. The physical examination shall be] performed within a year of the date of entry into school. A child may enter school provisionally upon submitting written [proof] documentation from a licensed physician, advanced practice registered nurse, or other authorized representative of the department of health stating that the child is in the process of undergoing a physical examination. Further [certification] documentation showing that the required physical examination has been completed [must] shall be submitted to the appropriate school official no later than three months after the child first entered the school."

SECTION 4. Section 302A-1160, Hawaii Revised Statutes, is amended to read as follows:

"**§302A-1160 [Health certificates.] Student's health record.** The department of education shall provide [health certificate] student health record forms for immunization and physical examination to the schools, private physicians, advanced practice registered nurses, and authorized personnel of the department of health. [Any immunization record signed by a licensed physician or advanced practice registered nurse may be accepted by the appropriate school official as certification of immunization if the information is transferred to the health certificate form and verified by the appropriate school official.]"

SECTION 5. Section 302A-1162, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§302A-1162[]] Rules.** (a) The department of health shall adopt rules under chapter 91 relating to immunization, physical examination, and tuberculin testing under sections 302A-1154 to 302A-1163. Immunizations required, and the manner and frequency of their administration, shall conform with recognized standard medical practices. The list of diseases and minimum requirements for protection under sections 302A-1154 to 302A-1163 may be revised whenever the department of health deems it necessary for the protection of public health.

(b) The department shall establish by rule standards for documentation of compliance with school health requirements under sections 302A-1154 through 302A-1163."

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 22, 2000.)

## ACT 110 H.B. NO. 2572

A Bill for an Act Relating to Kaneohe Bay.

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

SECTION 1. Section 200-39, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) Permits issued by the department for the commercial operation of ocean use activities in Kaneohe Bay shall be limited to the number and locations, by permit type and vessel and passenger capacity, provided in the Kaneohe Bay master plan developed pursuant to Act 208, Session Laws of Hawaii 1990 [and amended by section 200D-3;], until applicable rules consistent with the master plan are adopted by the department; provided that the passenger capacity for snorkeling tours and glassbottom boat tours shall be set through rules adopted pursuant to chapter 91. No thrill craft permit may be transferred after June 21, 1998; provided that transfers of permits may be made at any time between family members."

2. By amending subsection (e) to read:

"(e) All rules adopted by the department with regard to Kaneohe Bay shall be drafted in consultation with the Kaneohe Bay regional council [and shall be in accordance with, and implement the recommendations in, the Kaneohe Bay master plan]. For those provisions of the Kaneohe Bay master plan previously adopted by the legislature, the rules adopted by the department shall be in accordance with those provisions. Notwithstanding subsection (c) to the contrary, if the department determines for safety or environmental protection reasons that a permitted use should be relocated, the department may relocate the permitted use and the department shall have discretion to permit vessel substitution with a similar length vessel; provided that the increase is not greater than ten per cent of the current vessel length.

For those provisions of the Kaneohe Bay master plan developed pursuant to Act 208, Session Laws of Hawaii 1990, [and amended by section 200D-3.] not previously adopted by the legislature, the master plan shall be used as the recommended guideline in the adoption and implementation of rules with regard to the regulation of all activities in Kaneohe Bay."

SECTION 2. Act 129, Session Laws of Hawaii 1998, is amended by amending section 6 to read as follows:

"SECTION 6. Notwithstanding any law to the contrary, the department of land and natural resources shall not implement any provision relating to the locations of the commercial operation of ocean use activities in Kaneohe Bay recommended in the Kaneohe Bay master plan developed pursuant to Act 208, Session Laws of Hawaii 1990, [and amended by section 200D-3, Hawaii Revised Statutes,] until the department adopts rules relating to these activities pursuant to chapter 91, Hawaii Revised Statutes, and in accordance with section 200-39(e), Hawaii Revised Statutes."

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

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

(Approved May 22, 2000.)

## ACT 111 H.B. NO. 2643

A Bill for an Act Relating to Abandoned Motor Vehicles.

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

SECTION 1. Section 286-51, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) This part shall be administered by the director of finance in conjunction with the requirements of sections 249-1 to 249-13 and shall entail no additional expense or charge to the person registering the ownership of a motor vehicle other than as provided by this section or by other laws; provided that for each new certificate of ownership issued by the director of finance under section 286-52, the director of finance may charge a fee which shall be deposited in the general fund. The fees charged to issue a new certificate of ownership shall be established by the county's legislative body.

Notwithstanding any other law to the contrary, an additional fee of not more than $1 for each certificate of registration for a U-drive motor vehicle and $2 for each certificate of registration for all other motor vehicles may be established by

ordinance and collected annually by the director of finance of each county, to be used and administered by each county [for]:

(1) For the purpose of beautification and other related activities of highways under the ownership, control, and jurisdiction of each county[.]; and [to]

(2) To defray the additional cost in the disposition and other related activities of abandoned or derelict vehicles as prescribed in chapter 290.

The $2 fee established pursuant to this subsection for certificates of registration for motor vehicles other than U-drive motor vehicles may be increased by ordinance up to a maximum of $5; provided that all amounts received from any fee increase over $2 shall be expended only for the purposes of paragraph (2). The moneys so assessed and collected shall be placed in a revolving fund entitled, "the highway beautification and disposal of abandoned or derelict vehicles revolving fund"."

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

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

(Approved May 22, 2000.)

## ACT 112 H.B. NO. 2650

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. This Act shall be known and may be cited as the Judiciary Supplemental Appropriations Act of 2000.

SECTION 2. This Act amends Act 156, Session Laws of Hawaii 1999.

SECTION 3. Part II, Act 156, Session Laws of Hawaii 1999, is amended to read as follows:

"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, 1999, and ending June 30, 2001. 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 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| **The Judicial System** | | | | | | | |
| 1. | JUD101 | COURTS OF APPEAL | | 76.00* | | 76.00* | |
| | | OPERATING | JUD | 4,633,053A | | 4,633,053A | |
| | | | JUD | 75,000W | | 75,000W | |
| 2. | JUD111 | CIRCUIT COURTS | | 489.50* | | [ 493.50*] | |
| | | | | | | 494.50* | |
| | | OPERATING | JUD | 26,077,341A | | [ 26,041,957A] | |
| | | | JUD | | | 26,370,810A | |
| | | | JUD | 212,602N | | | |
| 3. | JUD112 | FAMILY COURTS | | 412.00* | | [ 416.00*] | |
| | | | | | | 422.00* | |
| | | OPERATING | JUD | 26,537,136A | | [ 26,683,470A] | |
| | | | JUD | | | 27,426,160A | |
| | | | JUD | 386,575B | | [ 386,575B] | |
| | | | JUD | | | 454,075B | |
| 4. | JUD121 | DISTRICT COURTS | | 495.50* | | [ 495.50*] | |
| | | | | | | 498.50* | |
| | | OPERATING | JUD | 17,911,155A | | [ 17,878,430A] | |
| | | | JUD | | | 18,109,886A | |
| | | | | 35.00* | | 35.00* | |
| | | | JUD | 1,643,033B | | 1,617,033B | |
| 5. | JUD201 | ADMIN. DIRECTOR SERVICES | | 236.00* | | 236.00* | |
| | | OPERATING | JUD | 15,690,914A | | [ 15,438,872A] | |
| | | | JUD | | | 16,011,017A | |
| | | | JUD | 2,080,102B | | 2,188,937B | |
| | | INVESTMENT CAPITAL | JUD | 2,970,000C | | [ 30,900,000C] | |
| | | | JUD | | | 37,890,000C" | |

SECTION 4. Part III, Session Laws of Hawaii 1999[1], is amended:

(1) By adding a new section to read as follows:

"SECTION 8.1. Provided that of the general fund appropriation for family court (JUD 112), the sum of $350,000 for fiscal year 2000-2001 shall be expended for the appointment of guardians ad litem and counsel for indigent parties pursuant to the provisions of Chapter 587, HRS; provided further that the judiciary shall provide a report on the effectiveness and efficiency of this program to the legislature no later than twenty days prior to the convening of the 2001 regular session."

(2) By adding a new section to read as follows:

"SECTION 8.2. Provided that of the general fund appropriation for family court (JUD 112), not more than $222,690 for fiscal year 2000-2001 shall be expended to create two additional circuit court clerk II positions, two additional court bailiff II positions, one additional judicial clerk III position, and one additional social worker IV position to assist with domestic violence cases."

(3) By adding a new section to read as follows:

"SECTION 8.3. Provided that of the general fund appropriation for administrative services (JUD 201), not more than $400,000 for fiscal year 2001 shall be expended for on-line personnel management; provided further that the judiciary shall provide a report on implementation and cost-benefit analysis to the legislature no later than twenty days prior to the convening of the 2001 session."

(4) By adding a new section to read as follows:

"SECTION 8.4. Provided that the judiciary is authorized to expend $30,000 for the purpose of analyzing, and determining an implementation strategy for organizing the state judiciary into a "single tier" trial court system, pursuant to the Achieving Court Excellence (ACE) initiatives adopted by the Chief Justice."

SECTION 5. Part IV, Act 156, Session Laws of Hawaii 1999, is amended to read as follows:

## "PART IV. CAPITAL IMPROVEMENTS PROGRAM PROJECTS

SECTION 9. The sum of [$33,870,000] $40,860,000 appropriated or authorized in part II of this Act for capital improvement[2] 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**

| | | | | APPROPRIATIONS (IN 000's) | | | |
|---|---|---|---|---|---|---|---|
| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
| **The Judicial System** | | | | | | | |
| **JUD201 - ADMIN. DIRECTOR SERVICES** | | | | | | | |
| 1. | | FAMILY COURT AND JUVENILE DETENTION CENTER, OAHU | | | | | |
| | | PLANS, LAND ACQUISITION, AND DESIGN FOR THE FAMILY COURT AND JUVENILE DETENTION CENTER AT KAPOLEI, OAHU. | | | | | |
| | | PLANS | | 1 | | | |
| | | LAND | | 1 | | | |
| | | DESIGN | | 198 | | | |
| | | TOTAL FUNDING | JUD | 200C | | | C |
| 2. | | KAUAI JUDICIARY COMPLEX, KAUAI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR A NEW JUDICIARY COMPLEX IN LIHUE, KAUAI. | | | | | |
| | | DESIGN | | 40 | | | |
| | | CONSTRUCTION | | 755 | | 30,000 | |
| | | TOTAL FUNDING | JUD | 795C | | 30,000C | |
| 3. | | HOAPILI HALE UPGRADE IMPROVEMENTS, MAUI | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR UPGRADE IMPROVEMENTS AT HOAPILI HALE IN WAILUKU, MAUI. | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN | | 10 | | | |
| | | CONSTRUCTION | | 180 | | | |
| | | EQUIPMENT | | 10 | | | |
| | | TOTAL FUNDING | JUD | 200C | | | C |
| 4. | | BACK-UP POWER FOR JUDICIARY COMPUTER CENTER, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR EMERGENCY ELECTRICAL POWER SYSTEMS FOR THE JUDICIARY COMPUTER CENTER AT KAUIKEAOULI, OAHU. | | | | | |
| | | PLANS | | 5 | | | |
| | | DESIGN | | 45 | | 15 | |
| | | CONSTRUCTION | | | | 420 | |
| | | EQUIPMENT | | | | 15 | |
| | | TOTAL FUNDING | JUD | 50C | | 450C | |
| 5. | | HILO STATE OFFICE BUILDING DISTRICT COURT INTERIOR ALTERNATIONS, HAWAII | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INTERIOR ALTERATIONS TO DISTRICT COURT OFFICES AT HILO, HAWAII. | | | | | |
| | | PLANS | | 5 | | | |
| | | DESIGN | | 15 | | | |
| | | CONSTRUCTION | | 75 | | | |
| | | EQUIPMENT | | 5 | | | |
| | | TOTAL FUNDING | JUD | 100C | | | C |
| 6. | | ARCHITECTURAL BARRIER REMOVAL FOR JUDICIARY BUILDINGS, STATEWIDE | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF ARCHITECTURAL BARRIERS IN JUDICIARY BUILDINGS, STATEWIDE. | | | | | |
| | | PLANS | | 1 | | 1 | |
| | | DESIGN | | 1 | | 1 | |
| | | CONSTRUCTION | | 897 | | 447 | |
| | | EQUIPMENT | | 1 | | 1 | |
| | | TOTAL FUNDING | JUD | 900C | | 450C | |
| 7. | | REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REMODELING AND UPGRADING JUDICIARY BUILDINGS, STATEWIDE. | | | | | |
| | | PLANS | | 5 | | | |
| | | DESIGN | | 70 | | | |
| | | CONSTRUCTION | | 415 | | | |
| | | EQUIPMENT | | 10 | | | |
| | | TOTAL FUNDING | JUD | 500C | | | C |
| 8. | | HOOKELE COURT NAVIGATIONAL PROJECT, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR COURT CONCIERGE AND CUSTOMER SERVICE CENTERS WITHIN JUDICIARY BUILDINGS, OAHU. | | | | | |
| | | PLANS | | 5 | | | |
| | | DESIGN | | 20 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION | | 200 | | | |
| | | TOTAL FUNDING | JUD | 225C | | | C |
| 8A. | | HILO JUDICIARY COMPLEX, HAWAII | | | | | |
| | | PLANS AND LAND ACQUISITION FOR THE HILO JUDICIARY COMPLEX. | | | | | |
| | | PLANS | | | | 1 | |
| | | LAND | | | | 6,500 | |
| | | TOTAL FUNDING | JUD | | C | 6,501 | C |
| 8B. | | ALIIOLANI HALE ROOF AND STRUCTURAL IMPROVEMENTS, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR ROOF AND STRUCTURAL IMPROVEMENTS AT ALIIOLANI HALE, OAHU. | | | | | |
| | | DESIGN | | | | 15 | |
| | | CONSTRUCTION | | | | 250 | |
| | | TOTAL FUNDING | JUD | | C | 265 | C |
| 8C. | | KOLOA DISTRICT COURT AND LIHUE OFFICE ANNEX FACILITY IMPROVEMENTS, KAUAI | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR KOLOA DISTRICT COURT AND LIHUE OFFICE ANNEX IMPROVEMENTS, KAUAI. | | | | | |
| | | DESIGN | | | | 13 | |
| | | CONSTRUCTION | | | | 114 | |
| | | EQUIPMENT | | | | 97 | |
| | | TOTAL FUNDING | JUD | | C | 224 | C" |

SECTION 6. Part V, Act 156, Session Laws of Hawaii 1999, is amended by amending section 10 to read as follows:

"PART V. ISSUANCE OF BONDS

SECTION 10. 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 [$33,870,000.] $40,860,000."

SECTION 7. Act 156, Session Laws of Hawaii 1999, is amended by adding a new section to read as follows:

"SECTION 10A. Any law to the contrary notwithstanding the appropriation under Act 155, Session Laws of Hawaii 1997, section 13, as amended and renumbered by Act 126, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balances thereof, unallotted, unencumbered, and unrequired, are hereby lapsed:

| Item No. | Amount | (MOF) |
|---|---|---|
| JUD 201-1 | 2,963,000 | C |
| JUD 201-10 | 200,000 | C" |

SECTION 8. 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 9. 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 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect on July 1, 2000.

(Approved May 22, 2000.)

**Notes**

1. So in original.
2. Prior to amendment "program" appeared here.

## ACT 113

H.B. NO. 2653

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Section 706-647, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A certified or exemplified copy of an order of any court of this State for payment of a fine or restitution pursuant to section 706-605 may be filed in the office of the clerk of an appropriate court of this State as a special proceeding <u>without the assessment of a filing fee or surcharge</u>. The order, whether as an independent order, as part of a judgment and sentence, or as a condition of probation or deferred plea, shall be enforceable in the same manner as a civil judgment."

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved May 22, 2000.)

## ACT 114

S.B NO. 2427

A Bill for an Act Making an Appropriation for Compensation of Crime Victims.

*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 $877,025, or so much thereof as may be necessary for fiscal year 2000-2001, to be deposited into the crime victim compensation special fund.

SECTION 2. There is appropriated out of the crime victim compensation special fund the sum of $877,025, or so much thereof as may be necessary for fiscal year 2000-2001 for the sole purpose of compensating certain persons or their providers of services pursuant to chapter 351, Hawaii Revised Statutes, by payments authorized by the crime victim compensation commission.

SECTION 3. The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2000.

(Approved May 22, 2000.)

## ACT 115 S.B NO. 2533

A Bill for an Act Relating to Crime Victim Compensation.

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

SECTION 1. Section 351-62.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Funds received pursuant to section 354D-12(b)(1) and amounts received pursuant to sections 351-35, 351-62.6, 351-63, [and] 706-605, and 853-1 shall be deposited into the crime victim compensation special fund. Moneys received shall be used for compensation payments, operating expenses, salaries of positions as authorized by the legislature, and collection of fees. The commission may enter into memorandums of agreement with the judiciary for the collection of fees by the judiciary; provided that no funds shall be deposited by the judiciary into the crime victim compensation special fund until collected."

SECTION 2. Section 351-62.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The court shall impose a compensation fee upon every [convicted] defendant who has been convicted or who has entered a plea under section 853-1 and who is or will be able to pay the compensation fee. The amount of the compensation fee shall be commensurate with the seriousness of the offense as follows:

(1) Not less than $100 nor more than $500 for [conviction of] a felony;
(2) $50 for [conviction of] a misdemeanor; and
(3) $25 for [conviction of] a petty misdemeanor.

The compensation fee shall be separate from any fine that may be imposed under section 706-640 and shall be in addition to any other disposition under this chapter; provided that the court shall waive the imposition of a compensation fee if the defendant is unable to pay the compensation fee. Moneys from the compensation fees shall be deposited into the crime victim compensation special fund under section 351-62.5."

SECTION 3. Section 853-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The proceedings may be deferred upon any of the conditions specified by section 706-624. As a further condition, the court shall impose a compensation fee pursuant to section 351-62.6 upon every defendant who has entered a plea of guilty or nolo contendere to a petty misdemeanor, misdemeanor, or felony; provided that the court shall waive the imposition of a compensation fee, if it finds that the

defendant is unable to pay the compensation fee. The court may defer the proceedings for [such] a period of time as the court shall direct but in no case to exceed the maximum sentence allowable [unless]; provided that, if the defendant has entered a plea of guilty or nolo contendere to a petty misdemeanor, [in which case] the court may defer the proceedings for a period not to exceed one year. The defendant may be subject to bail or recognizance at the court's discretion during the period during which the proceedings are deferred."

SECTION 4. This Act shall not apply to any person who has entered a plea under section 853-1, Hawaii Revised Statutes, prior to its effective date.

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

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

(Approved May 22, 2000.)

## ACT 116 S.B NO. 2535

A Bill for an Act Relating to Probate.

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

SECTION 1. Section 560:3-203, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A person entitled to letters under subsection (a)(2) to (5)[, and a person aged eighteen and over who would be entitled to letters but for the person's age,] may nominate a qualified person to act as personal representative. Any person aged eighteen and over may renounce the person's right to nominate or to an appointment by appropriate writing filed with the court. When two or more persons share a priority, those of them who do not renounce [must] shall concur in nominating another to act for them, or in applying for appointment."

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

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

(Approved May 22, 2000.)

## ACT 117 S.B NO. 2621

A Bill for an Act Relating to Health.

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

SECTION 1. Chapter 132D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§132D- Health care facilities; report of fireworks incidents.** Health care facilities in this State shall report all incidents of serious injuries and fatalities

caused by legal and illegal fireworks to the department of health and the police department of the county in which the person was attended or treated. All reports shall be in writing or in the manner specified by the department of health.

As used in this section, "health care facilities" includes any outpatient clinic, emergency room, or doctor's office, private or public, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person or persons. The term includes but is not limited to health care facilities that are commonly referred to as hospitals, extended care and rehabilitation centers, nursing homes, skilled nursing facilities, intermediate care facilities, hospices for the terminally ill that require licensure or certification by the department of health, kidney disease treatment centers including freestanding hemodialysis units, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, home health agencies, health maintenance organizations, and others providing similarly organized services regardless of nomenclature."

SECTION 2. New statutory material is underscored.[1]

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

(Approved May 22, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 118 S.B NO. 2779

A Bill for an Act Relating to State Enterprise Zones.

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

SECTION 1. The legislature finds that the state enterprise zones law offers state and county tax and other incentives to certain types of businesses that increase their hiring in the zones selected by the counties and approved by the governor. Enterprise zones are intended to stimulate business and industrial growth in low-income or high unemployment areas to help revitalize those areas. The legislature further finds that it is necessary to make several changes to the enterprise zones law to accomplish the law's intended purpose.

The purpose of this Act is to enhance the effectiveness of, clarify the administration of, and expand the enterprise zones law.

SECTION 2. Section 209E-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"<u>"Call center" means a business providing service at an establishment in which customer and technical support service for manufacturing companies, computer hardware and software companies, credit collection services, product fulfillment services, or disaster management services, are provided by telephone; provided that the business shall not include telemarketing or sales.</u>"

2. By amending the definitions of "enterprise zone", "qualified business", "service business", and "telecommunication services" to read:

"<u>"Enterprise zone" means an area nominated by, and within the jurisdiction of, a county government, and subsequently</u> declared by the governor to be eligible for the benefits of this chapter.

"Qualified business" means any corporation, partnership, or sole proprietorship authorized to do business in the State [which] that is qualified under section 209E-9 [and is:

(1) Subject], subject to the state corporate or individual income tax under chapter 235[;], and;

[(2)] (1) Engaged in manufacturing, the wholesale sale of tangible personal property as defined in section 237-4, or a service business as defined in this chapter; or

[(3)] (2) Engaged in producing agricultural products where the business is a producer as defined in section 237-5[.]; or

(3) Engaged in research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products.

"Service business" [for the purposes of this chapter] means any corporation, partnership, or sole proprietorship that repairs ships [or], aircraft, or assisted technology equipment, provides telecommunication services, information technology design and production services, medical and health care services, or education and training services as defined in this chapter.

"Telecommunication services" means terrestrial (copper and optical fiber cable) and satellite information delivery systems, switching systems, [and] ground stations, and call centers, but not consumer services."

SECTION 3. Section 209E-9, Hawaii Revised Statutes, is amended to read as follows:

**"§209E-9 Eligibility[.]; qualified business; sale of property or services.** (a) Any business firm may be eligible to be designated a ["qualified business"] qualified business for purposes of this chapter if the business:

(1) Begins the operation of a trade or business within an enterprise zone;

(2) During each taxable year has at least fifty per cent of its enterprise zone establishment's gross receipts attributable to the active conduct of trade or business within the enterprise zone;

(3) Increases its average annual number of full-time employees by at least ten per cent by the end of its first tax year of participation; and

(4) During each subsequent taxable year at least maintains that higher level of employment.

(b) A business firm also may be eligible to be designated a ["qualified business"] qualified business for purposes of this chapter if the business:

(1) Is actively engaged in the conduct of a trade or business in an area immediately prior to an area being designated an enterprise zone;

(2) Meets the requirements of subsection (a)(2); and

(3) Increases its average annual number of full-time employees employed at the business' establishment or establishments located within the enterprise zone by at least ten per cent annually.

(c) After designation as an enterprise zone, each qualified business firm in the zone shall submit annually to the department an approved form supplied by the department [which] that provides the information necessary for the department to determine if the business firm [meets the definition of a "qualified business".] qualifies as a qualified business. The approved form shall be submitted by each business to the governing body of the county in which the enterprise zone is located, then forwarded to the department by the governing body of the county.

(d) The form referred to in subsection (c) shall be prima facie evidence of the eligibility of a business for the purposes of this section.

(e) Tangible personal property [must] shall be sold [by] at an establishment of a qualified business within an enterprise zone and the transfer of title to the buyer of the tangible personal property [must] shall take place in the same enterprise zone in which the tangible personal property is sold. Services [must] shall be sold [by] at an establishment of a qualified business engaged in a service business within an enterprise zone and the services [must] shall 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], or the engaging in research, development, sale, or production of all types of genetically-engineered medical, agricultural, or maritime biotechnology products. The department shall also certify annually to the department of taxation that any qualified business is exempt from the use tax for purchases by [a] the qualified business. The gross proceeds received by a contractor licensed under chapter 444 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. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 22, 2000.)

## ACT 119 S.B NO. 2843

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 204 of the Hawaiian Homes Commission Act, 1920, as amended, is amended by amending subsection (a) to read as follows:

"(a) Upon the passage of this Act, all available lands shall immediately assume the status of Hawaiian home lands and be under the control of the department to be used and disposed of in accordance with the provisions of this Act, except that:

(1) In case any available land is under lease by the Territory of Hawaii, by virtue of section 73 of the Hawaiian Organic Act, at the time of the passage of this Act, such land shall not assume the status of Hawaiian home lands until the lease expires or the board of land and natural resources withdraws the lands from the operation of the lease. If the land is covered by a lease containing a withdrawal clause, as provided in section 73(d) of the Hawaiian Organic Act, the board of land and

natural resources shall withdraw such lands from the operation of the lease whenever the department gives notice to the board that the department is of the opinion that the lands are required by it for the purposes of this Act; and such withdrawal shall be held to be for a public purpose within the meaning of that term as used in section 73(d) of the Hawaiian Organic Act.

(2) Any available land, including lands selected by the department out of a larger area, as provided by this Act, not leased as authorized by section 207(a) of this Act, may be returned to the board of land and natural resources as provided under section 212 of this Act, or may be retained for management by the department. Any Hawaiian home lands general lease issued by the department after June 30, 1985, shall contain a withdrawal clause allowing the department to withdraw the land leased at any time during the term of the lease for the purposes of this Act.

In the management of any retained available lands not required for leasing under section 207(a), the department may dispose of those lands or any improvements thereon to the public, including native Hawaiians, on the same terms, conditions, restrictions, and uses applicable to the disposition of public lands in chapter 171, Hawaii Revised Statutes; provided that the department may not sell or dispose of such lands in fee simple except as authorized under section 205 of this Act; provided further that the department is expressly authorized to negotiate, prior to negotiations with the general public, the disposition [of a lease] of Hawaiian home lands or any improvements thereon to a native Hawaiian, or organization or association owned or controlled by native Hawaiians, for commercial, industrial, or other business purposes, in accordance with the [procedure] procedures set forth in [section 171-59, Hawaii Revised Statutes, subject to the notice requirement of section 171-16(c), Hawaii Revised Statutes, and the lease rental limitation imposed by section 171-17(b),] chapter 171, Hawaii Revised Statutes.

(3) The department, with the approval of the Secretary of the Interior, in order to consolidate its holdings or to better effectuate the purposes of this Act, may exchange the title to available lands for land, privately or publicly owned, of an equal value. All lands so acquired by the department shall assume the status of available lands as though the land were originally designated as available lands under section 203 of this Act, and all lands so conveyed by the department shall assume the status of the land for which it was exchanged. The limitations imposed by section 73(l) of the Hawaiian Organic Act and the land laws of Hawaii as to the area and value of land that may be conveyed by way of exchange shall not apply to exchanges made pursuant hereto. No such exchange of land publicly owned by the State shall be made without the approval of two-thirds of the members of the board of land and natural resources. For the purposes of this paragraph, lands "publicly owned" means land owned by a county or the State or the United States."

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

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

(Approved May 22, 2000.)

# ACT 120 H.B. NO. 2568

A Bill for an Act Relating to State Parks.

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

SECTION 1. Chapter 184, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

"**§184- State parks special fund.** (a) There is established within the state treasury a fund to be known as the state parks special fund. All proceeds collected by the state parks programs involving park user fees, any leases or concession agreements, the sale of any article purchased from the department to benefit the state parks programs, or any gifts or contributions, shall be deposited into this fund; provided that proceeds derived from the operation of Iolani Palace shall be used to supplement its educational and interpretive programs.

(b) The department shall expend the moneys from the state parks special fund for the following purposes:

(1) Permanent and temporary staff positions;
(2) Planning and development of state parks programs, including the aina hoomalu state parks program;
(3) Construction, repairs, replacement, additions, and extensions of state parks facilities;
(4) Operation and maintenance costs of state parks and state parks programs; and
(5) Administrative costs of the division of state parks."

SECTION 2. Section 184-32, Hawaii Revised Statutes, is repealed.

SECTION 3. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the aina hoomalu special fund calculated as of the close of business on June 30, 2000, to the credit of the state parks special fund. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

SECTION 4. There is appropriated out of the state parks special fund the sum of $500,000 or so much thereof as may be necessary for fiscal year 2000-2001 to be expended by the department of land and natural resources for the purposes of the state parks special fund.

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 6. This Act shall take effect on June 29, 2000, except that sections 2 and 4 shall take effect on July 1, 2000.

(Approved May 26, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 121

H.B. NO. 2569

A Bill for an Act Relating to the Commercial Fisheries Special Fund.

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

SECTION 1. Chapter 189, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§189- Commercial fisheries special fund.** (a) There is established in the treasury of the State a special fund to be known as the commercial fisheries special fund which shall be administered by the department.

(b) The following revenues shall be deposited into the commercial fisheries special fund:

(1) Moneys collected as fees for commercial fishing licenses and permits, use of public fishing grounds for commercial fishing purposes, and use of commercial fisheries-related facilities;

(2) Moneys collected under the provision of any law or rule related to the importation, rearing, fishing, taking, catching, or killing of any aquatic life for commercial purposes;

(3) Moneys, other than informers' fees authorized under section 187A-14, collected as fines or bail forfeitures or administrative fines for violations of this chapter;

(4) Moneys collected from the sale of any article purchased from the department related to aquatic life used for commercial purposes or fishing for commercial purposes;

(5) Any monetary contributions or moneys collected from the sale of non-monetary gifts to benefit aquatic life used for commercial purposes or fishing for commercial purposes; and

(6) Moneys derived from interest, dividend, or other income from the above sources.

(c) The commercial fisheries special fund shall be used for the following:

(1) Programs and activities for projects concerning aquatic life used for commercial purposes;

(2) Developing and conducting resource monitoring programs, conducting studies to determine the sustainable use of aquatic life for commercial purposes, and developing recommendations for acceptable levels of use;

(3) Research programs and activities concerning the conservation and management of aquatic life for commercial purposes;

(4) Programs and activities concerning the importation and management, preservation, propagation, and protection of aquatic life used for commercial purposes; and

(5) Payroll for personnel of the department or the awarding of grants-in-aid to or contracts with the University of Hawaii or other qualified organizations or individuals to develop or implement the programs and activities for the conservation and management of aquatic life for commercial purposes.

(d) The proceeds of the commercial fisheries special fund shall not be used as security for, or pledged to the payment of principal or interest on, any bonds or instruments of indebtedness.

(e) Nothing in this section shall be construed to prohibit the use of general funds or the funds of other programs and activities to implement or enforce title 12,

subtitle 5, concerning management and conservation of aquatic life used for commercial purposes."

SECTION 2. Act 220, Session Laws of Hawaii 1996, is repealed.

SECTION 3. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the commercial fisheries special fund established under Act 220, Session Laws of Hawaii 1996, as of the close of business on June 30, 2000, to the credit of the commercial fisheries special fund established in section 1. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

SECTION 4. There is appropriated out of the commercial fisheries special fund the sum of $150,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the purposes of this Act.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 5. New statutory material is underscored.[1]

SECTION 6. This Act shall take effect on June 29, 2000, except that sections 2 and 4 shall take effect on July 1, 2000.

(Approved May 26, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 122 H.B. NO. 2573

A Bill for an Act Relating to the Special Funds of the Land Division.

*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 Hawaiian Homes Commission Act of 1920, as amended, and 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; all rents from leases, licenses, and permits derived from public lands; all moneys collected from lessees of public lands within industrial parks; all fees, fines, and other administrative charges collected under this chapter[;] and chapter 183C; 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 for the following purposes:

(1) To reimburse the general fund of the State for advances made that are required to be reimbursed from the proceeds derived from sales, leases, licenses, or permits of public lands;

(2) For the planning, development, management, operations, or maintenance of all lands and improvements under the control and manage-

ment of the board, including but not limited to permanent or temporary staff positions who may be appointed without regard to [[]chapters[]] 76 and 77;

(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 management, maintenance, and development of trails and trail accesses under the jurisdiction of the department not to exceed $500,000 in any fiscal year;

(7) For the payment to private land developers who have contracted with the board for development of public lands under section 171-60; [and]

(8) For the payment of debt service on revenue bonds issued by the department, and the establishment of debt service and other reserves deemed necessary by the board;

(9) To reimburse the general fund for debt service on general obligation bonds issued to finance departmental projects, where the bonds are designated to be reimbursed from the special land and development fund; and

[(8)] (10) For other purposes of this chapter."

SECTION 2. Section 171-138, Hawaii Revised Statutes, is repealed.

SECTION 3. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the industrial park special fund calculated as of the close of business on June 30, 2000, to the credit of the special land and development fund. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

SECTION 4. There is appropriated out of the special land and development fund the sum of $2,000,000, or so much thereof as may be necessary, for fiscal year 2000-2001 for purposes of this fund. The sum appropriated shall be expended by the department of land and natural resources for the purposes of this fund.

SECTION 5. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 6. This Act shall take effect on June 29, 2000, except that sections 1, 2, and 4 shall take effect on July 1, 2000.

(Approved May 26, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 123 S.B NO. 185

A Bill for an Act Relating to Education.

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

SECTION 1. Section 302A-442, Hawaii Revised Statutes, is amended to read as follows:

"[[]§302A-442[]] **Occupational therapy services, physical therapy services, school health services, mental health services, psychological services, and medical services for diagnostic or evaluative purposes.** (a) The department of health, within the funds available, shall be responsible for the related services of [occupational therapy, physical therapy,] school health, mental health, psychological, and medical services for evaluation or diagnostic purposes, and, within the funds available, shall provide for those exceptional children who need these services and who attend public school in the State.

(b) The department of education, within the funds available, shall be responsible for the related services of occupational therapy and physical therapy for evaluation or diagnostic purposes, and, within the funds available, shall provide for those exceptional children who need these services and who attend public school in the State.

(c) The department of health shall work in cooperation with the department of education to implement this section. The procedures to implement this section shall be in accordance with the [department of health's] rules[.] of the department of health and the department of education."

SECTION 2. All rights, powers, functions, and duties of the occupational therapy and physical therapy programs of the school health support services section are transferred from the department of health to the department of education. All officers and employees of the occupational therapy and physical therapy programs of the school health support services section whose functions are transferred by this Act:

(1) Shall be transferred with their functions;
(2) Shall continue to perform their regular duties upon their transfer; and
(3) Shall retain all rights, benefits, and privileges that they currently enjoy in their employment with the department of health,

subject to state personnel laws and this Act. No tenured officer or employee of the occupational therapy program or physical therapy program of the school health support services section 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 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2001.

(Approved May 26, 2000.)

# ACT 124

S.B NO. 915

A Bill for an Act Relating to Candidate Vacancies.

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

SECTION 1. Section 11-118, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If the party fills the vacancy, and so notifies the chief election officer or clerk not later than 4:30 p.m. on the third day after the vacancy occurs, but not later than 4:30 p.m. on the fiftieth day prior to a primary or special primary election or not later than 4:30 p.m. on the fortieth day prior to a special, general, or special general election, the name of the replacement shall be printed in an available and appropriate place on the ballot, not necessarily in alphabetical order[.]; provided that the replacement candidate fills out an application for nomination papers and signs the proper certifications on the nomination paper and takes either an oath or affirmation as provided by law. If the party fails to fill the vacancy pursuant to this subsection, no candidate's name shall be printed on the ballot for the party for that race."

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

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

(Approved May 26, 2000.)

# ACT 125

S.B NO. 2108

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 purpose of this Act is to facilitate the establishment of a comprehensive information system for inventorying and maintaining information about the lands of the public land trust described in section 5(f) of the Admission Act and article XII, section 4 of the State Constitution.

SECTION 2. (a) The auditor shall initiate and coordinate all efforts to establish a public land trust information system. The information system shall consist of:

(1) The inventory of:
   (A) The lands comprising the public land trust as of August 21, 1959;
   (B) The lands acquired after August 21, 1959, in exchange for lands comprising the public land trust on or after August 21, 1959; and
   (C) The lands transferred to the State by the United States after August 21, 1959, pursuant to section 5(e) of the Admission Act or Pub. L. 88-233;

   and

(2) Other information necessary to assure the proper implementation of section 5(f) of the Admission Act, article XII, sections 4, 5, and 6 of the State Constitution, and chapter 10, Hawaii Revised Statutes, as amended.

(b) The inventory shall:

(1) Identify or describe every parcel of land comprising the public land trust on August 21, 1959, and every parcel added to the public land trust thereafter. Each parcel may be assigned a unique inventory number for purposes of cross-referencing information about each parcel with other information maintained in the public land trust information system; and
(2) Include a title history for any parcel included in the inventory that is conveyed or acquired on or after August 21, 1959, and other information that the auditor determines would be useful for understanding how the public land trust was managed and administered since Statehood, and for assuring the proper administration and management of the public land trust in the future.

SECTION 3. (a) Beginning July 1, 2000, the auditor shall identify all of the lands which are to be included in the public land trust inventory. The auditor shall also determine what other information would be useful to include in the inventory but only after interviewing representatives of the county, and conducting discussions with the office of Hawaiian affairs, the department of land and natural resources, the department of Hawaiian home lands, the attorney general, the director of finance, and other state agencies holding title to public land trust lands or to which lands of the public land trust have been set aside. At minimum, the auditor shall determine whether the following kinds of information about each parcel of land in the operating inventory would be useful:

(1) The parcel's location by metes and bounds, tax map key number, or both;
(2) The parcel's size rounded to the nearest acre;
(3) The date the parcel was acquired;
(4) If conveyed out of the public land trust, the date the parcel was conveyed;
(5) Whether the parcel was acquired by the State pursuant to section 5(b) or 5(e) of the Admission Act or Pub. L. 88-233, or in exchange for a parcel of land acquired by the State pursuant to those laws;
(6) Whether the parcel is a subdivided portion of a larger parcel acquired by the State pursuant to section 5(b) or 5(e) of the Admission Act or Pub. L. 88-233, or in exchange for a parcel of land acquired by the State pursuant to those laws;
(7) Whether the parcel or any portion of the parcel is ceded land, and the extent to which the parcel consists of ceded land;
(8) The name of the state or county agency holding title to the parcel;
(9) Whether the parcel has been set aside and the name of the state or county agency to which the parcel has been set aside;
(10) The parcel's current state land use, state land classifications pursuant to section 171-10, and county zoning designations;
(11) A description of all natural resources, including minerals and water, found on or appurtenant to the parcel;
(12) A description of every easement, covenant, regulatory condition, or other benefit or servitude to which the parcel is entitled or subject; and
(13) A description of all leases, uses, or other disposition to which the parcel has been put.

(b) The auditor shall also conduct an investigation into the most appropriate means of establishing and maintaining the public land trust information system, including:

(1) The type of hardware and software appropriate for storing and maintaining the information system;

(2) Whether the information system should be established as a geographic information system;
(3) The tasks needing to be performed to complete and establish the information system;
(4) The sequence in which the tasks needing to be performed are completed;
(5) Whether and to what extent state and county agencies holding title to public land trust lands or to which public land trust lands have been set aside should continue maintaining separate inventories of the public land trust lands;
(6) Whether a single agency should be responsible for maintaining the public land trust information system;
(7) To which agency the responsibility should be delegated if a single agency concept is chosen; and
(8) The extent to which other agencies must cooperate and assist in that effort.

(c) The auditor shall identify existing sources of data, information, and resources that can be incorporated into or used to establish the public land trust inventory and public land trust information system, including existing inventories of the ceded lands and the public land trust lands established or maintained by the federal government, the office of Hawaiian affairs, the department of Hawaiian home lands, the department of land and natural resources, the University of Hawaii, the department of transportation, the housing and community development corporation of Hawaii, the several counties, or private entities.

(d) The auditor shall:
(1) Estimate the total cost of establishing the public land trust information system;
(2) Identify possible sources of funding to defray that cost; and
(3) Identify the factors to be considered in prioritizing the expenditures to be made in each fiscal year,

if an incremental or phased implementation process is used to complete the system.

(e) For purposes of this Act:

"Ceded lands" means those lands ceded to the United States by the Republic of Hawaii under the joint resolution of annexation approved on July 7, 1898.

"Public land trust" means that public land trust established in section 5(f) of the Admission Act.

SECTION 4. All state and county agencies shall assist the auditor in facilitating the establishment of the public land trust information system and shall comply with any and all requests the auditor may make for any information and services pertinent to the completion of the information system.

SECTION 5. (a) The auditor shall submit a progress report to the legislature no later than twenty days prior to the convening of the regular sessions of 2001 and 2002. The progress report shall outline what needs to be done to complete the public land trust inventory and the public land trust information system, and include any legislation the auditor deems necessary to facilitate the inventories and systems expeditious completion and support.

(b) The inventory and information system shall be completed and operational by December 31, 2002, unless the auditor advises otherwise in a progress report.

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 2000-2001 to be expended by the auditor for the purposes of this Act; provided that

no funds appropriated shall be expended unless separately matched on a dollar-for-dollar basis and paid to the auditor by the office of Hawaiian affairs.

The sum appropriated shall be expended by the auditor for the purposes of this Act.

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved May 26, 2000.)

## ACT 126 S.B NO. 2115

A Bill for an Act Relating to False Claims.

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

SECTION 1. Chapter 661, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

**"PART . QUI TAM ACTIONS OR RECOVERY OF FALSE CLAIMS TO THE STATE**

**§661- Actions for false claims to the State; qui tam actions.** (a) Notwithstanding section 661-7 to the contrary, any person who:

(1) Knowingly presents, or causes to be presented, to an officer or employee of the State a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State;

(3) Conspires to defraud the State by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used, or to be used, by the State and, intending to defraud the State or wilfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;

(5) Is authorized to make or deliver a document certifying receipt of property used, or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who may not lawfully sell or pledge the property;

(7) Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State; or

(8) Is a beneficiary of an inadvertant submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim;

shall be liable to the State for a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages that the State sustains due to the act of that person.

(b) If the court finds that a person who has violated subsection (a):

(1) Furnished officials of the State responsible for investigating false claims violations with all information known to the person about the violation within thirty days after the date on which the defendant first obtained the information;
(2) Fully cooperated with any State investigation of such violation; and
(3) At the time the person furnished the State with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation;

the court may assess not less than two times the amount of damages that the State sustains because of the act of the person. A person violating subsection (a), shall also be liable to the State for the costs and attorneys' fees of a civil action brought to recover the penalty or damages.

(c) Liability under this section shall be joint and several for any act committed by two or more persons.

(d) This section shall not apply to any controversy involving an amount of less than $500 in value. For purposes of this subsection, ''controversy'' means the aggregate of any one or more false claims submitted by the same person in violation of this chapter. Proof of specific intent to defraud is not required.

(e) For purposes of this section:

''Claim'' includes any request or demand, whether under a contract or otherwise, for money or property that is made to a contractor, grantee, or other recipient if the State provides any portion of the money or property that is requested or demanded, or if the government will reimburse the contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded.

''Knowing'' and ''knowingly'' means that a person, with respect to information:

(1) Has actual knowledge of the information;
(2) Acts in deliberate ignorance of the truth or falsity of the information; or
(3) Acts in reckless disregard of the truth or falsity of the information;

and no proof of specific intent to defraud is required.

(f) This section shall not apply to claims, records, or statements for which procedures and remedies are otherwise specifically provided for under chapter 231.

**§661- Civil actions for false claims.** The attorney general shall investigate any violation under section 661- . If the attorney general finds that a person has violated or is violating section 661- , the attorney general may bring a civil action under this section.

**§661- Evidentiary determination; burden of proof.** A determination that a person has violated the provisions of this chapter shall be based on a preponderance of the evidence.

**§661- Statute of limitations.** An action for false claims to the State pursuant to this chapter shall be brought within six years after the false claim is discovered or by exercise of reasonable diligence should have been discovered and, in any event, no more than ten years after the date on which the violation of section 661- is committed.

**§661- Action by private persons.** (a) A person may bring a civil action for a violation of section 661- for the person and for the State. The action shall be brought in the name of the State. The action may be dismissed only with the written

consent of the court, taking into account the best interests of the parties involved and the public purposes behind this chapter.

(b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State in accordance with the Hawaii Rules of Civil Procedure. The complaint shall be filed in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within sixty days after it receives both the complaint and the material evidence and information.

(c) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subsection (b). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty days after the complaint is unsealed and served upon the defendant in accordance with the Hawaii Rules of Civil Procedure.

(d) Before the expiration of the sixty-day period or any extension obtained, the State shall:

(1) Proceed with the action, in which case the action shall be conducted by the State and the seal shall be lifted; or

(2) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action and the seal shall be lifted.

(e) When a person brings an action under this section, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

**§661- Rights of parties to qui tam actions.** (a) If the State proceeds with an action under section 661- , the State shall have the primary responsibility for prosecuting the action and shall not be bound by an act of the person bringing the action. The person shall have the right to continue as a party to the action, subject to the following limitations:

(1) The State may dismiss the action notwithstanding the objections of the person initiating the action if the court determines, after a hearing on the motion, that dismissal should be allowed;

(2) The State may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable. Upon a showing of good cause, the hearing may be held in camera;

(3) The court, upon a showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, may, in its discretion impose limitations on the person's participation by:

(A) Limiting the number of witnesses the person may call;

(B) Limiting the length of the testimony of the witnesses;

(C) Limiting the person's cross-examination of witnesses; or

(D) Otherwise limiting the participation by the person in the litigation.

(b) The defendant, by motion upon the court, may show that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense. At the court's discretion, the court may limit the participation by the person in the litigation.

(c) If the State elects not to proceed with the action, the person who initiated that action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts at the State's expense. When a person proceeds with the action, the court without limiting the status and rights of the person initiating the action, may nevertheless permit the State to intervene at a later date upon showing of good cause.

(d) Whether or not the State proceeds with the action, upon motion and a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay the discovery for a period of not more than sixty days. The court may extend the sixty day period upon a motion and showing by the State that the State has pursued the investigation or prosecution of the criminal or civil matter with reasonable diligence and the proposed discovery would interfere with the ongoing investigation or prosecution of the criminal or civil matter.

(e) Notwithstanding section 661- , the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceedings to determine civil monetary penalties. If any alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in the proceedings as the person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in the other proceeding that becomes final shall be conclusive on all parties to an action under this section.

(f) Whether or not the State elects to proceed with the action, the parties to the action shall receive court approval of any settlements reached.

**§661- Awards to qui tam plaintiffs.** (a) If the State proceeds with an action brought by a person under section 661- , the person shall receive at least fifteen per cent but not more than twenty-five per cent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award sums as it considers appropriate, but in no case more than ten per cent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under this subsection shall be made from the proceeds. Any person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(b) If the State does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five per cent and not more than thirty per cent of the proceeds of the action or settlement and shall be paid out of the proceeds. The person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All expenses, fees, and costs shall be awarded against the defendant.

(c) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 661- upon which the action was brought, then the court may, to the extent the

court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subsection (a), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from the person's role in the violation of section 661- , that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. The dismissal shall not prejudice the right of the State to continue the action.

(d) If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was frivolous, vexatious, or brought primarily for purposes of harassment.

(e) In no event may a person bring an action under section 661- :

(1) Against a member of the state senate or state house of representatives, a member of the judiciary, or an elected official in the executive branch of the State, if the action is based on evidence or information known to the State. For purposes of this section, evidence or information known only to the person or persons against whom an action is brought shall not be considered to be known to the state;

(2) When the person is a present or former employee of the State and the action is based upon information discovered by the employee during the course of the employee's employment, unless the employee first, in good faith, exhausted any existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and the State failed to act on the information provided within a reasonable period of time; or

(3) That is based upon allegations or transactions that are the subject of a civil or criminal investigation by the State, civil suit, or an administrative civil money penalty proceeding in which the State is already a party.

**§661- Jurisdiction.** No court shall have jurisdiction over an action under this part based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media, unless the action is brought by the attorney general or the person bringing the action is an original source of the information. For purposes of this section:

"Original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the State before filing an action under this part that is based on the information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure.

**§661- Fees and costs of litigation.** The State shall not be liable for expenses or fees, including attorney fees, that a person incurs in bringing an action under this part and shall not elect to pay those expenses or fees."

SECTION 2. The provisions of this Act are not exclusive and are in addition to any other applicable law or remedy. This Act shall be liberally construed and applied to promote the public interest.

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

(Approved May 26, 2000.)

## ACT 127 S.B NO. 2151

A Bill for an Act Relating to Firearms.

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

Part I.

SECTION 1. Chapter 134, Hawaii Revised Statutes, is amended by adding a new section to read as follows:

"**§134-A Seizure of firearms upon disqualification.** (a) If any applicant is denied a permit, the chiefs of police of the respective counties shall send, by certified mail, a notice setting forth the reasons for the denial and may require that the applicant voluntarily surrender all firearms and ammunition to the chief of police where the applicant resides or dispose of all firearms and ammunition. If an applicant fails to voluntarily surrender or dispose of all firearms and ammunition within thirty days from the date notice was mailed, the chief of police may seize all firearms and ammunition.

(b) Any person disqualified from ownership, possession, or control of firearms and ammunition under section 134-7 shall voluntarily surrender all firearms and ammunition to the chief of police where the person resides or dispose of all firearms and ammunition. If any person fails to voluntarily surrender or dispose of all firearms and ammunition within thirty days from the date of disqualification, the chief of police may seize all firearms and ammunition.

(c) For the purposes of this section, "dispose" means selling the firearms to a gun dealer licensed under section 134-31, transferring ownership of the firearms to any person who meets the requirements of section 134-2, or surrendering all firearms to the chief of police where the person resides for storage or disposal.

(d) The chief of police of the respective counties shall adopt procedures to implement and administer the provisions of this section by December 31, 2001."

SECTION 2. Section 134-7, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) Any person disqualified from ownership, possession, or control of firearms and ammunition [by this chapter] under this section shall surrender or dispose of all firearms and ammunition in compliance with [this chapter] section 134-A."

SECTION 3. Chapter 323C, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated to read as follows:

"**§323C-A Disclosure for firearm permit and registration purposes.** A health care provider or public health authority shall disclose health information, including protected health information, relating to an individual's mental health history, to the appropriate county chief of police in response to a request for the information from the chief of police, provided that:

(1) The information shall be used only for the purposes of evaluating the individual's fitness to acquire or own a firearm; and

(2) The individual has signed a waiver permitting release of the health information for that purpose."

SECTION 4. Section 806-11, Hawaii Revised Statutes, is amended to read as follows:

"[[]§806-11[]] **Disposal of firearms.** (a) At the time of arraignment, the court shall order a defendant who is under indictment for, or who has waived indictment for, or who has been bound over to the circuit court for a felony, or any crime of violence, or an illegal sale of any drug, to dispose of all firearms and ammunition within the defendant's possession in a manner in compliance with the provisions of chapter 134 and shall inform the defendant of the provisions of section 134-7(b) and section 134-12.5. The defendant shall comply with an order issued pursuant to this section within forty-eight hours of the issuance of such order. A defendant's compliance with the forty-eight hour requirement of this section shall not give rise to a prosecution for violations of sections 134-2, 134-3 or 134-4.

(b) The court shall immediately notify the chief of police of the county where the defendant resides that the defendant has been ordered to voluntarily surrender all firearms and ammunition to the chief of police or dispose of all firearms and ammunition within the defendant's possession.

(c) If the defendant fails to voluntarily surrender all firearms and ammunitions to the chief of police where the defendant resides or dispose of the firearms and ammunition within forty-eight hours of the issuance of the order, the chief of police may seize all firearms and ammunition.

(d) For the purposes of this section, "dispose" shall have the same meaning as provided in section 134-A."

Part II.

SECTION 5. There is established the violent firearm crime coalition which shall be administratively attached to the department of the attorney general. The coalition shall provide consultation to the attorney general regarding the establishment of strategic partnerships among law enforcement, prosecution, corrections, and the community with the goal of reducing violent firearm crime. The coalition shall consist of the following members, who shall serve without compensation:

(1) The attorney general or a designated representative;
(2) The director of public safety or a designated representative;
(3) One of the prosecuting attorneys selected by the prosecuting attorneys of the respective counties or a designated representative;
(4) One of the chiefs of police selected by the chiefs of police of the respective counties or a designated representative;
(5) The director of the department of health or a designated representative;
(6) The chairperson of the Hawaii paroling authority or a designated representative; and
(7) The administrator of adult probation administration or a designated representative.

The coalition may also include a representative of the judiciary, the United States department of justice and the bureau of alcohol, tobacco, and firearms. The coalition may consult with a representative of an Hawaii affiliate of a national organization representing providers of mental health services and a representative of an Hawaii affiliate of a national organization representing advocates for the right to bear arms. The attorney general shall serve as chairperson of the coalition.

The coalition shall clarify and articulate the best process to seize firearms from those individuals who are no longer qualified to own or possess firearms, and

who do not voluntarily relinquish firearms or transfer ownership of firearms. In addition, the coalition shall determine the best process to keep firearms from individuals who are no longer qualified to own or possess firearms for mental health reasons.

The department of the attorney general, in collaboration with the coalition, shall submit a report of its findings and recommendations to the legislature no later than twenty days prior to the convening of the 2001 and 2002 Regular Sessions.

Part III.

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 8. This Act shall take effect upon its approval.

(Approved May 26, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 128 S.B NO. 2545

A Bill for an Act Relating to Glass Recovery.

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

SECTION 1. The purpose of this Act is to improve compliance with, and enforcement of, the glass advance disposal fee program by clarifying that all glass importers are subject to record keeping requirements and inspection by the department of health, regardless of whether they are registered with the department of health.

SECTION 2. Section 342G-81, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"<u>"Import" means to buy, bring, or accept delivery of glass containers from an address, supplier, or any entity outside of the State of Hawaii.</u>"

SECTION 3. Section 342G-83, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) All glass container importers [registered with the department] shall maintain records reflecting the manufacture of their glass containers as well as the importation and exportation of products packaged in glass. The records shall be made available, upon request, for inspection by the department; provided that any proprietary information obtained by the department shall be kept confidential, and shall not be disclosed to any other person except:

(1) As may be reasonably required in an administrative or judicial proceeding to enforce any provision of this chapter or any rule adopted pursuant to this chapter; or

(2) Under an order issued by a court or administrative agency hearing officer."

SECTION 4. Section 342G-88, Hawaii Revised Statutes, is amended to read as follows:

"[[]§342G-88[]] **Penalties.** Any person who violates any provision of this part, or any rule adopted thereunder, shall be fined not more than $10,000 for each separate offense. Each day of each violation shall constitute a separate offense. Any action taken to impose or collect the penalty provided for in this section shall be considered [a civil] an administrative action."

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

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

(Approved May 26, 2000.)

## ACT 129

S.B NO. 2667

A Bill for an Act Relating to No Candidates Filed for an Elective Office.

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

SECTION 1. Chapter 12, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§12- **No candidate files nomination papers for an elective office.** If after the close of filing there are no candidates who have filed nomination papers for an elective office for the primary, special primary, or any special election held in conjunction with the primary election, the chief election officer or clerk, in the case of a county election, shall accept nomination papers for that office not later than 4:30 p.m. on the fiftieth day prior to the primary, special primary, or special election."

SECTION 2. New statutory material is underscored.[1]

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

(Approved May 26, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 130

S.B NO. 2670

A Bill for an Act Relating to Elections.

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

SECTION 1. Section 11-115, Hawaii Revised Statutes, is amended to read as follows:

"**§11-115 Arrangement of names on the ballot.** (a) The names of the candidates shall be placed upon the ballot for their respective offices in alphabetical order except [as]:

(1) As provided in section 11-118; [and]
(2) For the limitations of the voting system in use[, and except for]; and
(3) For the case of the candidates for vice president and lieutenant governor in the general election whose names shall be placed immediately below the name of the candidate for president or governor of the same political party.

(b) In elections using the paper ballot or electronic voting systems where the names of the candidates are printed and the voter records the voter's vote on the face of the ballot, the following format shall be used: A horizontal line shall be ruled between each candidate's name and the next name, except between the names of presidential and vice presidential candidates and candidates for governor and lieutenant governor of the same political party in the general election. In such case the horizontal line [will] shall follow the name of the candidates for vice president and lieutenant governor of the same political party, thereby grouping the candidates for president and vice president and governor and lieutenant governor of the same political party within the same pair of horizontal lines.

(c)[1] Immediately [after all the names, on the right side of the ballot,] to the left of (before) or to the right of (after) the candidate name or names, according to the requirements of the voting system, two vertical lines shall be ruled, so that in conjunction with the horizontal lines, a box shall be formed [opposite each] to the left of or to the right of the name and its equivalent, if any.

(d)[1] In case of the candidates for president and vice president and governor and lieutenant governor of the same political party, only one box shall be formed opposite their set of names. The boxes shall be of sufficient size to give ample room in which to designate the choice of the voter in the manner prescribed for the voting system in use. All of the names upon a ballot shall be placed at a uniform distance from the left edge and close thereto, and shall be of uniform size and print subject to section 11-119."

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

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

(Approved May 26, 2000.)

**Note**

1. Should be underscored.

## ACT 131 H.B. NO. 2218

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:19-101.8, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) 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 administrative fund. Each fiscal year, the commissioner shall transfer out of the fund and deposit into the insurance regulation 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. In addition, each fiscal year, the commissioner shall transfer out of the fund and deposit into the insurance regulation fund up to ten per cent of the total moneys

credited to the fund in the prior fiscal year for purposes of promoting Hawaii as a captive insurance domicile. Disbursements for promotional activities from the insurance regulation fund shall be subject to the approval of the director of commerce and consumer affairs. Subject to the foregoing expenditure [limit,] limits, all moneys remaining in the fund shall revert to the general fund."

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

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

(Approved May 30, 2000.)

## ACT 132 S.B NO. 3043

A Bill for an Act Relating to the State Risk Management and Insurance Administration.

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

SECTION 1. The purpose of this Act is to grant the state comptroller sufficient authority to establish a captive insurance company, which will be owned by the State, to insure the general liabilities of state agencies pursuant to chapter 41D, Hawaii Revised Statutes.

The State currently self-insures a substantial portion of its assets, and current insurance policies already maintain deductibles between $50,000 and $3,000,000 per occurrence. In return, the State pays nearly $5,000,000 in premiums per year. The State will save money under the proposed scheme since the state-owned captive insurance company will allow the State direct access to the discounted premium rates available in the reinsurance market.

SECTION 2. Section 41D-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"'"Captive insurance company" shall have the same meaning as captive insurance company in section 431:19-101."

SECTION 3. Section 41D-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The comptroller, through the risk manager, shall:

(1) Have discretion to purchase casualty insurance for the State or state agencies, including those employees of the State who, in the comptroller's discretion, may be at risk and shall be responsible for the acquisition of all casualty insurance;

(2) Have discretion to purchase property insurance for the State or state agencies and shall acquire all property insurance;

(3) Direct and manage all risk management and insurance programs of the State, except for employee benefits insurance and workers' compensation insurance programs or as otherwise provided in chapters 87, 88, 383 to 386A, 392, and 393;

(4) Consult with state agencies to determine what property, casualty, and other insurance policies are presently in force or are sought by the state agencies and to make determinations about whether to continue subscribing to insurance policies. In the event that the risk manager's

determination is not satisfactory to the state agency, the state agency may have the risk manager's decision reviewed by the comptroller. In this case, the comptroller's decision shall be final;

(5) Consolidate and combine state insurance coverages, and purchase excess insurance when, in the comptroller's discretion, it is appropriate to do so;

(6) Acquire risk management, investigative, claims adjustment, actuarial, and other services, except attorney's services, as may be required for the sound administration of this chapter;

(7) Gather from all state agencies and maintain data regarding the State's risks and casualty, property, and fidelity losses;

(8) In conjunction with the attorney general and as otherwise provided by this chapter, compromise or settle claims cognizable under chapter 662;

(9) Provide technical services in risk management and insurance to state agencies; [and]

(10) Be authorized to establish a captive insurance company pursuant to article 19 of chapter 431 to effectuate the purposes of this chapter; and

[(10)] (11) Do all other things appropriate to the development of sound risk management practices and policies for the State."

SECTION 4. Section 41D-8.5, Hawaii Revised Statutes, is amended to read as follows:

"[[]§41D-8.5[]] **Insurance for indemnification.** The comptroller may [obtain]:

(1) Obtain sufficient loss insurance to cover the liability of the State that may arise from indemnity provisions agreed to pursuant to section 29-15.5[.]; and

(2) Obtain appropriate and sufficient reinsurance to cover the liability of a captive insurance company established pursuant to section 41D-2."

SECTION 5. The insurance division shall prepare a study of the feasibility and cost effectiveness of providing insurance coverage for damage to real property suffered by the State as a result of fire, flood, or hurricane, and all other insurance coverage that the insurance commissioner deems appropriate and within the scope of chapter 41D, Hawaii Revised Statutes, through a captive insurance facility established pursuant to chapter 431, Hawaii Revised Statutes. The insurance commissioner shall submit the insurance commissioner's findings and recommendations, including any proposed legislation, to the legislature no later than twenty days before the convening of the regular session of 2001.

SECTION 6. There is appropriated out of the captive insurance administrative fund the sum of $100,000, or so much thereof as may be necessary, for fiscal year 1999-2000[1] to carry out the purposes of this Act. The sum appropriated shall be in addition to the moneys transferred to the insurance regulation fund pursuant to section 431:19-101.8, Hawaii Revised Statutes. The insurance commissioner shall transfer the appropriation authorized by this Act to the insurance regulation fund. The sum appropriated shall be expended by the department of commerce and consumer affairs.

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 section 6 shall take effect on July 1, 2000.

(Approved May 30, 2000.)

**Note**

1. So in original.

# ACT 133

S.B NO. 3190

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. Section 431:19-101, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"""Branch captive insurance company" means an outside captive insurance company licensed under this article by the commissioner to transact the business of insurance in this State through a business unit that has its principal place of business in this State.

"Outside captive insurance company" means an insurance company licensed under the laws of a jurisdiction other than this State and not otherwise admitted to do business as an insurance company in this State, that insures the risks of its parent or any affiliated companies."

SECTION 2. Section 431:19-102, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Any captive insurance company, when permitted by its articles of association or charter, may apply to the commissioner for a license to do any and all insurance set forth in subsection (h); provided that:

(1) No pure captive insurance company may insure any risks other than those of its parent and affiliated companies;
(2) No association captive insurance company may insure any risks other than those of the member organizations of its association, and their affiliated companies;
(3) No captive insurance company may provide personal motor vehicle or homeowner's insurance coverage or any component thereof, other than as employee benefits for the employees of a parent, association, or its members, and their respective affiliated companies; or as reinsurance as may be allowed under this article;[1] and
(4) No captive insurance company may accept or cede insurance except as provided in section 431:19-111.

(b) No captive insurance company shall do any insurance business in this State unless:

(1) It first obtains from the commissioner a license authorizing it to do insurance business in this State;
(2) Its board of directors holds at least one meeting each year in this State;
(3) It maintains its principal place of business in this State[;], except that a branch captive insurance company need only maintain the principal place of a business unit in this State; and
(4) It appoints a resident agent to accept service of process and to otherwise act on its behalf in this State. Whenever the agent cannot, with reasonable diligence, be found at the registered office of the captive insurance company, the commissioner shall be an agent of the captive insurance company upon whom any process, notice, or demand may be served."

SECTION 3. Section 431:19-103, Hawaii Revised Statutes, is amended to read as follows:

"**§431:19-103 Names of companies.** No captive insurance company shall adopt a name that is the same, deceptively similar, or likely to be confused with or mistaken for any other existing business name registered in the State[.], except that the commissioner may allow a branch captive insurance company to be licensed in this State under a different trade name if the normal name of the branch captive insurance company is not available for use in this State."

SECTION 4. Section 431:19-104, Hawaii Revised Statutes, is amended to read as follows:

"**§431:19-104 Minimum capital; letter of credit, security.** (a) Subject to subsection (c), no captive insurance company incorporated as a stock insurer shall be issued a license unless it shall possess and thereafter maintain unimpaired paid-in capital of an amount established and deemed appropriate by the commissioner.

(b) The capital may be in the form of cash, in the form of an irrevocable letter of credit issued by a bank chartered by this State or a member bank of the Federal Reserve System, or other security approved by the commissioner.

(c) Minimum capital or surplus requirements for captive insurance companies shall be as follows:

(1) Class 1: $100,000;
(2) Class 2: $250,000;
(3) Class 3: $500,000 for risk retention captive insurance companies, and $750,000 for association captive insurance companies; and
(4) Class 4: $1,000,000.

The foregoing requirements do not limit the commissioner's discretionary authority to require a captive insurance company to possess and maintain a greater amount of capital or surplus in order to preserve the solvency of the company, nor do such requirements limit or diminish any other applicable provision of law that may require a captive insurance company to maintain a particular level of capital, surplus, assets, or investments.

(d) In the case of a branch captive insurance company, and in lieu of minimum capital or surplus under this section or section 431:19-105, the commissioner shall determine the amount and form of security to be maintained by the branch captive insurance company in this State after taking into consideration:

(1) The amount of risk written through and retained by the branch captive insurance company in this State;
(2) The financial condition of the outside captive insurance company whose branch office is located in this State;
(3) Trusts or other security posted for ceding insurers; and
(4) Any other factors the commissioner deems appropriate.

The security required by the commissioner may be in the form of cash or investments, an irrevocable letter of credit issued by a bank chartered in this State or a member bank of the Federal Reserve System, a trust, or any other forms of security deemed appropriate by the commissioner."

SECTION 5. Section 431:19-107, Hawaii Revised Statutes, is amended to read as follows:

"**§431:19-107 Financial statements and other reports.** (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) Each captive insurance company that is not a pure captive insurance company shall annually file with the commissioner the following:

(1) Annual statement and audit:

(A) On or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, an annual statement 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. The reported information shall be verified by oaths of at least two of the captive's principal officers;

(B) On or before June 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, 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;

(C) The annual statement and audit shall be prepared in accordance with the National Association of Insurance Commissioners' annual statement instructions, following the practice and procedures prescribed by the National Association of Insurance Commissioners' practices and procedures manuals. Each risk retention group shall also comply with section 431:3-302; and

(2) On or before each March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, a risk-based capital report in accordance with section 431:3-402; provided that class 3 association captive insurance companies and class 4 captive insurance companies shall not be required to file their risk-based capital reports with the National Association of Insurance Commissioners.

(c) The statements required to be filed in subsections (a) and (b) shall include but not be limited to actuarially appropriate reserves for:

(1) Known claims and expenses associated therewith;

(2) Claims incurred but not reported and expenses associated therewith;

(3) Unearned premiums; and

(4) Bad debts, reserves for which shall be shown as liabilities.

An actuarial opinion regarding reserves for known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith shall be included in the audited statements, except that the actuarial opinion for captive insurance companies other than pure captive insurance companies shall be filed with the annual statement required under subsection (b), on or before March 1 each year. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.

(d) The commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, summary loss reports and quarterly financial statements.

(e) The commissioner may suspend or revoke the certificate of authority or fine any captive insurer that fails to file any of the documents required by subsections (a) and (b). The fine shall be not more than $500 per day past the due date.

(f) Each branch captive insurance company shall file with the commissioner copies of all reports and financial statements required to be filed by the outside captive insurance company of the branch captive insurance company under the laws of the jurisdiction in which the outside captive insurance company is domiciled. The

copies of the reports and financial statements shall be certified under oath by two officers of the outside captive insurance company and shall be filed with the commissioner no later than thirty days after the reports and financial statements are filed with the insurance regulator of the domicile of the outside captive insurance company. In addition to, and at the same time as the foregoing filings with the commissioner, the outside captive insurance company shall file a statement signed by two of its executive officers, one of which must be the president or chief financial officer, setting forth the gross premiums written, reinsurance ceded and accepted, and reserves and other liabilities associated with the insurance business written through the branch captive insurance company in this State.

If the commissioner is not satisfied that the reports, financial statements, and statement required to be filed under this subsection fairly and adequately describe the financial condition of the outside captive insurance company and the business underwritten through the branch captive insurance company in this State, the commissioner may require the branch captive insurance company to file an annual statement pursuant to subsection (a) within a reasonable time after notification of such requirement."

SECTION 6. Section 431:19-108, Hawaii Revised Statutes, is amended to read as follows:

"**§431:19-108 Examinations and investigations.** (a) The commissioner or any examiner authorized by the commissioner may conduct an examination of any captive insurance company as often as the commissioner deems appropriate; provided that an examination shall be conducted at least once every three years. The commissioner or any authorized examiner shall thoroughly inspect and examine the captive insurance company's affairs to ascertain its financial condition, its ability to fulfill its obligations, and whether it has complied with this article.

(b) The powers, authorities, and duties relating to examinations vested in and imposed upon the commissioner under section 431:2-301 through section 431:2-307.5 of the code are extended to and imposed upon the commissioner in respect to examinations of captive insurance companies.

(c) All examination reports conducted by the commissioner, or a designated agent of the commissioner, of any pure captive insurance company shall remain confidential unless the commissioner determines that the pure captive insurance company is in an adverse financial condition and the commissioner reasonably believes that the interest of the public necessitates the opening of the information contained in the examination report for public inspection.

(d) Each branch captive insurance company shall file annually with the commissioner a certificate of compliance issued by the insurance regulatory authority of the jurisdiction in which the outside captive insurance company of the branch captive insurance company is domiciled along with certified copies of any examination reports conducted of the outside captive insurance company by its domiciliary insurance regulator during the preceding calendar year. These filings shall be made with the commissioner by March 1 of each year. So long as the branch captive insurance company complies with the requirements of this subsection, and unless otherwise deemed necessary by the commissioner, any examination of the branch captive insurance company under this subsection shall be only with respect to the business underwritten by the branch captive insurance company in this State. If necessary, however, the commissioner may examine the outside captive insurance company of any branch captive insurance company licensed under this article."

SECTION 7. Section 431:19-115, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No insurance laws of this State other than those contained in this article, or contained in specific references contained in this section or article, shall apply to captive insurance companies formed under this article.

In addition to this article, 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 shall apply to captive insurance companies other than pure captive insurance companies[,] and branch captive insurance companies, unless these other laws are inconsistent with this article or the commissioner by rule, regulation, or order determines, on a case by case basis that these other laws should not apply thereto.

In addition to this article and the articles or portions thereof referenced in this section, chapter 431K shall apply to risk retention captive insurance companies licensed under this article."

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 May 30, 2000.)

**Note**

1. Semicolon should be underscored.

## ACT 134 H.B. NO. 1949

A Bill for an Act Relating to Alien Aquatic Organisms.

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

SECTION 1. The legislature finds that the introductions of alien aquatic plants and animals, as well as alien terrestrial plants and animals, are potentially harmful to both the environment and economy of the State.

In other parts of the world, the harmful effects of similar arrivals have been dramatic. Most alarming is the transport of organisms that create public health problems. For example:

(1) Cholera bacteria found in water samples from Mobile Bay, Alabama, are thought to have been brought in by ballast water discharged from ships from South America, which took on coastal water contaminated by a 1991 cholera epidemic. The presence of this disease, in turn, was blamed on bacteria-contaminated ballast water carried by ships from Asia;

(2) Dinoflagellates transported by ballast water have caused toxic red tides in Australia and elsewhere, killing fin fish and rendering shellfish poisonous to humans;

(3) In San Francisco Bay, the establishment of an inedible Asian clam has caused the recreational fishery to collapse;

(4) In the Great Lakes, the zebra mussel has not only destroyed valuable commercial and recreational fisheries, it has also clogged the water intake lines of dozens of shoreline communities, causing tens of millions of dollars in damage; and

(5) In 1991, the governor of Washington designated $100,000 in emergency funds to control the introduction and spread of green crab in order to protect shellfish growers.

In Hawaii, several species of alien aquatic organisms, intentionally introduced or brought in by ballast water or on the hulls of boats, have already become

established, displacing native species, altering aquatic ecosystems, and causing economic damage. For example:

(1) The seaweed Acanthophora, which arrived in Hawaii in 1950, on the hull of a barge towed from Guam, spread rapidly to most of the islands by 1960, displacing native limu;

(2) An alcyonarian (soft coral), Carijoa riisei from the Caribbean, probably arrived on the hull of a ship, and by the end of the 1970s, covered a portion of Honolulu Harbor; and

(3) A South Pacific goby, Mugilogovius cavifrons, which was probably introduced via ballast water in Pearl Harbor in 1987, has moved into streams and competes with the native o'opu.

The most recent example is a barnacle normally found in the Caribbean, the Gulf of Mexico, and Brazil. It was probably introduced into either Pearl Harbor or Honolulu Harbor from the hull of a ship that travelled through the Panama Canal. This barnacle has now spread throughout Hawaii, and is even found as far away as Midway.

Based on these and other experiences, it is apparent that once introduced, the control of alien aquatic organisms is both difficult and expensive. Complete eradication is probably impossible. Therefore, the ideal solution is to prevent their introduction.

In 1999, President Clinton announced a $29,000,000 plan to boost efforts against costly and troublesome non-native species of plants and animals. The President directed all federal agencies to address the spread of non-native species and called for the preparation of a national management plan by July 1, 2000.

Hawaii needs to be a part of this federal effort, not only to prevent the introduction of alien terrestrial species such as the brown tree snake, but alien aquatic species as well. Unfortunately, there is no lead state agency designated to prevent the unintentional introduction of alien aquatic organisms or to control these organisms once they have become established in Hawaii's aquatic ecosystems.

Act 237, Session Laws of Hawaii 1997, established the alien aquatic organism task force which determined that current law does not address the unintentional introduction of alien aquatic species via vessel. Neither does current law address the disposition of ballast water and fouling agents.

The purpose of this Act is to implement certain recommendations of the task force by:

(1) Designating the department of land and natural resources as the lead agency to prevent the introduction of alien aquatic organisms into Hawaii's environment; and

(2) Authorizing the department to draft rules and guidelines to address the problem.

The legislature recognizes the severity of the problem of alien species introduction and that there is currently a lack of sufficient funds to effectively address this problem. The purpose of designating the department of land and natural resources as the lead state agency is to facilitate the seeking of federal and other funds, should these funds be available. The legislature also recognizes that should these funds not be available, the department of land and natural resources will be limited in its ability to prevent alien species introductions.

SECTION 2. Chapter 187A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . ALIEN AQUATIC ORGANISMS

§187A- **Definitions.** For the purposes of this part, "high risk vessel" includes fishing and recreational vessels and floating structures, such as barges, dry docks, drilling rigs, and cranes, which have spent extended periods of time tied up in out-of-state ports.

§187A- **Alien aquatic organisms; lead agency; rules.** (a) The department is designated as the lead state agency for preventing the introduction and carrying out the destruction of alien aquatic organisms through the regulation of ballast water discharges and hull fouling organisms. The department may establish an interagency team to address the concerns relating to alien aquatic organisms.

(b) The department may adopt rules in accordance with chapter 91, including penalties, to carry out the purposes of this part. The rules may include standards for the department and the United States Coast Guard to use as part of their respective inspection protocols. The rules may also include implementation of a course of action in relation to the arrival or pending arrival of a high risk vessel.

(c) The governor may enter into an agreement with the U.S. Secretary of Transportation to carry out the purposes of this part, including but not limited to the enforcement of state law."

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

(Approved May 30, 2000.)

## ACT 135 H.B. NO. 2017

A Bill for an Act Relating to Collection Agencies.

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

SECTION 1. Chapter 443B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§443B- **Exempt out-of-state collection agency.** (a) A collection agency licensed or registered as a collection agency in another state, may apply for designation as an exempt out-of-state collection agency and conduct business in this State pursuant to this section. A collection agency granted designation as an exempt out-of-state collection agency shall be exempt from registration and other regulatory requirements under this chapter except as provided in this section.

(b) A collection agency may apply for designation as an exempt out-of-state collection agency; provided that the collection agency:

(1) Is licensed or registered as a collection agency under the laws of a state that:
   (A) Regulates collection agencies; and
   (B) Does not require a Hawaii collection agency to obtain a license or register to collect debts in that state if the activities of the Hawaii collection agency are limited to those described in paragraphs (2), (3), and (4);
(2) Is collecting debts on behalf of an out-of-state creditor;
(3) Does not solicit or engage in collection activities for clients in this State; and

(4) Only collects debts in this State using interstate communication methods, including telephone, facsimile, or mail.

(c) An applicant for designation as an exempt out-of-state collection agency shall submit the following:

(1) An application for an out-of-state collection agency exemption as prescribed by the director;

(2) Verification that:

(A) The collection agency holds a current license, permit, or registration to conduct business as a collection agency in another state;

(B) Is in good standing with and has complied with the laws of that state, including the maintenance of a bond, if required, and in the amount required by the state; and

(C) The collection agency's state of licensure does not require Hawaii collection agencies to register or become licensed in that state before collecting debts in that state;

(3) An agreement in writing to comply with the requirements of sections 443B-9, 443B-15, 443B-16, 443B-17, 443B-18, and 443B-19; and

(4) Payment of the following nonrefundable fees:

(A) With the application, an application fee of $25; and

(B) Upon approval of an out-of-state collection agency exemption, the compliance resolution fund fee for collection agencies.

(d) An exempt out-of-state collection agency may renew the exemption biennially by June 30 of each even-numbered year pursuant to subsection (c).

(e) An out-of-state collection agency shall not collect or attempt to collect any money or any other form of indebtedness alleged to be due and owing from any person who resides or does business in this State without first registering under this chapter or receiving an exemption pursuant to this section.

(f) An exempt out-of-state collection agency shall be subject to sections 443B-9, 443B-15, 443B-16, 443B-17, 443B-18, and 443B-19, and all remedies provided by this chapter and by any other law."

SECTION 2. New statutory material is underscored.[1]

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

(Approved May 30, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 136 H.B. NO. 2183

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds to Assist Industrial Enterprises.

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

SECTION 1. The legislature finds that although production of fuel grade ethanol from agricultural or municipal solid waste byproducts has demonstrated its value as a clean, economical additive to gasoline, a component of biodiesel fuel, and a gasoline substitute in flexible fuel vehicles, Hawaii continues to depend almost entirely upon imported petroleum to meet its transportation and energy needs. The legislature finds that the integration of ethanol production with the operation of sugar mills can make a positive contribution to the operating profits in the sugar

industry and the long-term viability of sugar in Hawaii. The legislature finds that the agricultural, environmental, energy, and economic policies of the State would be substantially forwarded by the effective utilization of technology to convert agricultural residues, green waste, and municipal solid waste into fuel grade ethanol for use as a fuel blend or additive. Financial assistance is essential to stimulate investment of the capital required to construct ethanol production plants that will provide the State with an alternative energy product that would reduce Hawaii's dependence on imported petroleum, as well as assist in the revival of the State's agricultural economy. The legislature further finds that the project development team of the Worldwide Energy Group, Inc., including the world's premier ethanol plant design and engineering firm, local landowners, sugar mills, and scientists with access to demonstrated state of the art conversion technology, has developed, as part of the Hawaii Sugar Ethanol Project, a coherent, prudent, and viable program for the production of ethanol in Hawaii.

For the foregoing reasons, the legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and is beneficial to the public health, safety, and general welfare.

The legislature further finds that part V, chapter 39A, Hawaii Revised Statutes, permits the State to financially assist industrial enterprises through the issuance of special purpose revenue bonds and that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State. The legislature finds that Worldwide Energy Group, Inc., a Hawaii corporation, is an industrial enterprise meeting the qualifications for special purpose revenue bond assistance under chapter 39A, part V, Hawaii Revised Statutes. The special purpose revenue bonds authorized under this Act will provide low interest rate bond financing for the construction of a fuel grade ethanol production plant on the island of Kauai and other appropriate locations in the State.

SECTION 2. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue in one or more series special purpose revenue bonds in a total amount not to exceed $50,000,000 for the purpose of assisting Worldwide Energy Group, Inc., a Hawaii corporation, in the planning, design, construction, and operation of any and all elements of the Hawaii Sugar Ethanol Project, including a multi-million gallon per year fuel grade ethanol facility on the island of Kauai and other appropriate locations in the State. The legislature finds and determines that the activities and facilities of Worldwide Energy Group, Inc., constitute a project as defined in part V, chapter 39A, Hawaii Revised Statutes, and that the financing thereof is assistance to an industrial enterprise.

SECTION 3. The special purpose revenue bonds issued under this Act shall be issued pursuant to part V, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist industrial enterprises serving the general public.

SECTION 4. The department of budget and finance shall process applications for special purpose revenue bonds under this Act in accordance with the requirements of its "Formal Application for Financing of an Industrial Enterprise." The department shall report to the legislature twenty days before the convening of the regular sessions of 2001 and 2002 regarding the status of the issuance of the special purpose revenue bonds authorized by this Act.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2004.

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

(Approved May 30, 2000.)

# ACT 137 H.B. NO. 2273

A Bill for an Act Relating to the Hawaii Children's Trust Fund.

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

SECTION 1. The legislature finds that public policies and programs addressing child maltreatment have developed based on an overall understanding of the extent of maltreatment and its consequences to society. Maltreatment commonly includes physical abuse, sexual abuse, neglect, and emotional abuse. The Child Abuse Prevention and Treatment Act, Public Law 93-247 (1974), defines child maltreatment as: "The physical and mental injury, sexual abuse, neglected treatment or maltreatment of a child under eighteen by a person who is responsible for the child's welfare under circumstances which indicate the child's health and welfare is harmed and threatened thereby, as determined in accordance with the regulations prescribed by the Secretary of Health, Education, and Welfare." It is clear that since 1974, abusive behavior is often perpetrated by strangers as well.

The legislature further finds that the extent of child abuse and neglect is difficult to accurately quantify because many incidences of abuse or neglect are not reported to authorities. Although the number of incidences of child abuse or neglect may be difficult to ascertain, the prevalence of abuse and neglect is indisputable. Prevalence is determined by the overall numbers of reported cases and by surveys of unreported cases, which yield percentage figures in relation to the total population.

Experts believe that the effects of maltreatment are unique to each individual child, although serious consequences often result depending on the intensity and frequency of maltreatment. The child's characteristics, relationship to the perpetrator, and access to supportive and treatment services influence the effects of maltreatment. However, children who are maltreated often experience disrupted growth and development. Adverse effects have been identified as physical, cognitive, emotional, and social development, and these consequences tend to accumulate over time. Research indicates that the negative effects on development can often be reversed with timely identification of the maltreatment and appropriate intervention.

The Hawaii children's trust fund was established by Act 336, Session Laws of Hawaii 1993, to serve as a medium for a public-private partnership for family strengthening to prevent child abuse and neglect. The trust fund makes grants to private, nonprofit organizations, public agencies, or qualified persons to provide community-based services and education, serving as an example of shared priority setting and decision making between public citizens, state officials, elected officials, and professionals. The trust fund maximizes financial resources by serving as a repository for federal and state funds, as well as private contributions from corporations and other businesses, foundations, individuals, and other interested parties.

The legislature further finds that the Hawaii children's trust fund has ameliorated poor conditions for Hawaii's most vulnerable population by identifying and funding those programs that have had effective outcomes.

The Hawaii community foundation administers the Hawaii children's trust fund. The foundation has been successfully managing charitable endowments since 1916. According to the foundation, in testimony before the senate in the 1999 session, a cost benefit analysis done in Hawaii and in other states demonstrated that

effective abuse and neglect prevention programs that strengthen families are less costly than treating children who have been abused or neglected.

An appropriation to the Hawaii children's trust fund would ensure that a more complete safety net is put in place for children and their families.

The purpose of this Act is to make an appropriation to the Hawaii children's trust fund from the Hawaii tobacco settlement special fund.

SECTION 2. There is appropriated out of the Hawaii tobacco settlement special fund of the State of Hawaii the sum of $250,000 or so much thereof as may be necessary for fiscal year 2000-2001 to be paid into the Hawaii children's trust fund to be used for the purposes under section 350B-2(c), Hawaii Revised Statutes; provided that the department of health submit a detailed financial report of the Hawaii children's trust fund to the legislature no later than twenty days prior to the convening of the regular session of 2001. This appropriation shall take precedence over the transfers to the emergency and budget reserve fund, the department of health tobacco special fund, and the Hawaii tobacco prevention and control trust fund provided for in section 328L-2, Hawaii Revised Statutes.

SECTION 3. The sum appropriated shall be expended by the department of health for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2000.

(Approved May 30, 2000.)

## ACT 138 H.B. NO. 2476

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:10C-304, Hawaii Revised Statutes, is amended to read as follows:

"**§431:10C-304 Obligation to pay personal injury protection benefits.** For purposes of this section, the term "personal injury protection insurer" includes personal injury protection self-insurers. Every personal injury protection insurer shall provide personal injury protection benefits for accidental harm as follows:

(1) Except as otherwise provided in section 431:10C-305(d), 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 personal injury protection benefits as defined in section 431:10C-103.5(a) payable for expenses to that person as a result of the injury:
   (A) Any person, including the owner, operator, occupant, or user of the insured motor vehicle;
   (B) Any pedestrian (including a bicyclist); or
   (C) Any user or operator of a moped as defined in section 249-1;

   provided that this paragraph shall not apply in the case of injury to or death of any operator or passenger of a motorcycle or motor scooter as defined in section 286-2 arising out of a motor vehicle accident, unless expressly provided for in the motor vehicle policy;

(2) Payment of 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-302(a)(5) may be made immediately in a lump sum payment, at the option of the beneficiary;

(3) (A) Payment of 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. All providers must produce descriptions of the service provided in conformity with applicable fee schedule codes;

(B) 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-103.5(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-103.5(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 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 personal injury protection benefits due, all attorney's fees and costs of settlement or suit necessary to effect the payment of any or all 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).]

(6) Disputes between the provider and the insurer over the amount of a charge or the correct fee or procedure code to be used under the workers' compensation supplemental medical fee schedule shall be governed by section 431:10C-308.5; and

(7) Any insurer who violates this section shall be subject to section 431:10C-117(b) and (c)."

SECTION 2. 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"] "workers' compensation supplemental medical fee schedule" means the [schedules] schedule 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] supplemental medical fee schedule 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 personal injury protection benefits" for purposes of this article.

(b) The charges and frequency of treatment for services specified in section 431:10C-103.5(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.] supplemental medical fee schedule. Charges for independent medical examinations, including record reviews, physical examinations, history taking, and reports, 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.] appropriate codes in the workers' compensation supplemental fee schedule. The workers' compensation [schedules] supplemental medical fee schedule shall not apply to independent medical examinations conducted by out-of-state providers[; provided that] if the charges for the examination are reasonable. The independent medical examiner shall be selected by mutual agreement between insurer and claimant; provided that if no agreement is reached, the selection may be submitted to the commissioner, arbitration or circuit court. The independent medical examiner shall be of the same specialty as the provider whose treatment is being reviewed, unless otherwise agreed by the insurer and claimant. All records and charges relating to an independent medical examination shall be made available to the claimant upon request. The commissioner may adopt administrative rules relating to fees or frequency of treatment for injuries covered by personal injury protection benefits. If adopted, these administrative rules shall prevail to the extent that they are inconsistent with the workers' compensation [schedules.] supplemental medical fee schedule.

(c) Charges for services for which no fee is set by the workers' compensation [schedules] supplemental medical fee schedule 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.

(d) Services for which no frequency of treatment guidelines are set forth in the workers' compensation [schedules] supplemental medical fee schedule or other administrative rules adopted by the commissioner shall be deemed appropriate and reasonable expenses necessarily incurred if so determined by a provider.

(e) In the event of a dispute between the provider and the insurer over the amount of a charge or the correct fee or procedure code to be used under the workers' compensation supplemental medical fee schedule, the insurer shall:

(1) Pay all undisputed charges within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued and demand for payment thereof; and

(2) Negotiate in good faith with the provider on the disputed charges for a period up to sixty days after the insurer has received reasonable proof of the fact and amount of benefits accrued and demand for payment thereof.

If the provider and the insurer are unable to resolve the dispute, the provider, insurer, or claimant may submit the dispute to the commissioner, arbitration, or court of competent jurisdiction. The parties shall include documentation of the efforts of the insurer and the provider to reach a negotiated resolution of the dispute.

[(e)] (f) The provider of services described in section 431:10C-103.5(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.

[(f)] (g) A health care provider shall be compensated by the insurer for preparing reports documenting the need for treatments which exceed the [schedules] workers' compensation supplemental medical fee schedule in accordance with the fee schedule for special reports. The health care provider may assess the cost of preparing a report to the insurer at no more than $20 per page up to a maximum of $75 for each report."

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

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

(Approved May 30, 2000.)

## ACT 139 S.B NO. 2112

A Bill for an Act Relating to the Waianae Coast Community Benchmarking Pilot Project.

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

SECTION 1. The legislature established the Waianae coast community benchmarking pilot project in Act 314, Session Laws of Hawaii 1997, to further benchmarking efforts to develop the economy and improve the quality of life on the Waianae coast. Various private organizations including the Chamber of Commerce of Hawaii, the Aloha United Way, the Business Roundtable, the Hawaii Community Foundation, the Hawaii Community Services Council, and the Polynesian Voyaging Society have participated in the benchmarking pilot process. However, the process was not financially supported by the legislature under Act 314 in 1997. In addition, the private organizations involved have expended their own funds to provide technical support to the process. The legislature finds that without legislative support through appropriations, the benchmarking pilot project will not succeed.

The purpose of this Act is to appropriate funds to support the benchmarking pilot project and to extend the duration of the project for three years until June 30, 2003.

SECTION 2. Act 314, Session Laws of Hawaii 1997, is amended by amending section 4 to read as follows:

"SECTION 4. This Act shall take effect upon its approval and shall be repealed on June 30, [2000.] 2003."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $2, or so much thereof as may be necessary for fiscal year 2000-2001, to support the work of the Waianae coast community benchmarking pilot project established in Act 314, Session Laws of Hawaii 1997, as follows:

(1) $1 for the various subprojects of the benchmarking pilot project; and

(2) $1 as a grant-in-aid to fund the Hawaii Community Services Council for the provision of technical support to the benchmarking pilot project.

SECTION 4. The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

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

SECTION 6. This Act shall take effect upon its approval, except that sections 3 and 4 shall take effect on July 1, 2000, and section 2 shall take effect on June 29, 2000.

(Approved May 30, 2000.)

## ACT 140 S.B NO. 2254

A Bill for an Act Relating to Privacy of Health Care Information.

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

SECTION 1. Section 323C-1, Hawaii Revised Statutes, is amended by amending the definition of "nonidentifiable health information" to read:

"'"Nonidentifiable health information" means any information that meets all of the following criteria: would otherwise be protected health information except that the information in and of itself does not reveal the identity of the individual whose health or health care is the subject of the information and [there is no reasonable basis to believe that the information could be used, either alone or with other information that is, or should reasonably be, known to be available to recipients of the information, to reveal the identity of that individual.] will not be used in any way that would identify the subjects of the information or would create protected health information."

SECTION 2. Section 323C-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) For the purpose of treatment or qualified health care operations, an entity may only use or disclose protected health information [within the entity] if the use or disclosure is properly noticed pursuant to sections 323C-13 and 323C-22. For all other uses and disclosures, an entity may only use or disclose protected health information, if the use or disclosure is properly consented to pursuant to section 323C-23. Disclosure to agents of an entity [described in subsection (a)] shall be considered as a disclosure within an entity."

SECTION 3. Section 323C-37, Hawaii Revised Statutes, is amended to read as follows:

"**[]§323C-37[] Health research.** (a) A health care provider, health plan, public health authority, employer, insurer, or educational institution may disclose protected health information to a health researcher if the following requirements are met:

(1) The research shall have been approved by an institutional review board. In evaluating a research proposal, an institutional review board shall require that the proposal demonstrate a clear purpose, scientific integ-

rity, and a realistic plan for maintaining the confidentiality of protected health information[;]. Research not otherwise subjected by federal regulation to institutional review board review shall be subject only to the review requirements of this paragraph;

(2) The health care provider, health plan, public health authority, employer, insurer, or educational institution shall only disclose protected health information which it has previously created or collected; and

(3) The holder of protected health information shall keep a record of all health researchers to whom protected health information has been made available.

(b) A health researcher who receives protected health information shall remove and destroy, at the earliest opportunity consistent with the purposes of the project involved, any information that would enable an individual to be identified.

(c) A health researcher who receives protected health information shall not disclose or use the protected health information or unique patient identifiers for any purposes not reviewed by an institutional review board under this part or for any purposes other than the health research project for which the information was obtained, except that the health researcher may disclose the information pursuant to section 323C-35(a).''

SECTION 4. (a) There is established the medical privacy task force within the office of information practices for administrative purposes. The task force shall advise and assist the office of information practices in analyzing health care information issues for the purpose of drafting rules to implement the requirements of chapter 323C, Hawaii Revised Statutes.

(b) Members of the task force shall be chosen by the director of the office of information practices and the task force shall consist of at least one representative from each of the following groups: health care consumer organizations, provider organizations, hospitals, individual and group medical practitioners, health insurance plans, health care data organizations, medical researchers, employers, pharmaceutical companies, department of health, and department of commerce and consumer affairs.

(c) The medical privacy task force shall submit a report of findings and recommendations, including recommended legislation, concerning health care issues that need statutory revision to chapter 323C, Hawaii Revised Statutes, to the legislature no later than twenty days prior to the convening of the regular session of 2001. The task force shall continue until terminated by the director of the office of information practices.

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

SECTION 6. This Act, upon its approval, shall take effect on June 30, 2000.

(Approved May 30, 2000.)

# ACT 141 S.B NO. 2521

A Bill for an Act Relating to Professional Service Contracts.

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

SECTION 1. Section 103D-304, Hawaii Revised Statutes, is amended to read as follows:

"**§103D-304 Procurement of professional services.** (a) Professional services shall be procured in accordance with sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or this section. Contracts for professional services shall be awarded on the basis of demonstrated competence and qualification for the type of services required, and at fair and reasonable prices.

(b) At a minimum, before the beginning of each fiscal year, the head of each purchasing agency shall publish a notice inviting persons engaged in providing professional services which the agency anticipates needing in the next fiscal year, to submit current statements of qualifications and expressions of interest to the agency. Additional notices may be given if:

(1) The response to the initial notice is inadequate;
(2) The response to the initial notice does not result in adequate representation of available sources; or
(3) Previously unanticipated needs for professional services arise.

The chief procurement officer may specify a uniform format for statements of qualifications. Persons may amend these statements by filing a new statement prior to the date designated for submission.

(c) The head of the purchasing agency shall designate a review committee consisting of a minimum of three employees from the agency or from another governmental body, with sufficient education, training, and licenses or credentials for each type of professional service which may be required. The committee shall review and evaluate all submissions and other pertinent information, including references and reports, and prepare a list of qualified persons to provide these services. Persons included on the list of qualified persons may amend their statements of qualifications as necessary or appropriate. Persons shall immediately inform the head of the purchasing agency of any change in information furnished which would disqualify the person from being considered for a contract award.

(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 primary selection criteria employed by the screening committee shall [establish criteria for the selection, and] include but not be limited to:

(1) Experience and professional qualifications of the staff to be assigned to the project;
(2) Past performance on projects of similar scope for public agencies or private industry; and

(3) Capacity to accomplish the work in the required time.

The screening committee shall 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] the 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 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 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 persons [in order of preference.] based on the selection criteria. The head of the purchasing agency shall negotiate a contract with the first ranked 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 ranked person, negotiations with that person shall be formally terminated and negotiations with the second ranked person on the list shall commence. Failing accord with the second ranked person, negotiations with the next ranked 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 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.

(f) Contracts awarded under this section shall be posted electronically within seven days of the contract award by the chief procurement officer and shall remain posted for at least one year. Information to be posted shall include:

(1) The names of the top five persons submitted under subsection (d), or, if the list submitted under subsection (d) is less than five, all of the persons submitted;

(2) The name of the person or organization receiving the award;

(3) The dollar amount of the contract;

(4) The purchasing agency head making the selection; and

(5) Any relationship of the principals to the official making the award.

[(f)] (g) Contracts for professional services of less than $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 2. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved May 30, 2000.)

# ACT 142 S.B NO. 2692

A Bill for an Act Relating to Salaries.

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

SECTION 1. The purpose of this Act is to provide for the independence of the judiciary as a separate branch of government by allowing the chief justice to determine the salaries of certain judiciary administrative officers based upon merit and other relevant factors.

SECTION 2. Section 601-3, Hawaii Revised Statutes, is amended to read as follows:

"**§601-3 Administrative director.** (a) The chief justice, with the approval of the supreme court, shall appoint an administrative director of the courts to assist the chief justice in directing the administration of the judiciary. The administrative director shall be a resident of the State for a continuous period of three years prior to the administrative director's appointment, and shall be appointed without regard to chapters 76 and 77 and shall serve at the pleasure of the chief justice. The administrative director shall hold no other office or employment. [Effective January 1, 1989, the administrative director shall receive a salary of $81,629 a year. Effective January 1, 1990, the administrative director shall receive a salary of $85,302 a year.] Effective July 1, 2000, the salary of the administrative director shall be no greater than provided in section 26-54 and shall be determined by the chief justice based upon merit and other relevant factors.

(b) The administrative director shall, subject to the direction of the chief justice, perform the following functions:

(1) Examine the administrative methods of the courts and make recommendations to the chief justice for their improvement;
(2) Examine the state of the dockets of the courts, secure information as to their needs of assistance, if any, prepare statistical data and reports of the business of the courts and advise the chief justice to the end that proper action may be taken;
(3) Examine the estimates of the courts for appropriations and present to the chief justice the administrative director's recommendations concerning them;
(4) Examine the statistical systems of the courts and make recommendations to the chief justice for a uniform system of judicial statistics;
(5) Collect, analyze, and report to the chief justice statistical and other data concerning the business of the courts;
(6) Assist the chief justice in the preparation of the budget, the six-year program and financial plan, the variance report and any other reports requested by the legislature;
(7) Carry out all duties and responsibilities that are specified in Title 7 as it pertains to employees of the judiciary; and
(8) Attend to such other matters as may be assigned by the chief justice.

(c) The administrative director shall, with the approval of the chief justice, appoint a deputy administrative director of the courts without regard to chapters 76 and 77 and such assistants as may be necessary. Such assistants shall be appointed without regard to chapters 76 and 77. [Effective January 1, 1989, the salary of the deputy administrative director shall be $74,608 a year. Effective January 1, 1990, the salary of the deputy administrative director shall be $77,966 a year.] Effective July 1, 2000, the salary of the deputy administrative director shall be no greater than

provided in section 26-52(3) and shall be determined by the chief justice based upon merit and other relevant factors. The administrative director shall be provided with necessary office facilities.

(d) The judges, clerks, officers, and employees of the courts shall comply with all requests of the administrative director for information and statistical data relating to the business of the courts and expenditure of public funds for their maintenance and operation.

(e) The salary levels of the administrative director and deputy administrative director shall be disclosed in the judiciary's annual budget submission to the legislature."

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

SECTION 4. This Act shall take effect on July 1, 2000.

(Approved May 30, 2000.)

## ACT 143 S.B NO. 3133

A Bill for an Act Relating to Crime.

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

SECTION 1. Section 712-1207, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§712-1207[]] Street solicitation of prostitution; designated areas.** (1) It shall be unlawful for any person within the boundaries of Waikiki and while on [a public street or sidewalk] any public property, to offer or agree to engage in sexual conduct with another person in return for a fee.

(2) It shall be unlawful for any person within the boundaries of other areas in this State designated by county ordinance pursuant to subsection (3), and while on any public property, to offer or agree to engage in sexual conduct with another person in return for a fee.

(3) Upon a recommendation of the chief of police of a county, that county may enact an ordinance that:

(a) Designates areas, each no larger than three square miles, as zones of significant prostitution-related activity that is detrimental to the health, safety, or welfare of the general public; or

(b) Alters the boundaries of any existing area under paragraph (a);

provided that not more than four areas may be designated within the State.

(4) Notwithstanding any law to the contrary, any person violating this section shall be guilty of a petty misdemeanor and shall be sentenced to a mandatory [minimum] term of thirty days imprisonment. The term of imprisonment shall be imposed immediately, regardless of whether the defendant appeals the conviction, except as provided in subsection [(3).] (5).

[(3)] (5) As an option to the mandatory [minimum] term of thirty days imprisonment, if the court finds the option is warranted based upon the defendant's record, the court may place the defendant on probation for a period not to exceed [one year,] six months, subject to the mandatory condition that the defendant observe geographic restrictions that prohibit the defendant from entering or [walking along the public streets or sidewalks of Waikiki] remaining on public property, in

Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m. Upon any violation of the geographic restrictions by the defendant, the court, after hearing, shall revoke the defendant's probation and immediately impose the mandatory [minimum] thirty-day term of imprisonment. Nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 706-624(2)(h).

[(4)] (6) Any person charged under this section may be admitted to bail, pursuant to section 804-4, subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or [walking along the public streets or sidewalks of Waikiki] remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m. Notwithstanding any other provision of law to the contrary, any person who violates these bail restrictions shall have the person's bail revoked after hearing and shall be imprisoned forthwith. Nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 804-7.1.

(7) Notwithstanding any other law to the contrary, a police officer, without warrant, may arrest any person when the officer has probable cause to believe that the person has committed a violation of subsection (5) or (6), and the person shall be detained, without bail, until the hearing under the appropriate subsection can be held, which hearing shall be held as soon as reasonably practicable.

[(5)] (8) For purposes of this section:

"Area" means any zone within a county that is defined with specific boundaries and designated as a zone of significant prostitution by this section or a county ordinance.

"Public property" includes any street, highway, road, sidewalk, alley, lane, bridge, parking lot, park, or other property owned or under the jurisdiction of any governmental entity or otherwise open to the public.

"Sexual conduct" has the same meaning as in section 712-1200(2).

"Waikiki" means that area of Oahu bounded by the Ala Wai canal, the ocean, and Kapahulu avenue.

[(6)] (9) This section shall apply to all counties; provided that if a county enacts an ordinance to regulate street solicitation for prostitution, other than an ordinance designating an area as a zone of significant prostitution-related activity, the county ordinance shall supersede this section and no person shall be convicted under this section in that county."

SECTION 2. Section 804-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If the charge is for an offense for which bail is allowable under section 804-3, the defendant may be admitted to bail before conviction as a matter of right[; provided that]. Except for section 712-1207(7), bail shall be allowed for any person charged under section 712-1207 only subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or [walking along the public streets or sidewalks of Waikiki] remaining on public property, in Waikiki and other areas in the State designated by county ordinance during the hours from 6 p.m. to 6 a.m.; and provided further that nothing contained in this subsection shall be construed as prohibiting the imposition of stricter geographic restrictions under section 804-7.1. The right to bail shall continue after conviction of a misdemeanor, petty misdemeanor, or violation, and release on bail may continue, in the discretion of the court, after conviction of a felony until the final determination of any motion for a new trial, appeal, habeas corpus, or other proceedings that are made, taken, issued, or allowed for the purpose of securing a review of the rulings, verdict, judgment, sentence, or other proceedings of any court

or jury in or by which the defendant has been arraigned, tried, convicted, or sentenced; provided that:

(1) No bail shall be allowed after conviction and prior to sentencing in cases where bail was not available under section 804-3, or where bail was denied or revoked before conviction;

(2) No bail shall be allowed pending appeal of a felony conviction where a sentence of imprisonment has been imposed; and

(3) No bail shall be allowed pending appeal of a conviction for a violation of section 712-1207, unless the court finds, based on the defendant's record, that the defendant may be admitted to bail subject to the mandatory condition that the person observe geographic restrictions that prohibit the defendant from entering or walking along the public streets or sidewalks of Waikiki or other areas in the State designated by county ordinance pursuant to section 712-1207 during the hours from 6 p.m. to 6 a.m.

Notwithstanding any other provision of law to the contrary, any person who violates these bail restrictions shall have the person's bail revoked after hearing and shall be imprisoned forthwith."

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

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

(Approved May 30, 2000.)

## ACT 144 H.B. NO. 1902

A Bill for an Act Relating to the State Water Code.

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

SECTION 1. The legislature finds that water shortages and existing water quality will continue to worsen in many areas of the State as the urbanization of former agriculture lands reduces irrigation return-flow (i.e., groundwater recharge) and increases residential, industrial, and commercial water use. One way to preserve this renewable but limited resource is to use nonpotable water whenever flushing toilets and watering lawns, or whenever the use of potable water is not necessary for health and safety reasons. It is estimated that dual line water supply systems, which supply potable and nonpotable water through parallel but separate distribution lines, can reduce residential potable water use by about fifty per cent. One example of a successful residential dual line water supply system can be found in Kapalua, Maui, where ditch water is used for irrigation and well water is used for drinking. Because of health and safety concerns, specifically cross-contamination and groundwater

quality, the use of dual line water supply systems in residential settings has been limited to date.

In order to demonstrate the feasibility of using dual line water supply systems in residential settings, and to generate public awareness of and support for this technology, this Act applies only to new industrial and commercial developments located in designated water management areas. Public acceptance of dual line water supply systems may be our single, best hope for opening up arid parts of the State to development of any sort.

SECTION 2. Chapter 174C, Hawaii Revised Statutes, is amended by adding a new section to part IV to be appropriately designated and to read as follows:

"**§174C- Dual line water supply systems; installation in new industrial and commercial developments located in designated water management areas.** (a) The commission, as a condition for issuing permits pursuant to this part, may require the use of dual line water supply systems in new industrial and commercial developments located in designated water management areas. The commission shall not require the use of dual line water supply systems if:

(1) There is a threat to existing water quality or to public health and safety, as determined by the department of health;

(2) A source of nonpotable water will not be reasonably available in the near future as determined by the commission; or

(3) There is a serious threat to permitted ground or surface water uses within a designated water management area as determined by the commission.

(b) The county boards of water supply, in consultation with the department of health, shall adopt standards for nonpotable water distributed through dual line water supply systems, and rules regarding the use of nonpotable water. The standards and rules shall be adopted in accordance with chapter 91 and shall protect existing water quality and the health and safety of the public.

(c) For the purposes of this section, the term:

"Developments" means one or more commercial or industrial subdivisions approved after the effective date of this Act. It shall not apply to any modification, addition to, or replacement of, any commercial or industrial subdivision in existence prior to the effective date of this Act.

"Dual line water supply system" means a supply system that distributes potable and nonpotable water through parallel but separate distribution lines."

SECTION 3. New statutory material is underscored.[1]

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

(Approved May 30, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 145

H.B. NO. 1912

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

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

SECTION 1. Section 437D-15, Hawaii Revised Statutes, is amended to read as follows:

"**§437D-15 Unfair trade practices.** Each lessor, and each officer, employee, agent, and other representative thereof, is prohibited from engaging in any practice constituting a violation of chapter 480. The following shall be per se violations of section 480-2:

(1) The making of any material statement [which] that has the tendency or capacity to mislead or deceive, either orally or in writing, in connection with the rental of, offer to rent, or advertisement to rent a vehicle;

(2) The omission of any material statement [which] that has the tendency or capacity to mislead or deceive, in connection with the rental of, offer to rent, or advertisement to rent a vehicle;

(3) The making of any statement to the effect that the purchase of a collision damage waiver is mandatory;

(4) Any violation of sections 437D-5 through 437D-14, and [[]section[]] 437D-17.5;

(5) The charging by the lessor to a lessee of [more]:

(A) More than the cost of the parts and labor necessary to repair a damaged vehicle in accordance with [the] standard [practices] practice in the automobile repair industry in the community, if the vehicle is repaired;[1] [and]

(B) More than the actual cash value of a vehicle if it is declared a total loss; or

(C) More than the diminution in value of a vehicle if it is not repaired and not declared a total loss;

(6) The making of any statement by the lessor to the effect that the lessee is or will be confined to remain within boundaries specified by the lessor unless payment or an agreement relating to the payment of damages has been made by the lessee[.];

(7) The charging of a lessee more than a reasonable estimate of the actual income lost for loss of use of a vehicle; and

(8) The charging of a lessee more than actual towing charges."

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

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

(Approved May 30, 2000.)

**Note**

1. "If the vehicle is repaired" should be underscored.

# ACT 146 H.B. NO. 2098

A Bill for an Act Relating to Criminal History.

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

SECTION 1. Chapter 846, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

"**§846- Employees of the department of health, its providers and subcontractors; criminal history checks.** (a) The department of health shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are seeking employment, or seeking to serve as providers or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division of the department of health. These procedures shall include but not be limited to criminal history record checks.

The Hawaii criminal justice data center may assess providers and subcontractors a reasonable fee for criminal history record checks performed. Providers and subcontractors shall be responsible for payment to the Hawaii criminal justice data center for the cost of the criminal history record checks.

(b) Except as otherwise specified, any person who seeks employment with the department of health, or who is employed or seeks employment with a provider or subcontractor in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division, shall be required to provide to the department of health:

(1) A sworn statement indicating whether the person has ever been convicted of an offense for which incarceration is a sentencing option and the details thereof;
(2) Written consent for the department of health to conduct a criminal history record check as provided for in subsection (a) and to obtain other information for verification; and
(3) Permission to be fingerprinted for the purpose of the Federal Bureau of Investigation criminal history record check.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the department of health for the purposes of determining whether a person is suitable for working in a position that necessitates non-witnessed direct contact with clients when providing non-witnessed direct mental health services on behalf of the child and adolescent mental health division. All such decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) The department of health may refuse to employ or may terminate the employment of any employee or applicant if the person has been convicted of an offense for which incarceration is a sentencing option, and if the department of health finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of clients receiving non-witnessed direct mental health services. Such refusal or termination may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding, all of which need not be conducted in accordance with chapter 91.

(d) This section shall not be used by the department of health to secure criminal history record checks on persons who have been employed continuously on a salaried basis prior to July 1, 2000.

(e) Nothing in this section shall prohibit criminal history record checks on employees of all providers and subcontractors.

(f) For the purposes of this section:

"Criminal history record check" means an examination or search for evidence of an individual's criminal history by means of:

(1) A search of the individual's fingerprints in the Federal Bureau of Investigation criminal history record files and, if found, an analysis and any other information available pertaining thereto; and

(2) A criminal history record check conducted through the files maintained by the Hawaii criminal justice data center.

"Provider" means any organization or individual that intends to enter into a contract with or is currently contracted by the child and adolescent mental health division of the department of health to provide direct mental health services to the department's eligible clients.

"Subcontractor" means any organization or individual that enters into a contract or agreement with a provider to provide direct mental health services to the department's eligible clients.

(g) Notwithstanding any other law to the contrary, the department of health shall be exempt from section 831-3.1 for purposes of this section and need not conduct its investigations, notifications, or hearings in accordance with chapter 91."

SECTION 2. Section 846-44, Hawaii Revised Statutes, is amended to read as follows:

"[[]§846-44[]] **Employees of private schools; criminal history record checks.** (a) Private schools [may] shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or are seeking employment in positions [which] that place them in close proximity to children. These procedures shall include but not be limited to criminal history record checks. [For the purposes of this section, "criminal history record check" means an examination or search for evidence of an individual's criminal history by means of a criminal history record check conducted by the Hawaii criminal justice data center; provided that the Hawaii criminal justice data center may charge a reasonable fee for criminal history record checks performed at the request of a private school.] The private school and designated organization shall establish safeguards and procedures to protect against inadvertent or inappropriate disclosure of information obtained under this section. The Hawaii criminal justice data center may charge a private school or designated organization a reasonable fee to cover the cost of the state and Federal Bureau of Investigation criminal history record check, which may be passed on to the applicant by the private school or designated organization.

(b) Except as otherwise specified, any person who is employed or seeks employment with a private school in a position [which] that necessitates close proximity to children [may be required to] shall provide to the private school [a] or designated organization:

(1) A sworn statement indicating whether or not the person has ever been convicted of an offense for which incarceration is a sentencing option, and the details [of the offense.] thereof;

(2) Written consent for the private school or designated organization to conduct a criminal history record check; and

(3) Permission to be fingerprinted for the purpose of the Federal Bureau of Investigation criminal history check.

Information obtained pursuant to [subsection (a) and this subsection] this section shall be used exclusively by the private school or designated organization for the purpose of determining whether or not a person is suitable for working in close

proximity to children. All decisions shall be subject to federal laws and regulations currently or hereafter in effect.

(c) Private schools may refuse to employ or may terminate the employment of an employee or applicant if the person has been convicted of an offense for which incarceration is a sentencing option, and if the private school finds by reason of the nature and circumstances of the crime that the person poses a risk to the health, safety, or well-being of children. This refusal or termination may occur only after appropriate investigation, notification of results and planned action, and opportunity to meet and rebut the finding.

(d) The State, the Hawaii criminal justice data center, and their respective officers and employees, shall be immune from civil liability for any official act, decision, or omission performed pursuant to this section that is not the result of gross negligence or wilful misconduct. The State, the Hawaii criminal justice data center, and their respective officers and employees shall be immune from civil liability for any act, decision, omission to act or decide, or use of the information by any private school or designated organization authorized to receive or who receives information pursuant to this section.

(e) This section shall not be used by the private schools to secure criminal history record checks on persons who have been employed continuously by the private school on a salaried basis prior to July 1, 2000.

(f) For the purposes of this section:

"Criminal history record check" means an examination or search for evidence of an individual's criminal history by means of:

(1) A search of the individual's fingerprints in the Federal Bureau of Investigation criminal history record files, and, if found, an indication of the state from which the records were provided; and

(2) A criminal history record check through the files maintained by the Hawaii criminal justice data center.

"Designated organization" means a private organization that receives the criminal history record checks on behalf of private schools."

SECTION 3. There is appropriated out of the state criminal history record improvement revolving fund the sum of $40,000 or so much thereof as may be necessary for fiscal year 2000-2001 to effectuate the purposes of this act. The sum appropriated shall be expended by the department of the attorney general for the purpose of this Act.

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

SECTION 5. This Act shall take effect upon its approval; provided that section 1 of this Act shall be repealed on June 30, 2001.

(Approved May 30, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 147

H.B. NO. 2406

A Bill for an Act Relating to Agriculture.

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

SECTION 1. Section 141-1, Hawaii Revised Statutes, is amended to read as follows:

"**§141-1 Duties in general.** The department of agriculture shall:

(1) [Information and statistics.] Gather, compile, and tabulate, from time to time, information and statistics concerning:
   (A) Entomology and plant pathology[.]: Insects, scales, blights, and diseases injurious, or liable to become injurious, to trees, plants, or other vegetation, and the ways and means of exterminating pests and diseases already in the State and preventing the introduction of those not yet here; and
   (B) General agriculture[.]: Fruits, fibres, and useful or ornamental plants and their introduction, development, care, and manufacture or exportation, with a view to introducing, establishing, and fostering new and valuable plants and industries[.];

(2) [Cooperation with other organizations.] Encourage and cooperate with the agricultural extension service and agricultural experiment station of the University of Hawaii and all private persons and organizations doing work of an experimental or educational character coming within the scope of the subject matter of chapters 141, 142, and 144 to [149A,] 150A, and avoid, as far as practicable, duplicating the work of those persons and organizations;

(3) [Agreements with other organizations.] Enter into contracts, cooperative agreements, or other transactions with any person, agency, or organization, public or private, as may be necessary in the conduct of the department's business and on such terms as the department may deem appropriate; provided that the department shall not obligate any funds of the State, except the funds that have been appropriated to the department[;]. Pursuant to cooperative agreement with any authorized federal agency, employees of the cooperative agency may be designated to carry out, on behalf of the State the same as department personnel, specific duties and responsibilities under chapters 141, 142, 150A, and rules adopted pursuant to those chapters, for the effective prosecution of pest control, and animal disease control, and regulation of import into the State and intrastate movement of regulated articles;

(4) [Library.] Secure copies of the laws of other states, territories, and countries, and other publications germane to the subject matters of chapters 141, 142, and 144 to [149A,] 150A, and make laws and publications available for public information and consultation;

(5) [Buildings and apparatus.] Provide buildings, grounds, apparatus, and appurtenances necessary for the examination, quarantine, inspection, and fumigation provided for by chapters 141, 142, and 144 to [149A;] 150A; for the obtaining, propagation, study, and distribution of beneficial insects, growths, and antidotes for the eradication of insects, blights, scales, or diseases injurious to vegetation of value and for the destruction of injurious vegetation; and for carrying out any other purposes of chapters 141, 142, and 144 to [149A;] 150A;

(6) [Further legislation.] Formulate and recommend to the governor and legislature additional legislation necessary or desirable for carrying out the purposes of chapters 141, 142, and 144 to [149A;] 150A;

(7) [Annual reports.] Publish at the end of each year a report of the expenditures and proceedings of the department and of the results achieved by the department, together with other matters germane to chapters 141, 142, and 144 to [149A,] 150A, and which the department may deem proper;

(8) [Planning and development.] Administer a program of agricultural planning and development, including the formulation and implementation of general and special plans, including but not limited to the functional plan for agriculture; administer the planning, development, and management of the agricultural park program; plan, construct, operate, and maintain the state irrigation water systems; review, interpret, and make recommendations with respect to public policies and actions relating to agricultural land and water use; assist in research, evaluation, development, enhancement, and expansion of local agricultural industries; and serve as liaison with other public agencies and private organizations for the above purposes. In the foregoing, the department of agriculture shall act to conserve and protect agricultural lands and irrigation water systems, promote diversified agriculture, increase agricultural self-sufficiency, and ensure the availability of agriculturally suitable 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 May 30, 2000.)

## ACT 148 H.B. NO. 2432

A Bill for an Act Relating to Low-Income Housing Tax Credit.

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

SECTION 1. The purpose of this Act is to allow partnership, limited liability company, and S corporation investors to claim the state low-income housing tax credit whether or not they claimed the federal low-income housing tax credit. The Act would also provide entities taxed as partnerships with the flexibility of allocating the state low-income housing tax credit among its partners and members.

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

"**§235-2.4 Operation of certain Internal Revenue Code provisions[.]; sections 63 to 530.** (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[1] 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.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to the exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) 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.

(e) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose 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.

(f) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

(g) 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.

(h) Section 468B (with respect to special rules for designated settlement funds) 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 a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

(i) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code 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.

(j) 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.

(k) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code 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.

(l) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code 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.

(m) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 for this chapter means federal modified adjusted gross income as defined in section 530.

[(n)] **§235-2.45 Operation of certain Internal Revenue Code provisions; sections 641 to 7518.** (a) 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.

[(o)] (b) 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.

[(p)] (c) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying section 685(c)(3) under this chapter.

(d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that, section 704(b)(2) shall not apply to allocations of low-income housing tax credits among partners under section 235-110.8.

[(q)] (e) 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.

[(r)] (f) 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.

[(s)] (g) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

[(t)] (h) 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.

[(u)] (i) Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

[(v)] (j) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

[(w)](k) 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 3. Section 235-110.8, Hawaii Revised Statutes, is amended as follows:

(1) By amending subsection (b) to read:

"(b) [There shall be allowed to each resident] Each taxpayer subject to the tax imposed by this chapter, who has filed net income tax return for a taxable year may claim a low-income housing tax credit [which] against the taxpayer's net income tax liability. The amount of the credit 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[.] on a timely basis. A credit under this section may be claimed whether or not the taxpayer claims a federal low-income housing tax credit pursuant to section 42 of the Internal Revenue Code."

(2) By amending subsection (g) to read:

"(g) The credit allowed under this section shall be claimed against net income tax liability for the taxable year. For the purpose of deducting this tax credit, net income tax liability means net income tax liability reduced by all other credits allowed the taxpayer under this chapter.

A tax credit under this section which exceeds the taxpayer's income tax liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. 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 properly and timely claim the credit shall constitute a waiver of the right to claim the credit. [In order to] A taxpayer may claim a credit under this section[, a taxpayer must claim a credit] only if the building or project is a qualified low-income housing building or a qualified low-income housing project under section 42 of the Internal Revenue Code.

Section 469 (with respect to passive activity losses and credits limited) of the Internal Revenue Code shall be applied in claiming the credit under this section."

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

SECTION 5. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1999.

(Approved May 30, 2000.)

**Note**

1. Prior to amendment "in" appeared here.

## ACT 149 H.B. NO. 2481

A Bill for an Act Relating to the Uniform Securities Act.

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

SECTION 1. Chapter 485, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§485- Withdrawal.** (a) An application for registration as a dealer, investment adviser, salesperson, or investment adviser representative, may be withdrawn without prejudice by the applicant upon notice to the commissioner in such form as the commissioner may prescribe before the registration becomes effective, unless a proceeding under section 485-15 is pending.

(b) Withdrawal from registration as a dealer, investment adviser, salesperson, or investment adviser representative shall be effective ninety days after receipt by the commissioner of an application to withdraw, or at such earlier time as the commissioner may allow, unless:

(1) A proceeding under section 485-15 against the registered person is pending when the application to withdraw is received or is instituted within ninety days thereafter; or

(2) Additional information regarding the application to withdraw is requested by the commissioner within ninety days after the application is filed.

(c) If a proceeding is pending or instituted under section 485-15 or if additional information is requested, withdrawal shall be effective at the time and upon the conditions imposed by order of the commissioner. If no proceeding is pending or instituted under section 485-15 or if no additional information is requested and withdrawal becomes effective, the commissioner may institute a proceeding under section 485-15 within two years after the withdrawal became effective and enter an order as of the last date on which registration was effective.

(d) Unless another date is specified by the federal covered adviser, withdrawal of a notice filing by a federal covered adviser becomes effective upon receipt by the commissioner of notice from the adviser of the withdrawal."

SECTION 2. Section 485-1, Hawaii Revised Statutes, is amended by amending the definition of "dealer" to read as follows:

"(3) "Dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. "Dealer" does not include:

(A) [a] A salesperson[,];

(B) [an] An issuer[,];

(C) [a] A person who has no place of business in this State if:

(i) [the] The person effects transactions in this State exclusively with or through the issuers of the securities involved in the transactions; other dealers; or banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees[,]; or

(ii) [during] During any period of twelve consecutive months the person does not direct more than fifteen offers to sell or to buy into this State in any manner to persons other than those specified in clause (i), whether or not the offeror or any of the offerees is then present in this State[,]; [or]

(D) [any] Any person licensed as a real estate broker or real estate salesperson under the laws of the State while effecting transactions in a security exempted by section 485-6(14)[.]; or

(E) A person who is a resident of Canada, has no office or other physical presence in this State, and:

(i) Only effects or attempts to effect transactions in securities with or through the issuers of securities involved in the transactions, broker dealers, banks, savings institutions, trust companies, insurance companies, investment companies (as defined in the Investment Company Act of 1940), pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; with or for a person from Canada who is present temporarily in this State and with whom a bona fide business relationship existed before the person entered this State; or with or for a person from Canada who is present in this State, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor;

(ii) Files a notice in the form of the person's current Canadian securities registration and a consent to service of process;

(iii) Is a member of a duly authorized self-regulatory organization or stock exchange in Canada;

(iv) Maintains the provincial or territorial registration and membership in a self-regulatory organization or stock exchange of the person in good standing;

(v) Discloses to the person's clients in this State that the person is not subject to the full regulatory requirements of this chapter; and

(vi) Does not violate this chapter."

SECTION 3. Section 485-2, Hawaii Revised Statutes, is amended to read as follows:

"**§485-2 Commissioner of securities.** (a) The administration of this chapter shall be vested in the commissioner of securities. The director of commerce and consumer affairs shall, with the approval of the governor, appoint the commissioner of securities who shall not be subject to chapters 76 and 77. The securities commissioner shall hold the commissioner's office at the pleasure of the director of commerce and consumer affairs and shall be responsible for the performance of the duties imposed under this chapter.

(b) The commissioner of securities may adopt, amend, and repeal, pursuant to chapter 91, such rules as may be necessary to carry out the purposes of this chapter.

(c) Notwithstanding subsection (b), the commissioner of securities may adopt, amend, and repeal forms and orders necessary to implement this chapter without regard to chapter 91. No form or order shall be adopted, amended, or repealed without regard to chapter 91, unless the commissioner of securities finds that the action is in the public interest, necessary or appropriate for the protection of investors, and consistent with the purposes of this chapter."

SECTION 4. Section 485-6, Hawaii Revised Statutes, is amended to read as follows:

"**§485-6 Exempt transactions.** The following transactions [are exempted] shall be exempt from sections 485-4.5, 485-8, and 485-25(a)(7):

(1) Any isolated nonissuer transaction, whether effected through a dealer or not;

(2) Any nonissuer distribution of an outstanding security if the manual of Hawaiian securities or any other recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, or the security has a fixed maturity or a fixed interest or dividend provision and there has been no default during the current fiscal year or within the three preceding fiscal years (or during the existence of the issuer and any predecessors if less than three years) in the payment of principal, interest, or dividends on the security;

(3) Any nonissuer transaction effected by or through a registered dealer pursuant to an unsolicited order or offer to buy;

(4) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(5) Any transaction in a bond or other evidence of indebtedness secured by a real or chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage, deed of trust, or

agreement, together with all the bonds or other evidences of indebtedness secured thereby, is offered and sold as a unit;

(6) Any transaction by a personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(7) Any transaction executed by a bona fide pledgee without any purpose of evading this chapter;

(8) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or other financial institution or institutional buyer, or to a dealer, whether the purchaser is acting for itself or in some fiduciary capacity;

(9) Any transaction pursuant to an offer directed by the offerer to not more than twenty-five persons (other than those designated in paragraph (8)) in the State during any period of twelve consecutive months, whether or not the offerer or any of the offerees is then present in the State, if all buyers represent that they are purchasing for investment (rather than with a present view to resale) and the seller reasonably accepts their representations as true, and no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer;

(10) Any offer or sale of a preorganization certificate or subscription for any security to be issued by any person if no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective subscriber, and the number of subscribers does not exceed twenty-five;

(11) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within ninety days of their issuance, if no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in the State;

(12) Any offer (but not a sale) of a security for which registration statements have been filed under both this chapter and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward the order is pending under either this chapter or the Act;

(13) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of the State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes, or to a lease which entitles the holder to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by the corporation, subject, however, to section 485-7;

(14) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of the State of an apartment in a condominium project, and a rental management contract relating to the apartment, including an interest in a general or limited partnership formed for the purpose of managing the rental of apartments if the rental management contract or the interest in the general or limited partnership is offered at the same time as the apartment is offered. The words "apartment", "condominium", and "project" are defined as they are defined in section 514A-3;

(15) Any transactions not involving a public offering, and in addition, any categories of transactions effected in accordance with any rules the commissioner may [issue] adopt under chapter 91 pursuant to this paragraph with a view to uniformity with federal law; [and]

(16) (A) Any transactions involving the offer or sale of a security by an issuer to an accredited investor that meet the following requirements:

(i) The issuer reasonably believes that the sale is to persons who are accredited investors;

(ii) The issuer is not in the development stage, without specific business plan or purpose;

(iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and

(iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. Any resale of a security sold in reliance [of] on this exemption within twelve months of sale shall be presumed to be made with a view to distribute and not to invest, except a resale pursuant to a registration statement effective under section 485-8, or to an accredited investor pursuant to an exemption available under chapter 485;

(B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:

(i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;

(ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;

(iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

(iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;

(C) Subparagraph (B) shall not apply if:

(i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;

(ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or

(iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph;

(D) An issuer claiming the exemption under this section, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the general announcement as required by section [[]485-24.6[]], and a $200 filing fee; and

(E) For the purposes of this paragraph, "accredited investor" shall have the same meaning as provided in 17 Code of Federal Regulations section 230.501(a)[.]; and

(17) Any offer or sale of a security effected by a resident of Canada who is excluded from the definition of "dealer" under section 485-1(3)(E)."

SECTION 5. Section 485-14, Hawaii Revised Statutes, is amended to read as follows:

"**§485-14 Registration of dealers, investment advisers, salespersons, and investment adviser representatives.** (a) It is unlawful for any person to transact business in this State as a dealer, investment adviser, salesperson, or investment adviser representative unless registered under this chapter. However, nothing in this chapter shall prevent the commissioner from participating, in whole or in part, in the Central Registration Depository system, in cooperation with the National Association of Securities Dealers, Inc., other states, and the United States, to the extent participation is deemed to be in the public interest of this State.

(b) Eligibility for registration as a dealer. To be eligible for registration as a dealer, an applicant shall have had (or if the applicant is a partnership or corporation have at least one partner, officer, or employee who has) at least one year of experience as a full-time security salesperson or experience as a security salesperson on a part-time basis found by the commissioner of securities to be substantially equivalent thereto[,]; provided that [the foregoing] this experience requirement shall not apply to issuers of securities applying for registration as dealers for the sole purpose of issuing and selling securities issued by them.

(c) Application for registration as a dealer. An application for registration as a dealer [in writing] shall be filed in the office of the commissioner in such form as the commissioner may prescribe, duly verified by oath, and shall state the principal office of the applicant wherever situated, and the location of the principal office and branch offices in the State, if any, the name and style of doing business, the names, residence, and business of principals, copartners, officers, and directors, specifying as to each person's capacity and title, the general plan and character of business, the length of time the dealer has been engaged in business and information as to the time, place, and character of experience as a securities salesperson. The commissioner may also require such additional information as to the applicant's previous history, record, and association including the following:

(1) Any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;

(2) The applicant's financial condition and history;

(3) Whether the dealer, or any person employed by or associated in business with the dealer, is subject to any disqualification which would

be a basis for denial, suspension, or revocation of registration of the dealer under section 485-15; and

(4) Any other information [as] that the commissioner deems necessary to establish the qualifications of the applicant.

There shall be filed with such application an irrevocable written consent to the service of process upon the commissioner in actions against the dealer in manner and form provided in section 485-12.

(d) Eligibility for registration as an investment adviser. To be eligible for registration under this chapter, an investment adviser shall have complied with the mandatory provisions [mandatory] of this section, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the applicant's knowledge of the securities business; provided that the commissioner may by rule set forth exemptions to the examination requirement. Every person required to take such an examination at or before the time of the examination, shall pay to the commissioner a fee of $250.

(e) Registration of investment advisers. An application for registration, duly verified by oath by the applicant, and in such form as the commissioner shall prescribe, shall be filed in the office of the commissioner accompanied by an irrevocable written consent to the service of process upon the commissioner in actions against the investment adviser in manner and form provided in section 485-12; the applicant's photograph; and a form of the disclosure statement described in section 485-25(c)(4). Information on the registration statement shall include:

(1) The name and form of organization under which the investment adviser engages or intends to engage in business; the name of the state or other sovereign power under which the investment adviser is organized; the location of the investment adviser's principal business office and branch offices, if any; the names and addresses of the investment adviser's partners, officers, directors, and persons performing similar functions or, if the investment adviser is an individual, of the individual; and the number of the investment adviser's employees;

(2) The education, the business affiliations for the past five years, and the present business affiliations of the investment adviser and of the investment adviser's partners, officers, directors, and persons performing similar functions and of any controlling person thereof;

(3) The nature of the business of the investment adviser, including the manner of giving advice and rendering analyses or reports;

(4) A balance sheet certified by an independent public accountant and other certified financial statements if the investment adviser has custody of or discretionary authority over client money, securities, or other assets, or an unaudited, verified balance sheet and financial statements if the investment adviser has no custody of or discretionary authority over client money, securities, or other assets. If the investment adviser maintains its principal place of business in a state other than this State and the investment adviser is registered in that state and in compliance with its financial reporting requirements, this requirement shall be deemed satisfied by the investment adviser filing with the commissioner a copy of those financial statements, if any, that are required to be filed by the adviser in the state where it maintains its principal place of business;

(5) The nature and scope of the authority of the investment adviser with respect to clients' funds and accounts;

(6) The basis or bases upon which the investment adviser is compensated;

(7) Whether the investment adviser, or any person employed by or associated in business with the investment adviser, is subject to any disquali-

fication which would be a basis for denial, suspension, or revocation of registration of the investment adviser under section 485-15;

(8) A statement as to whether the principal business of the investment adviser consists or is to consist of acting as investment adviser; and

(9) Other information as to the applicant's previous history, record, and association that the commissioner deems necessary including:

(A) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;

(B) The applicant's financial history; and

(C) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

The commissioner may use a uniform registration form adopted by the North American Securities Administrators Association, the Securities and Exchange Commission, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934; provided the form encompasses the information required under this section.

(f) Approval, bond. If the commissioner finds that the applicant for registration as a dealer is eligible for registration, then the commissioner shall register the applicant as a dealer upon payment of the fee hereinafter provided and, except as otherwise provided in this subsection, upon the dealer's filing of a bond in the sum of $5,000 running to the State conditioned upon the faithful compliance with this chapter by the dealer and by all salespersons registered by the dealer while acting for the dealer. The bond shall be executed as a surety by a surety company authorized to do business in the State; provided that no bond is required of or from any applicant if the applicant at the time of making application is a member of any recognized stock or bond exchange which has been in existence for a period of five years prior to April 29, 1931; provided further that no bond is required of a dealer if the aggregate par value of the securities to be sold is less than $5,000 or in the case of no par value stock, if the price at which the stock is to be offered to the public is less than $5,000 if the person selling or offering the securities for sale to the public notifies the commissioner in writing of the person's intention to make the sale and after the sale files with the commissioner a statement of the kind and amount of stock sold and the price received therefor, but where the aggregate par value of the securities or the price at which the stock is to be offered to the public is less than $5,000 no more than one sale or offering shall be allowed within a period of one year; provided further that in lieu of the above bond, any dealer may deposit and keep deposited with the commissioner cash in the amount of $5,000 or securities to be approved by the commissioner having a market value at all times of not less than $5,000 which cash or securities shall be held in trust [for the fulfilling of] to fulfill the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the dealer depositing the same. No bond shall be required under this section or under this chapter of any dealer that is registered under the Securities Exchange Act of 1934.

(g) Investment adviser's approval; bond, insurance required. If the commissioner finds that the applicant for registration as an investment adviser is eligible for registration, the commissioner shall register the investment adviser upon a payment of a fee hereinafter provided, and, except as otherwise provided in this subsection, upon the investment adviser filing a bond in the sum of $50,000 with the State as the obligee. The bond requirement shall be $5,000 if the adviser does not have custody of or discretionary authority over client money, securities, or other assets. The bond

shall be conditioned upon the faithful compliance with this chapter by the investment adviser. The bond shall be executed as a surety by a surety company authorized to do business in the State; provided that in lieu of the above bond any investment adviser may deposit and keep deposited with the commissioner cash in the applicable amount of $50,000 or $5,000 or securities to be approved by the commissioner having a market value at all times of not less than $50,000 or $5,000 which cash or securities shall be held in trust [for the fulfilling of] to fulfill the same terms and conditions as in the case of a bond required by this section, which cash or securities may be withdrawn at any time subject to the deposit in lieu thereof of cash or other securities of equal value, or upon the filing of a bond as provided in this section, and which cash or securities will be so held in trust for a period of two years beyond the revocation or termination of the registration of the investment adviser depositing the same. In addition, except as otherwise provided in this subsection, the investment adviser shall file with the commissioner a certificate of insurance which indicates that the investment adviser's business is insured for errors and omissions for at least $100,000 per occurrence with a $200,000 aggregate for those with less than two years experience and a $500,000 aggregate for those with two or more years of experience for the protection of the investment adviser's client, or shall meet an alternative requirement which also provides for the protection of the client of the investment adviser, as determined by rules adopted by the commissioner. This subsection shall not apply to any investment adviser that maintains its principal place of business in a state other than this State; provided that the investment adviser is registered in the state where it maintains its principal place of business and [[]is[]] in compliance with that state's net capital and bonding requirements, if any.

(h) Eligibility for registration as a salesperson. To be eligible for registration under this chapter, a salesperson shall have complied with the mandatory provisions of this section, shall be designated as a salesperson by a registered dealer, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the salesperson's knowledge of the securities business. Every person required to take such an examination shall, at or before the time the person takes the same, pay a fee as prescribed by the commissioner. However, registration is not required of a salesperson who represents a dealer in effecting transactions in this State limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934. No person shall be designated as a salesperson by, or shall act as a salesperson for, more than one registered dealer.

(i) Registration of salespersons. An information statement, containing information [as] that the commissioner shall prescribe, shall be filed where prescribed by the commissioner, together with an appointment of the applicant as a salesperson by a registered dealer. The commissioner may require the following:

(1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony;
(2) The applicant's financial history and condition;
(3) Disclosure as to whether the salesperson or any person associated in business with the salesperson is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the salesperson under section 485-15; and
(4) Any additional information [as] that the commissioner deems necessary to establish the applicant's qualifications.

If the commissioner finds a salesperson designated by any registered dealer to be eligible for registration as a salesperson, the commissioner shall register the person as a salesperson upon the payment of the fee hereinafter provided.

(j) Eligibility for registration as an investment adviser representative. To be eligible for registration under this chapter, an investment adviser representative shall

have complied with the mandatory provisions of this section, shall be designated as a representative by a federal covered adviser or a registered investment adviser, and shall take and pass an oral or written examination, or both, prescribed by the commissioner, to test the representative's knowledge of the investment advisory and securities business; provided that the commissioner may by rule set forth exemptions to the examination requirement. Every person required to take an examination shall, at or before the time the person takes the same, pay a fee as prescribed by the commissioner. No person shall be designated as an investment adviser representative by, or shall act as an investment adviser representative for, more than one federal covered adviser or registered investment adviser.

(k) Registration of investment adviser representative. An information statement, containing information that the commissioner shall prescribe, duly verified by oath by the applicant, shall be filed in the office of the commissioner, together with an appointment of the applicant as an investment adviser representative by a registered investment adviser if the representative is seeking registration with an investment adviser. The commissioner may require the following:

(1) Disclosure of any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business, and any conviction of a felony;
(2) The applicant's financial history and condition;
(3) Disclosure as to whether the investment adviser representative, or any person associated in business with the investment adviser representative, is subject to any disqualification which would be a basis for denial, suspension, or revocation of registration of the investment adviser representative under section 485-15; and
(4) Any additional information that the commissioner deems necessary to establish the applicant's qualifications.

If the commissioner finds an investment adviser representative designated by any federal covered adviser or investment adviser to be eligible for registration as an investment adviser representative, the commissioner shall register the person as an investment adviser representative upon the payment of a fee hereinafter provided.

(l) Recording; duration; renewal; fee. The [name] names and addresses of all persons found eligible for registration as dealers, investment advisers, salespersons, or investment adviser representatives and all orders with respect thereto shall be recorded in a register of dealers, investment advisers, salespersons, and investment adviser representatives kept in the office of the commissioner [which] and shall be open to public inspection. Except as hereinafter provided, every registration for investment advisers and investment adviser representatives under this section shall expire on December 31 in each odd-numbered year, and every registration for dealers and salespersons under this section shall expire on December 31 of each year. Applications for renewals shall be made not less than thirty nor more than sixty days before the end of the expiration year or as provided through the Central Registration Depository system. Any applicant for renewal of a dealer, investment adviser, salesperson, or investment adviser representative registration who does not submit the application within the time prescribed by this section shall pay a penalty of one hundred per cent of the applicable renewal fee. Any applicant for renewal of a dealer or investment adviser registration who submits the application after December 31 of the expiration year shall be required to reapply as a new dealer or investment adviser. The registration of any dealer, investment adviser, salesperson, or investment adviser representative may be revoked or terminated prior to its expiration by written notice filed with the commissioner by the registered dealer, registered salesperson, registered investment adviser, or registered investment adviser representative concerned, and the revocation shall take effect as of the date and time of filing of the notice. Upon revocation or termination of the registration of any

dealer, investment adviser, salesperson, or investment adviser representative, the dealer's, investment adviser's, salesperson's, or investment adviser representative's certificate of registration shall be surrendered to the commissioner for cancellation. The fee for registration and for each renewal shall be $200 in the case of dealers and investment advisers and $50 in the case of salespersons and investment adviser representatives.

(m) Changes. Changes in registration occasioned by changes in the personnel of a partnership or in the principals, copartners, officers, or directors of any [dealer] dealer's or investment adviser's business may be made from time to time by written application setting forth the facts with respect to such change.

(n) Announcement of registration application. The commissioner, by rule, may require an applicant for initial registration as a dealer, investment adviser, salesperson, or investment adviser representative to publish an announcement of the application in one or more newspapers of general circulation in this State.

(o) Notice of intent to offer. Every registered dealer who intends to offer any security of any issue registered or to be registered shall notify the commissioner in writing of the dealer's intention [so] to do[.] so. The notice shall contain the name of the dealer[,] and shall state the name of the security to be offered for sale, and whenever a dealer has prepared such notice and has forwarded the same by registered mail, postage prepaid, and properly addressed to the commissioner, such dealer, as to the contents of the notice and the filing thereof, is deemed to have complied with the requirements of this subsection.

(p) Issuers as dealers. Any issuer of a security required to be registered under this chapter selling such securities (other than in exempt transactions as defined in section 485-6), and any issuer of an exempt security as defined in section 485-4(9) and (10) offering such securities (other than (1) in exempt transactions as defined in section 485-6, or (2) through a dealer registered pursuant to this chapter) shall file with the commissioner a bond, or deposit securities or cash in an amount, based on the total capitalization, to be determined by the commissioner in the commissioner's discretion, which amount, however, shall not be less than $5,000, nor more than $25,000, subject also to the same conditions as herein prescribed in the case of dealers, and may appoint salespersons in the manner herein prescribed in the case of dealers.

(q) Capital requirement for dealers and investment advisers who have custody of or discretionary authority over client money, securities, or other assets. Except as otherwise provided in this subsection, the commissioner may by rule require a minimum capital requirement for registered dealers which shall not be less than $5,000 in the case of dealers and prescribe a ratio between net capital and aggregate indebtedness. This subsection shall not apply to any dealer that is registered under the Securities Exchange Act of 1934. The commissioner may by rule require a net worth requirement which shall not be less than $5,000 for investment advisers. This subsection shall not apply to any investment adviser that maintains its principal place of business in a state other than this State; provided that the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state's net worth or net capital requirements, if any.

(r) A registered broker dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. There shall be no filing fee for registration of a successor."

SECTION 6. Section 485-15, Hawaii Revised Statutes, is amended to read as follows:

**"§485-15 Denial, revocation, or suspension of dealers', investment advisers', salespersons', and investment adviser representatives' registration; suspension during investigation, etc.** Upon the finding of errors in a registration statement or the filing of complaints by consumers or by any government agency, the commissioner may conduct an investigation of the applicant or registrant and [registration under section 485-14 may be refused or any registration granted may be revoked by the commissioner of securities] the commissioner may deny an application for registration, revoke or suspend any registration, or limit or impose conditions on the securities activities that a registrant may conduct in this State, if after [a] reasonable notice and a hearing the commissioner determines that the applicant or registrant [so registered]:

(1) Has filed an application for registration which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) Has violated or failed to comply with any provision of this chapter or any rule or order under this chapter;

(3) Has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(4) Is permanently or temporarily enjoined by any court of competent jurisdiction for engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) Is the subject of an order of the commissioner denying, suspending, or revoking registration as a dealer, investment adviser, salesperson, or investment adviser representative;

(6) Is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission denying or revoking registration as a dealer, investment adviser, salesperson, or investment adviser representative, or the substantial equivalent of those terms as defined in this chapter, or is the subject of an order of the Securities and Exchange Commission suspending or expelling the applicant or registrant from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States Post Office fraud order; but:

   (A) The commissioner may not institute a revocation or suspension proceeding under this paragraph more than one year from the date of the order relied on[,]; and

   (B) The commissioner may not enter an order under this paragraph on the basis of an order under another law of this State unless that order was based on facts which would currently constitute a ground for an order under this section;

(7) Has engaged or is about to engage in fraudulent, dishonest, or unethical practices in the securities business;

(8) Is insolvent, either in the sense that liabilities exceed assets or in the sense that the dealer, investment adviser, salesperson, or investment adviser representative cannot meet obligations as they mature; but the commissioner may not enter an order against a dealer or investment adviser under this paragraph without a finding of insolvency as to the dealer or investment adviser;

(9) Is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;

(10) Has failed reasonably to supervise agents, if a dealer[,] or an agent of a dealer with supervisory responsibilities, or employees, if an investment adviser[;] or an employee of an investment adviser with supervisory responsibilities; for the purposes of this paragraph no person shall be deemed to have failed reasonably to supervise any person if there have been established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violations by such other person, and such person has reasonably discharged the duties and obligations incumbent upon the person by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with; or

(11) Has demonstrated unworthiness to transact the business of dealer, investment adviser, salesperson, or investment adviser representative.

In cases of charges against a salesperson or investment adviser representative notice thereof shall also be given the dealer or investment adviser employing such salesperson or investment adviser representative. Pending the hearing, the commissioner may order the suspension of the dealer's, investment adviser's, salesperson's, or investment adviser representative's registration; provided the order states the cause for the suspension.

Until the entry of a final order the suspension of the dealer's or investment adviser's registration, though binding upon the persons notified thereof, shall be deemed confidential, and shall not be published, unless it appears that the order of suspension has been violated after notice.

In the event the commissioner determines to refuse or revoke a registration as [hereinabove] provided[,] in this section, the commissioner shall enter a final order [herein] with the commissioner's findings on the register of dealers, investment advisers, salespersons, and investment adviser representatives; and suspension or revocation of the registration of a dealer or investment adviser shall also suspend or revoke the registration of all the dealer's or investment adviser's salespersons or investment adviser representatives.

It shall be sufficient cause for refusal or cancellation of registration in case of a partnership or corporation or any unincorporated association, if any member of a partnership or any officer or director of the corporation or association has been guilty of any act or omission which would be cause for refusing or revoking the registration of an individual dealer, investment adviser, salesperson, or investment adviser representative."

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 8. This Act shall take effect upon its approval.

(Approved May 30, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 150 H.B. NO. 2530

A Bill for an Act Relating to Air Pollution Control Public Notification.

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

SECTION 1. The legislature finds that section 342B-13, Hawaii Revised Statutes, regarding public notification, is confusing and inconsistent with the notice requirements of Act 2, Session Laws of Hawaii 1998, and creates an unnecessary expense for the department of health. To provide a more streamlined, consistent, and cost-effective means of public notice, Act 2, among other things, made widespread changes to the Hawaii Revised Statutes and inadvertently revised section 342B-13 to require public notification for air permits to be given twice weekly. No federal regulation requires notices to be published twice weekly. Furthermore, the existing language is ambiguous because it does not identify the duration for the twice weekly notices.

This Act furthers the purposes of Act 2, eliminates the requirement that notices be published twice weekly, and provides that public notification be given once in the county affected by the proposed action. This Act also requires posting of the notice on the department web site.

SECTION 2. Section 342B-13, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in subsections (b) and (c), where public participation is deemed appropriate by the director or is required, the director shall provide for notice and opportunity for public comment as follows:

(1) The director shall make available for public inspection in at least one location in the county affected by the proposed action, or in which the source is or would be located:
   (A) Information on the subject matter;
   (B) All information submitted by the applicant, except for that deemed confidential;
   (C) The department's analysis and proposed action; and
   (D) Other information and documents deemed appropriate by the department[;].
(2) The director shall notify the public of the availability of information listed in paragraph (1). Public notification shall be given [at least twice weekly] once in the county affected by the proposed action, or in which the source is or would be located[;]. The director shall also post this notice on the department's web site in an easily-located manner;
(3) Public notice shall be mailed to any person, group, or agency upon request;
(4) The director shall provide a period of not less than thirty days following the date of the public notice during which time interested persons may submit written comments on the subject matter, application, department's analysis and proposed actions, and other appropriate considerations. The period for comment may be extended at the discretion of the director; and
(5) The director, at the director's sole discretion, may hold a public hearing if the public hearing would aid in the director's decision. Any person may request a public hearing. The request shall be in writing and shall be filed within the thirty-day comment period prescribed in paragraph (4) and shall indicate the interest of the party filing the request and the reasons why a hearing is warranted. The director shall give the public

notice for a hearing in accordance with paragraph (2) at least thirty days in advance of the hearing date and shall conduct the hearing in the county which would be affected by the proposed action, or in which the source is or would be located.''

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

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

(Approved May 30, 2000.)

## ACT 151 H.B. NO. 2797

A Bill for an Act Relating to Insurance Code.

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

SECTION 1. Section 431:2-201.5, Hawaii Revised Statutes, is amended to read as follows:

**''§431:2-201.5 Conformity to federal law.** (a) The provisions of [the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191,] title 42 United States Code section 300(gg), et seq., as [it relates] they relate to group and individual health insurance [and to long-term care insurance to the extent provided in article 10H of chapter 431,] shall apply to title 24, except:

(1) Where state law provides greater health benefits or coverage than [the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191] title 42 United States Code section 300(gg), et seq., 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 [the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191:] title 42 United States Code section 300(gg), et seq.:

(A) ''Employee'' means an employee who works on a full-time basis with a normal workweek of twenty hours or more;

(B) ''Group health issuer'' means all persons offering [benefits under group health plans,] health insurance coverage to any group or association, but shall not include those persons offering benefits exempted from Title I of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 under [section 706(c)] sections 732(c) and 733(c) of title I 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 all small group health plans to all 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.

For the purpose of this subsection, "Small group health plans" means the medical plans currently offered, advertised, or marketed by a group health issuer for small employees.

(b) The [insurance] commissioner may adopt rules to implement, clarify, or conform title 24 to [the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191.] title 42 United States Code section 300(gg), et seq.

(c) The adoption of the Health Insurance Portability and Accountability Act of 1996, P.L. 104-191 for the purposes of title 24 is not an adoption for any purposes for income taxes under chapter 235.

(d) The State shall have jurisdiction over any matter that title 42 United States Code section 300(gg), et seq., permits, including jurisdiction over enforcement."

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

SECTION 3. This Act shall take effect on July 2, 2000.

(Approved May 30, 2000.)

## ACT 152 H.B. NO. 2835

A Bill for an Act Relating to Watershed Protection.

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

SECTION 1. Findings and purpose. The legislature finds that Hawaii's forests function as critical watersheds and are the primary source of fresh water for the islands. Hawaii's native forests in particular have evolved into efficient ecosystems that capture and store appreciably more water than any other natural milieu. The forested watersheds, both native and non-native, are vital recharge areas for Hawaii's underground aquifers and a dependable source of clean water for its streams.

The legislature finds that the relationship of Hawaii's forested uplands to a dependable supply of clean fresh water was recognized over a century ago. During that period, public and private interests recognized that years of extensive cattle grazing and other land use practices contributed significantly to the degradation of the forests. Public and private concerns about water supply and quality were the impetus for placing the forests into reserves and undertaking massive reforestation at the turn of the century. The legislature finds that since then, public and private investment in watershed protection and management has increasingly diminished and, once again, our forested watersheds are steadily degrading. Moreover, over the last one hundred years, Hawaii has lost half of its native forests.

The legislature recognizes that fresh water is not an infinite resource and that its high quality, quantity, and sustainability are essentially linked to the existence of forested watersheds. The legislature finds that there are presently approximately two million acres of major watershed areas statewide.

The purpose of this bill is to establish a watershed protection board to develop a watershed protection master plan to provide for the protection, preserva-

tion, and enhancement of important watershed areas. The master plan shall include potential watershed protection projects, implementation plan, including funding sources, including but not limited to appropriations, assessments, contributions, grants, and donations from public and private sources.

SECTION 2. Watershed protection board; established. There is established under the department of land and natural resources a watershed protection board. The board shall consist of seven members, including the chairperson of the board of agriculture or a designated representative, and a representative from the U.S. military. Each county water agency shall appoint a member to the board. The chairperson of the board of land and natural resources or a designated representative shall serve as chairperson and as an ex officio voting member of the board.

SECTION 3. Watershed protection board; powers and duties. The board shall develop a watershed protection master plan to include:

(1) Identification of potential watershed management areas to be protected;
(2) Development of criteria for eligible watershed management projects;
(3) Development of procedures and criteria for selecting eligible watershed management projects;
(4) Designation of watershed management projects, including the amount of funds needed for such projects;
(5) Development of an implementation plan for those designated watershed management projects;
(6) Identification of potential sources of funding, including appropriations, assessments, contribution, grants, donations from public and private sources, and recommendation of funding sources;
(7) Analysis of problems and issues encountered in the equitable levy, assessment, and collection of the watershed protection assessment on water users; and
(8) Any other issues designated by the board.

SECTION 4. The cost of the watershed protection master plan shall be borne by some or all of the agencies that have representation on the board by agreement or from other funding sources as approved by the board.

SECTION 5. The board shall submit the watershed protection master plan to the legislature no later than June 30, 2001.

SECTION 6. This Act shall take effect upon its approval. This Act shall sunset on June 30, 2002.

(Approved May 30, 2000.)

## ACT 153 H.B. NO. 2314

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431P-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon the authorization of the commissioner, insurers may provide standard extended coverage endorsements[,] <u>for residential property,</u> including

coverage of hurricane risks, subject to the fund's program for incentives and credits; provided that in the absence of such authorization, no other policy of residential property insurance or endorsement to a policy of residential property insurance on eligible residential property located in this State shall be issued to provide insurance for damages or losses caused by a covered event if such coverage is less than that offered by the fund. If standard extended coverage endorsements on commercial property are no longer being offered by the fund, any standard extended coverage endorsements on commercial property offered by an insurer shall qualify as a comparable coverage under section 431P-5(b)(8)(A). Standard extended coverage endorsements on residential property which include coverage for hurricane losses offered by an insurer shall qualify as a comparable coverage under section 431P-5(b)(8)(A)."

SECTION 2. The Hawaii hurricane relief fund's advisory committee shall study, at the fund's expense, the issue of hazard mitigation, including the providing of matching grants to policyholders who install mitigative devices. The study shall include whether the fund can achieve a hazard mitigation program without additional statutory authority. The study shall include an evaluation of the feasibility and pros and cons of a program in which:

(1) The fund sets aside an annual amount equal to five per cent (or other more appropriate percentage determined by the study) of the amount remaining after deducting any outstanding liabilities from the hurricane reserve trust fund in an amount not less than $700,000, and not more than $5,000,000 (or other more appropriate amount as determined by the study), for the purpose of providing matching grants to policyholders under the fund who:
    (A) Properly install fund-approved:
        (i) Wind-resistive devices; or
        (ii) Opening protection coverings for all plate and sliding glass openings larger than two by two feet that are installed along with sufficient single, double, and garage door retention devices, as applicable; and
    (B) Pay any established fees to offset the administrative and sufficient marketing costs of the grant program; and
(2) Each policyholder would be eligible to receive a grant up to $3,500, matching dollar-for-dollar their expenditures under paragraph (1), with no minimum grant eligibility threshold.

For purposes of the study, the advisory committee shall assume that the grants would not be subject to chapter 91; and that the grant program would be extended to former fund policyholders when the number of policyholders falls below eighty per cent of the number of residential fund policyholders as of January 1, 2000.

The advisory committee shall submit its findings and recommendations, including:

(1) Any proposed legislation, if necessary; and
(2) Which hazard mitigation program will provide the most benefit to residential homeowners,

to the legislature no later than twenty days before the convening of the regular session of 2001.

SECTION 3. If the study finds that:

(1) Legislative enactment is not necessary to enable this grant program;
(2) It is feasible to implement the grants program; and
(3) The pros of the grant program outweigh the cons,

then the study shall contain specific details on the implementation of the grant program.

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

SECTION 5. This Act shall take effect upon its approval, except that section 1 shall take effect retroactively to September 1, 1998.

(Approved May 31, 2000.)

## ACT 154 H.B. NO. 2405

A Bill for an Act Relating to Pesticides.

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

SECTION 1. Section 149A-2, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"""Integrated pest management" means a sustainable approach to managing pests by combining biological, cultural, physical, and chemical tools in a way that minimizes economic, health, and environmental risks."

2. By amending the definition of "pest" to read:

"Pest" means any insect, rodent, nematode, fungus, weed, or any other form of terrestrial or aquatic plant or animal life or virus, bacterium, or any other microorganism, except viruses, bacterium, or any other microorganisms on or in living humans or other living animals, which [the board declares to be a pest.] the administrator of the U.S. Environmental Protection Agency determines to be a pest pursuant to the Federal Insecticide Fungicide Rodenticide Act."

SECTION 2. Section 149A-13.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§149A-13.5[]] Pesticide use revolving fund; pesticide training workshops; training fee.** (a) There is established within the treasury of the State, a pesticide use revolving fund. The fund shall be administered by the department for the purposes of this section. The fund shall consist of:

(1) Licensing and registration fees and charges collected by the department under section 149A-13(b); and

(2) All fees collected by the department through the collection of training fees in accordance with subsection (c).

(b) Moneys in the pesticide use revolving fund shall be expended by the department to support the pesticide program's registration and licensing, certification and education, and compliance monitoring activities. The department shall also expend revolving fund moneys on the establishment of pesticide training workshops, educational programs, development of integrated pest management strategies, and other services for pesticide users such as the agricultural pest control industry, the structural pest control industry, and consumer users of pesticides, which provide pesticide instruction in areas[,] including but not limited to[,] the collection, disposal, and recycling of pesticide containers and all other pesticide services deemed necessary by the department. Moneys from the revolving fund may be used for [the purchase of] personnel, services, materials, and equipment[.] for the purposes of this

section; provided that the use of moneys from the revolving fund for personnel costs shall be limited to those employees under the registration and education section of the department's pesticides branch.

Moneys expended by the department from the pesticide use revolving fund for training workshops, educational programs, and other services for the agricultural pest control industry, the structural pest control industry, and consumer groups shall be [done so] expended in a manner that appropriately addresses the needs of each category of pesticide user.

(c) The department may set fees for the educational services and training provided under this section.

(d) All interest earned on the deposit or investment of the moneys in the fund shall become a part of the fund.

(e) [The balance in the revolving fund shall not exceed $250,000. All amounts in excess of the $250,000 shall be deposited to the credit of the state general fund.] All unobligated, unencumbered, or unexpended funds remaining in the fund in excess of $250,000 at the close of each fiscal year shall lapse to the state general fund.

(f) The department shall submit an annual report to the legislature on all moneys deposited into, and disbursed from, the pesticide use revolving fund. The report shall be submitted to the legislature not fewer than twenty days prior to the convening of each regular session. The report shall group all moneys deposited into, and disbursed from, the revolving fund according to the categories established in subsections (a) to (e).''

SECTION 3. Section 149A-16, Hawaii Revised Statutes, is amended to read as follows:

**''§149A-16 Coloration of certain pesticides.** [(a) Pesticides known as standard lead arsenate, basic lead arsenate, calcium arsenate, magnesium arsenate, zinc arsenate, zinc arsenite, sodium fluoride, sodium fluosilicate, or barium fluosilicate shall be distinctly colored as specified by rule.

(b)] The department may require, by rule, the distinct coloration of [other] certain pesticides [that it] as the EPA determines or, for a product registered pursuant to section 149A-19(a)(6), as the department determines to be necessary to protect [the] public health and the environment.''

SECTION 4. Section 149A-19, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

''(a) The board, after having afforded interested and affected parties an opportunity to be heard and, in instances in which human health is affected, after consultation with the director of health, shall [make and] adopt rules[:

(1) To declare as a pest any form of plant or animal life or virus which is injurious to plants, humans, domestic animals, articles, or substances;

(2) To determine] to:

(1) Determine the pesticides [which] that are highly toxic to humans[; to], designate pesticides as restricted use or nonrestricted use[;], and [to] establish a system of control over the distribution and use of certain pesticides and devices purchased by the consuming public;

[(3) To determine] (2) Determine standards of coloring for pesticides, and [to] subject pesticides to the requirements of section 149A-16;

[(4) To establish] (3) Establish procedures, conditions, and fees for the issuance of licenses for sale of restricted use pesticides;

[(5) To establish] (4) Establish fees for the licensing of pesticides within the limitations of section 149A-13(b);

[(6) To establish] (5) Establish procedures for the licensing of pesticides;
[(7) To establish] (6) Establish procedures for the registration of pesticides under provisions of section 24(c), FIFRA;
[(8) To establish] (7) Establish procedures for the disposal of pesticides; and
[(9) To establish] (8) Establish procedures to issue experimental use permits under provisions of section 5 of FIFRA."

SECTION 5. Section 149A-37, Hawaii Revised Statutes, is amended to read as follows:

"**§149A-37 Exemptions.** (a) Exemption from this chapter may be granted by the department to the University of Hawaii and other state and federal agencies for experimental or research work directed toward obtaining knowledge of the characteristics and proper usage of unspecified or experimental pesticides. Research and experimental work conducted by private agencies with adequate research facilities may also be similarly exempted upon approval by the department. Approval [must] shall be in writing stating the specific exemptions and conditions.

(b) Any pesticide exempted by the Administrator of the EPA pursuant to title 7, United States Code, section 136w(b), shall be exempt from this chapter, if the pesticide product meets the terms and conditions of the EPA's exemption, except for pesticides that the department has determined by rule may cause unreasonable adverse effects on the environment."

SECTION 6. Section 149A-41, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [Civil] Administrative penalties.

(1) In general, any registrant, commercial applicator, wholesaler, dealer, retailer, or other distributor who violates any provision of this chapter may be assessed [a civil] an administrative penalty by the board of not more than $5,000 for each offense[.];

(2) Any private applicator or other person not included in paragraph (1) who violates any provision of this chapter relating to the use of pesticides while on property owned or rented by that person or the person's employer, subsequent to receiving a written warning from the department or following a citation for a prior violation, may be assessed [a civil] an administrative penalty by the board of not more than $1,000 for each offense. Any private applicator or other person not included in paragraph (1) who violates any provision of this chapter relating to licensing, transport, sale, distribution, or application of a pesticide for commercial purposes may be assessed [a civil] an administrative penalty as provided in paragraph (1)[.];

(3) No [civil] administrative penalty shall be assessed unless the person charged shall have been given notice and an opportunity for a hearing on the specific charge in the county of the residence of the person charged. The [civil] administrative penalty and any proposed action contained in the notice of finding of violation shall become a final order unless, within twenty days of receipt of the notice, the person or persons charged make a written request for a hearing. In determining the amount of penalty, the board shall consider the appropriateness of the penalty to the size of the business of the person charged, the effect on the person's ability to continue business, and the gravity of the violation[.]; and

(4) In case of inability to collect the [civil] administrative penalty or failure of any person to pay all or such portion of the [civil] administrative penalty as the board may determine, the board shall refer the matter to the attorney general, who shall recover the amount by action in the appropriate court. For any judicial proceeding to recover the administrative penalty imposed, the attorney general 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 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1, 2000.

(Approved May 31, 2000.)

## ACT 155 H.B. NO. 2407

A Bill for an Act Making an Emergency Appropriation for the Department of Agriculture.

*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 Hawaii community development authority in its redevelopment of Kakaako will be displacing the measurement standards and plant quarantine programs of the department of agriculture. The measurement standards program of the quality assurance division will be the first program displaced to accommodate the widening of Ilalo street from Ward avenue to South and Punchbowl streets. The widening project includes improvements to the roadway, drainage, sewer, water, electrical, telephone, and cable systems and is part of the overall plan to create a waterfront that stimulates economic and educational uses.

The purpose of this Act is to provide the necessary statutory authorization and appropriations to relocate the measurement standards program and to construct a new building to accommodate both the measurement standards and commodities programs of the quality assurance division.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $200,000, or so much thereof as may be necessary for fiscal year 1999-2000, to cover all expenses related to temporarily relocating the measurement standards program and its personnel.

SECTION 4. The director of finance is authorized to issue general obligation bonds in the sum of $3,800,000, or so much thereof as may be necessary, and the same sum or so much thereof as may be necessary is appropriated for fiscal year 1999-2000, to finance the cost of plans, design, construction, and equipment of a new building for the measurement standards and commodities programs on Oahu.

SECTION 5. Any unexpended or unencumbered balances of the appropriation made by section 3 of this Act as of the close of business on June 30, 2000, shall not lapse and shall be carried over and may be expended during fiscal year 2000-2001; provided that on June 30, 2001, all unexpended and unencumbered balances shall lapse into the general fund of the State.

Any unexpended and unencumbered balances of the appropriation under section 4 of this Act as of the close of business on June 30, 2002, shall lapse.

SECTION 6. The sums appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 7. With approval of the governor, the designated expending agencies for capital improvement projects authorized in this Act may delegate to another state agency the implementation of such projects when it is determined by all involved agencies and parties that it is advantageous to do so.

SECTION 8. Any law to the contrary notwithstanding, the appropriation under Act 328, Session Laws of Hawaii 1997, section 140A, as amended by Act 116, Session Laws of Hawaii 1998, section 5, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired is hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| H-17 | $280,000 C |

SECTION 9. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in section 13 of article VII 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 section 13 of article VII 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 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 1999-2000 and estimated for each fiscal year from 2000-2001 to 2002-2003, is as follows:

| Fiscal Year | Net General Fund Revenues | Debt Limit |
|---|---|---|
| 1996-1997 | 3,115,264,737 | |
| 1997-1998 | 3,195,967,036 | |
| 1998-1999 | 3,254,256,686 | |
| 1999-2000 | 3,141,743,000 | $589,871,788 |
| 2000-2001 | 3,228,232,000 | $591,304,615 |
| 2001-2002 | 3,285,586,000 | $593,494,287 |
| 2002-2003 | (Not Applicable) | $595,426,262 |

For fiscal years 1999-2000, 2000-2001, 2001-2002, and 2002-2003, 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 1996-1997, 1997-1998, and 1998-1999 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, 1999, dated November 24, 1999. The net general fund revenues for fiscal years 1999-2000 to 2001-2002 are estimates, based on general fund revenue estimates made March 10, 2000, by the council on revenues, the body assigned by section 7 of article VII 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 section 13 of article VII of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of December 1, 1999 is as follows for fiscal year 2000-2001 to fiscal year 2006-2007:

| Fiscal Year | Principal and Interest |
|---|---|
| 2000-2001 | $352,508,780 |
| 2001-2002 | $367,994,493 |
| 2002-2003 | $411,701,970 |
| 2003-2004 | $378,223,219 |
| 2004-2005 | $373,053,164 |
| 2005-2006 | $347,383,328 |
| 2006-2007 | $344,154,560 |

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 2007-2008 to fiscal year 2019-2020 when the final installment of $27,612,984 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 $191,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to section 13 of article VII 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 October 31, 1999, adjusted for (i) appropriations to be funded with general obligation bonds and reimbursable general obligation bonds as provided in Act 91, Session Laws of Hawaii 1999 (General Appropriations Act of 1999), to be expended in the fiscal year 2000-2001; (ii) Appropriations to be funded by reimbursable general obligation bonds as provided in Act 151, Session Laws of Hawaii 1999 (Relating to Hawaii Hurricane Relief Fund Bonds) to be expended in the fiscal year 2000-2001; (iii) Act 156, Session Laws of Hawaii 1999, (the Judiciary Appropriations Act of 1999) to be expended in the fiscal year 2000-2001; and (iv) Lapses totaling $280,000 proposed in this Act, the total amount of authorized but unissued general obligation bonds, is $1,396,114,543. The total amount of general obligation bonds authorized in this Act is $3,800,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized in this Act is $1,399,914,543. (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 $191,000,000, all or part of which is excludable in determining the power of the State to issue general obligation bonds, pursuant to section 13 of article VII of the State Constitution. The total amount of guaranties authorized by S.B. No. 2873[1] (Relating to Hawaii Health Systems Corporation) is $47,500,000 and are herein validated. The total amount of guaranties previously authorized and validated by this Act is $238,500,000.

(5) Proposed general obligation bond issuance. As reported therein for fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002 and 2002-2003, the State proposes to issue $200,000,000 during the remainder of fiscal year 1999-2000, $350,000,000 during the first half of fiscal year 2000-2001, $150,000,000 during the second half of fiscal year 2000-2001, $150,000,000 during the first half of fiscal year 2001-2002, $150,000,000 during the second half of fiscal year 2001-2002, $100,000,000 during the first half of fiscal year 2002-2003, and $300,000,000 during the second half of fiscal year 2002-2003. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the third year, the bonds being payable in substantially equal annual installments of principal and interest payment, and with interest payments commencing six months from the date of issuance and being paid semiannually thereafter. It is assumed that this practice will be applied to the bonds which are proposed to be issued except that principal repayments will begin in the fourth year.

(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 1999-2000 to 2002-2003 is $1,000,000,000. An additional $400,000,000 is proposed to be issued

in fiscal year 2002-2003. The total amount of $1,000,000,000 which is proposed to be issued through fiscal year 2001-2002 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 $1,399,914,543, as reported in paragraph (4), except for $399,914,543. It is assumed that the appropriations to which an additional $399,914,543 in bond issuance needs to be applied will have been encumbered as of June 30, 2002. The $400,000,000 which is proposed to be issued in fiscal year 2002-2003 will be sufficient to meet the requirements of the June 30, 2002 encumbrances in the amount of $399,914,543. The amount of assumed encumbrances as of June 30, 2002 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 previously authorized and unissued bonds and bonds proposed in this Act versus the amount of bonds which is proposed to be issued by June 30, 2002, and the amount of June 30, 2002 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 2002-2003, 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 6.97 percent for the ten years from fiscal year 2000-2001 to fiscal year 2009-2010. 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 section

13 of article VII of the State Constitution for the fiscal years 1999-2000, 2000-2001, 2001-2002 and 2002-2003 are as follows:

| Fiscal year | Total amount of general obligation bonds not otherwise excluded by article VII, section 13 of the State constitution |
|---|---|
| 1999-2000 | $3,309,433,537 |
| 2000-2001 | $3,600,550,972 |
| 2001-2002 | $3,677,655,955 |
| 2002-2003 | $3,843,443,582 |

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 per cent 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 section 13 of article VII 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 6.0 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, 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 1999-2000 $190,000,000 | 589,871,788 | 423,100,970 (2002-2003) |
| 1st half FY 2000-2001 $332,500,000 | 591,504,615 | 443,051,970 (2002-2003) |
| 2nd half FY 2000-2001 $142,500,000 | 591,504,615 | 451,601,970 (2002-2003) |
| 1st half FY 2001-2002 $142,500,000 | 593,494,287 | 455,876,970 (2002-2003) |

| | | |
|---|---|---|
| 2nd half FY 2001-2002 $142,500,000 | 593,494,287 | 464,426,970 (2002-2003) |
| 1st half FY 2002-2003 $95,000,000 | 595,426,262 | 549,374,614 (2004-2005) |
| 2nd half FY 2002-2003 $285,000,000 | 595,426,262 | 479,324,614 (2004-2005) |

(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 10. 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 11. 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 the project authorized in this Act; provided that the sum total of general obligation bonds issued shall not exceed $3,800,000.

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 12. 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 13. In printing this Act, the revisor of statutes shall substitute in section 9 the corresponding act number for the bill identified therein.

SECTION 14. This Act shall take effect upon its approval.

(Approved June 1, 2000.)

**Note**

1. Act 279.

## ACT 156 S.B NO. 2791

A Bill for an Act Making an Emergency Appropriation to Pay the Share of Health Insurance Carrier Refund and Rate Credit Amounts Due to the Federal Government.

*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 141, Session Laws of Hawaii 1998, authorized the return to the state general fund of $31,315,640, representing the State's share of health insurance carrier refunds, rate credits, and any interest accrued thereon. The federal government provides the State with funding for fringe benefit costs which include health insurance premium costs. As a result, the federal government is entitled to a portion of that refund and the United States Department of Health and Human Services is requesting that the State make immediate payment of that portion. No funds have been previously appropriated to make this payment.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $2,623,718 or so much thereof as may be necessary for the fiscal year 1999-2000 to be used for the return to the federal government of the federal share of health insurance rate credits and rebates received by the State.

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

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

(Approved June 1, 2000.)

## ACT 157 S.B NO. 2872

A Bill for an Act Making 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. This emergency appropriation request is necessary to ensure that the Hawaii health systems corporation can repay the State for moneys advanced to pay retroactive and current fiscal year collective bargaining increase payments to state employees assigned to the Hawaii health systems corporation.

The purpose of the Act is to appropriate an additional $20,500,000 in general funds for fiscal year 1999-2000 to repay funds advanced by the State for the above-described employee payments, and to partially fund the increases for the rest of the fiscal year.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $20,500,000 or so much thereof as may be necessary for fiscal year 1999-2000 to pay retroactive and current fiscal year collective bargaining increase payments to state employees assigned to the Hawaii health systems corporation; provided that no funds shall be released until the Hawaii health systems corporation transmits all information relating to its accounts receivables that have been outstanding for over sixty days, to the department of accounting and general services.

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

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

(Approved June 1, 2000.)

## ACT 158 H.B. NO. 1946

A Bill for an Act Relating to Energy Conservation.

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

SECTION 1. Section 36-41, Hawaii Revised Statutes, is amended to read as follows:

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

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

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

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

(2) Upon receiving responses to the request for proposals, the agency may select the most qualified proposal or proposals on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, and other factors determined by the agency to be relevant and appropriate;

(3) The agency thereafter may negotiate and enter into an energy performance contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;

(4) The term of any energy performance contract entered into pursuant to this section shall not exceed 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";

(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)] (d) Any agency may enter into an energy performance contract pursuant to this section for a period not to exceed fifteen years.

[(d)] (e) 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 cost savings, lease payments, or specified revenues, and the level of payments is made contingent upon the [measured] verified energy [cost] savings, 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] verified energy cost savings.

"Verified" means the technique used in the determination of baseline energy use, post-installation energy use, and energy and cost savings by the following measurement and verification techniques: engineering calculations, metering and monitoring, utility meter billing analysis, computer simulations, mathematical models, and agreed-upon stipulations by the customer and the energy service company."

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

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

(Approved June 5, 2000.)

## ACT 159 H.B. NO. 2309

A Bill for an Act Relating to Land Exchange in North Kona, Hawaii.

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

SECTION 1. The legislature finds that it is in the public interest to enter into a land exchange with Earl E. Bakken involving private lands located on the coast of Kiholo Bay, North Kona District, on the island of Hawaii for public lands located inland of Kiholo Bay, North Kona, Hawaii.

These private lands, found at the location identified as TMK (3) 7-1-02:02, have significant recreational, environmental, and cultural value to the people of Hawaii. This shoreline property has an extensive coastal strand, mature vegetation, and anchialine pools adjacent to a fine black sand beach fronting Kiholo Bay. This private parcel is surrounded by public lands and the legislature finds that public acquisition of this private parcel would effect a consolidation of holdings of public lands and improve access from mauka public lands to the shoreline.

Kiholo Bay is a significant and productive marine ecosystem and is a major area for green sea turtles to rest and feed. The significant environmental value of the bay was recognized by the State, when it designated Kiholo Bay as a fishery management area, with specific restrictions to protect the sea turtles.

The legislature finds that the general area of Kiholo Bay has historical importance as the location of an historical fishing village that was once the abode of Kamanawa, who along with his twin brother, Kame'eiamoku, are the two great chiefs and supporters of King Kamehameha who appear on the official shield of the Hawaiian Kingdom. The great Kiholo Fishpond, built for King Kamehameha, was located in this area, before it was destroyed by lava in the 1850's.

Earl E. Bakken has proposed to exchange these private lands for a nine-acre parcel of public land at the location identified as a portion of TMK (3) 7-1-02:08, inland of Kiholo Bay, North Kona, Hawaii. These public lands are of significantly less public value as they have very limited recreational resources, and are located inland of the important and productive coastal ecosystem. This parcel of public land is located inland and adjacent to the Bakken's current residence, a single-family home. The land is to be used for a caretaker's residence.

This land exchange is consistent with the State's commitment to expand public recreational resources along the shoreline through obtaining coastal lands of significant recreational, environmental and cultural value. This land exchange would also provide the State with additional land on Kiholo Bay that will afford the State greater flexibility in the sequencing and rate of development of a state park at Kiholo Bay.

The purpose of this Act is to allow the exchange of private and public lands located in North Kona, Hawaii.

SECTION 2. Notwithstanding section 171-50(b), Hawaii Revised Statutes, the legislature approves the land exchange involving private lands at Kiholo Bay, North Kona, Hawaii owned by Earl E. Bakken identified as TMK (3) 7-1-02:02 and public lands located inland of Kiholo Bay, North Kona, Hawaii, identified as a portion of TMK (3) 7-1-02:08; provided that:

(1) The public lands shall be less than or of substantially equal "fair market" value to that of the private lands;
(2) The "fair market" value of the private lands and the public land shall be separately determined by a disinterested qualified appraiser or appraisers, and the cost shall be borne equally between the owner and the board of land and natural resources; and
(3) No payment by the State shall be required should the private lands exceed the value of the public lands, but any difference in the value of the public lands over the private lands shall be paid to the State at the time of the exchange; provided that no exchange shall be made should the value of the public lands exceed one hundred twenty per cent of the value of the private lands.

SECTION 3. Notwithstanding section 171-50(c), Hawaii Revised Statutes, the legislature approves the land exchange involving private lands at Kiholo Bay, North Kona, Hawaii, owned by Earl E. Bakken at the location identified as TMK (3) 7-1-02:02, and public lands located inland of Kiholo Bay, North Kona, Hawaii at the location identified as a portion of TMK (3) 7-1-02:08 provided that the following conditions are met:

(1) An exchange deed shall be executed between the parties and contain the following:
    (A) The location and area of the parcels of land to be exchanged;
    (B) The value of the lands to be conveyed by the State and Earl E. Bakken;
    (C) The name or names of the appraisers involved; and
    (D) The date of the appraisal or appraisals which shall not be more than six months prior to the date of the final approval of the land exchange by the board of land and natural resources;
(2) All of the right, title, and interest in the approximately three acres located at TMK (3) 7-1-02:02 obtained from Earl E. Bakken shall be conveyed in fee simple by deed to the State of Hawaii; and
(3) The lands transferred to the State by Earl E. Bakken under this Act shall assume the same public land status as designated under Section 5 of the Admissions Act as the lands transferred to Earl E. Bakken by the State.

SECTION 4. This Act shall take effect upon its approval; provided that the authority granted to enter into a land exchange agreement by this Act shall be repealed on June 30, 2001. Any agreement executed between the State and Earl E. Bakken pursuant to this Act prior to July 1, 2001, shall remain in force and effect regardless of this Act's repeal.

(Approved June 5, 2000.)

## ACT 160 S.B NO. 2166

A Bill for an Act Relating to Wind Farms.

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

SECTION 1. The legislature finds that wind farms that produce electricity not only reduce our dependence on fossil fuels but help our economy as well. For example, Kamao'a Wind Farm on the Big Island has the potential of reducing the Hilo and Kona regions' dependency on oil by forty thousand barrels annually. This

reduction will reduce pollution in the area and help stabilize the State's dependence on imported oil supplies.

Additionally, Kamao'a Wind Farm will pump $2,500,000 in the local economy to repower the wind farm. Kamao'a will provide a solid industrial base to help rejuvenate the ailing Kau economy by providing invaluable training and long-term employment to residents.

The purpose of this Act is to assist electricity producing wind farms by allowing such farms to benefit from the State's enterprise zone program.

SECTION 2. Section 209E-2, Hawaii Revised Statutes, is amended by amending the definition of "qualified business" to read as follows:

"'"Qualified business" means any corporation, partnership, or sole proprietorship authorized to do business in the State which is qualified under section 209E-9 and is:

(1) Subject to the state corporate or individual income tax under chapter 235;
(2) Engaged in manufacturing, the wholesale sale of tangible personal property as defined in section 237-4, or a service business as defined in this chapter; [or]
(3) Engaged in producing agricultural products where the business is a producer as defined in section 237-5[.]; or
(4) Engaged in producing electric power from wind energy for sale primarily to a public utility company for resale to the public."

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

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

(Approved June 5, 2000.)

## ACT 161 S.B NO. 2574

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 305-4, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§305-4[]] Special fund.** [The provisions of section] (a) Section 304-8 notwithstanding, there is hereby created a special fund to receive, disburse, and account for funds of special programs and activities of the community colleges, including but not limited to off-campus programs, summer session programs, overseas programs, evening sessions, study abroad, exchange programs, cultural enrichment programs, and consultative services which help make available the resources of the community colleges to the communities they serve.

(b) The special fund may include deposits from:

(1) The University of Hawaii tuition and fees special fund as established in section 304-16.5;
(2) Tuition, fees, and charges for affiliated instructional, training, and public service courses and programs; and
(3) Fees paid for:

(A) Student health;
(B) Transcript and diploma;
(C) Library;
(D) Facility use;
(E) Child care;
(F) Auxiliary enterprises;
(G) Alumni; and
(H) Other related activities."

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

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved June 5, 2000.)

## ACT 162 S.B NO. 2731

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:7-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In the event any person has paid to the commissioner any tax, fee, or other charge in error or in excess of that which the person is lawfully obligated to pay under this code, the commissioner, upon written request made by the person to the commissioner within the time set forth in section 431:7-204.6, shall authorize a refund thereof out of the insurance regulation funds, except that a tax refund shall be payable out of the general fund, of this State by submitting a voucher therefor to the comptroller of this State subject to the following limitations:

(1) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the commissioner; provided that if the assessment by the commissioner shall contain clerical errors, transposition of figures, typographical errors, and errors in calculation or if there shall be an illegal or erroneous assessment because the assessment is not in accordance with this code, the refund procedures in subsection (a) shall apply; and
(2) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied in respect to the taxpayer concerned differently than in respect of taxpayers generally.

As to all tax payments for which a refund or credit is not authorized by this subsection (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or under section 40-35 are exclusive."

SECTION 2. New statutory material is underscored.

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

(Approved June 5, 2000.)

# ACT 163

S.B NO. 2961

A Bill for an Act Relating to the Relief of Certain Persons' Claims Against the University of Hawaii and Providing Appropriations Therefor.

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

SECTION 1. The following sums of money are appropriated out of the general revenues of the State of Hawaii to the University of Hawaii's Systemwide Programs (UOH 900), for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and entities, for claims against the University of Hawaii or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

| JUDGMENTS AGAINST THE UNIVERSITY OF HAWAII AND SETTLEMENTS OF CLAIMS: | AMOUNT |
|---|---|
| In re University of Hawaii, Manoa Campus EPA Docket No. TCSA-09-02-0014 | $116,100.00 Settlement |
| Lam v. University of Hawaii, et al. Civil No. 89-00378 MLR, USDC | $ 30,000.00 Settlement |
| Tracy v. University of Hawaii Civil No. 99-00018 SOM, USDC | $ 50,000.00 Settlement |
| United States of America v. A.H. Robins Company, et al. | $ 5,682.72 Settlement |
| MISCELLANEOUS CLAIMS: | |
| Charles Feick | $ 20,000.00 |
| Cash payment to the Department of Health and the Environmental Protection Agency for improper storage and disposal of hazardous materials (includes $95,000 good faith credit) | $505,000.00 |
| Estimated expenditures for waste minimization and pollution prevention as required by the Department of Health and the Environmental Protection Agency for improper storage and disposal of hazardous materials | $800,000.00 |

SECTION 2. Notwithstanding the sums hereinabove appropriated as interest upon judgments against the University of Hawaii, 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 3. All unexpended and unencumbered balances of the appropriations made by section 1 of this Act as of the close of business on June 30, 2001, shall lapse into the general fund.

SECTION 4. 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 5. This Act shall take effect on July 1, 2000.

(Approved June 5, 2000.)

## ACT 164 S.B NO. 2988

A Bill for an Act Relating to Public Contracts and Procurement.

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

SECTION 1. The legislature finds that after receiving payment for construction projects, prime contractors sometimes do not make timely payments to subcontractors. One of the principal reasons for this is the prime contractors' liability for subcontractors union trust fund payments. Often, the long delay in receiving full clearance from union trust funds results in corresponding delays in payments to subcontractors.

The legislature also finds that earlier legislative action on the issue resulted in divisive conflict between construction industry groups. To avoid further rancor, representatives from various construction industry organizations established an informal task force to reconcile differences. After many months of open and sometimes heated debate, the members of the task force acquired a new respect for the unique problems facing their counterparts and crafted a partial solution to the thorny issue of prompt payment. The proposal provides that prime contractors make timely payments to subcontractors who possess a trust fund contribution bond or a performance/payment bond. This proposal makes significant progress toward addressing the subcontractors' concern for prompt payment, and the prime contractors' concern regarding liability for union trust fund benefit payments.

The purpose of this Act is to ensure prompt payment on state projects by contractors to subcontractors by:

(1) Specifying that subcontractors provide evidence to contractors of a valid union trust fund benefit payment bond, performance/payment bond, other bond, or another mutually agreeable form of collateral; and
(2) Imposing penalties on contractors for failing to properly pay amounts owed to subcontractors.

SECTION 2. Section 103-10.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§103-10.5[]] Prompt payment.** (a) Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract[,] ; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes[.] on which the procurement agency has withheld payment.

(b) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money[,] ; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

(c) Where a subcontractor has provided evidence to the contractor of:

(1) A valid union trust fund contribution bond acceptable to the contractor in an amount not less than three months of the subcontractor's trust fund contribution;
(2) A performance and payment bond for the project executed by a surety company authorized to do business in the State;
(3) Any other bond acceptable to the contractor; or
(4) Any other form of mutually-acceptable collateral;

and the contractor fails to pay in accordance with this section, a penalty of one and one-half per cent per month shall be imposed on the outstanding amounts due to the subcontractor. The penalty may be withheld from future payment due to the contractor. Where a contractor has violated subsection (b) three or more times within two years of the first violation, the contractor shall be referred to the contractor license board by the procurement agency for action under section 444-17(14)."

SECTION 3. Section 103D-501, Hawaii Revised Statutes, is amended to read as follows:

"**§103D-501 Contract clauses and their administration.** (a) The policy board shall adopt rules requiring the inclusion of contract clauses providing for adjustments in prices, time of performance, or other contract provisions, as appropriate, and covering the following subjects:

(1) The unilateral right of the governmental body to order in writing:
    (A) Changes in the work within the scope of the contract; and
    (B) Changes in the time of performance of the contract that do not alter the scope of the contract work;
(2) Variations occurring between estimated quantities of work in a contract and actual quantities;
(3) Suspension of work ordered by the governmental body; and
(4) Site conditions differing from those indicated in the contract, or ordinarily encountered, except that differing site conditions clauses established by these rules need not be included in a contract:
    (A) When the contract is negotiated;
    (B) When the contractor provides the site or design; or
    (C) When the parties have otherwise agreed with respect to the risk of differing site conditions.

(b) Adjustments in price permitted by rules adopted under subsection (a) shall be computed in one or more of the following ways:

(1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
(2) By unit prices specified in the contract or subsequently agreed upon;
(3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;
(4) In such other manner as the contracting parties may mutually agree; or
(5) In the absence of agreement by the parties, by a unilateral determination by the governmental body of the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable sections of the rules adopted under section 103D-601 and subject to the provisions of part VII.

A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312.

[(c) The policy board shall adopt rules requiring the inclusion in contracts of clauses providing for prompt payment by contractors to subcontractors. The rules shall provide that:

(1) Any money, other than retainage, paid to a contractor shall be dispersed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and

(2) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.

(d)] (c) The policy board shall adopt rules requiring the inclusion in contracts of clauses providing for appropriate remedies and covering the following subjects:

(1) Liquidated damages as appropriate;

(2) Specified excuses for delay or nonperformance;

(3) Termination of the contract for default; and

(4) Termination of the contract in whole or in part for the convenience of the governmental body.

[(e)] (d) The chief procurement officer or the head of a purchasing agency may vary the clauses [which] that may be required to be included in contracts under the rules adopted under subsections (a)[, (c), and (d);] and (c); provided that [any]:

(1) Any variations are supported by a written determination that states the circumstances justifying such variations[, and provided that notice]; and

(2) Notice of any such material variation be stated in the invitation for bids or request for proposals when the contract is awarded under section 103D-302 or 103D-303."

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

SECTION 5. This Act shall take effect on July 1, 2000, and shall apply to all public contracts entered into after June 30, 2000.

(Approved June 5, 2000.)

## ACT 165 H.B. NO. 750

A Bill for an Act Relating to Island Symbols.

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

SECTION 1. In 1923, the legislature of the Territory of Hawai'i recognized that several of the islands had adopted a local flower as its emblem,

| | |
|---|---|
| Hawaii ..... | Pua Lehua; |
| Oahu ..... | Pua Ilima; |
| Maui ..... | Lokelani; |
| Kauai ..... | Mokihana; |
| Molokai ..... | Pua Kukui; |
| Lanai ..... | Kaunaoa; and |
| Kahoolawe ..... | Hinahina. |

Under this premise, the legislature of the Territory of Hawai'i established and designated the Pua Aloalo, or native yellow hibiscus, as the official flower of the State to promote unity, loyalty, and feelings of pride in Hawai'i citizens. To date,

however, there is no record adopting the above flowers as official emblems of each island.

The citizens of Hawai'i recognize the above flowers and their colors as representations of the Hawaiian islands, even though they have never been officially adopted by the State. Various parades on all islands such as the Aloha Festivals and King Kamehameha Floral Parade use these colors and flowers on the adornments for their pā'ū riders, Hawaiian court members, and floats. The Hawai'i state library system has listed these flowers and colors to represent the islands of Hawai'i, and private schools and the department of education teach these flowers and colors as being associated with the Hawaiian islands. Many songs have also been composed about the Hawaiian islands and the flowers and colors associated with them, such as Nā Lei Hawai'i, Pūpū o Ni'ihau, Beautiful 'Ilima (for O'ahu), and many others. Since territorial times, Ni'ihau has been included to be represented by the color white and the pūpū shell.

The purpose of this Act is to bestow formal recognition on the following flowers or lei materials and their colors as the official emblems and symbols for their respective islands.

SECTION 2. Chapter 5, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§5- Official island colors.** The color red is established and designated as the official color of the island of Hawai'i.

The color pink is established and designated as the official color of the island of Maui.

The color golden yellow is established and designated as the official color of the island of O'ahu.

The color purple is established and designated as the official color of the island of Kaua'i.

The color green is established and designated as the official color of the island of Moloka'i.

The color orange is established and designated as the official color of the island of Lāna'i.

The color white is established and designated as the official color of the island of Ni'ihau.

The color gray is established and designated as the official color of the island of Kaho'olawe."

SECTION 3. Chapter[1] 5-16, Hawaii Revised Statutes, is amended to read as follows:

"**§5-16[1] State flower[.] and individual island flowers.** The native yellow hibiscus (Hibiscus brackenridgei A. Gray), also known as the Pua Aloalo or Ma'o-hau-hele, is established and designated as the official flower of the State.

The 'ōhi'a lehua (metrosideros macropus M. collina), also known as the pua lehua, is established and designated as the official flower of the island of Hawai'i.

The lokelani, also known as the damask rose (rosa damascena), is established and designated as the official flower of the island of Maui.

The pua 'ilima from the native dodder shrubs (sida fallax) is established and designated as the official flower of the island of O'ahu.

The mokihana from the native tree (pelea anisata) is established and designated as the official lei material of the island of Kaua'i.

The pua kukui, also known as the candlenut tree (aleurites moluccana), is established and designated as the official lei material of the island of Moloka'i.

The kauna'oa, also known as the native dodder (cuscuta sandwichiana), is established and designated as the official lei material of the island of Lāna'i.

The pūpū, also known as the momi, laiki, and kahelelani, is established and designated as the official lei material of the island of Ni'ihau.

The hinahina or native heliotrope (heliotropium anomalum, var. argenteum) is established and designated as the official lei material of the island of Kaho'olawe."

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

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

(Approved June 6, 2000.)

**Notes**

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

## ACT 166 H.B. NO. 755

A Bill for an Act Relating to Public Lands.

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

SECTION 1. The legislature finds that existing homestead lessees are unable to secure financing to improve their leasehold properties because of the descendant provision contained in section 171-99(e), Hawaii Revised Statutes. This has resulted in homestead lessees having to live in substandard conditions and being unable to secure loans to renovate or replace their dwellings. The legislature also finds that the descendant provisions contained in section 171-99(e), Hawaii Revised Statutes, are overly restrictive and can prevent the orderly transfer of homestead leases. Some homestead leases have terminated due to the inability of the lessee to comply with these descendant provisions.

The purpose of this Act is to:

(1) Allow lenders to accept the leased property as security for loans by setting aside the succession provision of the lease for the duration of the loan; and
(2) To make the leases more freely available to members of the lessee's family.

SECTION 2. Section 171-99, Hawaii Revised Statutes, is amended to read as follows:

"**§171-99 Continuation of rights under existing homestead leases, certificates of occupation, right of purchase leases, and cash freehold agreements.** (a) Issuance of land patents to occupier or lessee of homestead lands. A fee simple patent shall be issued to every existing occupier under a certificate of occupation issued heretofore, and to every lessee under a nine hundred and ninety-nine year homestead lease issued heretofore, of public lands, where the lands have been improved under the certificate or lease, or have been used as a place of residence by the occupier or lessee for an aggregate continuous period of not less than ten years upon payment to the board of land and natural resources of a fair market price, disregarding the value of the improvements made by the occupier or lessee, which price shall be determined by appraisal as provided for in this chapter; provided that

the board may exclude from [such] these patents areas required as roadways to other lots.

(b) Issuance of patent, lessee of right of purchase lease. The lessee of any existing right of purchase lease [shall], at [such] a time and under [such] conditions [as] that are contained in the lease, shall be entitled to a land patent from the board conveying to the lessee a fee simple title to the land described in the lessee's lease upon the payment of the fair market price of the land as determined by appraisal as provided for in this chapter[,]; provided that the lessee has reduced to cultivation twenty-five per cent of the premises and has resided thereon not less than two years and has substantially performed all other conditions of the lessee's lease.

(c) Cash freeholds, agreement, patent, conditions. At the end of three years from the date of the payment of the first installment, the holder of a freehold agreement is entitled to a land patent for the premises described therein, if the following conditions, in addition to those set forth herein, have been substantially performed:

(1) Payment of the balance of the purchase price in equal installments, in one, two, and three years respectively, from the date of the freehold agreement with interest annually at the rate of four per cent; provided that the freeholder may pay the installment before it is due[,] and thereby stop the corresponding interest;

(2) Cultivation of not less than twenty-five per cent of the area of the premises, and the planting and care of not less than an average of ten timber, shade, or fruit trees per acre, if agricultural land, at any one time before the end of the third year, or fencing in the [same] premises if pastoral land within [such] that time; provided that if the premises are classed as pastoral-agricultural land, the foregoing alternative conditions shall apply respectively to the two kinds of land;

(3) Maintenance by the freeholder of the freeholder's home on the premises from the end of the first to the end of the third year;

(4) Conditions for the prevention of waste, the planting of trees or the protection of trees growing or to be planted on the premises, or for the destruction of vegetable pests that may be on [such] the premises or the prevention of the future introduction of [such] pests thereon;

(5) Payment of all taxes that may be due on account of the premises.

The holder of a freehold agreement shall allow the land agents to enter and examine the premises at all reasonable times to see that the conditions are being performed. The holder shall not assign or sublet, conditionally or otherwise, the holder's interest or any part thereof, under the freehold agreement, without the written consent of the board indorsed on the agreement; and provided further that freeholders having the whole interest in a freehold agreement [may], at any time when all the conditions thereof to be performed by the freeholder up to [such] that time shall have been substantially performed, may surrender to the government the interest by delivery of the freehold agreement to the land agent, with the intention to surrender the [same] interest clearly indorsed thereon[,] and signed by them and duly attested. The surrender shall release the freeholders from all further duty or performance of the conditions of the instrument surrendered. But no [such] surrender shall be permitted if any freeholders are under the age of eighteen years, unless the minors are represented by statutory guardians; and provided further that any freeholder over the age of eighteen may assign the freeholder's interest to the freeholder's cotenants.

(d) Right of purchase lease; termination, forfeiture, or surrender. Upon the termination of a right of purchase lease by lapse of time, or upon the forfeiture or surrender of the lease or a freehold agreement, the board [may], in its discretion and within the limit of its authority, may open the premises or any part thereof for disposition in the manner or for [such] the uses as provided in this chapter. Before

the disposition, the fair market value thereof shall be established by appraisal. The value attributable to the improvements in the appraisal shall be paid to the surrendering lessees or freeholders, upon resale of the premises, and the director of finance shall pay the amount of the valuation upon the requisition of the board out of [such] the funds.

(e) [Interests, descent,[1] 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, widower, or reciprocal beneficiary;
(2) If there is no widow, widower, or reciprocal beneficiary, then in the children;
(3) If there are no children, then in the widows, widowers, or reciprocal beneficiaries of the children;
(4) If there are no such widows, 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, widows, or reciprocal beneficiaries of the sisters and brothers;
(8) If there are no such widowers, widows, or reciprocal beneficiaries, then in the nieces and nephews;
(9) If there are no nieces or nephews, then in the widowers, widows, or reciprocal beneficiaries of the nieces and nephews;
(10) If there are no such widowers, 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[2] in like manner as the decedent would have been subject to the performance if the decedent had continued alive; provided that if a widow, widower, or reciprocal beneficiary, in whom the interest shall have vested, shall thereafter marry again and decease leaving a widower, 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.] Assignment; certificate of occupation or homestead lease. No existing certificate of occupation or existing homestead lease, or fractional interest thereof, shall be transferable or assignable except by conveyance, devise, bequest, or intestate succession and with the prior approval of the board of land and natural resources; provided that transfer or assignment by conveyance, devise, or bequest shall be limited to a member or members of the occupier's or lessee's family.

For the purposes of this section, "family" means the spouse, reciprocal beneficiary, children, parents, siblings, grandparents, grandchildren, nieces, and nephews of the occupier or lessee.

All the successors shall be subject to the performance of the unperformed conditions of the certificate of occupation or the homestead lease.

(f) Option of cotenant to compel others to buy or sell. In case two or more persons become cotenants under any existing right of purchase lease, certificate of

occupation, or homestead lease by inheritance or otherwise, any one or more of [such] the persons, less than the whole number, may file in the office of the land agent an offer to the remainder of the persons to buy their interest in the premises or to sell them their own interest therein at a stated price, according to the proportion of the respective interest in question, and may deposit with the land agent the amount of the offered price in money, with a fee of $10. The land agent shall thereupon notify the persons to whom the offer is made of the nature of the offer and order them to file with the land agent their answer within sixty days whether they will buy or sell according to the offer. If the persons to whom the offer is made file with the land agent within sixty days of the time of their receiving the notification, their answer stating that they will sell their interest according to the terms of the offer, the land agent shall indorse the fact of the sale with the amount of the consideration on the lease and pay to [such] the persons the amount of the consideration deposited with the land agent according to their individual interest; and the interest of [such] the persons shall thereupon vest in the persons making the offer. The fact of the transfer shall be properly recorded in the official records of the land agent and indorsed upon the lease held by the lessee.

If, however, the persons to whom the offer is made fail to answer within sixty days from the time of their being notified of the offer or within sixty days from the time the notice of the offer mailed to their last known place or places of abode, or shall answer within sixty days that they will buy the interest of the persons making the offer on the terms offered, but fail within sixty days after the notification to deposit the amount representing the value of the interest according to the terms offered, their interest shall vest in the persons making the offer and the amount of the consideration shall be paid by the land agent of them individually or their respective representatives upon application. In such case, the fact of the transfer shall be recorded and indorsed as above provided.

In the event that any funds held by the land agent hereunder [may] are not [be] paid to the persons to whom properly payable, because of the inability of the land agent to locate [such] those persons, the funds [shall], after the expiration of one year, shall be deposited in the department of budget and finance of the State and there abide the claim of any person thereto lawfully entitled; provided that no claim to the funds shall be allowed unless the claim is made within five years after the deposit. Payment of any claim duly filed may be made if the department of budget and finance and the board concur in finding the claim valid and proper, but if the claimant fails to obtain concurrency of the department of budget and finance and the board within sixty days of the filing of the claimant's claim, the claimant may present a petition to the circuit court of the first judicial circuit in that behalf, notice whereof shall be given to the attorney general, who may appear and defend on behalf of the State, and if the court renders a judgment in favor of the claimant, the department of budget and finance shall pay the amount due without interest.

But if the persons to whom the offer is made [shall], within sixty days from the time of the notification, shall make answer to the land agent that they will buy the interest of the offering parties and shall deposit within sixty days with the land agent the amount required for the purpose according to the terms of the offer, the land agent shall indorse and record the fact of the sale as above provided, and pay to the offering parties the amount according to their individual interest; and the interest of the offering parties shall thereupon vest in the answering parties. In such case, the consideration money deposited by the offering parties shall be returned to them.

(g) Forfeiture; existing certificate of occupation or homestead lease. The violation of any of the conditions of any existing certificate of occupation or homestead lease shall be sufficient cause for the board, upon failure of the occupier or lessee within a reasonable period of time to remedy the default, after notice thereof in the manner provided in section 171-20, to take possession of the demised

premises without demand or previous entry, with or without legal process, and thereby, subject to section 171-21, terminate the estate created.

(h) Forfeiture; cash freeholds. In the case of default in the payment of any of the installments due on any cash freehold agreement for thirty days after the [same] installments are due, or failure of performance of any other conditions, the board may take possession of the premises, upon failure of the freeholder within a reasonable period of time to remedy the default, after notice thereof in the manner provided in section 171-20, without demand or previous entry, with or without legal process, and thereby subject to section 171-21, terminate the estate created.

(i) Mortgage of homestead leases. Whenever an existing homestead lease is mortgaged pursuant to section 171-22, the consent to mortgage from the board of land and natural resources may contain a condition exempting the lease from subsection (e) for the duration of the mortgage."

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 6, 2000.)

**Notes**

1. Prior to amendment ";" appeared here.
2. Prior to amendment "," appeared here.

## ACT 167 H.B. NO. 1773

A Bill for an Act Relating to the Motor Carrier Law.

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

SECTION 1. Section 271-32, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) The motion for reconsideration or a rehearing shall be filed within ten days after the decision and order has been served and shall set forth specifically the ground or grounds on which the applicant considers the decision or order to be unlawful. No person shall in any court urge or rely on any ground not so set forth in the motion. If a motion for reconsideration or rehearing is filed from a final decision and order [granting a change in rates], the commission's order [granting the change in rates] shall be automatically stayed until the commission renders its final determination on the motion; provided that: [(1) the motion will be deemed denied if the commission does not issue its final determination within twenty days from the filing date of the motion for reconsideration; and (2) no]

(1) No change in any rate, fare, or charge shall go into effect while a motion for reconsideration or rehearing is pending notwithstanding [the provisions of] section 271-20(e)[. The commission may set aside the automatic stay for good cause shown.];

(2) Any motion for reconsideration or rehearing shall be determined and an order issued by the commission within forty-five days from the filing date of the motion for reconsideration or rehearing; and

(3) The commission may set aside the automatic stay in its discretion."

2. By amending subsection (e) to read:

"(e) An appeal shall lie to the supreme court subject to chapter 602 from every order made by the commission which is final, or if preliminary is of the nature

defined by section 91-14(a); provided [such] the order is made after reconsideration or rehearing or is the subject of a motion for reconsideration or rehearing which the commission has denied [or with respect to which the commission has not issued a final determination within twenty days from the filing date of the motion]. An appeal shall lie to the supreme court subject to chapter 602 only by a person aggrieved in the contested case hearing provided for in this section in the manner and within the time provided by chapter 602 and by the rules of court."

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

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

(Approved June 6, 2000.)

## ACT 168 H.B. NO. 2410

A Bill for an Act Relating to the Relief of Certain Persons' Claims Against the State and Providing Appropriations Therefor.

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

SECTION 1. The following sums of money are appropriated out of the general revenues of the State of Hawaii for the purpose of satisfying claims for legislative relief as to the following named persons, firms, corporations, and 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:

| JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS: | | AMOUNT |
|---|---|---|
| 1. DEPARTMENT OF LAND AND NATURAL RESOURCES: | | |
| Alalem v. State of Hawaii<br>Civil No. 98-00411HG/EK, U.S.D.C. | | $ 22,000.00<br>Settlement |
| Lindholm v. State of Hawaii, et al.<br>Civil No. 98-141K, Third Circuit | | 20,000.00<br>Settlement |
| Wolfe v. State of Hawaii, et al.<br>Civil No. 98-092K, Third Circuit | | $ 20,966.58<br>Judgment |
| Amount of Judgment: | $ 20,000.00 | |
| Interest at 4% from 5/18/99: | $ 966.58 | |
| Palama v. State of Hawaii, et al.<br>Civil No. 99-0052, Fifth Circuit | | $ 36,707.38<br>Judgment |
| Amount of Judgment | $ 36,275.74 | |
| Interest at 4% from 4/3/00 | $ 431.64 | |
| Palila v. Hawaii Department of Land and Natural Resources,<br>Civil No. 78-0030 SPK, U.S.D.C. | | $ 12,378.50 |
| Harold Masumoto | | $ 19,702.26 |
| SUBTOTAL: | | $ 131,754.72 |

| JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS: | | AMOUNT |
|---|---|---|
| 2. DEPARTMENT OF PUBLIC SAFETY: | | |
| Allen v. Iranon, et al.<br>Civil No. 97-00175ACK-FIY, U.S.D.C. | | $ 750,654.00 |
| Domingo v. State of Hawaii, et al.<br>Civil No. 94-3753-10, First Circuit | | $ 37,500.00<br>Settlement |
| Larson v. Luczon, et al.<br>Civil No. 97-0234-01, First Circuit | | $ 20,000.00<br>Settlement |
| Lindley v. State of Hawaii, et al.<br>Civil No. 98-4638-10, First Circuit | | $ 25,000.00<br>Settlement |
| Manding v. State of Hawaii, et al.<br>Civil No. 98-01004HG, U.S.D.C. | | $ 40,000.00<br>Settlement |
| Naeole v. D'enbeau, et al.<br>Civil No. 97-0096(1), Second Circuit | | $ 62,155.77<br>Judgment |
| Parnell v. State of Hawaii, et al.<br>Civil No. 98-0493-02, First Circuit | | $ 65,000.00<br>Settlement |
| Punohu v. State of Hawaii<br>Civil No. 97-4289-10, First Circuit | | $ 40,000.00<br>Settlement |
| Reyes v. Kaneshiro, et al.<br>Civil No. 98-00367 SOM-FIY, U.S.D.C. | | $ 47,500.00<br>Settlement |
| Timm v. State of Hawaii, et al.<br>Civil No. 97-0380, Fifth Circuit | | $ 25,000.00<br>Settlement |
| Tupuola v. Penarosa, et al.<br>Civil No. 97-00647HG, U.S.D.C., and<br>Civil No. 97-2163-05, First Circuit | | $ 100,000.00<br>Settlement |
| Fernandez v. State of Hawaii, et al.<br>Civil No. 97-01548HG-BMK, USDC | | $ 85,653.55<br>Settlement |
| Olson v. State of Hawaii, et al.<br>Civil No. 98-0214-01(GCN), First Circuit | | $ 75,000.00<br>Settlement |
| SUBTOTAL: | | $1,373,463.32 |
| 3. DEPARTMENT OF HEALTH: | | |
| Bartlett v. State of Hawaii<br>Civil No. 97-01608 ACK, U.S.D.C.<br>Amount of Settlement:<br>Interest at 4% from 7/20/99: | <br><br>$ 55,489.33<br>$ 2,298.62 | $ 57,787.95<br>Settlement |
| Freeman v. Espinda, et al.<br>Civil No. 98-00244 DAE, U.S.D.C. | | $ 40,000.00<br>Settlement |
| Li v. State of Hawaii, et al.<br>Civil No. 95-2307-06, First Circuit | | $ 32,500.00<br>Settlement |
| Thompson v. State of Hawaii, et al.<br>Civil No. 98-1612-04, First Circuit | | $ 50,000.00<br>Settlement |
| SUBTOTAL: | | $ 180,287.95 |
| 4. DEPARTMENT OF EDUCATION: | | |
| Brandon v. State of Hawaii<br>Civil No. 96-0865-03, First Circuit | | $ 25,000.00<br>Settlement |

| JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS: | | AMOUNT |
|---|---|---|
| CARL Corporation v. State of Hawaii, et al.<br>PCH No. 96-4, Office of Administrative Hearings | | $ 654,409.29<br>Judgment |
| Downs v. State of Hawaii<br>Civil No. 98-69, Third Circuit | | $ 38,000.00<br>Settlement |
| Franca v. Schmidt, et al.<br>Civil No. 98-0-001225 (CKH), First Circuit | | $1,500,000.00<br>Settlement |
| Hoshijo v. State of Hawaii, Department of Education, et al., Case No. FEP H-7807, EEOC No. 37B-96-0322 | | $ 75,000.00<br>Settlement |
| Koki v. State of Hawaii<br>Civil No. 98-2230-05, First Circuit | | $ 111,000.00<br>Settlement |
| Lichter v. State of Hawaii, et al.<br>Civil No. 97-01036ACK, USDC | | $ 18,897.00<br>Settlement |
| Tuuefiafe v. State of Hawaii<br>Civil No. 97-1834-05, First Circuit | | $ 24,000.00<br>Settlement |
| Giltner v. State of Hawaii<br>Civil No. 98-0-003938(CKH), First Circuit | | $ 49,306.60<br>Settlement |
| SUBTOTAL: | | $2,495,612.89 |
| 5. DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM: | | |
| Deese v. State of Hawaii<br>Civil No. 99-0049 HG/FIY, U.S.D.C. | | $ 10,500.00<br>Settlement |
| Larobis v. State of Hawaii<br>Civil No. 98-00088 ACK, USDC | | $ 250,000.00<br>Settlement |
| Suntera v. Quinn, et al.<br>Civil No. 96-3580-08, First Circuit | | $ 75,000.00<br>Settlement |
| SUBTOTAL: | | $ 335,500.00 |
| 6. HAWAII HOUSING AUTHORITY: | | |
| Elliot V. Hawaii Housing Authority, et al.<br>Civil No. 98-2886-06, First Circuit | | $ 12,195.41<br>Judgment |
| Amount of Judgment: | $ 11,660.41 | |
| Interest at 4% from 6/10/99: | $ 535.00 | |
| SUBTOTAL: | | $ 12,195.41 |
| 7. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES: | | |
| Claim of General Graphics Exhibits | | $ 12,236.30 |
| G. W. Murphy Construction Co./State Capitol Renovation Project | | $ 300,000.00<br>Settlement |

| JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS: | AMOUNT |
|---|---|
| Griffin, et al. v. Aloha Stadium Authority, et al., Civil No. 97-00315SPK, USDC | $ 41,200.23 Settlement |
| SUBTOTAL: | $ 353,436.53 |
| 8. DEPARTMENT OF HUMAN SERVICES: | |
| Burns-Vidlak v. Chandler Civil No. 95-00892 BMK, U.S.D.C. | $ 134,933.79 Judgment |
| Slaton v. State of Hawaii, et al. Civil No. 96-1384-04, First Circuit | $ 20,000.00 Judgment |
| SUBTOTAL: | $ 154,933.79 |
| 9. MISCELLANEOUS CLAIMS (Escheated Warrants): | |
| Mere Foster-Cabaret | $ 347.38 |
| Mae Nagaue | $ 426.97 |
| Erlinda J. Quidilla | $ 417.28 |
| Anna C. Tienter | $ 140.42 |
| Setsu Okubo | $ 725.40 |
| Catherine Bratt | $ 12,975.11 |
| SUBTOTAL: | $ 15,032.56 |
| TOTAL (SECTION 1): | $5,052,217.17 |

SECTION 2. The following sums of money are appropriated out of the state highway fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

| JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS: | | AMOUNT |
|---|---|---|
| DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION: | | |
| Haraguchi v. State of Hawaii Civil No. 98-3166-07, First Circuit | | $ 75,000.00 Settlement |
| Estate of Erik Kolomitz, et al. v. State of Hawaii, Civil No. 96-0108(1), Second Circuit | | $ 835,493.68 Judgment |
| Amount of Judgment: | $ 822,283.23 | |
| Interest at 4% from 3/7/00: | $ 13,210.45 | |
| Taylor-Rice v. Leigh, et al. Civil No. 94-0173, Fifth Circuit | | $1,658,635.20 Judgment |
| Amount of Judgment: | $1,592,213.10 | |
| Interest of 4% from 3/5/98: | $ 66,422.10 | |
| TOTAL (SECTION 2): | | $2,569,128.88 |
| GRAND TOTAL (SECTIONS 1 AND 2): | | $7,621,346.05 |

SECTION 3. 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 or in lesser amounts deemed appropriate, 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 4. 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 5. All unexpended and unencumbered balances of the appropriations made by section 1 of this Act as of the close of business on June 30, 2001, shall lapse into the general fund of the State.

SECTION 6. The amount appropriated in section 2[1] for Allen v. Iranon, et al., shall be reduced or eliminated if and to the extent that the amount awarded is reduced or overturned if the State of Hawaii prevails in its appeal of that judgment.

SECTION 7. If any provision of this Act, or the application thereof to any person or entity 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. This Act shall take effect on July 1, 2000.

(Approved June 6, 2000.)

**Note**

1. So in original.

## ACT 169 H.B. NO. 2418

A Bill for an Act Relating to Certificates of Identification.

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

SECTION 1. The purposes of this Act are:
(1) To change the expiration date on the state identification card to coincide with an individual's birthday in the year it expires;
(2) To provide the option for renewal by mail for certain individuals; and
(3) To provide that seniors shall be charged a reduced fee for the card.

SECTION 2. Section 846-23, Hawaii Revised Statutes, is amended to read as follows:

"**§846-23 Rules.** For the purpose of carrying out this part the attorney general, subject to chapter 91, shall prescribe rules having the force and effect of law including rules assessing reasonable fees for the services provided under this part. The rules shall provide for a waiver of any fee in cases of extreme hardship. Until rules establishing the fees are adopted, the fee for each service provided under this part shall be $15, which fee may be waived in cases of extreme hardship[.] and which shall be reduced to $10 for any person who is sixty-five years old or older."

SECTION 3. Section 846-27, Hawaii Revised Statutes, is amended to read as follows:

"**§846-27 Registration and issuance of certificates; fee; revolving fund.** (a) Every person residing or present in the State may be registered, and have issued to the person a certificate of identification, under this part.

(b) Application for the registration shall be made in person by any adult person or minor over the age of fourteen years. In the case of a minor under the age of fourteen years, the application shall be made in the minor's behalf by the parent, or by another person in loco parentis of such minor who can provide proof of guardianship. In the case of an incompetent person, the application shall be made by the person having the custody or control of or maintaining the incompetent person.

(c) Application for renewal of a certificate of identification issued after November 1, 1998, for a person sixty-five years old or older may be done by mailing in a completed application and fee, if there is no change in name and citizenship. The department shall adopt rules to allow for renewal by mail for persons with physical or mental disabilities for whom application in person presents a serious burden.

[(c)] (d) There is established in the state treasury a revolving fund to be known as the state identification revolving fund. The fund shall consist of all fees assessed for the processing and issuance of certificates of identification under this part. The fund shall be administered by the attorney general for the purposes of this part.

[(d)] (e) The fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury. Interest and investment earnings credited to the assets of the fund shall become a part of the fund. Any balance remaining in the fund at the end of any fiscal year shall be carried forward in the fund for the next fiscal year."

SECTION 4. Section 846-30.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§846-30.5[]] Expiration date.** Every certificate of identification issued under this part, whether an original or a renewal, shall bear an expiration date which shall be on the person's birthday, six years after the [date] year 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. To provide for the transition to expiration dates that are birthdays of the persons issued certificates, any certificate issued to a person with an expiration date other than the birthday of that person in the year of expiration shall expire on that person's last birthday immediately preceding the certificate's stated expiration date."

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

SECTION 6. This Act shall take effect on July 1, 2000.

(Approved June 6, 2000.)

# ACT 170

H.B. NO. 2423

A Bill for an Act Relating to Tobacco Products Report.

*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 designed and to read as follows:

## "CHAPTER
## TOBACCO PRODUCTS REPORT

§ **-1 Definitions.** As used in this chapter:

"Attorney general" means the attorney general of the State of Hawaii.

"Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(1) Any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(2) Tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or

(3) Any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition.

The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette."

"Tobacco product manufacturer" means any person that is a "tobacco product manufacturer" as defined in section 675-2.

§ **-2 Reports to attorney general.** (a) Except as provided in subsection (b), any tobacco product manufacturer selling cigarettes to consumers within this State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) shall file a report with the attorney general setting forth:

(1) Its name and trade name (if any);

(2) The address of its principal place of business;

(3) A memorandum or a copy of the invoice covering each and every shipment of cigarettes made during the previous calendar quarter into this State; and

(4) Other information as may be required by the attorney general.

The memorandum or copy of the invoice shall include the name and address of the person to whom the shipment was made, the brand, and the quantity of cigarettes shipped. The attorney general may prescribe the format the report shall take. The report shall be filed with the attorney general not later than the thirtieth day of each calendar quarter covering the previous calendar quarter.

(b) In lieu of the reports required to be provided in subsection (a), any tobacco product manufacturer that is a signatory to the master settlement agreement, as defined in section 675-2, and whose cigarettes are sold to consumers within this state (whether directly by the manufacturer or through a distributor, retailer, or similar intermediary or intermediaries), may file with the attorney general copies of

reports that the tobacco product manufacturer submits to the department of taxation regarding its sales activities in this state.

(c) Information provided to the attorney general pursuant to this section that tends to identify customers of tobacco product manufacturers, terms of sale (including price), and non-aggregated sales volume data shall be exempt from disclosure under section 92F-11.

§ **-3 Penalties.** The attorney general may bring a civil action against any tobacco product manufacturer that fails to file the reports required under this chapter."

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

(Approved June 6, 2000.)

## ACT 171 H.B. NO. 2491

A Bill for an Act Relating to School Lunch.

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

SECTION 1. The purpose of this Act is to set the price of school lunch in proportion to the total cost of operating the school food services program, and to allow the department of education to adjust the price to maintain this proportion.

SECTION 2. Section 302A-405, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The price for the school lunch shall be [no more than $1 per child;] set by the department to ensure that moneys received from the sale of the lunches shall be up to one-third of the cost of preparing the school lunch, rounded to the nearest twenty-five cents, adjusted during the first year of the fiscal biennium. The price for the school lunch shall be based on the average cost of preparing the school lunch over the three years preceding the second year of the fiscal biennium; provided that the department by rule shall provide a lower rate or free lunches to children based on their economic need."

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

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved June 6, 2000.)

## ACT 172 S.B. NO. 2785

A Bill for an Act Relating to Unclaimed Property.

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

SECTION 1. Chapter 523A, Hawaii Revised Statutes, is amended by adding a new section to be appropriate designated and to read as follows:

"§523A- **Unclaimed property trust fund.** (a) There is established in the state treasury the unclaimed property trust fund, which shall be administered by the director.

(b) The proceeds of the fund shall be used to pay claims for return of abandoned property to their rightful owners and to other states' unclaimed property programs for owners whose last known address was in that other state.

(c) All moneys collected by the unclaimed property program from holders of property presumed abandoned and proceeds from the sale of unclaimed property, less costs in connection with the sale of the abandoned property, shall be deposited into the unclaimed property trust fund.

(d) All funds in the unclaimed property trust fund in excess of $1,000,000 remaining on balance on June 30 of each year shall lapse to the credit of the state general fund."

SECTION 2. Section 523A-23, Hawaii Revised Statutes, is amended to read as follows:

"**[ ]§523A-23[ ] Deposit of funds.** (a) Except as otherwise provided by this section, the director shall promptly deposit in the [general] unclaimed property trust fund of this State all funds received under this part, including the proceeds from the sale of abandoned property under section 523A-22. All funds in excess of $1,000,000 remaining on balance in the unclaimed property trust fund on June 30 of each year shall be transferred by the director to the state general fund. The trust fund balance shall be invested by the director and all investment earnings shall be deposited to the credit of the general fund.

(b) Before making any deposit to the credit of the [general] unclaimed property trust fund, the director may deduct:

(1) Any costs in connection with the sale of abandoned property;
(2) Costs of mailing and publication in connection with any abandoned property;
(3) Reasonable service charges; and
(4) Costs incurred in examining records of holders of property and in collecting the property from those holders."

SECTION 3. Section 523A-24, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) If a claim is allowed, the director shall deliver the property to the claimant or pay [over or deliver] from the unclaimed property trust fund to the claimant [the property or] the amount the director actually received or the net proceeds if [it] the property has been sold by the director, together with any additional amount required by section 523A-21. If the claim is for property presumed abandoned under section 523A-10 [which] that was sold by the director within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater."

SECTION 4. 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 2000-2001, to be deposited into the unclaimed property trust fund, for the purpose of satisfying claims for return of abandoned property.

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

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved June 6, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 173

S.B. NO. 2879

A Bill for an Act Relating to Motor Vehicle Tires.

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

SECTION 1. Chapter 342I, Hawaii Revised Statutes, is amended by adding ten new sections to part II to be appropriately designated and to read as follows:

"**§342I-A Registration and record keeping requirements.** (a) All facilities that accept used tires, including but not limited to tire retailers, wholesalers, transporters, collectors, and recyclers, shall maintain, for a minimum of three years, records that provide, at least, the following information:

(1) The name, phone number, and address of the person, company, business, source, or entity from whom the used tires were received, if receiving used tires from entities other than the general public, such as tire retailers, wholesalers, transporters, collectors, and recyclers;
(2) The date of receipt of the used tires;
(3) The quantity of used tires received; and
(4) The record of shipment indicating the:
    (A) Ultimate destination of the used tires;
    (B) Identification of the transporter;
    (C) Date of shipment; and
    (D) Quantity of tires shipped.

Permitted municipal solid waste disposal facilities, including incineration facilities that receive used tires incidental to the disposal of municipal solid waste, shall be exempt from the recordkeeping requirements of this section.

(b) A summary of the information maintained under subsection (a) shall be submitted to the department by July 31 of each year, listing the total quantity of used tires collected and the ultimate disposition of the used tires.

(c) By September 1, 2000, all importers operating within the State shall register with the department, using forms prescribed by the department, and shall notify the department of any change in address. After September 1, 2000, any person who desires to conduct business in this State as an importer shall register with the department no later than one month prior to the commencement of the business.

(d) All importers shall maintain records reflecting the importation of tires. The records shall be made available, upon request, for inspection by the department.

**§342I-B Motor vehicle tire surcharge.** There is established a motor vehicle tire surcharge on tires imported into the State after September 30, 2000, and before January 1, 2006. The motor vehicle tire surcharge shall be $1 per tire imported into the State and shall include those tires imported on motor vehicles, and their associated spare tires. Motor vehicle rental companies may subtract the number of tires on motor vehicles that are exported from the State when calculating the motor vehicle

tire surcharge. The surcharge shall be paid by the person or entity who imports the tires, including importers of motor vehicles.

**§342I-C Tire inventory records and payment.** (a) Payment of the motor vehicle tire surcharge shall be made quarterly based on inventory records of the importers except for those importers subject to subsection (c) or (d). The dates September 30, December 31, March 31, and June 30 represent the end of each quarter period. All importers shall submit to the department documentation in sufficient detail that identifies the number of tires imported into the State during the previous quarter.

(b) The amount due from the importers for the quarter shall be equal to the number of tires provided in subsection (a) multiplied by the motor vehicle tire surcharge of $1. Payment shall be made by check or money order payable to the "Department of Health, State of Hawaii" and shall be deposited into the environmental management special fund as provided in section 342I-D. All subsequent inventory reports and payments shall be made no later than the last day of the month following the end of the previous calendar quarter, except for those importers subject to subsection (c) or (d).

(c) An importer who imports fewer than fifty tires within a one-year period shall be exempt from payment of the surcharge.

(d) An importer who imports fifty or more tires, but fewer than or equal to two hundred tires, shall be permitted to provide a report and payment of the surcharge annually, with year ending December 31, rather than quarterly.

**§342I-D Deposit into environmental management special fund.** The surcharge collected pursuant to this part shall be deposited into a special account in the environmental management special fund established by section 342G-63. All interest earned or accrued on moneys deposited in the fund pursuant to this section shall become part of the account. Moneys from this special account may be used by the department to:

(1) Support permitting, monitoring, and enforcement activities, including personnel costs regarding used tire management, collection, recycling, and disposal facilities;
(2) Promote improved market development and reuse opportunities for recovered motor vehicle tires;
(3) Promote tire recovery, recycling, and reuse in the State through education, research, and demonstration projects;
(4) Implement the surcharge program under this part;
(5) Support programs to prevent illegal dumping; and
(6) Clean up improper tire disposal sites including conducting related environmental assessments and remediation.

**§342I-E Recovery of costs.** (a) Any costs incurred and payable from the fund as a result of tire cleanups and associated environmental assessments and remediation shall be recovered by the attorney general, upon the request of the department, from the liable person or persons. The amount of any cost that may be recovered pursuant to this section for a tire cleanup and associated assessment and remedial action paid from the fund shall include the amount paid from the fund and legal interest.

(b) Moneys recovered by the attorney general pursuant to this section shall be deposited to the special account of the environmental management special fund.

(c) Any action for recovery of response costs shall commence within two years after the date of completion of all response actions.

**§342I-F Contract for administrative services.** The department may contract the services of a third party to administer the motor vehicle tire program under this part.

**§342I-G Entry and inspection of facilities.** The department or other authorized party may enter and inspect any building or place, according to law at a reasonable time, for the purpose of:

(1) Investigating an actual or suspected violation of this part;
(2) Conducting reasonable tests;
(3) Taking samples; and
(4) Reviewing and copying records.

**§342I-H Enforcement.** The department of health shall enforce this part. Authorized employees of the department may issue warnings, citations, or administrative orders, or commence civil action in circuit court against persons who fail to comply with the requirements of this part.

**§342I-I Penalties.** (a) For each violation of this part, a violator shall be subject to a penalty of not more than $10,000 for each separate offense. However, the failure to post the notice required under section 342I-23, following a warning issued by an authorized employee of the department, shall be subject to a fine up to $1,000 for each separate offense. Each day of each violation shall constitute a separate offense. The fines imposed pursuant to this section shall be cumulative.

(b) Remedies shall be by citations, by civil action, or as provided under sections 342H-10 and 342H-11.

**§342I-J Disposition of collected fines and penalties.** Fines and penalties collected under this part shall be deposited into the environmental response revolving fund established by section 128D-2."

SECTION 2. Section 342I-21, Hawaii Revised Statutes, is amended by adding three new definitions to be appropriately inserted and to read as follows:

"<u>"Facility" means all contiguous land, including buffer zones and structures or other appurtenances and improvements on the land, used for the handling of used tires.</u>

<u>"Import" means to buy, bring, or accept delivery of tires, from an address, supplier, or any entity outside of the State, into the State and includes the tires on motor vehicles brought into the State.</u>

<u>"Importer" means any person or entity who imports tires, including the tires on motor vehicles imported into the State.</u>"

SECTION 3. In codifying the new sections added to part II of chapter 342I, Hawaii Revised Statutes, by section 1 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 4. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect on July 1, 2000.

(Approved June 6, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 174

S.B. NO. 2938

A Bill for an Act Relating to Conformity of the Hawaii Income Tax Law to the Internal Revenue Code.

*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- Operation of certain Internal Revenue Code provisions; sections 641 to 7525.** (a) 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; and

(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.

(b) 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.

(c) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying section 685(c)(3) under this chapter.

(d) 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.

(e) 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.

(f) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

(g) 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.

(h) Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall be

operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

(i) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

(j) 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.

(k) Section 7525 (with respect to confidentiality privileges relating to taxpayer communications) of the Internal Revenue Code shall be operative for the purposes of this chapter. All references to Internal Revenue Code sections within section 7525 of the Internal Revenue Code shall be operative for purposes of this section. The term "Internal Revenue Service" as used in section 7525(a)(2)(A) of the Internal Revenue Code means the department; the term "federal court" as used in section 7525(a)(2)(B) means state court; and the term "United States" as used in section 7525(a)(2)(B) means State."

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For all taxable years beginning after December 31, [1998,] 1999, as used in this chapter "Internal Revenue Code" means subtitle A, chapter 1 of the federal Internal Revenue Code of 1986, amended as of December 31, [1998,] 1999, 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 basis of property, if a taxpayer first determined the basis of property in a taxable year to which such sections apply, and if such determination was made before January 1, 1978; and

(2) Gross income, adjusted gross income, ordinary income and loss, and taxable income for a taxable year to which such sections apply where such taxable year begins before January 1, 1978."

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[.]; sections 63 to 530.** (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.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) 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.

(e) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose 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.

(f) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retirement Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

(g) 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.

(h) Section 468B (with respect to special rules for designated settlement funds) 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 a rate equal

to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

(i) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code 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.

(j) 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.

(k) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code 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.

(l) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code 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.

(m) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530.

[(n) 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.

(o) 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.

(p) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying section 685(c)(3) under this chapter.

(q) 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.

(r) 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.

(s) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

(t) 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.

(u) Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

(v) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

(w) 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 235-110.91, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

''(a) Section 41 (with respect to the credit for increasing research activities) and section 280C(c) (with respect to certain expenses for which the credit for increasing research activities are allowable) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section. <u>If section 41 of the Internal Revenue Code is repealed or terminated prior to January 1, 2006, its provisions shall remain in effect for purposes of the income tax law of the State as provided for in subsection (j).</u>''

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 6. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1999.

(Approved June 6, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 175 S.B. NO. 2939

A Bill for an Act Relating to the Integrated Tax Information Management Systems Acquisition by the Department of Taxation.

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

SECTION 1. The purpose of this Act is to ensure that needed resources appropriated this previous fiscal year are available to assist the department of taxation in its efforts to meet the obligations of the integrated tax information management systems performance-based contract.

SECTION 2. Act 155, Session Laws of Hawaii 1999, is amended by amending section 5 to read as follows:

"SECTION 5. There is appropriated out of the integrated tax information management systems special fund the sum of [$17,750,828,] $8,303,558, or so much thereof as may be necessary, for fiscal year 1999-2000, and the sum of [$7,480,428,] $16,296,090, or so much thereof as may be necessary, for fiscal year 2000-2001, to carry out the purposes of this Act.

The sums appropriated shall be expended by the department of taxation."

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

SECTION 4. This Act shall take effect on June 29, 2000.

(Approved June 6, 2000.)

## ACT 176 H.B. NO. 1893

A Bill for an Act Relating to Energy.

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

SECTION 1. Section 226-18, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Planning for the State's facility systems with regard to energy shall be directed [towards] toward the achievement of the following objectives[:], giving due consideration to all:

(1) Dependable, efficient, and economical statewide energy systems capable of supporting the needs of the people;
(2) Increased energy self-sufficiency where the ratio of indigenous to imported energy use is increased; [and]
(3) Greater energy security in the face of threats to Hawaii's energy supplies and systems[.]; and
(4) Reduction, avoidance, or sequestration of greenhouse gas emissions from energy supply and use."

2. By amending subsection (c) to read:

"(c) To further achieve the energy objectives, it shall be the policy of this State to:

(1) Support research and development as well as promote the use of renewable energy sources;

(2) Ensure that the combination of energy supplies and energy-saving systems [are] is sufficient to support the demands of growth;

(3) Base decisions of least-cost supply-side and demand-side energy resource options on a comparison of their total costs and benefits when a least-cost is determined by a reasonably comprehensive, quantitative, and qualitative accounting of their long-term, direct and indirect economic, environmental, social, cultural, and public health costs and benefits;

(4) Promote all cost-effective conservation of power and fuel supplies through measures including:

(A) Development of cost-effective demand-side management programs;

(B) Education; and

(C) Adoption of energy-efficient practices and technologies;

(5) Ensure to the extent that new supply-side resources are needed, the development or expansion of energy systems utilizes the least-cost energy supply option and maximizes efficient technologies;

(6) Support research, development, and demonstration of energy efficiency, load management, and other demand-side management programs, practices, and technologies; [and]

(7) Promote alternate fuels and energy efficiency by encouraging diversification of transportation modes and infrastructure[.];

(8) Support actions that reduce, avoid, or sequester greenhouse gases in utility, transportation, and industrial sector applications; and

(9) Support actions that reduce, avoid, or sequester Hawaii's greenhouse gas emissions through agriculture and forestry initiatives."

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

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

(Approved June 7, 2000.)

## ACT 177 H.B. NO. 1955

A Bill for an Act Relating to the Corrections Population Management Commission.

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

SECTION 1. Section 353F-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The corrections population management commission shall consist of [nine] eleven members. The state attorney general, the director of public safety, [the prosecuting attorney of the city and county of Honolulu] a representative of the county departments of the prosecuting attorney to be selected by the prosecuting attorneys, the state public defender, [and] the chairperson of the Hawaii paroling authority, the president of the senate, and the speaker of the house of representatives,

or their designated representatives, shall be members of the commission. [Additionally, the] The chief justice of the Hawaii supreme court shall appoint one judge and one adult probation administrator of the judiciary as members of the commission. [Finally, one member each shall be appointed by the president of the senate and the speaker of the house of representatives.] The governor shall appoint one member from the private sector who is knowledgeable on issues pertaining to reintegrating offenders into the community. Additionally, the chairperson of the Hawaii paroling authority shall appoint one rehabilitated offender, who is knowledgeable on issues pertaining to reintegrating offenders into the community, as a member of the commission."

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

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

(Approved June 7, 2000.)

## ACT 178 H.B. NO. 1983

A Bill for an Act Relating to the Land Court.

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

SECTION 1. Section 501-20, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

""State" means the State of Hawaii."

SECTION 2. Section 501-21, Hawaii Revised Statutes, is amended to read as follows:

"**§501-21 Registration application; by whom made.** Application for registration of title may be made by [the following persons]:

(1) The persons who claim, singly or collectively, to own the legal estate or easements or rights in land held and possessed in fee simple, either as a whole or as owner or owners of an undivided part;

(2) The persons who claim, singly or collectively, to have the power of appointing or disposing of the legal estate or easements or rights in land held and possessed in fee simple, either as a whole or as owners of an undivided part;

(3) Infants and other persons under disability, by their legally appointed guardians;

(4) A corporation by its proper officer or by an agent duly authorized by the board of directors;

(5) An unincorporated nonprofit association by a person authorized in a statement of authority recorded in the office of the assistant registrar of the land court or with the registrar of conveyances in the bureau of conveyances;

(6) Any personal representative duly appointed by the proper probate court, and duly authorized so to do by an order of court. For the purpose of registering title, such representative shall be a trustee of any title registered for the heirs of the estate, and be subject to the decree of distribution of the court of probate; and

(7) Any political subdivision of the State by its mayor, after resolution duly passed by its council so directing; the State, by the board of land and natural resources; or the government of the United States by any proper officer thereof thereunto duly authorized.

The basis for determining the fees payable in the registration of the easements and rights above stated shall, instead of the assessed valuation, be the value of the same as found by the land court and instead of the fee for examination of title chargeable under section 501-218, the fee shall be the actual amount allowed by the court to the examiner therefor.

The provisions relative to the registration and conveyance of registered land shall apply to the registration and conveyance of easements and rights."

SECTION 3. Section 501-102, Hawaii Revised Statutes, is amended to read as follows:

"**§501-102 Filing liens, etc., notice.** (a) 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[.] and shall contain a reference to the number of the certificate of title and an indorsement of the current certificate of title, if applicable, of the land to be affected.

(b) 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, 505, 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 4. Section 501-108, Hawaii Revised Statutes, is amended to read as follows:

"**§501-108 Conveyance of fee; procedure.** (a) An owner desiring to convey in fee registered land or any portion thereof shall execute a deed of conveyance, which the grantor or the grantee may present to the assistant registrar in the bureau of conveyances; provided that the assistant registrar shall not accept for registration any deed, mortgage, lease, or other voluntary instrument, unless a reference to the number of the certificate of title and an indorsement of the current certificate of title, if applicable, of the land affected by such instrument is incorporated in the body of the instrument tendered for registration.

The assistant registrar shall note upon all instruments filed or recorded concurrently with the recorded instrument the document number and the certificate of title number in the spaces provided therefor wherever required.

The assistant registrar shall thereupon, in accordance with the rules and instructions of the court, make out in the registration book a new certificate of title to the grantee. The assistant registrar shall note upon the original certificate the date of transfer, and a reference by number to the last prior certificate. The original certificate shall be stamped "canceled." The deed of conveyance shall be filed or recorded and indorsed with the number and place of registration of the certificate of title of the land conveyed.

(b) On all instruments to be filed or recorded, the top three and one-half inches of space of the first page shall be reserved for recording information for the

assistant registrar on the left half of that space, and for the registrar of conveyances on the right half of that space. The following one inch of space shall be reserved for information showing to whom the document should be returned. In addition, the first page shall identify and include, if possible, all names of the grantors and all names and addresses of the grantees, the type of document, and the tax map key number. Indorsements, if any, shall be made on a conforming fly sheet. If an instrument consists of more than one page, [it] each page shall be single-sided sheets of written text numbered consecutively, beginning with number one, and shall be stapled once in the upper left corner. No instrument shall have a cover or backer attached. The assistant registrar shall be permitted to remove any rivets affixed to any instrument.

(c) All names of all natural persons signing in their individual capacity in the instrument shall be typewritten, stamped, or printed by some other mechanical or electrical printing method beneath all signatures. No discrepancy in any name shall exist between the printed name, as it appears either in the body of the instrument, beneath the signature, or in the notary's certificate of acknowledgment. The provisions of this [paragraph] subsection shall not apply to any deed or conveyance instrument executed prior to July 1, 1989.

(d) The assistant registrar may refuse to file or record any instrument that will not reproduce legibly under photographic or electrostatic methods, or that is of a size larger than eight and one-half inches by fourteen inches, or that contains a schedule, inventory sheet, or map in excess of that size."

SECTION 5. Section 501-171, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) When the owner of registered land, or of any estate or interest therein, dies, having devised the same by will, the person or persons entitled thereto [may] shall file or record with the assistant registrar of the land court a correct statement of the full names of the devisees, the residence or post office address of each and their marital status and a reference to the number of the certificate of title of the land affected, a certified copy of the [will, either a certified copy of the order of the circuit court admitting it to probate or a certified copy of the written statement of the registrar of the circuit court admitting it to informal probate,] letters appointing the personal representative showing the powers of the personal representative, and either a certified copy of an order of the circuit court determining the persons entitled to distribution of the registered land and directing or approving distribution[,] or a deed from the personal representative to the devisee or devisees, and thereupon the assistant registrar shall cancel the certificate issued to the testator, and enter a new certificate [or certificates] to the devisee or devisees. When the owner of registered land or of any estate or interest therein dies, not having devised the same, the persons entitled thereto by law [may] shall file or record with the assistant registrar a correct statement of the full names of the heirs, the residence or post office address of each, and their marital status, a certified copy of the [judgment of the circuit court in an action determining the heirs, or] letters appointing the personal representative showing the powers of the personal representative, and either a certified copy of an order of the circuit court in probate proceedings determining the persons entitled to distribution of the registered land and directing or approving distribution[,] or a deed from the personal representative to the heir or heirs, and thereupon the assistant registrar shall cancel the certificate issued to the intestate, and enter a new certificate [or certificates] to the heir or heirs entitled thereto."

SECTION 6. Section 501-173, Hawaii Revised Statutes, is amended to read as follows:

"**§501-173 Purchaser acquiring title through personal representative may have the same registered.** If any personal representative is authorized by the terms of any will to grant, bargain, sell, convey, mortgage, or otherwise deal with registered land, the personal representative may do so in the same manner as if the land were registered in the representative's name as personal representative. Before any instrument executed by the personal representative, pursuant to such authority, is filed or recorded with the assistant registrar of the land court, there shall be first filed or recorded with the assistant registrar [a certified copy of the will together with a certified copy of the order of the circuit court admitting the same to probate or a certified copy of the written statement of the registrar of the circuit court admitting it to informal probate, and] a certified copy of the letters[, on which shall be listed all orders of the circuit court relating to the personal representative's authority to grant, bargain, sell, convey, mortgage, lease, or otherwise deal with real property,] appointing the personal representative showing the powers of the personal representative, or a certified copy of an order granting the petition for authority or an acknowledgment of authority, and either a certified copy of [each such order.] the order of the circuit court confirming the sale of the affected land or a certified copy of an affidavit filed in the circuit court of the personal representative made at the time of the deed, mortgage, lease, or other conveyance, attesting that the decedent's will does not require confirmation of the transaction and that no devisee or heir has demanded the confirmation. Any person who acquired title or any interest in registered land through or by virtue of the execution of the power vested in the personal representative may have the title or interest registered."

SECTION 7. Section 501-196, Hawaii Revised Statutes, is amended to read as follows:

"**§501-196 Alterations upon registration book prohibited when; court hearings; limitations.** No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon, and the [attestation] approval of the same by the registrar or an assistant registrar except by order of the court[.] recorded with the assistant registrar, provided that the registrar or assistant registrar may correct any clerical error made by personnel of the registrar's or assistant registrar's office. Any registered owner or other person in interest may at any time apply by petition to the court, upon the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate have terminated and ceased; or that new interests have arisen or been created which do not appear upon the certificate; or that any error, omission, or mistake was made in entering a certificate or any memorandum thereon; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered as married that the marriage has been terminated; or that a corporation which owned registered land and has been dissolved has not conveyed the same within three years after its dissolution, or upon any other reasonable ground. The court shall have jurisdiction to hear and determine the petition after notice to all parties in interest and may order the entry of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper. This section shall not be construed to give the court authority to open the original decree of registration, and nothing shall be done or ordered by the court which impairs the title or other interest of a purchaser holding a certificate for value and in good faith, or the purchaser's heirs or assigns, without the purchaser's or their written consent.

Any petition filed under this section and all petitions and motions filed under this chapter after original registration shall be filed and entitled in the original case in which the decree of registration was entered."

SECTION 8. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, prior to its effective date.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2000.

(Approved June 7, 2000.)

## ACT 179 H.B. NO. 1994

A Bill for an Act Making an Appropriation for Agriculture.

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

SECTION 1. The legislature finds that agriculture is one of the State's growth industries and a vital component of the State's economic base. Agriculture provides an economically viable use of land, providing the open space cherished by Hawaii's citizenry and sought by visitors.

The legislature also finds that Hawaii's agriculture industry has become increasingly diverse with new economic opportunities as prime agricultural land has become available and quarantine restrictions have eased. In addition, sectors of agriculture—sugar, pineapple, macadamia, coffee, papaya, flowers, and exotic tropical fruits—are working together to accelerate the expansion of the agriculture industry. To maximize opportunities for maintaining and expanding the agriculture industry and to take best advantage of the thousands of acres of prime farmland, production-driven research is paramount.

The legislature recognizes that the commitment of the private sector is critical to the success of Hawaii's agriculture industry. The Hawaii Agriculture Research Center (HARC), formerly known as the Hawaiian Sugar Planters' Association, exemplifies such commitment. HARC serves as a model of private-public partnerships for agricultural research, and effectively partners with public institutions, such as the United States Department of Agriculture-Agricultural Research Service and the University of Hawaii college of tropical agriculture and human resources, in facilitating agricultural technology transfer and maximizing the use of limited community resources. Most of HARC's funding comes from the private sector, which provides the accountability demanded by its stakeholders and increases returns on the State's funding, benefiting farm production and the local economy.

The legislature also finds that HARC has been directing its research primarily to crops that have received direct financial support, such as coffee, papaya, macadamia, sugarcane, and forestry. HARC seeks to help increase commercial production through crop improvement programs by focusing on improving cultural practices and producing superior planting material through plant breeding and selection. 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 necessary funds to assist in maintaining current minimum levels of agricultural research and development at HARC.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $750,000 or so much thereof as may be necessary for fiscal year 2000-2001 for agricultural research and development to be performed by the Hawaii Agriculture Research Center; provided that no funds shall be released unless matched dollar-for-dollar by the private sector.

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, 2000.

(Approved June 7, 2000.)

## ACT 180 H.B. NO. 2024

A Bill for an Act Making an Appropriation to the Legislative Agencies.

*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 $125,000 or so much thereof as may be necessary for fiscal year 2000-2001 for studies by the office of the auditor.

The sum appropriated shall be expended by the office of the auditor for the purposes of this Act.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $103,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the Council of State Governments dues.

The sum appropriated shall be expended by the legislative reference bureau for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved June 7, 2000.)

## ACT 181 H.B. NO. 2213

A Bill for an Act Relating to Binding Arbitration Awards.

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

SECTION 1. Section 431:10C-213.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§431:10C-213.5[]] Binding arbitration.** (a) A claimant or defendant shall have the option to elect arbitration to resolve a claim in tort that is covered by motor vehicle liability insurance.

(b) A claimant or defendant may submit any dispute relating to a tort claim to binding arbitration by either filing a written request with the clerk of the circuit court in the circuit where the accident occurred or by agreement.

(c) A claimant or defendant shall have the opportunity to decline arbitration.

(d) Except as otherwise provided herein, arbitration shall be in accordance with and governed by chapter 658.

(e) Fees and costs of arbitration shall be borne equally by the parties, unless otherwise agreed to by the parties.

(f) [Any] Collection of any arbitration award issued under this section shall be limited to the applicable liability policy limit, unless the insured tortfeasor otherwise agrees.

(g) The amount of an arbitration award under this section shall not be binding on a subsequent underinsured motorist claim."

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

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

(Approved June 7, 2000.)

## ACT 182 H.B. NO. 2472

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part I of article 3 to be appropriately designated and to read as follows:

"**§431:3- Stock insurer.** A stock insurer is an incorporated insurer with capital stock divided into shares and owned by its stockholders to whom the earnings are distributed as dividends on their shares."

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part II of article 9 to be appropriately designated and to read as follows:

"**§431:9- Appointment required.** (a) No person engaging in the business of insurance in this State shall do so without holding the required appointment.

(b) No general agent, subagent, or solicitor in this State shall solicit or take applications for, procure, or place for others any insurance policy without having an appointment with the insurer.

(c) No subagent or solicitor in this State shall solicit or take applications for, procure, or place for others any insurance policy without having an appointment with a general agent who holds an appointment with the insurer.

(d) Any person violating this section shall be subject to penalties as provided in section 431:9-201."

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part II of article 10 to be appropriately designated and to read as follows:

"**§431:10- Notice of cancellation or nonrenewal.** In the case of cancellation of a policy, the insurer shall give written notice to the insured not fewer than ten days prior to the effective date of cancellation. For nonrenewal of a policy, the insurer shall give written notice to the insured not fewer than thirty days prior to the effective date of nonrenewal. If under title 24 or a policy, a longer time period is required for a notice of cancellation or nonrenewal for the policy, the longer period shall be applicable. Cancellation or nonrenewal shall not be deemed valid unless evidence of mailing is provided."

SECTION 4. Section 431:2-209, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) One year after conclusion of the transactions to which they relate, the commissioner may destroy any correspondence, void or obsolete filings relating to rates, certificate of authority applications, foreign or alien insurers' annual statements and valuation reports, cards, and expired bonds. Three years after the conclusion of the transactions to which they relate, the commissioner may destroy any claim files, working papers of examinations, reports of examination by insurance supervisory officials of other states, void or obsolete filings relating to license applications, records of hearings and investigations, and any similar records, documents, or memoranda now or hereafter in the commissioner's possession."

2. By amending subsection (e) to read:

"(e) The following records and reports on file with the commissioner shall be confidential and protected from discovery, production, and disclosure for so long as the commissioner deems prudent:

(1) Complaints and investigation reports;

(2) Working papers of [examination reports;] examinations, complaints, and investigation reports;

(3) Proprietary information, including trade secrets, commercial information, and business plans, which, if disclosed may result in competitive harm to the person providing [said] the information;

(4) Any documents or information received from the National Association of Insurance Commissioners, the federal government, or insurance departments of other states, territories, and commonwealths that are confidential in other jurisdictions. The commissioner shall be authorized to share information, including otherwise confidential information with the National Association of Insurance Commissioners, the federal government, or insurance departments of other states, territories, and commonwealths so long as the statutes or regulations of the other jurisdictions permit them to maintain the same level of confidentiality as required under Hawaii law."

SECTION 5. Section 431:2-215, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) There is established a special fund to be designated as the insurance regulation fund. All assessments, fees, fines, penalties, and reimbursements collected by or on behalf of the insurance division under title 24, except for the commissioner's education and training fund (section 431:2-214), the patients' compensation fund (Act 232, Session Laws of Hawaii 1984), the drivers education fund underwriters fee (section 431:10C-115), and the captive insurance administrative fund (section 431:19-101.8)[,] to the extent provided by section 431:19-101.8(b), shall be deposited into the insurance regulation fund. All sums transferred into the insurance regulation fund may be expended by the commissioner to carry out the commissioner's duties and obligations under title 24.

(b) The insurance regulation fund shall be used to defray any administrative costs, including personnel costs, associated with the programs of the division, and costs incurred by supporting offices and divisions. Any law to the contrary notwithstanding, the commissioner may use the moneys in the fund to employ[,] or retain, by contract or otherwise, without regard to chapters 76 and 77, hearings officers, attorneys, investigators, accountants, examiners, and other necessary professional, technical, and support personnel to implement and carry out the purposes of title 24; provided that any position, except any attorney position, that is subject to chapter[1] 76 and 77 prior to July 1, 1999 shall remain subject to chapters 76 and 77."

SECTION 6. Section 431:7-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In the event any person has paid to the commissioner any tax, fee, or other charge in error or in excess of that which the person is lawfully obligated to pay under this code, the commissioner, upon written request made by the person to the commissioner within the time set forth in section 431:7-204.6, shall authorize a refund thereof out of the insurance regulation fund [of this State], except that a tax refund shall be payable out of the general fund, by submitting a voucher therefor to the comptroller [of this State] subject to the following limitations:

(1) No recourse may be had except under section 40-35 or by appeal for refunds of taxes paid pursuant to an assessment by the commissioner; provided that if the assessment by the commissioner [shall contain] contains clerical errors, transposition of figures, typographical errors, and errors in calculation or if there [shall be] is an illegal or erroneous assessment because the assessment is not in accordance with this code, the refund procedures in subsection (a) shall apply; and

(2) No refund or overpayment credit shall be made unless the original payment of the tax was due to the law having been interpreted or applied [in] with respect to the taxpayer concerned differently than [in] with respect [of] to taxpayers generally.

As to all tax payments for which a refund or credit is not authorized by this subsection (including, without prejudice to the generality of the foregoing, cases of unconstitutionality), the remedies provided by appeal or under section 40-35 are exclusive."

SECTION 7. Section 431:8-302, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Before placing insurance with any unauthorized insurer, the broker shall ascertain the financial condition of the insurer and:

(1) In the case of a foreign insurer, shall maintain in the broker's office a current certificate, in proper form, from the regulatory authority in the domicile of the unauthorized insurer, to the effect that the insurer has capital and surplus, or its equivalent under the laws of its domiciliary jurisdiction, which equals the minimum capital and surplus requirements of this State for that kind of insurer as set out in article 3; or

(2) In the case of an alien insurer, shall maintain in the broker's office evidence of the financial responsibility of the insurer. Evidence satisfactory to the commissioner that the insurer maintains in the United States an irrevocable trust fund in either a national bank or a member of the federal reserve system in an amount not less than [$2,500,000] $5,400,000 for the protection of all its policyholders in the United States consisting of cash, securities, letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of authorized

insurers writing like kinds of insurance in this State, shall constitute prima facie evidence of responsibility.

Upon request by the commissioner, the broker shall immediately submit to the commissioner the items described in this subsection."

SECTION 8. Section 431:9-105, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(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 the adjuster's current license in another [state's current license.] state. That other state shall have similar licensing requirements to section [431:9-217;] 431:9-222; and

(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."

SECTION 9. Section 431:9-201, Hawaii Revised Statutes, is amended to read as follows:

"**§431:9-201 License required.** (a) No person engaging in the business of insurance in this State shall act as, be appointed as, or hold oneself out to be a general agent, subagent, solicitor, or adjuster unless so licensed by this State.

(b) No general agent, subagent, or solicitor in this State shall solicit or take applications for, procure, or place for others any class of insurance for which the general agent, subagent, or solicitor is not licensed and does not hold an appointment from the insurer in this State for that class of insurance.

(c) A regular salaried officer or employee of an authorized insurer shall not be required to be licensed by reason of rendering assistance to, or on behalf of a licensed general agent, subagent, or solicitor, provided that the salaried officer or employee devotes substantially all of the officer's or employee's time to activities other than the solicitation of applications for insurance or annuity contracts and receives no commission or other compensation directly dependent upon the amount of business obtained.

(d) Any person violating this section shall be [fined not more than $1,000] assessed a civil penalty not to exceed $5,000 for each factually different violation.

(e) Any person who knowingly violates this section shall be assessed a civil penalty of not less than $1,000 and not more than $10,000 for each violation.

(f) Each repetition of an act that constitutes a violation subject to subsection (d) or (e) shall constitute a separate violation."

SECTION 10. Section 431:10B-108, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The benefits provided by the policy form shall not be deemed reasonable in relation to the premium charged or to be charged if the ratio of losses incurred to premiums earned is not at least sixty per cent. The commissioner may adopt by rules prima facie acceptable premium rates that shall reasonably be expected to produce a sixty per cent loss ratio. The prima facie rates shall be usable without actuarial or statistical justification when filed together with an otherwise acceptable policy form[.]; provided that the ratio of losses for the most recent three years is at least sixty per cent. The rules shall specify the plans of benefits to which the premium rates shall apply."

SECTION 11. Section 431:10C-307.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Violation of subsection (a) is a criminal offense and shall constitute a:

(1) Class B felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than $20,000;
(2) Class C felony if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is more than $300; or
(3) Misdemeanor if the value of the benefits, recovery, or compensation obtained or attempted to be obtained is [less than $300.] $300 or less."

SECTION 12. Section 431:11-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every insurer who is authorized to do business in this State and who is a member of an insurance holding company system shall register with the commissioner, except a foreign insurer subject to registration requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in this section and section 431:11-106(a)(1), (b), and (d). [The insurer shall file a copy of the registration statement and summary of its registration statement as required by subsections (b) and (c) with the National Association of Insurance Commissioners.] The insurer [also] shall file a copy of the summary of its registration statement as required by subsection (c) in each state in which that insurer is authorized to do business if requested by the commissioner of that state. Any insurer who is subject to registration under this section shall register within fifteen days after it becomes subject to registration, and annually thereafter by March 15 of each year for the previous calendar year, unless the commissioner for good cause shown extends the time for registration, and then within the extended time. The commissioner may require any insurer who is a member of a holding company system who is not subject to registration under this section to furnish a copy of the registration statement or other information filed by the insurance company with the insurance regulatory authority of domiciliary jurisdiction."

SECTION 13. Section 431:11-111, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

"(a) Any insurer failing[,] without just cause[,] to file any registration statement as required in this article, shall be [required, after notice and hearing, to pay a penalty of $100 for each day's delay,] liable for a fine in an amount of not less than $100 and not more than $500 for each day of delinquency, to be recovered by the commissioner, and the penalty so recovered shall be paid into the insurance

regulation fund [of this State. The maximum penalty under this subsection is $5,000]. The commissioner may reduce the penalty if the insurer demonstrates to the commissioner that the imposition of the penalty would constitute a financial hardship to the insurer.

(b) Every director or officer of an insurance holding company system who knowingly violates, participates in, or assents to, or who knowingly [shall permit] permits any of the officers or agents of the insurer to engage in any transactions or make investments [which] that have not been properly reported or submitted pursuant to sections 431:11-105(a), 431:11-106(a)(2), or 431:11-106(b), or who violates this article, shall [pay, in their individual capacity, a civil forfeiture of not more than $5,000 per violation, after notice and hearing before the commissioner.] be subject to a fine of not less than $100 and not more than $10,000 per violation. In determining the amount of the [civil forfeiture,] fine, the commissioner shall take into account the appropriateness of the [forfeiture] fine with respect to the gravity of the violation, the history of previous violations, and such other matters as justice may require."

2. By amending subsections (d) and (e) to read:

"(d) Whenever it appears to the commissioner that any insurer or any director, officer, employee, or agent thereof has committed a wilful violation of this article, the commissioner may cause criminal proceedings to be instituted against the insurer or the responsible director, officer, employee, or agent thereof. Any insurer who wilfully violates this article [may be fined not more than $5,000.] shall be subject to a fine of not less than $100 and not more than $10,000 per violation. Any individual who wilfully violates this article [may be fined in the individual's capacity not more than $5,000,] shall be subject to a fine in the individual's capacity of not less than $100 and not more than $10,000 per violation, or be imprisoned for not more than one year.

(e) Any officer, director, or employee of an insurance holding company system who wilfully and knowingly subscribes to or makes, or causes to be made, any false statements [or], false reports, or false filings with the intent to deceive the commissioner in the performance of the commissioner's duties under this article, upon conviction thereof, shall be imprisoned for not more than one year, or fined $5,000, or both. Any fines imposed shall be paid by the officer, director, or employee in [their] the person's individual capacity."

SECTION 14. Section 431:15-335, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All unclaimed funds subject to distribution remaining in the liquidator's hands when the liquidator is ready to apply to the court for discharge, including the amount distributable to any creditor, shareholder, member, or other person who is unknown or cannot be found, shall be deposited with the [insurance regulation fund,] director of finance, and shall be paid without interest except in accordance with section 431:15-332 to the person entitled thereto or the person's legal representative upon proof satisfactory to the [insurance regulation fund] director of finance of the person's right thereto. Any amount on deposit not claimed within six years from the discharge of the liquidator shall be deemed to have been abandoned and shall be escheated without formal escheat proceedings and be deposited with the [insurance regulation fund.] general fund."

SECTION 15. Section 432:2-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Nothing in this article shall exempt fraternal benefit societies from the provisions and requirements of [sections 416-19 and 416-20.] section 431:2-215."

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 17. This Act shall take effect upon its approval.

(Approved June 7, 2000.)

**Notes**

1. Prior to amendment, "chapters" appeared here.
2. Edited pursuant to HRS §23G-16.5.

## ACT 183 S.B. NO. 1276

A Bill for an Act Relating to the Superintendent of Education.

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

SECTION 1. Section 26-52, Hawaii Revised Statutes, is amended to read as follows:

"**§26-52 Department heads and executive officers.** The salaries of the following state officers shall be as follows:

(1) The salary of the superintendent of education shall be [$90,041 a year;] set by the board of education at a rate no greater than $150,000 a year;
(2) The salary of the president of the University of Hawaii shall be set by the board of regents;
(3) The salaries of all department heads or executive officers of the departments of accounting and general services, agriculture, attorney general, budget and finance, business, economic development, and tourism, commerce and consumer affairs, Hawaiian home lands, health, human resources development, human services, labor and industrial relations, land and natural resources, public safety, taxation, and transportation shall be $85,302 a year; and
(4) The salary of the adjutant general shall be $85,302 a year; provided that if this salary is in conflict with the pay and allowance fixed by the tables of the regular army or air force of the United States, the latter shall prevail."

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

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

(Approved June 7, 2000.)

## ACT 184 S.B. NO. 2056

A Bill for an Act Relating to Individual Development Account Contribution Tax Credits.

*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- **Individual development account contribution tax credit.** (a) There shall be allowed to each taxpayer subject to the tax imposed under this chapter, an individual development account contribution tax credit certified under chapter 257 which shall be applied against the taxpayer's net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed.

(b) The individual development account contribution tax credit shall be equal to fifty per cent of the amount contributed by the taxpayer to a fiduciary organization as defined by and in the manner prescribed in chapter 257. If a deduction is taken under section 170 (with respect to charitable contributions and gifts) of the Internal Revenue Code, no tax credit shall be allowed for that portion of the contribution for which the deduction was taken.

(c) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of the tax credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. 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.

(d) Application for the credit under this section shall be upon forms provided by the department.

(e) The credit under this section shall be available for taxable years beginning after December 31, 1999, but shall not be available for taxable years beginning after December 31, 2004."

SECTION 2. Section 257-10, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) [Individuals, organizations, or businesses contributing matching funds for individual development accounts shall receive a tax credit equal to fifty per cent of the amount contributed.] Taxpayers subject to the tax imposed under chapter 235 who contribute matching funds for individual development accounts may be eligible for the tax credit provided under section 235- ."

2. By amending subsection (c) to read:

"(c) The administrator of the fiduciary organization, with the cooperation of the participating organizations, shall maintain records of the names of contributors and the total amount each contributor contributes to an individual development account match fund for the [calendar] taxable year. All contributions shall be verified by the department of human services. The department of human services shall total all contributions that the department certifies. Upon each determination, the department of human services shall issue a certificate to the taxpayer. The taxpayer shall file the certificate with the taxpayer's tax return with the department of taxation.

When the total amount of certified contributions reaches $1,000,000, the department shall immediately discontinue certifying contributions and notify the department of taxation. In no instance, shall the total amount of certified contributions exceed $1,000,000 over the five year period between January 1, 2000, and December 31, 2004."

SECTION 3. Act 160, Session Laws of Hawaii 1999, is amended by amending section 33 to read as follows:

"SECTION 33. This Act shall take effect upon its approval; provided that:

(1) Part I, Part III, and Part V, and sections 29 and 30 of this Act shall take effect on July 1, 1999; [and]
(2) Section 25 shall apply to taxable years beginning after December 31, 1999; and
[(2)] (3) Section 28 shall take effect on June 29, 1999."

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

SECTION 5. This Act, upon its approval, shall apply to taxable years beginning after December 31, 1999, and before January 1, 2005; provided that section 3 shall take effect retroactive to June 28, 1999.

(Approved June 7, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 185 S.B. NO. 2152

A Bill for an Act Relating to the Interstate Compact for the Supervision of Adult Offenders.

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

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

"CHAPTER
INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS

§ -1 **Terms and provisions of compact.** The interstate compact for the supervision of adult offenders is hereby entered into and enacted into law with all jurisdictions legally joining therein, in form substantially as follows:

ARTICLE I
PURPOSE

The compacting states to this interstate compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the bylaws and rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. Section 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the interstate commission created hereunder, through means of joint and cooperative action among the compacting states, to: provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and

obligations of the compact among the compacting states. In addition, this compact will create an interstate commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct non-compliance; and coordinate training and education regarding regulations of interstate movement of offenders for officials involved in such activity. The compacting states recognize that there is no ''right'' of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the interstate commission created herein are the formation of public policies and are therefore public business.

## ARTICLE II
## DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

''Adult'' means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law.

''By-laws'' means those by-laws established by the interstate commission for its governance, or for directing or controlling the interstate commission's actions or conduct.

''Compact administrator'' means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the interstate commission and policies adopted by the state council under this compact.

''Compacting state'' means any state which has enacted the enabling legislation for this compact.

''Commissioner'' means the voting representative of each compacting state appointed pursuant to Article III of this compact.

''Interstate commission'' means the interstate commission for adult offender supervision established by this compact.

''Member'' means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner.

''Non-compacting state'' means any state which has not enacted the enabling legislation for this compact.

''Offender'' means an adult placed under, or subject to, supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies.

''Person'' means any individual, corporation, business enterprise, or other legal entity, either public or private.

"Rules" means acts of the interstate commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the interstate commission, which shall have the force and effect of law in the compacting states.

"State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States.

"State council" means the resident members of the state council for interstate adult offender supervision created by each state under Article III of this compact.

## ARTICLE III
## THE COMPACT COMMISSION

(a) The compacting states hereby create the "interstate commission for adult offender supervision." The interstate commission shall be a body corporate and joint agency of the compacting states. The interstate commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

(b) The interstate commission shall consist of commissioners selected and appointed by resident members of a state council for interstate adult offender supervision for each state. In addition to the commissioners who are the voting representatives of each state, the interstate commission shall include individuals who are not commissioners but who are members of interested organizations. The non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All non-commissioner members of the interstate commission shall be ex-officio (nonvoting) members. The interstate commission may provide in its by-laws for such additional, ex-officio, non-voting members, as it deems necessary.

(c) Each compacting state represented at any meeting of the interstate commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the interstate commission. The interstate commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of twenty-seven or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

(d) The interstate commission shall establish an executive committee, which shall include commission officers, members and others as shall be determined by the by-laws. The executive committee shall have the power to act on behalf of the interstate commission during periods when the interstate commission is not in session, with the exception of rulemaking or amendment to the compact. The executive committee oversees the day-to-day activities managed by the executive director and interstate commission staff, administers enforcement and compliance with the provisions of the compact, its by-laws and as directed by the interstate commission, and performs other duties as directed by commission or set forth in the by-laws.

## ARTICLE IV
## THE STATE COUNCIL

Each member state shall create a state council for interstate adult offender supervision which shall be responsible for the appointment of the commissioner who

shall serve on the interstate commission from that state. Each state council shall appoint as its commissioner the compact administrator from that state to serve on the interstate commission in this capacity pursuant to applicable law of the member state. While each member state may determine the membership of its own state council, its membership shall include at least one representative from the legislative, judicial, and executive branches of government, victims groups and compact administrators. Each compacting state retains the right to determine the qualifications of the compact administrator who shall be appointed by the state council or by the governor in consultation with the legislature and the judiciary. In addition to appointment of its commissioner to the national interstate commission, each state council shall exercise oversight and advocacy concerning its participation in interstate commission activities and other duties as may be determined by each member state including but not limited to, development of policy concerning operations and procedures of the compact within that state.

## ARTICLE V
## POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

(1) To adopt a seal and suitable by-laws governing the management and operation of the interstate commission;
(2) To adopt rules which shall be binding in the compacting states to the extent and in the manner provided in this compact;
(3) To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws and rules adopted by the compact commission;
(4) To enforce compliance with compact provisions, interstate commission rules, and by-laws, using all necessary and proper means, including but not limited to, the use of judicial process;
(5) To establish and maintain offices;
(6) To purchase and maintain insurance and bonds;
(7) To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;
(8) To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;
(9) To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;
(10) To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;
(11) To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;
(12) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;
(13) To establish a budget and make expenditures and levy dues as provided in Article X of this compact;
(14) To sue and be sued;

(15) To provide for dispute resolution among compacting states;
(16) To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;
(17) To report annually to the legislatures, governors, judiciary, and state councils of the compacting states concerning the activities of the interstate commission during the preceding year. The reports shall also include any recommendations that may have been adopted by the interstate commission;
(18) To coordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity; and
(19) To establish uniform standards for the reporting, collecting, and exchanging of data.

## ARTICLE VI
## ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

**Section A. By-laws.** The interstate commission shall, by a majority of its members, within twelve months of the first interstate commission meeting, adopt by-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

(1) Establishing the fiscal year of the interstate commission;
(2) Establishing an executive committee and such other committees as may be necessary;
(3) Providing reasonable standards and procedures:
  (A) For the establishment of committees, and
  (B) Governing any general or specific delegation of any authority or function of the interstate commission;
(4) Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each meeting;
(5) Establishing the titles and responsibilities of the officers of the interstate commission;
(6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the interstate commission. Notwithstanding any civil service or other similar laws of any compacting state, the by-laws shall exclusively govern the personnel policies and programs of the interstate commission;
(7) Providing a mechanism for winding up the operations of the interstate commission and the equitable return of any surplus funds that may exist upon the termination of the compact after the payment and/or reserving of all of its debts and obligations;
(8) Providing transition rules for "start up" administration of the compact; and
(9) Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

**Section B. Officers and staff.** The interstate commission, by a majority of the members, shall elect from among its members a chairperson and a vice chairperson, each of whom shall have authorities and duties as may be specified in the by-laws. The chairperson or, in the chairperson's absence or disability, the vice chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers

shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the interstate commission.

The interstate commission, through its executive committee, shall appoint or retain an executive director upon terms and conditions and for compensation as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, and hire and supervise such other staff as may be authorized by the interstate commission, but shall not be a member.

**Section C. Corporate records of the interstate commission.** The interstate commission shall maintain its corporate books and records in accordance with the by-laws.

**Section D. Qualified immunity, defense and indemnification.** (a) The members, officers, executive director and employees of the interstate commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of interstate commission employment, duties or responsibilities; provided that nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of any person. The interstate commission shall defend the commissioner of a compacting state, the chairperson's representatives or employees, or the interstate commission's representatives or employees, in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties or responsibilities; provided that the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

(b) The interstate commission shall indemnify and hold the commissioner of a compacting state, the appointed designee or employees, or the interstate commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against them arising out of any actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities; provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

## ARTICLE VII
## ACTIVITIES OF THE INTERSTATE COMMISSION

(a) The interstate commission shall meet and take actions consistent with the provisions of this compact.

(b) Except as otherwise provided in this compact and unless a greater percentage is required by the by-laws, in order to constitute an act of the interstate commission, the act shall have been taken at a meeting of the interstate commission and shall have received an affirmative vote of a majority of the members present.

(c) Each member of the interstate commission shall have the right and power to cast a vote to which that compacting state is entitled and to participate in the business and affairs of the interstate commission. A member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a state council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The by-laws may provide for members' participation in meetings

by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication, shall be subject to the same quorum requirements of meetings where members are present in person.

(d) The interstate commission shall meet at least once during each calendar year. The chairperson of the interstate commission may call additional meetings at any time and, upon the request of a majority of the members, shall call additional meetings.

(e) The interstate commission's by-laws shall establish conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In adopting rules, the interstate commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(f) Public notice shall be given of all meetings, and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission shall adopt rules consistent with the principles contained in the "government in sunshine act", 5 U.S.C. Section 552(b), as may be amended. The interstate commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

(1) Relate solely to the interstate commission's internal personnel practices and procedures;
(2) Disclose matters specifically exempted from disclosure by statute;
(3) Disclose trade secrets or commercial or financial information which is privileged or confidential;
(4) Involve accusing any person of a crime, or formally censuring any person;
(5) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
(6) Disclose investigatory records compiled for law enforcement purposes;
(7) Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the interstate commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;
(8) Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity; or
(9) Specifically relate to the interstate commission's issuance of a subpoena, or its participation in a civil action or proceeding.

For every meeting closed pursuant to this provision, the interstate commission's chief legal officer shall publicly certify that, in the officer's opinion, the meeting may be closed to the public, and shall reference each relevant exemption. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll call vote (reflected in the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(g) The interstate commission shall collect standardized data concerning the interstate movement of offenders as directed through its by-laws and rules which

shall specify the data to be collected, the means of collection and data exchange, and reporting requirements.

## ARTICLE VIII
## RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

(a) The interstate commission shall promulgate rules in order to effectively and efficiently achieve the purposes of the compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states.

(b) Rulemaking shall occur pursuant to the criteria set forth in this article and the by-laws and rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, 5 U.S.C.S. section 551 et seq., and the federal Advisory Committee Act, 5 U.S.C.S. app. 2, section 1 et seq., as may be amended (hereinafter "APA"). All rules and amendments shall become binding as of the date specified in each rule or amendment.

(c) If a majority of the legislatures of the compacting states rejects a rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then the rule shall have no further force and effect in any compacting state.

When promulgating a rule, the interstate commission shall:

(1) Publish the proposed rule stating with particularity the text of the rule which is proposed and the reason for the proposed rule;
(2) Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;
(3) Provide an opportunity for an informal hearing; and
(4) Adopt a final rule and its effective date, if appropriate, based on the rulemaking record.

(d) Not later than sixty days after a rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the federal district court where the interstate commission's principal office is located for judicial review of such rule. If the court finds that the interstate commission's action is not supported by substantial evidence (as used in the APA), in the rulemaking record, the court shall hold the rule unlawful and set it aside. Subjects to be addressed within twelve months after the first meeting shall at a minimum include:

(1) Notice to victims and opportunity to be heard;
(2) Offender registration and compliance;
(3) Violations/returns;
(4) Transfer procedures and forms;
(5) Eligibility for transfer;
(6) Collection of restitution and fees from offenders;
(7) Data collection and reporting;
(8) The level of supervision to be provided by the receiving state;
(9) Transition rules governing the operation of the compact and the interstate commission during all or part of the period between the effective date of the compact and the date on which the last eligible state adopts the compact; and
(10) Mediation, arbitration and dispute resolution.

The existing rules governing the operation of the previous compact superseded by this Act shall be void twelve months after the first meeting of the interstate commission created hereunder.

Upon determination by the interstate commission that an emergency exists, it may adopt an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be

retroactively applied to that rule as soon as reasonably possible, in no event later than ninety days after the effective date of the rule.

## ARTICLE IX
## OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

**Section A. Oversight.** The interstate commission shall oversee the interstate movement of adult offenders in the compacting states and shall monitor such activities being administered in non-compacting states which may significantly affect compacting states.

The courts and executive agencies in each compacting state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. In any judicial or administrative proceeding in a compacting state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission, the interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

**Section B. Dispute resolution.** The compacting states shall report to the interstate commission on issues or activities of concern to them, and cooperate with and support the interstate commission in the discharge of its duties and responsibilities.

The interstate commission shall attempt to resolve any disputes or other issues which are subject to the compact and which may arise among compacting states and non-compacting states.

The interstate commission shall enact a by-law or adopt a rule providing for both mediation and binding dispute resolution for disputes among the compacting states.

**Section C. Enforcement.** The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact using any or all means set forth in Article XII, Section B, of this compact.

## ARTICLE X
## FINANCE

(a) The interstate commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

(b) The interstate commission shall levy on and collect an annual assessment from each compacting state to cover the cost of the internal operations and activities of the interstate commission and its staff which shall be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each compacting state and shall adopt a rule binding upon all compacting states which governs the assessment.

(c) The interstate commission shall not incur any obligations of any kind prior to securing the funds adequate to meet them; nor shall the interstate commission pledge the credit of any of the compacting states, except by and with the authority of the compacting state.

(d) The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its by-laws. However, all receipts and disbursements of funds handled by the interstate commis-

sion shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

## ARTICLE XI
## COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

Any state, as defined in this compact, is eligible to become a compacting state. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than thirty-five of the states. The initial effective date shall be the later of July 1, 2001, or upon enactment into law by the thirty-fifth jurisdiction. Thereafter it shall become effective and binding, as to any other compacting state, upon enactment of the compact into law by that state. The governors of non-compacting states or their designees will be invited to participate in interstate commission activities on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

Amendments to the compact may be proposed by the interstate commission for enactment by the compacting states. No amendment shall become effective and binding upon the interstate commission and the compacting states until it is enacted into law by unanimous consent of the compacting states.

## ARTICLE XII
## WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

**Section A. Withdrawal.** (a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a compacting state may withdraw from the compact (''withdrawing state'') by enacting a statute specifically repealing the statute which enacted the compact into law.

(b) The effective date of withdrawal is the effective date of the repeal.

(c) The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other compacting states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

(d) The withdrawing state is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

(e) Reinstatement following withdrawal of any compacting state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

**Section B. Default.** (a) If the interstate commission determines that any compacting state has at any time defaulted (''defaulting state'') in the performance of any of its obligations or responsibilities under this compact, the by-laws or any duly promulgated rules, the interstate commission may impose any or all of the following penalties:

(1) Fines, fees and costs in amounts as are deemed reasonable by the interstate commission;

(2) Remedial training and technical assistance as directed by the interstate commission; and

(3) Suspension and termination of membership in the compact.

(b) Suspension shall be imposed only after all other reasonable means of securing compliance under the by-laws and rules have been exhausted. Immediate

notice of suspension shall be given by the interstate commission to the governor, the chief justice of the state; the majority and minority leaders of the defaulting state's legislature, and the state council.

(c) The grounds for default include, but are not limited to, failure of a compacting state to perform such obligations or responsibilities imposed upon it by this compact, interstate commission by-laws, or duly promulgated rules. The interstate commission shall immediately notify the defaulting state in writing of the penalty imposed by the interstate commission on the defaulting state pending a cure of the default. The interstate commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the interstate commission, in addition to any other penalties imposed herein, the defaulting state may be terminated from the compact upon an affirmative vote of a majority of the compacting states and all rights, privileges and benefits conferred by this compact shall be terminated from the effective date of suspension. Within sixty days of the effective date of termination of a defaulting state, the interstate commission shall notify the governor, the chief justice and the majority and minority leaders of the defaulting state's legislature and the state council of such termination.

(d) The defaulting state is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination. The interstate commission shall not bear any costs relating to the defaulting state unless otherwise mutually agreed upon between the interstate commission and the defaulting state. Reinstatement following termination of any compacting state requires both a reenactment of the compact by the defaulting state and the approval of the interstate commission pursuant to the rules.

**Section C. Judicial enforcement.** The interstate commission, by majority vote of the members, may initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its offices to enforce compliance with the provisions of the compact, its duly promulgated rules and by-laws, against any compacting state in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys fees.

**Section D. Dissolution of compact.** The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state. Upon the dissolution of this compact, the compact becomes void and shall be of no further effect, and the business and affairs of the interstate commission shall be wound up and any surplus funds shall be distributed in accordance with the by-laws.

## ARTICLE XIII
## SEVERABILITY AND CONSTRUCTION

The provisions of this compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

The provisions of this compact shall be liberally constructed to effectuate its purposes.

## ARTICLE XIV
## BINDING EFFECT OF COMPACT AND OTHER LAWS

**Section A. Other laws.** Nothing herein prevents the enforcement of any other law of a compacting state that is not inconsistent with this compact.

All compacting states' laws conflicting with this compact are superseded to the extent of the conflict.

**Section B. Binding-effect of the compact.** (a) All lawful actions of the interstate commission, including all rules and by-laws promulgated by the interstate commission, are binding upon the compacting states.

(b) All agreements between the interstate commission and the compacting states are binding in accordance with their terms.

(c) Upon the request of a party to a conflict over meaning or interpretation of interstate commission actions, and upon a majority vote of the compacting states, the interstate commission may issue advisory opinions regarding such meaning or interpretation.

(d) In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by those provisions upon the interstate commission shall be ineffective and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which the obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

§ -2 **State compact administrator.** The state's commissioner on the interstate commission for adult offender supervision shall be the compact administrator of the state council for interstate adult offender supervision established under section -3.

§ -3 **State council for interstate adult offender supervision.** There is established the state council for interstate adult offender supervision, which shall be placed administratively in the judiciary. The council shall be composed of five members to be appointed as follows:

(1) One member of the house of representatives appointed by the speaker of the house of representatives;
(2) One member of the senate appointed by the senate president;
(3) One member of the judiciary appointed by the chief justice of the supreme court;
(4) The director of public safety, or the director's designee;
(5) One member from the general public representing victims groups appointed by the governor; and
(6) The compact administrator, appointed by the governor, with the advice and consent of the senate and the chief justice.

The council shall exercise oversight and advocacy concerning its participation in commission activities and other duties as may be determined by the council, including development of policy concerning operations and procedures of the compact within the State. The council shall also have the authority to appoint a member other than the compact administrator to cast a vote on behalf of the State at meetings of the interstate commission in which the compact administrator is absent.

§ -4 **Expenditures; reports.** Expenditures by the council, including the amounts fixed annually as the equal contribution of each member to the compact, shall be made upon warrants issued by the state comptroller based upon vouchers approved by any one of the commissioners. A report of the activities and expenses of

the commissioners and a proposed program for the State's continuing participation in the activities of the interstate commission for adult supervision, including a budget request, shall be submitted by the commissioners to each regular session of the legislature.

§ **-5 Execution.** The governor shall execute the compact on behalf of this State, and perform any other acts which may be deemed requisite to its formal adoption."

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the new sections designated in this Act.

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

(Approved June 7, 2000.)

## ACT 186 S.B. NO. 2154

A Bill for an Act Relating to Protective Orders.

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

SECTION 1. Domestic violence is a pervasive problem in Hawaii that impacts not only victims, but family, friends, and others.

SECTION 2. Section 586-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"<u>"Dating relationship" means a romantic, courtship, or engagement relationship, often but not necessarily characterized by actions of an intimate or sexual nature, but does not include a casual acquaintanceship or ordinary fraternization between persons in a business or social context.</u>"

2. By amending the definition of "family or household members" to read:

"<u>"Family or household member" means spouses or reciprocal beneficiaries, former spouses or former reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, [and] persons jointly residing or formerly residing in the same dwelling unit[.], and persons who have or have had a dating relationship.</u>"

SECTION 3. Section 586-3, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) A petition for relief under this chapter may be made by:

(1) Any family or household [[]member[]] on [his or her] <u>the member's</u> own behalf or on behalf of a family or household member who is a minor[,] or who is incapacitated as defined in section 560:5-101(2)[,] or who is physically unable to go to the appropriate place to complete or file the petition; or

(2) Any state agency on behalf of a person who is a minor[,] or who is incapacitated as defined in section 560:5-101(2)[,] or a person who is physically unable to go to the appropriate place to complete or file the petition on behalf of that person.

(c) A petition for relief shall[:] be in writing [and] upon forms provided by the court[;] <u>and shall</u> allege, <u>under penalty of perjury,</u> that: a past act or acts of abuse

may have occurred[, 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 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 4. Section 586-4, Hawaii Revised Statutes, is amended to read as follows:

"**§586-4 Temporary restraining order.** (a) Upon petition to a family court judge, [a] an ex parte temporary restraining order may be granted without notice to restrain either or both parties from contacting, threatening, or physically abusing each other, notwithstanding that a complaint for annulment, divorce, or separation has not been filed. The order may be granted to any person who, at the time [such] the order is granted, is a family or household member as defined in section 586-1 or who filed a petition on behalf of a family or household member. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

(1) Contacting, threatening, or physically abusing the [petitioner;] protected party;

(2) Contacting, threatening, or physically abusing any person residing at the [petitioner's] protected party's residence; or

(3) [Telephoning the petitioner;

(4)] Entering or visiting the [petitioner's] protected party's residence[; or

(5) Contacting, threatening, or physically abusing the petitioner at work].

(b) For any person who is alleged to be a family or household member by virtue of a dating relationship, the court may consider the following factors in determining whether a dating relationship exists:

(1) The length of the relationship;

(2) The nature of the relationship; and

(3) The frequency of the interaction between the parties.

[(b)] (c) The family court judge may issue the ex parte temporary restraining order orally, if the person being restrained is present in court. The order shall state that there is probable cause to believe that a past act or acts of abuse have occurred, or that threats of abuse make it probable that acts of abuse may be imminent. The order further shall state that the temporary restraining order is necessary for the [purpose] purposes of: preventing acts of abuse or preventing a recurrence of actual domestic abuse[,]; and [assuring] ensuring a period of separation of the parties involved. The order shall describe in reasonable detail the act or acts sought to be restrained. Where necessary, the order may require either or both of the parties involved to leave the premises during the period of the order, and also may restrain the party or parties to whom it is directed from contacting, threatening, or physically abusing the applicant's family or household members. The order shall not only be binding upon the parties to the action, but also upon their officers, agents, servants, employees, attorneys, or any other persons in active concert or participation with them. The order shall enjoin the respondent or person to be restrained from performing any combination of the following acts:

(1) Contacting, threatening, or physically abusing the [petitioner;] protected party;

(2) Contacting, threatening, or physically abusing any person residing at the [petitioner's] protected party's residence; or

(3) [Telephoning the petitioner;

(4)] Entering or visiting the [petitioner's] protected party's residence[; or

(5) Contacting, threatening, or physically abusing the petitioner at work].

[(c)] (d) When a temporary restraining order is granted [pursuant to this chapter] and the respondent or person to be restrained knows of the order, a knowing or intentional violation of the restraining order is a misdemeanor. A person convicted under this section shall undergo domestic violence intervention at any available domestic violence program as ordered by the court. The court additionally shall sentence a person convicted under this section as follows:

(1) For a first conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of forty-eight hours and be fined not less than $150 nor more than $500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and

(2) For the second and any subsequent conviction for violation of the temporary restraining order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than $250 nor more than $1,000; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

The court may suspend any jail sentence, except for the mandatory sentences under paragraphs (1) and (2), upon condition that the defendant remain alcohol and drug-free, conviction-free, or complete court-ordered assessments or intervention. Nothing in this section shall be construed as limiting the discretion of the judge to impose additional sanctions authorized in sentencing for a misdemeanor.

[(d)] (e) Any fines collected pursuant to subsection [(c)] (d) shall be deposited into the spouse and child abuse special account established under section 601-3.6."

SECTION 5. Section 586-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [Upon the request of the petitioner, any] Any order for protection granted pursuant to this chapter shall be [forwarded] transmitted by the clerk of the court within twenty-four hours to the appropriate county police department."

SECTION 6. Section 586-10.5, Hawaii Revised Statutes, is amended to read as follows:

"**§586-10.5 Reports by the department of human services.** In cases where there are allegations of domestic abuse involving a [minor] family or household member[,] who is a minor or an incapacitated person as defined in section 560:5-101(2), the employee or appropriate nonjudicial agency designated by the family court to assist the petitioner shall report the matter to the department of human services, as required under chapters 350 and 587, and shall further notify the department of the granting of the temporary restraining order and of the hearing date. The department of human services shall provide the family court with an oral or written report of the investigation's progress on or before the hearing date."

SECTION 7. Chapter 586, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

## "PART II. FOREIGN PROTECTIVE ORDERS

**§586-A Foreign protective orders.** Any valid protective order, as defined in 18 U.S.C. §2266, issued by a court or tribunal of another state, tribe, or territory of the United States shall be accorded full faith and credit by the courts of this State and shall be enforced as if it were an order issued in this State.

**§586-B Valid protective order.** (a) A protective order issued by another state, tribe, or territory shall be considered valid if:

(1) The issuing court or tribunal had jurisdiction over the parties and matter under the laws of the state, tribe, or territory; and

(2) The respondent received notice and an opportunity to be heard before the foreign protective order was issued; provided that, in the case of an ex parte order, notice and opportunity to be heard were provided within a reasonable period of time, sufficient to protect the respondent's right to due process.

(b) Failure to provide reasonable notice and opportunity to be heard shall be an affirmative defense to any charge or process filed seeking enforcement of an out-of-state protective order.

**§586-C Filing of foreign protective order; not required.** A certified copy of a foreign protective order, accompanied by a sworn affidavit that the order remains in effect and has not been vacated or modified, may be filed with the court; provided that no filing fee shall be required. Filing of a foreign protective order with the court shall not be required for enforcement of the foreign protective order in this State.

**§586-D Enforcement of foreign protective orders.** (a) A law enforcement officer shall enforce a foreign protective order that appears to be authentic on its face. For purposes of this section, "authentic on its face" means the protective order contains the names of both parties and remains in effect.

(b) If a paper copy of the order is unavailable and the officer verifies the existence and status of the order through a national or state centralized registry for protective orders or through communication with appropriate authorities in the issuing state, tribe, or territory, the officer shall enforce the order.

(c) A law enforcement officer shall make an arrest for a violation of a foreign protective order in the same manner as for violations of protective order orders issued in this State.

**§586-E Good faith immunity.** Any law enforcement officer acting in good faith shall be immune from civil or criminal liability in any action arising in connection with enforcement of a valid foreign protective order pursuant to this part.

**§586-F Penalties.** Any violation of a foreign protective order entitled to full faith and credit under this part is a misdemeanor. The court shall sentence a person convicted under this section as follows:

(1) For a first conviction for violation of the protective order, the person shall serve a mandatory minimum jail sentence of forty-eight hours but not more than thirty days and be fined not less than $150 nor more than $500; provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine; and

(2) For a second and any subsequent conviction for violation of the protective order, the person shall serve a mandatory minimum jail sentence of thirty days and be fined not less than $250 nor more than $1,000;

provided that the court shall not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist."

SECTION 8. In codifying the new sections added by section 7 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 9. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

(Approved June 7, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 187 S.B. NO. 2218

A Bill for an Act Relating to New Century Charter Schools.

*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- Charter school reviewal guidelines.** The board of education shall adopt guidelines under which new charter schools shall be reviewed by the board, upon their formation under section 302A-1182 or 302A-1183. The guidelines shall include such elements as:

(1) Minimum school size;
(2) Assurance that each school will be able to account for the funds allocated;
(3) Assurance that each school will be held accountable for student performance; and
(4) Assurance that each school will meet legal standards for the expenditure of state funds;

provided that the guidelines provide clear responsibilities for the expenditure of federal and any other non-state funds."

SECTION 2. Section 26-35.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For purposes of this section, "member" means any person who is appointed, in accordance with the law, to serve on a temporary or permanent state board, including members of the local school board of any new charter school

established under section 302A-1182, council, authority, committee, or commission, established by law or elected to the board of trustees of the employees' retirement system under section 88-24; provided that "member" shall not include any person elected to serve on a board or commission in accordance with chapter 11."

SECTION 3. Section 302A-1182, Hawaii Revised Statutes, is amended by amending subsections (c) and (d)[1] to read as follows:

"(c) The local school board shall formulate and develop a detailed implementation plan, which shall include but not be limited to the following:

(1) A description of the administrative and educational framework, and which provides for the basic protection of employees and their reasonable academic freedoms;
(2) A plan for identifying, recruiting, and selecting students to make certain that student participation is not exclusive, elitist, or segregationalist;
(3) A plan for [assessing student performance that focuses upon] a comprehensive assessment and accountability system that meets or exceeds[2] the established state educational content and performance standards[, has at least equivalent rigor of standards and technical quality,] as well as any other specific student outcomes to be achieved, and making this plan accountable to the general public;
(4) The curriculum, instructional framework, and assessment mechanisms to be used to achieve student outcomes;
(5) A plan to hold the school, its faculty, and staff (collectively and individually) accountable in at least an equivalent manner as are other public schools throughout the State;
(6) A governance structure of the school;
(7) A facilities management plan that is consistent with the state facilities plan; provided that if the facilities management plan includes use of existing school facilities, the new century charter school shall receive authorization from the administrator responsible for the facilities; provided further that the final determination of use shall be under the discretion of the board; and
(8) [Annual] A system of financial accountability that includes annual financial and program audits.

The detailed implementation plan shall be approved by sixty per cent of the school's existing administrative, support, and teaching personnel, and parents; provided that the school personnel may request their bargaining unit representative to certify and conduct the elections for their respective bargaining units. Once approved, the detailed implementation plan shall be submitted to the board for review.

(d) The board shall have [thirty] sixty days to review the completed implementation plan for the proposed new century charter school to assure its compliance with subsection (c) and section 302A-1184. Unless the board finds that the plan conflicts with subsection (c) or section 302A-1184, the governor, the superintendent, and the board shall issue a charter designating the proposed new century charter school as a new century charter school within thirty days, and the proposed implementation plan shall be converted to a written performance contract between the school and the board. If, within thirty days after the submission of the plan, the board finds a conflict with subsection (c) or section 302A-1184, it shall notify the local school board of the finding in writing to enable the local school board to appropriately amend the plan to resolve the conflict.

(e) The new century charter schools shall not charge tuition. The State shall afford the local school board of any new century charter school the same protections as the State affords to the board."

SECTION 4. Section 302A-1183, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) As an alternative to section 302A-1182(b), any community, group of teachers, or any program within an existing school may submit a letter of intent to the board for the establishment of a new century charter school."

SECTION 5. Section 302A-1185, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) New century charter schools shall receive an allocation of state general funds based upon the operational and educational funding requirements of the schools; provided that:

(1) Beginning in fiscal year 1999-2000, and every year thereafter, the auditor shall determine the appropriate allocation based on the total department general fund appropriation and per pupil expenditure for the previous year; provided that in setting the allocation, the auditor shall explicitly consider the advice of the superintendent and representatives of local school boards and indicate in the final determination the manner in which that advice was accommodated.

(2) Small schools with less than one hundred twenty students shall be given a state subsidy or small school allotment, as determined by the department, to augment the per pupil allocation given; provided that if additional federal grant moneys are received, the auditor shall determine the appropriate portion of the federal grant moneys to be used to offset the small school allotment; provided further that the federal grant moneys shall not include federal impact aid;

(3) The department may provide a limited start-up and planning grant formulated by the auditor to a charter school upon the issuance of its charter;

[(3)] (4) The auditor shall take into consideration any changes to the department's budget made by the legislature or the governor and any applicable collective bargaining negotiated amounts; [and]

[(4)] (5) The allocation for self-contained special education students and for other special education students shall be adjusted appropriately to reflect the additional expenses incurred for students in these programs; provided that any increment to the per pupil allocation made in this paragraph shall not exceed [that] the increment available to all other public schools[.]; and

(6) The auditor shall develop a methodology for allocating funds that can be applied to alternative forms of public schools, including but not limited to new century charter schools.

(b) All federal and other financial support for new century charter schools shall be no less than all other public schools; provided that if administrative services are provided to the charter school by the department, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the charter school's allocation.

Any new century charter school shall be eligible to receive any supplementary financial grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to new century charter schools; provided that if department administrative services, including funds management,

budgetary, fiscal accounting, or other related services, are provided with respect to these supplementary grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that does not exceed six and one-half per cent of the supplementary grant for which the services are used.

All additional funds that are generated by the local school [board] boards, not from a supplementary grant, shall be separate and apart from allotted funds [[]and[]] may be expended at the discretion of the local school [board.] boards."

SECTION 6. Section 302A-1186, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§302A-1186[]] New century charter schools; self-evaluation.** (a) Every new century charter school shall conduct self-evaluations annually. The self-evaluation process shall include but not be limited to:

(1) The identification and adoption of benchmarks to measure and evaluate administrative and instructional programs as provided in this section;
(2) The identification of any administrative and legal barriers to meeting the benchmarks, as adopted, and recommendations for improvements and modifications to address the barriers; [and]
(3) The impact of any changes made upon the students of the new century charter school[.]; and
(4) A profile of the charter school's enrollment and community it serves.

Every new century charter school shall submit a report of its self-evaluation to the board within sixty days after the completion of the school year; provided that the department shall have thirty days to respond to any recommendation regarding improvements and modifications that would directly impact the department.

(b) The board shall initiate an independent evaluation of each new century charter school four years after its establishment and every four years thereafter to assure compliance with statewide student content and performance standards and fiscal accountability; provided that each new century charter school established prior to July 1, 1998, shall be evaluated four years after July 1, 1998, and every four years thereafter. Upon a determination by the board that student achievement within a new century charter school does not meet the student performance standards, or that the new century charter school is not fiscally responsible, a new century charter school shall be placed on probationary status and shall have two years to bring student performance into compliance with statewide standards and improve the school's fiscal accountability. If a new century charter school fails to meet its probationary requirements, or fails to comply with any of the requirements of this section, the board, upon a two-thirds majority vote, may then deny the continuation of the new century charter school."

SECTION 7. Section 1 of this Act shall not apply to charter schools in existence prior to the effective date of this Act.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.[3]

SECTION 9. This Act shall take effect on July 1, 2000, and, except as provided in section 7, shall apply to new century charter schools beginning with the 2000-2001 school year.

(Approved June 7, 2000.)

Notes

1. So in original.
2. "That meets or exceeds" should be underscored.
3. Edited pursuant to HRS §23G-16.5.

# ACT 188

S.B. NO. 2530

A Bill for an Act Relating to Agriculture.

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

SECTION 1. The legislature finds that the cessation of sugar operations in Hawaii has resulted in the loss of jobs and revenues to the State, the counties and to the citizens of Hawaii. The land formerly devoted to the growing of sugar cane is now available for commercial growing of a diverse number of crops, including cacao seedlings, cacao trees and their cacao bean crop. The establishment of new facilities in the State to process cacao beans and produce cacao and chocolate products would support the development of cacao nursery and farming operations and the marketing and sales of cacao and chocolate locally and for export. Such facilities would create an estimated one hundred new jobs directly in the processing and production operations, as well as additional new jobs in related nursery, farming, marketing and sales operations. Due to the economic conditions in the State, and the loss of many agricultural jobs, the creation of new jobs is imperative at this time.

The legislature also finds that it is particularly in the public interest to encourage and promote the development of new agriculture-related enterprises where and when that opportunity presents itself. The establishment of new facilities that can process cacao beans and produce cacao and chocolate products for use locally and for export is the type of enterprise that will provide such an opportunity for our State. The cacao processing and cacao and chocolate production facilities proposed by Hawaii Gold Cacao Tree, Inc., in the county of Hawaii is an excellent example of the type of enterprise that the legislature finds to be in the public interest.

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's general welfare.

SECTION 2. Pursuant to part IV, 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 $10,000,000, in one or more series, for the purpose of assisting Hawaii Gold Cacao Tree, Inc., to finance the establishment of facilities in the county of Hawaii to process cacao beans and to manufacture and produce cacao and chocolate products. The legislature finds and determines that the planning, construction, and equipping of facilities to process cacao beans and to manufacture and produce cacao and chocolate products constitutes a project as defined in part IV, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a processing enterprise.

SECTION 3. The department of budget and finance shall process applications for special purpose revenue bonds under this Act in accordance with the requirements of its "Formal Application for Financing of an Industrial Enterprise" as it existed on October 22, 1987. The department shall report to the legislature twenty days before the convening of the regular sessions of 2001 and 2002 regarding any progress made with respect to the issuance of the special purpose revenue bonds authorized by this Act.

SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 5. The department of budget and finance is further authorized to issue from time to time refunding special purpose revenue bonds authorized in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2003.

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

(Approved June 7, 2000.)

## ACT 189 H.B. NO. 1881

A Bill for an Act Relating to Use of Intoxicants.

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

### PART I

SECTION 1. The purpose of this part is to reduce the maximum jail time that may be imposed upon drug impaired offenders. The effect of such a reduction will be to make the application of the right to a jury trial for driving under the influence of drugs consistent with that for operating a vehicle under the influence of intoxicating liquor. The legislature further intends that, by making these reduced penalties retroactive to pending driving under the influence of drugs cases, it be made clear that these offenders are not entitled to a jury trial, as the offense is a "petty offense" in the constitutional sense.

SECTION 2. Section 291-7, Hawaii Revised Statutes, is amended to read as follows:

"**§291-7 Driving under the influence of drugs.** (a) A person commits the offense of driving under the influence of drugs if the person operates or assumes actual physical control of the operation of any vehicle while under the influence of any drug [which] that impairs [such] the person's ability to operate the vehicle in a careful and prudent manner. The term "drug" as used in this section [shall mean] means any controlled substance as defined and enumerated on schedules I through IV of chapter 329.

(b) A person committing the offense of driving under the influence of drugs shall be sentenced as follows without possibility of probation or suspension of sentence:

(1) For a first offense, or any offense not preceded within a five-year period by a conviction under this section, by:
   (A) A fourteen-hour minimum drug abuse rehabilitation program, including education and counseling, or other comparable programs deemed appropriate by the court; and
   (B) Ninety-day prompt suspension of license, with absolute prohibition from operating a motor vehicle during suspension of license,

or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a motor vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in drug treatment programs; and

(C) Any one or more of the following:

(i) Seventy-two hours of community service work;

(ii) Not less than forty-eight hours and not more than five days of imprisonment; or

(iii) A fine of not less than $150 but not more than $1,000[.];

(2) For an offense [which] that occurs within five years of a prior conviction under this section:

(A) Prompt suspension of license for a period of one year with the absolute prohibition from operating a motor vehicle during suspension of license;

(B) Either one of the following:

(i) Not less than eighty hours of community service work; or

(ii) Not less than forty-eight consecutive hours but not more than fourteen days of imprisonment[;] of which at least forty-eight hours shall be served consecutively; and

(C) A fine of not less than $500 but not more than $1,000 [.]; and

(3) For an offense [which] that occurs within five years of two prior convictions under this section, by:

(A) A fine of not less than $500 but not more than $1,000;

(B) Revocation of license for a period of not less than one year but not more than five years; and

(C) Not less than ten days but not more than [one hundred eighty] thirty days imprisonment[.] of which at least forty-eight hours shall be served consecutively.

[(4)] Notwithstanding any other law to the contrary, any conviction for driving under the influence of drugs shall be considered a prior conviction.

(c) Whenever a court sentences a person pursuant to subsection (b)(2) or (3), it also shall [also] require that the offender be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the offender's drug dependence and the need for appropriate treatment. The counselor shall submit a report with recommendations to the court. The court may require the offender to obtain appropriate treatment.

All costs for [such] the assessment or treatment or both shall be borne by the offender.

(d) Notwithstanding any other law to the contrary, whenever a court revokes a person's driver's license pursuant to [the provisions of] this section, the examiner of drivers shall not grant to [such] the person an application for a new driver's license for [such] a period of time as specified by the court.

(e) As used in this section[, the terms "driver",]:

"Driver", "driver's license", and "examiner of drivers" shall have the same meanings as provided in section 286-2[; and the term "vehicle"].

"Vehicle" shall have the same meaning as provided in section 291C-1."

## PART II

SECTION 3. The legislature finds that section 5 of the federal TEA-21 Restoration Act establishes a new program under Section 164 of Chapter 1, Title 23 U.S.C., encouraging states to enact repeat intoxicated driver laws. States that do not have a repeat intoxicated driver law by October 1, 2000, must transfer 1.5 per cent of federal aid highway funds to the state's Section 402 state and community highway safety funds for the first two years. If this part is not enacted by September 30, 2001, three per cent of the State's federal aid highway funds will be transferred until the State enacts this legislation.

The legislature further finds that each state is required to have in effect a repeat intoxicated driver law that imposes on impaired drivers who have been convicted of a previous driving under the influence violation of the following minimum penalty:

(1) A driver's license suspension for not less than one year;
(2) Vehicle impoundment, immobilization of each of the individual's motor vehicles, or the installation of an ignition interlock system on each of the motor vehicles;
(3) An assessment of the individual's degree of abuse of alcohol and treatment; and
(4) Community services for not less than thirty days or five days of imprisonment for a second offense; and not less than ten days of imprisonment for a third and subsequent offenses.

The penalties for a first time offender are unchanged.

Accordingly, the purpose of this part is to amend the law relating to the administrative revocation of driver's licenses by expanding that law to include the revocation of all motor vehicle registrations issued to a driver who has been convicted of a previous violation of driving under the influence of intoxicating liquor (section 291-4, Hawaii Revised Statutes) or habitually driving under the influence of intoxicating liquor or drugs (section 291-4.4). In addition, this part increases the penalties for subsequent convictions under section 291-4.

SECTION 4. Chapter 249, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§249- Special series plates.** A qualified household member, as defined in section 286-251, or a co-owner of a motor vehicle owned by an arrestee under part XIV of this chapter, who has been granted a special motor vehicle registration under section 286-B, shall apply to the appropriate county director of finance for special license plates that shall bear a special series of numbers or letter so as to be readily identifiable by law enforcement officers. The director of finance may issue the special plates only if:

(1) The director of finance receives written approval for the issuance of special plates from the administrative director of the courts or the administrative director's appointee under section 286-251;
(2) The qualified household member or a co-owner of the motor vehicle has a driver's licence that has not expired or been suspended or revoked; and
(3) The applicant pays a fee for the special license plates that is equal to the cost of the license plates and tag or emblem, plus the administrative cost of furnishing the plates and tag or emblem and effecting the registration for each motor vehicle for which special plates are issued."

SECTION 5. Chapter 286, Hawaii Revised Statutes, is amended by adding three new sections to part XIV to be appropriately designated and to read as follows:

"**§286-A Failure to surrender license plates.** Any person who has had the person's motor vehicle registration and license plates revoked pursuant to this part and subsequently fails to comply with an order to surrender the motor vehicle license plates shall be guilty of a misdemeanor.

**§286-B Special motor vehicle registration.** (a) Anytime after the effective date of revocation or after the administrative hearing decision is mailed pursuant to section 286-259(i), a qualified household family member or co-owner of a motor vehicle with an arrestee who has had a motor vehicle registration revoked under this part may submit a sworn statement to the director requesting a special motor vehicle registration. The director may grant the request upon determining that the following conditions have been met:

(1) The applicant is a member of the arrestee's household or co-owner of the vehicle;
(2) The applicant has a driver's license that has not expired or been suspended or revoked;
(3) The applicant is completely dependent on the motor vehicle for the necessities of life; and
(4) The director finds that the applicant will take reasonable precautions to ensure that the arrestee will not drive the vehicle.

A person to whom a special motor vehicle registration has been granted shall apply to the appropriate county director of finance for special series license plates, as provided in section 249- .

(b) The director shall revoke the special motor vehicle registration if any conditions set forth in the application no longer exist.

(c) The applicant shall be under an affirmative duty to report to the director any changes in the conditions to the special motor vehicle registration.

(d) The director shall adopt rules, pursuant to chapter 91, necessary to carry out the purposes of this section.

**§286-C Transferring vehicle prohibited; exceptions.** (a) A registered owner shall not sell or transfer a motor vehicle during the time period the motor vehicle's registration has been ordered revoked and license plates surrendered or during the time the motor vehicle bears the special series license plates, unless the registered owner applies to the administrative director of the courts or the administrative director's appointee under section 286-251 for consent to transfer title to the motor vehicle. If the director is satisfied that:

(1) The proposed sale is in good faith and for valid consideration;
(2) The registered owner will be deprived of the custody and control of the motor vehicle; and
(3) The sale is not for the purpose of circumventing the provisions of this part,

the director may consent to the sale or transfer. If the director consents, the director shall issue a certified copy of the written consent to the registered owner and forward a copy to the appropriate county director of finance.

(b) The county director of finance, upon proper application and the presentation to the director of a certified copy of the written consent to the sale or transfer of a motor vehicle, shall transfer the certificate of title and ownership to the new owner pursuant to chapter 286 and shall issue new license plates to the new registered owner pursuant to chapter 249.

(c) Notwithstanding subsections (a) and (b), if the title to the motor vehicle is transferred by foreclosure of a chattel mortgage, cancellation of a conditional sales contract, a sale upon execution, or decree or order of a court of competent jurisdiction, after the registration and license plates have been revoked under this part, the county director of finance shall transfer the certificate of title and ownership to the new owner pursuant to chapter 286 and shall issue new license plates to the new registered owner pursuant to chapter 249."

SECTION 6. Chapter 286, part XIV, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**"PART XIV. ADMINISTRATIVE REVOCATION OF DRIVER'S LICENSE AND MOTOR VEHICLE REGISTRATION"**

SECTION 7. Section 286-251, Hawaii Revised Statutes, is amended as follows:

1. By adding four new definitions to be appropriately inserted and to read:

""Household member" means:

(1) Persons who reside in the same dwelling unit; or

(2) Persons under twenty-one years of age who are related to the arrestee by marriage, blood, or adoption, but regardless of whether they reside in the same dwelling with the arrestee.

"Qualified household member" means a household member of the arrestee who has a driver's license that has not expired or been suspended or revoked.

"Repeat intoxicated driver" means a person who previously:

(1) Has been convicted of one or more violations under section 291-4 or 291-4.4 during the five years preceding the date of arrest;

(2) Has been convicted of three or more violations under section 291-4 or 291-4.4 during the ten years preceding the date of arrest; or

(3) Has had one prior alcohol enforcement contact during the five years preceding the date of arrest, two prior alcohol enforcement contacts during the seven years preceding the date of arrest, or three or more prior alcohol enforcement contacts during the ten years preceding the date of arrest."

"Temporary vehicle registration" means the portion of the notice of administrative revocation that, when completed by the arresting officer, permits the arrestee to drive the vehicles registered in the name of the arrestee for thirty days or until the time established by the director under this part."

2. By amending the definition of "administrative revocation" to read:

""Administrative revocation" means termination of the arrestee's driver's license or the registration of all motor vehicles registered to the arrestee, or both, pursuant to this part and does not include any revocation imposed under section 291-4 or 291-4.4."

3. By amending the definitions of "alcohol enforcement contact" and "arrestee" to read:

""Alcohol enforcement contact" means [any]:

(1) Any administrative revocation ordered pursuant to this part; [any driver's license]

(2) Any suspension or revocation of any driver's license or motor vehicle registration, or both, imposed by this or any other state or federal jurisdiction for refusing to submit to a test for alcohol concentration in the person's blood; or [any]

(3) Any conviction in this or any other state or federal jurisdiction for driving, operating, or being in physical control of a motor vehicle while

having an unlawful concentration of alcohol in the blood, or while under the influence of alcohol.

"Arrestee" means a person arrested for violation of section 291-4 or 291-4.4 and, for purposes of this part, also refers to a person from whom a blood sample has been drawn pursuant to section 286-163, because there was probable cause to believe that the person has violated section 291-4[.] or 291-4.4."

SECTION 8. Section 286-252, Hawaii Revised Statutes, is amended to read as follows:

"**§286-252 Notice of administrative revocation; effect.** As used in this part, the notice of administrative revocation:

(1) Establishes that the arrestee's driving privilege in this State shall be terminated thirty days after the date of arrest or [such] a later date as is established by the director under section 286-259, if the director administratively revokes the arrestee's license;

(2) Establishes that the registrations of all motor vehicles registered to an arrestee who is a repeat intoxicated driver shall be terminated thirty days after the date of an arrest pursuant to section 286-255(b);

[(2)] (3) Establishes the date on which administrative revocation proceedings against the arrestee were initiated; and

[(3)] (4) Serves as a temporary driver's permit [to drive] and temporary motor vehicle registration as provided in section 286-255."

SECTION 9. Section 286-254, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) to (e) to read:

"(b) The notice, when completed by the arresting officer and issued to the arrestee, shall contain at a minimum the following information relating to the arrest:

(1) Information identifying the arrestee;

(2) The specific violation for which the person was arrested;

(3) The date issued and the date the administrative revocation is scheduled to go into effect;

(4) That the arrestee was informed of the sanctions of this part and of the consequences of refusing to be tested for alcohol [content] concentration of the blood and whether or not the arrestee consented to be tested;

(5) The expiration date of the temporary driver's permit[;] and the temporary motor vehicle registration, if applicable; and

(6) That the arrest will be administratively reviewed.

(c) The notice shall provide, at a minimum, the following information relating to the administrative review:

(1) That the review is automatic;

(2) That the arrestee [may], within three days of the arrest, may submit written information demonstrating why the arrestee's driver's license and motor vehicle registration, if applicable, should not be administratively revoked;

(3) The address or location where the arrestee may submit the information;

(4) That the arrestee is not entitled to be present or represented at the review; and

(5) That the review decision shall be mailed to the arrestee no later than eight days after the date of the arrest.

(d) The notice shall state that if the arrestee's license is not administratively revoked after the review, the arrestee's driver's license and motor vehicle registra-

tion and license plates, if applicable, shall be returned, unless a subsequent alcohol enforcement contact has occurred, along with a certified statement that the administrative revocation proceedings have been terminated.

(e) The notice shall state that if the arrestee's driver's license [is] and motor vehicle registration, if applicable, are administratively revoked after the review, a decision shall be mailed to the arrestee containing, at a minimum, the following information:

(1) The reasons why the arrestee's driver's license [was] and motor vehicle registration, if applicable, were administratively revoked;

(2) That the arrestee may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;

(3) That if the [arrestee requests] arrestee's request for an administrative hearing is received within six days, the hearing shall be scheduled to commence no later than twenty-five days after the date of arrest;

(4) The procedure to request an administrative hearing;

(5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;

(6) That the arrestee may regain the right to a hearing by requesting the director, within sixty days after the arrest, to schedule a hearing;

(7) That the director shall schedule the hearing to commence no later than thirty days after the request is [made] received but that, except as provided in section 286-259(k), the temporary permit shall not[, in any event,] be extended if the arrestee fails to request an administrative hearing within the initial six-day period provided for that purpose;

(8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated; [and]

(9) The duration of the administrative revocation and other conditions [which] that may be imposed, including referral to the driver's education program for alcohol counseling[,] and alcohol treatment[, and installation of an ignition interlock system.]; and

(10) That the director may grant a special registration to a qualified household member or to a co-owner of any motor vehicle owned by the arrestee upon a determination that the person is completely dependent on the motor vehicle for the necessities of life; provided that the special registration shall not be valid for use by the arrestee."

2. By amending subsections (g) and (h) to read:

"(g) The notice shall state that if the administrative revocation is reversed after the hearing, the arrestee's driver's license and motor vehicle registration, if applicable, [and any fees collected from the arrestee under this part shall be returned] along with a certified statement that the administrative revocation proceedings have been terminated.

(h) The notice shall state that if the administrative revocation is sustained at the hearing, a decision shall be mailed to the arrestee containing, at a minimum, the following information:

(1) The effective date of the administrative revocation;

(2) The duration of the administrative revocation;

(3) If applicable, the date by which all motor vehicle license plates issued to the arrestee must be surrendered to the director;

(4) If applicable, that failure to surrender all motor vehicle license plates as required is a misdemeanor;

[(3)] (5) Other conditions [which] that may be imposed by law; and
[(4)] (6) The right to obtain judicial review."

SECTION 10. Section 286-255, Hawaii Revised Statutes, is amended to read as follows:

"**§286-255 Arrest; procedures.** (a) Whenever a person is arrested for a violation of section 291-4 or 291-4.4, on a determination by the arresting officer that:

(1) There was reasonable suspicion to stop the motor vehicle, or that the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6; and
(2) There was probable cause to believe that the arrestee was driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;

the arresting officer immediately shall take possession of any license held by the person and request the arrestee to take a test for alcohol concentration.[1] The arresting officer shall inform the person that the person has the option to take a breath test, a blood test, or both. The arresting officer also shall inform the person of the sanctions under this part, including the sanction for refusing to take a breath or a blood test. Thereafter, the arresting officer shall complete and issue to the arrestee a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary driver's permit. The notice shall serve as a temporary driver's permit, unless, at the time of arrest, the arrestee was unlicensed, the arrestee's license was revoked or suspended, or the arrestee had no license in the arrestee's possession.

(b) Whenever the police determine that, as the result of a blood test performed pursuant to section 286-163(b) and (c), there is probable cause to believe that a person being treated in a hospital or medical facility has violated section 291-4[,] or 291-4.4, the police shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary driver's permit. The notice shall serve as a temporary driver's permit unless, at the time the notice was issued, the person was unlicensed, the person's license was revoked or suspended, or the person had no license in the person's possession.

(c) Whenever an arrestee under this section is a repeat intoxicated driver, the arresting officer shall take possession of the motor vehicle registration and, if the motor vehicle being driven by the arrestee is registered to the arrestee, remove the license plates and issue a temporary motor vehicle registration and temporary license plates for the motor vehicle. No temporary motor vehicle registration and license plates shall be issued if the arrestee's registration has expired or been revoked. The appropriate police department, upon determining that the arrestee is a repeat intoxicated driver, shall notify the appropriate county director of finance to enter a stopper on the motor vehicle registration files to prevent the arrestee from conducting any motor vehicle transactions, except as permitted under this part."

SECTION 11. Section 286-256, Hawaii Revised Statutes, is amended to read as follows:

"**§286-256 Immediate restoration of license[.] and motor vehicle registration.** If a test conducted in accordance with part VII and section 321-161 and the rules adopted thereunder shows that the arrestee's alcohol concentration was less than .08, the director or the arresting agency shall immediately return the arrestee's

driver's license and motor vehicle registration and license plates, if applicable, along with a certified statement that administrative revocation proceedings have been terminated with prejudice."

SECTION 12. Section 286-257, Hawaii Revised Statutes, is amended to read as follows:

"**§286-257 Sworn statements of law enforcement officials.** (a) Whenever a person[:] is arrested for a violation of section 291-4 or 291-4.4 and submits to a test that establishes that the arrestee's alcohol concentration was .08 or more; or has been involved in a collision resulting in injury or death, and a blood test performed pursuant to section 286-163 establishes that the person's alcohol concentration was .08 or more, the following shall be immediately forwarded to the director:

(1) A copy of the arrest report or the report of the officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting officer or the officer who issued the notice of administrative revocation stating facts that establish that:
   (A) There was reasonable suspicion to stop the motor vehicle, the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6, or the person was tested pursuant to section 286-163;
   (B) There was probable cause to believe that the arrestee had been driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;
   (C) The arrestee was informed of the sanctions of this part, that criminal charges may be filed, and the consequences of refusing to be tested for alcohol concentration; and
   (D) The arrestee agreed to be tested or the person was tested pursuant to section 286-163;
(2) The sworn statement of the person responsible for maintenance of the testing equipment stating facts that establish that pursuant to section 321-161 and rules adopted thereunder:
   (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
   (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
   (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
(3) The sworn statement of the person who conducted the test stating facts that establish that pursuant to section 321-161 and rules adopted thereunder:
   (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
   (B) The person followed the procedures established for conducting the test;
   (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the person's alcohol concentration was at, or above, the prohibited level; and
   (D) The person whose breath or blood was tested was the person arrested;
(4) A copy of the notice of administrative revocation issued to the arrestee;

(5) Any driver's license and motor vehicle registration and license plates, if applicable, taken into possession by the arresting officer; and
(6) A listing of any prior alcohol enforcement contacts involving the arrestee.

(b) Whenever a person is arrested for a violation of section 291-4 or 291-4.4 and refuses to submit to a test to determine alcohol concentration [in the blood], the following shall be immediately forwarded to the director:
(1) A copy of the arrest report and the sworn statement of the arresting officer stating facts that establish that:
(A) There was reasonable suspicion to stop the motor vehicle or the motor vehicle was stopped at an intoxication control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6;
(B) There was probable cause to believe that the arrestee had been driving, operating, or in actual physical control of the motor vehicle while under the influence of intoxicating liquor;
(C) The arrestee was informed of the sanctions of this part, that criminal charges may be filed, and the probable consequences of refusing to be tested for concentration of alcohol in the blood; and
(D) The arrestee refused to be tested;
(2) A copy of the notice of administrative revocation and the temporary driver's permit and temporary motor vehicle registration, if applicable, issued to the arrestee;
(3) Any driver's license and motor vehicle registration and license plates, if applicable, taken into possession; and
(4) A listing of all alcohol enforcement contacts involving the arrestee."

SECTION 13. Section 286-258, Hawaii Revised Statutes, is amended to read as follows:

"**§286-258 Administrative review; procedures.** (a) The director shall automatically review the issuance of a notice of administrative revocation, and a written decision administratively revoking the driver's license and motor vehicle registration, if applicable, or rescinding the notice of administrative revocation shall be mailed to the arrestee no later than eight days after the date the notice was issued.

(b) The arrestee shall have the opportunity to demonstrate in writing why the arrestee's driver's license and motor vehicle registration, if applicable, should not be administratively revoked and shall submit any written information within three days of the notice, either by mail or in person, to the director's office or to any office or address designated by the director for that purpose.

(c) In conducting the administrative review, the director shall consider:
(1) Any sworn or unsworn statement or other evidence provided by the arrestee;
(2) The breath or blood test results, if any; and
(3) The sworn statements of the law enforcement officials, and other evidence or information required by section 286-257.

(d) The director shall administratively revoke the arrestee's driver's license if the director determines that:
(1) There existed reasonable suspicion to stop the motor vehicle, the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6, or the person was tested pursuant to section 286-163;

(2) There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor; and

(3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having an alcohol concentration of .08 or more or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.

(e) The director shall administratively revoke the registration of all vehicles owned or registered to the arrestee and impound any license plate issued to the arrestee if the director determines that the arrestee is a repeat intoxicated driver and that:

(1) There existed reasonable suspicion to stop the motor vehicle, the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6, or the person was tested pursuant to section 286-163;

(2) There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor; and

(3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having an alcohol concentration of .08 or more or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.

[(e)] (f) If the evidence does not support administrative revocation, the director shall rescind the notice of administrative revocation and return the arrestee's driver's license and motor vehicle registration and license plates, if applicable, along with a certified statement that administrative revocation proceedings have been terminated.

[(f)] (g) If the director administratively revokes the arrestee's driver's license[,] and motor vehicle registration, if applicable, the director shall mail to the arrestee a written decision stating the reasons for the administrative revocation. The decision shall also indicate that the arrestee has six days from the date the decision is mailed to request an administrative hearing to review the director's decision. The decision shall also explain the procedure by which to request an administrative hearing, and shall be accompanied by a form, postage prepaid, which the arrestee may fill out and mail in order to request an administrative hearing. The decision shall also inform the arrestee of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of the law enforcement officials, prior to the hearing. Further, the decision shall state that the arrestee may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting officer.

[(g)] (h) Failure of the arrestee to request a hearing within the time provided in section 286-259(a) shall cause the administrative revocation to take effect for the period and under the conditions provided in the administrative review decision issued by the director under this section. The arrestee may regain the right to a hearing by requesting the director, within sixty days of the arrest, to schedule a hearing. The hearing shall be scheduled to commence no later than thirty days after the request is [made.] received by the director. The administrative review decision issued by the director under this section shall clearly explain the consequences of failure to request an administrative hearing and the procedure by which the arrestee may regain the right to a hearing."

SECTION 14. Section 286-259, Hawaii Revised Statutes, is amended to read as follows:

"**§286-259 Administrative hearing.** (a) If the director administratively revokes the arrestee's driver's license and motor vehicle registration, if applicable, after administrative review, the arrestee may request an administrative hearing to review the decision within six days of the date the administrative review decision is mailed. [The] If the request for the hearing is received by the director within six days of this date, the hearing shall be scheduled to commence no later than twenty-five days from the date the notice of administrative revocation was issued. The director may continue the hearing only as provided in subsection (j).

(b) The hearing shall be held at a place designated by the director, as close to the location of the arrest as practical.

(c) The arrestee may be represented by counsel.

(d) The director shall conduct the hearing and have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses and take testimony;

(3) Receive and determine the relevance of evidence;

(4) Issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;

(5) Regulate the course and conduct of the hearing; and

(6) Make a final ruling.

(e) The director shall affirm the administrative revocation only if the director determines that:

(1) There existed reasonable suspicion to stop the motor vehicle, the motor vehicle was stopped at an intoxication and drug control roadblock established and operated in compliance with sections 286-162.5 and 286-162.6, or the person was tested pursuant to section 286-163;

(2) There existed probable cause to believe that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor; and

(3) The evidence proves by a preponderance that the arrestee drove, operated, or was in actual physical control of the motor vehicle while under the influence of intoxicating liquor or while having an alcohol concentration of .08 or more or that the arrestee refused to submit to a breath or blood test after being informed of the sanctions of this part.

(f) In addition to subsection (e), the director shall affirm the administrative revocation of the registration of all motor vehicles owned by or registered to the arrestee only if the director determines that the arrestee is a repeat intoxicated driver. If the director affirms the administrative revocation pursuant to this subsection, the director shall order the arrestee to surrender the license plates and motor vehicle registrations of all motor vehicles owned by or registered to the arrestee. The director may destroy any license plates seized from or surrendered by the arrestee.

[(f)] (g) The arrestee's prior alcohol enforcement contacts shall be entered into evidence.

[(g)] (h) The sworn statements provided in section 286-257 shall be admitted into evidence. Upon notice to the director no later than five days prior to the hearing that the arrestee wishes to examine a law enforcement official who made a sworn statement, the director shall issue a subpoena for the official to appear at the hearing. If the official cannot appear, the official may at the discretion of the director testify by telephone.

[(h)] (i) The hearing shall be recorded in a manner to be determined by the director.

[(i)] (j) The director's decision shall be rendered in writing and mailed to the arrestee no later than five days after conclusion of the hearing. If the decision is to reverse the administrative revocation, the director shall return the arrestee's driver's license, [and any fees collected from the arrestee under this part] motor vehicle registration, and license plates if applicable, along with a certified statement that administrative revocation proceedings have been terminated. If the decision sustains the administrative revocation, the director shall mail to the arrestee a written decision indicating the duration of the administrative revocation and any other conditions or restrictions as may be imposed pursuant to section 286-261.

[(j)] (k) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary driver's permit or temporary motor vehicle registration, if applicable, for a period not to exceed the period of the continuance[.], unless the extension is otherwise prohibited. If a continuance is granted at the request of the arrestee, the director shall not extend the validity of the temporary driver's permit[.] or temporary motor vehicle registration, if applicable. For purposes of this section a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced other than for recesses during the day or at the end of the day or week.

(l) The director may grant a special motor vehicle registration, pursuant to section 286-8, to a qualified household member or co-owner of any motor vehicle upon determination that the person is dependent on the motor vehicle for the necessities of life. The special motor vehicle registration shall not be valid for use by the arrestee.

[(k)] (m) If the arrestee fails to appear at the hearing, administrative revocation shall take effect for the period and under the conditions established by the director in the administrative review decision issued by the director under section 286-258."

SECTION 15. Section 286-259.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§286-259.5[]] Fees and costs.** The director shall be authorized to assess and collect a [$15] $30 fee from the arrestee for the costs of processing the arrestee's request for an administrative hearing to cover costs which include but should not be limited to the cost of photocopying documents, the issuance of subpoenas, conditional driver's license permits or temporary motor vehicle registration and license plates, or temporary driver's permit and relicensing forms, interpreter services, law enforcement official mileage fees, and other similar costs. The director may waive the fee in the case of indigent arrestees upon an appropriate inquiry into the financial circumstances of the person seeking the waiver and an affidavit or a certificate signed by such person demonstrating the person's financial inability to pay the fee."

SECTION 16. Section 286-261, Hawaii Revised Statutes, is amended to read as follows:

"**§286-261 Effective date and period of administrative revocation; criteria.** (a) Unless an administrative revocation is reversed or the temporary driver's license permit [is] and temporary motor vehicle registration and temporary license plates, if applicable, are extended by the director, administrative revocation shall become effective on the day specified in the notice. Except as provided in section 286-264, no driver's license nor motor vehicle registration and license plates, if

applicable, shall be restored under any circumstances and no conditional permit shall be issued during the administrative revocation period.

(b) The periods of administrative revocation with respect to a driver's license and motor vehicle registration, if applicable, that [may] shall be imposed under this part are as follows:

(1) [Three] A minimum of three months[,] up to a maximum of one year revocation of driver's license, if the arrestee's driving record shows no prior alcohol enforcement contacts during the five years preceding the date of arrest;

(2) [One] A minimum of one year up to a maximum of two years revocation of driver's license and all registrations of motor vehicles registered to the arrestee if the arrestee's driving record shows one prior alcohol enforcement contact during the five years preceding the date of arrest;

(3) [Two] A minimum of two years up to a maximum of four years revocation of driver's license and all registrations of motor vehicles registered to the arrestee if the arrestee's driving record shows two prior alcohol enforcement contacts during the seven years preceding the date of arrest;

(4) [For life] Lifetime revocation of driver's license and prohibition on all subsequent motor vehicles registrations by the arrestee if the arrestee's driving record shows three or more prior alcohol enforcement contacts during the ten years preceding the date of arrest; or

(5) For arrestees under the age of eighteen years, the revocation of the driver's license for the period remaining until the arrestee's eighteenth birthday, or for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection [(c),] (d), whichever is longer.

(c) Whenever a motor vehicle registration is revoked under this part, the director shall cause the revocation to be entered electronically into the motor vehicle registration file of the arrestee.

[(c)] (d) The driver's license of an arrestee who refuses to be tested after being informed of the sanctions of this part shall be revoked under subsection (b)(1), (2), [and] (3), and (4) for a period of one year, two years, [and] four years, and a life time, respectively.

(e) In addition to subsection (d), the motor vehicle registration and license plates of an arrestee who is a repeat intoxicated driver and who refused to be tested after being informed of the sanctions of this part shall be revoked for the periods specified in subsection (d), and the arrestee shall be prohibited from subsequently registering any motor vehicle for the applicable revocation period.

[(d)] (f) Whenever a driver's license is administratively revoked under this part, the offender shall be referred to a certified substance abuse counselor for an assessment of the arrestee's alcohol abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the arrestee's alcohol abuse or dependence warrants treatment, the director [may] shall so order. All costs for assessment and treatment shall be paid by the arrestee.[2]

[(e)] (g) Alcohol enforcement contacts that occurred prior to August 1, 1991, shall be counted in determining the administrative revocation period.

(h) Alcohol enforcement contacts that occurred prior to the effective date of this Act shall be counted in determining the administrative revocation period for motor vehicle registration."

SECTION 17. Section 286-262, Hawaii Revised Statutes, is amended to read as follows:

"[[]§286-262[]] **Notice to other states.** When a nonresident's driving privilege [is] or driver's license and motor vehicle registration, if applicable, are administratively revoked under this part, the director shall notify, in writing, the officials in charge of traffic control or public safety in the nonresident's home state and in any other state in which the nonresident has driving privileges, driver's licenses, and motor vehicle registrations, as applicable, of the action taken in this State and shall return to the appropriate issuing authority in the other states any driver's license and any motor vehicle registration seized under section 286-255."

SECTION 18. Section 286-264, Hawaii Revised Statutes, is amended as follows:

1. By amending the title and subsection (a) to read:

"**§286-264 Conditional driver's license permits.** (a) [If an arrestee subject to administrative revocation under this part submitted to a breath or blood test and has had no prior alcohol enforcement contacts during the five years preceding the date of arrest,] At the administrative hearing, the director, at the request of [the] an arrestee [at the administrative hearing,] who is subject to an administrative revocation period as provided in section 286-261(b)(1), may issue a conditional driver's permit [allowing] that will allow the arrestee, after a minimum period of absolute license revocation of thirty days, to drive [after a minimum period of absolute license revocation of thirty days if] for the remainder of the revocation period, provided that one or more of the following conditions are met:

(1) The arrestee is gainfully employed in a position that requires driving and will be discharged if the arrestee's driving privileges are administratively revoked; or

(2) The arrestee has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section 286-261.

The director shall not issue a conditional permit to an arrestee whose license, during the conditional permit period, is expired or is suspended or revoked as a result of action other than the instant revocation for which the arrestee is requesting a conditional permit under this section."

2. By amending subsection (d) to read:

"(d) A conditional permit may include restrictions allowing the arrestee to drive:

(1) Only during hours of employment for activities solely within the scope of the employment;

(2) Only during daylight hours; or

(3) Only for specified purposes or to specified destinations.

In addition, the director may impose any other appropriate restrictions[, including installation of an ignition interlock system]."

SECTION 19. Section 286-265, Hawaii Revised Statutes, is amended to read as follows:

"**§286-265 Eligibility for relicensing.** To be eligible for relicensing after a period of administrative revocation has expired, the person shall:

(1) Submit proof to the director of compliance with all conditions imposed by the director or by the court;

(2) Obtain a certified statement from the director indicating eligibility for relicensing;

(3) Present the certified statement to the appropriate driver licensing and motor vehicle registration official; and

(4) Successfully complete each requirement for obtaining a new driver's license and motor vehicle registration, if applicable, in this State including payment of all applicable fees."

SECTION 20. Section 291-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A person committing the offense of driving under the influence of intoxicating liquor shall be sentenced as follows without possibility of probation or suspension of sentence:

(1) For the first offense, or any offense not preceded within a five-year period by a conviction for driving under the influence of intoxicating liquor under this section or section 291-4.4 by:
   (A) A fourteen-hour minimum alcohol abuse rehabilitation program including education and counseling, or other comparable program deemed appropriate by the court; and
   (B) Ninety-day prompt suspension of license with absolute prohibition from operating a motor vehicle during suspension of license, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a motor vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcoholism treatment programs; and
   (C) Any one or more of the following:
      (i) Seventy-two hours of community service work;
      (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
      (iii) A fine of not less than $150 but not more than $1,000.
(2) For an offense that occurs within five years of a prior conviction for driving under the influence of intoxicating liquor under this section or section 291-4.4 by:
   (A) Prompt suspension of license for a period of one year with the absolute prohibition from operating a motor vehicle during suspension of license;
   (B) Either one of the following:
      (i) Not less than [one] two hundred forty hours of community service work; or
      (ii) Not less than [forty-eight consecutive hours] five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; and
   (C) A fine of not less than $500 but not more than $1,500.
(3) For an offense that occurs within five years of two prior convictions for driving under the influence of intoxicating liquor under this section or section 291-4.4 by:
   (A) A fine of not less than $500 but not more than $2,500;
   (B) Revocation of license for a period not less than one year but not more than five years; and
   (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively.
(4) Any person eighteen years of age or older, who is convicted under this section and who operated or assumed actual physical control of a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine

of $500, and an additional mandatory term of imprisonment of forty-eight hours; provided, however, that the total term of imprisonment for a person convicted under this section shall not exceed thirty days.

Notwithstanding any other law to the contrary, any conviction for driving under the influence of intoxicating liquor under this section or section 291-4.4 shall be considered a prior conviction for purposes of imposing sentence under this section.

No license suspension or revocation shall be imposed pursuant to this subsection if the person's license has previously been administratively revoked pursuant to part XIV of chapter 286 for the same offense; provided that, if the administrative revocation is subsequently reversed, the person's license shall be suspended or revoked as provided in this subsection."

SECTION 21. Section 291-4.4, Hawaii Revised Statutes, is amended to read as follows:

"**§291-4.4 Habitually driving under the influence of intoxicating liquor or drugs.** (a) A person commits the offense of habitually driving under the influence of intoxicating liquor or drugs if, during a ten-year period the person has been convicted three or more times for a driving under the influence offense; and

(1) The person operates or assumes actual physical control of the operation of any vehicle while under the influence of intoxicating liquor, meaning that the person is under the influence of intoxicating liquor in an amount sufficient to impair the person's normal mental faculties or ability to care for oneself and guard against casualty;

(2) The person operates or assumes actual physical control of the operation of any vehicle with .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood or .08 or more grams of alcohol per two hundred ten liters of breath; or

(3) A person operates or assumes actual physical control of the operation of any vehicle while under the influence of any drug which impairs such person's ability to operate the vehicle in a careful and prudent manner. The term "drug" as used in this section shall mean any controlled substance as defined and enumerated on schedules I through IV of chapter 329.

(b) For the purposes of this section, a driving under the influence offense means a violation of this section or section 291-4, 291-7, or 707-702.5, or violation of laws in another jurisdiction that requires proof of each element of the offenses punishable under either this section or section 291-4, 291-7, or 707-702.5 if committed in Hawaii.

(c) Habitually driving under the influence of intoxicating liquor or drugs is a class C felony. In addition to any other penalty imposed, a person convicted under this section shall be sentenced to:

(1) Revocation of driver's license for not less than one year; and

(2) Not less than ten days imprisonment of which at least forty-eight hours shall be served consecutively.

No license suspension or revocation shall be imposed pursuant to this subsection if the person's license has previously been administratively revoked pursuant to part XIV of chapter 286 for the same act; provided that, if the administrative revocation is subsequently reversed, the person's license shall be suspended or revoked as provided in this subsection.

(d) Whenever a court sentences a person pursuant to subsection (c), it also shall require that the offender be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the offender'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 offender to obtain appropriate treatment if the counselor's assessment establishes the offender's alcohol abuse or dependence.

All cost for assessment or treatment or both shall be borne by the offender."

## PART III

SECTION 22. House Concurrent Resolution No. 26, H.D. 2, S.D. 1 (1998), entitled "Requesting the Department of Transportation to Review Hawaii's Impaired Driving Statutes and to Make Recommendations for Uniform Statutory Construction," directed the department of transportation to:

(1) Review Hawaii's impaired driving statutes to identify inconsistent statutory provisions, including disparate punishment provisions for similar offenses and provisions conferring a right to jury trial for some impaired driving offenses but not others; and

(2) Make recommendations and draft appropriate legislation to create more uniform and consistent impaired driving statutes.

The department of transportation solicited input in this effort from the governor's highway safety council impaired driving task force (task force). The task force is made up of over seventy-five individuals and organizations from around the State. Members include representatives from the department of health, police, prosecutors, defense bar, judiciary, administrative drivers' license revocation office, emergency room physicians, Mothers Against Drunk Driving, and others. The task force's efforts have resulted in proposed legislation that consolidates many provisions and provides for uniform and consistent treatment of impaired driving and boating offenses. The provisions in this part are based upon the task force's proposals.

It is the intent of the legislature to provide, where appropriate, uniform provisions, rights, and penalties, including immediate license revocation under the administrative revocation of license provisions and the same rights with respect to jury trials, for impaired driving and boating offenders. The legislature further intends that individuals who are charged under this part with an offense for operating a vehicle, including a vessel underway, under the influence of an intoxicant shall not be entitled to a jury trial if the maximum term of imprisonment for the offense does not exceed thirty days.

The legislature has previously taken steps to indicate its intent that defendants charged with driving under the influence of intoxicating liquor not be entitled to a jury trial. In Act 128, Session Laws of Hawaii 1993, the legislature clearly stated its intent that the first offense of driving under the influence of intoxicating liquor is a "petty offense" in the constitutional sense and reduced the maximum possible penalty to ensure that defendants charged with a first offense not be entitled to a jury trial. After finding a critical need to relieve the then existing first circuit court congestion of driving under the influence of intoxicating liquor cases awaiting jury trial, the legislature again took action in Act 226, Session Laws of Hawaii 1995, to reduce the maximum terms of imprisonment for second and third offenses of driving under the influence of intoxicating liquor. The maximum term of imprisonment for a second offense was reduced from sixty to fourteen days and for a third offense from one hundred eighty to thirty days to ensure that defendants charged with these offenses are not entitled to jury trials.

Furthermore, the legislature notes that in **State v. Lindsey**, 77 Haw. 162 (1994), the Hawaii supreme court ruled that "if the maximum term of imprisonment for a particular offense does not exceed thirty days, it is presumptively a petty offense to which the right to a jury trial does not attach." The court further stated that the "presumption can be overcome only in extraordinary cases when consider-

ation of other ... factors ... unequivocally demonstrates that society demands that persons charged with the offense at issue be afforded the right to a jury trial." Consequently, the legislature finds and intends that a term of imprisonment not to exceed thirty days will not entitle a defendant under this part to a jury trial.

The legislature also is mindful that the statutory changes proposed in this part will require the judiciary and law enforcement agencies to develop new procedures and forms to ensure compliance. The legislature believes that an enactment date of January 1, 2002, will provide sufficient time to accommodate these development timetables.

Accordingly, the purpose of this part is to consolidate, for purposes of uniformity and consistency, where appropriate, the provisions relating to operating a vehicle while using an intoxicant.

SECTION 23. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
USE OF INTOXICANTS WHILE OPERATING A VEHICLE
PART I. GENERAL PROVISIONS

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

"Administrative revocation" means termination of the respondent's driver's vehicle license or the privilege to operate a vessel underway on or in the waters of the State pursuant to part III, but does not include any revocation imposed under section -81.

"Alcohol" means the product of distillation of any fermented liquid, regardless of whether rectified, whatever may be the origin thereof, and includes ethyl alcohol, lower aliphatic alcohol, and phenol as well as synthetic ethyl alcohol, but not denatured or other alcohol that is considered not potable under the customs laws of the United States.

"Alcohol concentration" means either grams of alcohol per one hundred milliliters or cubic centimeters of blood or grams of alcohol per two hundred ten liters of breath.

"Alcohol enforcement contact" means: any administrative revocation ordered pursuant to part III; any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on December 31, 2001; any driver's license suspension or revocation or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for alcohol concentration; any conviction in this State for operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol; or a conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful alcohol concentration or while under the influence of alcohol.

"Certified substance abuse counselor" means any person certified by the department of health pursuant to section 321-193(10), or any other substance abuse specialist or medical practitioner the director of health may appoint to carry out the functions of a certified substance abuse counselor under this chapter.

"Director" means the administrative director of the courts or any other person within the judiciary appointed by the director to conduct administrative reviews or hearings or carry out other functions relating to administrative revocation under part III.

"Drug" means any controlled substance, as defined and enumerated on schedules I through IV of chapter 329, or its metabolites.

"Drug enforcement contact" means: any administrative revocation ordered pursuant to part III; any administrative revocation ordered pursuant to part XIV of chapter 286, as that part was in effect on December 31, 2001; any driver's license suspension or revocation or any suspension or revocation of a privilege to operate a vessel underway imposed by this or any other state or federal jurisdiction for refusing to submit to a test for drug concentration in the person's blood or urine; any conviction in this State for operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs; or a conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having an unlawful drug content in the blood or urine or while under the influence of drugs.

"Impair" means to weaken, to lessen in power, to diminish, to damage, or to make worse by diminishing in some material respect or otherwise affecting in an injurious manner.

"Intoxicant" means alcohol or any drug, as defined in this section.

"Law enforcement officer" means any public servant, whether employed by the State, a county, or by the United States, vested by law with a duty to maintain public order or to make arrests for offenses or to enforce the criminal laws, and includes a conservation and resources enforcement officer as defined in section 199-3.

"License" means any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this State and includes:

(1) Any learner's permit or instruction permit;
(2) The privilege of any person to operate a motor vehicle, regardless of whether the person holds a valid license;
(3) Any nonresident's operating privilege; and
(4) The eligibility, including future eligibility, of any person to apply for a license or privilege to operate a motor vehicle.

"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.

"Moped" has the same meaning as in section 291C-1.

"Motor vehicle" has the same meaning as in section 291C-1, except that it specifically includes a moped.

"Nonresident's operating privilege" means the privilege conferred by law upon a nonresident to operate a vehicle in this State.

"Notice of administrative revocation" or "notice" means the written notice issued to the respondent pursuant to section -33.

"Operate" means to drive or assume actual physical control of a vehicle upon a public way, street, road, or highway or to navigate or otherwise use or assume physical control of a vessel underway on or in the waters of the State.

"Operator" means a person who drives or assumes actual physical control of a vehicle or a person who operates, navigates, or who has an essential role in the operation of a vessel underway.

"Public way, street, road, or highway" includes:

(1) The entire width, including beam and shoulder, of every road, alley, street, way, right of way, lane, trail, highway, or bridge;
(2) A parking lot, when any part thereof is open for use by the public or to which the public is invited for entertainment or business purposes;

(3) Any bicycle lane, bicycle path, bicycle route, bikeway, controlled-access highway, laned roadway, roadway, or street, as defined in section 291C-1; or

(4) Any public highway, as defined in section 264-1.

"Respondent" means a person to whom a notice of administrative revocation has been issued following an arrest for a violation of section -81 or following the collection of a blood or urine sample from the person, pursuant to section -21, because there was probable cause to believe that the person has violated section -81.

"State" means: any state or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; the United States Virgin Islands; American Samoa; Guam; any province or territory of the Dominion of Canada; and the Commonwealth of the Northern Mariana Islands, except when the word, in context, clearly refers to the State of Hawaii.

"Substance" and "substance abuse" have the same meanings as provided in section 321-191.

"Temporary permit" means that portion of the notice of administrative revocation that, when completed by a law enforcement officer, permits the respondent to operate a vehicle for thirty days in the case of an alcohol related offense and forty-four days in the case of a drug related offense or until such time as the director may establish under part III.

"Under the influence" means that a person:

(1) Is under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;

(2) Is under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;

(3) Has .08 or more grams of alcohol per two hundred ten liters of the person's breath; or

(4) Has .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood.

"Underway" means that a vessel is not at anchor, made fast to the shore, or aground.

"Vehicle" includes a:

(1) Motor vehicle;

(2) Moped; and

(3) Vessel.

"Vessel" means all description of watercraft that are used or are capable of being used as a means of transportation on or in the water.

"Waters of the State" means any waters within the jurisdiction of the State, the marginal seas adjacent to the State, and the high seas when navigated as part of a journey or ride to or from the shore of the State.

§ **-2 Medical services.** The several county and state government physicians shall, or any other qualified person may, make whatever tests and analyses as may be requested of them by any law enforcement officer in connection with the determination of whether a person is or was under the influence of an intoxicant or has consumed a measurable amount of alcohol for any purpose under this chapter.

§ **-3 Evidence of intoxication.** (a) In any criminal prosecution for a violation of section -81 or in any proceeding under part III:

(1) .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person's blood;

(2) .08 or more grams of alcohol per two hundred ten liters of the person's breath; or

(3) The presence of one or more drugs in an amount sufficient to impair the person's ability to operate a vehicle in a careful and prudent manner,

within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the person's blood, breath, or urine shall be competent evidence that the person was under the influence of an intoxicant at the time of the alleged violation.

(b) In any criminal prosecution for a violation of section -81, the amount of alcohol found in the defendant's blood or breath within three hours after the time of the alleged violation as shown by chemical analysis or other approved analytical techniques of the defendant's blood or breath shall be competent evidence concerning whether the defendant was under the influence of an intoxicant at the time of the alleged violation and shall give rise to the following presumptions:

(1) If there were .05 or less grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 or less grams of alcohol per two hundred ten liters of defendant's breath, it shall be presumed that the defendant was not under the influence of alcohol at the time of the alleged violation; and

(2) If there were in excess of .05 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .05 grams of alcohol per two hundred ten liters of defendant's breath, but less than .08 grams of alcohol per one hundred milliliters or cubic centimeters of defendant's blood or .08 grams of alcohol per two hundred ten liters of defendant's breath, that fact may be considered with other competent evidence in determining whether the defendant was under the influence of alcohol at the time of the alleged violation, but shall not of itself give rise to any presumption.

(c) Nothing in this section shall be construed as limiting the introduction, in any criminal proceeding for a violation under section -81 or in any proceeding under part III, of relevant evidence of a person's alcohol concentration or 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.

§ **-4 Convictions and acts prior to January 1, 2002.** (a) Any:

(1) Conviction for an offense under section 200-81, 291-4, 291-4.4, or 291-7, as those sections were in effect on December 31, 2001; or

(2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant;

shall be counted as a prior offense for purposes of section -41 or -81.

(b) Any conviction of an offense under section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, shall be counted for purposes of imposing sentence for a violation under section -82.

## PART II. TESTING AND IMPLIED CONSENT

§ **-11 Implied consent of operator of vehicle to submit to testing to determine alcohol concentration and drug content.** (a) Any person who operates a vehicle upon a public way, street, road, or highway or on or in the waters 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, blood, or urine for the

purpose of determining 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 law enforcement officer having probable cause to believe the person operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State is under the influence of an intoxicant or is under the age of twenty-one and has consumed a measurable amount of alcohol concentration, only after:

(1) A lawful arrest; and

(2) The person has been informed by a law enforcement officer of the sanctions under part III and section -85;

(c) If there is probable cause to believe that a person is in violation of section -84, as a result of being under the age of twenty-one and having consumed a measurable amount of alcohol, or section -81, as a result of having consumed alcohol, then the person shall elect to take a breath or blood test, or both, for the purpose of determining the alcohol concentration.

(d) If there is probable cause to believe that a person is in violation of section -81, as a result of having consumed any drug, then the person shall elect 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 drug or its metabolic products or both.

(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 operating a vehicle under the influence of any drug under section -81 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 any drug. The officer shall state in the officer's report the facts upon which that belief is based. The person shall elect 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 concentration. Submission to testing for drugs under subsection (d) or this subsection shall not be a substitute for alcohol tests requested under subsection (c).

(f) Any person tested pursuant to this section who is convicted or has the person's license suspended or revoked pursuant to this chapter may be ordered to reimburse the county for the cost of any blood or urine tests, or both, conducted pursuant to this section. If reimbursement is so ordered, the court or the director, as applicable, 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 or urine test, or both.

§ **-12 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 alcohol concentration or drug content therein. This limitation shall not apply to the taking of a breath or urine specimen.

§ **-13 Additional tests.** The person tested may choose any physician, registered nurse, or person licensed in a clinical laboratory occupation under section 321-13 to withdraw blood and also may choose any qualified person to administer a test or tests in addition to any administered at the direction of a law enforcement officer. The result of the test or tests may be used as provided in section -3. The failure or inability to obtain an additional test by a person shall not preclude the admission of the test or tests administered at the direction of a law enforcement

officer. Upon the request of the person who is tested, full information concerning the test or tests administered shall be made available to that person.

§ -14 **Consent of person incapable of refusal not withdrawn.** The consent of a person deemed to have given the person's consent pursuant to section -11 shall not be withdrawn by reason of the person's being dead, unconscious, or in any other condition that renders the person incapable of consenting to examination, and the test may be given. In such event, a test of the person's blood or urine shall be administered.

§ -15 **Refusal to submit to breath, blood, or urine test; subject to administrative revocation proceedings.** If a person under arrest refuses to submit to a breath, blood, or urine test, none shall be given, except as provided in section -21, but the person shall be subject to the procedures and sanctions under part III or section -85, as applicable.

§ -16 **Proof of refusal; admissibility.** If a legally arrested person refuses to submit to a test of the person's breath, blood, or urine, evidence of refusal shall be admissible only in a proceeding under part III or section -85 and shall not be admissible in any other action or proceeding, whether civil or criminal.

§ -17 **Other evidence not excluded.** This part shall not limit the introduction of any other competent evidence bearing on the question of whether the person was under the influence of an intoxicant or was operating a vehicle while under the age of twenty-one and after consuming a measurable amount of alcohol.

§ -18 **Test results to be collected.** The results of any test for intoxicants made upon any person, including any person who has been fatally injured in a traffic collision or the operator of a vehicle involved in a collision that resulted in another person's death, shall be sent to the state director of transportation, who shall compile the data without revealing the identity of any individual tested. This data shall be available only to the state and county highway safety councils and to other agencies the director of transportation deems necessary and advisable.

§ -19 **Authorization to establish intoxicant control roadblock programs.** The police departments of the respective counties may establish and implement intoxicant control roadblock programs in accordance with the minimum standards and guidelines provided in section -20. The chief of police in any county establishing an intoxicant 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 -20. In the case of internal police standards that do not fall within the definition of "rule" under section 91-1(4), failure to comply scrupulously with such internal police procedures shall not invalidate a roadblock that otherwise meets the minimum statutory criteria provided in section -20.

§ -20 **Minimum standards for roadblock procedures.** (a) Every intoxicant control roadblock program shall:

(1) Require that all vehicles approaching roadblocks be stopped or that certain vehicles be stopped by selecting vehicles 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 vehicles involved in any roadblock stop;
   (C) Uniformed law enforcement 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;
   (E) Termination of roadblocks at the discretion of the law enforcement officer in charge where traffic congestion would otherwise result; and

(4) Provide for a sufficient quantity and visibility of uniformed officers and official vehicles to ensure speedy compliance with the purpose of the roadblocks and to move traffic with a minimum of inconvenience.

(b) Nothing in this section shall prohibit the establishment of procedures to make roadblock programs less intrusive than required by the minimum standards provided in this section.

**§ -21 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 a law enforcement officer from obtaining a sample of breath, blood, or urine, from the operator of any vehicle involved in a collision resulting in injury to or the death of any person, as evidence that the operator was under the influence of an intoxicant.

(b) If a health care provider who is providing medical care, in a health care facility, to any person involved in a vehicle collision:

(1) Becomes aware, as a result of any blood or urine test performed in the course of medical treatment, that:
   (A) The alcohol concentration in the person's blood meets or exceeds the amount specified in section -81(a)(4); or
   (B) The persons's blood or urine contains one or more drugs that are capable of impairing a person's ability to operate a vehicle in a careful and prudent manner; and

(2) Has a reasonable belief that the person was the operator of a vehicle involved in the collision,

the health care provider shall notify, as soon as reasonably possible, any law enforcement officer present at the health care facility to investigate the collision. If no law enforcement officer is present, the health care provider shall notify the county police department in the county where the collision occurred. If the health care provider is aware of any blood or urine test result, as provided in paragraph (1), but lacks information to form a reasonable belief as to the identity of the operator involved in a vehicle collision, as provided in paragraph (2), then the health care provider shall give notice to a law enforcement officer present or to the county police department, as applicable, for each person involved in a vehicle collision whose alcohol concentration in the person's blood meets or exceeds the amount specified in section -81(a)(4) or whose blood or urine contains one or more drugs. The notice by the health care provider shall consist of the name of the person being treated, the blood alcohol concentration or drug content disclosed by the test, and the date and time of the administration of the test. This 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 if a law enforcement officer has probable cause to believe that a person involved in the collision has committed a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, or -81, the law enforcement officer shall request that a sample of blood or urine be recovered from the vehicle operator or any other person suspected of committing a violation of section 707-702.5, 707-703, 707-704, 707-705, 707-706, or -81.

(d) The law enforcement officer shall make the request under subsection (c) to the hospital or medical facility treating the person from whom the blood or urine is to be recovered. Upon the request of the law enforcement officer 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:

(1) Provide the law enforcement officer with the blood or urine sample requested;
(2) Recover the sample in compliance with section 321-161; and
(3) Assign a person authorized under section -12 to withdraw the blood sample or obtain the urine.

(e) Any person complying with this section shall be exempt from liability pursuant to section 663-1.9 as a result of compliance.

(f) 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, that is used, operated, or designed to provide medical diagnosis, treatment, or rehabilitative or preventive care to any person. The term includes 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.

§ **-22 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 this part shall not be admissible in any proceeding brought under chapter 329 or 712.

## PART III. ADMINISTRATIVE REVOCATION PROCESS

§ **-31 Notice of administrative revocation; effect.** As used in this part, the notice of administrative revocation:

(1) Establishes that the respondent's license and privilege to operate a vehicle in the State or on or in the waters of the State shall be terminated:
   (A) Thirty days after the date the notice of administrative revocation is issued in the case of an alcohol related offense;
   (B) Forty-four days after the date the notice of administrative revocation is issued in the case of a drug related offense; or
   (C) Such later date as is established by the director under section -38,

   if the director administratively revokes the respondent's license;

(2) Establishes the date on which administrative revocation proceedings against the respondent were initiated; and
(3) Serves as a temporary permit, if applicable, to operate a vehicle as provided in section -33.

§ -32 **Criminal prosecution.** (a) Criminal prosecution under section -81 may be commenced concurrently with administrative revocation proceedings under this part; provided that documentary and testimonial evidence provided by the respondent during the administrative proceeding shall not be admissible against the respondent in any proceeding under section -81 arising out of the same occurrence.

(b) When a person's license and privilege to operate a vehicle is revoked under this part and the person also is convicted of an offense under section -81 arising out of the same occurrence, the total period of revocation imposed in the two proceedings shall not exceed the longer period of revocation imposed in either proceeding. If the person is convicted under section -81 prior to completion of administrative proceedings, the person shall surrender the temporary permit issued under this part at the time of entry of a plea of guilty or no contest, entry of a verdict of guilty, or of sentencing, whichever occurs first.

§ -33 **Probable cause determination; issuance of notice of administrative revocation; procedures.** (a) Whenever a person is arrested for a violation of section -81 on a determination by the arresting law enforcement officer that:

(1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections -19 and -20; and
(2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant;

the law enforcement officer immediately shall take possession of any license held by the person and request the person to take a test for concentration of alcohol in the blood, in the case of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test or a blood test, or both, pursuant to section -11. In the case of a drug related offense, the person shall elect to take a blood test or a urine test, or both, pursuant to section -11. The law enforcement officer also shall inform the person of the sanctions under this part, including the sanction for refusing to take a breath, blood, or urine test. Thereafter, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

(b) Whenever a law enforcement officer determines that, as the result of a blood or urine test performed pursuant to section -21(b) or (c), there is probable cause to believe that a person being treated in a hospital or medical facility has violated section -81, the law enforcement officer immediately shall take possession of any license held by the person and shall complete and issue to the person a notice of administrative revocation and indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit unless, at the time the notice was issued: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession.

§ -34 **Notice of administrative revocation; contents.** (a) The notice of administrative revocation shall provide, at a minimum and in clear language, the following general information relating to administrative revocation:

(1) The statutory authority for administrative revocation;

(2) An explanation of the distinction between administrative revocation and a suspension or revocation imposed under section -81; and

(3) That criminal charges filed pursuant to section -81 may be prosecuted concurrently with the administrative action.

(b) The notice, when completed by the law enforcement officer and issued to the respondent, shall contain at a minimum the following information relating to the incident that gives rise to the issuance of the notice of administrative revocation:

(1) Information identifying the respondent;

(2) The specific violation for which the respondent was arrested;

(3) The date issued and the date the administrative revocation is scheduled to go into effect;

(4) That the respondent was informed of the sanctions of this part and of the consequences of refusing to be tested for alcohol concentration of the blood or drug content in the blood or urine and whether the respondent consented to be tested;

(5) The expiration date of the temporary permit; and

(6) That the issuance of the notice of administrative revocation will be administratively reviewed.

(c) The notice shall provide, at a minimum, the following information relating to the administrative review:

(1) That the review is automatic;

(2) That the respondent, within three days of the issuance of the notice of administrative revocation in the case of an alcohol related offense and within seventeen days of the issuance of the notice of administrative revocation in the case of a drug related offense, may submit written information demonstrating why the respondent's license and privilege to operate a vehicle should not be administratively revoked;

(3) The address or location where the respondent may submit the information;

(4) That the respondent is not entitled to be present or represented at the administrative review; and

(5) That the administrative review decision shall be mailed to the respondent:

(A) No later than eight days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and

(B) No later than twenty-two days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense.

(d) The notice shall state that, if the respondent's license and privilege to operate a vehicle is not administratively revoked after the review, the respondent's license shall be returned, along with a certified statement that the administrative revocation proceedings have been terminated.

(e) The notice shall state that, if the respondent's license and privilege to operate a vehicle are administratively revoked after the review, a decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

(1) The reasons why the respondent's license and privilege to operate a vehicle were administratively revoked;

(2) That the respondent may request the director, within six days of the date the decision is mailed, to schedule an administrative hearing to review the administrative revocation;

(3) That, if the respondent's request for an administrative hearing is received by the director within six days of the date the decision was mailed, the hearing shall be scheduled to commence:

(A) No later than twenty-five days after the date of the issuance of the notice of administrative revocation in the case of an alcohol related offense; and

(B) No later than thirty-nine days after the date of the issuance of the notice of administrative revocation in the case of a drug related offense;

(4) The procedure to request an administrative hearing;

(5) That failure to request an administrative hearing within the time provided shall cause the administrative revocation to take effect for the period and under the conditions established by the director in the decision;

(6) That the respondent may regain the right to a hearing by requesting the director, within sixty days after the issuance of the notice of administrative revocation, to schedule a hearing;

(7) That the director shall schedule the hearing to commence no later than thirty days after a request under paragraph (6) is received, but that, except as provided in section -38(j), the temporary permit shall not be extended if the respondent fails to request an administrative hearing within the initial six-day period provided for that purpose;

(8) That failure to attend the hearing shall cause the administrative revocation to take effect for the period and under the conditions indicated; and

(9) The duration of the administrative revocation and other conditions that may be imposed, including: referral to the driver's education program for alcohol counseling, or substance abuse counseling or treatment, or both.

(f) The notice shall provide, at a minimum, the following information relating to administrative hearings:

(1) That the respondent shall have six days from the date the administrative review decision was mailed to request that an administrative hearing be scheduled;

(2) That a request for an administrative hearing and payment of $30 fee, unless waived, shall entitle the respondent to review and copy, prior to the hearing, all documents that were considered at the administrative review, including the arrest report and the sworn statements;

(3) That the respondent may be represented by an attorney, submit evidence, give testimony, and present and cross-examine witnesses;

(4) That, in cases where the respondent is under the age of eighteen, a parent or guardian must be present; and

(5) That a written decision shall be mailed no later than five days after completion of the hearing.

(g) The notice shall state that, if the administrative revocation is reversed after the hearing, the respondent's license, along with a certified statement that the administrative revocation proceedings have been terminated.

(h) The notice shall state that, if the administrative revocation is sustained at the hearing, a written decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, that shall contain, at a minimum, the following information:

(1) The effective date of the administrative revocation;

(2) The duration of the administrative revocation;
(3) Other conditions that may be imposed by law; and
(4) The right to obtain judicial review.

(i) The notice shall state that failure of the respondent, or of the parent or guardian of the respondent if the respondent is under the age of eighteen, to attend a scheduled hearing shall cause the administrative revocation to take effect as provided in the administrative review decision.

§ -35 **Immediate restoration of license.** (a) In cases involving an alcohol related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder shows that a respondent had an alcohol concentration less than .08, the director or the arresting law enforcement agency immediately shall return the respondent's license, along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

(b) In cases involving a drug related offense, if a test conducted in accordance with part II and section 321-161 and the rules adopted thereunder fails to show the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the director or the arresting law enforcement agency immediately shall return the respondent's license, along with a certified statement that administrative revocation proceedings have been terminated with prejudice.

§ -36 **Documents required to be submitted for administrative review; sworn statements of law enforcement officials.** (a) Whenever a respondent has been arrested for a violation of section -81 and submits to a test that establishes: the respondent's alcohol concentration was .08 or more; the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section -21 establishes that the respondent's alcohol concentration was .08 or more or establishes the presence in the respondent's blood or urine of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

(1) A copy of the arrest report or the report of the officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:
    (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections -19 and -20, or the respondent was tested pursuant to section -21;
    (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
    (C) The respondent was informed of: the sanctions of this part; that criminal charges may be filed; and the consequences of refusing to be tested for alcohol concentration or drug content; and
    (D) The respondent agreed to be tested or the person was tested pursuant to section -21;
(2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:

(A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
(B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
(C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;

(3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
(A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
(B) The person followed the procedures established for conducting the test;
(C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and
(D) The person whose breath or blood was tested is the respondent;

(4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
(A) The equipment used to conduct the test was approved for use in drug testing;
(B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and
(C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;

(5) In a case involving an drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
(A) At the time the test was conducted, the person was trained and capable of operating the testing equipment;
(B) The person followed the procedures established for conducting the test;
(C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and
(D) The person whose blood or urine was tested is the respondent;

(6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;

(7) Any driver's license taken into possession by the law enforcement officer; and

(8) A listing of any prior alcohol or drug enforcement contacts involving the respondent.

(b) Whenever a respondent has been arrested for a violation of section -81 and refuses to submit to a test to determine alcohol concentration or drug content in the blood or urine, the following shall be forwarded immediately to the director:

(1) A copy of the arrest report and the sworn statement of the arresting law enforcement officer, stating facts that establish that:

(A) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections -19 and -20;
(B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
(C) The respondent was informed of:
(i) The sanctions of this part;
(ii) The possibility that criminal charges may be filed; and
(iii) The probable consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine; and
(D) The respondent refused to be tested;
(2) A copy of the notice of administrative revocation issued to the respondent;
(3) Any driver's license taken into possession; and
(4) A listing of all alcohol and drug enforcement contacts involving the respondent.

§ **-37 Administrative review; procedures; decision.** (a) The director automatically shall review the issuance of a notice of administrative revocation and shall issue a written decision administratively revoking the license and privilege to operate a vehicle or rescinding the notice of administrative revocation. The written review decision shall be mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than:
(1) Eight days after the date the notice was issued in a case involving an alcohol related offense; or
(2) Twenty-two days after the date the notice was issued in a case involving a drug related offense.

(b) The respondent shall have the opportunity to demonstrate in writing why the respondent's license and privilege to operate a vehicle should not be administratively revoked and, within three days of receiving the notice of administrative revocation, as provided in section -33, shall submit any written information, either by mail or in person, to the director's office or to any office or address designated by the director for that purpose.

(c) In conducting the administrative review, the director shall consider:
(1) Any sworn or unsworn written statement or other written evidence provided by the respondent;
(2) The breath, blood, or urine test results, if any; and
(3) The sworn statement of any law enforcement official or other evidence or information required by section -36.

(d) The director shall administratively revoke the respondent's license and privilege to operate a vehicle if the director determines that:
(1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections -19 and -20, or the person was tested pursuant to section -21;
(2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
(3) The evidence proves by a preponderance that:
(A) The respondent operated the vehicle while under the influence of an intoxicant; or
(B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed of the sanctions of this part.

(e) If the evidence does not support administrative revocation, the director shall rescind the notice of administrative revocation and return the respondent's license, along with a certified statement that administrative revocation proceedings have been terminated.

(f) If the director administratively revokes the respondent's license and privilege to operate a vehicle, the director shall mail a written review decision to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen. The written review decision shall:

(1) State the reasons for the administrative revocation;

(2) Indicate that the respondent has six days from the date the decision is mailed to request an administrative hearing to review the director's decision;

(3) Explain the procedure by which to request an administrative hearing;

(4) Be accompanied by a form, postage prepaid, that the respondent may fill out and mail in order to request an administrative hearing;

(5) Inform the respondent of the right to review and copy all documents considered at the review, including the arrest report and the sworn statements of the law enforcement officials, prior to the hearing; and

(6) State that the respondent may be represented by counsel at the hearing, submit evidence, give testimony, and present and cross-examine witnesses, including the arresting officer.

(g) Failure of the respondent to request a hearing within the time provided in section -38(a) shall cause the administrative revocation to take effect for the period and under the conditions provided in the administrative review decision issued by the director under this section. The respondent may regain the right to an administrative hearing by requesting the director, within sixty days of the issuance of the notice of administrative revocation as provided in section -33, to schedule an administrative hearing. The administrative hearing shall be scheduled to commence no later than thirty days after the request is received by the director. The administrative review decision issued by the director under this section shall explain clearly the consequences of failure to request an administrative hearing and the procedure by which the respondent may regain the right to a hearing.

§ **-38 Administrative hearing; procedure; decision.** (a) If the director administratively revokes the respondent's license and privilege to operate a vehicle after the administrative review, the respondent may request an administrative hearing to review the decision within six days of the date the administrative review decision is mailed. If the request for hearing is received by the director within six days of the date the decision is mailed, the hearing shall be scheduled to commence no later than:

(1) Twenty-five days from the date the notice of administrative revocation was issued in a case involving an alcohol related offense; or

(2) Thirty-nine days from the date the notice of administrative revocation was issued in a case involving a drug related offense.

The director may continue the hearing only as provided in subsection (j).

(b) The hearing shall be held at a place designated by the director, as close to the location where the notice of administrative revocation was issued as practical.

(c) The respondent may be represented by counsel and, if the respondent is under the age of eighteen, must be accompanied by a parent or guardian.

(d) The director shall conduct the hearing and have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses and take testimony;

(3) Receive and determine the relevance of evidence;

(4) Issue subpoenas, take depositions, or cause depositions or interrogatories to be taken;
(5) Regulate the course and conduct of the hearing; and
(6) Make a final ruling.

(e) The director shall affirm the administrative revocation only if the director determines that:

(1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections -19 and -20, or the person was tested pursuant to section -21;
(2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
(3) The evidence proves by a preponderance that:
    (A) The respondent operated the vehicle while under the influence of an intoxicant; or
    (B) The respondent operated the vehicle and, after being informed of the sanctions of this part, refused to submit to a breath, blood, or urine test.

(f) The respondent's prior alcohol and drug enforcement contacts shall be entered into evidence.

(g) The sworn statements provided in section -36 shall be admitted into evidence. Upon notice to the director, no later than five days prior to the hearing, that the respondent wishes to examine a law enforcement official who made a sworn statement, the director shall issue a subpoena for the official to appear at the hearing. If the official cannot appear, the official, at the discretion of the director, may testify by telephone.

(h) The hearing shall be recorded in a manner to be determined by the director.

(i) The director's decision shall be rendered in writing and mailed to the respondent, or to the parent or guardian of the respondent if the respondent is under the age of eighteen, no later than five days after the hearing is concluded. If the decision is to reverse the administrative revocation, the director shall return the respondent's license, along with a certified statement that administrative revocation proceedings have been terminated. If the decision sustains the administrative revocation, the director shall mail to the respondent a written decision indicating the duration of the administrative revocation and any other conditions or restrictions as may be imposed pursuant to section -41.

(j) For good cause shown, the director may grant a continuance either of the commencement of the hearing or of a hearing that has already commenced. If a continuance is granted at the request of the director, the director shall extend the validity of the temporary permit, unless otherwise prohibited, for a period not to exceed the period of the continuance. If a continuance is granted at the request of the respondent, the director shall not extend the validity of the temporary permit. For purposes of this section, a continuance means a delay in the commencement of the hearing or an interruption of a hearing that has commenced, other than for recesses during the day or at the end of the day or week.

(k) If the respondent fails to appear at the hearing, or if an respondent under the age of eighteen fails to appear with a parent or guardian, administrative revocation shall take effect for the period and under the conditions established by the director in the administrative review decision issued by the director under section -37.

§ **-39 Fees and costs.** The director may assess and collect a $30 fee from the respondent to cover the costs of processing the respondent's request for an

administrative hearing. These costs include but should not be limited to: the cost of photocopying documents; the issuance of subpoenas, conditional permits, and relicensing forms; interpreter services; law enforcement official mileage fees; and other similar costs. The director may waive the fee in the case of an indigent respondent, upon an appropriate inquiry into the financial circumstances of the respondent seeking the waiver and an affidavit or a certificate signed by the respondent demonstrating the respondent's financial inability to pay the fee.

§ -40 **Judicial review; procedure.** (a) If the director sustains the administrative revocation after an administrative hearing, the respondent, or parent or guardian of an respondent under the age of eighteen, may file a petition for judicial review within thirty days after the administrative hearing decision is mailed. The petition shall be filed with the clerk of the district court in the district in which the incident occurred and shall be accompanied by the required filing fee for civil actions. The filing of the petition shall not operate as a stay of the administrative revocation, nor shall the court stay the administrative revocation pending the outcome of the judicial review. The petition shall be appropriately captioned. The petition shall state with specificity the grounds upon which the petitioner seeks reversal of the administrative revocation.

(b) The court shall schedule the judicial review as quickly as practicable, and the review shall be on the record of the administrative hearing without taking of additional testimony or evidence. If the petitioner fails to appear without just cause or, in the case of a petitioner under the age of eighteen, the petitioner fails to appear with a parent or guardian, the court shall affirm the administrative revocation.

(c) The sole issues before the court shall be whether the director:

(1) Exceeded constitutional or statutory authority;
(2) Erroneously interpreted the law;
(3) Acted in an arbitrary or capricious manner;
(4) Committed an abuse of discretion; or
(5) Made a determination that was unsupported by the evidence in the record.

(d) The court shall not remand the matter back to the director for further proceedings consistent with its order.

§ -41 **Effective date and period of administrative revocation; criteria.** (a) Unless an administrative revocation is reversed or the temporary permit is extended by the director, administrative revocation shall become effective on the day specified in the notice of administrative revocation. Except as provided in section -44, no license and privilege to operate a vehicle shall be restored under any circumstances and no conditional permit shall be issued during the administrative revocation period. Upon completion of the administrative revocation period, the respondent may reapply and be reissued a license pursuant to section -45.

(b) The periods of administrative revocation that shall be imposed under this part are as follows:

(1) A minimum of three months up to a maximum of one year, if the respondent's record shows no prior alcohol or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
(2) A minimum of one year up to a maximum of two years, if the respondent's record shows one prior alcohol or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
(3) A minimum of two years up to a maximum of four years, if the respondent's record shows two prior alcohol or drug enforcement

contacts during the seven years preceding the date the notice of administrative revocation was issued;

(4) For life, if the respondent's record shows three or more prior alcohol or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued; or

(5) For respondents under the age of eighteen years who were arrested for a violation of section -81, either for the period remaining until the respondent's eighteenth birthday or for the appropriate revocation period provided in paragraphs (1) to (4) or in subsection (c), if applicable, whichever is longer.

(c) If a respondent has refused to be tested after being informed of the sanctions of this part, the revocation imposed under subsection (b)(1), (2), and (3) shall be for a period of one year, two years, and four years, respectively.

(d) Whenever a license and privilege to operate a vehicle is administratively revoked under this part, the respondent shall be referred to a certified substance abuse counselor for an assessment of the respondent's substance abuse or dependence and the need for treatment. The counselor shall submit a report with recommendations to the director. If the counselor's assessment establishes that the extent of the respondent's substance abuse or dependence warrants treatment, the director may so order. All costs for assessment and treatment shall be paid by the respondent.

(e) Alcohol and drug enforcement contacts that occurred prior to the effective date of this Act shall be counted in determining the administrative revocation period.

(f) The requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a revocation under subsection (b)(1).

§ **-42 Notice to other states.** When a nonresident's driving and boating privileges are administratively revoked under this part, the director shall:

(1) Notify, in writing, the officials in charge of traffic control, boating control, or public safety in the nonresident's home state, and in any other state in which the nonresident has driving and boating privileges, of the action taken in this State; and

(2) Return to the appropriate issuing authority in the other states any license seized under section -33.

§ **-43 Administrative Procedure Act.** Neither the administrative review nor the administrative hearing provided under this part shall be subject to the contested case requirements of chapter 91. The availability of administrative review of an order of administrative revocation shall have no effect upon the availability of judicial review under this part.

§ **-44 Conditional permits.** (a) During the administrative hearing, the director, at the request of a respondent who is subject to administrative revocation for a period as provided in section -41(b)(1), may issue a conditional permit that will allow the respondent, after a minimum period of absolute license revocation of thirty days, to drive for the remainder of the revocation period, provided that one or more of the following conditions are met:

(1) The respondent is gainfully employed in a position that requires driving and will be discharged if the respondent's driving privileges are administratively revoked; or

(2) The respondent has no access to alternative transportation and therefore must drive to work or to a substance abuse treatment facility or counselor for treatment ordered by the director under section -41.

The director shall not issue a conditional permit to a respondent whose license, during the conditional permit period, is expired or is suspended or revoked as a result of action other than the instant revocation for which the arrestee is requesting a conditional permit under this section.

(b) A request made pursuant to subsection (a)(1) shall be accompanied by:

(1) A sworn statement from the respondent containing facts establishing that the respondent currently is employed in a position that requires driving and that the respondent will be discharged if not allowed to drive; and

(2) A sworn statement from the respondent's employer establishing that the employer will, in fact, discharge the respondent if the respondent is prohibited from driving.

(c) A request made pursuant to subsection (a)(2) shall be accompanied by a sworn statement by the respondent attesting to the specific facts upon which the request is based, which statement shall be verified by the director.

(d) A conditional permit may include restrictions allowing the respondent to drive:

(1) Only during hours of employment for activities solely within the scope of the employment;

(2) Only during daylight hours; or

(3) Only for specified purposes or to specified destinations.

In addition, the director may impose any other appropriate restrictions.

(e) The duration of the conditional permit shall be determined on the basis of the criteria set forth in subsections (b) and (c).

(f) If the respondent violates the conditions imposed under this section, the conditional permit shall be rescinded, and administrative revocation shall be immediate for the appropriate period authorized by law.

§ **-45 Eligibility for relicensing.** To be eligible for relicensing after a period of administrative revocation has expired, the person shall:

(1) Submit proof to the director of compliance with all conditions imposed by the director or by the court;

(2) Obtain a certified statement from the director indicating eligibility for relicensing;

(3) Present the certified statement to the appropriate licensing official; and

(4) Successfully complete each requirement for obtaining a new license in this State, including payment of all applicable fees.

§ **-46 Computation of time.** The time in which any act provided in this part is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday, and then it also is excluded.

## PART IV. PROHIBITED CONDUCT

§ **-81 Operating a vehicle under the influence of an intoxicant.** (a) A person commits the offense of operating a vehicle under the influence of an intoxicant if the person operates or assumes actual physical control of a vehicle:

(1) While under the influence of alcohol in an amount sufficient to impair the person's normal mental faculties or ability to care for the person and guard against casualty;

(2) While under the influence of any drug that impairs the person's ability to operate the vehicle in a careful and prudent manner;

(3) With .08 or more grams of alcohol per two hundred ten liters of breath; or

(4) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) A person committing the offense of operating a vehicle under the influence of an intoxicant shall be sentenced as follows without possibility of probation or suspension of sentence:

(1) For the first offense, or any offense not preceded within a five-year period by a conviction for an offense under this section or section -4(a):
   (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court; and
   (B) Ninety-day prompt suspension of license and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, or the court may impose, in lieu of the ninety-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the ninety-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in substance abuse treatment programs; and
   (C) Any one or more of the following:
      (i) Seventy-two hours of community service work;
      (ii) Not less than forty-eight hours and not more than five days of imprisonment; or
      (iii) A fine of not less than $150 but not more than $1,000.

(2) For an offense that occurs within five years of a prior conviction for an offense under this section or section -4(a):
   (A) Prompt suspension of license and privilege to operate a vehicle for a period of one year with an absolute prohibition from operating a vehicle during the suspension period;
   (B) Either one of the following:
      (i) Not less than one-hundred hours of community service work; or
      (ii) Not less than forty-eight consecutive hours but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively; and
   (C) A fine of not less than $500 but not more than $1,500.

(3) For an offense that occurs within five years of two prior convictions for offenses under this section or section -4(a):
   (A) A fine of not less than $500 but not more than $2,500;
   (B) Revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years; and
   (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively.

(4) For an offense that occurs within ten years of three or more prior convictions for offenses under this section, section 707-702.5, or section -4(a):
   (1) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
   (2) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively; and
   (3) Referral to a substance abuse counselor as provided in subsection (d).

An offense under this paragraph is a class C felony.

(5) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of $500 and an additional mandatory term of imprisonment of forty-eight hours; provided, however, that the total term of imprisonment for a person sentenced under this paragraph and paragraphs (1), (2), or (3) shall not exceed thirty days.

(c) Notwithstanding any other law to the contrary, any:

(1) Conviction under this section or section -4(a); or

(2) Conviction in any other state or federal jurisdiction for an offense that is comparable to operating or being in physical control of a vehicle while having either an unlawful alcohol concentration or an unlawful drug content in the blood or urine or while under the influence of an intoxicant;

shall be considered a prior conviction for the purposes of imposing sentence under this section. No license and privilege suspension or revocation shall be imposed pursuant to this subsection if the person's license and privilege to operate a vehicle has previously been administratively revoked pursuant to part III for the same act; provided that, if the administrative suspension or revocation is subsequently reversed, the person's license and privilege to operate a vehicle shall be revoked as provided in this subsection.

(d) Whenever a court sentences a person pursuant to subsection (b), it also shall require that the offender be referred to a substance abuse counselor who has been certified pursuant to section 321-193 for an assessment of the offender's substance 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 offender to obtain appropriate treatment if the counselor's assessment establishes the offender's substance abuse or dependence. All cost for assessment or treatment or both shall be borne by the offender.

(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 a new driver's license until the expiration of the period of revocation determined by the court. After the period of revocation is completed, the person may apply for and the examiner of drivers may grant to the person a new driver's license.

(f) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood or urine tests conducted pursuant to section -11. 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 or urine 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).

(h) As used in this section, the term "examiner of drivers" has the same meaning as provided in section 286-2.

**§ -82 Operating a vehicle after license and privilege have been suspended or revoked for operating a vehicle under the influence of an intoxicant; penalties.** (a) No person whose license and privilege to operate a vehicle has been revoked, suspended, or otherwise restricted pursuant to part III or section -81 or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, or 291-7, as those provisions were in effect on December 31, 2001, shall operate or assume actual physical control of any vehicle:

(1) In violation of any restrictions placed on the person's license;

(2) While the person's license remains suspended or revoked; or
(3) While the person's privilege to operate a vehicle has been revoked.

(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 conviction for an offense under this section:
  (A) A term of imprisonment of not less than three consecutive days but not more than thirty days;
  (B) A fine of not less than $250 but not more than $1,000; and
  (C) Revocation of license and privilege to operate a vehicle for an additional year;
(2) For an offense that occurs within five years of a prior conviction for an offense under this section:
  (A) Thirty days imprisonment;
  (B) A $1,000 fine; and
  (C) Revocation of license and privilege to operate a vehicle for an additional two years; and
(3) For an offense that occurs within five years of two or more prior convictions for offenses under this section:
  (A) One year imprisonment;
  (B) A $2,000 fine; and
  (C) Permanent revocation of the person's license and privilege to operate a vehicle.

The period of revocation shall commence upon the release of the person from the period of imprisonment imposed pursuant to this section.

§ **-83 Records of convictions and suspensions of operating privileges to be maintained.** The department of land and natural resources shall maintain a record of all persons convicted of offenses or violations involving vessels under this part and the period of suspension of operator privileges ordered by the court under this part.

§ **-84 Operating a vehicle 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 operate 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 operating a motor vehicle upon a public way, street, road, or highway or on or in the waters of the State 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 and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, 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 vehicle and, for the remainder of the one hundred eighty-day period, a 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 and privilege to operate a vehicle for a period of one year with absolute prohibition from operating a vehicle during the suspension period; 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 and privilege to operate a vehicle 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.

(c) Notwithstanding any other law to the contrary, any conviction or plea under this section shall be considered a prior alcohol enforcement contact.

(d) 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.

(e) 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.

(f) 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.

(g) Any person sentenced under this section may be ordered to reimburse the county for the cost of any blood tests conducted pursuant to section -11. 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.

(h) 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).

(i) Any person who violates this section shall be guilty of a violation.

(j) As used in this section, the terms "driver's license" and "examiner of drivers" have the same meanings as provided in section 286-2.

**§ -85 Refusal to submit to testing for measurable amount of alcohol; district court hearing; sanctions; appeals; admissibility.** (a) If a person under arrest for operating a vehicle after consuming a measurable amount of alcohol, pursuant to section -84, refuses to submit to a breath or blood test, none shall be given, except as provided in section -21, 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 vehicle upon a public way, street, road, or highway or on or in the waters of the State 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 vehicle upon a public way, street, road, or highway or on or in the waters of the State 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 license and privilege to operate a vehicle 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 III of this chapter and shall not be admissible in any other action or proceeding, whether civil or criminal."

SECTION 24. Section 199-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The conservation and resources enforcement officers, with respect to all state lands, including public lands, state parks, forest reserves, forests, aquatic life

and wildlife areas, 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, 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) Enforce the laws in chapter __ relating to operating a vessel on or in the waters of the State while using intoxicants;
[(7)] (8) 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)] (9) Carry out [such] other duties and responsibilities as the board of land and natural resources from time to time may direct."

SECTION 25. 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 [section 286-151.5 or part XIV of chapter 286,] section __-85 or part III of chapter __, except as provided in section [291-4(f);] __-41(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 [291-4.3(b)(1),] __-81(b)(1) or __-84(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 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,] county, 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, shall suspend the license and shall keep the [same] license 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, operating a vehicle while under the influence of an intoxicant, 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, and operating a vehicle after license and privilege to operate a vehicle have been suspended or revoked, except when a person's license has been suspended or revoked for the first conviction of driving without a motor vehicle insurance policy; and

(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 $3,000 and there are reasonable grounds for the administrator to believe that the defendant is at fault."

SECTION 26. Section 663-1.9, Hawaii Revised Statutes, is amended to read as follows:

"**§663-1.9 Exception to liability for health care provider[3] authorized person withdrawing blood or urine at the direction of a police officer.** (a) Any health care provider who, in good faith in compliance with section [286-163,] -21, provides notice concerning the alcohol concentration of a person's blood or drug content of a person's blood or urine shall be immune from any civil liability in any action based upon the compliance. The health care provider also 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 or collects urine from another person at the written request of a police officer for testing of the blood's [alcoholic] alcohol concentration or drug content[,] or the drug content of the urine, and any hospital, laboratory, or clinic, employing or utilizing the services of such person, and owning or leasing the premises on which [such] the tests are performed, shall not be liable for civil damages resulting from the authorized person's acts or omissions in withdrawing the blood[,] or collecting urine, 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" means a person authorized under section [286-152] -12 to withdraw blood at the direction of a police officer.

"Health care provider" has the same meaning as in section [286-163.] -21."

SECTION 27. Chapter 200, part VII, Hawaii Revised Statutes, is repealed.

SECTION 28. Chapter 286, part VII, Hawaii Revised Statutes, is repealed.

SECTION 29. Chapter 286, part XIV, Hawaii Revised Statutes, is repealed.

SECTION 30. Section 291-4, Hawaii Revised Statutes, is repealed.

SECTION 31. Section 291-4.3, Hawaii Revised Statutes, is repealed.

SECTION 32. Section 291-4.4, Hawaii Revised Statutes, is repealed.

SECTION 33. Section 291-4.5, Hawaii Revised Statutes, is repealed.

SECTION 34. Section 291-5, Hawaii Revised Statutes, is repealed.

SECTION 35. Section 291-6, Hawaii Revised Statutes, is repealed.

SECTION 36. Section 291-7, Hawaii Revised Statues, is repealed.

## PART IV

SECTION 37. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 38. In codifying the new sections added by section 5 of part $2^4$ 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 39. The legislative reference bureau shall prepare proposed legislation as necessary to conform and consolidate the varying statutory provisions of parts I, II, and III of this Act, and to make necessary amendments to statutes affected by the repeal of part VII of chapter 200, parts VII and XIV of chapter 286, and sections 291-4, 291-4.3, 291-4.4, 291-4.5, 291-5, 291-6, and 291-7. The bureau shall transmit such proposed legislation to the legislature not later than twenty days prior to the convening of the regular session of 2001.

SECTION 40. Statutory material to be repealed is bracketed. New statutory material is underscored.[5]

SECTION 41. This Act shall take effect upon approval; provided that:

(1) Part I shall take effect upon approval and shall apply retroactively to all pending cases for driving under the influence of drugs under section 291-7, Hawaii Revised Statutes;
(2) Part II shall take effect on September 30, 2000; and
(3) Part III shall take effect on January 1, 2002.

(Approved June 8, 2000.)

**Notes**

1. Prior to amendment "for concentration of alcohol in blood" appeared here.
2. Prior to amendment "offender" appeared here.
3. Prior to amendment, "," appeared here.
4. Should be "II".
5. Edited pursuant to HRS §23G-16.5.

# ACT 190

S.B. NO. 2480

A Bill for an Act Relating to Annulment, Divorce, and Separation.

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

SECTION 1. Section 580-3, Hawaii Revised Statutes, is amended to read as follows:

"**§580-3 Service.** (a) The complaint for annulment, divorce, or separation, and the summons shall be served by an authorized process server on the defendant

personally if the defendant is within the State, unless the defendant enters an appearance in the case, and except as hereinafter otherwise provided.

(b) If service by an authorized process server is not feasible or is inconvenient or if the defendant is without the State, the court may authorize the service to be made by any other responsible person, or the court may authorize notice of the pendency of the action and of a time and place of hearing, which shall be not less than twenty days after the giving of personal notice, to be given to the defendant personally by such person and in such manner as the court shall designate and the case may be heard and determined at or after the time specified in the notice.

(c) If the defendant is without the circuit, the court may authorize service by registered or certified mail, with request for a return receipt and direction to deliver to addressee only. The return receipt signed by the defendant shall be prima facie evidence that the defendant accepted delivery of the complaint and summons on the date set forth on the receipt. Actual receipt by the defendant of the complaint and summons sent by registered or certified mail shall be equivalent to personal service on the defendant by an authorized process server as of the date of the receipt.

(d) If it appears that the defendant has refused to accept service by mail, or is concealing oneself, or evading service, or that plaintiff does not know the address or residence of the defendant and has not been able to ascertain the same after reasonable and due inquiry and search for at least fifteen days either before or after the filing of the complaint, the court may authorize notice of the pendency of the action and of a time and place of hearing, which shall not be less than twenty days after the last publication of the published notice, to be given to the defendant by publication thereof at least once in each of three successive weeks in a newspaper suitable for the advertisement of notices of judicial proceedings, published in the State, and the case may be heard and determined at or after the time specified in the notice.

(e) If the plaintiff, as a result of impoverishment, is unable to publish notice as required by subsection (d), the plaintiff shall file an affidavit attesting to impoverishment and to the fact that after due and diligent search, the whereabouts of the individual sought to be served are unknown. Upon those filings, the court shall order that service be made by forwarding a certified copy of the pleadings and process to the individual at the last known address by registered or certified mail, with a return receipt requested and a directive to deliver to addressee only, sending a certified copy of the pleadings and process to the defendant's closest known relative, if any can be found, and by posting a copy of the pleadings and process at the courthouse in which the pleadings and process has been filed. Service shall be completed thirty days after mailing. The plaintiff shall attest to the fact of the mailing and the date thereof by affidavit, attaching the sender's receipt for that mail and, if available, the return receipt and envelope."

SECTION 2. New statutory material is underscored.

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

(Approved June 8, 2000.)

# ACT 191

S.B. NO. 2536

A Bill for an Act Relating to the Uniform Principal and Income 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 PRINCIPAL AND INCOME ACT
## ARTICLE 1
## DEFINITIONS AND FIDUCIARY DUTIES

§ **-101 Short title.** This chapter may be cited as the Uniform Principal and Income Act.

§ **-102 Definitions.** As used in this chapter, unless the context otherwise requires:

"Accounting period" means a calendar year unless another twelve-month period is selected by a fiduciary. The term includes a portion of a calendar year or other twelve-month period that begins when an income interest begins or ends when an income interest ends.

"Beneficiary" includes, in the case of a decedent's estate, an heir and devisee and, in the case of a trust, an income beneficiary and a remainder beneficiary.

"Fiduciary" means a personal representative or a trustee. The term includes an executor, administrator, successor personal representative, special administrator, and a person performing substantially the same function.

"Income" means money or property a fiduciary receives as the current return from a principal asset. The term includes a portion of the receipts from a sale, exchange, or liquidation of a principal asset, to the extent provided in article 4.

"Income beneficiary" means a person to whom a trust's net income is or may be payable.

"Income interest" means an income beneficiary's right to receive all or part of the net income, whether the terms of the trust require it to be distributed or authorize it to be distributed in the trustee's discretion.

"Mandatory income interest" means an income beneficiary's right to receive net income that the terms of the trust require the fiduciary to distribute.

"Net income" means the total receipts allocated to income during an accounting period minus the disbursements made from income during the period. Receipts and disbursements include items transferred to or from income during the period under this chapter.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a government or governmental subdivision, agency, or instrumentality.

"Principal" means property held in trust for distribution to a remainder beneficiary when the trust terminates.

"Remainder beneficiary" means a person, including another trust, entitled to receive principal when an income interest ends.

"Terms of a trust" means the manifestation of the intent of a settlor or decedent with respect to the trust, expressed in a manner that admits of its proof in a judicial proceeding, whether by written or spoken words or by conduct.

"Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by a court.

§ -103 **Fiduciary duties; general principles.** (a) In allocating receipts and disbursements to or between principal and income, and in any matter within the scope of articles 2 and 3, a fiduciary:

(1) Shall administer a trust or estate in accordance with the terms of the trust or the will, even if there is a different provision in this chapter;

(2) May administer a trust or estate by the exercise of a discretionary power of administration given to the fiduciary by the terms of the trust or the will, even if the exercise of the power produces a result different from a result required or permitted by this chapter, and no inference that the fiduciary has improperly exercised the discretion arises from the fact that the fiduciary has made an alteration contrary to the provisions of this chapter;

(3) Shall administer a trust or estate in accordance with this chapter if the terms of the trust or the will do not contain a different provision or do not give the fiduciary a discretionary power of administration; and

(4) Shall add a receipt or charge a disbursement to principal to the extent that the terms of the trust and this chapter do not provide a rule for allocating the receipt or disbursement to or between principal and income.

(b) In exercising the power to adjust granted by section -104(a) or a discretionary power of administration regarding a matter within the scope of this chapter, whether granted by the terms of a trust, a will, or this chapter, a fiduciary shall administer a trust or estate impartially, based on what is fair and reasonable to all of the beneficiaries, except to the extent that the terms of the trust or the will clearly manifest an intention that the fiduciary shall or may favor one or more of the beneficiaries. The exercise of discretion in accordance with this chapter is presumed to be fair and reasonable to all of the beneficiaries.

§ -104 **Trustee's power to adjust.** (a) Subject to subsection (b), a trustee may adjust between principal and income to the extent the trustee considers necessary if all of the following conditions are satisfied:

(1) The trustee invests and manages trust assets as a prudent investor;

(2) The terms of the trust describe the amount that may or must be distributed to a beneficiary by referring to the trust's income; and

(3) The trustee determines, after applying the rules in section -103(a), and considering any power the trustee may have under the trust to invade principal or accumulate income, either of the following conditions exist:

(A) The trustee is unable to administer a trust or estate impartially based on what is fair and reasonable to all beneficiaries if no clear intention to favor one or more beneficiaries is manifested in the will or trust; or

(B) In the case of a will or trust that clearly manifests an intent to favor one or more beneficiaries, the trustee is unable to favor such beneficiaries without diminishing the rights of other beneficiaries.

(b) In deciding whether and to what extent to exercise the power conferred by subsection (a), a trustee shall consider all of the factors relevant to the trust and its beneficiaries, including the following factors to the extent they are relevant:

(1) The nature, purpose, and expected duration of the trust;

(2) The intent of the settlor;

(3) The identity and circumstances of the beneficiaries;
(4) The needs for liquidity, regularity of income, and preservation and appreciation of capital;
(5) The assets held in the trust; the extent to which they consist of financial assets, interests in closely held enterprises, tangible and intangible personal property, or real property; the extent to which an asset is used by a beneficiary; and whether an asset was purchased by the trustee or received from the settlor;
(6) The net amount allocated to income under the other sections of this chapter and the increase or decrease in the value of the principal assets, which the trustee may estimate as to assets for which market values are not readily available;
(7) Whether and to what extent the terms of the trust give the trustee the power to invade principal or accumulate income or prohibit the trustee from invading principal or accumulating income, and the extent to which the trustee has exercised a power from time to time to invade principal or accumulate income;
(8) The actual and anticipated effect of economic conditions on principal and income and effects of inflation and deflation; and
(9) The anticipated tax consequences of an adjustment.

(c) A trustee may not make an adjustment:
(1) That diminishes the income interest in a trust that requires all of the income to be paid at least annually to a surviving spouse and for which an estate tax or gift tax marital deduction would be allowed, in whole or in part, if the trustee did not have the power to make the adjustment;
(2) That reduces the actuarial value of the income interest in a trust to which a person transfers property with the intent to qualify for a gift tax exclusion;
(3) That changes the amount payable to a beneficiary as a fixed annuity or a fixed fraction of the value of the trust's assets;
(4) From any amount that is permanently set aside for charitable purposes under a will or the terms of a trust, unless both income and principal are so set aside; provided that a trustee may transfer income to principal only upon a court order (unless the trustee is holding institutional funds as defined in section 517D-3 exclusively for the benefit of a community foundation and section 517D-4 applies);
(5) If possessing or exercising the power to make an adjustment may cause an individual to be treated as the owner of all or part of the trust for income tax purposes, and the individual would not be treated as the owner if the trustee did not possess the power to make an adjustment;
(6) If possessing or exercising the power to make an adjustment causes all or part of the trust assets to be included for estate tax purposes in the estate of an individual who has the power to remove a trustee or appoint a trustee, or both, and the assets would not be included in the estate of the individual if the trustee did not have the power to make an adjustment; or
(7) If the trustee is a beneficiary of the trust.

(d) If subsection (c)(5), (6), or (7) applies to a trustee and there is more than one trustee, a co-trustee to whom the provision does not apply may make the adjustment, unless the exercise of the power by the remaining trustee or trustees is clearly not permitted by the terms of the trust.

(e) A trustee may release the entire power conferred by subsection (a) or may release only the power to adjust from income to principal or the power to adjust from principal to income if the trustee is uncertain about whether possessing or exercising

the power will cause a result described in subsection (c)(1) through (6) or if the trustee determines that possessing or exercising the power will or may deprive the trust of a tax benefit or impose a tax burden not described in subsection (c). The release may be permanent or for a specified period, including a period measured by the life of an individual.

(f) Terms of a trust that limit the power of a trustee to make an adjustment between principal and income are not contrary to this section, unless it is clear from the terms of the trust that the terms are intended to deny the trustee the power of adjustment conferred by subsection (a).

(g) Nothing in this section or in this chapter is intended to create or imply a duty to make an adjustment, and the trustee is not liable for not considering whether to make an adjustment or for choosing not to make an adjustment.

§ **-105 Notice of proposed action.** (a) A trustee may give a notice of proposed action regarding a matter governed by the chapter as provided in this section. For the purpose of this section, a proposed action includes a course of action and a decision not to take action.

(b) The trustee shall mail notice of the proposed action to all adult beneficiaries who are receiving, or are entitled to receive, income under this trust or to receive a distribution of principal if the trust were terminated at the time the notice is given.

(c) Notice of proposed action need not be given to any person who consents in writing to the proposed action. The consent may be executed at any time before or after the proposed action is taken.

(d) The notice of proposed action shall state that it is given pursuant to this section and shall state all of the following:

(1) The name and mailing address of the trustee;

(2) The name and telephone number of a person who may be contacted for additional information;

(3) A description of the action proposed to be taken and an explanation of the reasons for the action;

(4) The time within which objections to the proposed action can be made, which shall be at least thirty days from the mailing of the notice of proposed action; and

(5) The date on or after which the proposed action may be taken or is effective.

(e) A beneficiary may object to the proposed action by mailing a written objection to the trustee at the address stated in the notice of proposed action within the time period specified in the notice of proposed action.

(f) A trustee is not liable to a beneficiary for an action regarding a matter governed by this chapter if the trustee does not receive a written objection to the proposed action from the beneficiary within the applicable period and the other requirements of this section are satisfied. If no beneficiary entitled to notice objects under this section, the trustee is not liable to any current or future beneficiary with respect to the proposed action.

(g) If the trustee receives a written objection within the applicable period, either the trustee or a beneficiary may petition the court to have the proposed action taken as proposed, taken with modifications, or denied. In the proceeding, a beneficiary objecting to the proposed action has the burden of proving that the trustee's proposed action constitutes an abuse of discretion. A beneficiary who has not objected is not estopped from opposing the proposed action in the proceeding. If the trustee decides not to implement the proposed action, the trustee shall notify the beneficiaries of the decision not to take the action and the reasons for the decision, and the trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. A beneficiary may petition the

court to have the action taken, and has the burden of proving that not taking the action is an abuse of discretion.

§ -106 **Proceedings regarding trustee's power to adjust.** In a proceeding with respect to a trustee's exercise or nonexercise of the power to make an adjustment under section -104, the sole remedy shall be to direct, deny, or revise an adjustment between principal and income.

## ARTICLE 2
## DECEDENT'S ESTATE OR TERMINATING INCOME INTEREST

§ -201 **Determination and distribution of net income.** After a decedent dies, in the case of an estate, or after an income interest in a trust ends, the following rules apply:

(1) A fiduciary of an estate or a terminating income interest shall determine the amount of net income and net principal receipts received from property specifically given to a beneficiary under the rules in articles 3 through 5 that apply to trustees and the rules in paragraph (5). The fiduciary shall distribute the net income and net principal receipts to the beneficiary who is to receive the specific property.

(2) A fiduciary shall determine the remaining net income of a decedent's estate or a terminating income interest under the rules in articles 3 through 5 that apply to trustees and by:
   (A) Including in net income all income from property used to discharge liabilities;
   (B) Paying from income or principal, in the fiduciary's discretion: fees of attorneys, accountants, and fiduciaries; court costs and other expenses of administration; and interest on death taxes; provided that the fiduciary may pay those expenses from income of property passing to a trust for which the fiduciary claims an estate tax marital or charitable deduction only to the extent that the payment of those expenses from income will not cause the loss of the deduction; and
   (C) Paying from principal all other disbursements made or incurred in connection with the settlement of a decedent's estate or the winding up of a terminating income interest, including debts, funeral expenses, disposition of remains, family allowances, and death taxes and related penalties that are apportioned to the estate or terminating income interest by the will, the terms of the trust, or applicable law.

(3) A fiduciary shall distribute to a beneficiary who receives a pecuniary amount outright the interest or other amount, provided by the will, the terms of the trust, or applicable law, from net income determined under paragraph (2) or from principal to the extent that net income is insufficient. If a beneficiary is to receive a pecuniary amount outright from a trust after an income interest ends and no interest or other amount is provided for by the terms of the trust or applicable law, the fiduciary shall distribute the interest or other amount to which the beneficiary would be entitled under applicable law if the pecuniary amount were required to be paid under a will.

(4) A fiduciary shall distribute the net income remaining after distributions required by paragraph (3) in the manner described in section -202 to all other beneficiaries, including a beneficiary who receives a pecuniary amount in trust, even if the beneficiary holds an unqualified power

to withdraw assets from the trust or other presently exercisable general power of appointment over the trust.

(5) A fiduciary may not reduce principal or income receipts from property described in paragraph (1) because of a payment described in section -501 or -502 to the extent that the will, the terms of the trust, or applicable law requires the fiduciary to make the payment from assets other than the property or to the extent that the fiduciary recovers or expects to recover the payment from a third party. The property's net income and principal receipts are determined by including all of the amounts the fiduciary receives or pays with respect to the property, whether those amounts accrued or became due before, on, or after the date of a decedent's death or an income interest's terminating event, and by making a reasonable provision for amounts that the fiduciary believes the estate or terminating income interest may become obligated to pay after the property is distributed.

§ -202 **Distribution to residuary and remainder beneficiaries.** (a) Each beneficiary described in section -201(4) is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in undistributed principal assets, using values as of the distribution date. If a fiduciary makes more than one distribution of assets to beneficiaries to whom this section applies, each beneficiary, including one who does not receive part of the distribution, is entitled, as of each distribution date, to the net income the fiduciary has received after the date of death or terminating event or earlier distribution date but has not distributed as of the current distribution date.

(b) In determining a beneficiary's share of net income, the following rules apply:

(1) The beneficiary is entitled to receive a portion of the net income equal to the beneficiary's fractional interest in the undistributed principal assets immediately before the distribution date, including assets that later may be sold to meet principal obligations;

(2) The beneficiary's fractional interest in the undistributed principal assets shall be calculated without regard to property specifically given to a beneficiary and property required to pay pecuniary amounts not in trust;

(3) The beneficiary's fractional interest in the undistributed principal assets shall be calculated on the basis of the aggregate value of those assets as of the distribution date without reducing the value by any unpaid principal obligation; and

(4) The distribution date for purposes of this section may be the date as of which the fiduciary calculates the value of the assets if that date is reasonably near the date on which assets are actually distributed.

(c) The rules in this section apply to net gain or loss realized after the date of death or terminating event or earlier distribution date from the disposition of a principal asset if this section applies to the income from the asset.

(d) If a fiduciary does not distribute all of the collected but undistributed net income or gain to each person as of a distribution date, the fiduciary shall maintain appropriate records showing the interest of each beneficiary in that net income or gain.

## ARTICLE 3
## APPORTIONMENT AT BEGINNING AND END OF INCOME INTEREST

§ -301 **When right to income begins and ends.** (a) An income beneficiary is entitled to net income from the date on which the income interest begins. An income interest begins on the date specified in the terms of the trust or, if no date is specified, on the date an asset becomes subject to a trust or successive income interest.

(b) An asset becomes subject to a trust on the date:

(1) It is transferred to the trust in the case of an asset that is transferred to a trust during the transferor's life;

(2) Of a testator's death in the case of an asset that becomes subject to a trust by reason of a will, even if there is an intervening period of administration of the testator's estate; or

(3) Of an individual's death in the case of an asset that is transferred to a fiduciary by a third party because of the individual's death.

(c) An asset becomes subject to a successive income interest on the day after the preceding income interest ends, as determined under subsection (d), even if there is an intervening period of administration to wind up the preceding income interest.

(d) An income interest ends on the day before an income beneficiary dies or another terminating event occurs. For purposes of this chapter, an income interest also ends on the last day of a period during which there is no beneficiary to whom a trustee may distribute income.

§ -302 **Apportionment of receipts and disbursements when decedent dies or income interest begins.** (a) An income receipt or disbursement other than one to which section -201(1) applies shall be allocated to principal if its due date occurs before a decedent dies in the case of an estate or before an income interest begins in the case of a trust or successive income interest.

(b) An income receipt or disbursement shall be allocated to income if its due date occurs on or after the date on which a decedent dies or an income interest begins and it is a periodic due date. An income receipt or disbursement shall be treated as accruing from day to day if its due date is not periodic or it has no due date. The portion of the receipt or disbursement accruing before the date on which a decedent dies or an income interest begins shall be allocated to principal and the balance shall be allocated to income.

(c) An item of income or an obligation is due on the date on which the payor is required to make a payment. If there is no stated payment date, there is no due date for the purposes of this chapter. Distributions to shareholders or other owners from an entity to which section -401 applies are deemed to be due on the date fixed by the entity for determining who is entitled to receive the distribution or, if no date is fixed, on the declaration date for the distribution. A due date is periodic for receipts or disbursements that shall be paid at regular intervals under a lease or an obligation to pay interest or if an entity customarily makes distributions at regular intervals.

§ -303 **Apportionment when income interest ends.** (a) As used in this section, "undistributed income" means net income received before the date on which an income interest ends. The term does not include an item of income or expense that is due or accrued or net income that has been added or is required to be added to principal pursuant to the terms of the trust.

(b) When a mandatory income interest ends, the trustee shall pay to a mandatory income beneficiary who survives that date, or the estate of a deceased mandatory income beneficiary whose death causes the interest to end, the benefi-

ciary's share of the undistributed income that is not disposed of pursuant to the terms of the trust, unless the beneficiary has an unqualified power to revoke more than five per cent of the trust immediately before the income interest ends. In the latter case, the undistributed income from the portion of the trust that may be revoked shall be added to principal.

(c) When a trustee's obligation to pay a fixed annuity or a fixed fraction of the value of the trust's assets ends, the trustee shall prorate the final payment if and to the extent required by applicable law to accomplish a purpose of the trust or its settlor relating to income, gift, estate, or other tax requirements.

## ARTICLE 4
## ALLOCATION OF RECEIPTS DURING ADMINISTRATION OF TRUST
## PART I. RECEIPTS FROM ENTITIES

§ -401 **Character of receipts.** (a) As used in this section, "entity" means a corporation, partnership, joint venture, limited liability company, regulated investment company, real estate investment trust, common trust fund, and any other organization in which a trustee has an interest other than a trust or estate to which section -402 applies or a business or activity to which section -403 applies, or an asset backed security to which section -415 applies.

(b) Except as otherwise provided in this section, money received by a trustee from an entity shall be allocated to income.

(c) Receipts from an entity that shall be allocated to principal include:

(1) Property other than money;

(2) Money received in one distribution or a series of related distributions in exchange for part or all of a trust's interest in the entity;

(3) Money received in total or partial liquidation of the entity; and

(4) Money received from an entity that is a regulated investment company or a real estate investment trust if the money distributed is a capital gain dividend for federal income tax purposes.

(d) Money is received in partial liquidation:

(1) To the extent that the entity, at or near the time of a distribution, indicates that it is a distribution in partial liquidation; or

(2) If the total amount of money or property received in a distribution or series of related distributions is greater than twenty per cent of the entity's gross assets, as shown by the entity's year-end financial statements immediately preceding the initial receipt.

(e) Money shall not be received in partial liquidation, nor shall it be taken into account under subsection (d)(2), to the extent that it does not exceed the amount of income tax that a trustee or beneficiary is required to pay on taxable income of the entity that distributes the money.

(f) A trustee may rely upon a statement made by an entity about the source or character of a distribution if the statement is made at or near the time of distribution by the entity's board of directors or other person or group of persons authorized to exercise powers to pay money or transfer property comparable to those of a corporation's board of directors.

§ -402 **Distribution from trust or estate.** Subject to the terms of a recipient trust, an amount received as a distribution of income from a trust or an estate in which the trust has an interest other than a purchased interest shall be allocated to income. An amount received as a distribution of principal from such a trust or estate shall be allocated to principal. If a trustee purchases an interest in a

trust that is an investment entity, or a decedent or donor transfers an interest in such a trust to a trustee, section -401 or -415 shall apply to a receipt from the trust.

§ **-403 Business and other activities conducted by trustee.** (a) If a trustee who conducts a business or other activity determines that it is in the best interest of all the beneficiaries to account separately for the business or activity instead of accounting for it as part of the trust's general accounting records, the trustee may maintain separate accounting records for its transactions, whether or not its assets are segregated from other trust assets.

(b) A trustee who accounts separately for a business or other activity may determine the extent to which its net cash receipts shall be retained for working capital, the acquisition or replacement of fixed assets, or other reasonably foreseeable needs of the business or activity, and the extent to which the remaining net cash receipts are accounted for as principal or income in the trust's general accounting records. If a trustee sells assets of the business or other activity, other than in the ordinary course of the business or activity, the trustee shall account for the net amount received as principal in the trust's general accounting records to the extent the trustee determines that the amount received is no longer required in the conduct of the business.

(c) Activities for which the trustee may maintain separate accounting records include:

(1) Retail, manufacturing, service, and other traditional business activities;
(2) Farming;
(3) Raising and selling livestock and other animals;
(4) Management of rental properties;
(5) Extraction of minerals and other natural resources;
(6) Timber operations; and
(7) Activities to which section -415 applies.

## PART II. RECEIPTS NOT NORMALLY APPORTIONED

§ **-404 Principal receipts.** The following shall be allocated to principal:

(1) To the extent not allocated to income under this chapter, assets received from a:
   (A) Transferor during the transferor's lifetime;
   (B) Decedent's estate;
   (C) Trust with a terminating income interest; or
   (D) Payor pursuant to a contract naming the trust or its trustee as beneficiary;
(2) Money or other property received from the sale, exchange, liquidation, or change in form of a principal asset, including realized profit, subject to this article;
(3) Amounts recovered from third parties to reimburse the trust because of disbursements described in section -502(a)(7) or for other reasons to the extent not based on the loss of income;
(4) Proceeds of property taken by eminent domain, but a separate award made for the loss of income with respect to an accounting period during which a current income beneficiary had a mandatory income interest shall be classified as income;
(5) Net income received in an accounting period during which there is no beneficiary to whom a trustee may or shall distribute income; and
(6) Other receipts as provided in part III.

§ -405 **Rental property.** To the extent that a trustee accounts for receipts from rental property pursuant to this section, an amount received as rent of real or personal property, including an amount received for cancellation or renewal of a lease, shall be allocated to income. An amount received as a refundable deposit, including a security deposit or a deposit that is to be applied as rent for future periods, shall be added to principal and held subject to the terms of the lease and shall not be available for distribution to a beneficiary until the trustee's contractual obligations have been satisfied with respect to that amount.

§ -406 **Obligation to pay money.** (a) An amount received as interest, whether determined at a fixed, variable, or floating rate, on an obligation to pay money to the trustee, including an amount received as consideration for prepaying principal, shall be allocated to income without any provision for amortization of premium.

(b) An amount received from the sale, redemption, or other disposition of an obligation to pay money to the trustee more than one year after it is purchased or acquired by the trustee, including an obligation whose purchase price or value when it is acquired is less than its value at maturity, shall be allocated to principal. If the obligation matures within one year after it is purchased or acquired by the trustee, an amount received in excess of its purchase price or its value when acquired by the trust shall be allocated to income.

(c) This section shall not apply to obligations to which sections -409 through -412, -414, and -415 apply.

§ -407 **Insurance policies and similar contracts.** (a) Except as provided in subsection (b), proceeds from a life insurance policy or other contract whose beneficiary is the trust or its trustee, including a contract that insures the trust or its trustee against loss for the damage or destruction of, or loss of title to, a principal asset shall be allocated to principal. The trustee shall allocate dividends on an insurance policy to income if the premiums on the policy are paid from income, and to principal if the premiums are paid from principal. This section shall not apply to a contract to which section -409 applies.

(b) Insurance proceeds shall be allocated to income if they are from a policy that insures the trustee against the loss of occupancy or other use by an income beneficiary, the loss of income, or, subject to section -403, the loss of profits from a business.

## PART III. RECEIPTS NORMALLY APPORTIONED

§ -408 **Insubstantial allocations not required.** If a trustee determines that an allocation between principal and income required by sections -409 through -412 or section -425 is insubstantial, the trustee may allocate the entire amount to principal if one of the circumstances described in section -104(c) does not apply to such an allocation. This power may be exercised by a co-trustee in the circumstances described in section -104(d), and it may be released for the reasons and in the manner described in section -104(e). An allocation shall be presumed to be insubstantial if:

(1) The amount of the allocation would increase or decrease an accounting period's net income, as determined before the allocation, by less than ten per cent; or

(2) The value of the asset producing the receipt for which the allocation would be made is less than ten per cent of the total value of the trust's assets at the beginning of the accounting period.

§ -409 **Deferred compensation, annuities, and similar payments.** (a) This section shall apply to payments that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payor in exchange for future payments. The payments include those made in money or property from the payor's general assets or from a separate fund created by the payor, including a private or commercial annuity, an individual retirement account, and a pension, profit sharing, stock bonus, or stock ownership plan. This section shall not apply to payments to which section -410 applies.

(b) To the extent that a payment is characterized as interest or a dividend or a payment made in lieu of interest or a dividend, it shall be allocated to income. The balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment, shall be allocated to principal.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, and all or part of the payment is required to be made, a trustee shall allocate to income ten per cent of the part that is required to be made during the accounting period and the balance to principal. If no part of a payment is required to be made or the payment received is the entire amount to which the trustee is entitled, the entire payment shall be allocated to principal.

For purposes of this subsection, a payment shall not be ''required to be made'' to the extent that it is made because the trustee exercises a right of withdrawal.

(d) If, to obtain an estate tax marital deduction for a trust, a trustee shall allocate more of a payment to income than provided for by this section, the trustee shall allocate to income the additional amount necessary to obtain the marital deduction.

§ -410 **Liquidating asset.** (a) As used in this section, ''liquidating asset'' means an asset whose value will diminish or terminate because the asset is expected to produce receipts for a period of limited duration. The term includes leaseholds, patents, trademarks, copyrights, royalty rights, and rights to receive payments during a period of more than one year under an arrangement that does not provide for the payment of interest on the unpaid balance. The term does not include deferred compensation that is subject to section -409, natural resources that are subject to section -411, timber that is subject to section -412, an activity that is subject to section -414, an asset subject to section -415, or any asset for which the trustee establishes a reserve for depreciation under section -503.

(b) A trustee shall allocate to income ten per cent of the receipts from a liquidating asset and the balance to principal.

§ -411 **Minerals, water, and other natural resources.** (a) Receipts from an interest in minerals or other natural resources shall be allocated as follows:

(1) If received as nominal delay rental or nominal annual rent on a lease, a receipt shall be allocated to income.

(2) If received from a production payment, a receipt shall be allocated to income if and to the extent that the agreement creating the production payment provides a factor for interest or its equivalent. The balance shall be allocated to principal.

(3) If an amount received as a royalty, bonus, or delay rental is more than nominal, ninety per cent shall be allocated to principal and the balance to income.

(4) If an amount is received from a working interest or any other interest not provided for in paragraph (1), (2), or (3), ninety per cent of the net

amount received shall be allocated to principal and the balance to income.

(b) An amount received on account of an interest in water that is renewable shall be allocated to income. If the water is not renewable, ninety per cent of the amount shall be allocated to principal and the balance to income.

(c) This chapter applies without regard to whether a decedent or donor was extracting minerals, water, or other natural resources before the interest became subject to the trust.

(d) If a trust owns an interest in minerals, water, or other natural resources on the effective date of this chapter, the trustee may allocate receipts from the interest as provided in this section or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in minerals, water, or other natural resources after the effective date of this chapter, the trustee shall allocate receipts from the interest as provided in this section.

§ **-412 Timber.** (a) A trustee may account for net receipts from the sale of timber and related products under subsection (b), unless the trustee determines that net receipts are insubstantial and allocates the net receipts to principal under section -408. If a trust owns more than one block of timber land, the trustee may use different methods to account for net receipts from different blocks.

(b) If a trustee does not account under section -408 for net receipts from the sale of timber and related products or allocate the net receipts to principal because they are insubstantial, the trustee shall allocate the net receipts:

(1) To income to the extent that the amount of timber removed from the land does not exceed the rate of growth of the block as a whole during the accounting periods in which a beneficiary has a mandatory income interest;

(2) To principal to the extent that the amount of timber removed from the land exceeds the block's rate of growth or the net receipts are from the sale of standing timber;

(3) To or between income and principal if the net receipts are from the lease of timberland or from a contract to cut timber from land owned by a trust, by determining the amount of timber removed from the land under the lease or contract and applying the rules in paragraphs (1) and (2); or

(4) To principal to the extent that advance payments, bonuses, and other payments are not allocated pursuant to paragraph (1), (2), or (3).

(c) In determining the net receipts from the sale of timber, a trustee shall deduct and transfer to principal a reasonable amount for depletion.

(d) This chapter applies regardless of whether a decedent or transferor was harvesting timber from the property before it became subject to the trust.

(e) If a trust owns an interest in timberland on the effective date of this chapter, the trustee may allocate net receipts from the sale of timber and related products as provided in this section or in the manner used by the trustee before the effective date of this chapter. If the trust acquires an interest in timberland after the effective date of this chapter, the trustee shall allocate net receipts from the sale of timber and related products as provided in this section.

§ **-413 Property not productive of income.** (a) If a marital deduction is allowed for all or part of a trust whose assets consist substantially of property that does not provide the surviving spouse with sufficient income from or use of the trust assets, and if the amounts that the trustee transfers from principal to income under section -104 and distributes to the spouse from principal pursuant to the terms of the trust are insufficient to provide the spouse with the beneficial enjoyment required

to obtain the marital deduction, the spouse may require the trustee to make property productive of income, convert property within a reasonable time, or exercise the power conferred by section -104(a). The trustee may decide which action or combination of actions to take.

(b) In all other cases, proceeds from the sale or other disposition of an asset are principal without regard to the amount of income the asset produces during any accounting period.

§ **-414 Derivatives and options.** (a) As used in this section, "derivative" means a contract or financial instrument or a combination of contracts and financial instruments that gives a trust the right or obligation to participate in some or all changes in the price of a tangible or intangible asset or group of assets, or changes in a rate, an index of prices or rates, or other market indicator for an asset or a group of assets.

(b) To the extent that a trustee does not account under section -403 for transactions in derivatives, receipts from and disbursement made in connection with those transactions shall be allocated to principal.

(c) If a trustee grants an option to buy property from the trust, whether or not the trust owns the property when the option is granted, grants an option that permits another person to sell property to the trust, or acquires an option to buy property for the trust or an option to sell an asset owned by the trust, and the trustee or other owner of the asset is required to deliver the asset if the option is exercised, an amount received for granting the option shall be allocated to principal, and an amount paid to acquire the option shall be paid from principal. A gain or loss realized upon the exercise of an option, including an option granted to a settlor of the trust for services rendered, shall be allocated to principal.

§ **-415 Asset-backed securities.** (a) As used in this section, "asset-backed security" means an asset whose value is based upon the right it gives the owner to receive distributions from the proceeds of financial assets that provide collateral for the security. The term includes an asset that gives the owner the right to receive only the interest or other current return from the collateral financial assets or only the proceeds from the capital investment in the collateral financial assets. It does not include an asset to which section -401 or -409 applies.

(b) If a trust receives a payment from the interest or other current return and the capital investment of the collateral financial assets, the trustee shall allocate to income the portion of a payment that the payor identifies as being from the interest or other current return, and shall allocate the balance of the payment to principal.

(c) If a trust receives one or more payments in exchange for the trust's entire interest in an asset-backed security in one accounting period, the trustee shall allocate the payments to principal. If a payment is one of a series of payments that will result in the liquidation of the trust's interest in the security over more than one accounting period, the trustee shall allocate ten per cent of the payment to income and the balance to principal.

## ARTICLE 5
## ALLOCATION OF DISBURSEMENTS DURING ADMINISTRATION OF TRUST

§ **-501 Disbursements from income.** Unless otherwise governed by statutory fees or unless the instrument provides for it, trustee shall make the following disbursements from income to the extent that they are not disbursements to which section -201(2)(B) or (C) applies:

(1) One-half of the regular compensation of the trustee and of any person providing investment advisory or custodial services to the trustee;
(2) One-half of all expenses for accountings, judicial proceedings, or other matters that involve both the income and remainder interests;
(3) All of the other ordinary expenses incurred in connection with the administration, management, or preservation of trust property and the distribution of income, including interest, ordinary repairs, regularly recurring taxes assessed against principal, and expenses of a proceeding or other matter that concerns primarily the income interest; and
(4) Recurring premiums on insurance covering the loss of a principal asset or the loss of income from or use of the asset.

§ -502 **Disbursements from principal.** (a) Unless otherwise governed by statutory fees or unless the instrument provides for it, a trustee shall make the following disbursements from principal:
(1) The remaining one-half of the disbursements described in section -501(1) and (2);
(2) All of the trustee's compensation calculated on principal as an acceptance, distribution, or termination fee, and disbursements made to prepare property for sale;
(3) Payments on the principal of a trust debt;
(4) Expenses of a proceeding that concerns primarily principal, including a proceeding to construe the trust or to protect the trust or its property;
(5) Insurance premiums paid on a policy not described in section -501(4) of which the trust is the owner and beneficiary;
(6) Estate, inheritance, and other transfer taxes, including penalties, apportioned to the trust; and
(7) Disbursements related to environmental matters, including reclamation, assessing environmental conditions, remedying and removing environmental contamination, monitoring remedial activities and the release of substances, preventing future releases of substances, collecting amounts from persons liable or potentially liable for the costs of those activities, penalties imposed under environmental laws, rules, or regulations and other payments made to comply with those laws, rules, or regulations, statutory or common law claims by third parties, and defending claims based on environmental matters.

(b) If a principal asset is encumbered with an obligation that requires income from that asset to be paid directly to the creditor, the trustee shall transfer from principal to income an amount equal to the income paid to the creditor in reduction of the obligation's principal balance.

§ -503 **Transfers from income to principal for depreciation.** (a) As used in this section, ''depreciation'' means a reduction in value of a fixed asset having a useful life of more than one year, due to wear, tear, decay, corrosion, or gradual obsolescence.

(b) A trustee may transfer to principal a reasonable amount of the net cash receipts from a principal asset that is subject to depreciation, but a transfer may not be made for depreciation:
(1) Of that portion of real property used or available for use by a beneficiary as a residence or of tangible personal property held or made available for the personal use or enjoyment of a beneficiary;
(2) During the administration of a decedent's estate; or
(3) Under this section if the trustee is accounting under section -403 for the business or activity in which the asset is used.

(c) An amount transferred to principal need not be held as a separate fund.

§ -504 **Transfers from income to reimburse principal.** (a) If a trustee makes or expects to make a principal disbursement described in this section, the trustee may transfer an appropriate amount from income to principal in one or more accounting periods to reimburse principal or to provide a reserve for future principal disbursements.

(b) Principal disbursements to which subsection (a) applies include the following, but only to the extent that the trustee has not been and does not expect to be reimbursed by a third party:

(1) An amount chargeable to income but paid from principal because it is unusually large, including extraordinary repairs;

(2) A capital improvement to a principal asset, whether in the form of changes to an existing asset or the construction of a new asset, including special assessments;

(3) Disbursements made to prepare property for rental, including tenant allowances, leasehold improvements, and broker's commissions;

(4) Periodic payments on an obligation secured by a principal asset to the extent that the amount transferred from income to principal for depreciation is less than the periodic payments; and

(5) Disbursements described in section -502(a)(7).

(c) If the asset whose ownership gives rise to the disbursements becomes subject to a successive income interest after an income interest ends, a trustee may continue to transfer amounts from income to principal as provided in subsection (a).

§ -505 **Income taxes.** (a) A tax required to be paid by a trustee based on receipts allocated to income shall be paid from income.

(b) A tax required to be paid by a trustee based on receipts allocated to principal shall be paid from principal, even if the tax is called an income tax by the taxing authority.

(c) A tax required to be paid by a trustee on the trust's share of an entity's taxable income shall be paid proportionately from:

(1) Income to the extent that receipts from the entity are allocated to income; and

(2) Principal to the extent that:

(A) Receipts from the entity are allocated to principal; and

(B) The trust's share of the entity's taxable income exceeds the total receipts in paragraphs (1) and (2)(A).

(d) For purposes of this section, receipts allocated to principal or income shall be reduced by the amount distributed to a beneficiary from principal or income for which the trust receives a deduction in calculating the tax.

§ -506 **Adjustments between principal and income because of taxes.** (a) A fiduciary may make adjustments between principal and income to offset the shifting of economic interests or tax benefits between income beneficiaries and remainder beneficiaries that arise from:

(1) Elections and decisions, other than those described in subsection (b), that the fiduciary makes from time to time regarding tax matters;

(2) An income tax or any other tax that is imposed upon the fiduciary or a beneficiary as a result of a transaction involving or a distribution from the estate or trust; or

(3) The ownership by an estate or trust of an interest in an entity whose taxable income, whether or not distributed, is includable in the taxable income of the estate, trust, or a beneficiary.

(b) If the amount of an estate tax marital deduction or charitable contributions deduction is reduced because a fiduciary deducts an amount that is paid from principal for income tax purposes instead of deducting it for estate tax purposes, and as a result, estate taxes paid from principal are increased and income taxes paid by an estate, trust, or beneficiary are decreased, each estate, trust, or beneficiary that benefits from the decrease in income tax shall reimburse the principal from which the increase in estate tax is paid. The total reimbursement shall equal the increase in the estate tax to the extent that the principal used to pay the increase would have qualified for a marital deduction or charitable contributions deduction but for the payment. The proportionate share of the reimbursement for each estate, trust, or beneficiary whose income taxes are reduced shall be the same as its proportionate share of the total decrease in income tax. An estate or trust shall reimburse principal from income."

SECTION 2. Section 554A-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A trustee has the power, subject to subsections (a) and (b):

(1) To collect, hold, and retain trust assets received from a trustor until, in the judgment of the trustee, disposition of the assets should be made;

(2) To receive additions to the assets of the trust;

(3) To continue or participate in the operation of any business or other enterprise, and to effect incorporation, dissolution, or other change in the form of the organization of the business or enterprise;

(4) To invest and reinvest trust assets in accordance with the provisions of the trust or as provided by law;

(5) To deposit trust funds in a bank;

(6) To acquire or dispose of an asset, for cash or on credit, at public or private sale; and to manage, develop, improve, exchange, partition, change the character of, or abandon a trust asset or any interest therein; and to encumber, mortgage, or pledge a trust asset for a term within or extending beyond the term of the trust, in connection with the exercise of any power vested in the trustee;

(7) To make ordinary or extraordinary repairs or alterations in buildings or other structures, to demolish any improvements, or[1] to raze existing or erect new party walls or buildings;

(8) To subdivide, develop, or dedicate land to public use; or to make or obtain the vacation of plats and adjust boundaries; or to adjust differences in valuation on exchange or partition by giving or receiving consideration; or to dedicate easements to public use without consideration;

(9) To enter for any purpose into a lease as lessor or lessee with or without option to purchase or renew for a term within or extending beyond the term of the trust;

(10) To enter into a lease or arrangement for exploration and removal of minerals or other natural resources or enter into a pooling or unitization agreement;

(11) To grant an option involving disposition of a trust asset or to take an option for the acquisition of any asset;

(12) To vote a security, in person or by general or limited proxy;

(13) To pay calls, assessments, and any other sums chargeable or accruing against or on account of securities;

(14) To sell or exercise stock subscription or conversion rights; to consent, directly or through a committee or other agent, to the reorganization,

consolidation, merger, dissolution, or liquidation of a corporation or other business enterprise;

(15) To hold a security in the name of a nominee or in other form without disclosure of the trust, so that title to the security may pass by delivery, but the trustee is liable for any act of the nominee in connection with the stock so held;

(16) To insure the assets of the trust against damage or loss, and the trustee against liability with respect to third persons;

(17) To borrow money to be repaid from trust assets or otherwise; to advance money for the protection of the trust, and for all expenses, losses, and liabilities sustained in the administration of the trust or because of the holding or ownership of any trust assets, for which advances with any interest the trustee has a lien on the trust assets as against the beneficiary;

(18) To pay or contest any claim; to settle a claim by or against the trust by compromise, arbitration, or otherwise; and to release, in whole or in part, any claim belonging to the trust to the extent that the claim is uncollectible;

(19) To pay taxes, assessments, compensation of the trustee, and other expenses incurred in the collection, care, administration, and protection of the trust;

(20) To allocate items of income or expense to either trust income or principal, as provided by chapter [557, the Revised] ___, the Uniform Principal and Income Act, including creation of reserves out of income for depreciation, obsolescence, or amortization, or for depletion in mineral or timber properties;

(21) To pay any sum distributable to a beneficiary under legal disability, without liability to the trustee, by paying the sum to the beneficiary or by paying the sum for the use of the beneficiary either to a legal representative appointed by the court, or if none, to a relative;

(22) To effect distribution of money and property (that may be made in kind on a pro rata or non-pro rata basis), in divided or undivided interests, and to adjust resulting differences in valuation;

(23) To employ persons, including attorneys, auditors, investment advisors, or agents, even if they are associated with the trustee, to advise or assist the trustee in performance of the trustee's administrative duties; to act without independent investigation upon their recommendations; and instead of acting personally, to employ one or more agents to perform any act of administration, whether or not discretionary;

(24) To prosecute or defend actions, claims, or proceedings for the protection of trust assets and of the trustee in the performance of trustee duties; and

(25) To execute and deliver all instruments [which] that will accomplish or facilitate the exercise of the powers vested in the trustee."

SECTION 3. Chapter 557, Hawaii Revised Statutes, is repealed.

SECTION 4. This Act applies to every trust or decedent's estate as of the beginning of an accounting period of the trust or estate following the effective date of this Act, except as otherwise expressly provided in the will, terms of the trust, or in 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, 2000.

(Approved June 8, 2000.)

**Note**

1. "Or" should be underscored.

## ACT 192 S.B. NO. 2741

A Bill for an Act Relating to the State Water Code.

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

SECTION 1. The purpose of this Act is to extend the time provided for in Act 101, Session Laws of Hawaii 1998, to submit the state agricultural water use and development plan.

SECTION 2. Act 101, Session Laws of Hawaii 1998, is amended by amending section 4 to read as follows:

"SECTION 4. The chairperson of the board of agriculture shall submit the state agricultural water use and development plan as defined in section 174C-31, Hawaii Revised Statutes, to the legislature no later than twenty days prior to the convening of the regular session of [2000.] 2002."

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

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

(Approved June 8, 2000.)

## ACT 193 S.B. NO. 2745

A Bill for an Act Relating to Aquaculture.

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

SECTION 1. Chapter 141, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"**§141- Fees for aquaculture services.** The department of agriculture may establish and assess fees pursuant to chapter 91 for:

(1) Aquatic animal and plant health diagnostic services; and
(2) Any items or expert services purchased from the department related to aquaculture planning, disease management, and the marketing of seafood products;

provided that the assessment of these fees does not violate any other provision of this chapter.

**§141- Aquaculture development special fund.** (a) There is established in the state treasury the aquaculture development special fund into which shall be deposited:

(1) Appropriations from the legislature;
(2) Moneys collected as fees for special microbiological and histological procedures and expert aquaculture-related services;
(3) Moneys collected from the sale of any item related to aquaculture development that is purchased from the department;
(4) Moneys directed to the aquaculture development program from any other sources, including but not limited to grants, gifts, and awards; and
(5) Moneys derived from interest, dividend, or other income from the above sources.

(b) Moneys in the aquaculture development special fund shall be used to:
(1) Implement the aquatic disease management programs and activities of the department, including provision of state funds to match federal grants; and
(2) Support research and development programs and activities relating to the expansion of the state aquaculture industry. Research and development programs and activities funded under this paragraph may be conducted by department personnel or through contracts with the University of Hawaii or other qualified persons."

SECTION 2. There is appropriated out of the aquaculture development special fund the sum of $30,000 or so much thereof as may be necessary for fiscal year 2000-2001 to carry out the purposes of the aquaculture development special fund.

SECTION 3. The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 4. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect on July 1, 2000.

(Approved June 8, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 194 S.B. NO. 2758

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Section 571-52, Hawaii Revised Statutes, is amended to read as follows:

"**§571-52 Assignment by court order of future income for payments of support.** (a) Whenever any person 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, and fails or refuses to obey or perform the order[,] and has been adjudged guilty of contempt of court for such failure or refusal, the court may make an order [which] that shall operate as an assignment by the person for the benefit of the child or spouse, of such amounts at such times as may be specified in the order, from any income due or to become due in the future to such person from the person's employer or successor employers, until further order of the court.

The assignment of the amounts shall be to the clerk of the court where the order is entered if for the support or maintenance of a spouse or former spouse, or to the child support enforcement agency if for the support[, maintenance, or education] of a child or if child support and spouse support are contained in the same order. The order of assignment to the child support enforcement agency shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency. The order of assignment shall be effective immediately after service upon an employer of a true copy of the order, which service may be effected by [certified or registered] regular mail [or], by personal delivery[.], or by transmission through electronic means.

Thereafter, the employer shall for each pay period withhold from any income due to the person from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the clerk of the court or child support enforcement agency as set forth in the order, as much as may remain payable to the person for such pay period up to the amount specified in the order of assignment as being payable during the same period. The person ordered to pay shall inform the court immediately of any change [which] that would affect the order of assignment or the disbursement thereof.

Compliance by an employer with the order of assignment shall operate as a discharge of the employer's liability to the employee for that portion of the employee's income withheld and transmitted to the clerk of court or child support enforcement agency, as the case may be, whether or not the employer has withheld the correct amount.

[The term "employer" as used in this section includes the United States government, the State, any political subdivision thereof and any person who is or shall become obligated to the obligor for payment of income.]

(b) Notwithstanding [the provisions][1] of subsection (a)[,] to the contrary, whenever a court has ordered any person (hereinafter "obligor") to make periodic payments toward the support of a child [and], upon petition of the person to whom such payments are ordered to be made[,] or that person's assignee, and the court finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of payments [which] that would become due over a one-month period under the order, judgment, or decree providing for child support, the court shall order an assignment of future income, or a portion thereof, of the obligor in an amount adequate to insure that past due payments and payments [which] that will become due in the future under the terms of the support order will be paid. Such an order shall operate as an assignment by the obligor to the 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.

For each payment made pursuant to an assignment order, the person making such payment may deduct and retain as an administrative fee the additional amount of $2 from the income owed to the obligor. Any assignment made pursuant to an assignment order shall have priority as against any garnishment, attachment, execution, or other assignment order, or any other order unless otherwise ordered by the court and the same shall not be subject to any of the exemptions or restrictions contained in part III of chapter 651, and chapters 652 and 653.

For purposes of this subsection, delinquencies in payments shall be computed on the basis of the moneys owed and unpaid on the date that the obligor under the support order has been given notice pursuant to law of the application for the order of assignment[, and the]. The fact that the obligor may have subsequently paid such delinquencies shall not relieve the court of its duty under this subsection to order the assignment.

(c) An employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding.

[(c)] (d) It shall be unlawful for any employer to refuse to hire a prospective employee, to discharge an employee, or to take any other disciplinary action against an employee, based in whole or part[,] upon an assignment authorized by this section. Any employer violating this section shall be guilty of a misdemeanor under section 710-1077(1)(g).

[(d) Notwithstanding any other provision of law, for purposes of this section, the term "income" shall include without limitation,]

(e) As used in this section:

"Employer" includes the United States Government, the State, any political subdivision thereof, and any person who is or shall become obligated to the obligor for payment of income.

"Income" includes salaries, wages, earnings, workers' compensation, disability benefits, commissions, independent contractor income, and any other entitlement to money including moneys payable as a pension [or as an], annuity [or], retirement [or], disability [or], death, or other benefit, or as a return of contributions and interest [thereon] from the United States government, [or from] the State, or other political subdivision thereof, or from any retirement, disability, or annuity system established by any of them pursuant to statute."

SECTION 2. Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(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 copy of the assignment order. The order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency.

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. An employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding. 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."

SECTION 3. Section 576B-101, Hawaii Revised Statutes, is amended by amending the definition of "income withholding order" to read as follows:

""'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, and 576D-14, to withhold support from the income of the obligor."

SECTION 4. Section 576B-501, Hawaii Revised Statutes, is amended to read as follows:

"[[]§576B-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, and 576E-16, without first filing a petition or comparable pleading or registering the order with a tribunal of this State."

SECTION 5. Section 576D-14, Hawaii Revised Statutes, is amended to read as follows:

"**§576D-14 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 towards the delinquency. The income withholding order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency. The order shall be served upon the employer by [certified] regular mail [or], by personal [service,] delivery, or [transmitted] by transmission 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] that 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 by regular mail 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 a 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[,] pursuant to the notice provided under subsection (e), 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).

(i) In a case being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the agency may terminate income withholding by sending a notice to the employer by regular mail or transmission by electronic means. The notice shall be issued upon determination by the agency that the obligor no longer owes the child support or that the obligation is being satisfied through withholding by another employer."

SECTION 6. Section 576E-16, Hawaii Revised Statutes, is amended as follows:

(1) By amending subsections (a) and (b) to read:

"(a) Whenever an administrative order is entered establishing, modifying, or enforcing support, establishing an arrearage that has accrued under a previous judicial or administrative order for support, or establishing a public assistance debt, there shall concurrently be issued an order [which] that shall operate as an assignment to the agency for the benefit of the child or in the case of spousal support, for the benefit of a spouse or former spouse, of such amounts at such times as may be specified in the order, from the responsible parent's income due or to become due in the future from the responsible parent's employer, or successor employers, [until further court or administrative order;] except when alternative arrangements are ordered pursuant to section 576D-10. The income withholding order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency. A copy of the income withholding order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued along with the copy of the support order as provided in section 576E-12.

(b) The income withholding order issued pursuant to subsection (a) or section 576D-14 shall be effective immediately after service upon an employer of a copy of the order, which service may be effected by [certified or registered] regular mail, 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."

2. By amending subsection (d) to read:

"(d) An income withholding order shall remain in effect until terminated when appropriate by court or administrative order[.], except that an employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding. Payment by the responsible parent of any delinquency shall not in and of itself warrant termination of the income withholding

order. The agency shall promptly refund any amount withheld in error to the responsible parent.''

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 8, 2000.)

**Note**

1. ''The provisions'' should not be bracketed.

## ACT 195 S.B. NO. 2781

A Bill for an Act Relating to Taxation.

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

SECTION 1. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235- Hotel construction and 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 construction or renovation costs incurred during the taxable year for each qualified hotel facility located in Hawaii, and shall not include the construction or renovation costs for which another credit was claimed under this chapter for the taxable year.

In the case of a partnership, S corporation, estate, trust, association of apartment owners of a qualified hotel facility, time share owners association, or any developer of a time share project, the tax credit allowable is for construction or 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, no tax credit shall be allowed for that portion of the construction or renovation cost for which the deduction is taken.

The basis of eligible property for depreciation or accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.

(b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year.

(c) 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 credits allowed by this section shall be made for amounts less than $1. All claims for a tax credit 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.

(d) The director of taxation shall prepare any forms that 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.

(e) The tax credit allowed under this section shall be available for taxable years beginning after December 31, 1998, and shall not be available for taxable years beginning after December 31, 2002.

(f) To qualify for the income tax credit, the taxpayer shall be in compliance with all applicable federal, state, and county statutes, rules, and regulations.

(g) As used in this section:

"Construction or renovation cost" means any costs incurred after December 31, 1998, for plans, design, construction, and equipment related to new construction, alterations, or modifications to a qualified hotel facility.

"Net income tax liability" means income tax liability reduced by all other credits allowed under this chapter.

"Qualified hotel facility" means a hotel/hotel-condo as defined in section 486K-1, and includes a time share facility or project.

"Taxpayer" means a taxpayer under this chapter, and includes:

(1) Association of apartment owners; or

(2) Time share owners association;

(h) No taxpayer that claims a credit under this section shall claim a credit under chapter 235D."

SECTION 2. Chapter 237, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§237- Call centers; exemption; engaging in business; definitions.** (a) This chapter shall not apply to amounts received from a person operating a call center by a person engaged in business as a telecommunications common carrier for interstate or foreign telecommunications services, including toll-free telecommunications, telecommunications capabilities for electronic mail, voice, and data telecommunications, computerized telephone support, facsimile, wide area telecommunications services, or computer-to-computer communication.

(b) The establishment of a call center in this State by any person shall not be used by itself by the State to find that any other part of the person's business is engaged in business in this State for the purposes of this chapter. Gross income or gross proceeds received by a call center for customer service and support shall be exempt from the measure of taxes imposed by this chapter.

(c) The department, by rule, may provide that the person providing the telecommunications service may take from the person operating a call center a certificate, in a form that the department shall prescribe, certifying that the amounts received for telecommunications services are for operating a call center. If the certificate is required by rule of the department, the absence of the certificate in itself shall give rise to the presumption that the amounts received from the sale of telecommunications services are not for operating a call center.

(d) As used in this section:

"Call center" means a physical or electronic operation that focuses on providing customer service and support for computer hardware and software companies, manufacturing companies, software service organizations, and telecommunications support services, within an organization in which a managed group of individuals spend most of their time engaging in business by telephone, usually working in a

computer-automated environment; provided that the operation shall not include telemarketing or sales.

"Customer service and support" means product support, technical assistance, sales support, phone or computer-based configuration assistance, software upgrade help lines, and traditional help desk services.

"Telecommunications common carrier" means any person that owns, operates, manages, or controls any facility used to furnish telecommunications services for profit to the public, or to classes of users as to be effectively available to the public, engaged in the provision of services, such as voice, data, image, graphics, and video services, that make use of all or part of their transmission facilities, switches, broadcast equipment, signalling, or control devices.

"Telecommunications service" or "telecommunications" means the offering of transmission between or among points specified by a user, of information of the user's choosing, including voice, data, image, graphics, and video without change in the form or content of the information, as sent and received, by means of electromagnetic transmission, or other similarly capable means of transmission, with or without benefit of any closed transmission medium.

(e) This section shall not apply to gross proceeds or gross income received after June 30, 2010."

SECTION 3. Chapter 239, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§239- Call centers; exemption; engaging in business; definitions.** (a) This chapter shall not apply to amounts received from a person operating a call center by a person engaged in business as a telecommunications common carrier for interstate or foreign telecommunications services, including toll-free telecommunications, telecommunications capabilities for electronic mail, voice and data telecommunications, computerized telephone support, facsimile, wide area telecommunications services, or computer to computer communication.

(b) The department, by rule, may provide that the person providing the telecommunications service may take from the person operating a call center a certificate, in a form that the department shall prescribe, certifying that the amounts received for telecommunications services are for operating a call center. If the certificate is required by rule of the department, the absence of the certificate in itself shall give rise to the presumption that the amounts received from the sale of telecommunications services are not for operating a call center.

(c) As used in this section:

"Call center" means a physical or electronic operation that focuses on providing customer service and support for computer hardware and software companies, manufacturing companies, software service organizations, and telecommunications support services, within an organization in which a managed group of individuals spend most of their time engaging in business by telephone, usually working in a computer-automated environment; provided that the operation shall not include telemarketing or sales.

"Customer service and support" means product support, technical assistance, sales support, phone or computer-based configuration assistance, software upgrade help lines, and traditional help desk services.

(d) This section shall not apply to income received after June 30, 2010."

SECTION 4. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect upon approval; provided that:

(1) Section 1 shall apply to taxable years beginning after December 31, 1998;
(2) Section 2 shall apply to gross income or gross proceeds received after June 30, 2000; and
(3) Section 3 shall apply to the entire gross income received by a public service company for the fiscal year preceding July 1, 2001; provided that in the case of a public service company operating on a calendar year, this Act shall apply to the entire gross income received for the calendar year in which July 1, 2001, occurs and for fiscal years thereafter.

(Approved June 8, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 196 S.B. NO. 2870

A Bill for an Act Relating to Safe Drinking Water.

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

SECTION 1. Chapter 340F, Hawaii Revised Statutes, is amended by amending the title to read as follows:

"**[[]CHAPTER 340F[]]**
**HAWAII LAW FOR MANDATORY CERTIFICATION OF [OPERATING PERSONNEL IN WATER TREATMENT PLANTS] PUBLIC WATER SYSTEM OPERATORS**"

SECTION 2. Section 340F-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read as follows:

"'Public water system" has the same meaning as in section 340E-1."

2. By amending the definition of "operator" to read:

"'Operator" means any individual who operates a [water treatment plant,] public water system or a major segment of a public water system such as a water treatment plant[.] or distribution system."

3. By amending the definition of "supervisor" to read:

"'Supervisor" means, where shift operation is not required, any individual who has direct responsibility for the operation of a [water treatment plant] public water system or who supervises operators of such a [plant.] system. Where shift operation is required, "supervisor" means any individual who has direct responsibility for active daily [on-site] onsite technical and administrative supervision, and active daily [on-site] onsite charge of an operating shift, or a major segment of a [water treatment plant.] public water system."

4. By repealing the definition of "water treatment plant":

["'Water treatment plant" means the various facilities used in the treatment of water, including source, treatment, storage, and distribution, serving a public water system."]

SECTION 3. Section 340F-2, Hawaii Revised Statutes, is amended to read as follows:

"[[]§340F-2[]] **Classification.** The board shall classify all public water systems, water treatment plants[.], and distribution systems, and shall define the terms "water treatment plant" and "distribution system". The [classification] classifications shall take due regard to size, complexity, and type of the water treatment facility[,] or distribution system, character of water to be treated[,] or distributed, and other physical conditions affecting such water treatment plants[,] and distribution systems, and the skill, knowledge, and experience required of an operator."

SECTION 4. Section 340F-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Upon board approval the director shall issue certificates entitling qualified individuals to operate water treatment plants[.] or distribution systems, or both. Each certificate shall indicate the class of water treatment plant or distribution system for which the individual is qualified."

SECTION 5. Section 340F-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A state board of certification of five members shall be appointed by the governor to carry out this chapter. The board shall be placed, for administrative purposes, in the department of health. The board shall consist of the following:

(1) Four individuals who shall be duly qualified in the fields of sanitary engineering or [drinking water treatment plant] public water system operation[.]; and
(2) One individual from the state agency responsible for the State's safe drinking water program."

SECTION 6. Section 340F-6, Hawaii Revised Statutes, is amended to read as follows:

"[[]§340F-6[]] **Certification requirement.** All classified water treatment plants whether publicly or privately owned, used, or intended for use by the public or private persons, shall at all times be under the direct supervision of an individual whose competency is certified to by the director in a classification corresponding to the classification of the water treatment plant to be supervised. All classified distribution systems, whether publicly or privately owned, used, or intended for use by the public or private persons, shall at all times be under the supervision of an individual whose competency is certified to by the director in a classification corresponding to the classification of the distribution system to be supervised."

SECTION 7. Section 340F-7, Hawaii Revised Statutes, is amended to read as follows:

"[[]§340F-7[] **Regulations.**] **Rules.** The board shall adopt [such] rules [and regulations] as may be necessary for the administration of this chapter, [and] which shall include at least the following provisions:

(1) The basis for classification of water treatment plants and distribution systems as required by section 340F-2;
(2) Criteria for the qualification of applicants for operator certification corresponding to each of the classifications referred to in paragraph (1);
(3) Procedures for examination of candidates and renewal of certificates; and
(4) Procedures for the revocation of certificates."

SECTION 8. Section 340F-8, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§340F-8[]] Prohibited acts.** It shall be unlawful:

(1) For any [water treatment plant] public water system, or major segment of a public water system such as a water treatment plant or distribution system, to be operated unless the operator is duly certified under this chapter; and

(2) For any individual to perform the duties of an operator without being duly certified under this chapter."

SECTION 9. No person shall be held in violation of the requirements of section 340F-6, Hawaii Revised Statutes, that distribution systems be supervised by a certified operator, and section 340F-8, Hawaii Revised Statutes, that distribution systems which are part of a public water system be operated by a certified operator, until the date specified in rules adopted under section 340F-7, Hawaii Revised Statutes, to classify distributions systems and provide for certification of their operators.

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

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

(Approved June 8, 2000.)

## ACT 197

S.B. NO. 2905

A Bill for an Act Relating to Employment Security.

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

SECTION 1. 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,] 2003, 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:

(1) .05 per cent of taxable wages for 2000;

(2) .03 per cent of taxable wages for 2001; and

(3) .01 per cent of taxable wages for 2002;

as specified in section 383-61.

For 2003 and all subsequent years, there shall be no employment and training fund assessments."

SECTION 2. The auditor shall conduct an audit of the employment and training fund, established by section 383-128, Hawaii Revised Statutes, and shall report the findings and recommendations at least twenty days prior to the convening of the regular session of 2001. The audit shall include but not be limited to an assessment of:

(1) The programs for which expenditures from the fund have been made;
(2) The nexus between the revenue sources and expenditures;
(3) The moratorium on employer assessments from 1997 through 1998;
(4) The characterization of the fund as a special fund or a trust fund; and
(5) The feasibility and merit of levying a nominal training charge.

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

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

(Approved June 8, 2000.)

## ACT 198 S.B. NO. 2945

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 237-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) "Wholesaler" or "jobber" applies only to a person making sales at wholesale. Only the following are sales at wholesale:

(1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;
(2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;
(3) Sales to a licensed producer or cooperative association of materials or commodities that are to be incorporated by the producer or by the cooperative association into a finished or saleable product that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities that are sold by the producer or by the cooperative association;
(4) Sales to a licensed contractor, of materials or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in such finished work or project in such form as to be perceptible to the senses;
(5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; provided that in the

case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

(6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);

(7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of seedlings and cuttings for producing nursery plants; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);

(8) Sales of tangible personal property:

(A) To a licensed seller engaged in a service business or calling; provided that:

(i) The property is not consumed or incidental to the performance of the services;

(ii) There is a resale of the article at the retail rate of four per cent; and

(iii) The resale of the article is separately charged or billed by the person rendering the services; [and]

(B) Where:

(i) Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling, or upon the order or request of a person[,] subject to tax under section 237D-2[,] for the purpose of furnishing transient accommodations;

(ii) The tangible personal property becomes or is used as an identifiable element of the service rendered; and

(iii) The cost of the tangible personal property does not constitute overhead to the licensed seller;

the sale shall be subject to section 237-13.3[.]; or

(C) Where the taxpayer is subject to both subparagraphs (A) and (B), then the taxpayer shall be taxed under subparagraph (A). [Subparagraph] Subparagraphs (A) and (C) shall be repealed on January 1, 2006[.];

(9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;

(10) Sales of services to a licensed seller engaging in a business or calling whenever:

(A) Either:

(i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;

(ii) In the context of a [service-to-goods] service-to-tangible personal property transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, or preparing[, or acquiring] tangible personal property to be sold;

(iii) In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor [in executing a contract]; or

(iv) In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;

(B) The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations; [and]

(C) The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations[.];

(D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, contractor, or person furnishing transient accommodations for imposition of the tax under this chapter;

(E) The gross income of the licensed seller is not subject to a deduction under this chapter or chapter 237D; and

(F) The resale of the service, tangible personal property, contracting, or transient accommodations is subject to the tax imposed under this chapter at the highest tax rate.

Sales subject to this paragraph shall be subject to section 237-13.3;

(11) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments that are provided to customers by the licensed retail merchant, jobber, or other licensed seller; [and]

(12) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller[.]; and

(13) Sales of amusements subject to taxation under section 237-13(4) to a licensed seller engaging in a business or calling whenever:

(A) Either:

(i) In the context of an amusement-to-service transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;

(ii) In the context of an amusement-to-tangible personal property transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of selling tangible personal property; or

(iii) In the context of an amusement-to-amusement transaction, an amusement is rendered upon the order or request of a licensed seller for the purpose of rendering another amusement in the course of the person's amusement business;

(B) The benefit of the amusement passes to the customer of the licensed seller as an identifiable element of the other service, tangible personal property to be sold, or amusement;

(C) The cost of the amusement does not constitute overhead to the licensed seller;

(D) The gross income of the licensed seller is not divided between the licensed seller and another licensed seller, person furnishing transient accommodations, or person rendering an amusement for imposition of the tax under chapter 237;

(E) The gross income of the licensed seller is not subject to a deduction under this chapter; and

(F) The resale of the service, tangible personal property, or amusement is subject to the tax imposed under this chapter at the highest rate.

As used in this paragraph, "amusement" means entertainment provided as part of a show for which there is an admission charge. Sales subject to this paragraph shall be subject to section 237-13.3."

SECTION 2. Section 237-6, Hawaii Revised Statutes, is amended to read as follows:

**"§237-6 "Contractor", "contracting", "federal cost-plus contractor", defined.** "Contracting" means the business activities of a contractor.

"Contractor" includes, for purposes of this chapter:

(1) Every person engaging in the business of contracting to erect, construct, repair, or improve buildings or structures, of any kind or description, including any portion thereof, or to make any installation therein, or to make, construct, repair, or improve any highway, road, street, sidewalk, ditch, excavation, fill, bridge, shaft, well, culvert, sewer, water system, drainage system, dredging or harbor improvement project, electric or steam rail, lighting or power system, transmission line, tower, dock, wharf, or other improvements;

(2) Every person engaging in the practice of architecture, professional engineering, land surveying, and landscape architecture, as defined in section 464-1; and

(3) Every person engaged in the practice of pest control or fumigation as a pest control operator as defined in section 460J-1.

"Federal cost-plus contractor" means a contractor having a contract with the United States or an instrumentality thereof, excluding national banks, where, by the

terms of the contract, the United States or such instrumentality, excluding national banks, agrees to reimburse the contractor for the cost of material, plant, or equipment used in the performance of the contract and for taxes which the contractor may be required to pay with respect to such material, plant, or equipment, whether the contractor's profit is computed in the form of a fixed fee or on a percentage basis; and also means a subcontractor under such a contract, who also operates on a cost-plus basis."

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 to points outside 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 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 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; and

(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 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 [and]; provided that insofar as the [sales] sale of tangible personal property is a wholesale sale under section 237-4(a)(8)(B), the sale shall be subject to section 237-13.3. 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, 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.

(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] provided 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 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 require that a seller take from the purchaser of tangible personal property a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any purchaser who furnishes a certificate shall be obligated to pay to the seller, upon demand, the amount of the additional tax that is imposed upon the seller whenever the sale in fact is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the sales of the business are exclusively 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; 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;

[but] provided that any person claiming a deduction under this paragraph shall be required to show in the person's return the name and general excise number of the person paying the tax on the amount deducted by the person.

(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 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 the person intended, and for the period of at least one year after completion of the building, structure, or other improvements the person continued to intend 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 that 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 (9); provided that insofar as the business of renting or leasing real property under a lease is taxed under section 237-16.5, the tax shall be levied by section 237-16.5.

(4) Tax upon theaters, amusements, radio broadcasting stations, etc.

(A) 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[.], and in the case of a sale of an amusement at wholesale under section 237-4(a)(13), the tax shall be subject to section 237-13.3.

(B) The department may require that the person rendering an amusement at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the amusement, upon demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering the amusement at wholesale.

(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.

(A) Upon every person engaging or continuing within the State in any service business or calling including professional services 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 the business, and in the case of a wholesaler under section 237-4(a)(10), the tax shall be equal to one-half of one per cent of the gross income of the business. [Sales subject to this subparagraph] Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.

(B) The department[, by rule,] may require that the person rendering a service at wholesale take from the licensed seller a certificate, in a form prescribed by the department, certifying that the sale is a sale at wholesale; provided that:

(i) Any licensed seller who furnishes a certificate shall be obligated to pay to the person rendering the service, upon

demand, the amount of additional tax that is imposed upon the seller whenever the sale is not at wholesale; and

(ii) The absence of a certificate in itself shall give rise to the presumption that the sale is not at wholesale unless the person rendering the sale is exclusively rendering services at wholesale.

(C) Where any person engaging or continuing within the State in any service business or calling renders 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 those services and the ultimate recipient of the benefits of 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. Where the taxpayer is subject to both this subparagraph and to the lowest tax rate under subparagraph (A), the taxpayer shall be taxed under this subparagraph. This subparagraph shall be repealed on January 1, 2006.

(D) 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 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, 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 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 that activity.

(8) 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 a producer in the form of a benefit payment shall be paid by the person or persons to whom the amount is actually disbursed, and the producer actually making 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.

(9) 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. Section 237-13.3, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

"**[[]§237-13.3[]] Application of sections 237-4(a)(8), 237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A).** (a) Sections 237-4(a)(8), 237-4(a)(10), 237-4(a)(13), 237-13(2)(A), 237-13(4)(A), and 237-13(6)(A) to the contrary notwithstanding, instead of the tax levied under [sections 237-4 and] section 237-13(2)(A) on wholesale sales subject to section 237-4(a)(8)(B), under section 237-13(4)(A) on a wholesaler subject to section 237-4(a)(13), and under section 237-13(6)(A) on a wholesaler subject to section 237-4(a)(10) at one-half of one per cent, during the period January 1, 2000, to December 31, 2005, the tax shall be as follows:

(1) In calendar year 2000, 3.5 per cent;
(2) In calendar year 2001, 3.0 per cent;
(3) In calendar year 2002, 2.5 per cent;
(4) In calendar year 2003, 2.0 per cent;
(5) In calendar year 2004, 1.5 per cent;
(6) In calendar year 2005, 1.0 per cent; and
(7) In calendar year 2006 and thereafter, the tax shall be 0.5 per cent."

SECTION 5. Section 237-16, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) This section shall not apply to:

(1) Sales of tangible personal property treated as a wholesale sale under section 237-4(a)(8)(B) to a licensed seller engaged in a service business or calling or a licensed person furnishing transient accommodations; or
(2) Sales of services treated as a wholesale sale under section 237-4(a)(10) to a licensed seller engaged in a service business or calling, a licensed contractor as defined in section 237-6, or a licensed person furnishing transient accommodations."

SECTION 6. Section 237-29.53, Hawaii Revised Statutes, is amended to read as follows:

"**§237-29.53 Exemption for contracting or services exported out of State.** (a) There shall be exempted from, and excluded from the measure of, taxes imposed by this chapter, all of the value or gross income derived from contracting (as defined under section 237-6) or services performed by a person engaged in a service business or calling in the State for [a customer located] use outside the State where:

(1) The contracting or services are for resale, consumption, or use outside the State; and

(2) The value or gross income derived from the contracting or services performed would otherwise be subject to the tax imposed under this chapter on contracting or services at the highest rate.

For the purposes of this subsection, the seller or person rendering the contracting or services exported and resold, consumed, or used outside the State shall take from the customer, a certificate or an equivalent, in a form the department prescribes, certifying that the contracting or service purchased is to be otherwise resold, consumed, or used outside the State. Any customer who furnishes this certificate or an equivalent shall be obligated to pay the seller or person rendering the contracting or services, upon demand, if the contracting or service 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 or person rendering the contracting or service.

(b) There shall be exempted from, and excluded from the measure of, taxes imposed by this chapter, all of the value or gross income derived from contracting (as defined in section 237-6) or services performed by a person engaged in a service business or calling in the State for a purchaser who resells all of the contracting or services for resale, consumption, or use outside the State pursuant to subsection (a). For the purposes of this subsection, the seller or person rendering the contracting or services for a purchaser who resells the contracting or services for resale, consumption, or use outside the State shall take from the purchaser, a certificate or an equivalent, in a form that the department prescribes, certifying that the contracting or services purchased is to be [resold to a customer of the purchaser who has complied with] for resale, consumption, or use outside the State pursuant to subsection (a). Any purchaser who furnishes this certificate or an equivalent shall be obligated to pay the seller or person rendering the contracting or services, upon demand, if the contracting or services purchased is not resold in its entirety to a customer of the purchaser who has complied with subsection (a), the amount of the additional tax which by reason thereof is imposed upon the seller or the person rendering the contracting or service.

[(c) For purposes of this section, ''service business or calling'' includes all activities engaged in for other persons for a consideration that involve the rendering of a service as distinguished from the sale of tangible personal property or the production and sale of tangible personal property. ''Service business or calling'' includes professional services, but does not include service rendered by an employee to the employee's employer.]''

SECTION 7. Section 238-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definitions of ''price'', ''purchase'' and ''sale'', ''purchaser'', ''representation'', ''seller'', and ''use'' to read:

''''Price'' means the total amount for which tangible personal property [or], services, or contracting are purchased, valued in money, whether paid in money or otherwise, and wheresoever paid; provided that cash discounts allowed and taken on sales shall not be included.

''Purchase'' and ''sale'' means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means, wheresoever consummated, of tangible personal property [or], services, or contracting for a consideration.

''Purchaser'' means any person purchasing property [or], services, or contracting and ''importer'' means any person importing property [or], services[;], or contracting; provided that the terms ''purchaser'' and ''importer'' shall not include the State, its political subdivisions, or wholly owned agencies or instrumentalities of the State or a political subdivision; or the United States, its wholly owned agencies or instrumentalities, or any person immune from the tax imposed by this chapter

under the Constitution and laws of the United States but the terms shall include national banks.

"Representation" refers to any or all of the following:

(1) A seller being present in the State;

(2) A seller having in the State a salesperson, commission agent, manufacturer's representative, broker, or other person who is authorized or employed by the seller to assist the seller in selling property [or], services, or contracting for use or consumption in the State, by procuring orders for the sales, making collections or deliveries, or otherwise; and

(3) A seller having in the State a person upon whom process directed to the seller from the courts of the State may be served, including the director of commerce and consumer affairs and the deputy director in the cases provided in section 415-14.

"Seller" means any person engaged in the business of selling tangible personal property [or], services, or contracting, wheresoever engaged, but does not include the United States or its wholly owned agencies or instrumentalities other than national banks, the State or a political subdivision thereof, or wholly owned agencies or instrumentalities of the State or a political subdivision.

"Use" (and any nounal, verbal, adjectival, 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 [or], services, or contracting to be appreciably consumed or not, or the keeping of the property or services for such use or for sale, and shall include the exercise of any right or power over tangible or intangible 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]. 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; and

(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;

(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 237-24.9; [and]

(9) The use of services or contracting imported for resale [to a foreign customer located outside the State to the extent the services are resold, consumed, or used by that foreign customer] where the contracting or services are for resale, consumption, or use outside the State pursuant to section 237-29.53(a)[.]; and

(10) The use of contracting imported or purchased by a contractor as defined in section 237-6 who is:
(A) Licensed under chapter 237;
(B) Engaged in business as a contractor; and
(C) Subject to the tax imposed under section 238-2.3.

With regard to purchases made and distributed under the authority of chapter 421, a cooperative association shall be deemed the user thereof."

2. By repealing the definition of "foreign customer".

["""Foreign customer" means a nonresident person who:
(1) Is not subject to chapter 237;
(2) Has not been physically present in the State for more than thirty days in the six months prior to entering into a written exported contracting or services agreement with a person licensed under chapter 237 engaged in contracting (as defined in section 237-6) or a service business or calling; and
(3) Is the sole recipient of the exported contracting or services provided through a person in Hawaii engaged in contracting or a service business or calling and licensed under chapter 237."]

SECTION 8. Section 238-2, Hawaii Revised Statutes, is amended to read as follows:

"**§238-2 Imposition of tax; exemptions.** There is hereby levied an excise tax on the use in this State of tangible personal property which is imported, or purchased from an unlicensed seller, for use in this State. The tax imposed by this chapter shall accrue when the property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions thereof are as follows:

(1) If the importer or purchaser is licensed under chapter 237 and is:
(A) A wholesaler or jobber importing or purchasing for purposes of resale; or

(B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold in such manner as to result in a further tax on the activity of the manufacturer as the manufacturer or as a wholesaler, and not as a retailer,

there shall be no tax; provided that if the wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 237), paragraph (2) shall apply to the wholesaler, jobber, or manufacturer, but the director of taxation shall refund to the wholesaler, jobber, or manufacturer, in the manner provided under section 231-23(c) such amount of tax as the wholesaler, jobber, or manufacturer shall, to the satisfaction of the director, establish to have been paid by the wholesaler, jobber, or manufacturer to the director with respect to property which has been used by the wholesaler, jobber, or manufacturer for the purposes stated in this paragraph;

(2) If the importer or purchaser is licensed under chapter 237 and is:

(A) A retailer or other person importing or purchasing for purposes of resale, not exempted by paragraph (1);

(B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold at retail in this State, in such manner as to result in a further tax on the activity of the manufacturer in selling such products at retail;

(C) A contractor importing or purchasing material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses; or

(D) A person engaged in a service business or calling as defined in section 237-7, or a person furnishing transient accommodations subject to the tax imposed by section 237D-2, in which the import or purchase of tangible personal property would have qualified as a sale at wholesale as defined in section 237-4(a)(8) had the seller of the property been subject to the tax in chapter 237, the tax shall be one-half of one per cent of the purchase price of the property, if the purchase and sale are consummated in Hawaii; or, if there is no purchase price applicable thereto, or if the purchase [or a person furnishing transient accommodations subject to the tax imposed by section 237D-2,] or sale is consummated outside of Hawaii, then one-half of one per cent of the value of such property;

and

(3) In all other cases, four per cent of the value of the property.''

SECTION 9. Section 238-2.3, Hawaii Revised Statutes, is amended to read as follows:

"§238-2.3[1] **Imposition of tax on imported services; exemptions.** There is hereby levied an excise tax on the value of services or contracting as defined in section 237-6 that are performed by an unlicensed seller at a point outside the State and imported or purchased for use in this State. The tax imposed by this chapter shall accrue when the service or contracting as defined in section 237-6 is received by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions from the tax are as follows:

(1) If the importer or purchaser is licensed under chapter 237 and is:
   (A) Engaged in a service business or calling in which the imported or purchased services or contracting become identifiable elements, excluding overhead, of the services rendered[,] by the importer or purchaser, and the gross income of the importer or purchaser is subject to the tax imposed under chapter 237 on services at the rate of one-half of one per cent[;] or the rate of tax imposed under section 237-13.3; or
   (B) A manufacturer importing or purchasing services or contracting that become identifiable elements, excluding overhead, of a finished or saleable product (including the container or package in which the product is contained) and the finished or saleable product is to be sold in a manner that results in a further tax on the activity of the manufacturer as a wholesaler, and not a retailer;

   there shall be no tax imposed on the value of the imported or purchased services[;] or contracting; provided that if the manufacturer is also engaged in business as a retailer as classified under chapter 237, paragraph (2) shall apply to the manufacturer, but the director of taxation shall refund to the manufacturer, in the manner provided under section 231-23(c), that amount of tax that the manufacturer, to the satisfaction of the director, shall establish to have been paid by the manufacturer to the director with respect to services that have been used by the manufacturer for the purposes stated in this paragraph.

(2) If the importer or purchaser is a person licensed under chapter 237 and is:
   (A) Engaged in a service business or calling in which the imported or purchased services or contracting become identifiable elements, excluding overhead, of the services rendered[,] by the importer or purchaser, and the gross income from those services when sold by the importer or purchaser is subject to the tax imposed under chapter 237 at the highest rate; [or]
   (B) A manufacturer importing or purchasing services or contracting that become identifiable elements, excluding overhead, of the finished or saleable manufactured product (including the container or package in which the product is contained) and the finished or saleable product is to be sold in a manner that results in a further tax under chapter 237 on the activity of the manufacturer as a retailer; or
   (C) A contractor importing or purchasing services or contracting that become identifiable elements, excluding overhead, of the finished work or project required, under the contract, and where the gross proceeds derived by the contractor are subject to the tax under section 237-13(3) or 237-16 as a contractor[;],

   the tax shall be one-half of one per cent of the value of the imported or purchased services[.] or contracting; and

(3) In all other cases, the importer or purchaser is subject to the tax at the rate of four per cent on the value of the imported or purchased services[.] or contracting."

SECTION 10. Section 238-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a), (b), (c), and (d) to read:

"(a) The tax imposed by this chapter shall not apply to any property [or], services, or contracting or to any use of the property [or], services, or contracting [which] that cannot legally be so taxed under the Constitution or laws of the United States, but only so long as, and only to the extent to which the State is without power to impose the tax.

To the extent that any exemption, exclusion, or apportionment is necessary to comply with the preceding sentence, the director of taxation shall:

(1) Exempt or exclude from the tax under this chapter, property, services, or contracting or the use of property, services, or contracting exempted under chapter 237; or

(2) Apportion the gross value of services or contracting sold to customers within the State by persons engaged in business both within and without the State to determine the value of that portion of the services or contracting that is subject to taxation under chapter 237 for the purposes of section 237-21.

Any provision of law to the contrary notwithstanding, exemptions or exclusions from tax under this chapter allowed on or before April 1, 1978, under the provisions of the Constitution of the United States or an act of the Congress of the United States to persons or common carriers engaged in interstate or foreign commerce, or both, whether ocean-going or air, shall continue undiminished and be available thereafter.

(b) The tax imposed by this chapter shall not apply to any use of property [or], services, or contracting the transfer of which property [or], services, or contracting to, or the acquisition of which by, the person so using the same, has actually been or actually is taxed under chapter 237.

(c) The tax imposed by this chapter shall be paid only once upon or in respect of the same property [or], services[;], or contracting; provided that nothing in this chapter contained shall be construed to exempt any property [or], services, or contracting, or the use thereof from taxation under any other law of the State.

(d) The tax imposed by this chapter shall be in addition to any other taxes imposed by any other laws of the State, except as otherwise specifically provided herein; provided that if it be finally held by any court of competent jurisdiction, that the tax imposed by this chapter may not legally be imposed in addition to any other tax or taxes imposed by any other law or laws with respect to the same property [or], services, or contracting, or the use thereof, then this chapter shall be deemed not to apply to the property [or], services, or contracting, [and] or the use thereof under such specific circumstances, but such other laws shall be given full effect with respect to the property [or], services, or contracting, [and] or use."

2. By amending subsections (i) and (j) to read:

"(i) Each taxpayer liable for the tax imposed by this chapter on tangible personal property [or], services, or contracting shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by the taxpayer with respect to the same transaction and property [or], services, or contracting to another state and any subdivision thereof, but such credit shall not exceed the amount of the use tax imposed under this chapter on account of the transaction and property [or], services[.], or contracting. The director of taxation may require the taxpayer to produce the necessary receipts or vouchers indicating the payment of the

sales or use tax to another state or subdivision as a condition for the allowance of the credit.

(j) The tax imposed by this chapter shall not apply to any use of property [or], services, or contracting exempted by section 237-26 or section 237-29."

SECTION 11. Section 238-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) On or before the last day of each calendar month, any person who has become liable for the payment of a tax under this chapter during the preceding calendar month in respect of any property [or], services, or contracting, or the use thereof, shall file a return with the assessor of the taxation district in which the property was held or the services or contracting were received when the tax first became payable, or with the director of taxation at Honolulu, setting forth a description of the property [or], services, or contracting and the character and quantity thereof in sufficient detail to identify the same or otherwise in such reasonable detail as the director by rule shall require, and the purchase price or value thereof as the case may be. The return shall be accompanied by a remittance in full of the tax, computed at the rate specified in section 238-2 or 238-2.3 upon the price or value so returned. Any tax remaining unpaid after the last day following the end of the calendar month during which the tax first became payable shall become delinquent; provided that a receipt from a seller required or authorized to collect the tax, given to a taxpayer in accordance with section 238-6, shall be sufficient to relieve the taxpayer from further liability for the tax to which the receipt may refer, or for the return thereof."

SECTION 12. Section 238-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For purposes of the taxes due under sections 238-2(3), 238-2.5, and 238-2.3, every seller having in the State, regularly or intermittently, any property, tangible or intangible, any place of business, or any representation as hereinabove defined, (and irrespective of the seller's having or not having qualified to do business in the State) shall, if the seller makes sales of property [or], services, or contracting for use in the State (whether or not the sales are made in the State), collect from the purchaser the taxes imposed by sections 238-2(3), 238-2.5, and 238-2.3, on the use of the property [or], services, or contracting so sold by the seller. The collection shall be made within twenty days after the accrual of the tax or within such other period as shall be fixed by the director of taxation upon the application of the seller, and the seller shall give to the purchaser a receipt therefor in the manner and form prescribed by the director; provided that this subsection shall not apply to vehicles registered under section 286-50."

SECTION 13. Section 238-9, Hawaii Revised Statutes, is amended to read as follows:

"**§238-9 Records.** Every person who is engaged in any business in the State and who is required under this chapter to make returns, shall keep in the English language in the State and preserve for a period of three years, books of account or other records in sufficient detail to enable the director of taxation, as far as reasonably practicable, to determine whether or not any taxes imposed by this chapter are payable in respect of the property [or], services, or contracting concerned, and if so payable, the amount thereof."

SECTION 14. Section 239-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding subsection (a), the rate of tax upon the portion of the gross income of [a]:

(1) A public utility [which] that consists of the receipts from the sale of its products or services to another public utility [which] that resells such products or services shall be one-half of one per cent[,]; or

(2) A public utility engaged in the business of selling telecommunication services to a person defined in section 237-13(6)(D) who resells such products or services, shall be as follows:

(A) In calendar year 2000, 5.5 per cent;

(B) In calendar year 2001, 5.0 per cent;

(C) In calendar year 2002, 4.5 per cent;

(D) In calendar year 2003, 4.0 per cent;

(E) In calendar year 2004, 3.5 per cent;

(F) In calendar year 2005, 3.0 per cent;

(G) In calendar year 2006, 2.5 per cent; and

(H) In calendar year 2007, and thereafter, 0.5 per cent;

provided that the resale of the products, services, or telecommunication services is subject to taxation under this section[,] or subject to taxation at the highest rate under section 237-13(6); and provided further that the public utility's exemption from real property taxes imposed by chapter 246 shall be reduced by the proportion that its public utility gross income described herein bears to its total public utility gross income. Whenever the public utility has other public utility gross income, the gross income from the sale of its products or services to another public utility or a person subject to section 237-13(6)(D) shall be included in applying subsection (a) in determining the rate of tax upon the other public utility gross income. The department shall have the authority to implement the tax rate changes in paragraph (2) by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability with due regard to the tax rate changes."

SECTION 15. Section 239-6, Hawaii Revised Statutes, is amended to read as follows:

"**§239-6 Airlines, certain carriers.** (a) There shall be levied and assessed upon each airline a tax of four per cent of its gross income each year from the airline business; provided that if an airline adopts a rate schedule for students in grade twelve or below traveling in school groups providing such students at reasonable hours a rate less than one-half of the regular adult fare, the tax shall be three per cent of its gross income each year from the airline business.

(b) There shall be levied and assessed upon each motor carrier, each common carrier by water, and upon each contract carrier other than a motor carrier, a tax of four per cent of its gross income each year from the motor carrier or contract carrier business.

(c) The tax imposed by this section is a means of taxing the personal property of the airline or other carrier, tangible and intangible, including going concern value, and is in lieu of the tax imposed by chapter 237 but is not in lieu of any other tax.

(d) Notwithstanding subsections (a), (b), and (c), the rate of tax upon the portion of the gross income of a motor carrier which consists of the receipts from the sale of its products or services to a contractor shall be as follows:

(1) In calendar year 2000, 3.5 per cent;

(2) In calendar year 2001, 3.0 per cent;

(3) In calendar year 2002, 2.5 per cent;

(4) In calendar year 2003, 2.0 per cent;

(5) In calendar year 2004, 1.5 per cent;

(6) In calendar year 2005, 1.0 per cent; and

(7) In calendar year 2006, and thereafter, 0.5 per cent;

provided that there is a resale of the products or services and the resale by the contractor is subject to taxation at the highest rate under section 237-13 or 237-16; the gross income of the motor carrier is not divided as provided in the definition of "gross income" in section 239-2 for the tax imposed under this chapter or chapter 237; and the gross income of the motor carrier from the sale of its products or services to the contractor is not subject to a deduction under chapter 237 by the contractor; and in the case of services provided by the motor carrier, the benefit of the service passes to the customer of the contractor as an identifiable element of the contracting or service provided by the contractor and does not constitute overhead as defined in section 237-1.

The department shall have the authority to implement the tax rate changes in paragraphs (1) through (7) by prescribing tax forms and instructions that require tax reporting and payment by deduction, allocation, or any other method to determine tax liability with due regard to the tax rate changes.

For purposes of this subsection, "contractor" has the same meaning as defined in section 237-6."

SECTION 16. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 17. This Act, upon its approval, shall apply to gross income or gross proceeds received after December 31, 1999; provided that:

(1) Sections 7 through 13 shall apply to taxes accruing after December 31, 1999; and

(2) Sections 14 and 15 shall take effect on January 1, 2001, so that the amendments made by sections 14 and 15 shall apply to the entire gross income received by a public service company for the calendar year preceding January 1, 2001, and for the calendar years thereafter. In the case of a public service company operating on a fiscal year basis, the amendments made by sections 14 and 15 shall apply to the entire gross income received for the fiscal year in which January 1, 2001, occurs and for fiscal years thereafter.

(Approved June 8, 2000.)

**Note**

1. So in original.

## ACT 199

S.B. NO. 2946

A Bill for an Act Relating to Taxation Appeals.

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

SECTION 1. Section 232-24, Hawaii Revised Statutes, is amended to read as follows:

"**§232-24 Taxes paid pending appeal.** The tax paid upon the amount of any assessment, actually in dispute and in excess of that admitted by the taxpayer, and covered by an appeal to the tax appeal court duly taken, shall, pending the final determination of the appeal, be paid by the director of finance into the "litigated claims fund". If the final determination is in whole or in part in favor of the

appealing taxpayer, the director of finance shall repay to the taxpayer out of the fund, or if investment of the fund should result in a deficit therein, out of the general fund of the State, the amount of the tax paid upon the amount held by the court to have been excessive or nontaxable, together with interest at the rate of eight per cent a year from the date of each payment into the litigated claims fund, the interest to be paid from the general fund of the State. The balance, if any, of the payment made by the appealing taxpayer, or the whole of the payment, in case the decision is wholly in favor of the assessor, shall, upon the final determination become a realization under the tax law concerned.

In a case of an appeal to a board of review, the tax paid, if any, upon the amount of the assessment actually in dispute and in excess of that admitted by the taxpayer, shall during the pendency of the appeal and until and unless an appeal is taken to the tax appeal court, be held by the director of finance in a special deposit. In the event of final determination of the appeal in the board of review, the director of finance shall repay to the appealing taxpayer out of the deposit the amount of the tax paid upon the amount held by the board to have been excessive or nontaxable, if any, the balance, if any, or the whole of the deposit, in case the decision is wholly in favor of the assessor, to become a realization under the tax law concerned."

SECTION 2. Section 235-114, Hawaii Revised Statutes, is amended to read as follows:

"**§235-114 Appeals.** Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment in the manner and within the time hereinafter set forth[; provided the tax so assessed shall have been paid]. Appeal may be made either to the district board of review or to the tax appeal court[.]; provided that, for appeals other than to the board, the tax so assessed shall have been paid. Either the taxpayer or the assessor may appeal to the tax court from a decision by the board upon which the tax so assessed shall have been paid. If the taxpayer chose not to pay the tax when appealing to the board, and the decision by the board is appealed by the taxpayer or the decision by the board in favor of the department is not appealed, the taxpayer must pay the tax so assessed plus interest as provided in section 231-39(b)(4).

If the appeal is first made to the board, the appeal shall either be heard by the board or be transferred to the tax appeal court for hearing at the election of the taxpayer or employer. If heard by the board, an appeal shall lie from the decision thereof to the tax appeal court and to the supreme court in the manner and with the costs provided by chapter 232. The supreme court shall prescribe forms to be used in the appeals. The forms shall show the amount of taxes or liability upon the basis of the taxpayer's computation of the taxpayer's taxable income or the employer's computation of the employer's liability, the amount upon the basis of the assessor's computation, the amount upon the basis of the decisions of the board of review and tax appeal court, if any, and the amount in dispute. If or when the appeal is filed with or transferred to the tax appeal court, the court shall proceed to hear and determine the appeal, subject to appeal to the supreme court as is provided in chapter 232.

Any taxpayer or employer appealing from any assessment of income taxes or liability shall lodge with the assessor or assistant assessor a notice of the appeal in writing, stating the ground of the taxpayer's or employer's objection to the additional assessment or any part thereof. The taxpayer or employer shall also file the notice of appeal with the board or the tax appeal court at any time within thirty days subsequent to the date when the notice of assessment was mailed properly addressed to the taxpayer or employer at the taxpayer's or employer's last known residence or place of business. Except as otherwise provided, the manner of taking the appeal, the costs applicable thereto, and the hearing and disposition thereof, including the

distribution of costs and of taxes paid by the taxpayer pending the appeal, shall be as provided in chapter 232.

The [board or the] tax appeal court may allow an individual taxpayer to file an appeal without payment of the net income tax in cases where the total tax liability does not exceed $50,000 in the aggregate for all tax years, upon proof that the taxpayer would be irreparably injured by payment of the tax."

SECTION 3. Section 237-42, Hawaii Revised Statutes, is amended to read as follows:

"**§237-42 Appeals.** Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114, provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid."

SECTION 4. Section 237D-11, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§237D-11[]] Appeals.** Any person aggrieved by any assessment of the tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid."

SECTION 5. Section 238-8, Hawaii Revised Statutes, is amended to read as follows:

"**§238-8 Appeal, correction of assessment.** If any person having made the return and paid the tax as provided by this chapter feels aggrieved by the assessment so made upon the person by the director of taxation, the person may, provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid, appeal the assessment in the manner and within the time and in all other respects as provided in section 235-114, for which purpose the word "income" shall be deemed to refer to purchase price or value, as the case may be. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232."

SECTION 6. Section 243-14.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§243-14.5[]] Appeals.** Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232."

SECTION 7. Section 244D-12, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§244D-12[]] Appeals.** Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and

within the time and in all other respects as provided in the case of income tax appeals by section 235-114, provided that[1], for appeals other than to the district board of review, the taxes[2] so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232."

SECTION 8. Section 245-10, Hawaii Revised Statutes, is amended to read as follows:

"**§245-10 Appeals.** Any person aggrieved by any assessment of the taxes imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided that, for appeals other than to the district board of review, the taxes so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232."

SECTION 9. Section 247-4.5, Hawaii Revised Statutes, is amended to read as follows:

"**[]§247-4.5[] Appeals.** Any person aggrieved by any assessment of the tax imposed by this chapter may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided that, for appeals other than to the district board of review, the tax so assessed shall have been paid. The hearing and disposition of the appeal, including the distribution of costs and of taxes paid pending the appeal, shall be as provided in chapter 232."

SECTION 10. Section 251-10, Hawaii Revised Statutes, is amended to read as follows:

"**[]§251-10[] Appeals.** Any person aggrieved by any assessment of the surcharge tax for any month or any year may appeal from the assessment in the manner and within the time and in all other respects as provided in the case of income tax appeals by section 235-114; provided that, for appeals other than to the district board of review, the surcharge tax so assessed shall have been paid."

SECTION 11. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved June 8, 2000.)

**Notes**

1. "That" should be underscored.
2. Prior to amendment "tax" appeared here.

# ACT 200

S.B. NO. 3079

A Bill for an Act Relating to Criminal Trespass in the First Degree.

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

SECTION 1. Section 708-813, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of criminal trespass in the first degree if:

(a) That person knowingly enters or remains unlawfully:
  (i) In a dwelling; or
  (ii) In or upon the premises of a hotel or apartment building;

(b) That person:
  (i) Knowingly enters or remains unlawfully in or upon premises that are fenced or enclosed in a manner designed to exclude intruders; and
  (ii) Is in possession of a firearm, as defined in section 134-1, at the time of the intrusion; or

(c) That person enters or remains unlawfully in or upon the premises of any public school as defined in section [302A-501,] 302A-101, or any private school, after reasonable warning or request to leave by school authorities or a police officer[.]; provided however, such warning or request to leave shall be unnecessary between 10:00 p.m. and 5:00 a.m."

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 8, 2000.)

# ACT 201

S.B. NO. 3179

A Bill for an Act Relating to Tobacco.

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

SECTION 1. Chapter 245, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"**PART . EXPORT AND FOREIGN CIGARETTES**

**§245-A Sale of export cigarettes prohibited.** It shall be unlawful for a person to sell or distribute in the State; to acquire, hold, own, possess, or transport for sale or distribution in the State, or to import or cause to be imported into the State for sale or distribution in the State any of the following cigarettes:

(1) The package of which bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to

be sold, distributed, or used in the United States, including but not limited to labels stating "for export only", "U.S. tax-exempt", for "use outside U.S.", or similar wording;

(2) The package of which does not comply with all requirements imposed by federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the specific warning labels specified in the federal Cigarette Labeling and Advertising Act, title 15 U.S.C. section 1333;

(3) The package of which does not comply with all federal trademark and copyright laws;

(4) Imported into the United States on or after January 1, 2000, in violation of title 26 U.S.C. section 5754 or any other federal law or regulation;

(5) For which the person otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States; or

(6) For which there has not been submitted to the Secretary of the United States Department of Health and Human Services the list of the ingredients added to tobacco in the manufacture of such cigarettes required by the federal Cigarette Labeling and Advertising Act, title 15 U.S.C. section 1335a.

**§245-B Alteration of packaging prohibited.** It shall be unlawful for any person to alter the package of any cigarettes, prior to sale or distribution to remove, conceal, or obscure:

(1) Any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "for export only", "U.S. tax-exempt", "for use outside U.S.", or similar wording; or

(2) Any health warning that is not specified in or does not conform with the requirements of the federal Cigarette Labeling and Advertising Act, title 15 U.S.C. section 1333.

**§245-C Criminal penalties for illegal sale of export or foreign cigarettes.** Any person who knowingly violates section 245-A or 245-B shall be guilty of a class C felony, and upon conviction thereof, shall be fined not more than $10,000, and may be imprisoned not less than one year and not more than five years, or both.

**§245-D Confiscation and seizure of illegal sale or export of foreign cigarettes.** The attorney general and the police departments of each of the counties may seize and confiscate any cigarette, package of cigarettes, or carton of cigarettes that is possessed, kept, stored, or retained for the purpose of sale, or sold or offered for sale in violation of this part.

**§245-E Forfeiture.** The forfeiture of any cigarette, package of cigarettes, or carton of cigarettes unlawfully possessed, or kept, stored, or retained for the purpose of sale, or sold or offered for sale, in violation of this part, may be enforced pursuant to chapter 712A by an appropriate administrative or judicial proceeding. Any cigarette, package of cigarettes, or carton of cigarettes forfeited as provided in this section shall be ordered destroyed.

**§245-F Affixing of cigarette tax stamps to export cigarettes or altered packages prohibited.** It shall be unlawful for any person to affix any cigarette tax

stamp required under this chapter to the package of any cigarettes described in section 245-A or altered in violation of section 245-B.

**§245-G Documentation of foreign cigarettes.** On the first business day of each month, each licensee shall file the following documents with the department and the attorney general for all cigarettes imported into the United States to which the licensee or licensee's agent has affixed a cigarette tax stamp in the preceding month:

(1) A copy of a permit issued pursuant to the Internal Revenue Code, title 26 U.S.C. section 5713, to the person importing the cigarettes into the United States, permitting the person to import the cigarettes;

(2) A copy of the United States Customs Service form containing, with respect to the cigarettes, the internal revenue tax information required by the United States Bureau of Alcohol, Tobacco and Firearms;

(3) A statement, signed by the licensee under penalty of perjury, that shall be treated as confidential by the department and shall be exempt from disclosure under chapter 92F, identifying:
   (A) The brand and brand styles of all cigarettes;
   (B) The quantity of each brand style of the cigarettes;
   (C) The supplier of the cigarettes; and
   (D) The person or persons, if any, to whom the cigarettes have been conveyed for resale; and

(4) A statement, signed under penalty of perjury by an officer of the manufacturer or importer of the cigarettes, certifying that the manufacturer or importer has complied with:
   (A) The package health warning and ingredient reporting requirements of the Federal Cigarette Labeling and Advertising Act, title 15 U.S.C. sections 1333 and 1335a, with respect to the cigarettes; and
   (B) Chapter 675, including a statement of whether the manufacturer is or is not a participating manufacturer within the meaning of section 675-3.

**§245-H Illegal sale of export or foreign cigarettes; revocation or suspension of license; civil penalties.** If any licensee violates this part or any rule adopted pursuant to this part, the director may:

(1) Revoke or suspend the licensee's license pursuant to procedures complying with chapter 91; and

(2) Impose a civil penalty in an amount not to exceed the greater of five times the retail value of the cigarettes involved, or $5,000.

**§245-I Unfair trade practices.** Any violation of this part shall constitute an unfair method of competition and unfair and deceptive acts or practices in the conduct of any trade of commerce under section 480-2 and shall be subject to a civil penalty as provided in section 480-3.1. Each package of cigarettes sold in violation of this part shall constitute a separate violation.

**§245-J Deceptive cigarette sales.** The importation or reimportation of cigarettes into the United States for sale or distribution under any trade name, trade dress, or trademark that is the same as, or is confusingly similar to, any trade name, trade dress, or trademark used for cigarettes manufactured in the United States for sale or distribution in the United States shall be deemed to violate section 481A-3.

**§245-K Enforcement.** (a) Enforcement of this part shall be under the concurrent jurisdiction of the attorney general, the prosecuting attorneys or deputy prosecuting attorneys of the various counties, and the police departments of the various counties.

(b) In addition to any other remedy provided by law, including enforcement as provided in subsection (a), any person may bring an action for appropriate injunctive or other equitable relief for a violation of this part and for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than $1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit.

**§245-L Applicability.** This part shall not apply to:

(1) Cigarettes allowed to be imported or brought into the United States for personal use free of federal tax or duty or voluntarily abandoned to the United States Secretary of Treasury at the time of entry; or

(2) Cigarettes sold or intended to be sold as duty-free merchandise by a duty-free sales enterprise in accordance with the provisions of title 19 U.S.C. section 1555(b) and any implementing regulations; provided that this part shall apply to any such cigarettes that are brought back into the customs territory for resale within the customs territory.

**§245-M Penalties cumulative.** The penalties provided in this part are in addition to any other penalties imposed under other law."

SECTION 2. Section 712-1257, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

"(4) Any person who violates subsection (1), shall be fined not more than $2,500 for the first offense. Any subsequent offense shall subject the person to a fine of not less than $100 and not more than $5,000. Any person who knowingly violates subsection (1) shall be guilty of a class C felony."

SECTION 3. In codifying the new part added to chapter 245, Hawaii Revised Statutes, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act shall take effect on July 1, 2000, only if Senate Bill No. 2486,[1] in any form passed by the legislature, Regular Session of 2000, becomes an Act.

(Approved June 8, 2000.)

**Note**

1. Act 249.

## ACT 202 H.B. NO. 2492

A Bill for an Act Relating to Education.

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

SECTION 1. Section 37-41.5, Hawaii Revised Statutes, is amended to read as follows:

"**§37-41.5 Department of education; carryover of funds.** (a) The department of education may retain up to five per cent of any appropriation, except for appropriations to fund financing agreements entered into in accordance with chapter 37D, for the school-based budgeting program EDN 100 and for the comprehensive school support services program EDN 150 at the close of a fiscal year and the funds retained shall not lapse until June 30 of the first fiscal year of the next fiscal biennium. The department of education shall submit:

(1) A report to the director of finance[, by] ninety days after the close of [the first] each fiscal year, which shall be prepared in the form prescribed by the director of finance and shall [identifying] identify the total amount of funds that will carry over to the [second] next fiscal year; and

(2) A copy of this report to the legislature, as well as a report identifying the carryover of funds on a school-by-school basis, at least twenty days prior to the convening of the next regular session of the legislature.

(b) Any appropriation retained in accordance with this section shall be used exclusively for the school-based budgeting program EDN 100[,] and the comprehensive school support services program EDN 150, and of those appropriations allocated to the schools, funds shall remain within the budget of the school to which they were originally allocated; provided that the retention of an appropriation shall not be used by the department as a basis for reducing a school's future budget requirements. [For the purposes of this chapter, "EDN 100" means the budget program identification number for the school-based budgeting program within the department of education.]"

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

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

(Approved June 14, 2000.)

## ACT 203 H.B. NO. 2574

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

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

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

"(a) There is created in the department a special fund to be designated as the "special land and development fund". Subject to the Hawaiian Homes Commission Act of 1920, as amended, and 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; all moneys collected under section 171-58 for mineral and water rights; all rents from leases, licenses, and permits derived from public lands; all fees, fines, and other administrative charges collected under this chapter; 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 for the following purposes:

(1) To reimburse the general fund of the State for advances made that are required to be reimbursed from the proceeds derived from sales, leases, licenses, or permits of public lands;
(2) For the planning, development, management, operations, or maintenance of all lands and improvements under the control and management of the board, including but not limited to permanent or temporary staff positions who may be appointed without regard to [[]chapters[]] 76 and 77;
(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 management, maintenance, and development of trails and trail accesses under the jurisdiction of the department not to exceed $500,000 in any fiscal year;
(7) For the payment to private land developers who have contracted with the board for development of public lands under section 171-60; [and]
(8) For other purposes of this chapter[.]; and
(9) For the protection, planning, management, and regulation of water resources under chapter 174C."

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

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

## ACT 204 H.B. NO. 2576

A Bill for an Act Relating to the Water Resource Management Fund.

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

SECTION 1. Chapter 174C, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

"**§174C- Water resource management fund.** (a) There is established in the department a special fund to be designated as the water resource management fund. The fund shall be administered by the commission. The water resource management fund shall be used for the following:
(1) Monitoring programs and activities concerning water resource quality, protection, and management;
(2) Research programs and activities concerning water conservation and investigation of alternative sources of water;
(3) Preparation and dissemination of information to the public concerning activities authorized under this chapter;

(4) Data collection, development, and updating of long-range planning documents authorized under this chapter; and
(5) Any other protection, management, operational, or maintenance functions authorized and deemed necessary by the commission, including but not limited to funding permanent or temporary staff positions.

(b) The following shall be deposited into the water resource management fund:

(1) Appropriations by the legislature to the water resource management fund;
(2) All fees and administrative charges collected under this chapter or any rule adopted thereunder;
(3) Moneys collected as fines or penalties imposed under this chapter or any rule adopted thereunder;
(4) Moneys derived from public and private sources to benefit water resource protection and management;
(5) Any moneys collected from the sale of retail items by the department related to water resources;
(6) Any other moneys collected pursuant to chapter 174C; and
(7) Moneys derived from interest, dividend, or other income from the above sources."

SECTION 2. There is appropriated out of the water resource management fund the sum of $25,000 or so much thereof as may be necessary for fiscal year 2000-2001, to be expended by the department of land and natural resources for the purposes of the water resource management fund.

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 205 H.B. NO. 2648

A Bill for an Act Relating to Probation.

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

SECTION 1. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§353- Probation services fee; assessment.** Any defendant received for supervision pursuant to section 353-81 shall be assessed a probation services fee pursuant to section 706-A."

SECTION 2. Chapter 706, Hawaii Revised Statutes, is amended by adding two new sections to part III to be appropriately designated and to read as follows:

"**§706-A Probation services fee.** (1) The court, when sentencing a defendant to probation, shall order the defendant to pay a probation services fee. The amount of the fee shall be as follows:

(a) $150, when the term of probation is for more than one year; or

(b) $75, when the term of probation is for one year or less;

provided that no fee shall be ordered when the court determines that the defendant is unable to pay the fee.

(2) The entire fee ordered or assessed shall be payable forthwith by cash, check, or by a credit card approved by the court. When a defendant is also ordered to pay a fine, make restitution, pay a crime victim compensation fee, or pay other fees in addition to the probation services fee under subsection (a), payments by the defendant shall be made in the following order of priority:

(a) Restitution;
(b) Crime victim compensation fee;
(c) Probation services fee;
(d) Other fees; and
(e) Fines.

(3) Any defendant received for supervision pursuant to section 353-81 shall be assessed a probation services fee pursuant to this section.

(4) The defendant shall pay the fee to the clerk of the court. The fee shall be deposited with the director of finance who shall transmit the fee to the probation services special fund pursuant to section 706-B.

**§706-B Probation services special fund.** (1) There is established in the state treasury a special fund to be known as the probation services special fund. All probation services fees collected under section 706-A shall be deposited into this fund.

(2) Moneys in the probation services special fund shall be used by the judiciary to monitor, enforce, and collect fees, fines, restitution, other monetary obligations owed by defendants, and other terms and conditions of probation.

(3) The probation services special fund shall be exempt from transfers for central service expenses pursuant to section 36-27, and reimbursements for departmental administration expenses pursuant to section 36-30."

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,[1] 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 department of education;
(3) Special funds of the University of Hawaii;
(4) State educational facilities improvement special fund;
(5) Convention center capital and operations special fund under section 206X-10.5;
(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 321-1.3;
(11) Spouse and child abuse special account under section 346-7.5;

(12) Spouse and child abuse special account under section 601-3.6;
(13) Funds of the employees' retirement system created by section 88-109;
(14) Unemployment compensation fund established under section 383-121;
(15) Hawaii hurricane relief fund established under chapter 431P;
(16) Hawaii health systems corporation special funds;
(17) Boiler and elevator safety revolving fund established under section 397-5.5;
(18) Tourism special fund established under section 201B-11;
(19) Department of commerce and consumer affairs' special funds;
(20) Compliance resolution fund established under section 26-9;
(21) Universal service fund established under chapter 269;
(22) Integrated tax information management systems special fund under section 231-3.2;
(23) Insurance regulation fund under section 431:2-215;
(24) Hawaii tobacco settlement special fund under section 328L-2; [and]
(25) Emergency budget and reserve fund under section 328L-3; and
(26) Probation services special fund under section 706-B;

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 department of education;
(4) Special funds 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 321-1.3;
(9) Spouse and child abuse special account under section 346-7.5;
(10) Spouse and child abuse special account under section 601-3.6;
(11) Funds of the employees' retirement system created by section 88-109;
(12) Unemployment compensation fund established under section 383-121;
(13) Hawaii hurricane relief fund established under chapter 431P;
(14) Convention center capital and operations special fund established under section 206X-10.5;
(15) Hawaii health systems corporation special funds;
(16) Tourism special fund established under section 201B-11;
(17) Compliance resolution fund established under section 26-9;
(18) Universal service fund established under chapter 269;
(19) Integrated tax information management systems special fund;
(20) Insurance regulation fund under section 431:2-215;
(21) Hawaii tobacco settlement special fund under section 328L-2; [and]
(22) Emergency and budget reserve fund under section 328L-3; and

(23) Probation services special fund under section 706-B;

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. Chapter 706, Hawaii Revised Statutes, is amended by amending the title of part III to read as follows:

"**PART III. FEES, FINES, AND RESTITUTION**"

SECTION 6. Section 706-644, Hawaii Revised Statutes, is amended to read as follows:

"**§706-644 Consequences of nonpayment; imprisonment for contumacious nonpayment; summary collection.** (1) When a defendant is sentenced pursuant to section 706-605, granted a conditional discharge pursuant to section 712-1255, or granted a deferred plea pursuant to chapter 853, and the defendant is ordered to pay a fee, fine, or restitution, whether as an independent order, as part of a judgment and sentence, or as a condition of probation or deferred plea, and the defendant defaults in the payment thereof or of any installment, the court, upon the motion of the prosecuting attorney or upon its own motion, may require the defendant to show cause why the defendant's default should not be treated as contumacious and may issue a summons or a warrant of arrest for the defendant's appearance. Unless the defendant shows that the defendant's default was not attributable to an intentional refusal to obey the order of the court, or to a failure on the defendant's part to make a good faith effort to obtain the funds required for the payment, the court shall find that the defendant's default was contumacious and may order the defendant committed until the fee, fine, restitution, or a specified part thereof is paid.

(2) When a fee, fine, or restitution is imposed on a corporation or unincorporated association, it is the duty of the person or persons authorized to make disbursement from the assets of the corporation or association to pay it from those assets, and their failure to do so may be held contumacious unless they make the showing required in subsection (1).

(3) The term of imprisonment for nonpayment of fee, fine, or restitution shall be specified in the order of commitment, and shall not exceed one day for each $25 of the fee or fine, thirty days if the fee or fine was imposed upon conviction of a violation or a petty misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of a fee or fine shall be given credit toward payment of the fee or fine for each day of imprisonment, at the rate of $25 per day.

(4) If it appears that the defendant's default in the payment of a fee, fine, or restitution is not contumacious, the court may make an order allowing the defendant additional time for payment, reducing the amount of each installment, or revoking the fee, fine, or the unpaid portion thereof in whole or in part, or converting the unpaid portion of the fee or fine to community service. A defendant shall not be discharged from an order to pay restitution until the full amount of the restitution has actually been collected or accounted for.

(5) Unless discharged by payment or, in the case of a fee or fine, service of imprisonment pursuant to subsection (3), an order to pay a fee, fine, or restitution, whether as an independent order, as a part of a judgment and sentence, or as a condition of probation or deferred plea pursuant to chapter 853, may be collected in the same manner as a judgment in a civil action. The State or the victim named in the order may collect the restitution, including costs, interest, and attorney's fees,

pursuant to section 706-646. The State may collect the fee or fine, including costs, interest, and attorney's fees pursuant to section 706-647.

(6) Attorney's fees, costs, and interest shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of attorney's fees, costs, and interest."

SECTION 7. There is appropriated from the probation services special fund, the sum of $300,000, or so much thereof as may be necessary for fiscal year 2000-2001, to carry out the purposes of this Act. The sum appropriated shall be expended by the judiciary.

SECTION 8. In codifying the new sections added to chapter 706, Hawaii Revised Statutes, by section 2 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 9. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 11. This Act shall take effect on July 1, 2000; provided that amendments made to section 36-27 by this Act shall not be repealed when that section is reenacted on July 31, 2003, pursuant to section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 14, 2000.)

**Notes**

1. Comma should be underscored.
2. Edited pursuant to HRS §23G-16.5.

## ACT 206 H.B. NO. 2793

A Bill for an Act Relating to Agriculture.

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

SECTION 1. The legislature finds that with the decline of large-scale sugar operations in Hawaii, there is great need for the revitalization and diversification of agriculture. In recognition of this need, the agribusiness development corporation (ADC) was established in 1994 to assist in this purpose.

By Act 117, Session Laws of Hawaii 1999, the legislature appropriated $400,000 for ADC, with the intent that these funds be used for the planning, design, and construction of an agricultural subdivision in the Hamakua district on the island of Hawaii, which was one of the areas severely affected by the decline of the sugar industry. However, this appropriation has not yet been utilized for this purpose and these funds are now in danger of lapsing. Therefore, the legislature finds it necessary to extend the appropriation to June 30, 2001, which will allow ADC to expend any heretofore unencumbered funds without having to make a new appropriation.

The purpose of this Act is to:

(1) Carry over to fiscal year 2000-2001, any unexpended or unencumbered funds at the close of fiscal year 1999-2000, for expenses incurred in the performance of the duties of the ADC board; and
(2) Allow the use of such funds for grants for the development of an agricultural subdivision in the Hamakua district on the island of Hawaii.

SECTION 2. Act 117, Session Laws of Hawaii 1999, is amended by amending section 4 to read as follows:

"SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $400,000 or so much thereof as may be necessary for fiscal year 1999-2000 for the expenses incurred in the performance of the duties of the agribusiness development corporation board[.]; provided that:

(1) Any unexpended or unencumbered funds at the close of fiscal year 1999-2000 may be expended or encumbered during fiscal year 2000-2001, and shall not lapse until June 30, 2001; and
(2) The agribusiness development corporation may use $250,000 for grants for the development of an agricultural subdivision in the Hamakua district on the island of Hawaii.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act."

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

SECTION 4. This Act shall take effect on June 29, 2000.

(Approved June 14, 2000.)

## ACT 207 H.B. NO. 2801

A Bill for an Act Relating to Agriculture.

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

SECTION 1. The legislature finds that the swine industry is a significant contributor to diversified agriculture in Hawaii, generating $6,000,000 in farm gate value alone. Swine production is also an integral part of Hawaii's culture and economy, and is essential for the continued functioning of activities ranging from family luaus to Chinatown markets.

However, the legislature finds that Hawaii's swine industry is threatened by porcine respiratory and reproductive syndrome (PRRS), which can have a devastating impact on swine, particularly in herds that are free of the disease and have not built up resistance to this disease. PRRS has been shown in Hawaii to cause losses of approximately six months production and income, and increase ongoing production costs after the disease is under control. Moreover, this disease has made it impossible for some farmers to continue in business.

The purpose of this Act is to coordinate a mandatory survey and sampling of swine farms in the State to determine the incidence of PRRS.

SECTION 2. (a) The department of agriculture, animal industry division, shall conduct a mandatory survey and sampling of swine farms in the State to

determine the incidence of PRRS. The survey results shall be confidential except that final reports or report summaries shall be available to the general public upon request. Raw data that would allow any owner or business to be identified shall be considered confidential, unless to do so would otherwise violate chapter 92F, Hawaii Revised Statutes; provided that the results shall be available to the producer on whose farm the survey is conducted and to the cooperative extension service for statistical analysis.

(b) The department of agriculture shall establish procedures to certify that swine herds are negative for PRRS and maintain a list of these herds.

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

## ACT 208 H.B. NO. 3014

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

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

SECTION 1. The legislature finds that it is in the public interest to encourage the development of local district cooling facilities to make chilled water available to connected buildings for use in the provision of air conditioning to those buildings. The issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act will encourage the development of facilities for the distribution of chilled water for these purposes by lowering interest rates in financing capital improvement costs associated with chilled water distribution systems, through the use of tax exempt special purpose revenue bonds, thereby making such projects more economically feasible.

The legislature finds that Rickmar Properties, Inc., is engaged in the planning, design, and construction of a district cooling facility and pipeline distribution system in downtown Honolulu. The legislature further finds that the issuance of special purpose revenue bonds and refunding special purpose revenue bonds under this Act to assist Rickmar Properties, Inc., in constructing the portion of this district cooling project consisting of its distribution system will make the development of such a cooling system more economically feasible and provide numerous benefits, including the following:

(1) The general public will benefit by the displacement of large electrical loads to off-peak hours, increased energy efficiency, replacement of older refrigerants (e.g. chloroflourocarbons), and minimization of refrigerant emission points;

(2) The general public will benefit because the lower cost to connect to the local district cooling facility in comparison to building stand-alone air conditioning systems will allow more economical construction of new buildings, and more leasable space will be available in both new and old buildings because some of the space otherwise occupied by cooling equipment will not be needed for that purpose;

(3) The general public will benefit environmentally because the proposed cooling facility will use brackish water, thereby resulting in a substantial reduction in the current use of Oahu's fresh water supply to provide air conditioning;

(4) Owners, tenants, and other occupants of connected buildings will benefit economically through lower air conditioning costs and reduced

maintenance requirements (since individual chillers and cooling towers are eliminated) and the related elimination of the capital costs of replacing cooling systems serving individual buildings and such reduction of costs will be beneficial to the economy of the State; and

(5) Owners, tenants, and other occupants of connected buildings will benefit economically since the local district cooling facility will be able to take advantage of greater economies of scale and use off-peak (and lower cost) electricity by local district cooling facilities and such benefits will also promote the general economy of the State.

SECTION 2. The legislature further finds that the activities of the district cooling project proposed to be constructed by Rickmar Properties, Inc., including the distribution system, constitute an industrial enterprise defined in part V, chapter 39A, Hawaii Revised Statutes, and that the cost of construction of the distribution system thereof is qualified to be financed through the issuance of special purpose revenue bonds under such part V.

SECTION 3. Pursuant to part V, chapter 39A, Hawaii Revised Statutes, the department of budget and finance is hereby authorized, with the approval of the governor, to issue special purpose revenue bonds in a total amount not to exceed $19,000,000 in one or more series, for the purpose of assisting Rickmar Properties, Inc. (or a partnership in which Rickmar Properties, Inc. is a general partner, or the successor in interest or assignee of Rickmar Properties, Inc.), with one or more of the following:

(1) The establishment of a distribution system through which chilled water produced at a water cooling facility will be moved to buildings wishing to be connected to the cooling facility; and

(2) The financing, refinancing, or both, of the costs related to the planning, design, and construction of the distribution system, including costs of construction, renovation, equipping, and purchasing tangible assets (including land and easements for such distribution system and pipelines and other improvements) comprising such distribution system.

SECTION 4. The department of budget and finance shall process applications for special purpose revenue bonds under this Act in accordance with the requirements of its "Formal Application for Financing of an Industrial Enterprise." The department shall report to the legislature twenty days before the convening of the regular sessions of 2001 and 2002 regarding any status with respect to the issuance of the special purpose revenue bonds authorized by this Act.

SECTION 5. The department of budget and finance is authorized, with the approval of the governor, to issue from time to time (including times subsequent to June 30, 2003), 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 3 and any refunding special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption, and any such refunding special purpose revenue bonds shall be bonds for the projects and purposes described in section 3. 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 6. Any unused portion of the authorization to issue new special purpose revenue bonds under this Act shall lapse as of the close of business on June 30, 2003.

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

## ACT 209 S.B. NO. 3129

A Bill for an Act Relating to Hawaiian Healing Practices.

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

SECTION 1. Act 162, Session Laws of Hawaii 1998, is amended:

1. By amending subsection (b) of section 4 to read as follows:

"(b) Papa Ola Lokahi shall submit a final report and recommended legislation to the legislature no later than twenty days prior to the convening of the regular session of 1999; provided that, if Papa Ola Lokahi is not then prepared to submit a final report, then Papa Ola Lokahi shall submit an interim report by such date, and shall submit a final report, together with recommended legislation, no later than twenty days prior to the convening of the regular session of [2000.] 2002."

2. By amending section 6 to read as follows:

"SECTION 6. This Act shall take effect upon its approval; provided that on July 1, [2000] 2002, subsection (c) of section 453-2, Hawaii Revised Statutes, shall be repealed."

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

SECTION 3. This Act shall take effect on June 30, 2000.

(Approved June 14, 2000.)

## ACT 210 S.B. NO. 3160

A Bill for an Act Relating to the Sale of Residential Condominium Apartments to Owner-Occupants.

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

SECTION 1. The legislature finds that certain governmental regulations pertaining to the sale of residential condominium apartments in Hawaii unnecessarily add to the time, cost, and efficiency of selling those apartments, all of which negatively impact the consumer. Of particular concern is part VI of chapter 514A, Hawaii Revised Statutes, which sets forth procedures to be followed in the sale of residential condominium apartments to prospective owner-occupants.

The legislature finds that procedures governing the sale of condominium apartments to owner-occupants were initially imposed in 1980 when real estate prices in Hawaii were rising rapidly and speculative purchasing limited the number of homes available to bona fide owner-occupants, or resulted in an owner-occupant paying more for an apartment. The presale notice and other restrictive sales proce-

dure requirements were seen as ways to offer a bona fide owner-occupant a first opportunity to purchase a condominium apartment at its initial offering price.

The real estate market has drastically changed since these presale notice and restrictive sales practice requirements were enacted. Speculative investment is no longer a reality, and the skyrocketing real estate prices of the late 1970s and early 1980s no longer exist. The large number of condominium apartments available for sale and healthy competition in the marketplace have resulted in competitive prices and an environment in which an owner-occupant buyer may make a selective purchase. The legislature therefore finds that some of the owner-occupancy sales requirements of part VI of chapter 514A, Hawaii Revised Statutes, are no longer relevant in today's market. Certain statutory requirements are confusing and cumbersome and often inhibit sales and discourage buyers, especially first-time homebuyers who are not familiar with condominiums and related statutory requirements. The requirements are also difficult to monitor and regulate. Accordingly, the legislature believes that changes to chapter 514A, Hawaii Revised Statutes, are warranted to facilitate the marketing and sale of condominium apartments.

The purpose of this Act is to amend part VI of chapter 514A, Hawaii Revised Statutes, in order to set forth sales and marketing requirements that give priority to the sale of residential condominium apartments to owner-occupants, without hampering a developer's need to maintain flexibility in an ever-changing market.

SECTION 2. Section 514A-101, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

"<u>"Initial date of sale" means the date of the first publication of the announcement or advertisement pursuant to section 514A-102.</u>"

2. By amending the definitions of "chronological system", "owner-occupant", and "residential unit" to read:

"<u>"</u>"Chronological system" means a system in which the residential [units] <u>apartments</u> 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[,] <u>or reservations,</u> and earnest money deposits.

"Owner-occupant" means any individual in whose name sole or joint legal title is held in a residential [unit] <u>apartment</u> which, simultaneous to such ownership, serves as the individual's principal residence, as defined by the state department of taxation, for a period of not less than three hundred [and] sixty-five consecutive days; provided that the individual retains complete possessory control of the premises of the residential [unit] <u>apartment</u> during this period. An individual shall not be deemed to have complete possessory control of the premises if the individual rents, leases, or assigns the premises for any period of time to any other person in whose name legal title is not held[.]<u>; except that an individual shall be deemed to have complete possessory control even when the individual conveys or transfers the apartment into a trust for estate planning purposes and continues in the use of the premises as the individual's principal residence during this period.</u>

"Residential [unit"] <u>apartment"</u> means "apartment" as defined in section 514A-3, but excludes:

(1) Any apartment intended for commercial use; [and]

(2) Any apartment designed and constructed for hotel or resort use [which] <u>that</u> is located on any parcel of real property designated and governed by a county for hotel or resort use pursuant to[:

(A) Section] <u>section</u> 46-4; [or] <u>and</u>

[(B)] (3) Any other use pursuant to authority granted by law to a county."

SECTION 3. Section 514A-102, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-102 Announcement[,] or advertisement; publication.** [(a) 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, 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 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;
(4) A statement of the residential units by apartment numbers that have been designated by the developer pursuant to section 514A-103, and that such apartments shall initially be offered for a thirty-day period after the first publication of the announcement to only prospective owner-occupants who will use the residential units as their principal residences for a period of not less than three hundred sixty-five consecutive days;
(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;
(6) A statement that the 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 designated real estate broker by a date designated by the developer;

    and
(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, public report, and to obtain further information on the project.

(b) 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 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.] At least once in each of two successive weeks, and at any time following the issuance of an effective date of the first public report for the condominium project, the developer shall cause to be published in 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 that is published at least weekly in the county in which the project is to be located, an announcement or advertisement containing at least the following information:

(1) The location of the project;
(2) The minimum price of the residential apartments;
(3) A designation as to whether the residential apartments are to be sold in fee simple or leasehold;
(4) A statement that for a thirty-day period following the initial date of sale of the condominium project, at least fifty per cent of the residential apartments being marketed shall be offered only to prospective owner-occupants;
(5) The name, telephone number, and address of the developer or other real estate broker designated by the developer that an interested individual may contact to secure an owner-occupant affidavit, public report, and any other information concerning the project; and
(6) If applicable, a statement that the residential apartments will be offered to prospective purchasers through a public lottery."

SECTION 4. Section 514A-103, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-103 Designation of residential [units.] apartments.** (a) The developer of any project containing residential [units] apartments shall designate at least fifty per cent of [such] the [units] apartments for sale to prospective owner-occupants pursuant to section 514A-105. [Such units] The designation shall be set forth either in the public report or in the announcement or advertisement required by section 514A-102, and may be set forth in both. The apartments shall constitute a proportionate representation of all the residential [units] apartments in the project with regard to factors of square footage, number of bedrooms and bathrooms, floor level, and whether or not [such unit] the apartment has a lanai.

(b) A developer shall have the right to substitute an apartment designated for owner-occupants with an apartment that is not so designated; provided that the apartments are similar with regard to factors enumerated in subsection (a). The substitution shall not require the developer's submission of a supplementary public report."

SECTION 5. Section 514A-104, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-104 [Unit] Apartment selection, requirements.** (a) When the chronological system is used, the developer or the developer's real estate broker, as

the case may be, shall offer the residential [units] apartments that have been designated pursuant to section 514A-103 as follows:

(1) For thirty days from the date of the first published announcement or advertisement required under section 514A-102, the developer or developer's real estate broker shall offer the residential [units] apartments that have been designated pursuant to section 514A-103 to prospective purchasers chronologically in the order in which they submit to the developer or the developer's real estate broker, a completed owner-occupant affidavit, an executed sales contract[,] or reservation, 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] apartment 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,] apartment, only one residential [unit] apartment 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 or advertisement 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 or advertisement is published[.]; and

(4) The developer shall compile and maintain a list of all prospective purchasers that [submitted] submit a completed owner-occupant affidavit, an executed sales contract[,] or reservation, and an earnest money deposit, and maintain [the] a 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 offer the residential [units] apartments that have been designated pursuant to section 514A-103 as follows:

(1) From the date of the first published announcement or advertisement required under section 514A-102[,] until five calendar days after the last published announcement[,] or advertisement, 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. All prospective owner-occupants on this list shall be included in the public lottery described [below.] in paragraph (2). The [developers] developer and the developer's real estate broker shall maintain at all times sufficient copies of [such] affidavits for prospective owner-occupants to execute. Upon the request of the commission, the developer shall provide a copy of the lottery list of [those] prospective owner-occupants[.];

(2) The developer or developer's real estate broker shall conduct a public lottery [no later than 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[.], or advertisement. 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] so 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,] apartment, only one of them shall be entitled to enter the public lottery[.]; and

(4) [At] After 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] apartments 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] apartments designated pursuant to section 514A-103. Those prospective purchasers selected in the lottery who did not have the opportunity to select one of the residential [units] apartments 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."

SECTION 6. Section 514A-104.5, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-104.5 Affidavit.** (a) The owner-occupant affidavit required by section 514A-104 shall expire after three hundred sixty-five consecutive days have elapsed after the recordation 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.

(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].

(c) The affidavit shall be personally executed by all the prospective owner-occupants of the residential [unit] apartment and shall not be executed by an attorney-in-fact.

[(d) The affidavit shall be reaffirmed as provided in section [514A-105(c)]]."

SECTION 7. Section 514A-104.6, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§514A-104.6[]] Prohibitions.** (a) No person who has executed an owner-occupant affidavit shall sell or offer to sell, lease or offer to lease, rent or offer to rent, assign or offer to assign, or convey the [unit] apartment until at least three hundred sixty-five consecutive days have elapsed since the recordation of the purchase[.]; provided that a person who continues in the use of the premises as the individual's principal residence during this period may convey or transfer the apartment into a trust for estate planning purposes. Any contract or instrument entered into in violation of this part shall be subject to the remedies provided in section 514A-69.

(b) No developer, employee or agent of a developer, or real estate licensee shall violate or aid any other person in violating this part. [It is the affirmative duty of any developer, employee or agent of a developer, and real estate licensee to immediately report to the commission any person who violates or attempts to violate this part.]"

SECTION 8. Section 514A-105, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-105 Sale of residential [units.] apartments; developer requirements.** [(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 only as set forth in section 514A-104; provided 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 an owner-occupant affidavit and an earnest money deposit in a reasonable amount designated by the developer.

(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 on the back-up reservation list who have not executed a sales contract for a residential unit in the project in the order in which their names appear on that list.

(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 on the back-up reservation list who have not executed a sales contract for a residential unit in the project, in the order in which their names appear on that list. If the sales contract has become binding upon the purchaser pursuant tolaiñ1 section 514A-62, the developer may exercise the remedies provided for in the sales contract and any other remedies provided by law.

(d) Any prospective owner-occupant on the 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.

(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.] (a) The developer may go to sale using either a chronological system or a lottery system at any time after issuance of an effective date for a public report for which the effective date has not expired.

(b) For a thirty-day period following the initial date of sale of apartments in a condominium project, at least fifty per cent of the apartments being sold shall be offered for sale only to prospective owner-occupants; provided that notwithstanding this part, in the case of a project that includes one or more existing structures being converted to condominium status, each residential apartment contained in the project first shall be offered for sale to any individual occupying the apartment immediately prior to the conversion and who submits an owner-occupant affidavit and an earnest money deposit in a reasonable amount designated by the developer.

(c) Each contract for the purchase of a residential apartment by an owner-occupant may be conditioned upon the purchaser obtaining adequate financing, or a commitment for adequate financing. If the sales contract is canceled, the developer shall re-offer the residential apartment first to prospective owner-occupants on the back-up reservation list described in sections 514A-104 and 514A-105, in the order in which the names appear on the reservation list; provided that the prospective owner-occupant has not already executed a sales contract or reservation for a residential apartment in the project.

(d) At any time, any prospective owner-occupant on the back-up reservation list may be offered any residential apartment in the project that has not been sold or set aside for sale to prospective owner-occupants."

SECTION 9. Section 514A-107, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Before the commission brings an action in any court of competent jurisdiction pursuant to subsection (a) against any person who executed an affidavit pursuant to this part, it may consider whether the following extenuating circumstances affected the person's ability to comply with the law:

(1) Serious illness of any of the owner-occupants who executed the affidavit or any other person who was to or has occupied the residential [unit;] apartment;
(2) Unforeseeable job or military transfer;
(3) Unforeseeable change in marital status, or change in parental status; or
(4) Any other unforeseeable occurrence subsequent to execution of the affidavit.

Thereafter, the commission may cease any further action and order release of any net proceeds held in abeyance.

(c) Any individual who executes an affidavit pursuant to this part and who subsequently sells or offers to sell, leases or offers to lease, rents or offers to rent, assigns or offers to assign, or otherwise transfers any interest in the residential [unit which] apartment that the person obtained pursuant to this part, shall have the burden of proving his or her compliance with the requirements of this part."

SECTION 10. Section 514A-107.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person who executes an affidavit required by this part and violates or fails to comply with any of the provisions of this part or any rule adopted by the commission pursuant thereto shall be subject to a civil penalty of up to $10,000 or fifty per cent of the net proceeds received or to be received by the person from the sale, lease, rental, assignment, or other transfer of the residential [unit] apartment to which the violation relates, whichever is the greater."

SECTION 11. 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] a project developed pursuant to section 46-15 or 46-15.1, or chapter 53, 201G, or 206[,]; provided that the developer of [such a] the 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). 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] specified 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] the governmental agency. The developer of a project specified in subsection (a) who exercises [such an] the election shall provide detailed written notification to the commission of [which] the [specified] specific provisions that 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] A copy of this notification shall be filed [with the notification requirements of section 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 12. Section 514A-106, Hawaii Revised Statutes, is repealed.

SECTION 13. This Act shall not apply to any condominium project for which the announcement required under section 514A-102, Hawaii Revised Statutes, was published prior to the effective date of this Act.

SECTION 14. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 15. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.

# ACT 211 S.B. NO. 3199

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. Chapter 150A, Hawaii Revised Statutes, is amended by adding seven new sections to part II to be appropriately designated[1] and to read as follows:

"**§150A-6.1 Plant import.** (a) The board shall maintain a list of restricted plants that require a permit for entry into the State. Restricted plants shall not be imported into the State without a permit issued pursuant to rules.

(b) The department shall designate, by rule, as restricted plants, specific plants that spread or may be likely to spread an infestation or infection of an insect, pest, or disease that is detrimental or potentially harmful to agriculture, horticulture, the environment, or animal or public health. In addition, plant species designated by rule as noxious weeds are designated as restricted plants.

**§150A-6.2 Animal import.** (a) The board shall maintain:

(1) A list of conditionally approved animals that require a permit for import into the State;

(2) A list of restricted animals that require a permit for both import into the State and possession; and

(3) A list of animals that are prohibited entry into the State.

(b) The board shall adopt rules, pursuant to chapter 91, to establish an advisory committee of no fewer than three members with applicable expertise in vertebrate biology to identify whether an animal is a prohibited hybrid animal when the department suspects that the lineage of the animal is not as stated by the owner or on other official documents.

(c) Animals on the lists of conditionally approved and restricted animals shall be imported only by permit. Any animal that is not on the lists of conditionally approved, restricted, or prohibited animals 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 that is not on the lists of prohibited, restricted, or conditionally approved animals, for the purpose of remediating medical emergencies or agricultural or ecological disasters, or conducting medical or scientific research in a manner that the animal will not be detrimental to agriculture, the environment, or humans, if the importer of the animal can meet permit requirements 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 lists 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.

**§150A-6.3 Microorganism import.** (a) The board shall maintain:

(1) A list of nonrestricted microorganisms allowed entry into the State without a permit;

(2) A list of restricted microorganisms that require a permit for import into the State and possession; and

(3) A list of microorganisms that are select human pathogens allowed entry into the State without a permit but that require the department to notify the department of health of entry for the purpose of possible department of health inspection and monitoring.

Import of a microorganism on these lists, as well as import of any unlisted microorganism, shall be subject to the notification, labeling, and inspection requirements of section 150A-5, and is allowed only as provided herein.

(b) Import of a microorganism on the restricted list of microorganisms shall be by permit issued pursuant to rules and subject to conditions established by rules; provided that, if the department in its discretion determines that import of a microorganism on the restricted list or the microorganism's proposed use presents a high risk to agriculture, horticulture, the environment, or animal or public health, the import request shall be subject to advisory committee review and board approval, including a determination that the importer is able to comply with conditions established by the board, before a permit may be issued.

(c) Import and possession of an unlisted microorganism may be allowed based on the department's determination of the level of risk presented by the import, including its proposed use, to agriculture, horticulture, the environment, or animal or public health. Import shall be either by letter of authorization or special permit issued by the department, without advisory committee review or board approval, or, alternatively, by special permit issued by the department subsequent to advisory committee review and board approval, according to risk level as provided by rule; provided that in the latter instance the importer is able to comply with conditions established by the board.

(d) The department may issue an emergency permit on a case-by-case basis to a state or federal agency or state university to allow import and possession of a microorganism on the list of restricted microorganisms or an unlisted microorganism for the purpose of remediating any emergency or disaster affecting agriculture, horticulture, the environment, or animal or public health; provided that:

(1) The board, without advisory committee review, first obtains advice from qualified persons with relevant expertise;

(2) The board determines that import in less time than is required for issuance of a special permit under subsections (b) and (c) as applicable, is necessary to remediate the emergency or disaster; and

(3) The importer is able to meet conditions established by the board;

(e) Microbial products may be imported as follows:

(1) Microbial products containing certain strains of microorganisms on the nonrestricted list of microorganisms, as identified by rule, may enter the State without a permit but shall not be imported without a registration issued pursuant to rules. Import of an unregistered microbial product required to be registered with the department is a violation of this section; and

(2) Import of microbial products other than those products required to be registered pursuant to paragraph (1) shall be by permit or letter of authorization, as provided in subsections (b) and (c) as applicable.

**§150A-6.4 Permit issuance; requirements.** Except as otherwise provided in this part, all permits referenced in sections 150A-6 through 150A-6.3 shall be issued pursuant to rules. Any violation of conditions listed on the permits shall be a violation of this chapter.

**§150A-6.5 Animals; prohibition against possession, etc.; exception.** No person shall possess, propagate, sell, transfer, or harbor any animal included on the list of prohibited animals maintained by the board, except upon a determination that the species:

(1) Was initially permitted entry and later prohibited entry into the State; or
(2) Was continually prohibited but unlawfully introduced and is currently established in the State; and
(3) Is not significantly harmful to agriculture, horticulture, or animal or public health, and the environment.

Under the circumstances described in this subsection, the board may permit possession of the individual animal through its registration with the department while still prohibiting the same species of animal from importation, propagation, transfer, and sale.

**§150A-6.6 Import lists amendment.** Without regard to the notice and public hearing requirements of chapter 91, the board may adopt rules to make additions to or deletions from the lists required to be maintained in sections 150A-6.1 through 150A-6.3; provided that the board shall adopt rules pursuant to chapter 91 to establish methods to obtain public input and notify the public of additions to or deletions from the lists required under sections 150A-6.1 through 150A-6.3.

**§150A-6.7 Permit revolving fund.** (a) There is established in the state treasury a revolving fund to be known as the permit revolving fund to be administered by the department. The permit revolving fund shall consist of:

(1) Legislative appropriations;
(2) User fees as authorized by rule;
(3) All interest earned on or accrued to moneys deposited in the permit revolving fund;
(4) Grants and gifts; and
(5) Any other moneys made available to the permit revolving fund from other sources.

(b) The department shall expend moneys in the permit revolving fund to:

(1) Facilitate the processing and issuance of permits;
(2) Amend lists of creatures prohibited or allowed for import;
(3) Comply with monitoring activities;
(4) Train personnel, and provide educational workshops, materials, and equipment; and
(5) For any other purpose deemed necessary to carry out the purposes of this part."

SECTION 2. Section 150A-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"""Microbial product" means any product manufactured with known cultures of microorganisms for the purpose of bioremediation or bioaugmentation, including products such as microbial pesticides.

"Unlisted microorganism" means any microorganism not on the lists of nonrestricted or restricted microorganisms or on the list of select human pathogen microorganisms."

SECTION 3. Section 150A-5, Hawaii Revised Statutes, is amended to read as follows:

"**§150A-5 Conditions of importation.** The importation into the State of any of the following articles, viz., nursery-stock, tree, shrub, herb, vine, cut-flower,

cutting, graft, scion, bud, seed, leaf, root, or rhizome; nut, fruit, or vegetable; grain, cereal, or legume in the natural or raw state; moss, hay, straw, dry-grass, or other forage; unmanufactured log, limb, or timber, or any other plant-growth or plant-product, unprocessed or in the raw state; soil; [bacteria, fungus, or virus;] microorganisms; live bird, reptile, nematode, insect, or any other animal in any stage of development (that is in addition to the so-called domestic animal, the quarantine of which is provided for in chapter 142); box, vehicle, baggage, or any other container in which such articles have been transported or any packing material used in connection therewith shall be made in the manner hereinafter set forth:

(1) Notification of arrival. Any person who receives for transport or brings or causes to be brought to the State as freight, air freight, baggage, or otherwise, for the purpose of debarkation or entry therein, or as ship's stores, any of the foregoing articles, shall, immediately upon the arrival thereof, notify the department, in writing, of the arrival, giving the waybill number, container number, name and address of the consignor, name and address of the consignee or the consignee's agent in the State, marks, number of packages, description of contents of each package, port at which laden, and any other information that may be necessary to locate or identify the same, and shall hold such articles at the pier, airport, or any other place where they are first received or discharged, in such a manner that they will not spread or be likely to spread any infestation or infection of insects or diseases that may be present until inspection and examination can be made by the inspector to determine whether or not any article, or any portion thereof, is infested or infected with or contains any pest. In addition, the department by rules shall designate restricted articles that shall require a permit from the department in advance of importation[.] and shall designate other articles that shall require a department letter of authorization or registration in advance of importation. The restricted articles shall include[,] but not be limited to[, fungi, bacteria, virus,] certain microorganisms or living insects. Failure to obtain the permit, letter of authorization, or registration in advance is a violation of this section[.];

(2) Individual passengers, officers, and crew.

(A) It shall be the responsibility of the transportation company to distribute, prior to the debarkation of passengers and baggage, the State of Hawaii plant and animal declaration form to each passenger, officer, and crew member of any aircraft or vessel originating in the continental United States or its possessions or from any other area not under the jurisdiction of the appropriate federal agency in order that the passenger, officer, or crew member can comply with the directions and requirements appearing thereon. All passengers, officers, and crew members, whether or not they are bringing or causing to be brought for entry into the State the articles listed on the form, shall complete the declaration, except that one adult member of a family may complete the declaration for other family members. Any person who defaces the declaration form required under this section, gives false information, fails to declare restricted articles in the person's possession or baggage, or fails to declare in cargo manifests is in violation of this section[.];

(B) Completed forms shall be collected by the transportation company and be delivered, immediately upon arrival, to the inspector at the first airport or seaport of arrival. Failure to distribute or

collect declaration forms or to immediately deliver completed forms is a violation of this section[.]; and

(C) It shall be the responsibility of the officers and crew of an aircraft or vessel originating in the continental United States or its possessions or from any other area not under the jurisdiction of the appropriate federal agency to immediately report all sightings of any plants and animals to the plant quarantine branch. Failure to comply with this requirement is a violation of this section[.];

(3) Plant and animal declaration form. The form shall include directions for declaring domestic and other animals cited in chapter 142, in addition to the articles enumerated in this chapter[.];

(4) Labels. Each container in which any of the above-mentioned articles are imported into the State shall be plainly and legibly marked, in a conspicuous manner and place, with the name and address of the shipper or owner forwarding or shipping the same, the name or mark of the person to whom the same is forwarded or shipped or the person's agent, the name of the country, state, or territory and locality therein where the product was grown or produced, and a statement of the contents of the container. Upon failure to comply with this paragraph, the importer or carrier is in violation of this section[.];

(5) Authority to inspect. Whenever the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may:

(A) Enter and inspect any aircraft, vessel, or other carrier at any time after its arrival within the boundaries of the State, whether offshore, at the pier, or at the airport, for the purpose of determining whether any of the articles or pests enumerated in this chapter or rules adopted thereto, is present[.];

(B) Enter into or upon any pier, warehouse, airport, or any other place in the State where any of the above-mentioned articles are moved or stored, for the purpose of ascertaining, by inspection and examination, whether or not any of the articles is infested or infected with any pest or disease or contaminated with soil or contains prohibited plants or animals[.]; and

(C) Inspect any baggage or personal effects of disembarking passengers, officers, and crew members on aircraft or vessels arriving in the State to ascertain if they contain any of the articles or pests enumerated in this chapter. No baggage or other personal effects of the passengers or crew members shall be released until the baggage or effects have been passed.

Baggage or cargo inspection shall be made at the discretion of the inspector, on the pier, vessel, or aircraft or in any quarantine or inspection area.

Whenever the inspector has good cause to believe that the provisions of this chapter are being violated, the inspector may require that any box, package, suitcase, or any other container carried as ship's stores, cargo, or otherwise by any vessel or aircraft moving between the continental United States and Hawaii or between the Hawaiian Islands, be opened for inspection to determine whether any article or pest prohibited by this chapter or by rules adopted pursuant thereto is present. It is a [violation of] violation of this section if any prohibited article or any pest or any plant, fruit, or vegetable infested with plant pests is found[.];

(6) Request for importation and inspection. In addition to requirements of the United States customs authorities concerning invoices or other

formalities incident to importations into the State, the importer shall be required to file a written statement with the department, signed by the importer or the importer's agent, setting forth the importer's desire to import certain of the above-mentioned articles into the State and [giving]:

(A) Giving the following additional information: [the]

(i) The kind (scientific name), quantity, and description; [the]

(ii) The locality where same were grown or produced; [the certification]

(iii) Certification that all animals to be imported are the progeny of captive populations or have been held in captivity for a period of one year immediately prior to importation or have been specifically approved for importation by the board; [the]

(iv) The port from which the same were last shipped; [the]

(v) The name of the shipper; and [the]

(vi) The name of the consignee[. The statement shall also contain:]; and

(B) Containing:

[(A)] (i) A request that the department, by its duly authorized agent, examine the articles described;

[(B)] (ii) An agreement by the importer to be responsible for all costs, charges, or expenses; and

[(C)] (iii) A waiver of all claims for damages incident to the inspection or the fumigation, disinfection, quarantine, or destruction of the articles, or any of them, as hereinafter provided, if any treatment is deemed necessary.

Failure or refusal to file a statement, including the agreement and waiver, is a violation of this section and may, in the discretion of the department, be sufficient cause for refusing to permit the entry of the articles into the State[.];

(7) Place of inspection. If, in the judgment of the inspector, it is deemed necessary or advisable to move any of the above-mentioned articles, or any portion thereof, to a place more suitable for inspection than the pier, airport, or any other place where they are first received or discharged, the inspector is authorized to do so. All costs and expenses incident to the movement and transportation of the articles to such place shall be borne by the importer or the importer's agent. If the importer, importer's agent, or transportation company request inspection of sealed containers of the above-mentioned articles at locations other than where the articles are first received or discharged and the department determines that inspection at such place is appropriate, the department may require payment of costs necessitated by these inspections, including overtime costs;

(8) Disinfection or quarantine. If, upon inspection, any article [so] received or brought into the State for the purpose of debarkation or entry therein is found to be infested or infected or there is reasonable cause to presume that it is infested or infected and the infestation or infection can, in the judgment of the inspector, be eradicated, a treatment shall be given such article. The treatment shall be at the expense of the owner or the owner's agent, and the treatment shall be as prescribed by the department. The article shall be held in quarantine at the expense of the owner or the owner's agent at a satisfactory place approved by the

department for a sufficient length of time to determine that eradication has been accomplished. If the infestation or infection is of such nature or extent that it cannot be effectively and completely eradicated, or if it is a potentially destructive pest or it is not widespread in the State, or after treatment it is determined that the infestation or infection is not completely eradicated, or if the owner or the owner's agent refuses to allow the article to be treated or to be responsible for the cost of treatment and quarantine, the article, or any portion thereof, together with all packing and containers, may, at the discretion of the inspector, be destroyed or sent out of the State at the expense of the owner or the owner's agent. Such destruction or exclusion shall not be made the basis of a claim against the department or the inspector for damage or loss incurred[.];

(9) Disposition. Upon completion of inspection, either at the time of arrival or at any time thereafter should any article be held for inspection, treatment, or quarantine, the inspector shall affix to the article or the container or to the delivery order in a conspicuous place thereon, a tag, label, or stamp to indicate that the article has been inspected and passed. This action shall constitute a permit to bring the article into the State[.]; and

(10) Ports of entry. None of the articles mentioned in this section shall be allowed entry into the State except through the airports and seaports in the State designated and approved by the board."

SECTION 4. Section 150A-6, Hawaii Revised Statutes, is amended to read as follows:

"**§150A-6 Soil, plants, animals, etc., importation or possession prohibited.** [(a)] No person shall transport, receive for transport, or cause to be transported to the State, for the purpose of debarkation or entry thereinto, any of the following:

(1) Soil; provided that limited [[]quantities[]] of soil may be imported into the State for experimental or other scientific purposes under permit with conditions prescribed by the department;

(2) Rocks, plants, plant products, or any article with soil adhering thereto;

(3) Any live snake, flying fox, fruit bat, Gila monster, injurious insect, or eels of the order Anguilliformes, or any other animal, plant, or microorganism in any stage of development that is detrimental or potentially harmful to agriculture, horticulture, animal or public health, or natural resources, including native biota, or has an adverse effect on the environment as determined by the board, except, as provided in this chapter and provided that, notwithstanding the list of animals prohibited entry into the State, the department may bring into and maintain in the State one live, sterile brown tree snake of the male sex for the purpose of research or training of snake detector dogs, and, further, that a government agency may bring into and maintain in the State not more than two live, nonvenomous snakes of the male sex solely for the purpose of exhibition in a government zoo, but only after:

(A) The board is presented with satisfactory evidence that the sex of the snakes was established to be male prior to the shipment; and

(B) The [[]board[]] gives written approval conditioned upon such terms as the board may deem necessary, which terms shall include measures to assure the prevention of escape, continuing supervision and control by the board with respect to any depart-

ment import under this paragraph, and the manner in which the snakes shall be disposed of or destroyed.

In case of the death of one or more snakes, the department or government agency may import and maintain replacements subject to the conditions described in this paragraph; and

(4) Any live or dead honey bees, or used bee equipment that is not certified by the department to be free of pests; provided that nothing in this paragraph shall be construed to prohibit the importation of bee semen.

[(b) The board shall maintain:

(1) A list of conditionally approved animals that require a permit for import into the State;

(2) A list of restricted animals that require a permit for both import into the State and possession; and

(3) A list of animals that are prohibited entry into the State;

provided that the board shall adopt rules, pursuant to chapter 91, to establish an ad hoc panel of no fewer than three members with applicable expertise in vertebrate biology to identify whether an animal is a prohibited hybrid animal when the department suspects that the lineage of the animal is not as stated by the owner or on other official documents.

Animals on the lists of conditionally approved and restricted animals shall be imported only by permit. Any animal that is not on the lists of conditionally approved, restricted, or prohibited animals 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 that is not on the lists of prohibited, restricted, or conditionally approved animals, for the purpose of remediating medical emergencies or agricultural or ecological disasters, or conducting medical or scientific research in a manner that the animal will not be detrimental to agriculture, the environment, or humans if the importer of the animal can meet permit requirements 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.

(c) The board shall maintain:

(1) A list of nonrestricted microorganisms allowed entry into the State without a permit but which are subject to the notification, labeling, and inspection requirements of section 150A-5;

(2) A list of restricted microorganisms that require a permit for import into the State and possession, except as otherwise provided in part V; and

(3) A list of microorganisms that are prohibited entry into the State, except that the department may issue an emergency permit on a case-by-case basis to a state or federal agency or state university for the import and possession of a microorganism on the list of prohibited microorganisms for the purpose of remediating medical emergencies or agricultural or ecological disasters pursuant to the board's determination that:

(A) An emergency or disaster exists; and

(B) The importer is able to meet permit requirements consistent with Centers for Disease Control and Prevention and National Institutes of Health guidelines or other guidelines as determined by the board.

No emergency permit may be issued until the board, without regard to rule requirements for advisory review, obtains advice from qualified persons with relevant expertise.

Except as otherwise provided in part V, any microorganism that is not on the lists of nonrestricted, restricted, or prohibited microorganisms may not enter the State until the board's review and determination for placement on one of those lists; provided that pending the listing by rule of an unlisted microorganism determined by the board to be allowed for import, the department may issue a special permit on a case-by-case basis for the import and possession of the microorganism for purposes approved by the board if the microorganism is to be used in a manner that will not be detrimental to agriculture, horticulture, the environment, animals, and humans, and if the importer is able to meet conditions established by the board.

(d) Except as otherwise provided herein, all permits referenced in this section shall be issued pursuant to rules. Any violation of the conditions listed on the permits shall be a violation of this section.

(e) The board shall maintain a list of restricted plants and a list of prohibited plants. Restricted plants shall not be imported into the State without a permit issued pursuant to rules, and any violation of the conditions listed on the permit shall be a violation of this section.

The department of agriculture shall designate specific plants that may spread or may be likely to spread an infestation or infection of an insect, pest, or disease that is detrimental or potentially harmful to agriculture, horticulture, animal or public health, or natural resources including native biota, or may have an adverse effect on the environment as determined by the board. These plants are to be designated by rule as restricted plants. In addition, plant species designated by rule as noxious weeds are designated as restricted plants.

(f) No person shall possess, propagate, sell, transfer, or harbor any plant, animal, or microorganism included on the list or lists of prohibited plants, animals, and microorganisms maintained by the board under this section, except as allowed by the board upon a determination that the species:

(1) Was initially permitted entry and later prohibited entry into the State; or
(2) Was continually prohibited but unlawfully introduced and is currently established in the State; and
(3) Is not significantly harmful to agriculture, horticulture, animal or public health, and the environment.

Under the circumstances described in this subsection, the board may permit possession of the individual plant, animal, or microorganism through its registration with the department while still prohibiting the same species of plant, animal, or microorganism from importation, propagation, transfer, and sale.

(g) Without regard to the notice and public hearing requirements of chapter 91, the board may adopt rules to make additions to or deletions from the lists required to be maintained in subsections (b), (c), and (e); provided that the board shall adopt rules pursuant to chapter 91 to establish methods to obtain public input and to notify the public as to any additions to or deletions from the lists required under subsections (b), (c), and (e).]"

SECTION 5. Section 150A-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) It is a violation of [section 150A-6] this part to bring to or possess in the State any living creature that is prohibited[,] or restricted [and], without a permit issued by the department, except as expressly provided in [that section or in part V, and such a] this part. The creature shall constitute contraband and shall be seized immediately upon discovery, whenever found, and be destroyed, donated to a government zoo, or sent out of the State, at the discretion of the department. Any

expense or loss in connection therewith shall be borne by the owner or the owner's agent."

SECTION 6. Section 150A-7.5, Hawaii Revised Statutes, is amended to read as follows:

"**§150A-7.5 User fees.** Fees may be assessed for the processing and issuance of permits issued by the department under this part [and], for inspections related to permit conditions, and for the registration of microbial products containing certain strains of microorganisms, as established by rule."

SECTION 7. Section 150A-9.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Interim rules adopted by the department pursuant to this section shall be effective as stated by such rules; provided that [any]:

(1) Any interim rule shall be published at least once statewide within [ten] twelve days of issuance; and [provided further that no]

(2) No interim rule shall be effective for more than one hundred eighty days."

SECTION 8. Section 150A-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person who violates any provision of this chapter other than sections 150A-5(2)(B), 150A-5(2)(C), [150A-6(a)(3)] 150A-6(3), and [150A-6(a)(4)] 150A-6(4) or who violates any rule adopted under this chapter other than those rules involving [a plant,] an animal[, or microorganism] that is prohibited or a plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a misdemeanor and fined not less than $100. The provisions of section 706-640 notwithstanding, the maximum fine shall be $10,000. For a second offense committed within five years of a prior offense, the person or organization shall be fined not less than $500 and not more than $25,000."

SECTION 9. Section 150A-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Notwithstanding section 706-640:

(1) Any person or organization that violates section [150A-6(a)(3) or 150A-6(a)(4),] 150A-6(3) or 150A-6(4), or owns or intentionally transports, possesses, harbors, transfers, or causes the importation of any snake or other prohibited animal seized under section 150A-7(b), or whose violation involves [a plant,] an animal[, or microorganism] that is prohibited or a plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a [petty] misdemeanor and subject to a fine of not less than $5,000, but not more than $20,000; and

(2) Any person or organization who intentionally transports, harbors, or imports with the intent to propagate, sell, or release any [plant,] animal[, or microorganism] that is prohibited or any plant, animal, or microorganism that is restricted, without a permit, shall be guilty of a class C felony and subject to a fine of not less than $50,000, but not more than $200,000."

SECTION 10. Section 150A-14, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

"(f) Any person or organization that voluntarily surrenders any prohibited [plant,] animal[, or microorganism] or any restricted plant, animal, or microorgan-

ism without a permit issued by the department, prior to the initiation of any seizure action by the department, shall be exempt from the penalties of this section.

(g) For purposes of this section "intent to propagate" shall be presumed when the person or organization in question is found to possess, transport, harbor, or import:

(1) Any two or more animal specimens of the opposite sex that are prohibited or restricted, without a permit;
(2) Any three or more animal specimens of either sex that are prohibited or restricted, without a permit;
(3) Any plant or microorganism having the inherent capability to reproduce [and] that is [prohibited or] restricted,[2] without a permit; or
(4) Any specimen that is in the process of reproduction."

SECTION 11. Section 150A-41, Hawaii Revised Statutes, is amended by amending subsection (a) and (b) to read as follows:

"(a) Notwithstanding the permit requirements of sections 150A-5 and [150A-6,] 150A-6.3, the board may issue a certificate to an importer of microorganisms authorizing import and possession of microorganisms[, other than microorganisms] on the [lists] list of [nonrestricted] restricted microorganisms or [prohibited] unlisted microorganisms referenced in section [150A-6;] 150A-6.3; provided that:

(1) The import and possession is for medical or scientific purposes;
(2) The microorganisms are contained in a laboratory or other contained system approved by the department;
(3) The microorganisms are used in a manner that will not be detrimental to agriculture, horticulture, the environment, animals, or humans; and
(4) The importer is able to meet requirements established by the board, as further verified through site inspection by the department.

(b) Import by a certified importer of microorganisms other than those listed in the importer's certificate or for uses other than specified for each type of microorganism listed in the certificate shall be pursuant to section [150A-6.] 150A-6.3."

SECTION 12. There is appropriated out of the permit revolving fund the sum of $25,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the purposes of the permit revolving fund.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.[3]

SECTION 14. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

**Notes**

1. So in original.
2. Comma should not be underscored.
3. Edited pursuant to HRS §23G-16.5.

## ACT 212

H.B. NO. 1969

A Bill for an Act Making an Appropriation to Match Federal Funds for the Establishment of Manufacturing Extension Programs.

*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 $200,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the establishment of manufacturing extension programs in Hawaii; provided that no funds shall be made available under this Act unless matched dollar-for-dollar out of federal funds for the purpose for which this sum is appropriated.

SECTION 2. The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

## ACT 213

H.B. NO. 2222

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Condominium property regimes currently play a major role in Hawaii's housing and will play an even larger role in the next century. Act 180, Session Laws of Hawaii 1961, was the initial law relating to condominium property regimes. The condominium property regimes law, chapter 514A, Hawaii Revised Statutes, is now approximately thirty-nine years old. The present law is the result of numerous amendments enacted over the years made in a piecemeal fashion and with little regard to the law as a whole.

Those who live and work with the law report that the condominium property regimes law is unorganized, inconsistent, and obsolete in some areas, and micro-manages condominium associations. The law is also overly regulatory, hinders development, and ignores technological changes and the present day development process. However, the desire to modernize the law must be balanced by the need to protect the public and to allow the condominium community to govern itself.

Accordingly, the purpose of this Act is to update, clarify, organize, deregulate, and provide for consistency and ease of use of the condominium property regimes law. This Act appropriates funds for a review of the condominium property regimes law and related laws and issues.

SECTION 2. The real estate commission shall conduct a review of Hawaii's condominium property regimes law, make findings and formulate recommendations for recodification of the law, and develop draft legislation consistent with its review and recommendations. The review shall include an examination of the condominium and common interest laws of other states, the Uniform Common Interest Act, and other related laws and issues, such as those related to zoning, use of agricultural lands for condominiums, and subdivision of land. In addition, the commission shall:

(1) Consult with public and private organizations and individuals whose duties and interests are affected by the condominium property regimes

law, including the department of commerce and consumer affairs, and other state, county, and private agencies and individuals; and

(2) Conduct a public hearing for the purpose of receiving comments and input on the condominium property regimes law and related laws and issues.

SECTION 3. The funds appropriated by this Act shall be expended to establish a temporary full-time condominium specialist position, exempt from chapters 76 and 77, Hawaii Revised Statutes, that shall be filled by a licensed attorney. The condominium specialist shall have legal, professional, administrative, and analytical work experience, preferably in condominium law, statutory drafting, and dealing effectively with diverse organizations, and shall have demonstrated ability to plan and coordinate activities and deal effectively with others. The funds appropriated by this Act shall also be expended for administration, equipment, and supplies related to the review.

SECTION 4. The real estate commission shall submit a progress report, including any draft legislation to the legislature no later than twenty days prior to the convening of the regular sessions of 2001 and 2002. The real estate commission shall submit a final report of the review, including findings and recommendations of the commission, and draft legislation to the legislature no later than twenty days prior to the convening of the regular session of 2003.

SECTION 5. There is appropriated out of the condominium management education fund the sum of $85,000 or so much thereof as may be necessary for fiscal year 2000-2001 to conduct a comprehensive review of the condominium property regimes law, including the establishment of one full-time temporary condominium specialist position in the department of commerce and consumer affairs, and other current expenses.

SECTION 6. The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

## ACT 214 H.B. NO. 2429

A Bill for an Act Relating to the Housing and Community Development Corporation of Hawaii.

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

SECTION 1. The purpose of this Act is to amend the state rent supplement program to allow more persons who earn fifty per cent or less of the median family income to participate in the program and increase the rent contribution of each tenant from twenty per cent to thirty per cent of the tenant's annual income.

SECTION 2. Section 201G-128, Hawaii Revised Statutes, is amended to read as follows:

"**§201G-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 current family size exceeds the permissible family size for the applicant's current dwelling unit, as determined by prevailing county building or housing codes. 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 the person's spouse[,] or a household member, 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] the land; and
    (B) Is a person whose spouse or a household member 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] 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."

SECTION 3. Section 201G-232, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§201G-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] that is a mortgagor under [sections] section 202, 207, 213, 221(d)(3), 221(d)(5), or 231 of the National Housing Act, as amended, or [which] that conforms to the standards of those sections but [which] that is not a mortgagor under those sections or any other private mortgagor under the National Housing Act, as amended, for [low-] very low income, low-income, 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."

SECTION 4. Section 201G-233, Hawaii Revised Statutes, is amended to read as follows:

"[[]§201G-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] any single person or family, pursuant to criteria and procedures established by the corporation, that 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] not exceeding the very low income limit as determined by the corporation pursuant to rules adopted by the corporation; 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] the qualified tenant's 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."

SECTION 5. Section 201G-234, Hawaii Revised Statutes, is amended to read as follows:

"[[]§201G-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] that unit exceeds [one-fifth] thirty per cent of the tenant's income as determined by the corporation pursuant to procedures and regulations established by it."

SECTION 6. Section 201G-235, Hawaii Revised Statutes, is amended to read as follows:

"[[]§201G-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] income of 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.]''

SECTION 7. The housing and community development corporation is authorized to increase the rent contribution amount set forth in section 201G-234, Hawaii Revised Statutes, on the day before this Act takes effect in increments or in one step; provided that:

(1) The corporation shall conduct a public hearing before making any increase; and
(2) The amount of the annual payment with respect to any dwelling unit shall not exceed thirty per cent of the tenant's income as determined by the Hawaii housing and community development corporation.

This section shall only apply to participants in the rent supplement program under chapter 201G, Hawaii Revised Statutes, on June 30, 2000.

SECTION 8. New participants to the rent supplement program after June 30, 2000, shall be required to comply with section 201G-234, Hawaii Revised Statutes.

SECTION 9. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval; provided that:

(1) Sections 6 and 7 shall take effect on June 30, 2000; and
(2) Sections 4 and 5 shall take effect on July 1, 2000.

(Approved June 14, 2000.)

# ACT 215 H.B. NO. 2446

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

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

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding to part II a new section to be appropriately designated and to read as follows:

"**§88- Accidental death claims.** (a) An application for service-connected accidental death benefits may be filed with the board by or on behalf of the claimant as specified in sections 88-85 and 88-286. The application shall be filed no later than two years from the date of receipt of the written notification from the system.

(b) If a claim is filed, the system shall obtain the following:

(1) A copy of the employer's report of the accident submitted by the employer to the department of labor and industrial relations, workers' compensation division, and other reports relating to the accident;

(2) A certified statement from the head of the department in which the deceased member was employed, stating the date, time, and place of the accident, and the nature of the service being performed when the accident occurred. The statement shall also include an opinion as to whether or not the accident was the result of wilful negligence on the deceased member's part;

(3) A copy of the latest position description of the deceased member's duties and responsibilities;

(4) A certified copy of the death certificate; and

(5) A copy of an autopsy report, if performed.

(c) If the medical board certifies 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.

(d) Upon approval, benefits shall be paid effective the date the claim was filed with the system, in accordance with sections 88-85 and 88-286."

SECTION 2. Section 88-83.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§88-83.5[]] Benefit limitations.** (a) Notwithstanding any other law to the contrary, the benefits payable to all employees who first become members on or after January 1, 1990, shall be subject to the limitations set forth in section 415 of the Internal Revenue Code of 1986, as amended.

(b) Notwithstanding any other law to the contrary, the benefits payable to all employees who first became members before January 1, 1990, shall be subject to the greater of the following limitations as provided in section 415(b)(10) of the Internal Revenue Code of 1986, as amended:

(1) The limitations set forth in section 415 of the Internal Revenue Code of 1986, as amended; or

(2) The benefit of the member without regard to any benefit increases pursuant to an amendment adopted after October 14, 1987.

(c) The system shall establish a benefit restoration plan for the payment of retirement benefits as permitted under section 415(m) of the Internal Revenue Code of 1986, as amended, as follows:

(1) All retired members and beneficiaries of the system whose pension has been limited by section 415 of the Internal Revenue Code shall receive a monthly benefit from the plan established pursuant to this subsection that is equal to the difference between the retirement benefit otherwise payable and the retirement benefit payable because of section 415 of the Internal Revenue Code of 1986, as amended;

(2) Participation in the plan shall be determined for each plan year and shall cease whenever the retirement benefit is not limited by section 415 of the Internal Revenue Code of 1986, as amended;

(3) The plan shall be funded on a plan-year-to-plan-year basis and shall not be used to pay any benefits payable in future years. Upon the recommendation of the system's actuary, the required contribution amount shall be determined by the board of trustees and deposited in a separate fund from an allocation of employer contribution amounts pursuant to this chapter;

(4) The board of trustees shall administer the plan and may make modifications to the benefits payable as may be necessary to maintain the qualified status of the plan under section 415(m) of the Internal Revenue Code of 1986, as amended."

SECTION 3. Section 88-87, Hawaii Revised Statutes, is amended to read as follows:

"**§88-87 Adjustment for deficiency in accumulated contributions.** Upon retirement, the maximum retirement allowance of any member whose accumulated contributions are deficient shall be reduced by an amount which is the actuarial equivalent of the amount of the deficiency. A deficiency shall be the amount by which a member's accumulated contributions fail to equal the accumulated contributions which would be standing to the member's account had the member contributed at the full rate required by law [without reduction through withdrawals or advances]. [Anticipated deficiencies] Deficiencies may be [repaid] paid by the member in advance of retirement, in which case [regular interest shall be computed to date payment is received in determining the amount of the deficiency.] the member's retirement allowance shall not be reduced."

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

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

(Approved June 14, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 216 H.B. NO. 2458

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

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

SECTION 1. Act 212, Session Laws of Hawaii 1994, is amended by amending section 4 to read as follows:

"SECTION 4. The board of trustees of the employees' retirement system shall make payments with respect to all eligible employees who retire pursuant to this Act.

The board shall determine the amount equal to the actuarial present value of the difference between the allowances members receive after the receipt of service credit under this Act and the allowances members would have received without the two years of additional service credit. The board shall also determine the portion of the additional actuarial present value of benefits to be charged to the State and to each county, based on retirements during the early retirement incentive bonus period. The State and counties shall make separate additional payments to the employees' retirement system in the amounts required to liquidate the additional actuarial present value of benefits over a period of five years beginning July 1, 1997[.]; provided that the State's and counties' separate payments under this Act will be recalculated so as to liquidate the outstanding balance of each employer's additional actuarial present value of benefits as of June 30, 1997, over the period of time specified in section 88-122(d)."

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

SECTION 3. This Act, upon its approval, shall take effect on June 30, 1999.

(Approved June 14, 2000.)

## ACT 217 H.B. NO. 2468

A Bill for an Act Relating to the Public Utilities Commission.

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

SECTION 1. Section 269-55, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§269-55[]] Handling of complaints.** The consumer advocate shall counsel utility customers in the handling of consumer complaints before the public utilities commission. The public utilities commission shall provide a central clearing house of information by collecting and compiling all consumer complaints and inquiries concerning public utilities [and shall monitor the handling of consumer complaints by the public utilities commission]."

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 14, 2000.)

# ACT 218

H.B. NO. 2480

A Bill for an Act Relating to Limited Liability Partnerships.

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

SECTION 1. Chapter 425, Hawaii Revised Statutes, is amended by adding a new subpart to part IV, to be appropriately designated and to read as follows:

## "LIMITED LIABILITY PARTNERSHIPS

**§425-A Name.** The name of a limited liability partnership shall end with "Registered Limited Liability Partnership", "Limited Liability Partnership", "R.L.L.P.", "L.L.P.", "RLLP", or "LLP".

**§425-B Limited liability partnerships; formation.** (a) A partnership may become a limited liability partnership if the partnership:

(1) Obtains the partnership's approval of the terms and conditions upon which the partnership shall become a limited liability partnership;
(2) Files a registration statement with the director pursuant to part I, either prior to, or simultaneously with the filing of a statement of qualification as provided by this subpart; and
(3) Is in good standing pursuant to part I.

(b) The terms and conditions upon which a partnership becomes a limited liability partnership shall be approved by the vote necessary to amend the partnership agreement; provided that where a partnership agreement specifies the vote necessary to amend provisions of the partnership agreement controlling obligations to contribute to the partnership, approval shall be by the vote necessary to amend those provisions.

(c) The filing of a statement of qualification pursuant to this subpart establishes that a partnership has satisfied all conditions precedent to qualification of the partnership as a limited liability partnership.

**§425-C Statement of qualification.** (a) A statement of qualification shall contain:

(1) The name of the partnership;
(2) The street address of the partnership's chief executive office and, if different, the street address of an office in this State, if any;
(3) If the partnership does not have an office in this State, the name and street address of the partnership's agent for service of process; and
(4) A statement that the partnership elects to be a limited liability partnership.

(b) The agent of a limited liability partnership for service of process shall be an individual who is a resident of this State or other person qualified or registered with the director to do business in this State.

**§425-D Amendment of statement of qualification.** (a) If any statement in the statement of qualification was false when made, or any arrangement of other facts described have changed, making the statement inaccurate in any material respect, the limited liability partnership, within thirty days after it becomes aware of the inaccuracy, shall file with the director a statement certified and signed by a partner, correcting the statement of qualification. No person shall have any liability resulting from a failure to file an amendment to a statement of qualification pursuant to this subsection.

(b) A statement of qualification may be amended at any time for any proper purpose determined by the partners.

(c) A statement of qualification shall be amended by delivering a statement of amendment of limited liability partnership to the director for filing. The statement of amendment shall set forth:

(1) The name of the limited liability partnership;

(2) The date on which the limited liability partnership's statement of qualification was filed; and

(3) The amendment to the statement of qualification.

(d) A restated statement of qualification may be executed and filed in the same manner as a statement of amendment. The restated statement shall set forth all of the operative provisions of the statement as amended.

(e) An amendment to a statement of qualification or restated statement of qualification shall be effective when filed.

**§425-E Status as limited liability partnership; cancellation.** (a) The status of a partnership as a limited liability partnership shall be effective upon the filing of the statement of qualification.

(b) Status as a limited liability partnership shall continue, regardless of changes in the partnership, until canceled pursuant to section 425-14 or revoked pursuant to 425-N. Cancellation of a statement of qualification is effective upon filing.

(c) The status of a partnership as a limited liability partnership and the liability of its partners shall not be affected by errors in or amendments made to the information required to be contained in the statement of qualification under section 425-C.

**§425-F Foreign limited liability partnerships.** (a) Before transacting business in this State, a foreign limited liability partnership shall register pursuant to part I of this chapter and file a statement of foreign qualification with the director.

(b) A foreign limited liability partnership shall not be denied a statement of foreign qualification by reason of any difference between the law under which the partnership was formed and the law of this State.

**§425-G Law governing foreign limited liability partnership.** (a) The law under which a foreign limited liability partnership is formed shall govern relations among the partners, between the partners and the partnership, and the liability of partners for obligations of the partnership.

(b) A statement of foreign qualification shall not be construed to authorize a foreign limited liability partnership to engage in any business or exercise any power prohibited to a limited liability partnership in this State.

**§425-H Statement of foreign qualification.** (a) A statement of foreign qualification shall contain:

(1) The name of the foreign limited liability partnership, which name complies with:

(A) The law of the state or other jurisdiction under which the foreign limited liability partnership is formed; and

(B) Section 425-C;

(2) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any;

(3) The name and street address of the partnership's agent for service of process; and

(4) The total number of partners on the date the statement is filed.

(b) The agent of a foreign limited liability partnership for service of process shall be an individual who is a resident of this State or other person qualified or registered with the director to do business in the State.

**§425-I Amendment of statement of foreign qualification.** If any statement in the statement of foreign qualification was false when made or any arrangement of other facts described have changed making the statement inaccurate in any material respect, the foreign limited liability partnership, within thirty days after it becomes aware of the inaccuracy, shall file with the director a statement, certified and signed by a partner, correcting the statement of foreign qualification. No person shall have any liability resulting from a failure to file an amendment to a restatement of foreign qualification pursuant to this subsection.

(b) A statement of foreign qualification may be amended at any time for any purpose determined by the partners.

(c) A statement of foreign qualification shall be amended by delivering a statement of amendment of foreign limited liability partnership to the director for filing. The statement shall set forth:

(1) The name of the foreign limited liability partnership;

(2) The date on which the foreign limited liability partnership and statement of foreign qualification was filed; and

(3) The amendment to the statement of foreign qualification.

(d) A restated statement of foreign qualification may be executed and filed in the same manner as a statement of amendment. The restated statement shall set forth all of the operative provisions of the statement as amended.

(e) The amendment to a statement of foreign qualification or restated statement of foreign qualification shall be effective when filed.

**§425-J Status as qualified foreign limited liability partnership; cancellation.** (a) The status of a partnership as a qualified foreign limited liability partnership shall be effective upon the filing of the statement of foreign qualification.

(b) Status as a qualified foreign limited liability partnership shall continue, regardless of changes in the partnership, until canceled pursuant to section 425-14 or revoked pursuant to section 425-N. Cancellation of a statement of foreign qualification is effective when it is filed.

(c) The status of a partnership as a foreign limited liability partnership and the liability of its partners shall not be affected by errors in or amendments made to the information required to be contained in the statement of foreign qualification under section 425-H.

**§425-K Foreign limited liability partnerships; effect of failure to qualify.** (a) A foreign limited liability partnership engaged in the transaction of business in this State shall not maintain an action or proceeding in this State unless it has in effect a statement of foreign qualification.

(b) The failure of a foreign limited liability partnership to have in effect a statement of foreign qualification shall not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this State.

(c) A limitation on personal liability of a partner is not waived solely by the transaction of business in this State without a statement of foreign qualification.

(d) If a foreign limited liability partnership transacts business in this State without a statement of foreign qualification, the director shall be its agent for service of process with respect to a right of action arising out of a business transaction in this State.

**§425-L Foreign limited liability partnerships; activities not constituting the transaction of business.** (a) Activities of a foreign limited liability partnership that do not constitute the transaction of business for the purpose of this subpart include:

(1) Maintaining, defending, or settling an action or proceeding;
(2) Holding meetings of its partners or carrying on any other activity concerning its affairs;
(3) Maintaining bank accounts;
(4) Maintaining offices or agencies for the transfer, exchange, and registration of the partnership's own securities, or maintaining trustees or depositories with respect to those securities;
(5) Selling through independent contractors;
(6) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this State before they become contracts;
(7) Creating or acquiring indebtedness, with or without a mortgage, or other security interest in property;
(8) Collecting debts or foreclosing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;
(9) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions; and
(10) Transacting business in interstate commerce.

(b) For purposes of this subpart, the ownership in this State of income-producing real property or income-producing tangible personal property, other than property excluded under subsection (a), constitutes the transaction of business in this State.

(c) This section shall not apply to a determination of contracts or activities that may subject a foreign limited liability partnership to service of process, taxation, or regulation under any other law of this State.

**§425-M Annual reports.** (a) Every limited liability partnership and foreign limited liability partnership authorized to transact business in this State shall file an annual report in the office of the director that contains:

(1) The name of the limited liability partnership or foreign limited liability partnership;
(2) In the case of a foreign limited liability partnership, the state or other jurisdiction under whose laws the foreign limited liability partnership is formed;
(3) The street address of the partnership's chief executive office and, if different, the street address of an office of the partnership in this State, if any; and
(4) If the partnership does not have an office in this State, the name and street address of the partnership's current agent for service of process.

(b) An annual report as of the preceding December 31 shall be filed on or before March 31 of each year following the calendar year in which a limited liability partnership files a statement of qualification or a foreign limited liability partnership becomes authorized to transact business in this State.

**§425-N Revocation of statement of qualification.** (a) The director may revoke the statement of qualification of a limited liability partnership or statement of foreign qualification of a foreign limited liability partnership that fails to file an annual report for a period of two years or fails to pay the required filing fee. The director shall provide the partnership at least sixty days written notice of intent to

revoke the statement. The notice shall be mailed to the partnership at its last known address appearing in the records of the director. The notice shall specify the annual report that has not been filed or the fee that has not been paid, and the effective date of the revocation. The revocation shall not be effective if the specified annual report is filed and the specified fee is paid before the effective date of the revocation.

(b) Revocation under subsection (a) shall only affect a partnership's status as a limited liability partnership or foreign limited liability partnership and shall not be deemed an event of dissolution of the partnership.

(c) A partnership whose statement of qualification or statement of foreign qualification has been revoked may apply to the director for reinstatement within two years after the effective date of the revocation. The application shall state:

(1) The name of the partnership and the effective date of the revocation; and

(2) That the ground for revocation either did not exist or has been corrected.

(d) A reinstatement under subsection (c) shall relate back to and take effect as of the effective date of the revocation, and the partnership's status as a limited liability partnership or foreign limited liability partnership shall continue upon reinstatement as if the revocation had never occurred.

**§425-O Execution of statements.** Each statement or document required by this subpart to be filed with the director shall be signed and certified by at least one partner.

**§425-P Filing requirements; filing duty of the director.** (a) A document shall satisfy the requirements of this subpart to be entitled to filing by the director.

(b) A document shall contain the information required by this subpart and may contain additional information.

(c) If the director has prescribed a mandatory form for the document, the document shall be in or on the prescribed form.

(d) The director's duty to file documents under this subpart is ministerial. The filing or refusal to file a document shall not:

(1) Affect the validity or invalidity of the document in whole or part;

(2) Relate to the correctness or incorrectness of information contained in the document; or

(3) Create a presumption that the documentation is valid or invalid, or the information contained in the document is correct or incorrect.

**§425-Q Correction of filed documents.** (a) A limited liability partnership or foreign limited liability partnership may correct a document filed with the director if the document:

(1) Contains an incorrect statement; or

(2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) To correct a document, a limited liability partnership or foreign limited liability partnership shall prepare and deliver to the director for filing, a certificate of correction that:

(1) Identifies the document, including its filing date, or includes a copy of the document to be corrected, attached to the certificate;

(2) Identifies the incorrect statement, if any;

(3) Explains why the incorrect statement, if any, is incorrect, or describes the manner in which execution of the document was defective; and

(4) Corrects the incorrect statement or defective execution.

(c) A certificate of correction is effective retroactive to the effective date of the document corrected except as to persons relying on the uncorrected document

and adversely affected by the correction, as to which persons, a certificate of correction is effective from the time of filing.

**§425-R Fee for recording.** (a) The director shall collect the following fees for documents filed under this subpart:

(1) For each annual report filed, a fee of $50;
(2) For each statement of qualification of limited liability partnership, a fee of $100 for each partner, subject to a maximum fee of $10,000;
(3) For each statement of foreign qualification of limited liability partnership, a fee of $1,000 if the partnership has fewer than ten partners; $5,000 if the partnership has ten or more but fewer than fifty partners; and $10,000 if the partnership has fifty or more partners;
(4) For each certificate of correction or statement of amendment, a fee of $100;
(5) For each certificate of good standing, a fee of $100;
(6) For review of articles of conversion, a fee of $200;
(7) For any other certificate, statement, or document, a fee of $100; and
(8) For each certification of domestic or foreign partnership, a fee of $100.

(b) The following special handling fees shall be assessed by the director for expeditious handling and review of the following documents:

(1) For limited liability partnerships:
  (A) Statement of qualification of limited liability partnership, $100;
  (B) Certificate of correction, $100;
  (C) Statement of amendment of limited liability partnership, $100;
  (D) Annual report, $100;
  (E) Certification of limited liability partnership, $1 a page;
  (F) Certificate of good standing, $100; and
  (G) Articles of conversion, $150;
(2) For foreign limited liability partnerships:
  (A) Statement of foreign qualification of limited liability partnership, $100;
  (B) Certificate of correction, $100;
  (C) Statement of amendment of foreign limited liability partnership, $100;
  (D) Annual report, $100;
  (E) Certification of foreign partnership, $1 a page;
  (F) Certificate of good standing, $100; and
  (G) Articles of conversion, $150; and
(3) For any other certificate or document authorized by this subpart, $100.

(c) All fees collected under this section shall be managed in accordance with section 26-9(l).

**§425-S Revocation if instrument dishonored.** The director may revoke the filing of a document filed under this subpart if the director determines that the filing fee for the document was paid by an instrument that was dishonored when presented by the State for payment. Documents revoked under this section shall be returned and notice of revocation shall be given to the filing party by regular mail. Failure to give or receive the notice shall not invalidate revocation under this section. Revocation of a filing under this section shall not affect an earlier filing.

**§425-T Record of statements.** The director shall keep books or files in which shall be recorded the information required by this subpart to be filed with the director. The books or files shall be open to public inspection.

**§425-U Action by director.** The director may maintain an action to restrain a foreign limited liability partnership from transacting business in this State in violation of this subpart.

**§425-V Personal liability and penalty.** (a) Each partner of a partnership that neglects or fails to substantially comply with any provision of this subpart shall severally forfeit to the State $25 for each and every month while the default continues, to be recovered by action brought in the name of the State by the director; provided that the director, for good cause shown, may reduce or waive the same.

(b) Any person who signs or certifies as correct any statement or certificate filed pursuant to this subpart, or who presents any statement or certificate for filing, knowing that the statement or certificate is false in any material respect and with the intent to deceive or defraud, shall be guilty of a class C felony.

(c) Any person who negligently, but without intent to deceive or defraud, signs or certifies as correct any statement or certificate filed pursuant to this subpart, that is in fact false, shall be subject to a civil fine not to exceed $500.

**§425-W Transition rules for limited liability partnerships and foreign limited liability partnerships under prior law.** (a) All entities that were limited liability partnerships registered under the law in effect on the date preceding the effective date of this subpart, shall be converted into and be deemed partnerships that have registered under part I and filed a statement of qualification of limited liability partnership pursuant to this subpart.

(b) All entities that were foreign limited liability partnerships registered under the law in effect on the date preceding the effective date of this subpart, shall be converted into and be deemed foreign limited liability partnerships that have registered under part I and filed a statement of foreign qualification pursuant to this subpart."

SECTION 2. Chapter 425, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART
MISCELLANEOUS PROVISIONS

**§425-AA 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.

**§425-BB Short title.** This chapter may be cited as the Uniform Partnership Act (1977)."

SECTION 3. Section 425-101, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "limited liability partnership" to read:

""Limited liability partnership" means a partnership that has filed a [certificate of limited liability partnership under section 425-153] statement of qualification under section 425-B and does not have a similar statement in effect in any other jurisdiction."

2. By amending the definition of "statement" to read:

""Statement" means a registration or annual statement filed under section 425-1, a statement of correction filed under section 425-1.7, a statement of change filed under section 425-7, a statement of dissolution filed under section 425-9, a statement of denial filed under section 425-115, a statement of dissociation filed

under section 425-136, a statement of qualification under section 425-C, a statement of foreign qualification under section 425-H, an amendment, or any other document filed under this chapter."

SECTION 4. Section 425-103, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The partnership agreement shall not:

(1) Vary the rights and duties under section 425-105 except to eliminate the duty to provide copies of statements to all of the partners;

(2) Unreasonably restrict the right of access to books and records under section 425-122(b);

(3) Eliminate the duty of loyalty under section 425-123(b) or 425-132(b)(3), but:

(A) The partnership agreement may identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; or

(B) All of the partners or a number or percentage specified in the partnership agreement may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(4) Unreasonably reduce the duty of care under section 425-123(c) or 425-132(b)(3);

(5) Eliminate the obligation of good faith and fair dealing under section 425-123(d), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(6) Vary the power to dissociate as a partner under section 425-131(a), except to require the notice under section 425-130(1) to be in writing;

(7) Vary the right of a court to expel a partner in the events specified in section 425-130(5);

(8) Vary the requirement to wind up the partnership business in cases specified in section 425-138(4), (5), or (6); or

(9) [Vary the law applicable to a limited liability partnership under section 425-161; or

(10)] Restrict rights of third parties under this part."

SECTION 5. Section 425-106, Hawaii Revised Statutes, is amended to read as follows:

"**§425-106 Governing law.** [Except as otherwise provided in section 425-161, the] The law of the jurisdiction in which a partnership has its chief executive office governs relations among the partners and between the partners and the partnership."

SECTION 6. Section 425-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A limited liability partnership continues to be the same entity that existed before the filing of a [certificate of limited liability partnership] statement of qualification under section [425-153] 425-C."

SECTION 7. Section 425-145, Hawaii Revised Statutes, is repealed.

SECTION 8. Chapter 425, part V, Hawaii Revised Statutes, is repealed.

SECTION 9. If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

SECTION 10. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 11. Statutory material to be repealed is bracketed.[1] New statutory material is underscored.

SECTION 12. In codifying the new subpart and part added to chapter 425, Hawaii Revised Statutes, by sections 1 and 2 of this Act, and references to new sections in sections 3 and 6 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designation of new sections.

SECTION 13. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 219 H.B. NO. 2483

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 428, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§428- Restated articles of organization.** (a) A limited liability company may at any time restate its articles of organization as amended.

(b) The restated articles of organization shall set forth all of the operative provisions of the articles of organization as amended, together with a statement that the restated articles of organization correctly set forth without change the corresponding provisions of the articles of organization as amended, and that the restated articles of organization supersede the original articles of organization and all amendments thereto.

(c) The restated articles of organization shall be delivered to the director for filing. The director may certify the restated articles of organization currently in effect, without including the information required to be filed by subsection (b)."

SECTION 2. Section 415-8, Hawaii Revised Statutes, is amended to read as follows:

"**§415-8 Corporate name.** The corporate name:

(1) Shall contain the word "corporation", "incorporated", or "limited", or shall contain an abbreviation of one of the words; and

(2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, [domestic] partnership, [domestic] limited liability company, or [domestic] limited liability partnership existing or

registered under the laws of this State, or any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in [the manner provided in this chapter, or the name of a corporation which has in effect a registration of its corporate name as provided in this chapter,] this State, except that this provision shall not apply if the applicant files with the director either of the following:

(A) The written consent [of] from the [other corporation] entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or

(B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 3. Section 415-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in this section, each corporation shall continuously maintain in [the] this State:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent who shall be:

(A) An individual who resides in [the] this State and whose business office is identical to the registered office;

(B) A domestic corporation or not-for-profit domestic corporation whose business office is identical to the registered office; or

(C) A foreign corporation or not-for-profit foreign corporation authorized to transact business in [the] this State whose business office is identical to the registered office."

SECTION 4. Section 415-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A corporation may change its registered office or registered agent by delivering to the director for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent [and the new agent's written consent to the appointment. This consent may be indicated on or attached to the statement of change]; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent shall be identical."

SECTION 5. Section 415-12, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The [agency] appointment of the agent shall be terminated, and the registered office discontinued if so provided, thirty-one days after the date on which the statement was filed."

SECTION 6. Section 415-14, Hawaii Revised Statutes, is amended to read as follows:

"**§415-14 Service of process on corporation.** (a) Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent, officer, or director of the corporation who is found within the jurisdiction of the court, officer, or board; or if any registered agent, officer, or director cannot be found, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and in case the corporation[, if a foreign corporation,] has not filed with the director pursuant to sections 415-10, 415-11, 415-113, and 415-114, the name of a person upon whom legal notice and process from the courts of the State may be served, and likewise if the person so named is not found within the State, service may be made upon the corporation by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service using registered or certified mail is perfected at the earliest of:

(1) The date the corporation receives the mail;
(2) The date shown on the return receipt, if signed on behalf of the corporation; or
(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law."

SECTION 7. Section 415-54, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The articles of incorporation shall be delivered to and filed by the director and shall set forth:

(1) The name of the corporation;
(2) The aggregate number of shares which the corporation shall have authority to issue, and, if the shares are to be divided into classes, the number of shares of each class;
(3) The mailing address of its initial or principal office and, if the corporation is required at the time of incorporation to have a registered office and registered agent in this State, the street address of the corporation's initial registered office and the name of its initial registered agent at that office; provided that where no specific street address is available for the corporation's initial or principal office or for the corporation's registered office, the rural route post office number or post office box designated or made available by the United States Postal Service;
(4) The number of directors constituting the initial board of directors and the names and [residence] addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified; [provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;] and
(5) The name, title, and [residence] address of each officer[; provided that where no specific street address is available, the rural route post office

number or post office box designated or made available by the United States Postal Service]."

SECTION 8. Section 415-74, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Upon receiving the approvals required by sections 415-71, 415-72, 415-72A, and 415-73, articles of merger or articles of consolidation shall be delivered to the director for filing and shall set forth:

(1) Either:

(A) The names and jurisdictions of incorporation of the corporations proposing to merge, and the name and jurisdiction of incorporation of the corporation into which they propose to merge which is hereinafter designated as the surviving corporation; or

(B) The names and jurisdictions of incorporation of the corporations proposing to consolidate, and the name and jurisdiction of incorporation of the new corporation into which they propose to consolidate which is hereinafter designated as the new corporation;

[(1)] (2) A statement that the plan of merger, or the plan of consolidation has been approved by the board of directors of each corporation involved in the merger or consolidation;

[(2)] (3) Either:

(A) A statement that the vote of shareholders is not required by virtue of section 415-73(e); or

(B) As to each corporation, the approval of whose shareholders is required, the number of shares outstanding and, if the shares of any class were entitled to vote as a class, the designation and number of outstanding shares of each class;

[(3)] (4) As to each corporation the approval of whose shareholders is required, the number of shares voted for and against the plan, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the plan, respectively; and

[(4)] (5) A statement indicating the changes in the articles of incorporation of the surviving corporation to be effected by the merger or consolidation."

SECTION 9. Section 415-75, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Articles of merger shall be delivered to the director for filing and shall set forth:

(1) The name and jurisdiction of incorporation of the subsidiary corporation, and the name and jurisdiction of incorporation of the corporation owning at least ninety per cent of its shares which is hereinafter designated as the surviving corporation;

[(1)] (2) A statement that the plan of merger has been approved by the board of directors of the surviving corporation;

[(2)] (3) The number of outstanding shares of each class of the subsidiary corporation and the number of shares of each class owned by the surviving corporation; and

[(3)] (4) The date a copy of the plan of merger is mailed to shareholders of the subsidiary corporation entitled to receive the plan."

SECTION 10. Section 415-75.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Articles of merger shall be delivered to the director for filing and shall set forth:

(1) The name and jurisdiction of incorporation of the parent corporation owning at least ninety per cent of the shares of the subsidiary corporation, the name and jurisdiction of incorporation of any nonsurviving subsidiary corporation, and the name and jurisdiction of the surviving subsidiary corporation;

[(1)] (2) A statement that the plan of merger has been approved by the board of directors of the parent corporation;

[(2)] (3) The number of outstanding shares of each class of any nonsurviving subsidiary corporation and the number of such shares of each class owned by the parent corporation; and

[(3)] (4) The date a copy of the plan of merger is mailed to shareholders of any nonsurviving subsidiary corporation entitled to receive the plan."

SECTION 11. Section 415-75.6, Hawaii Revised Statutes, is amended to read as follows:

"[[]§415-75.6[]] **Merger with or into domestic or foreign limited liability company.** (a) As used in this section, the terms "limited liability company" and "foreign limited liability company" shall have the meanings defined in section 428-101.

(b) One or more corporations or foreign corporations may merge with or into one or more limited liability companies or foreign limited liability companies if in the case of a domestic corporation the board of directors and the shareholders approve a plan of merger as provided in sections 415-71 and 415-73, and in the case of a foreign corporation it complies with section 415-77.

(c) In addition to the requirements of section 415-74, the plan of merger shall also set forth:

(1) The name of each limited liability company and foreign limited liability company proposing to merge; and

(2) If the surviving entity is a limited liability company or a foreign limited liability company:

(A) The manner and basis of converting the shares of each corporation or foreign corporation and the interests as members of each limited liability company or foreign limited liability company into interests as members of the surviving domestic limited liability company or foreign limited liability company pursuant to such merger, or a statement that such information is contained in the operating agreement proposed for such surviving entity;

(B) The contents of the articles of organization of the surviving entity pursuant to such merger in accordance with section 428-203 if a domestic limited liability company is the surviving entity, or in accordance with comparable provisions of applicable law if a foreign limited liability company is the surviving entity; and

(C) The contents of the operating agreement to be entered into among the persons who will be the members of the surviving entity pursuant to the merger, which shall, if not separately provided in the plan of merger, state the manner and basis for the conversion of the shares of each merging corporation or foreign corporation and the interests as members of each merging limited liability company or foreign limited liability company into interests as

members of the surviving entity and that notice of the approval of the merger will be deemed to be execution of the operating agreement by such persons.

(d) After a plan of merger is approved by the shareholders of each corporation and foreign corporation as provided in subsection (b), and by the members of each domestic limited liability company as provided in section 428-904, or as provided in comparable provisions of applicable law for each foreign limited liability company, the surviving entity shall deliver to the office of the director for filing articles of merger [complying with section 415-74,] executed on behalf of each party to the merger. The articles of merger shall:

(1) Comply with section 415-74 if the surviving entity is a domestic or foreign corporation; or

(2) Comply with section 428-905 if the surviving entity is a domestic or foreign limited liability company.

(e) Section 415-76 shall be applicable to each corporation that is a party to the plan of merger.

(f) If a foreign corporation is a party to the merger, section 415-77 shall apply to such foreign corporation.

(g) Section 428-906 shall apply to each domestic and foreign limited liability company that is a party to the plan of merger."

SECTION 12. Section 415-77, Hawaii Revised Statutes, is amended to read as follows:

"**§415-77 Merger, consolidation, or share exchange between domestic and foreign corporations.** One or more foreign corporations and one or more domestic corporations may be merged or consolidated, or participate in a share exchange, in the following manner, if the merger, consolidation, or share exchange is permitted by the laws of the state under which each foreign corporation is organized:

(1) Each domestic corporation shall comply with [the provisions of] this chapter with respect to the merger, consolidation, or share exchange, as the case may be, of domestic corporations and each foreign corporation shall comply with the applicable provisions of the laws of the state under which it is organized; and

(2) If the surviving or new corporation in a merger or consolidation is to be governed by the laws of any state other than this State, it shall comply with [the provisions of] this chapter with respect to foreign corporations if it is to transact business in this State, and in every case it shall file with the director of this State:

(A) An agreement that it may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation and in any proceeding for the enforcement of the rights of a dissenting shareholder of the domestic corporation against the surviving or new corporation;

(B) An irrevocable appointment of a resident of this State as its agent to accept service of process in any such proceeding[;], and include the resident's street address in this State; and

(C) An agreement that it will promptly pay to the dissenting shareholders of the domestic corporation the amount, if any, to which they shall be entitled under provisions of this chapter with respect to the rights of dissenting shareholders."

SECTION 13. Section 415-83, Hawaii Revised Statutes, is amended to read as follows:

"**§415-83 Voluntary dissolution by consent of shareholders.** (a) A corporation may be voluntarily dissolved by the written consent of all of its shareholders.

(b) Upon the execution of the written consent, a statement of intent to dissolve shall set forth:

(1) The name of the corporation;
(2) The names and [respective residence] addresses of its officers;
(3) The names and [respective residence] addresses of its directors; and
(4) A statement that the written consent has been signed by all shareholders of the corporation, or signed in their names by their attorneys thereunto duly authorized."

SECTION 14. Section 415-84, Hawaii Revised Statutes, is amended to read as follows:

"**§415-84 Voluntary dissolution by act of corporation.** A corporation may be dissolved by the act of the corporation, when authorized, in the following manner:

(1) The board of directors shall adopt a resolution recommending that the corporation be dissolved, and directing that the question of the dissolution be submitted to a vote at a meeting of shareholders, which may be either an annual or a special meeting;
(2) Written notice shall be given to each shareholder [[]of[]] record entitled to vote at such meeting within the time and in the manner provided in this chapter for the giving of notice of meetings of shareholders, and, that one of the purposes of the meeting is to consider the advisability of dissolving the corporation;
(3) With respect to corporations incorporated on or after July 1, 1987, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon;
(4) With respect to corporations incorporated before July 1, 1987, at such meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control, provided that [said] the lesser proportion shall not be less than the proportion set forth in paragraph (3) [of this section]; and
(5) Upon the adoption of the resolution, a statement of intent to dissolve shall set forth:

(A) The name of the corporation;
(B) The names and [respective residence] addresses of its officers;
(C) The names and [respective residence] addresses of its directors;
(D) The date[, time, and location] of the shareholders meeting;
(E) The number of shares outstanding, and, if the shares of any class are entitled to vote as a class, the designation and number of outstanding shares of each class; and
(F) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each such class voted for and against the resolution, respectively."

SECTION 15. Section 415-87, Hawaii Revised Statutes, is amended to read as follows:

"**§415-87 Procedure after filing of statement of intent to dissolve.** After the filing by the director of a statement of intent to dissolve:

(1) The corporation shall immediately cause notice thereof to be mailed to each known creditor of the corporation;
(2) The corporation [shall forthwith] may publish, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State, notice thereof to all creditors of the corporation[. The corporation, with the approval of the director, may omit the publication of the notice if the corporation has insufficient assets to pay for the publication];
(3) The corporation shall proceed to collect its assets, convey, and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all of its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests; and
(4) The corporation, at any time during the liquidation of its business and affairs, may make application to a court of competent jurisdiction within the State and judicial subdivision in which the principal office or principal place of business of the corporation is situated, to have the liquidation continued under the supervision of the court as provided in this chapter."

SECTION 16. Section 415-88, Hawaii Revised Statutes, is amended to read as follows:

"**§415-88 Revocation of voluntary dissolution proceedings by consent of shareholders.** By the written consent of all of its shareholders, a corporation may, at any time prior to the filing of the articles of dissolution by the director, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

Upon the execution of such written consent, a statement of revocation of voluntary dissolution proceedings shall set forth:

(1) The name of the corporation;
(2) The names and [residence] addresses of its officers;
(3) The names and [residence] addresses of its directors;
[(4) A copy of the written consent signed by all shareholders of the corporation revoking the voluntary dissolution proceedings;] and

[(5)] (4) That the written consent revoking the voluntary dissolution proceedings has been signed by all shareholders of the corporation or signed in their names by their attorneys thereunto duly authorized."

SECTION 17. Section 415-89, Hawaii Revised Statutes, is amended to read as follows:

"**§415-89 Revocation of voluntary dissolution proceedings by act of corporation.** By the act of the corporation, a corporation may, at any time prior to the filing of the articles of dissolution by the director, revoke voluntary dissolution proceedings theretofore taken, in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of the revocation be submitted to a vote at a special meeting of shareholders;

(2) Written notice, stating that the purpose or one of the purposes of the meeting is to consider the advisability of revoking the voluntary dissolution proceedings, shall be given to each shareholder of record entitled to vote at the meeting within the time and in the manner provided in this chapter for the giving of notice of special meetings of shareholders;

(3) At the meeting, a vote of the shareholders entitled to vote thereat shall be taken on a resolution to revoke the voluntary dissolution proceedings, which shall require for its adoption the affirmative vote of the holders of a majority of the shares entitled to vote thereon and shall be adopted in the same manner as the dissolution was authorized in section 415-84; and

(4) Upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall set forth:
   (A) The name of the corporation;
   (B) The names and [residence] addresses of its officers;
   (C) The names and [residence] addresses of its directors;
   (D) [A copy of] That the resolution revoking the voluntary dissolution proceedings was adopted by the shareholders [revoking the voluntary dissolution proceedings];
   (E) The number of shares outstanding and, if the shares of any class are entitled to vote as a class, the designation and number of the outstanding shares of each class; and
   (F) The number of shares voted for and against the resolution, respectively, and, if the shares of any class are entitled to vote as a class, the number of shares of each class voted for and against the resolution, respectively."

SECTION 18. Section 415-92, Hawaii Revised Statutes, is amended to read as follows:

"**§415-92 Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, then when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been distributed to its shareholders, articles of dissolution verified on oath by two officers shall set forth:

(1) The name of the corporation;

(2) That the director has theretofore filed a statement of intent to dissolve the corporation and the date on which the statement was filed;

(3) The dates that notice of the filing of the statement of intent to dissolve the corporation was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State, or a statement that publication [of notice had been waived by the director;] was not made;
(4) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
(5) That all of the remaining property and assets of the corporation have been distributed among its shareholders in accordance with their respective rights and interests; and
(6) That there are no suits pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit."

SECTION 19. Section 415-95, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever the director certifies the name of a corporation as having given any cause for dissolution pursuant to section 415-94, the director may declare the corporation dissolved. Before the director may declare a corporation dissolved, the director shall[:
(1) Give] give notice of the ground or grounds for dissolution as provided in section 415-94, by mailing the notice to the corporation at its last known address appearing in the records of the director[;] and
[(2) Give] may give [statewide] public notice of the intention to dissolve the corporation [once in each of three successive weeks]."

SECTION 20. Section 415-108, Hawaii Revised Statutes, is amended to read as follows:

"**§415-108 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:
(1) Is not the same as, or substantially identical to, the name of any domestic corporation, [domestic] partnership, [domestic] limited liability company, or [domestic] limited liability partnership existing or registered under the laws of this State, or any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in [the manner provided in this chapter,] this State, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the director any one of the following:
(A) The written consent [of such other corporation] from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name;
(B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this State; or
(C) A copy of a certificate of registration of a trade name by the foreign corporation under which trade name that foreign corporation will transact business in this State; and

(2) Is transliterated into letters of the English alphabet, if the name is not in English."

SECTION 21. Section 415-110, Hawaii Revised Statutes, is amended as follows:

"**§415-110 Application for certificate of authority.** To procure a certificate of authority to transact business in this State, a foreign corporation [should make application therefor] shall apply to the director[, which]. The application shall set forth:

(1) The name of the corporation and the jurisdiction in which it is incorporated;
(2) The date of incorporation and the period of duration of the corporation;
(3) The mailing address of the principal office of the corporation in the jurisdiction in which it is incorporated;
(4) The street address of the proposed registered office of the corporation in this State, and the name of its proposed registered agent in this State at that address;
(5) The primary specific purpose and such other purposes of the corporation which it proposes to pursue in the transaction of business in this State;
(6) The names and [respective] addresses of the directors and officers of the corporation; and
(7) Any additional information as may be necessary or appropriate to enable the director to determine whether the corporation is entitled to a certificate of authority to transact business in this State. The application shall be made on forms prescribed and furnished by the director which shall be delivered to the director for filing."

SECTION 22. Section 415-119, Hawaii Revised Statutes, is amended to read as follows:

"**§415-119 Withdrawal of foreign corporation.** A foreign corporation authorized to transact business in this State may withdraw from the State upon procuring from the director a certificate of withdrawal. In order to procure a certificate of withdrawal, the foreign corporation shall deliver to the director an application for withdrawal, which shall set forth:

(1) The name of the foreign corporation and the state or country under the laws of which it is incorporated;
(2) That the foreign corporation is not transacting business in this State;
(3) That the foreign corporation surrenders its authority to transact business in this State;
(4) That the foreign corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to transact business in this State may thereafter be made on the corporation by service thereof on the director;
(5) The dates that notice of the foreign corporation's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State[. The foreign corporation, with the approval of the director, may omit the publication of the notice if the corporation has insuffi-

cient assets to pay for the publication;] or a statement that publication was not made;

(6) That all taxes, debts, obligations, and liabilities of the foreign corporation in [the] this State have been paid and discharged or that adequate provision has been made therefor;

(7) A mailing address to which the director may mail a copy of any process against the foreign corporation that may be served on the director; and

(8) Such additional information as may be necessary or appropriate in order to enable the director to determine and assess any unpaid fees payable by the foreign corporation as in this chapter prescribed.

The application for withdrawal shall be made on forms prescribed and furnished by the director and shall be delivered to and filed by the director."

SECTION 23. Section 415-125, Hawaii Revised Statutes, is amended to read as follows:

"**§415-125 Annual report of domestic and foreign corporations.** Each domestic corporation and each foreign corporation authorized to transact business in this State shall deliver to the director, within the time prescribed by this chapter, an annual report signed by any authorized officer, or an attorney-in-fact for an officer, or if the corporation is in the hands of a receiver or trustee, by the receiver or trustee setting forth:

(1) The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated;

(2) Where the corporation is required by law to have a registered office and registered agent in [the] this State, the street address of the domestic corporation's or foreign corporation's registered office in this State, and the name of its registered agent in this State at such address, and the mailing address of its principal office in the state or country under the laws of which it is incorporated; provided that if the mailing address of the principal office differs from the street address, or where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;

(3) A brief statement of the character of the business in which the corporation or foreign corporation is actually engaged in this State;

(4) The names and [respective residence] addresses of the directors and officers of the corporation and the names and [respective] addresses of the directors and officers of the foreign corporation; [provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service];

(5) A statement of the aggregate number of shares which a domestic corporation has authority to issue, itemized by classes [and series], if any[, within a class]; and

(6) A statement of the aggregate number of shares issued by a domestic corporation, itemized by classes [and series], if any[, within each class]."

SECTION 24. Section 415-128, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing of corporate documents:

(1) Articles of incorporation, $100;

(2) Articles of amendment, $50;
(3) Restated articles of incorporation, $50;
(4) Articles of conversion, merger, or consolidation, $200;
(5) Articles of merger (subsidiary corporation), $100;
(6) Articles of dissolution, $50;
(7) Annual report of domestic and foreign corporations organized for profit, $25;
(8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, $50;
(9) Application for a certificate of authority, $100;
(10) Application for a certificate of withdrawal, $50;
(11) Reservation of corporate name, $20;
(12) Transfer of reservation of corporate name, $20;
(13) Good standing certificate, $25;
(14) Special handling fee for review of corporation documents, excluding articles of conversion, merger, or consolidation, $50;
(15) Special handling fee for review of articles of conversion, merger, or consolidation, $150;
(16) Special handling fee for certificates issued by the department, $20 per certificate; [and]
(17) Special handling fee for certification of documents, $1 per page[.]; and
(18) Agent's statement of change of registered office, $50 for each affected domestic corporation or foreign corporation; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to $1 for each affected domestic corporation or foreign corporation."

SECTION 25. Section 415A-8, Hawaii Revised Statutes, is amended to read as follows:

"**§415A-8 Corporate name.** The name of a professional corporation:
(1) May be any name permitted by law expressly applicable to the profession in which the corporation is engaged or by a rule or regulation of the licensing authority of the profession; and
(2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business in [the] this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in [the manner provided in the Hawaii Business Corporation Act, chapter 415, or the name of a corporation which has registered its corporate name as provided in the Hawaii Business Corporation Act, chapter 415;] this State, except that this [section] provision shall not apply if the applicant files with the director either of the following:
  (A) The written consent [of such other corporation] from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
  (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 26. Section 415A-14.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The articles of incorporation [must] shall set forth:

(1) A [[]corporate[]] name for the corporation that satisfies the requirements of section 415A-8;

(2) The profession or professions that the corporation shall be authorized to practice and any other purpose allowed by the licensing laws and rules of [the] this State; [and]

(3) [The matters specified in section 415-54(a).] The mailing address of its initial or principal office; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;

(4) The number of directors constituting the initial board of directors and the names and addresses of the individuals who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified;

(5) The name, title, and address of each officer; and

(6) The number of shares the corporation is authorized to issue, and if the shares are to be divided into classes, the number of shares of each class."

SECTION 27. Section 415A-18, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever it is established that a professional corporation has failed to comply with any provision of this chapter, the director may declare the corporation dissolved.

Before the director may declare a corporation dissolved, the director shall[:

(1) Give] give notice of the ground or grounds for dissolution as provided in section 415-94[,] by mailing the notice to the professional corporation at its last known address appearing in the records of the director[;], and

[(2) Give statewide] may give public notice of the intention to dissolve the corporation [once in each of three successive weeks]."

SECTION 28. Section 415A-22, Hawaii Revised Statutes, is amended to read as follows:

"**§415A-22 Annual report of professional corporations.** The annual report of each professional corporation shall be delivered to the director for filing [pursuant to the Hawaii Business Corporation Act, chapter 415,] and shall [include a statement that all of the shareholders, not less than one-half of the directors, and all of the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation.] set forth:

(1) The name of the corporation;

(2) The profession or professions that it is or are actually engaged in;

(3) The mailing address of its principal office; provided that where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;

(4) The names and addresses of the directors and officers of the corporation;

(5) A statement of the aggregate number of shares which the corporation has authority to issue, itemized by classes, if any;

(6) A statement of the aggregate number of shares issued by the corporation, itemized by classes, if any; and

(7) A statement that all of the shareholders, not less than one-half of the directors, and all of the officers other than the secretary and treasurer of the corporation are qualified persons with respect to the corporation."

SECTION 29. Section 415B-7, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-7 Corporate name.** The corporate name shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability company, or limited liability partnership[, or trade name] existing or registered under the laws of this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved in [the manner provided under the laws of this State, or the name of a corporation which has in effect a registration of its corporate name as provided under the laws of] this State, except that this provision shall not apply if the applicant [delivers to] files with the director [for filing] either of the following:

(1) The written consent [of] from the [other corporation] entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or

(2) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State."

SECTION 30. Section 415B-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as provided in this section, each corporation shall continuously maintain in [the] this State:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent who shall be:

(A) An individual who resides in [the] this State and whose business office is identical to the registered office;

(B) A domestic corporation or domestic profit corporation whose business office is identical to the registered office; or

(C) A foreign corporation or foreign profit corporation authorized to transact business in [the] this State whose business office is identical to the registered office."

SECTION 31. Section 415B-8.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A corporation may change its registered office or registered agent by delivering to the director for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of the new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of the new registered agent [and the new agent's written consent to the appoint-

ment. This consent may be indicated on or attached to the statement of change]; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent shall be identical."

SECTION 32. Section 415B-8.7, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The [agency] appointment of the agent shall be terminated, and the registered office discontinued if so provided, thirty-one days after the date on which the statement was filed."

SECTION 33. Section 415B-9, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-9 Service of process on corporation.** (a) Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent, officer, or director of the corporation who is found within the jurisdiction of the court, officer, or board; [and in the event of failure to find any such] or if any registered agent, officer, or director[,] cannot be found, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

(b) If[:

(1) No] no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State[;], and

[(2) The] in case the corporation[, if a foreign corporation,] has [neglected to deliver to] not filed with the director the name of a person upon whom legal notice and process from the courts of the State may be served [or], pursuant to sections 415B- 8.5, 415B-8.6, 415B-129, and 415B-130, and likewise if the person [so] named is not found within the State[;

then], service may be made upon the corporation by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service using registered or certified mail [shall be] is perfected at the earliest of:

(1) The date the corporation receives the mail;

(2) The date shown on the return receipt, if signed on behalf of the corporation; or

(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(c) Nothing in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner [now or hereafter] permitted by law."

SECTION 34. Section 415B-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each domestic corporation or foreign corporation authorized to conduct affairs in this State shall deliver to the director for filing, within the time prescribed by this chapter, an annual report setting forth:

(1) The name of the corporation or foreign corporation and the state or country under the laws of which it is incorporated;

(2) Where the corporation is required by law to have a registered office and registered agent in [the] this State, the street address of the domestic corporation's or foreign corporation's registered office in this State, the name of its registered agent in this State at such address, and the mailing address of its principal office in the state or country under the laws of which it is incorporated; provided that if the mailing address of the principal office differs from the street address, or where no specific street address is available, the rural route post office number or post office box designated or made available by the United States Postal Service;
(3) A brief statement of the character of the affairs in which the corporation [is actually conducting,] or[, in the case of a] foreign corporation[, which the corporation] is actually conducting in this State; and
(4) The names and [respective] addresses of the directors and officers of the corporation or foreign corporation [and, in the case of a domestic corporation, the names and residence addresses of the directors and officers of a domestic corporation]."

SECTION 35. Section 415B-34, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) One or more individuals may organize a corporation by signing and delivering articles of incorporation to the director pursuant to section 415B-10, which shall set forth:
(1) The name of the corporation;
(2) The period of the corporation's duration, which may be perpetual;
(3) The purpose or purposes for which the corporation is organized;
(4) Any provisions, not inconsistent with law, which the incorporators elect to set forth in the articles of incorporation for the regulation of the internal affairs of the corporation, including any provision for the distribution of assets on dissolution or final liquidation;
(5) The mailing address of the corporation's initial or principal office and, if the corporation is required at the time of incorporation to have a registered office and registered agent in this State, the street address of the corporation's initial registered office and the name of its initial registered agent at that office; provided that where no specific street address is available for the corporation's initial or principal office or for the corporation's registered office, the rural route post office number or post office box designated or made available by the United States Postal Service [may be listed];
(6) The number of directors constituting the initial board of directors and the names and [residence] addresses of the individuals who are to serve as the initial directors and initial officers; and
(7) If a corporation has no members, that fact shall be set forth."

SECTION 36. Section 415B-40, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§415B-40[]] Restated articles of incorporation.** (a) A domestic corporation at any time may restate [amended] its articles of incorporation as theretofore amended, by a resolution adopted by the board of directors.

(b) Upon the adoption of the resolution, restated articles of incorporation shall set forth all of the operative provisions of the articles[,] of incorporation as theretofore amended, together with a statement that the restated articles of incorporation correctly set forth without change the corresponding provisions of the arti-

cles[,] of incorporation as theretofore amended, and that the restated articles of incorporation supersede the original articles of incorporation and all [prior] amendments thereto.

(c) The restated articles of incorporation shall be delivered to [and filed by] the director [pursuant to section 415B-10.] for filing. The director may certify the restated articles of incorporation currently in effect, without including the information required to be filed by subsection (b)."

SECTION 37. Section 415B-40.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) A domestic corporation may at any time amend and restate its articles of incorporation by complying with the procedures and requirements [under] of sections 415B-37 and 415B-40.

(b) Upon [their] its adoption, the amended and restated articles of incorporation shall set forth:

(1) All of the operative provisions of the articles of incorporation as theretofore amended;
(2) The information required [under] by section 415B-38; and
(3) A statement that the amended and restated articles of incorporation supersede the original articles of incorporation and all amendments thereto."

SECTION 38. Section 415B-84, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-84 Articles of merger or consolidation.** (a) The articles of merger or articles of consolidation shall be delivered to the director for filing and shall set forth:

(1) Either:
  (A) The names and jurisdictions of incorporation of the corporations proposing to merge, and the name and jurisdiction of incorporation of the corporation into which they propose to merge, which is hereinafter designated as the surviving corporation; or
  (B) The names and jurisdictions of incorporation of the corporations proposing to consolidate, and the name and jurisdiction of incorporation of the new corporation into which they propose to consolidate, which is hereinafter designated as the new corporation.

[(1) That] (2) A statement that the plan of merger or the plan of consolidation has been approved [and signed] by the board of directors of each corporation, in accordance with section 415B-83[, and a statement of the jurisdiction of incorporation if a foreign corporation is involved];

[(2)] (3) If the members of any merging or consolidating corporation are entitled to vote thereon, then as to each such corporation:
  (A) A statement setting forth the date of the meeting of members at which the plan was adopted, that a quorum was present at the meeting, and that the plan received at least two-thirds of the votes which members present at the meeting or represented by proxy were entitled to cast; or
  (B) A statement that the [amendment] plan was adopted by a consent in writing signed by all members entitled to vote with respect thereto;

[(3)] (4) If any merging or consolidating corporation has no members, or no members entitled to vote thereon, then as to each such corporation a

statement of this fact, the date of the meeting of the board of directors at which the plan of merger or consolidation was adopted, and a statement of the fact that the plan received the vote of a majority of the directors in office; and

[(4)] (5) A statement indicating the changes in the articles of incorporation of the surviving corporation to be effected by the merger or consolidation.

(b) After the articles of merger or articles of consolidation have been delivered to the director and filed, the certificate of merger or certificate of consolidation shall be issued by the director."

SECTION 39. Section 415B-86, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-86 Merger or consolidation of domestic and foreign corporations.** (a) One or more foreign corporations and one or more domestic corporations may be merged or consolidated in the following manner; provided that a merger or consolidation is permitted by the laws of the jurisdiction under which each such[1] corporation is organized:

(1) Each domestic corporation shall comply with this chapter with respect to the merger or consolidation, as the case may be, of domestic corporations and each foreign corporation shall comply with the laws of the jurisdiction under which it is organized; and

(2) If the surviving or new corporation, as the case may be, is to be governed by the laws of any jurisdiction other than this State, it shall comply with the provisions of this chapter with respect to foreign corporations if it is to conduct affairs in this State, and it shall deliver to the director for filing:

(A) An agreement that the surviving or new corporation may be served with process in this State in any proceeding for the enforcement of any obligation of any domestic corporation which is a party to the merger or consolidation; and

(B) An irrevocable appointment of a resident of this State as the surviving or new corporation's agent to accept service of process in any such proceeding[.], and include the resident's street address in this State.

(b) The effect of the merger or consolidation shall be the same as in the case of the merger or consolidation of domestic corporations except where the surviving or new corporations are governed by laws other than those of this State, insofar as those laws otherwise provide.

(c) After approval by the members, or[2] if there are no members entitled to vote thereon, by the board of directors, and at any time prior to the filing of the articles of merger or consolidation, the merger or consolidation may be abandoned pursuant to any provisions therefor set forth in the plan of merger or consolidation."

SECTION 40. Section 415B-91, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) Upon the adoption of a resolution, a statement of intent to dissolve the corporation shall be delivered to the director for filing and shall set forth:

(1) The name of the corporation;

(2) The names and [respective residence] addresses of the corporation's officers and directors;

(3) The manner in which the resolution approving the dissolution was adopted; and

(4) The number of votes by members or directors, as the case may be, cast in favor of the resolution.

(c) The corporation [shall] may publish once in each of four successive weeks in any newspaper of general circulation published in the State, a notice to all creditors of the corporation to present their claims at a place designated in the notice within ninety days from the first publication of the notice. The corporation shall mail[, within thirty days from the first publication of the notice, postage prepaid,] a [like] written notice to each creditor whose name and address is known to the corporation and who prior to the mailing of the notice, has not presented any claim. The notice shall provide a mailing address where the claim is to be sent and the deadline for receipt of the claim, which may not be less than ninety days after the date the written notice is received by the creditor, and that the claim will be barred if not received by the deadline. All claims, other that[3] tort claims, not so presented shall be forever barred. [The corporation, with the approval of the director, may omit the publication of the notice if the assets of the corporation are insufficient to pay for the publication.]"

SECTION 41. Section 415B-94, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-94 Articles of dissolution.** If voluntary dissolution proceedings have not been revoked, when all debts, liabilities, and obligations of the corporation have been paid and discharged, or adequate provision has been made therefor, and all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter, articles of dissolution shall be delivered to the director for filing and shall be verified on oath and set forth:

(1) The name of the corporation;
(2) That all debts, obligations, and liabilities of the corporation have been paid and discharged or that adequate provision has been made therefor;
(3) A copy of any plan of distribution as adopted by the corporation, or a statement that no plan was so adopted;
(4) That all of the remaining property and assets of the corporation have been transferred, conveyed, or distributed pursuant to this chapter;
(5) That there are no actions pending against the corporation in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against the corporation in any pending action;
(6) The dates [on which the] that notice [required by section 415B-91(c)] of the filing of the statement of intent to dissolve the corporation was published[;], or a statement that publication was not made; and
(7) The date that the director filed the statement of intent."

SECTION 42. Section 415B-96, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-96 Revocation of voluntary dissolution proceedings.** (a) At any time prior to the filing of the articles of dissolution by the director, a corporation may revoke the action theretofore taken to dissolve the corporation in the following manner:

(1) The board of directors shall adopt a resolution recommending that the voluntary dissolution proceedings be revoked, and directing that the question of revocation be submitted to a vote at an annual or special meeting of members entitled to vote thereon. Written notice stating that the purpose, or one of the purposes, of the meeting is to consider the

advisability of revoking the voluntary dissolution proceedings, shall be given to each member entitled to vote at the meeting pursuant to this chapter. A resolution to revoke the voluntary dissolution proceedings shall be adopted upon receiving at least two-thirds of the votes which members present at the meeting or represented by proxy are entitled to cast[.]; or

(2) If there are no members or no members entitled to vote on the revocation of voluntary dissolution proceedings, a resolution to revoke the voluntary dissolution proceedings shall be adopted at a meeting of the board of directors upon receiving the vote of a majority of the directors in office.

[(3)] (b) Upon the adoption of the resolution, a statement of revocation of voluntary dissolution proceedings shall set forth:

[(A)] (1) The name of the corporation;

[(B)] (2) The names and [residence] addresses of its officers;

[(C)] (3) The names and [residence] addresses of its directors;

[(D)] (4) A copy of the resolution revoking the voluntary dissolution proceedings;

[(E)] (5) If adoption of the resolution is by the members entitled to vote on the revocation of voluntary dissolution proceedings, the number of members of the corporation and the number of members voting for and against the resolution, respectively; and, if the members of any class are entitled to vote as a class, the designation and number of members of each class and the number of members of each class voting for and against the resolution, respectively; and

[(F)] (6) If the adoption of the resolution is by the board of directors, the number of directors voting for and against the resolution, respectively.

(c) Upon the adoption of the resolution by the members, or by the board of directors where there are no members or no members entitled to vote thereon, the corporation may again conduct its affairs."

SECTION 43. Section 415B-98, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever the director certifies that a corporation has given any cause for dissolution pursuant to section 415B-97, the director may declare the corporation dissolved. Before the director may declare a corporation dissolved, the director shall[:

(1) Give] give notice of the ground or grounds for dissolution as provided in section [415-94,] 415B-97, by mailing the notice to the corporation at its last known address appearing in the records of the director[;] and

[(2) Give statewide] may give public notice of the intention to dissolve the corporation [once in each of three successive weeks]."

SECTION 44. Section 415B-98, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Within two years after the involuntary dissolution of a corporation under this section, the corporation may be reinstated by the director upon written application executed by any two officers of the corporation setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary dissolution, and the filing of all reports due and unfiled. Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited liability company, or limited liability

partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved corporation pursuant to the amendment provisions of this chapter."

SECTION 45. Section 415B-122, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-122 Corporate name of foreign corporation.** No certificate of authority shall be issued to a foreign corporation unless its corporate name:

(1) Is not the same as, or substantially identical to, the name of any [profit or nonprofit] domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any [profit or nonprofit] foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business or conduct affairs in this State, [or a corporate] or any trade name, trademark, or service mark [reserved or] registered [pursuant to the laws of] in this State[;], or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the foreign corporation applying for a certificate of authority files with the director any one of the following:
   (A) The written consent from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name;
   (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign corporation to the use of the name in this State; or
   (C) A copy of a certificate of registration of a trade name by the foreign corporation under which trade name that foreign corporation will conduct affairs in this State; and
(2) Is transliterated into letters of the English alphabet, if the name is not in English."

SECTION 46. Section 415B-124, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-124 Application for certificate of authority.** In order to procure a certificate of authority to conduct affairs in this State, a foreign corporation shall submit an application therefor to the director stating:

(1) The name of the corporation and the jurisdiction under which it is incorporated;
(2) The date of incorporation and the period of duration of the corporation;
(3) The mailing address of the principal office of the corporation in the jurisdiction in which it is incorporated;
(4) The address of the corporation's proposed registered office in this State and the name of its proposed registered agent in this State at that address;
(5) Any purpose of the corporation which it proposes to pursue in conducting its affairs in this State;
(6) The names and [respective] addresses of the directors and officers of the corporation; and

(7) Any additional information necessary or appropriate to enable the director to determine whether the corporation is entitled to a certificate of authority to conduct affairs in this State."

SECTION 47. Section 415B-131, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-131 Amendment to articles of incorporation of foreign corporation.** Whenever the [articles of incorporation of] name of a foreign corporation authorized to conduct affairs in this State [are amended to change its corporate name,] is changed by an amendment to its articles of incorporation, the foreign corporation, within thirty days after the amendment becomes effective, shall deliver to the director [for filing a copy of the amendment] a certificate evidencing the name change, duly [certified] authenticated by the proper officer of the [jurisdiction in] state or country under the laws of which [the corporation] it is incorporated. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate."

SECTION 48. Section 415B-133, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-133 Merger of foreign corporation authorized to conduct affairs in this State.** (a) Whenever a foreign corporation authorized to conduct affairs in this State is a party to a statutory merger permitted by the laws of the [jurisdiction in] state or country under the laws of which it is incorporated, and the corporation is the surviving corporation, [the foreign corporation] it shall [deliver to the director for filing], within [sixty] thirty days after the merger becomes effective, deliver to the director, a [copy of the articles of] certificate evidencing the merger duly [certified] authenticated by the proper officer of the [jurisdiction in] state or country under the laws of which the statutory merger was effected. [It shall not be necessary for the surviving corporation to obtain either a new or amended certificate of authority to conduct affairs in this State.] The certificate evidencing the merger shall be evidence of a change of name if the name of the surviving corporation is changed thereby. If the certificate is in a foreign language a translation under oath of the translator shall accompany the certificate.

(b) Whenever a foreign corporation authorized to conduct affairs in this State is a party to a statutory merger permitted by the laws of the state or country under the laws of which it is incorporated, and that corporation is not the surviving corporation, the surviving corporation, within thirty days after the merger becomes effective, shall deliver to the director for filing a certificate evidencing the merger in the form prescribed by subsection (a), together with an application for withdrawal of the merged foreign corporation in accordance with section 415B-134 executed by the surviving corporation on behalf of the merged foreign corporation.

(c) If the surviving corporation in a merger is to be governed by the laws of any state other than this State, it shall comply with this chapter with respect to foreign corporations if it is to conduct affairs in this State."

SECTION 49. Section 415B-134, Hawaii Revised Statutes, is amended to read as follows:

"**§415B-134 Withdrawal of foreign corporation.** (a) A foreign corporation authorized to conduct affairs in this State may withdraw from this State by applying to the director for a certificate of withdrawal. In order to obtain a certificate of

withdrawal, a foreign corporation shall deliver to the director an application for withdrawal, which shall set forth:

(1) The name of the corporation and the jurisdiction in which it is incorporated;
(2) That the corporation is not conducting affairs in this State;
(3) That the corporation surrenders its authority to conduct affairs in this State;
(4) That the corporation revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action or proceeding based upon any cause of action arising in this State during the time the corporation was authorized to conduct affairs in this State may thereafter be made on such corporation by service thereof on the director;
(5) The dates that notice of the foreign corporation's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in the State[. The foreign corporation, with the approval of the director, may omit the publication of the notice if the corporation has insufficient assets to pay for the publication;], or a statement that publication was not made;
(6) That all taxes, debts, obligations, and liabilities of the foreign corporation in [the] this State have been paid and discharged or that adequate provision has been made therefor; and
(7) A post office address to which the director may mail a copy of any process against the corporation that may be served on the director.

(b) The application for withdrawal shall be made on forms prescribed and furnished by the director and shall be delivered to and filed by the director."

SECTION 50. Section 415B-155, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing of corporate documents:

(1) Articles of incorporation, $50;
(2) Articles of amendment, $20;
(3) Restated articles of incorporation, $20;
(4) Articles of merger or consolidation, $100;
(5) Articles of conversion, $200;
(6) Articles of dissolution, $20;
(7) Annual report of nonprofit domestic [and] or foreign [corporations,] corporation, $5;
(8) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a nonprofit domestic or foreign corporation, $20;
(9) Application for a certificate of authority, $50;
(10) Application for a certificate of withdrawal, $20;
(11) Reservation of corporate name, $20;
(12) Transfer of reservation of corporate name, $20;
(13) Good standing certificate, $20;
(14) Special handling fee for review of corporation documents, excluding articles of merger or consolidation, $50;
(15) Special handling fee for review of articles of conversion, merger, or consolidation, $150;
(16) Special handling fee for certificates issued by the department, $20 per certificate; [and]

(17) Special handling fee for certification of documents, $1 per page[.]; and
(18) Agent's statement of change of registered office, $20 for each affected domestic corporation or foreign corporation; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to $1 for each affected domestic corporation or foreign corporation."

SECTION 51. Section 425-1, Hawaii Revised Statutes, is amended to read as follows:

"**§425-1 Registration and annual statements.** (a) Whenever any general partnership is formed under the laws of [the] this State to do business in [the] this State, or any general partnership formed under the laws of any other jurisdiction shall do business in [the] this State, such partnership shall file in the office of the director of commerce and consumer affairs the registration and annual statements hereinafter provided. A registration statement shall be filed by a partnership formed under the laws of [the] this State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in [the] this State. An annual statement shall be filed on or before March 31 of each year, as of December 31 of the preceding year. Every such registration statement shall contain the following information:

(1) The name of the partnership;
(2) The name and [residence] address of each partner;
(3) The street address of the chief executive office of the partnership in the State and, if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction and the street address of the partnership's chief executive office and of one office in this State, if there is one;
(4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in [the] this State;
(5) The fact that none of the partners is either a minor or an incompetent person;
(6) In the case of a foreign general partnership, the designation of a person residing within [the] this State as agent for service of process and notice[;], and the person's street address; and
(7) The names of the partners authorized to execute an instrument transferring real property held in the name of the partnership, and may state the authority, or limitations on the authority, of some or all of the partners to enter into other transactions on behalf of the partnership and any other matter.

(b) Every such annual statement shall contain the information specified in paragraphs (1), (2), (3), (5),[4] (6) and a listing of the names of any partner admitted, withdrawn, or who has died during the year.

(c) The registration statement of a domestic partnership shall be certified by each partner, and the registration statement of a foreign partnership shall be certified by at least one partner. Each annual statement shall be certified as correct by any partner."

SECTION 52. Section 425-6, Hawaii Revised Statutes, is amended to read as follows:

"**§425-6 Partnership name.** (a) No statement or certificate of any partnership [having a name] shall be recorded by the director unless the name:

(1) Is not the same as, or substantially identical to the name of any domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered [to do business] under the laws of [the] this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business in this State, or [with] any trade name, [service mark, or] trademark [previously], or service mark registered [shall be recorded by the director.] in this State, or a name the exclusive right to which is, at the time, reserved in this State, except that this provision shall not apply if the partnership files with the director any one of the following:

(A) The written consent from the entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or

(B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the partnership to the use of the name in this State.

(b) The acceptance of a statement or certificate of a partnership for registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, limited liability company, or limited liability partnership name, trade name, trademark, or service mark.

[(b)] (c) The director may make, amend, and repeal such rules as may be necessary to carry out the purposes of this section."

SECTION 53. Section 425-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing of general partnership documents:

(1) Partnership registration statement, $25;
(2) Partnership change of name statement, $25;
(3) Partnership dissolution statement, $25;
(4) Foreign general partnership registration statement, $25;
(5) Statement of change, $25;
(6) Application [[]for[]] certificate of withdrawal, $10;
(7) Statement of correction, $25;
(8) Reservation of name, $20;
(9) Transfer of reservation of name, $20;
(10) Annual statement for domestic or foreign general partnership, $10;
(11) Good standing certificate, $25;
(12) Articles of conversion, $200;
(13) Any other statement, certificate, or other document for a domestic or foreign general partnership, $25;
(14) Special handling fee for review of any general partnership document, $20;
(15) Special handling fee for certificates issued by the director, $20 per certificate;
(16) Special handling fee for certification of documents, $1 per page; [and]
(17) Special handling fee for review of articles of conversion, $150[.] ; and
(18) Agent's statement of change of address, $25 for each affected foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to $1 for each affected foreign general partnership."

SECTION 54. Section 425-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Within two years after the involuntary cancellation of a general partnership under this section, the registration statement of the general partnership may be reinstated by the director upon written application executed by any partner of the general partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfiled. Within the applicable reinstatement period, should the name of the general partnership, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily canceled general partnership pursuant to the amendment provisions of this chapter."

SECTION 55. Section 425-17, Hawaii Revised Statutes, is amended to read as follows:

"**§425-17 Withdrawal procedure for foreign general partnership.** (a) Any foreign general partnership which has qualified to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director of commerce and consumer affairs a certificate of withdrawal. Any such general partnership shall file in the office of the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

(1) The name of the foreign general partnership, and the state or country under the laws of which it is formed;

(2) That the foreign general partnership is not transacting business in this State;

(3) That the foreign general partnership surrenders its authority to transact business in this State;

(4) That the foreign general partnership revokes the authority of its registered agent in this State to accept service of process, and consents that service or[5] process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;

[(5) The name and residence address of each general partner;

(6)] (5) The dates that notice of the foreign general partnership's intent to withdraw from the State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in [the] this State[. The foreign general partnership, with the approval of the director may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;], or a statement that publication was not made;

[(7)] (6) That all taxes, debts, obligations, and liabilities of the foreign general partnership in [the] this State have been paid and discharged or that adequate provision has been made therefor;

[(8)] (7) A mailing address to which the director may mail a copy of any process against the foreign general partnership that may be served on the director; and

[(9)] (8) Such additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign general partnership.

(b) Upon the filing of the application for withdrawal, and after the payment of a fee of $10, the director shall issue a certificate of withdrawal, which shall be effective as of the date of the filing of the application for withdrawal, and the authority of the foreign general partnership to transact business in this State shall then cease. No such general partnership may withdraw from this State without complying with the aforesaid conditions and until such compliance, service of legal notices, and processes may be made on any agent of the general partnership within [the] this State, or if none can be found, service of such notices and processes upon the director of commerce and consumer affairs shall be deemed sufficient service of such notices and processes upon it."

SECTION 56. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) No certificate of a limited liability partnership or registration for a foreign limited liability partnership shall be accepted by the director [if] unless the name of the domestic or foreign limited liability partnership:

(1) Is not the same as, or substantially identical to, the name of any domestic corporation, [domestic] partnership, [domestic] limited liability company, or [domestic] limited liability partnership[,] existing or registered under the laws of [the] this State, or any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in [the] this State, or any trade name, [service mark, or] trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved[,] in this State, except that this provision shall not apply if the domestic or foreign limited liability partnership [applying for registration] files with the director either of the following:
   (A) The written consent [of] from the entity or holder of [the registered or] a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
   (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the domestic or foreign limited liability partnership to the use of the name in this State; and
(2) In the case of a foreign limited liability partnership, is [not] transliterated into letters of the English alphabet, if the name is not in English."

SECTION 57. Section 425-169, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The director shall collect the following fees for documents filed under this part:

(1) For each change of partnership name or statement of dissolution filed, a fee of $5 per partner, subject to a maximum fee of $5,000;
(2) For each annual statement filed, a fee of $50;
(3) For each limited liability partnership registered, a fee of $100 for each partner, subject to a maximum fee of $10,000;
(4) For each foreign limited liability partnership registered, a fee of $1,000 if the partnership has fewer than ten partners; $5,000 if the partnership has ten or more but fewer than fifty partners; and $10,000 if the partnership has fifty or more partners;

(5) For each reservation or transfer of limited liability partnership name, a fee of $100;
(6) For each certificate of correction or certificate of amendment, a fee of $100;
(7) For each certificate of good standing, a fee of $100;
(8) For review of articles of conversion, a fee of $200;
(9) For any other certificate, statement, or document, a fee of $100; [and]
(10) For each certification of domestic or foreign partnership, a fee of $100[.]; and
(11) Agent's statement of change of address, $100 for each affected foreign limited liability partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to $1 for each affected foreign limited liability partnership."

SECTION 58. Section 425-171, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Within two years after the involuntary cancellation of a domestic [or foreign] limited liability partnership under this section, the registration statement of the domestic [or foreign] limited liability partnership may be reinstated by the director upon written application executed by any partner of the domestic limited liability partnership setting forth such information as the director may require, and the payment of all delinquent fees, penalties, assessments, taxes, costs of involuntary cancellation, and the filing of all statements due and unfiled. Within the applicable reinstatement period, should the name of the domestic limited liability partnership, or a name substantially identical thereto[,] be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should such name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily canceled domestic limited liability partnership pursuant to the amendment provisions of this chapter."

SECTION 59. Section 425-172, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any foreign limited liability partnership that has registered under section 425-155 to transact business in this State may withdraw and surrender its right to engage in business within this State by securing from the director a certificate of withdrawal. Any such partnership shall file in the office of the director an application for withdrawal, certified and signed by a partner, that shall set forth:

(1) The name of the foreign limited liability partnership, and the jurisdiction in which, or in accordance with the laws of which, it is formed;
(2) That the foreign limited liability partnership is not transacting business in this State;
(3) That the foreign limited liability partnership surrenders its authority to transact business in this State;
(4) That the foreign limited liability partnership revokes the authority of its registered agent in this State to accept service of process, and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
[(5) The name and resident address of each partner resident in Hawaii;
(6)] (5) The dates that notice of the foreign limited liability partnership's intent to withdraw from [the] this State was published, once in each of four successive weeks (four publications) in a newspaper of general

circulation published in [the] this State[. The foreign limited liability partnership, with the approval of the director, may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;], or a statement that publication was not made;

[(7)] (6) That all taxes, debts, obligations, and liabilities of the foreign limited liability partnership in [the] this State have been paid and discharged or that adequate provision has been made therefor;

[(8)] (7) A mailing address to which the director may mail a copy of any process against the foreign limited liability partnership that may be served on the director; and

[(9)] (8) Additional information as may be necessary or appropriate to enable the director to determine and assess any unpaid fees payable by the foreign limited liability partnership."

SECTION 60. Section 425D-102, Hawaii Revised Statutes, is amended to read as follows:

"**§425D-102 Name.** (a) The name of each limited partnership as set forth in its certificate of limited partnership:

(1) May not contain the name of a limited partner unless:
   (A) It is also the name of a general partner or the corporate name of a corporate general partner; or
   (B) The business of the limited partnership had been carried on under that name before the admission of that limited partner;
(2) Shall not be the same as, or substantially identical to, the name of any domestic corporation, [domestic] partnership, [domestic] limited liability company, or [domestic] limited liability partnership existing or registered under the laws of this State, or any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State, or any trade name, trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved[, or the name of a partnership which has in effect a registration of its partnership name as provided in this chapter,] in this State, except that this provision shall not apply if the applicant [filed] files with the director either of the following:
   (A) The written consent [of] from the [other partnership] entity or holder of a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
   (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the applicant to the use of the name in this State.

(b) The director may adopt, amend, and repeal such rules as may be necessary to carry out the purpose of this section."

SECTION 61. Section 425D-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In order to form a limited partnership, a certificate of limited partnership [must] shall be executed and delivered to the office of the director for filing. The certificate shall set forth:

(1) The name of the limited partnership;
(2) The address of the principal office;
(3) The name and the [residence] address of each general partner;

(4) The name and address of each limited partner;
(5) The latest date upon which the limited partnership is to dissolve; and
(6) Any other matter the general partners determine to include therein."

SECTION 62. Section 425D-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A certificate of limited partnership shall be canceled upon the dissolution and the commencement of winding up of the partnership or when there are no limited partners. A certificate of cancellation shall be delivered to the director for filing and shall set forth:

(1) The name of the limited partnership;
(2) The date of filing of its certificate of limited partnership;
(3) The reason for filing the certificate of cancellation; and
(4) The effective date, which shall be a date and time certain, of cancellation, if it is not to be effective upon the filing of the certificate[; and
(5) Any other information the general partners filing the certificate determine]."

SECTION 63. Section 425D-203.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§425D-203.5[]] Annual statement.** (a) Every limited partnership shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year containing the following information:

(1) The name of the limited partnership;
(2) The name and [residence] address of each general partner;
(3) The name and address of each limited partner;
[(4) The nature of the limited partnership business;
(5)] (4) The location of the principal place of business of the limited partnership in this State; and
[(6)] (5) The fact that none of the partners is either a minor or an incompetent person.

(b) Each annual statement shall be certified as correct by any general partner."

SECTION 64. Section 425D-902, Hawaii Revised Statutes, is amended to read as follows:

"**§425D-902 Registration.** Before transacting business in this State, a foreign limited partnership shall register with the director. In order to register, a foreign limited partnership shall submit to the director an application for registration as a foreign limited partnership, certified and signed by a general partner and setting forth:

(1) The name of the foreign limited partnership;
(2) The state and date of its formation;
(3) The name and street address of any qualified agent for service of process on the foreign limited partnership whom the foreign limited partnership elects to appoint; the agent [must] shall be an individual resident of this State or a domestic corporation;
(4) The address of the office required to be maintained in the state of its organization by the laws of that state or, if not so required, of the principal office of the foreign limited partnership;
(5) The name and [residence] address of each general partner; and

(6) The address of the office at which is kept a list of the names and addresses of the limited partners and their capital contributions, together with a written commitment on the part of the foreign limited partnership that it will keep those records until the registration of the foreign limited partnership in this State is canceled or withdrawn."

SECTION 65. Section 425D-904, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No registration for a foreign limited partnership shall be accepted by the director [if] unless the name of such foreign limited partnership:

(1) Is not the same as, or substantially identical to, the name of any domestic corporation, [domestic] partnership, [domestic] limited liability company, or [domestic] limited liability partnership existing or registered [to do business] under the laws of this State, or any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State, or any trade name, [service mark, or] trademark, or service mark registered in this State, or a name the exclusive right to which is, at the time, reserved[,] in this State, except that this provision shall not apply if the foreign limited partnership [applying for registration] files with the director either of the following:
   (A) The written consent [of] from the entity or holder of [the registered or] a reserved or registered name to use the same or substantially identical name, and one or more words are added to make the name distinguishable from the other name; or
   (B) A certified copy of a final decree of a court of competent jurisdiction establishing the prior right of the foreign limited partnership to the use of the name in this State; and
(2) Is [not] transliterated into letters of the English alphabet, if the name is not in English."

SECTION 66. Section 425D-906, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A foreign limited partnership registered to transact business in this State may withdraw from [the] this State upon procuring from the director a certificate of withdrawal. In order to procure a certificate of withdrawal, the foreign limited partnership shall deliver to the director an application for withdrawal, certified and signed by a general partner, which shall set forth:

(1) The name of the foreign limited partnership and the state or country under the laws of which it is formed;
(2) That the foreign limited partnership is not transacting business in this State;
(3) That the foreign limited partnership surrenders its authority to transact business in this State;
(4) That the foreign limited partnership revokes the authority of its registered agent in this State to accept service of process and consents that service of process in any action, suit, or proceeding based upon any cause of action arising in this State during the time the partnership was authorized to transact business in this State may thereafter be made on the partnership by service thereof on the director;
(5) The name and [residence] address of each general partner;
(6) The dates that notice of the foreign limited partnership's intent to withdraw from [the] this State was published, once in each of four successive weeks (four publications) in a newspaper of general circula-

tion published in [the] this State[. The foreign limited partnership, with the approval of the director, may omit the publication of the notice if the partnership has insufficient assets to pay for the publication;], or a statement that publication was not made;

(7) That all taxes, debts, obligations, and liabilities of the foreign limited partnership in [the] this State have been paid and discharged or that adequate provision has been made therefor;

(8) A mailing address to which the director may mail a copy of any process against the foreign limited partnership that may be served on the director; and

(9) Such additional information as may be necessary or appropriate in order to enable the director to determine and assess any unpaid fees payable by the foreign limited partnership."

SECTION 67. Section 425D-906.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§425D-906.5[]] Annual statement.** (a) Every foreign limited partnership registered in this State shall file an annual statement on or before March 31 of each year as of December 31 of the preceding year containing the following information:

(1) The name of the limited partnership;

(2) The name and [residence] address of each general partner;

(3) The name and address of each limited partner;

[(4) The nature of the limited partnership business;

(5)] (4) The name of the jurisdiction where the limited partnership was formed and the location of the principal place of business of the partnership; and

[(6)] (5) The fact that none of the partners is either a minor or incompetent.

(b) Each annual statement shall be certified as correct by any general partner."

SECTION 68. Section 425D-1107, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing of limited partnership documents:

(1) Certificate of limited partnership, $50;

(2) Any certificate of amendment, restatement, or correction, $20;

(3) Certificate of cancellation, $20;

(4) Annual statement for domestic or foreign limited partnership, $10;

(5) Any other certificate or document of domestic or foreign limited partnership, $20;

(6) Application for registration as a foreign limited partnership, $100;

(7) Any certificate of amendment or agent change for foreign limited partnership, $20;

(8) Application for certificate of withdrawal of foreign limited partnership, $20;

(9) Reservation of name, $20;

(10) Transfer of reservation of name, $20;

(11) Good standing certificate, $20;

(12) Filing articles of conversion, $200;

(13) Special handling fee for review of articles of conversion, $150;

(14) Special handling fee for review of any limited partnership document, $50;

(15) Special handling fee for certificates issued by the director, $20 per certificate; [and]
(16) Special handling fee for certification of documents, $1 per page[.]; and
(17) Agent's statement of change of address, $20 for each affected foreign limited partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to $1 for each affected foreign limited partnership."

SECTION 69. Section 428-105, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as authorized by subsections (c) and (d), the name of a limited liability company [must] shall not be the same as, or substantially identical to:
(1) The name of any domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State;
(2) The name of any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State;
(3) A name the exclusive right to which is reserved under the laws of this State;
(4) A fictitious name approved under section 428-1005 for a foreign limited liability company authorized to transact business in this State because its real name is unavailable; or
(5) Any trade name, [service mark, or] trademark, or service mark registered in this State."

SECTION 70. Section 428-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Articles of organization of a limited liability company [must] shall set forth:
(1) The name of the company;
(2) The street address of the initial designated office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
(3) The name and street address of the initial agent for service of process;
(4) The name and address of each organizer;
(5) Whether the duration of the company is for a specified term and, if so, the period specified;
(6) Whether the company is to be manager-managed, and:
(A) If so, the name and [residence street] address of each initial manager, [or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service,] and the number of initial members; or
(B) If not, the name and [residence street] address of each initial member[, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service]; and
(7) Whether the members of the company are to be liable for its debts and obligations under section 428-303(c)."

SECTION 71. Section 428-204, Hawaii Revised Statutes, is amended to read as follows:

"[[]§428-204[] **Amendment or restatement of articles of organization.** (a) Articles] **Articles of amendment.** A limited liability company may amend its articles of organization [of a limited liability company may be amended at any] from time [by delivering articles of amendment to the director for filing.] to time, in any and in as many respects as may be desired, so long as its articles of organization as amended contain only those provisions which may be lawfully contained in original articles of organization at the time of making the amendment. The articles of amendment shall [contain the following:] be delivered to the director for filing and shall set forth:

(1) The name of the limited liability company; and
(2) The amendment to the articles of organization, referencing specifically the provisions being amended.

[(b) A limited liability company at any time may restate its articles of organization as theretofore amended. Restated articles of organization shall be signed and filed in the same manner as articles of amendment. Restated articles of organization shall set forth all of the operative provisions of the articles of organization as theretofore amended, together with a statement that, except for the amendments specifically referenced therein, the restated articles of organization correctly set forth without change the corresponding provisions of the articles of organization as theretofore amended, and that the restated articles of organization supersede the original articles of organization and all amendments thereto.]"

SECTION 72. Section 428-204.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A limited liability company may at any time [may] amend and restate its articles of organization by complying with the procedures and requirements of [section] sections 428-204[.] and 428- ."

SECTION 73. Section 428-210, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each limited liability company and each foreign limited liability company authorized to transact business in this State shall deliver to the director for filing an annual report that sets forth:

(1) The name of the company and the state or country under whose law it is organized;
(2) The street address of its designated office and the name and street address of its agent for service of process in this State, provided that if no street address is available the rural post office number or post office box designated or made available by the United States Postal Service;
(3) The street address of its principal office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service; and
(4) Whether the company is manager-managed, and:
    (A) If so, the name and [residence street] address of each manager, [or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service,] and the number of members; or
    (B) If not, the name and [residence street] address of each member[, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service]."

SECTION 74. Section 428-805, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) At any time after dissolution and winding up, and when all debts, liabilities, and obligations of the limited liability company have been paid and discharged, or adequate provision has been made therefor, and all remaining property and assets of the limited liability company, if any, have been distributed to its members, a limited liability company may terminate its existence by delivering for filing with the director articles of termination stating:

(1) The name of the company;
(2) The dates the notice of intent to terminate was published pursuant to section 428-808 and the name of the newspaper publishing the notice[;], or a statement that publication was not made;
(3) That all debts, obligations, and liabilities of the limited liability company have been paid and discharged or that adequate provision has been made therefor;
(4) That all of the remaining property and assets of the limited liability company, if any, have been distributed among its members in accordance with their respective rights and interests;
(5) That there are no suits pending against the limited liability company in any court, or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit; and
(6) That the company's business has been wound up and the legal existence of the company has been terminated."

SECTION 75. Section 428-807, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A dissolved limited liability company shall notify its known claimants in writing of the intent to terminate [within thirty days from the first publication of the notice of intent to terminate published pursuant to section 428-808]. The notice shall:

(1) Specify the information required to be included in a claim;
(2) Provide a mailing address where the claim is to be sent;
(3) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the written notice is received by the claimant; and
(4) State that the claim will be barred if not received by the deadline."

SECTION 76. Section 428-808, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A dissolved limited liability company that intends to terminate [shall] may publish notice of its intent to terminate and request persons having claims against the company to present them in accordance with the notice[; provided that a dissolved limited liability company, with the approval of the director, may omit the publication of the notice if the limited liability company has insufficient assets to pay for publication]."

SECTION 77. Section 428-810, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

"(a) If the director determines that a ground exists to terminate administratively[,] a limited liability company, the director may declare the company terminated. Before the director declares a limited liability company terminated, the director shall mail a notice of the grounds for termination to the company and [shall publish] may give public notice of the intention to terminate the limited liability company [once in each of three successive weeks (three publications) in a newspaper of general circulation in this State].

(b) If the company does not correct each ground for termination or demonstrate to the reasonable satisfaction of the director that each ground determined by the director does not exist within sixty days after mailing of the notice [and the last publication date of the notice] of intention to terminate the limited liability company, the director shall administratively terminate the company by signing a decree of termination that recites the ground or grounds for termination and its effective date.

(c) A company administratively terminated continues its existence temporarily but may carry on only business necessary to wind up and liquidate its business and affairs under section 428-802 and to notify claimants under [sections] section 428-807 [and 428-808]. The company ceases existence upon the completion of these matters."

SECTION 78. Section 428-905, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) After approval of the plan of merger under section 428-904(c) [and compliance with section 428-908, if applicable], unless the merger is abandoned under section 428-904(d), articles of merger shall be signed on behalf of each limited liability company and each other entity that is a party to the merger and delivered to the director for filing. The articles shall set forth and contain:

(1) The name and jurisdiction of formation or organization of each of the entities that are parties to the merger[;], and the name, address, and jurisdiction of organization of the limited liability company into which they propose to merge, which is hereinafter designated as the surviving company;

(2) A statement that the plan of merger was approved by each entity that is a party to the merger;

(3) As to each entity, the total authorized votes and the number voted for and against the plan;

(4) [The name and address of the surviving company;] A statement indicating the changes in the articles of organization of the surviving company to be effected by the merger;

(5) The effective date and time of the merger, which shall be not earlier than the date and time of filing of the articles of merger and not later than thirty days after the filing of the articles of merger; and

(6) If the surviving [entity] company is a foreign limited liability company, it shall file with the director:

(A) An agreement that the surviving [entity] company may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of any entity previously subject to suit in this State which is to merge;

(B) An irrevocable appointment of a resident of this State [including the street address,] as its agent to accept service of process in any such proceeding[;], and include the resident's street address in this State; and

(C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting member, shareholder, or partner to receive payment for their interest against the surviving [entity; and

(7) A statement of compliance with section 428-908, if applicable.] company.

(b) If a foreign limited liability company is the surviving [entity] company of a merger, it shall not do business in this State until an application for that authority is filed with the director."

SECTION 79. Section 428-1002, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A foreign limited liability company may apply for a certificate of authority to transact business in this State by delivering an application to the director for filing. The application shall set forth:

(1) The name of the foreign limited liability company or, if its name is unavailable for use in this State, a name that satisfies the requirements of section 428-1005;
(2) The name of the state or country under whose law it is organized;
(3) The street address of its principal office, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service, and a representation and warranty that a list of the names of and addresses of all members and their respective capital contributions are kept and will be kept at this principal office until cancellation, in accordance with section 428-1007, of the foreign limited liability company's authority to transact business in this State;
(4) The street address of its initial designated office in this State or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service;
(5) The name and street address of its initial agent for service of process in this State;
(6) Whether the duration of the company is for a specified term and, if so, the period specified;
(7) Whether the company is manager-managed, and:
    (A) If so, the name and [residence street] address of each manager[, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service]; or
    (B) If not, the name and [residence street] address of each member[, or if no street address is available, the rural post office number or post office box designated or made available by the United States Postal Service];
(8) Whether the members of the company are to be liable for its debts and obligations under a provision similar to section 428-303(c); and
(9) Any additional information as may be necessary or appropriate to enable the director to determine whether the foreign limited liability company is entitled to obtain authority to transact business in this State."

SECTION 80. Section 428-1005, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as authorized by subsections (c) and (d), the name, including a fictitious name, of a foreign limited liability company shall not be the same as, or substantially identical to:

(1) The name of any <u>domestic</u> corporation, partnership, limited liability company, or limited liability partnership existing <u>or registered</u> under the laws of this State;
(2) The name of any foreign corporation, [foreign] partnership, [foreign] limited liability company, or [foreign] limited liability partnership authorized to transact business in this State;
(3) A name[,] the exclusive right to which is reserved under the laws of this State;

(4) The fictitious name of another foreign limited liability company authorized to transact business in this State; or
(5) Any trade name, [service mark, or] trademark, or service mark registered in this State."

SECTION 81. Section 428-1007, Hawaii Revised Statutes, is amended to read as follows:

"**§428-1007 Cancellation of authority.** (a) A foreign limited liability company may cancel its authority to transact business in this State by obtaining a certificate of cancellation. Cancellation does not terminate the authority of the director to accept service of process on the company for claims for relief arising out of the transactions of business in this State. In order to obtain a certificate of cancellation, the foreign limited liability company shall deliver to the director for filing an application for cancellation, which shall set forth:
(1) The name and jurisdiction of formation or organization of the foreign limited liability company;
(2) A statement that the foreign limited liability company is not transacting business in this State;
(3) A statement that the foreign limited liability company surrenders its authority to transact business in this State;
(4) A statement that the foreign limited liability company revokes the authority of its agent for service of process in this State and consents that the service of process for any claim for relief arising out of the transactions of business in this State may be made on such foreign limited liability company by service upon the director;
(5) The address to which a person may mail a copy of any process against the foreign limited liability company;
(6) The dates the notice of cancellation was published pursuant to subsection (b) and the name of the newspaper publishing the notice[;], or a statement that publication was not made; and
(7) A statement that all taxes, debts, obligations, and liabilities of the foreign limited liability company in this State have been paid and discharged or that adequate provision has been made therefor.

(b) A foreign limited liability company intending to cancel its authority to transact business in this State [shall] may publish notice of its cancellation and request persons having claims against the company to present them in accordance with the notice. The notice shall:
(1) Be published at least once in each of four successive weeks (four publications) in a newspaper of general circulation in this State; and
(2) Describe the information required to be contained in a claim and provide a mailing address where the claim may be sent.

(c) After the filing of the application for cancellation, the director shall issue a certificate of cancellation which shall be effective as of the date of the filing of the application for cancellation, and the authority of the foreign limited liability company to transact business in this State shall cease.

[(d) A cancellation does not terminate the authority of the director to accept service of process on a foreign limited liability company with respect to causes of action arising out of the transaction of business in this State.

(e) The foreign limited liability company, with the approval of the director, may omit the publication of the notice if the foreign limited liability company has insufficient assets to pay for the publication.]"

SECTION 82. Section 428-1301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following fees shall be paid to the director upon the filing and issuance of records under this chapter:

(1) Articles of organization, $100;
(2) Articles of amendment, $50;
(3) Restated articles of organization, $50;
(4) Articles of merger or conversion, $200;
(5) Statement of dissociation, $50;
(6) Articles of termination, $50;
(7) Application for reinstatement for administratively terminated limited liability company, $50;
(8) Annual report, $25;
(9) Statement of change of designated office or agent for service of process, or both, for limited liability company or foreign limited liability company, $50;
(10) [Statement of resignation of agent for service of process, $50;] Agent's statement of change of address, $50 for each affected domestic limited liability company or foreign limited liability company; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to $1 for each affected domestic limited liability company or foreign limited liability company;
(11) Any other statement or document of a domestic or foreign limited liability company, $50;
(12) Application for certificate of authority for foreign limited liability company, $100;
(13) Application for cancellation of authority of foreign limited liability company, $50;
(14) Reservation of name, $25;
(15) Good standing certificate, $25;
(16) Any other record not otherwise covered in this part, $50;
(17) Certified copy of any record relating to a limited liability company or foreign limited liability company, 25 cents per page, and $10 for the certificate and affixing the seal thereto;
(18) Special handling fee for review of any record other than articles of merger or conversion, $80;
(19) Special handling fee for review of articles of merger or conversion, $200;
(20) Special handling fee for certificate[6] issued by the director not otherwise covered by this [part,] section, $10 per certificate;
(21) Special handling fee for certification of record, $1 per page; and
(22) Any service of notice, demand, or process upon the director as agent for service of process of a limited liability company or foreign limited liability company, $50, which amount may be recovered as taxable costs by the party to the suit or action causing such service to be made if such party prevails in the suit or action."

SECTION 83. Section 482-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) It shall be unlawful for any person to adopt or use a print, label, trademark, service mark, or trade name which is identical to or confusingly similar with any registered print, label, trademark, service mark, or trade name, or the name of any [partnership,] corporation, partnership, limited liability company, or limited liability partnership existing or registered, or authorized to transact business, in

accordance with the laws of this State, on [partnerships,] corporations, partnerships, limited liability companies, or limited liability partnerships[.], or a name the exclusive right to which is, at the time, reserved in this State.''

SECTION 84. Section 428-908, Hawaii Revised Statutes, is repealed.

SECTION 85. Statutory material to be repealed is bracketed. New statutory material is underscored.[7]

SECTION 86. This Act shall take effect July 2, 2000.

(Approved June 14, 2000.)

**Notes**

1. Prior to amendment ''foreign'' appeared here.
2. Prior to amendment '','' appeared here.
3. Prior to amendment ''than'' appeared here.
4. Prior to amendment ''and'' appeared here.
5. Prior to amendment ''of'' appeared here.
6. Prior to amendment ''certificates'' appeared here.
7. Edited pursuant to HRS §23G-16.5.

## ACT 220

S.B. NO. 2354

A Bill for an Act Relating to Public Access.

*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 $50,000 for the senate and $80,000 for the house of representatives or so much thereof as may be necessary for fiscal year 2000-2001 to purchase hardware and software to upgrade the legislative internal computer network.

The sums appropriated shall be expended by the senate and the house of representatives, respectively, for the purpose of this Act.

SECTION 2. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

## ACT 221

S.B. NO. 2729

A Bill for an Act Relating to Service Contracts.

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

SECTION 1. The purpose of this Act is to protect service contract holders in this State by creating a regulatory framework governing the sale, terms, and administration of service contracts sold to consumers.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
SERVICE CONTRACTS

§ -1 **Application.** (a) This chapter shall not apply to:
(1) Express or implied warranties;
(2) Maintenance agreements; and
(3) Warranties, service contracts, and maintenance agreements offered by public utilities on their transmission devices to the extent they are regulated by the public utilities commission or the department of commerce and consumer affairs.

(b) The marketing, sale, offering for sale, issuance, making, proposing to make, and administration of service contracts by providers and related service contract sellers, administrators, and other persons shall be exempt from regulation under the insurance laws of this State other than laws included in this chapter.

§ -2 **Definitions.** As used in this chapter:

"Administrator" means a person appointed or designated by a provider who administers service contracts and service contract plans on behalf of the provider and subject to the requirements of this chapter.

"Commissioner" means the insurance commissioner.

"Consumer" means a natural person who buys, other than for purposes of resale, any tangible personal property that is distributed in commerce and that is normally used for personal, family, or household purposes, and not for business or research purposes.

"Contract holder" means a person who is the purchaser or holder of a service contract.

"Contractual liability insurance policy" means a policy of insurance that is issued to a provider, insures the provider's service contracts, and may provide:
(1) Reimbursement to the provider for sums that the provider is legally obligated to pay under the insured service contract; or
(2) The service that the provider is legally obligated to perform under the insured service contract.

"Maintenance agreement" means a contract of limited duration that provides scheduled maintenance only.

"Nonoriginal manufacturer's parts" means replacement parts not made for or by the original manufacturer of the property, commonly referred to as "after market parts".

"Person" means an individual, partnership, limited liability company, corporation, incorporated or unincorporated association, joint stock company, reciprocal, syndicate, or any similar entity or combination of entities acting in concert.

"Premium" means the consideration paid to an insurer for a contractual liability insurance policy.

"Provider" means a person who is contractually obligated to the service contract holder under the terms of the service contract, including all sellers of motor vehicle service contracts.

"Provider fee" means the consideration paid for a service contract.

"Service contract" means a contract or agreement for a separately stated consideration and a specific duration, to perform or indemnify the repair, replacement, or maintenance of property for operational or structural failure due either to a defect in materials or artisanship, or to normal wear and tear, with or without additional provision for incidental payment or indemnity under limited circumstances, including but not limited to towing, rental, and emergency road service. Service contracts may provide for the repair, replacement, or maintenance of property damaged by power surges, or accidentally damaged during handling.

"Warranty" means a warranty made without consideration, solely by the manufacturer, importer, or seller of property or services, that is not negotiated or separated from the sale of the product and is incidental to the sale of the product, that provides repair or replacement for defective parts, mechanical or electrical breakdown, labor, or other remedial measures.

§ **-3 Registration.** (a) Before conducting business in this State, a provider shall register with the commissioner on a form prescribed by the commissioner, and shall pay to the commissioner a fee as provided under section 431:7-101.

(b) Provider registration shall be updated annually and shall contain the following information:

(1) The address of the principal office of the provider;
(2) The name and address of the provider's agent for the service of process in this State, if other than the provider;
(3) The identities of the provider's executive officer or officers directly responsible for the provider's service contract business;
(4) The name, address, and telephone number of any administrators designated by the provider to be responsible for the administration of service contracts in this State;
(5) A copy of each service contract form the provider proposes to use in this State; and
(6) A statement that the provider is in compliance with the financial responsibility requirements of section -4 and that details how the provider intends to meet the requirements, and proof of compliance with the requirements.

§ **-4 Financial responsibility.** A provider shall comply with the requirements under any one of the following paragraphs, and shall not be subject to any other financial security requirements under state law:

(1) The provider shall insure all service contracts under a contractual liability insurance policy issued by an insurer authorized to transact insurance in this State or issued pursuant to part III of article 8 of chapter 431;
(2) The provider shall:
    (A) Maintain a funded reserve account for all obligations under service contracts issued and in force in this State. The reserves shall not be less than forty per cent of the gross consideration received from the sale of the service contract, less claims paid, for all in force contracts. The reserve account shall be subject to examination by the commissioner; and
    (B) Place in trust with the commissioner, for all service contracts issued and in force in this State, a financial security deposit having a value that is not less than $25,000, or five per cent of the gross consideration received less claims paid for the sale of the service contracts. The financial security deposit shall consist of one of the following:
        (i) A surety bond issued by an authorized surety;
        (ii) Securities of the type eligible for deposit by authorized insurers in this State;
        (iii) Cash;
        (iv) A letter of credit issued by a qualified financial institution; or
        (v) Another form of security authorized by the commissioner by rule;

or

(3) The provider or its parent company shall:

(A) Maintain a net worth or stockholders' equity of at least $100,000,000; and

(B) Upon request, provide the commissioner with a copy of the provider's or the provider's parent company's most recent form 10-K or Form 20-F filed with the Securities and Exchange Commission within the last calendar year, or if the company does not file with the Securities and Exchange Commission, a copy of the provider's or the provider's parent company's audited financial statements.

If the financial responsibility requirement under this paragraph is to be maintained by the provider's parent company, the parent company shall guarantee the provider's obligations under service contracts sold by the provider in this State.

§ -5 **Recordkeeping.** (a) The provider or provider's administrator shall keep accurate accounts, books, and records of all transactions regulated under this chapter.

(b) Accounts, books, and records maintained as required by this section shall include the following:

(1) Copies of each type of service contract sold;

(2) The name and address of each contract holder, to the extent that the name and address have been furnished by the contract holder;

(3) A list of the locations where the provider's service contracts are marketed, sold, or offered for sale; and

(4) Recorded claims files which at a minimum shall contain the date and description of each claim under the provider's service contracts.

(c) The provider for each service contract shall retain records required under this section for at least one year after coverage under the contract has expired. A provider discontinuing business in this State shall maintain records required under this section until it provides the commissioner with satisfactory proof that the provider has discharged all contractual obligations to contract holders in this State.

(d) The records required under this section may be, but are not required to be, maintained on a computer disk or other recordkeeping technology. If records are maintained in a form other than hard copy, the records shall be in a form allowing duplication as legible hard copy at the request of the commissioner.

(e) Upon request of the commissioner, the provider shall make available to the commissioner all accounts, books, and records concerning service contracts sold by the provider reasonably necessary to enable the commissioner to determine compliance or noncompliance with this chapter.

§ -6 **Service contracts; receipt; disclosures.** (a) Providers shall provide purchasers of a service contract with:

(1) A receipt for or other written evidence of the purchase of the service contract that shall be provided to the service contract holder;

(2) A copy of the service contract that shall be provided within a reasonable period of time from the date of purchase; and

(3) Except for offers or sales of service contracts by telephone, mail, or electronic means, a written copy of the basic terms and conditions of the service contract to be made available to the purchaser where the purchaser is physically present at the point of sale.

(b) Service contracts shall be written in clear, understandable language, and shall be printed or typed in a typeface and format that is easy to read.

(c) All service contracts shall:

(1) State the name and address of:
  (A) The provider; and
  (B) The administrator of the contract, if different from the provider;

(2) Identify:
  (A) The service contract seller; and
  (B) The contract holder, to the extent that the contract holder has furnished the contract seller, administrator, or provider with that information;

(3) The terms of the sale, including the purchase price;

(4) The procedure the contract holder must follow to obtain service;

(5) Any deductible amount that applies;

(6) The specific merchandise and services to be provided, and any limitations, exceptions, or exclusions;

(7) Where the contract covers a motor vehicle, whether the use of nonoriginal manufacturer's parts is allowed;

(8) Any restrictions governing the transferability of the service contract that apply;

(9) The terms, restrictions, or conditions governing the return or cancellation of the service contract by either the provider or contract holder prior to the contract's termination or expiration date;

(10) The obligations and duties of the contract holder, such as the duty to protect against any further damage, or to follow owner's manual instructions; and

(11) Any provision for, or exclusion of consequential damages or preexisting conditions that applies.

The information under paragraphs (1) and (2) shall not be required to be preprinted on the service contract and may be added to the service contract at the time of sale. The purchase price under paragraph (3) shall not be required to be preprinted on the service contract and may be negotiated with the contract holder at the time of sale.

(d) Service contracts insured under a contractual liability insurance policy shall include the name and address of the insurer and contain a statement substantially similar to the following:

"Obligations of the provider under this service contract are insured under a service contract contractual liability insurance policy."

(e) Service contracts not insured under a contractual liability insurance policy shall contain a statement substantially similar to the following:

"Obligations of the provider under this service contract are backed by the full faith and credit of the provider."

§ **-7 Service contract returns and refunds.** (a) Service contracts shall state that the contract holder may return the contract within:

(1) Thirty days of the date that the contract was mailed to the contract holder;

(2) Twenty days of the date the contract was delivered to the contract holder, if the contract was delivered at the time of sale; or

(3) A longer time period as specified in the service contract.

(b) Upon return of the service contract to the provider within the applicable time period, and if no claim has been made under the service contract prior to its return to the provider, the service contract shall be void and the provider shall refund to, or credit the account of, the contract holder with the full purchase price of the service contract. A ten per cent penalty per month shall be added to a refund that is not paid or credited within forty-five days after the return of the service contract to the provider.

(c) The right to void a service contract under subsection (b) shall not be transferred and shall apply only to the original service contract purchaser upon the terms and conditions provided in the contract and consistent with this chapter.

(d) Upon cancellation of a service contract by the provider, the provider, at least five days prior to cancellation, shall mail to the contract holder at the contract holder's last known address, a written prior notice of cancellation that states the effective date of the cancellation; provided that prior notice under this subsection shall not be required if cancellation is for:

(1) Nonpayment of the provider's fee for the service provided under the service contract;
(2) A material misrepresentation by the contract holder to the provider; or
(3) A substantial breach of duties of the contract holder under the service contract, relating to a covered product or its use.

§ **-8 Contractual liability insurance policies.** (a) Contractual liability insurance policies in this State shall provide that if covered service is not provided by the service contract provider or administrator within sixty days of proof of loss by the contract holder, the contract holder is entitled to apply directly to the contractual liability insurance company for services under the service contract that are covered under the policy.

(b) A contractual liability insurance policy insurer shall not terminate the policy until it has issued a notice of termination required by the commissioner under the insurance laws of this State. The termination of a contractual liability insurance policy shall not reduce the insurer's responsibility for service contracts issued by providers prior to the date of termination.

(c) A provider covered by a contractual liability insurance policy shall be considered the agent of the contractual liability insurance policy insurer, for purposes of determining duties owed by the insurer to contract holders in accordance with the service contract and this chapter.

(d) Insurers issuing reimbursement insurance to providers are deemed to have received the premiums for the insurance upon the payment of provider fees by consumers for service contracts issued by the insured provider.

§ **-9 Applicability of premium taxes.** Service contract provider fees shall not be subject to premium taxes. Contractual liability insurance policies shall be subject to premium taxes.

§ **-10 Prohibited acts.** (a) No provider shall use in its name, the word "insurance", "casualty", "surety", "mutual", or any other word descriptive of the insurance, casualty, or surety business, or a name deceptively similar to the name or description of any insurance or surety corporation, or to the name of any other provider; provided that the word "guaranty" or similar word may be used by a provider. This section shall not apply to a provider using any language prohibited by this section in its name prior to the effective date of this Act.

(b) A provider or its representative shall not in its service contracts or literature make, permit, or cause to be made, any false or misleading statement, or deliberately omit any material statement that would be considered misleading if omitted.

(c) No person shall condition a loan or the sale of any property on the purchase of a service contract.

§ **-11 Rules.** The commissioner may adopt rules pursuant to chapter 91 to implement this chapter.

§ **-12 Enforcement.** (a) The commissioner may take any action necessary or appropriate to enforce this chapter, and the rules adopted and orders issued hereunder. The commissioner may conduct investigations and examinations of providers, administrators, insurers, or other persons. If a provider has violated this chapter, or rules or orders under this chapter, the commissioner may issue an order:

(1) Requiring a person to cease and desist from violating this chapter or rules or orders under this chapter;

(2) Prohibiting a person from selling or offering for sale service contracts in violation of this chapter; or

(3) Imposing a civil penalty on a person or any combination of the foregoing, as applicable.

(b) A person aggrieved by an order under this section may request a hearing before the commissioner, conducted subject to chapter 91. The hearing request shall be filed with the commissioner within twenty days of the effective date of the commissioner's order. Upon filing of a hearing request, the order shall be suspended from its effective date, until completion of the hearing and final decision of the commissioner. At the hearing, the commissioner shall have the burden of proof to show that the order is justified.

(c) The commissioner may bring an action in any court of competent jurisdiction, for an injunction or other appropriate relief to remedy threatened or existing violations of this chapter, rules established pursuant to this chapter, or orders of the commissioner. An action filed under this section may also seek restitution on behalf of persons aggrieved by a violation of this chapter, rules established pursuant to this chapter, or orders of the commissioner.

(d) Violations of this chapter, rules established pursuant to this chapter, or orders of the commissioner shall be considered unfair or deceptive acts or practices in the conduct of trade or commerce under section 480-2."

SECTION 3. Section 431:1-209, Hawaii Revised Statutes, is amended to read as follows:

"**§431:1-209 General casualty insurance defined.** General casualty insurance includes vehicle insurance as defined in section 431:1-208, disability insurance defined in section 431:1-205 and in addition is insurance:

(1) Against legal liability for the death, injury, or disability of any human being, or from damage to property[.];

(2) Of medical, hospital, surgical, and funeral benefits to persons injured, irrespective of legal liability of the insured, when issued with or supplemental to insurance against legal liability for the death, injury or disability of human beings[.];

(3) Of the obligation accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury to employees[.];

(4) Against loss or damage by burglary, theft, larceny, robbery, forgery, fraud, vandalism, malicious mischief, confiscation, or wrongful conversion, disposal or concealment, or from any attempt of any of the foregoing; also insurance against loss or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers or documents, resulting from any cause, except while in the mail[.];

(5) Upon personal effects of individuals, by an all-risk type of policy commonly known as the personal property floater[.];

(6) Against loss or damage to glass and its appurtenances resulting from any cause[.];

(7) Against any liability and loss or damage to property resulting from accidents to or explosions of boilers, pipes, pressure containers, machinery, or apparatus[.];

(8) Against loss of or damage to any property of the insured resulting from the ownership, maintenance or use of elevators, except loss or damage by fire[.];

(9) Against loss or damage to any property caused by the breakage or leakage of sprinklers, water pipes or containers, or by water entering through leaks or openings in buildings[.];

(10) Against loss or damage resulting from failure of debtors to pay their obligations to the insured (credit insurance)[.];

(11) Against loss of or damage to any domesticated or wild animal resulting from any cause (livestock insurance)[.];

(12) Against loss of or damage to any property of the insured resulting from collision of any other object with such property, but not including collision to or by vessels, craft, piers, or other instrumentalities of ocean or inland navigation (collision insurance)[.];

(13) Against legal liability of the insured, and against loss, damage, or expense incident to a claim of such liability, and including any obligation of the insured to pay medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death or injury of any person, or arising out of injury to the economic interest of any person as the result of negligence in rendering expert, fiduciary, or professional service (malpractice insurance)[.];

(14) Against any contract of warranty or guaranty which promises service maintenance, parts replacement, repair, money, or any other indemnity in the event of loss of or damage to a motor vehicle or any part thereof from any cause, including loss of or damage to or loss of use of the motor vehicle by reason of depreciation, deterioration, wear and tear, use, obsolescence, or breakage if made by a warrantor or guarantor who or which as such is doing an insurance business[.

The making of a contract covering only defects in material and work in exchange for a separately stated charge where it is incidental to the business of selling or leasing motor vehicles, shall not be deemed insurance; provided the maker of the contract has an insurance policy, with an insurer as defined in section 431:1-202, providing coverage for the making of those contracts. The policy shall assume the legal liability created by each contract or, alternatively, the ultimate legal liability of all contracts made by the issuer. If the maker of the contract is unable to perform the duties imposed by the contract, the purchaser of the contract then shall be considered a policyholder of the insurer. The policy shall include a loss payee endorsement that provides coverage to any lending institution as its interest may appear. In addition, the contract conspicuously shall state the name and address of the licensed underwriting insurer and contain a statement that the policyholder shall be entitled to make a direct claim against the insurer upon the failure of the issuer to pay any claim within sixty days after proof of loss has been filed with the issuer. The requirement that the maker of the contract have an insurance policy with an insurer shall not apply if the maker is a manufacturer, distributor or importer of automobiles.]; provided that service contracts, as defined and meeting the requirements of chapter ___, shall not be subject to chapter 431.

The doing or proposing to do any business in substance equivalent to the business described in this section in a manner designed to evade the provisions of this section is the doing of an insurance business[.]; and

(15) Against any other kind of loss, damage, or liability properly the subject of insurance and not within any other class or classes of insurance as defined in section 431:1-204 to section 431:1-211, if such insurance is not contrary to law or public policy."

SECTION 4. 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 ..... $900
(2) Organization of domestic insurers and affiliated corporations:
  (A) Application and all other papers required for issuance of solicitation permit, filing ..... $1,500
  (B) Issuance of solicitation permit ..... $150
(3) General agent's license:
  (A) Issuance, regular license ..... $75
  (B) Issuance, temporary license ..... $75
(4) Subagent's license:
  (A) Issuance, regular license ..... $75
  (B) Issuance, temporary license ..... $75
(5) Nonresident agent's or broker's license: Issuance ..... $60
(6) Solicitor's license: Issuance ..... $60
(7) Independent adjuster's license: Issuance ..... $60
(8) Public adjuster's license: Issuance ..... $60
(9) Workers' compensation claims adjuster's limited license: Issuance $60
(10) Limited license issued pursuant to section 431:9-214(c): Issuance . $60
(11) Managing general agent's license: Issuance ..... $75
(12) Reinsurance intermediary's license: Issuance ..... $75
(13) Surplus line broker's license: Issuance ..... $150
(14) Service contract provider's registration: Issuance ..... $75
[(14)] (15) Examination for license: For each examination, a fee to be established by the commissioner.

(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) $600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
(2) $75 per year for all services (including extension of the license) for a regularly licensed general agent;
(3) $75 per year for all services (including extension of the license) for a regularly licensed subagent;
(4) $45 per year for all services (including extension of the license) for a regularly licensed nonresident agent or broker;
(5) $30 per year for all services (including extension of the license) for a regularly licensed solicitor;
(6) $45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
(7) $45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
(8) $45 per year for all services (including extension of the license) for a regularly limited licensed workers' compensation claims adjuster;

(9) $45 per year for all services (including extension of the license) for a limited license issued pursuant to section 431:9-214(c);
(10) $75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
(11) $75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
(12) $45 per year for all services (including extension of the license) for a licensed surplus line broker; [and]
(13) $75 per year for all services (including renewal of registration) for a service contract provider; and
[(13)] (14) The services referred to in paragraphs (1) to [(12)] (13) 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 5. If any provision of this Act, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to person or circumstances other than those as to which it is held invalid, shall not be affected.

SECTION 6. This Act shall not apply to service contracts or contractual liability insurance policies effective prior to July 1, 2000, or to the activities of service contract providers, administrators, sellers, or contractual liability insurance policy insurers prior to July 1, 2000. The failure of a provider or other person to comply with this Act or otherwise to administer a service contract plan, in the manner required by this Act prior to July 1, 2000, shall not be admissible in any court, arbitration, or alternative dispute resolution proceeding, or otherwise used to prove that the action of any person or the service contract was unlawful or otherwise improper.

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

SECTION 8. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

## ACT 222 S.B. NO. 2987

A Bill for an Act Relating to Public Contracts.

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

SECTION 1. The legislature finds that for construction projects, the State often retains a percentage of the amount paid to prime contractors. The contractors, in turn, often retain a higher rate from subcontractors to protect themselves, in case the subcontractors fail to complete their work, and from other contingencies. The higher retention rates imposed upon subcontractors often cause cash flow problems for these companies.

The legislature also finds that earlier legislative action on the issue resulted in divisive conflict between construction industry groups. To avoid further rancor, representatives from various construction industry organizations established an informal task force to reconcile differences. After many months of open, sometimes

heated debate, the members of the task force acquired a new respect for the unique problems facing their counterparts and managed to craft a partial solution to the thorny problem of retention. The proposal provides that the retention rate imposed upon subcontractors shall be equal to the retention rate imposed upon their prime contractor by the State, provided the subcontractor possesses a performance and payment bond. This addresses the subcontractors' concern for equal retention rates, and the prime contractors' concern regarding liability for work completion.

The purpose of this part is to require equal retention rates on state projects for subcontractors who possess a valid performance and payment bond or another mutually agreeable form of collateral.

SECTION 2. Section 103-32.1, Hawaii Revised Statutes, is amended to read as follows:

"**§103-32.1 Contract provision for retainage[.]; subcontractors.** (a) Any public contract may include a provision for the retainage of a portion of the amount due under the contract to the contractor to insure the proper performance of the contract; provided that:

(1) The sum withheld by the procurement officer from the contractor shall not exceed five per cent of the total amount due the contractor and that after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the contracting officer may continue to withhold as retainage, sums not exceeding five per cent of the amount due the contractor; and

(2) The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

(b) Where a subcontractor has provided evidence to the contractor of:

(1) A valid performance and a payment bond for the project that is acceptable to the contractor and executed by a surety company authorized to do business in this State;

(2) Any other bond acceptable to the contractor; or

(3) Any other form of collateral acceptable to the contractor;

the retention amount withheld by the contractor from its subcontractor shall be the same percentage of retainage as that of the contractor. This subsection shall also apply to the subcontractors who subcontract work to other subcontractors."

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

SECTION 4. This Act shall take effect on July 1, 2000, and shall apply to all public works contracts entered into after June 30, 2000.

(Approved June 14, 2000.)

# ACT 223

H.B. NO. 1632

A Bill for an Act Relating to Agriculture.

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

PART I

SECTION 1. The legislature finds that the sugar cane industry remains as a vital component of the island of Kauai's economic base. The industry employs approximately seven hundred workers and uses about twenty-five thousand acres of land for cultivation on Kauai. As a user of large tracts of land and a provider of many jobs, the sugar cane industry is without parallel, especially to neighbor island rural communities as on Kauai.

The legislature further finds that the sugar industry on Kauai is struggling to survive and in urgent need of financial assistance to continue operations. Past experience with sugar cane company shutdowns, such as in Hamakua, has shown that the closures have come at a great cost, both financially and socially, to the persons employed and to the State in general.

The legislature further finds that due to the emergency situation of the sugar industry on Kauai and because of the large scale of operations, additional funding is needed for the agricultural loan revolving fund to enable the department of agriculture to carry out appropriate loan programs.

The purpose of this Part is to appropriate the sum of $2,500,000 in fiscal year 2000-2001 to be deposited into the agricultural loan revolving fund to finance major sugar cane operations on Kauai to encourage the continuation of sugar production on that island. An additional sum of $2,500,000 will be earmarked from the agricultural loan revolving fund for this Part.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $2,500,000 or so much thereof as may be necessary for fiscal year 2000-2001 to be deposited into the agriculture loan revolving fund to finance major sugar cane operations on the island of Kauai to encourage the continuation of sugar production on that island.

SECTION 3. There is appropriated out of the agriculture loan revolving fund the sum of ~~$5,000,000~~ $2,500,000[1] or so much thereof as may be necessary for fiscal year 2000-2001 to finance major sugar cane operations on the island of Kauai to encourage the continuation of sugar production on that island.

SECTION 4. The sums appropriated shall be expended by the department of agriculture for the purposes of this Part.

SECTION 5. Notwithstanding chapter 155, Hawaii Revised Statutes, or any other law to the contrary, the department of agriculture may make direct loans to qualified farmers under section 155-8, Hawaii Revised Statutes, in the aggregate amount of $5,000,000 from the agriculture loan revolving fund to finance major sugar cane operations on the island of Kauai to encourage the continuation of sugar production on that island. The board of agriculture may waive any statutory requirement specified under chapter 155, Hawaii Revised Statutes, as deemed necessary to effectuate this Part, with the exception of the following conditions:

(1) Interest charged shall not be less than three per cent per year simple interest;

(2) The term of the loan shall not exceed ten years; and

(3) Collateral shall consist of not less than a first lien position in rolling stocks and crops and the pledging of other assets as deemed reasonable by the board of agriculture.

The credit elsewhere requirement shall be waived.

PART II

SECTION 6. The legislature finds that papaya is a vital component of the island of Hawaii's economic base. The industry grows papaya on two thousand five hundred acres of land across the island but primarily in the Puna district. Papayas are grown on more than five hundred independent family farms and the industry employs approximately two thousand workers.

The Big Island's papaya industry has historically produced more than ninety per cent of the State's papayas. In 1992, the dreaded papaya ringspot virus (PRSV) was found at Pahoa, Puna, and in three years, it virtually eliminated papaya production in the district. Island production dropped from more than sixty million pounds in 1992 to less than thirty million pounds in 1999. As a result, the Big Island's production now comprises only sixty-five per cent of the State's papaya production.

Although the genetically-engineered Rainbow and Sunup varieties are resistant to PRSV and are being planted in hundreds of acres in the Puna district and elsewhere on the island, consumer acceptance to genetically-engineered products may dictate a need to restore the favored Kapoho Solo variety to the Puna district. The incidence of PRSV must be severely reduced, with the long-term goal of complete eradication if the Big Island papaya industry is to return to prominence in Hawaii's diversified agriculture. The elimination of PRSV can only be accomplished by removing every diseased and susceptible papaya plant on the island in a timely manner. This goal can be accomplished only through the cooperation of industry, government, and the private sector, a task which industry and the private sector are willing to pursue.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of $800,000 or so much thereof as may be necessary for fiscal year 2000-2001 to be expended for intensive control of the papaya ringspot virus, leading to eradication of the virus from the island of Hawaii.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Part.

SECTION 8. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

**Note**

1. Item vetoed, replaced, and initiated "BJC".

## ACT 224 H.B. NO. 540

A Bill for an Act Relating to Human Services.

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

SECTION 1. The legislature finds that with the enactment of the Personal Responsibility and Work Opportunity Responsibility Act of 1996, Congress stripped away medical assistance and other benefits from income qualified immigrants.

However, a citizen's right to access these benefits were untouched. Despite the fact that scholars, courts, and attorney generals have declared these discriminatory provisions illegal, Hawaii has failed to accord immigrants the equal protections they are entitled.

The legislature further finds that the State's children's health insurance program is expected, upon approval by the federal health care financing administration, to enroll all uninsured children under nineteen whose family's income does not exceed two hundred per cent of the federal poverty level for Hawaii. The 1999 legislature appropriated up to ten per cent from the Hawaii tobacco master settlement agreement to implement the State's children's health insurance program.

The legislature believes that it has an opportunity to not only increase the numbers of uninsured children receiving medical assistance, but to provide medical assistance to all permanent legal immigrant children as well as other children for whom the federal government does not provide medical assistance.

The purpose of this Act is to provide medical assistance, of up to two hundred per cent of the federal poverty level for Hawaii, to persons less than nineteen years of age and who are:

(1) Legal immigrant residents who arrived after August 22, 1996;
(2) Permanently residing under color of law; and
(3) Nonimmigrants from the Trust Territories of the Pacific Islands who are citizens of the Marshall Islands, the Federated States of Micronesia, or Palau, or whenever the federal government does not provide medical assistance.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§346- Medical assistance to other children.** The department shall provide state-funded medical assistance, of up to two hundred per cent of the federal poverty level for Hawaii, to persons less than nineteen years of age who are:

(1) Legal permanent residents who arrived after August 22, 1996;
(2) Persons who are permanently residing under color of law; and
(3) Nonimmigrants from the Trust Territories of the Pacific Islands who are citizens of:
    (A) The Marshall Islands;
    (B) The Federated States of Micronesia; or
    (C) Palau, as defined by the Compact of Free Association Act of 1985, P.L. 99-239, or the Compact of Free Association between the United States and the Government of Palau, P.L. 99-658,

who are otherwise eligible for benefits under the State's medicaid programs, including QUEST and the State's children health insurance program, but are ineligible due to restricted eligibility rules imposed by Title XXI of the Social Security Act, the Personal Responsibility and Work Reconciliation Act of 1996, the Compact of Free Association Act of 1985, P.L. 99-239, the Compact of Free Association between the United States and the Government of Palau, P.L. 99-658, or any other provision of federal law denying medical assistance to nonimmigrants who are citizens of the Marshall Islands, the Federated States of Micronesia, or Palau."

SECTION 3. New statutory material is underscored.[1]

SECTION 4. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 225

H.B. NO. 2278

A Bill for an Act Relating to Social Workers.

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

SECTION 1. Chapter 467E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§467E- Reciprocity and endorsement.** (a) The director may enter into reciprocity agreements with other states and issue a license to a social worker who has been licensed in that state; provided that the requirements for a license in the state that the applicant is licensed are deemed by the director to be equal or greater than the requirements for a license in this State at the date of the license.

(b) The director may also issue a license by endorsement by honoring a passing score on the examination of the Association of Social Work Boards; provided that the applicant meets the other requirements under section 467E-7 and the passing score is from the examination category that the other state uses for its license."

SECTION 2. Section 26H-4, Hawaii Revised Statutes, is amended to read as follows:

"**§26H-4 Repeal dates for newly enacted professional and vocational regulatory programs.** (a) Any professional or vocational regulatory program enacted after January 1, 1994, and listed in this section shall be repealed on the date indicated in subsection (b). The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

(b) [(1) Chapter 467E (social workers) shall be repealed on December 31, 2000.

(2)] (1) Chapter 451J (marriage and family therapists) shall be repealed on December 31, 2002[.]; and

[(3)] (2) Chapter 457G (occupational therapy practice) shall be repealed on December 31, 2003."

SECTION 3. Section 467E-9, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§467E-9[]] Examination for license.** (a) Each applicant for licensure shall take and pass a written national examination administered by the [American] Association of [State] Social Work Boards in accordance with procedures and standards prescribed by the director.

(b) Applicants who have passed the Academy of Certified Social Workers examination administered by the National Association of Social Workers prior to June 30, 1995, shall be deemed to have satisfied the requirements of this section[.] only if the application for licensure is filed with the department by June 30, 2000.

(c) The examination fee shall be paid by the applicant directly to the [American] Association of [State] Social Work Boards."

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

SECTION 5. This Act shall take effect on June 30, 2000.

(Approved June 14, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 226 H.B. NO. 2534

A Bill for an Act Relating to Critical Access Hospitals.

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

SECTION 1. The legislature finds that rural hospitals are essential for the health care of the State. All hospitals are hurt by reimbursement trends, but rural facilities are especially disadvantaged due to the low volume of patients and high expense of providing care in remote areas. In recognition of this fact, the federal government passed 42 U.S.C. 1395i-4, that established the medicare rural hospital flexibility program, a national program designed to assist states and rural communities in improving access to essential health care services through the establishment of limited service hospitals and rural health networks. The program creates the critical access hospital as a limited service hospital eligible for medicare certification and reimbursement, and supports the development of rural health networks consisting of critical access hospitals, acute general hospitals, and other health care providers.

The department of health has developed a Hawaii rural health plan to guide the implementation of the federal medicare rural hospital flexibility program. Medicaid reimbursements to critical access hospitals shall be calculated on a cost basis using medicare reasonable cost principles, and shall not be applied in a manner that requires reduction in reimbursement to other long-term care providers.

To ensure federal reimbursement, the federal government must approve Hawaii's rural health plan, the medicaid payment methodology, and other modifications to the state medicaid plan.

The purpose of this Act is to enhance the federal medicare rural hospital flexibility program by reimbursing critical access hospitals on a cost basis under the medicaid program using matching federal funds.

SECTION 2. Section 346-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"<u>"Critical access hospital" means a hospital located in the State that is included in Hawaii's rural health plan approved by the federal Health Care Financing Administration and approved as a critical access hospital by the department of health as provided in Hawaii's rural health plan and as defined in 42 U.S.C. Section 1395i-4.</u>"

SECTION 3. Section 346D-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"<u>"Critical access hospital" means a hospital located in the State that is included in Hawaii's rural health plan approved by the federal Health Care Financing Administration and approved as a critical access hospital by the department of</u>

health as provided in Hawaii's rural health plan and as defined in 42 U.S.C. Section 1395i-4."

SECTION 4. Section 346-59, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department shall adopt rules under chapter 91 concerning payment to providers of medical care. The department shall determine the rates of payment due to all providers of medical care, and pay such amounts in accordance with the requirements of the appropriations act and the Social Security Act, as amended. Payments to critical access hospitals for services rendered to medicaid beneficiaries shall be calculated on a cost basis using medicare reasonable cost principles."

SECTION 5. Section 346D-1.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§346D-1.5[]] Medicaid reimbursement equity.** Not later than June 30, 2003, there shall be no distinction between hospital-based and nonhospital-based reimbursement rates for institutionalized long-term care under medicaid. Reimbursement for institutionalized intermediate care facilities and institutionalized skilled nursing facilities shall be based solely on the level of care rather than the location. This section shall not apply to critical access hospitals."

SECTION 6. The State's share of matching funds shall be provided through the Hawaii health systems corporation and other designated critical access hospitals' appropriations to the extent funding is available. If funding is not available, medicaid reimbursement to critical access hospitals shall revert back to the existing medicaid payment methodology.

SECTION 7. There is appropriated the sum of $2,857,000 in interdepartmental funds (U) and $2,973,000 in federal funds (N) to the department of human 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 on July 1, 2000, and shall be repealed on June 30, 2004; provided that sections 346-1, 346-59, 346D-1, and 346D-1.5, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 2000.

(Approved June 14, 2000.)

## ACT 227 H.B. NO. 2774

A Bill for an Act Relating to Discrimination in Public Places.

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

SECTION 1. The legislature finds that medical research has documented the many benefits of breast milk to the health of children. In fact, the American Academy of Pediatrics recommends that women breast feed for at least the first twelve months of a child's life, because to a child, the best meal is a breast meal.

However, the legislature finds that on occasion, mothers have been told to leave public premises or have been discouraged from breast feeding by being told to breast feed in a restroom. The legislature believes that Hawaii's laws should support mothers who choose to breast feed their children.

The purpose of this Act is to recognize the right of mothers to breast feed their children in places of public accommodations, such as stores, parks, and restaurants.

SECTION 2. Chapter 489, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . BREAST FEEDING IN PUBLIC ACCOMMODATIONS

**§489- Discriminatory practices; breast feeding.** It is a discriminatory practice to deny, or attempt to deny, the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodations to a woman because she is breast feeding a child.

**§489- Private cause of action.** Any person who is injured by an unlawful discriminatory practice under this part may bring proceedings to enjoin the unlawful discriminatory practice, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorneys' fees, the cost of suit, and $100. Any action under this part shall be subject to the jurisdiction of the district courts as provided in chapter 604, and may be commenced and conducted in the small claims division of the district court.

**§489- Exclusion from civil rights commission.** Notwithstanding the provisions of chapter 368, this part shall not be subject to chapter 368 and shall not be enforced by the civil rights commission."

SECTION 3. Chapter 489, Hawaii Revised Statutes is amended by designating sections 489-1 to 489-8 as part I, entitled "General Provisions".

SECTION 4. Section 489-6, Hawaii Revised Statutes, is amended to read as follows:

"**§489-6 Complaint against unfair discrimination; reporting requirements.** The civil rights commission shall receive complaints of unfair discriminatory treatment in public accommodations in accordance with the procedures established under chapter 368[.]; provided that this section shall not apply to complaints under part of this chapter."

SECTION 5. Section 489-7.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§489-7.5[]] Suits by persons injured; amount of recovery, injunctions.** (a) Any person who is injured by an unlawful discriminatory practice, other than an unlawful discriminatory practice under part of this chapter, may:

(1) Sue for damages sustained, and, if the judgment is for the plaintiff, the plaintiff shall be awarded a sum not less than $1,000 or threefold damages by the plaintiff sustained, whichever sum is the greater, and reasonable attorneys' fees together with the costs of suit; and

(2) Bring proceedings to enjoin the unlawful discriminatory practices, and if the decree is for the plaintiff, the plaintiff shall be awarded reasonable attorneys' fees together with the cost of suit.

(b) The remedies provided in subsection (a) shall be applied in class action and de facto class action lawsuits or proceedings provided that:

(1) The minimum $1,000 recovery provided in subsection (a) shall not apply in a class action or a de facto class action lawsuit; and

(2) That portion of threefold damages in excess of compensatory damages shall be apportioned and allocated by the court in its exercise of discretion so as to promote effective enforcement of this chapter and deterrence from violation of its provisions.

(c) The remedies provided in this section are cumulative and may be brought in one action."

SECTION 6. Section 489-8, Hawaii Revised Statutes, is amended to read as follows:

"**§489-8 Civil penalty.** (a) It shall be unlawful for a person to discriminate unfairly in public accommodations.

(b) Any person, firm, company, association, or corporation who violates this chapter shall be fined a sum of not less [[]than[]] $500 nor more than $10,000 for each violation, which sum shall be collected in a civil action brought by the attorney general or the civil rights commission on behalf of the State. The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State. Each day of violation under this chapter shall be a separate violation.

(c) This section shall not apply to violations of part of this chapter."

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

SECTION 8. This Act shall take effect on approval.

(Approved June 14, 2000.)

## ACT 228

S.B. NO. 862

A Bill for an Act Relating to Medical Use of Marijuana.

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

SECTION 1. The legislature finds that modern medical research has discovered a beneficial use for marijuana in treating or alleviating the pain or other symptoms associated with certain debilitating illnesses. There is sufficient medical and anecdotal evidence to support the proposition that these diseases and conditions may respond favorably to a medically controlled use of marijuana.

The legislature is aware of the legal problems associated with the legal acquisition of marijuana for medical use. However, the legislature believes that medical scientific evidence on the medicinal benefits of marijuana should be recognized. Although federal law expressly prohibits the use of marijuana, the legislature recognizes that a number of states are taking the initiative in legalizing the use of marijuana for medical purposes. Voter initiatives permitting the medical use of

marijuana have passed in California, Arizona, Oregon, Washington, Alaska, Maine, Nevada, and the District of Columbia.

The legislature intends to join in this initiative for the health and welfare of its citizens. However, the legislature does not intend to legalize marijuana for other than medical purposes. The passage of this Act and the policy underlying it does not in any way diminish the legislature's strong public policy and laws against illegal drug use.

Therefore, the purpose of this Act is to ensure that seriously ill people are not penalized by the State for the use of marijuana for strictly medical purposes when the patient's treating physician provides a professional opinion that the benefits of medical use of marijuana would likely outweigh the health risks for the qualifying patient.

SECTION 2. Chapter 329, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . MEDICAL USE OF MARIJUANA

**§329-A Definitions.** As used in this part:

"Adequate supply" means an amount of marijuana jointly possessed between the qualifying patient and the primary caregiver that is not more than is reasonably necessary to assure the uninterrupted availability of marijuana for the purpose of alleviating the symptoms or effects of a qualifying patient's debilitating medical condition; provided that an "adequate supply" shall not exceed three mature marijuana plants, four immature marijuana plants, and one ounce of usable marijuana per each mature plant.

"Debilitating medical condition" means:

(1) Cancer, glaucoma, positive status for human immunodeficiency virus, acquired immune deficiency syndrome, or the treatment of these conditions;

(2) A chronic or debilitating disease or medical condition or its treatment that produces one or more of the following:
   (A) Cachexia or wasting syndrome;
   (B) Severe pain;
   (C) Severe nausea;
   (D) Seizures, including those characteristic of epilepsy; or
   (E) Severe and persistent muscle spasms, including those characteristic of multiple sclerosis or Crohn's disease;

   or

(3) Any other medical condition approved by the department of health pursuant to administrative rules in response to a request from a physician or potentially qualifying patient.

"Marijuana" shall have the same meaning as "marijuana" and "marijuana concentrate" as provided in sections 329-1 and 712-1240.

"Medical use" means the acquisition, possession, cultivation, use, distribution, or transportation of marijuana or paraphernalia relating to the administration of marijuana to alleviate the symptoms or effects of a qualifying patient's debilitating medical condition. For the purposes of "medical use", the term distribution is limited to the transfer of marijuana and paraphernalia from the primary caregiver to the qualifying patient.

"Physician" means a person who is licensed under chapters 453 and 460, and is licensed with authority to prescribe drugs and is registered under section 329-32. "Physician" does not include physician's assistant as described in section 453-5.3.

"Primary caregiver" means a person, other than the qualifying patient and the qualifying patient's physician, who is eighteen-years-of-age or older who has agreed to undertake responsibility for managing the well-being of the qualifying patient with respect to the medical use of marijuana. In the case of a minor or an adult lacking legal capacity, the primary caregiver shall be a parent, guardian, or person having legal custody.

"Qualifying patient" means a person who has been diagnosed by a physician as having a debilitating medical condition.

"Usable marijuana" means the dried leaves and flowers of the plant Cannabis family Moraceae, and any mixture of preparation thereof, that are appropriate for the medical use of marijuana. "Usable marijuana" does not include the seeds, stalks, and roots of the plant.

"Written certification" means the qualifying patient's medical records or a statement signed by a qualifying patient's physician, stating that in the physician's professional opinion, the qualifying patient has a debilitating medical condition and the potential benefits of the medical use of marijuana would likely outweigh the health risks for the qualifying patient. The department of public safety may require, through its rulemaking authority, that all written certifications comply with a designated form. "Written certifications" are valid for only one year from the time of signing.

**§329-B Medical use of marijuana; conditions of use.** (a) Notwithstanding any law to the contrary, the medical use of marijuana by a qualifying patient shall be permitted only if:

(1) The qualifying patient has been diagnosed by a physician as having a debilitating medical condition;

(2) The qualifying patient's physician has certified in writing that, in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient; and

(3) The amount of marijuana does not exceed an adequate supply.

(b) Subsection (a) shall not apply to a qualifying patient under the age of eighteen years, unless:

(1) The qualifying patient's physician has explained the potential risks and benefits of the medical use of marijuana to the qualifying patient and to a parent, guardian, or person having legal custody of the qualifying patient; and

(2) A parent, guardian, or person having legal custody consents in writing to:

(A) Allow the qualifying patient's the medical use of marijuana;

(B) Serve as the qualifying patient's primary caregiver; and

(C) Control the acquisition of the marijuana, the dosage, and the frequency of the medical use of marijuana by the qualifying patient.

(c) The authorization for the medical use of marijuana in this section shall not apply to:

(1) The medical use of marijuana that endangers the health or well-being of another person;

(2) The medical use of marijuana:

(A) In a school bus, public bus, or any moving vehicle;

(B) In the workplace of one's employment;

(C) On any school grounds;

(D) At any public park, public beach, public recreation center, recreation or youth center; or

(E) Other place open to the public; and

(3) The use of marijuana by a qualifying patient, parent, or primary caregiver for purposes other than medical use permitted by this chapter.

**§329-C Registration requirements.** (a) Physicians who issue written certification shall register the names, addresses, patient identification numbers, and other identifying information of the patients issued written certifications with the department of public safety.

(b) Qualifying patients shall register with the department of public safety. Such registration shall be effective until the expiration of the certificate issued by the physician. Every qualifying patient shall provide sufficient identifying information to establish personal identity of the qualifying patient and the primary caregiver. Qualifying patients shall report changes in information within five working days. Every qualifying patient shall have only one primary caregiver at any given time. The department shall then issue to the qualifying patient a registration certificate, and may charge a reasonable fee not to exceed $25.

(c) Primary caregivers shall register with the department of public safety. Every primary caregiver shall be responsible for the care of only one qualifying patient at any given time.

(d) Upon an inquiry by a law enforcement agency, the department of public safety shall verify whether the particular qualifying patient has registered with the department and may provide reasonable access to the registry information for official law enforcement purposes.

**§329-D Insurance not applicable.** This part shall not be construed to require insurance coverage for the medical use of marijuana.

**§329-E Protections afforded to a qualifying patient or primary caregiver.** (a) A qualifying patient or the primary caregiver may assert the medical use of marijuana as an affirmative defense to any prosecution involving marijuana under this chapter or chapter 712; provided that the qualifying patient or the primary caregiver strictly complied with the requirements of this part.

(b) Any qualifying patient or primary caregiver not complying with the permitted scope of the medical use of marijuana shall not be afforded the protections against searches and seizures pertaining to the misapplication of the medical use of marijuana.

(c) No person shall be subject to arrest or prosecution for simply being in the presence or vicinity of the medical use of marijuana as permitted under this part.

**§329-F Protections afforded to a treating physician.** No physician shall be subject to arrest or prosecution, penalized in any manner, or denied any right or privilege for providing written certification for the medical use of marijuana for a qualifying patient; provided that:

(1) The physician has diagnosed the patient as having a debilitating medical condition, as defined in section 329-A;

(2) The physician has explained the potential risks and benefits of the medical use of marijuana, as required under section 329-B;

(3) The written certification is based upon the physician's professional opinion after having completed a full assessment of the patient's medical history and current medical condition made in the course of a bona fide physician-patient relationship; and

(4) The physician has complied with the registration requirements of section 329-C.

**§329-G Protection of marijuana and other seized property.** Marijuana, paraphernalia, or other property seized from a qualifying patient or primary caregiver in connection with a claimed medical use of marijuana under this part shall be returned immediately upon the determination by a court that the qualifying patient or primary caregiver is entitled to the protections of this part, as evidenced by a decision not to prosecute, dismissal of charges, or an acquittal; provided that law enforcement agencies seizing live plants as evidence shall not be responsible for the care and maintenance of such plants.

**§329-H Fraudulent misrepresentation; penalty.** (a) Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution under this part or chapter 712 shall be a petty misdemeanor and subject to a fine of $500.

(b) Notwithstanding any law to the contrary, fraudulent misrepresentation to a law enforcement official of any fact or circumstance relating to the issuance of a written certificate by a physician not covered under section 329-F for the medical use of marijuana shall be a misdemeanor. This penalty shall be in addition to any other penalties that may apply for the non-medical use of marijuana. Nothing in this section is intended to preclude the conviction of any person under section 710-1060 or for any other offense under part V of chapter 710.

SECTION 3. Section 453-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, any license to practice medicine and surgery may be revoked, limited, or suspended by the board at any time in a proceeding before the board, or may be denied, for any cause authorized by law, including but not limited to the following:

(1) Procuring, or aiding or abetting in procuring, a criminal abortion;
(2) Employing any person to solicit patients for one's self;
(3) Engaging in false, fraudulent, or deceptive advertising, including[,] but not limited to:
    (A) Making excessive claims of expertise in one or more medical specialty fields;
    (B) Assuring a permanent cure for an incurable disease; or
    (C) Making any untruthful and improbable statement in advertising one's medical or surgical practice or business;
(4) Being habituated to the excessive use of drugs or alcohol; or being addicted to, dependent on, or a habitual user of a narcotic, barbiturate, amphetamine, hallucinogen, or other drug having similar effects;
(5) Practicing medicine while the ability to practice is impaired by alcohol, drugs, physical disability, or mental instability;
(6) Procuring a license through fraud, misrepresentation, or deceit, or knowingly permitting an unlicensed person to perform activities requiring a license;
(7) Professional misconduct, hazardous negligence causing bodily injury to another, or manifest incapacity in the practice of medicine or surgery;
(8) Incompetence or multiple instances of negligence, including[,] but not limited to[,] the consistent use of medical service which is inappropriate or unnecessary;
(9) Conduct or practice contrary to recognized standards of ethics of the medical profession as adopted by the Hawaii Medical Association or the American Medical Association;

(10) Violation of the conditions or limitations upon which a limited or temporary license is issued;
(11) Revocation, suspension, or other disciplinary action by another state or federal agency of a license, certificate, or medical privilege for reasons as provided in this section;
(12) Conviction, whether by nolo contendere or otherwise, of a penal offense substantially related to the qualifications, functions, or duties of a physician, notwithstanding any statutory provision to the contrary;
(13) Violation of chapter 329, the uniform controlled substances act, or any rule adopted thereunder[;] except as provided in section 329-B;
(14) Failure to report to the board, in writing, any disciplinary decision issued against the licensee or the applicant in another jurisdiction within thirty days after the disciplinary decision is issued; or
(15) Submitting to or filing with the board any notice, statement, or other document required under this chapter, which is false or untrue or contains any material misstatement or omission of fact."

SECTION 4. Section 712-1240.1, Hawaii Revised Statutes, is amended to read as follows:

"**§712-1240.1 Defense to promoting.** (1) It is a defense to prosecution for any offense defined in this part that the person who possessed or distributed the dangerous, harmful, or detrimental drug did so under authority of law as a practitioner, as an ultimate user of the drug pursuant to a lawful prescription, or as a person otherwise authorized by law.

(2) It is an affirmative defense to prosecution for any marijuana-related offense defined in this part that the person who possessed or distributed the marijuana was authorized to possess or distribute the marijuana for medical purposes pursuant to part of chapter 329."

SECTION 5. This Act shall not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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. In codifying the new sections added by section 2, and referred to in sections 3 and 4 of this Act, the revisor of statutes shall substitute the appropriate section numbers for the letters used in designating the new sections 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 14, 2000.)

# ACT 229

S.B. NO. 2475

A Bill for an Act Relating to Gender Equity in Sports.

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

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new subpart to part II to be appropriately designated and to read as follows:

" . GENDER EQUITY IN SPORTS

**§302A- Gender equity in athletics.** No person, on the basis of sex, shall be excluded from participating in, be denied the benefits of, or be subjected to discrimination in athletics offered by a public high school, pursuant to Public Law 92-318, Title IX of the federal Education Amendments of 1972.

**§302A- Factors; unequal aggregate expenditures.** (a) The superintendent of education and the advisory commission on gender equity in sports shall consider:

(1) Whether the selection of sports and levels of competition effectively accommodate the interests and abilities of members of both sexes;
(2) The provision of equipment, uniforms, and supplies;
(3) Equal access to practice and game times;
(4) Travel and per diem allowances;
(5) Opportunities to receive coaching and academic tutoring;
(6) Assignment and compensation of coaches and tutors;
(7) Access to locker room, weight room, and practice, competitive, and training facilities;
(8) Access to medical services;
(9) The provision of housing and dining facilities and services;
(10) Publicity; and
(11) Any other relevant factors.

(b) Unequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams, if a public high school operates or sponsors separate teams, do not constitute a violation of this subpart, but in determining violations of this subpart, the failure to provide necessary funds for teams for one sex in assessing equality of opportunity for members of each sex shall be considered.

**§302A- Advisory commission on gender equity in sports.** (a) There shall be established within the department of education for administrative purposes only, an advisory commission on gender equity in sports. The advisory commission may consist of seven members appointed by the superintendent of education who shall ensure that the advisory commission represents, to the maximum extent possible, the gender, racial, and ethnic diversity of the State.

(b) The advisory commission shall determine if any school does not exhibit substantial progress toward compliance with Public Law 92-318, Title IX, of the federal Education Amendments of 1972 and section 302A-1001. Based upon its findings and determinations, the advisory commission may make recommendations to the board of education, the superintendent of education, and the legislature.

(c) The advisory commission shall expire three years after the effective date of this Act.

**§302A- Equity in athletics; rules and implementation.** (a) By July 1, 2001, the superintendent shall define equity in athletics for all public high schools and shall recommend rules for appropriate enforcement mechanisms to ensure

equity. The superintendent shall develop a strategic plan containing recommendations and a timetable to achieve equity. Those recommendations relating to use of existing personnel, equipment, resources, and facilities shall be commenced and continued by the expiration of the advisory commission. The recommendations shall include, but not be limited to:

(1) A determination of an equitable rate of participation of males and females in athletics at public high schools; and

(2) A determination of the appropriate use of revenues when making decisions about the equitable use of funds for support of athletic activities. In making this determination, the advisory commission shall consider all funds received and expended for athletic promotion or support, including revenues from direct-support organizations.

(b) Indicators shall be developed and benchmarks shall be established to measure progress toward goals.

§302A- **Compliance report.** By December 31, 2000, the superintendent of education shall submit to the legislature and the advisory commission on gender equity in sports a report of compliance with Public Law 92-318, Title IX, of the federal Education Amendments of 1972, including a compliance plan with timelines for every public high school, an analysis and assessment of current activities with respect to Title IX compliance, and itemized expenditures for athletics.

§302A- **No private right of action.** No private right of action at law shall arise under this subpart.

§302A- **Applicability.** This subpart shall apply to public schools as defined in section 302A-101; provided that it shall apply to grades nine to twelve only."

SECTION 2. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved June 14, 2000.)

## ACT 230 H.B. NO. 645

A Bill for an Act Relating to Veterans Rights and Benefits.

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

SECTION 1. The purpose of this Act is to provide an alternative to the procedures currently specified in the rules of the office of veterans services to enable the office to provide grants to assist survivors of deceased World War II Filipino veteran or interested parties pay for funeral and burial expenses and costs to transport the veteran's remains to the Philippines.

SECTION 2.[1] The office of veterans services, at the request of a deceased veteran's survivor or an interested party, shall receive, review, and approve requests for payment to:

(1) Provide funeral and burial services for a deceased World War II Filipino veteran; and
(2) Transport the remains of a deceased World War II Filipino veteran to the Philippines.

(b) Within the amount authorized in this Act, the office shall establish the maximum amounts of burial grant funds that may be disbursed on behalf of a deceased World War II Filipino veteran.

(c) The office shall not expend more than the amount appropriated for the fiscal year to provide burial grants for deceased World War II Filipino veterans.

(d) Specific eligibility criteria, application and appeal procedures, service choices, and invoicing arrangements shall be established by the office.

(e) Payment shall be authorized by the office upon the submission of an invoice reflecting that the services will be satisfactorily performed on behalf of the deceased World War II Filipino veteran.

(f) For the purposes of this section, "World War II Filipino veteran" means any Filipino veteran, who is now a citizen of the United States, who served honorably in an active duty status in any of the armed services of the United States between September 1, 1939, and December 31, 1946.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $55,000 or so much thereof as may be necessary for fiscal year 2000-2001 for funeral and burial service expenses and costs of transporting deceased World War II Filipino veterans back to the Philippines.

The sum appropriated shall be expended by the office of veterans affairs for the purposes of this Act.

SECTION 4. This Act does not affect rights and duties that matured, and proceedings that were begun, before its effective date.

SECTION 5. This Act shall take effect on July 1, 2000.

(Approved June 15, 2000.)

**Note**

1. No subsection (a).

## ACT 231 H.B. NO. 2262

A Bill for an Act Establishing a Commission to Celebrate the One-Hundredth Anniversary of the Arrival of the Koreans to Hawaii.

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

SECTION 1. The legislature finds that members of the Korean community have contributed significantly and substantially to Hawaii. Since the arrival of the first Koreans to Hawaii in 1903, the rich culture and proud heritage of the Korean people have been and continues to be a positive influence upon life in Hawaii. The year 2003 will mark the one-hundredth anniversary of their arrival in Hawaii. In recognition of the great contributions of Koreans to our diverse and multicultural society, a celebration to commemorate their arrival and subsequent achievements in Hawaii is appropriate.

The purpose of this Act is to provide for the celebration of the centennial anniversary of the Korean people in Hawaii.

SECTION 2. There is established a temporary commission to be known as the Korean centennial celebration commission which shall have charge of all ar-

rangements for the commemoration of the centennial anniversary of the arrival of the first Koreans to Hawaii. The commission shall be placed within the office of the governor for administrative purposes and shall cease to operate after December 31, 2003.

The centennial celebration shall be immune from civil liability that may occur in the implementation of the celebration.

SECTION 3. The commission shall consist of fifteen members of the Korean community to be appointed by the governor without regard to section 26-34, Hawaii Revised Statutes. The members shall represent government, labor, business, culture and the arts, and the community at large. The governor shall designate the chair of the commission from among the appointed members. An individual appointed to another commission is eligible to be appointed as a member of this commission.

The members shall not receive compensation for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this Act.

Any member of the commission shall be immune from civil liability for any act done in connection with the performance of their duties as provided in section 26-35.5, Hawaii Revised Statutes.

SECTION 4. The commission shall:

(1) Prepare an overall program to celebrate the centennial anniversary of the arrival of the Korean people in Hawaii, their significant contributions to the development of this State, and their culture and heritage;
(2) Identify a nonprofit organization that will be responsible for any moneys received or expended for the centennial anniversary celebration; and
(3) Develop, plan, and coordinate the various program activities that are to be scheduled throughout the year of the celebration and shall encourage the participation of all segments of the Korean community.

In fulfilling its responsibilities, the commission shall consult, cooperate with, and seek advice from appropriate Korean organizations and agencies.

SECTION 5. The commission may seek grants from public and private sources and may accept donations to finance the projects, programs, and activities of the centennial anniversary celebration. Any funds received by the commission shall be turned over to the nonprofit organization responsible for any moneys received or expended for the centennial anniversary celebration.

Chapter 42F, Hawaii Revised Statutes, shall apply to any grant or subsidy made pursuant to this Act by the legislature.

All property acquired by the commission shall be deposited for preservation in the Hawaii state public library system, museums, and public archives or shall otherwise be disposed of as directed by the commission.

SECTION 6. At the end of its term, the commission shall submit to the governor a final report of all its activities, including an accounting of all moneys received and disbursed. The report shall include a description of:

(1) The production, publication, and distribution of books, films, and other educational materials on the life and experiences of Koreans in Hawaii;
(2) Conferences, convocations, lectures, and seminars; and
(3) Traveling exhibits, other exhibits, ceremonies, theatrical productions, and other special events commemorating the anniversary.

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved June 15, 2000.)

## ACT 232 H.B. NO. 2354

A Bill for an Act Making an Appropriation for the Fiftieth Anniversary Commemoration of the Korean War Commission.

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

SECTION 1. Only five years had passed since the end of World War II when the United States found itself in a major international conflict. In the early morning hours of June 25, 1950, the communist government of North Korea launched an attack into South Korea.

Determined to support the world's democracies, the United States immediately led a United Nations force into the Korean War. What was envisioned as a short, decisive repelling of the enemy became a prolonged and frustrating fight that threatened to explode beyond Korean borders. The fighting lasted for three years until an uneasy peace returned to the region with a negotiated settlement that reestablished the earlier boundary between North and South Korea.

One-and-a-half million American men and women, a cross-section of the nation's population, struggled side-by-side during the conflict. They served as soldiers, chaplains, nurses, clerks, and in a host of other combat and support roles. One hundred thirty-one individuals were awarded the Medal of Honor, the nation's highest commendation for combat bravery. Of the recipients, ninety-four had given their lives in heroic acts that earned them the honor.

The governor, through Executive Order No. 99-07, honors the men and women who served in Korea for their struggles and sacrifices under trying circumstances in service to their country and the cause of freedom by establishing the fiftieth anniversary commemoration of the Korean War commission. The purpose of the commission is to:

(1) Gather information regarding the identity of Korean War veterans and their families, especially those who lost their loved ones during the war;
(2) Recommend to the department of defense how Hawaii can identify, thank, and honor Korean War veterans and their families;
(3) Recognize and remember the prisoners-of-war and missing-in-action;
(4) Recognize the many contributions of women and minorities to the nation during the Korean War;
(5) Provide the public with a clearer understanding and appreciation of the lessons, history, and legacy of the war, and the military's contribution in maintaining world peace and freedom;
(6) Remember the forces engaged in preserving the peace, freedom, and prosperity of the Republic of Korea; and
(7) Strengthen the bonds of friendship and relationships throughout the world by focusing on the twenty-two countries that fought as allies.

The fiftieth anniversary commemoration of the start of the Korean War is rapidly approaching. The legislature believes that Korean War veterans and their families should be identified, thanked, and properly recognized and honored.

The purpose of this Act is to appropriate funds to the fiftieth anniversary commemoration of the Korean War commission to carry out its mission throughout the State.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of $70,000 or so much thereof as may be necessary for fiscal year 2000-2001 to carry out the functions of the fiftieth anniversary commemoration of the Korean War commission throughout the State.

The sum appropriated shall be expended by the department of defense for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved June 15, 2000.)

## ACT 233 S.B. NO. 680

A Bill for an Act Relating to Fireworks.

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

SECTION 1. The legislature finds that the widespread discharge of fireworks in all counties in the State creates a serious safety hazard for persons and property as well as a severe health risk—particularly for the young, the elderly, and others with respiratory ailments—as a result of concentrated sulfuric smoke emissions. The Honolulu fire department has stated that they received many reports of dangerous fires caused by illegal aerial fireworks during this year's New Year celebrations, with serious injuries and death having occurred. The widespread use of fireworks also burdens county resources.

The legislature also finds that fireworks in Hawaii are used in celebrations of cultural significance to the people of the State, including the New Year, Chinese New Year, and Fourth of July.

The purpose of this Act is to permit the use of fireworks in the State only for cultural purposes and public displays as established in this Act; provided that the amount of firecrackers to be sold to an individual, shall be limited to 5,000 firecrackers per permit; and provided further that fireworks for cultural purposes shall not be purchased more than five days before the event. This Act also increases the license fees for the importation, sale, or storage of fireworks. In addition, this Act reinforces the prohibition on the use of aerial common fireworks and special fireworks in the State, except for permitted use in public displays, and changes the penalties for importation, sale, possession, and use of aerial common fireworks.

SECTION 2. Chapter 132D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§132D- Importation of aerial common fireworks, special fireworks, or both, for public display.** Aerial common fireworks, special fireworks, or both, shall only be imported and stored, if necessary, in an amount sufficient for an anticipated three-month inventory; provided that if a licensee under section 132D-7 provides aerial common fireworks, special fireworks, or both, for public displays as allowed under section 132D-16 more than once a month, the licensee may import or store, if necessary, sufficient aerial common fireworks, special fireworks, or both, for a six-month inventory."

SECTION 3. Chapter 132D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§132D- Licensee; bill of lading, notification, storage, limits on sales.** (a) Any person who has obtained a license under section 132D-7 and ships fireworks into the State shall:

(1) Clearly designate the types of fireworks in each shipment on the bill of lading or shipping manifest with specificity;

(2) Declare on the bill of lading or shipping manifest the gross weight of aerial common fireworks, non-aerial common fireworks, and special fireworks to be imported in each shipment and the location of the storage facility, if applicable, in which the fireworks are to be stored;

(3) Prior to shipment and when booking each shipment of fireworks, notify the appropriate county official as determined by the county regarding whether the shipment will be distributed from:

(A) Pier to pier;

(B) Pier to warehouse or storage facility; or

(C) Pier to redistribution; and

(4) At the time shipping is booked, the importer or consignee shall notify the appropriate county official as determined by the county in writing of the expected shipment's landing date.

(b) The fire department of a county, in which a shipment of fireworks has landed and becomes subject to the jurisdiction of the fire department, shall be allowed to inspect, if it chooses, any shipment declared on the shipping manifest as fireworks.

(c) The facility in which fireworks are to be stored must:

(1) Have received approval fifteen days prior to the shipment's arrival from the appropriate county fire department; and

(2) Meet all state and county fire and safety codes.

(d) Any fireworks landed in the State shall be subject to seizure and forfeiture if:

(1) The importer or consignee does not have in the importer's or consignee's possession a valid license to import fireworks under section 132D-7;

(2) The consignee does not have a valid license to store fireworks under section 132D-7; or

(3) The fireworks have not been declared or have been misdeclared in violation of section (a).

(e) No person holding a retailer license to sell non-aerial common fireworks shall be allowed to sell non-aerial common fireworks commonly known as firecrackers in a packet size larger than 5,000 individual units. Any person violating this subsection shall be guilty of a misdemeanor.

(f) Any person violating subsections (a), (c), or (d) shall be subject to the following for shipments of fireworks of:

(1) Twenty-five pounds or less gross weight shall be a petty misdemeanor;

(2) Over twenty-five pounds to three hundred pounds gross weight shall be a misdemeanor;

(3) Over three hundred pounds to ten thousand pounds gross weight shall be a class C felony; and

(4) More than ten thousand pounds gross weight shall be a class B felony."

SECTION 4. Section 132D-2,[1] Hawaii Revised Statutes, is amended as follows:

1. By inserting three new definitions to read:

""<u>"Cultural" means relating to the arts, customs, traditions, mores, and history of all of the various ethnic groups of Hawaii.</u>

"Import" (and any nounal, verbal, adjectival, adverbial, and other equivalent form of the term used interchangeably in this chapter) means to bring or attempt to bring fireworks into the State or to cause fireworks to be brought into the State.

"Public display" means a public exhibition and the use of fireworks for commercial activities (including such activities as movie or television production)."

2. By amending the definition of "aerial common fireworks" to read:

""Aerial common fireworks" means any firework, classified as common fireworks by the United States Bureau of Explosives or contained in the regulations of the United States Department of Transportation and designated as UN 0336 1.4G, which produces an audible or visible effect and which is designed to rise into the air and explode or detonate in the air or to fly about above the ground and which is prohibited for use by any person who does not have a [display permit] permit for public display issued by a county[.] under section 132D-16. "Aerial common fireworks" include firework items commonly known as bottle rockets, sky rockets, missile-type rockets, helicopters, torpedoes, daygo bombs, roman candles, flying pigs, and jumping jacks, which move about the ground farther than inside a circle with a radius of twelve feet as measured from the point where the item was placed and ignited, [types of balloons which require fire underneath to propel the same,] aerial shells, and mines."

SECTION 5. Section 132D-3, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§132D-3[]] Permissible uses of non-aerial common fireworks.** Non-aerial common fireworks may be set off, ignited, discharged, or otherwise caused to explode within the State only:

(1) From 9:00 p.m. on New Year's Eve to 1:00 a.m. on New Year's Day; from [9:00 p.m.] 7:00 a.m. [Chinese New Year's Eve] to [1:00 a.m.] 7:00 p.m. on Chinese New Year's Day; and from [9:00] 1:00 p.m. to 9:00 p.m. on the Fourth of July [to 1:00 a.m. July 5]; or

(2) From 9:00 a.m. to 9:00 p.m. as allowed by permit pursuant to section 132D-10 if the proposed cultural use is to occur at any time other than during the periods prescribed in paragraph (1)[.];

provided that the purchase of not more than 5,000 individual non-aerial common fireworks commonly known as firecrackers shall be allowed under each permit."

SECTION 6. Section 132D-4, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§132D-4[]] Permissible uses of special fireworks and aerial common fireworks.** Special fireworks and aerial common fireworks may be purchased, set off, ignited, or otherwise caused to explode in the State only if for public display and permitted in writing pursuant to [section] sections 132D-10[.] and 132D-16."

SECTION 7. Section 132D-7, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§132D-7[]] License or permit required.** [(a) It shall be unlawful for any person to import any fireworks into the State, to] A person shall not:

(1) Import, store, offer to sell, or sell, at wholesale or retail, [any] aerial common fireworks, special fireworks, or non-aerial common fireworks, unless the person has a valid license issued by the [department.] county;

(2) Possess aerial common fireworks or special fireworks without a valid license to import, store, or sell aerial common fireworks or special fireworks, or a valid permit as provided for in this chapter; or

[(b) It shall be unlawful for any person to set off, ignite or discharge aerial common or special fireworks at any time or to set off, ignite or discharge]

(3) Purchase non-aerial common fireworks [at any time other than the periods] with a permit under section 132D-10 more than five calendar days before the applicable time period for use prescribed in section 132D-3[(1)] in [any] the county [unless the person has a valid permit issued by the county in which the permitted activity is to occur.] that issued the permit."

SECTION 8. Section 132D-8, Hawaii Revised Statutes, is amended to read as follows:

"[[]§132D-8[]] **Application for license.** (a) [The license] All licenses required under section 132D-7 shall be issued by the [department] county and shall be nontransferable. [The license] Licenses to import shall specify the date of issuance or effect and the date of expiration, which shall be March 31 of each year. The application shall be made on a form setting forth the date upon which the importations are to begin, the address of the location of the importer, and the name of the proprietor or, if a partnership, the name of the partnership and the names of all partners or, if a corporation, the name of the corporation and the names of its officers. If the state fire council or county discovers at a later date that a licensee has been convicted of a felony under this chapter, the licensee's license shall be revoked and no new license shall be issued to the licensee for two years.

(b) Each storage, wholesaling, and retailing site shall be required to obtain a separate license. The license shall specify the date of issuance or effect and the date of expiration, which shall be March 31 of each year. The application shall be made on a form setting forth the date upon which the storage, sale, or offers for sale are to begin, the address of the location of the licensee, and the name of the proprietor, or, if a partnership, the name of the partnership and the names of all partners or, if a corporation, the name of the corporation and the name of its officers. Any license issued pursuant to this chapter may be revoked by the [department] county if the licensee violates any provision of this chapter or if the licensee stores or handles the fireworks in such a manner as to present an unreasonable safety hazard.

(c) It shall be unlawful for any person, other than a wholesaler who is selling or transferring fireworks to a licensed retailer, to sell or offer to sell any fireworks[:

(1) More than seven calendar days prior to the designated period for use as described in section 132D-3(1);

(2) At other than the designated periods for use set forth in section 132D-3(1), unless the purchaser presents a valid permit; or

(3) At] at any [other] time[, and whenever the sale of special fireworks is involved,] to any person who does not present a permit duly issued as required by section [132D-7.] 132D-10 or 132D-16. The permit shall be signed by the seller or transferor at the time of sale or transfer of the fireworks, and the seller or transferor shall indicate on the permit the amount and type of fireworks sold or transferred. No person shall sell or deliver fireworks to any permittee in any amount in excess of the amount specified in the permit, less the amount shown on the permit previously to have been purchased[.]; provided that no fireworks shall be sold to a permittee holding a permit issued for purposes of section 132D-3, more than five calendar days before the applicable time period under section 132D-3.

(d) Aerial common fireworks, special fireworks, or both, shall only be sold or transferred by a wholesaler to a person with a valid permit under sections 132D-10 and 132D-16. No person with a valid permit under sections 132D-10 and 132D-16 shall sell or transfer aerial common fireworks, or special fireworks, or both, to any other person.

[(d)] (e) Any license issued pursuant to this chapter shall be prominently displayed in public view at each licensed location."

SECTION 9. Section 132D-9, Hawaii Revised Statutes, is amended to read as follows:

"**§132D-9[2] Application for permit.** The permit required under section [132D-7] 132D-10 or 132D-16 shall be issued by the county [fire department] and be nontransferable. The county shall issue all permits for which complete applications have been submitted and which contain only correct information. The permit shall specify the date of issuance or effect and the date of expiration but in no case for a period to exceed one year. The permit for the purchase of non-aerial common fireworks for the purposes of section 132D-3 shall not allow purchase for more than one event as set forth in section 132D-3. The application shall be made on a form setting forth the dates for which the permit shall be valid, the location where the permitted activity is to occur, and the name of the proprietor or, if a partnership, the name of the partnership and the names of all partners or, if a corporation, the name of the corporation and the names of its officers. The permit application may be denied if the proposed use of fireworks presents a substantial inconvenience to the public or presents an unreasonable fire or safety hazard. Any permit issued pursuant to this chapter shall be prominently displayed in public view at the site."

SECTION 10. Section 132D-10, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§132D-10[]] Permits.** A permit shall be required for the purchase[, setting off, ignition, or discharge] of:

(1) Any non-aerial common fireworks [when the proposed date of the use of the fireworks is not within the periods prescribed in section 132D-3(1); and] commonly known as firecrackers upon payment of a fee of $25; and

(2) Any aerial common fireworks and any special fireworks [under all circumstances and at any time.] for the purposes of section 132D-16."

SECTION 11. Section 132D-11, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§132D-11[]] Fee.** (a) The fee for the license required under section 132D-7 shall [not exceed $110] be $3,000 for importers, $2,000 for each wholesaler's site, $1,000 for each storage site, and $500 for each retailer's site, and $110 for permits for public display under section 132D-16 for each year or fraction of a year in which the licensee plans to conduct business and shall be payable to the [department.] county. The license fees shall be used by each county fire department to pay the salary of an auditor of fireworks records. The auditor shall monitor strict inventory and recordkeeping requirements to ensure that sales of fireworks are made only to license or permit holders under this chapter. The county shall provide an exemption from the fees under this section to nonprofit community groups for importation and storage of fireworks for displays once a year.

(b) The fee for the [permit] license required under section 132D-7 shall be [no greater than $25] the fee specified in subsection (a) for each year [or], fraction of a year, or event in which the [permittee] licensee plans to conduct business and shall be payable to the county in which the permitted activity is to occur."

SECTION 12. Section 132D-14, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§132D-14[]] Penalty.** (a) [Any person importing aerial common fireworks or special fireworks into the State without first having obtained a license as required by section 132D-7 shall be guilty of a class C felony.] Any person:

(1) Importing aerial common fireworks or special fireworks without having a valid license under section 132D-7 shall be guilty of a class C felony;

(2) Purchasing, possessing, setting off, igniting, or discharging aerial common fireworks or special fireworks without a valid permit under sections 132D-10 and 132D-16, or storing, selling, or possessing aerial common fireworks or special fireworks without a valid license under section 132D-7:

(A) If the total weight of the aerial common fireworks or special fireworks is twenty-five pounds or more, shall be guilty of a class C felony; or

(B) If the total weight of the aerial common fireworks or special fireworks is less than twenty-five pounds, shall be guilty of a misdemeanor.

(3) Who transfers or sells aerial common fireworks or special fireworks to a person who does not have a valid permit under sections 132D-10 and 132D-16, shall be guilty of a class C felony; and

(4) Who removes or extracts the pyrotechnic contents from any fireworks and uses the contents to construct fireworks or a fireworks related device shall be guilty of a misdemeanor.

(b) Except as provided in subsection (a)[,] or as otherwise specifically provided for in this chapter, any person violating any other provision of this chapter, shall be [guilty of a petty misdemeanor.] fined not more than $2,000 for each violation.

(c) The court shall collect the fines imposed in subsections (a) and (b) for violating this chapter and of the fines collected shall pay twenty per cent to the State and eighty per cent to the county in which the fine was imposed which shall be expended by the county for law enforcement purposes."

SECTION 13. Section 132D-16, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§132D-16[]] Permit for public display.** (a) Any person desiring to set off, ignite, or discharge aerial common fireworks, special fireworks, or both, for a public display shall apply to, and obtain a permit as required by section [132D-7,] 132D-10, from the county not less than twenty days before the date of the display.

(b) The application shall state, among other things:

(1) The name, age, and address of the applicant;

(2) The name, age, and address of the person who will operate the display, and verification that the person is a licensed pyrotechnic operator;

(3) The time, date, and place of the display;

(4) The type and quantity of aerial common fireworks, special fireworks, or both, to be displayed; and

(5) The purpose or occasion for which the display is to be presented.

(c) No permit shall be issued under this section unless the applicant presents, at the applicant's option, either:

(1) A written certificate of an insurance carrier, which has been issued to or for the benefit of the applicant, or a policy providing for the payment of damages in the amount of not less than $5,000 for injury to, or death of, any one person, and subject to the foregoing limitation for one person; in the amount of not less than $10,000 for injury to, or death of, two or more persons; and in the amount of not less than $5,000 for damage to property, caused by reason of the authorized display and arising from any tortious acts or negligence of the permittee, the permittee's agents, employees, or subcontractors. The certificate shall state that the policy is in full force and effect and will continue to be in full force and effect for not less than ten days after the date of the public display; or

(2) The bond of a surety company duly authorized to transact business within the State, or a bond with not less than two individual sureties who together have assets in the State equal in value to not less than twice the amount of the bond, or a deposit of cash, in the amount of not less than $10,000 conditioned upon the payment of all damages that may be caused to any person or property by reason of the authorized display and arising from any tortious acts or negligence of the permittee, the permittee's agents, employees, or subcontractors. The security shall continue to be in full force and effect for not less than ten days after the date of the public display.

The county may require coverage in amounts greater than the minimum amounts set forth in paragraph (1) or (2) if deemed necessary or desirable in consideration of such factors as the location and scale of the display, the type of aerial common fireworks, special fireworks, or both, to be used, and the number of spectators expected.

(d) The county, pursuant to duly adopted rules, shall issue the permit after being satisfied that the requirements of subsection (c) have been met, the display will be handled by a pyrotechnic operator duly licensed by the State, the display will not be hazardous to property, and the display will not endanger human life. The permit shall authorize the holder to display aerial common fireworks, special fireworks, or both, only at the place and during the time set forth therein, and to acquire and possess the specified aerial common fireworks, special fireworks, or both, between the date of the issuance of the permit and the time during which the display of those aerial common fireworks, special fireworks, or both, is authorized."

SECTION 14. Section 132D-17, Hawaii Revised Statutes, is amended to read as follows:

"[[]§132D-17[] **Preemption.** (a) It is the intent of the legislature to occupy the entire field of regulation in all matters that are the subject of this chapter.

(b)] **Inconsistent county ordinances, rules.** Notwithstanding any other law to the contrary, no county shall enact [any] ordinances or adopt any rules[,] regulating fireworks, except as required in [section 132D-7 regulating fireworks. All] this chapter, that is inconsistent with or more restrictive than, the provisions of this chapter. Any ordinances and rules regulating fireworks[,] that were enacted or adopted by a county before March 31, 1995, except those provisions which are not inconsistent with, or more restrictive than those of this chapter, are declared [null and] void."

SECTION 15. Section 132D-20, Hawaii Revised Statutes, is amended to read as follows:

"[[]§132D-20[]] **Enforcement.** This chapter shall be enforced by [the department and designated] each county [agencies]. The counties are authorized to enforce and administer the provisions of this chapter [regulating permits for display, agricultural uses, uses by commercial establishments and wholesale and retail sales of fireworks]."

SECTION 16. Section 132D-2, Hawaii Revised Statutes, is amended by deleting the definition of "department".

["'"Department" means the state fire council."]

SECTION 17. Section 132D-19, Hawaii Revised Statutes, is repealed.

SECTION 18. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 19. Statutory material to be repealed is bracketed. New statutory material is underscored.[3]

SECTION 20. This Act shall take effect on July 6, 2000.

(Approved June 15, 2000.)

**Notes**

1. "132D-2" substituted for "132D-1."
2. So in original.
3. Edited pursuant to HRS §23G-16.5.

## ACT 234 H.B. NO. 1873

A Bill for an Act Relating to Education.

*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 be appropriately designated and to read as follows:

"**§29- Department of education; federal funds; general fund offset.** (a) Federal impact aid, U.S. Department of Defense funds, and federal indirect overhead reimbursements received by the department of education shall not be returned to the general fund.

(b) If the amount of federal impact aid and U.S. Department of Defense funds received by the department of education exceeds the authorized appropriation in the general appropriations act or the supplemental appropriations act, then the governor shall:

(1) Allow the department of education to increase the federal fund expenditure ceiling for all program identification numbers, each by an amount proportionate to its portion of the total general fund appropriation made by the legislature, and by the amount that the federal impact aid and U.S. Department of Defense funds received by the department of education exceeds the authorized appropriation in the general appropriations act or the supplemental appropriations act; and

(2) Allow the department of education to retain the full amount of the general fund offset created by increased impact aid receipts; provided that the department shall not use the general fund offset to create new programs or expand existing programs.

(c) The department of education shall submit a report to the legislature, not fewer than twenty days prior to the convening of each regular session, concerning the exact amount and specific nature of federal impact aid, U.S. Department of Defense funds, and federal indirect overhead reimbursements received under this section."

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

"**§302A- Federal indirect overhead reimbursements.** The department may retain and expend federal indirect overhead reimbursements for discretionary grants in excess of the negotiated rate for such reimbursements as determined by the director of finance and the superintendent.

**§302A- Federal grants search, development, and application revolving fund.** (a) There is established a federal grants search, development, and application revolving fund into which shall be deposited the department's share of federal indirect overhead reimbursements, pursuant to section 302A- . Unless otherwise provided by law, all other receipts shall immediately be deposited to the credit of the general fund of the State. The department may expend funds in the federal grants search, development, and application revolving fund to search for discretionary grants and develop program applications to secure additional revenues for the department. Moneys in the revolving fund may be expended for consultant services and operational expenses, including the creation and hiring of temporary staff.

(b) The department shall prepare and submit an annual report on the status of the federal grants search, development, and application revolving fund to the legislature. The annual report shall include but not be limited to a list of the grant applications to the federal agencies and the grant awards received.

**§302A- Appropriations for trust funds of the department of education.** Notwithstanding any other law to the contrary, in any fiscal year, if the amount of revenues deposited into a trust fund of the department of education exceeds the amount appropriated from that fund for that year, the superintendent may approve expenditures in excess of the amount appropriated, up to the amount by which revenues for that fund exceed the appropriations from that fund for a fiscal year; provided that the department shall submit a report annually to the governor and the legislature of all expenditures in excess of each fund's appropriation for each fiscal year."

SECTION 3. There is appropriated out of the federal grants search, development, and application revolving fund the sum of $1,000,000 or so much thereof as may be necessary for fiscal year 2000-2001 to the department of education to carry out the purposes of this Act, including the creation and hiring of necessary staff.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

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. 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 such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor need not enforce the strict provisions of this Act, but shall promptly report any such lack of enforcement with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 6. New statutory material is underscored.[1]

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved June 19, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 235 H.B. NO. 1874

A Bill for an Act Relating to Educational Accountability.

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

SECTION 1. The legislature finds that an accountability system involving the process of accepting responsibility and being answerable for one's actions, should motivate and support improved performance. An effective accountability system clearly:

(1) Links authority and adequate resources to responsibility;
(2) Defines clear lines of responsibility and mutual obligation; and
(3) Requires continuous inspection of how well our system and our schools are supporting student attainment of statewide standards.

This inspection should lead to recommendations and actions in a continuous improvement cycle.

The legislature further finds that those most responsible for the success of our public education system are the board of education and the superintendent of education, and therefore, they should be held most accountable for educational outcomes. However, because Hawaii maintains a statewide school system, responsibility for various support functions for our public education system are assigned to myriad state agencies. The legislature further finds that among these agencies, there are competing goals and objectives that can impede the efficiency and effectiveness of our public schools. It is necessary, therefore, to review various agency functions and identify those which may be impeding educational success and achievement of statewide standards.

Thus, the purpose of this Act is to establish an interagency educational accountability working group to review statutes and agency administrative rules, policies, procedures, and practices and recommend these for temporary suspension by the appropriate agencies to support measures for improved educational accountability.

SECTION 2. (a) There is established within the department of education, an interagency educational accountability working group. Specifically, the working group shall:

(1) Review all pertinent statutes, agency rules, policies, procedures, and practices to identify those which are impeding educational system restructuring and reallocation and effective use of educational resources;

(2) Based on the review required in paragraph (1), enumerate and report to the board of education, governor, and legislature any statutes, rules, policies, procedures, and practices identified as needing suspension to allow the department of education to restructure and reallocate its resources to support student achievement; and

(3) Submit an annual report to the 2001 and 2002 regular sessions of the legislature regarding the progress of the working group and any legislative actions necessary to support the reorganization, reallocation, and effective use of educational resources.

(b) The interagency working group shall be composed of:

(1) The governor or the governor's designee;

(2) The chair of the board of education or the chair's designee;

(3) The director of accounting and general services or the director's designee;

(4) The attorney general or the attorney general's designee;

(5) The director of budget and finance or the director's designee;

(6) The superintendent of education or the superintendent's designee;

(7) The director of health or the director's designee;

(8) The director of human resources development or the director's designee;

(9) The director of labor and industrial relations or the director's designee; and

(10) One representative each from the Hawaii State Teachers' Association, the Hawaii Government Employees' Association, the United Public Workers Local 646, and the Hawaii State Parents, Teachers and Students Association.

(c) The chair of the working group shall be the superintendent of education, as the chief executive officer of the public school system. The working group shall convene on a regular basis, and shall focus its initial efforts on identifying statutes, agency rules, policies, procedures, and practices specifically in the areas of financial and human resource allocation and management and their effect on educational resources. The working group shall develop a list of the statutes, rules, policies, procedures, and practices recommended for suspension by the appropriate agency, beginning with the 2001-2003 fiscal biennium.

SECTION 3. The working group shall submit, in a timely fashion, a status report to the board of education, which shall include a summary of its activities regarding the review of agency functions and identification of rules, policies, procedures, and practices recommended for suspension.

SECTION 4. The working group shall submit a status report to the legislature which shall include a summary of its activities regarding the review of agency functions and identification of statutes, rules, policies, procedures, and practices recommended for suspension no later than sixty days prior to the the convening of the regular session of 2001. The working group shall submit a final report to the legislature that shall include a summary of the activities undertaken by the depart-

ment of education in response to the suspensions no later than sixty days prior to the convening of the regular session of 2002.

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

(Approved June 19, 2000.)

## ACT 236 H.B. NO. 2092

A Bill for an Act Relating to Education.

*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- Running start program.** (a) There is established in the department of education, the running start program to allow eligible students to enroll in any qualified course offered by the University of Hawaii system.

(b) For the purposes of this section:

"Eligible student" means a high school student in the eleventh or twelfth grade who:

(1) Has passed a standardized test administered by the college that demonstrates the student's ability to succeed at the college level;

(2) Is under the age of twenty-one as of September 1 of the school year in which the college course is taken; and

(3) Has other qualifications deemed appropriate by the department of education or the University of Hawaii; provided that subsequent qualifications do not restrict any student from taking the standardized test.

"Qualified course" means any vocational or academic course offered by the University of Hawaii system that also applies to the department of education's graduation requirements or is otherwise permitted by department of education rule or policy.

(c) All course credits successfully completed pursuant to this section that would otherwise be transferable but for a student's grade level, shall be transferable to any University of Hawaii system degree granting institution; provided that the student is admitted to the campus where the credit is transferred.

(d) College courses successfully completed under this section shall also satisfy the department of education's graduation requirements as determined by the department of education pursuant to rule.

(e) This section shall not preclude the department of education and the University of Hawaii from establishing programs by mutual agreement that permit high school students to enroll in college courses.

(f) The department of education shall adopt rules pursuant to chapter 91 to effectuate this section."

SECTION 2. Section 302A-401, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§302A-401[] Articulation agreement with the University of Hawaii; enrollment.] Running start program.** [The department, in consultation with, and with the concurrence of, the University of Hawaii, shall establish rules] (a) There is created in the department, the running start program to permit [qualified] eligible

students to enroll in any [vocational or academic courses] qualified course offered by the University of Hawaii system[; provided that the courses apply to the department's graduation requirements or are otherwise permitted by the department's rules or policies].

(b) For the purposes of this section:

"Eligible student" means a high school student in the eleventh or twelfth grade who:

(1) Has passed a standardized test administered by the college that demonstrates the student's ability to succeed at the college level;

(2) Is under the age of twenty-one as of September 1 of the school year in which the college course is taken; and

(3) Has other qualifications deemed appropriate by the department of education or the University of Hawaii; provided that subsequent qualifications do not restrict any student from taking the standardized test.

"Qualified course" means any vocational or academic course offered by the University of Hawaii system that also applies to the department's graduation requirements or is otherwise permitted by department rule or policy.

(c) All course credits successfully completed pursuant to this section that would otherwise be transferable but for a student's grade level, shall be transferable to any University of Hawaii system degree granting institution; provided that the student is admitted to the campus where the credit is transferred.

(d) College courses successfully completed under this section shall also satisfy the department's graduation requirements as determined by the department pursuant to rule.

(e) This section shall not preclude the department and the University of Hawaii from establishing programs by mutual agreement that permit high school students to enroll in college courses.

(f) Every student enrolled in a college course pursuant to this section shall remit appropriate tuition and fees to the college for every college course.

(g) The department shall adopt rules pursuant to chapter 91 to effectuate this section."

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

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

(Approved June 19, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 237 S.B NO. 2420

A Bill for an Act Relating to Technology.

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

SECTION 1. The legislature finds that in the last fifteen years a "New Economy" has emerged in the United States. This change has fundamentally altered industrial and occupational order, introduced unprecedented levels of entrepreneurial dynamism and competition, as well as a dramatic trend toward globalization. This "New Economy" has been spurred by advances in technologies and has effectively restructured the way businesses operate in today's marketplace.

The legislature further finds that a recent report, "The State New Economy Index, Benchmarking Economic Transformations in the States," by the Progressive Policy Institute, has begun to assess how the fifty states have responded to—and encouraged—these fundamental changes. In this report, Hawaii has attained an overall rank of twenty-six among the fifty states. While Hawaii does well in some areas—foreign direct investment, workforce education, and education technology in the schools—it ranks poorly in a number of critical areas, particularly new business start-ups and high technology jobs.

The legislature believes that if Hawaii's businesses and residents are to compete successfully in this "New Economy," the State must encourage and support growth in technology. Currently, there is a demand for highly trained technology workers. For example, CISCO Networking Systems urgently needs a highly skilled workforce and is committing substantial energies toward training and developing technology workers. It has helped prepare over 70,000 students worldwide during the past three years in its networking academies; of these, just 684 students are from Hawaii.

The purpose of this Act is to establish a new economy technology scholarship program on a pilot basis to create a sustained pool of highly trained technology workers, in the shortest time possible, to improve this State's ability to attract and retain business. Further, this Act is intended to encourage Hawaii students to pursue higher education and training in science and technology fields that are essential to economic development in this State.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

"CHAPTER
NEW ECONOMY TECHNOLOGY SCHOLAR PROGRAM

§ -1 **Short title.** This chapter shall be known and may be cited as the New Economy Technology Scholarship Act.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

"Approved course of study" means a program or curriculum offered by an approved post-secondary educational institution that provides instruction in science, technology, and related fields, and that is on the list of approved courses of study established by the department in -3(c).

"Approved educational institution" means a public or private post-secondary educational institution located in this State that has been accredited by a nationally recognized accrediting agency that is listed by the United States Secretary of Education, or vendor educational programs provided by vendor certified training organizations.

"Department" means the department of business, economic development, and tourism.

"Incumbent worker" means any person who has been a resident of this State for one year and who has been employed full-time in this State for a period of one year while pursuing an associate degree or its equivalent.

"Program" means the new economy technology scholarship program established under section -3.

"Student" means any individual domiciled in this State who attends or is about to attend a secondary school or post-secondary educational institution located in this State.

"Vendor educational programs" means those courses offered by technology businesses, resulting in a professional certification to provide services within that vendor's business.

"Work requirement" means postgraduate, full-time employment with an employer located in this State in an occupation related to an approved course of study required under -3. The term does not include a paid student internship, a paid fellowship, volunteer service, or employment before graduation.

§ -3 **New economy technology scholarship pilot program; establishment, administration.** (a) There is established a five-year pilot program to be known as the new economy technology scholarship program to be placed in the department of business, economic development and tourism for administrative purposes.

(b) Under the parameters of the scholarship program, the department may provide scholarship grants to an eligible student who is a resident of this State upon confirmation from an approved educational institution that the student has been accepted for enrollment in an approved course of study. Scholarship grants shall only be for the amount set forth in sections -4(a) and -5(a) and shall only be used for tuition and mandatory fees.

(c) The department shall establish lists of approved courses of study for the various types of approved educational institutions to be addressed by the program. The lists shall be based on areas of business demand and expected contribution to economic development and shall be reviewed and updated on an annual basis.

(d) To receive a scholarship grant under this chapter, a student shall meet all of the following requirements:

(1) Graduation from a high school in this State, or earned a general educational development (GED) diploma or the equivalent thereof;

(2) Maintenance of domicile in Hawaii during the term of the scholarship grants;

(3) Compliance with any conditions placed on the scholarship grant by the department;

(4) For those attending a post-secondary education institution, maintenance of a grade point average of 3.0 or higher, on a scale of 4.0, or its equivalent, beginning with the first semester of the freshman year and through the term of the scholarship or in the last year of high school if the student is applying under section -4 or -5; or if enrolled in a vendor educational program maintenance of a passing rate in the program; and

(5) Enter into a written agreement with the department to:

(A) Satisfy all degree, diploma, or certificate requirements and other requirements under this chapter;

(B) Commence employment in this State within one year after completion of an approved undergraduate degree or certificate program for a period of one year for each academic year the student received a scholarship grant under this chapter unless the department determines that there are extenuating circumstances; and

(C) Reimburse the State all amounts received under this chapter and interest thereon, as determined by the department, if the student fails to comply with subparagraphs (A) and (B).

(e) A student shall apply to the department for a scholarship grant as prescribed by the department, and include all information and documentation required by the department. The application of a student under eighteen years of age shall include the signature of a parent or guardian. The application shall include a

verified statement of grade point average from the appropriate approved educational institution.

(f) The work requirement under subsection (d)(5)(B)[1] shall begin after the receipt of bachelor's or associate's degree or other appropriate certificate from an approved educational institution.

(g) If a student terminates enrollment in the approved educational institution during the academic year or prior to completion of the approved course of study, the approved educational institution shall notify the department in writing and shall return all unused portions of the scholarship grant. Returned amounts shall be used to fund other scholarship grants under this chapter.

(h) A scholarship under this chapter is only transferrable to another approved educational institution if approved by the department.

(i) Grants awarded under the program shall be limited to funds appropriated for that purpose or funds otherwise matched by external entities. First priority for awarding grants shall be given to renewal applicants.

§ -4 **Scholarships; bachelor's degree programs.** (a) The department shall award a scholarship in an amount up to $2,000 per academic year to a student enrolled full-time in an approved educational institution pursuing a bachelor's degree in an approved course of study.

(b) A grant shall be awarded beginning no earlier than the second academic year of enrollment in an approved educational institution. The grant shall be for a maximum of three academic years or for up to four academic years if the student is enrolled in an approved course of study that, according to the department, requires five academic years to complete. To qualify for renewals beyond three years, the student must be in compliance with the requirements of section -3(d) and the department must determine that the student is making satisfactory progress toward completing a degree.

(c) A student who accepts a grant under this section shall complete a college-approved or university-approved internship or work experience in a science, technology, or related field with an employer located in this State prior to receiving a bachelor's degree. The student shall comply with any conditions placed upon the internship by the department. Proof of completion of the internship or work experience requirements must be submitted to the department prior to graduation, unless otherwise authorized by the department.

§ -5 **Scholarships; associate and certificate programs.** (a) The department shall award a scholarship in an amount up to $2,000 per academic year to a student enrolled full-time in an approved educational institution pursuing an associate's degree or a certificate provided by a vendor educational program, or in a degree-granting institution subject to chapter 446E in an academic program approved by the department. A student who is enrolled part time and is an incumbent worker pursuing an associate's degree, certification, or other specialized program approved by the department is eligible for a grant of twenty per cent tuition and mandatory fees.

(b) The grant shall be for a maximum of two academic years or for up to three academic years if the student is enrolled in an approved course of study that, according to the department, requires three academic years to complete. To qualify for a grant three times, the student must be in compliance with section -3(d), and the approved educational institution must determine that the student is making satisfactory progress toward completing an associate's degree or the requirements of the certificate program.

(c) The department may waive the one-year employment requirement for an incumbent worker for extenuating circumstances related to the student's employment within the last year.

§ **-6 Program administration.** (a) The department shall monitor and verify a student's fulfillment of all internship and work requirements under this chapter.

(b) The department may enter into a contract with a private or public entity to administer the program.

(c) The department shall enforce repayment of all scholarship grants for a student who does not comply with this chapter. Repayment shall include the use of all lawful collection procedures and the use of private collection agencies.

(d) Scholarship grants received by a student from the program shall not be considered taxable income under chapter 235.

(e) Scholarship grants received by a student from the program shall not be considered financial assistance or appropriations to the approved educational institution.

(f) No funds under this chapter shall be granted to a person enrolled in a customized job training partnership program or continuing education course from a post-secondary educational institution for which an employer is providing over fifty per cent of the financial support, directly or indirectly, and for which the student is not being charged tuition or fees.

(g) Any person who knowingly or intentionally procures, obtains, or aids another to procure or obtain a grant under this chapter through fraudulent means shall be disqualified from participation in the program and shall be liable to the department for an amount equal to three times the amount obtained.

(h) Any appeal under this chapter shall be subject to chapter 91.

(i) The department shall adopt rules under chapter 91 necessary to carry out the purposes of this chapter.

§ **-7 Annual report.** (a) The department shall publish a report by September 1, 2001, and every year thereafter. The report shall include information regarding the operation of the program to include:

(1) The total number of students receiving scholarship grants;
(2) The total amount of scholarship funds awarded;
(3) The number of full-time and part-time students receiving scholarship grants attending four-year educational institutions, community colleges, independent two-year colleges, degree-granting institutions, vendor educational programs, and certificate programs reported by institution and category of institution;
(4) The amount of scholarship funds awarded to students attending four-year educational institutions, community colleges, independent two-year colleges, degree-granting institutions, vendor educational programs, and certificate programs reported by institution and category of institution; and
(5) The total number of students who withdraw from the program or internship or work requirements.

(b) The annual report shall be submitted to the governor and the legislature."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $200,000 or so much thereof as may be necessary for fiscal year 2000-2001 to establish and implement the new economy technology scholar program.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2000, and shall be repealed on June 30, 2005.

(Approved June 19, 2000.)

**Note**

1. Subsection "(d)(5)(B)" substituted for "(e)(5)(B)".

# ACT 238

S.B NO. 2837

A Bill for an Act Relating to Educational Accountability.

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

SECTION 1. Section 302A-1004, Hawaii Revised Statutes, is amended to read as follows:

"**§302A-1004 Educational [assessment and] accountability[;] system; annual reports.** (a) The department shall [establish] implement a comprehensive system of educational accountability to motivate and support the improved performance of students and the education system. This accountability system shall:

(1) Include student accountability; school or collective professional accountability; individual professional accountability for teachers, principals, and other employees; and public accounting for other significant partners to the education process (including, but not limited to, parents, community members, businesses, higher education, media, and political leadership);

[(1)] (2) Link authority and adequate resources to responsibility;

[(2)] (3) Define clear roles for all parties and lines of responsibility and mutual obligation[;] and develop a collaborative process with stakeholders, including representatives of appropriate bargaining units, parents, administration, and students;

[(3)] (4) Involve fair and adequate assessment against agreed upon goals;

[(4)] (5) Invoke a full and balanced set of appropriate [actions (assistance, rewards, or sanctions) for observed performance;] consequences for observed performance, including rewards and recognition for those schools that meet or exceed their goals, assistance to those that fall short, and sanctions for those that given adequate assistance and ample time, continue to fail to meet goals;

[(5)] (6) Involve [a]:

(A) A statewide student assessment program that [is explicitly aligned with the Hawaii] provides annual data on student, school, and system performance at selected benchmark grade levels in terms of student performance relative to statewide content and performance standards and embodies high and rigorous expectations for the attainment of all students; and

(B) An annual assessment in core subjects for each grade level, as conducted by each school;

[(6)] (7) Involve a comprehensive school profile or report card for each school, which shall include, but not be limited to, student performance measures, school attendance, drop-out rates, and parental involvement. These reports shall be made available annually to the board, the governor, the legislature, the parents, and the general public[.];

(8) Require that teachers and administrators engage in the continuous professional growth and development that ensure their currency with respect to disciplinary content, leadership skill, knowledge, or pedagogical skill, as appropriate to their position. This requirement may be established by the department in terms of credit hours earned or their equivalent in professional development activity certified by the department as appropriate in focus and rigor; and

(9) Establish an explicit link between professional evaluation results and individual accountability through professional development of the knowledge, skill, and professional behavior necessary to the position, by requiring that results of the professional evaluation be used by the department to prescribe professional development focus and content, as appropriate.

Beginning with the 2001-2002 school year, the department shall submit to the legislature, the governor, and the board of education at least twenty days prior to the convening of each regular legislative session a report of the specifics of the design of the comprehensive accountability system, as well as the fiscal requirements and legislative actions necessary to create the accountability system.

(b) The department shall submit to the legislature and to the governor, at least twenty days prior to the convening of each regular legislative session, an educational status report that includes but is not limited to the following:

(1) Results of school-by-school assessments of educational outcomes[, including reference to such student performance standards and school-by-school assessment models as may be developed by the commission on performance standards and adopted by the board. This paragraph is repealed on June 30, 2001];

(2) Summaries of [school improvement plans;] each school's standards implementation design;

(3) Summary descriptions of the demographic makeup of the schools, with indications of the range of these conditions among schools within Hawaii;

(4) Comparisons of conditions affecting Hawaii's schools with the conditions of schools in other states; and

(5) Other such assessments as may be deemed appropriate by the board.

(c) The department shall provide electronic access to computer-based financial management, student information, and other information systems to the legislature and the auditor. The department shall submit to the legislature and to the governor, at least twenty days prior to the convening of each legislative session, a school-by-school expenditure report that includes but is not limited to the following:

(1) The financial analysis of expenditures by the department with respect to the following areas:

(A) Instruction, including face-to-face teaching, and classroom materials;

(B) Instructional support, including pupil, teacher, and program support;

(C) Operations, including non-instructional pupil services, facilities, and business services;

(D) Other commitments, including contingencies, capitol improvement projects, out-of-district obligations, and legal obligations; and

(E) Leadership, including school management, program and operations management, and district management; and

(2) The measures of accuracy, efficiency, and productivity of the department, districts, and schools in delivering resources to the classroom and the student.

(d) The superintendent of education is responsible for the development and implementation of an educational accountability system. The system shall include consequences and shall be designed through a collaborative process involving stakeholders that shall include parents, community members, the respective exclusive representatives, as well as others deemed appropriate by the superintendent.

For the purposes of this section, negotiations under chapter 89 shall be between the superintendent or the superintendent's designee and the respective exclusive representative, and shall be limited to the impact on personnel arising from the superintendent's decision in implementing the educational accountability system. After the initial agreement is negotiated, provisions on the impact of the accountability on personnel may be reopened only upon mutual agreement of the parties."

SECTION 2. Act 74, Session Laws of Hawaii 1999, is amended by amending section 3 to read as follows:

"SECTION 3. The department of education shall submit a report on [the findings and recommendations of the design of the comprehensive accountability system referred to in section 2 of this Act, to the legislature, and to the governor, at least twenty days prior to the convening of the regular legislative session of 2000. This report shall include, but not be limited to, the essential elements of the design, a timeline for its implementation, the legislative actions necessary to enable implementation, as well as a fiscal note describing resources necessary to execute the designs. The department of education shall submit a report on] the status of the implementation of the [comprehensive] educational accountability system to the legislature, and to the governor, at least twenty days prior to the convening of the regular legislative session of 2001."

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 19, 2000.)

## ACT 239 S.B NO. 3026

A Bill for an Act Relating to School Facilities.

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

SECTION 1. Hawaii's future lies in its ability to provide its youth and young adults with a quality educational system. Over the years, the State has demonstrated its commitment to this goal by establishing new policies and increasing funding to support the educational needs of Hawaii's people. However, one critical aspect of our educational system, which is sometimes overlooked, is the physical structure needed to provide students with an environment conducive to proper learning.

The legislature finds that the State has invested over $1,700,000,000 in the construction of school facilities for the department of education and the University of Hawaii. Through the department of accounting and general services, and the

University of Hawaii, repair, maintenance, and improvement services are performed to assure the health and safety of our students. Within the past six years, however, the severe downturn in the State's economy has made it difficult to fund repair, maintenance, and improvements at required levels.

The deferral of repair, maintenance, and improvement projects is a short-sighted strategy, because any postponement of relatively inexpensive work actually costs the State untold millions of dollars in future obligations. To assure safe, structurally sound, and aesthetic educational facilities and to be fiscally responsible, the State needs to fund this repair, maintenance, and improvement backlog.

The legislature finds and determines that the quality of public education in the State is related to the condition of its public educational facilities. The physical facilities used by the department of education and the University of Hawaii provide the centerpiece around which all other educational activities exist. Adequate financing of repairs, maintenance, and improvement is necessary to keep educational facilities functional, architecturally sound, aesthetically pleasing, and in compliance with building and safety codes to support quality instruction, research, student, and community service programs.

The legislature further finds and determines that it is in the best interest of the State to allocate tax revenues for the purposes of repairing, maintaining, and improving the physical facilities used by the department of education and the University of Hawaii for public education.

Accordingly, the purpose of this Act is to appropriate general funds for repair, maintenance, and improvement projects to improve school facilities at the primary, secondary, and college levels. The general funds appropriated in this Act shall be used solely to manage, plan, design, repair, replace, maintain, renovate, and construct other related improvements to public education facilities under the management, control, and direction of the department of accounting and general services and the University of Hawaii. The funds may be used for improvements including but not limited to, reroofing, mechanical and electrical systems, renovations, resurfacing, repainting, recarpeting, waterproofing, facility audits, and other general repair projects.

SECTION 2. (a) The expenditure of appropriations made under this Act for any project with an estimated total cost of less than $100,000 shall be exempt from the provisions of chapter 103D, Hawaii Revised Statutes; provided that:

(1) Insofar as it is practical and based on specifications developed by the respective expending agency, adequate and reasonable competition of no fewer than three quotations shall be solicited for each project;
(2) Considering all factors, including quality, warranty, and delivery, the award shall be made to the vendor with the most advantageous quotation; and
(3) The procurement requirements shall not be artificially divided or parceled so as to avoid competitive bidding or competitive proposals.

(b) A separate contract file shall be maintained for each project funded under this Act. Each contract file shall contain the following:

(1) All quotations received for the project;
(2) An explanation, if known, whenever fewer than three quotations are received; and
(3) A justification on the selection of the vendor.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $30,000,000 or so much thereof as may be necessary for fiscal year 2000-2001 for repair, maintenance, and improvement projects for the department of education.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $15,000,000 or so much thereof as may be necessary for fiscal year 2000-2001 for repair, maintenance, and improvement projects for the University of Hawaii system.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 5. Any unexpended or unencumbered balances of the appropriations made by sections 3 and 4 of this Act to be expended in fiscal year 2000-2001 shall not lapse at the end of fiscal year 2000-2001; provided that any unencumbered balances of the appropriations under section 3 and 4 of this Act as of the close of business on June 30, 2002, shall lapse as of that date.

SECTION 6. This Act shall take effect on July 1, 2000.

(Approved June 19, 2000.)

## ACT 240 H.B. NO. 1759

A Bill for an Act Relating to Traffic Enforcement.

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

SECTION 1. Staff turnover and unanticipated problems caused by the wording of enabling legislation have delayed implementation of the three-year traffic enforcement demonstration project authorized by Act 234, Session Laws of Hawaii 1998, as amended by Act 263, Session Laws of Hawaii 1999. Act 234, which established the demonstration project, took effect on July 1, 1998, and is scheduled to end on July 1, 2001.

The purpose of this Act is to:

(1) Extend the demonstration project until July 1, 2003,
(2) Authorize the department of transportation to retain and pay contractors for the project, and
(3) Make other required changes to the enabling legislation.

SECTION 2. Section 286-45, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Any private contractor that has entered into a contract with [a county] the department to implement the traffic enforcement demonstration project pursuant to section 5 et seq. of Act 234, Session Laws of Hawaii 1998, may obtain from [the] any county finance director the names and addresses of registered motor vehicle owners, which shall be used only as is necessary to carry out the provisions of the contract and the purposes of that Act and may not otherwise be publicly disclosed."

SECTION 3. Section 286-172, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Subject to authorization granted by the chief justice with respect to the traffic records of the violations bureaus of the district courts and of the circuit courts, the director of transportation shall furnish information contained in the statewide traffic records system in response to:

(1) Any request from a state, a political subdivision of a state, or a federal department or agency, or any other authorized person pursuant to rules adopted by the director of transportation under chapter 91;
(2) Any request from a person having a legitimate reason, as determined by the director, as provided under the rules adopted by the director under paragraph (1), to obtain the information for verification of vehicle ownership, traffic safety programs, or for research or statistical reports;
(3) Any request from a person required or authorized by law to give written notice by mail to owners of vehicles; or
(4) Any request from a private contractor that has entered into a contract with [a county as may be necessary] the department to implement the traffic enforcement demonstration project pursuant to section 5 et seq. of Act 234, Session Laws of Hawaii 1998[. The private contractor may obtain from the director of transportation the]; provided that names and addresses of registered motor vehicle owners[, which] shall be used only as is necessary to carry out the provisions of the contract and the purposes of that Act and may not otherwise be publicly disclosed."

SECTION 4. Section 291C-165, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In every case when a citation is issued, the original of the citation shall be given to the violator; provided that:

(1) In the case of an unattended vehicle, the original of the citation shall be affixed to the vehicle as provided for in section 291C-167; or
(2) In the case of:
    (A) A vehicle utilizing the high occupancy vehicle lane illegally; or
    (B) A traffic or other violation on a controlled access facility that is recorded through the use of a hand-held or mounted video camera, conventional camera, or digital camera that produces photographic identification of a vehicle,

the original of the citation [shall] may be sent [by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident,] within three days of the date of the incident by certified mail, registered mail, or first class mail with a certificate of mailing obtained as evidence of service to the registered owner of the vehicle at the address on record at the vehicle licensing division [as provided in section 291C-223. If the end of the forty-eight[1] hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday]; provided that days when the post office is not open to the public shall not be included in the calculation of the three days; provided further that the administrative judge of the district courts may allow a [carbon] copy of the citation to be given to the violator or affixed to the vehicle and provide for the disposition of the original and any other copies of the citation."

SECTION 5. Section 291C-223, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§291C-223[]] Summons or citation for illegal use of high occupancy vehicle lane.** Whenever any motor vehicle is observed operating in a high occupancy vehicle lane without the prescribed number of passengers, the officer observing the vehicle shall[:

(1) Cause] cause a summons or citation [as described in section 291C-165] to be issued at the scene of the violation to the operator of the vehicle[;] or

[(2) Make every reasonable effort to be seen by the operator of the vehicle and record evidence of the violation by taking any information displayed on the vehicle that may identify its] be sent by mail to the registered owner [and cause a summons or citation] of the vehicle as described in section 291C-165 [to be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, to the registered owner of the vehicle at the address on record at the vehicle licensing division. If the end of the forty-eight hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday. Upon receipt, the registered owner shall be given fourteen days to respond to the summons or citation by:
(A) Paying a fine by mail; or
(B) Requesting a hearing be set on the matter.
A mail receipt signed by the registered owner is prima facie evidence of notification].''

SECTION 6. Act 234, Session Laws of Hawaii 1998, is amended by adding a new section to read as follows:

''SECTION 17A. **Police matters.** County police are authorized and encouraged to provide oversight and all police services required for the traffic enforcement demonstration project; provided that to the extent necessary to implement this Act, the powers of police officers for the enforcement of sections 291C-102, 291C-32(a)(3), and 291C-38(c), Hawaii Revised Statutes, are conferred upon the director of transportation and such of the officers, employees, agents and representatives of the department as may be designated by the director to exercise such powers. For the purposes of this section, the term ''agents and representatives'' includes persons performing services under contracts with the department pursuant to this Act.''

SECTION 7. Act 234, Session Laws of Hawaii 1998, is amended by adding a new section to read as follows:

''SECTION 17B. **Photo enforcement revolving fund.** (a) There is established a photo enforcement revolving fund to be administered by the department of transportation. Notwithstanding any other law to the contrary, the department may expend funds from this revolving fund; provided that no expenditure shall be made from and no obligation shall be incurred against the revolving fund in excess of the amount standing to the credit of the fund.

(b) All payments to the State resulting from citations and summons authorized under section 10 shall be deposited into the photo enforcement revolving fund; provided that any interest earned shall be deposited into the general fund.

(c) The department shall use the photo enforcement revolving fund to pay contractors and purchase county police oversight and services necessary for implementation of the traffic enforcement demonstration project.

(d) Notwithstanding any other law to the contrary, the department may also use up to twenty per cent of the photo enforcement revolving fund to pay for any non-recurring state and county expenses and any temporary state positions needed to implement the traffic enforcement demonstration project and administer the revolving fund.

(e) The department shall deposit that portion of the revolving fund not needed for purposes of this section into the general fund.''

SECTION 8. Act 234, Session Laws of Hawaii 1998, is amended by amending section 1 to read as follows:

"SECTION 1. The legislature finds that traffic violations in Hawaii, especially on the island of Oahu, have become intolerable, particularly the offenses of speeding and running red lights. Both of these violations endanger the lives of residents and compound the already hazardous conditions for both pedestrians and motorists on Hawaii's roads and highways. News items are increasingly common that describe hit-and-run drivers who have run over small children or the elderly, both inside and outside crosswalks, who may not be able to react quickly enough to a racing drunk driver or someone speeding through an intersection after the light has already turned red.

The legislature further finds that two recent technological innovations that address the hazards caused by speeding and disregarding red lights have already been in place and demonstrated their reliability and effectiveness in other jurisdictions—namely, photo speed imaging detector and photo red light imaging systems. The legislature finds that these innovations—both of which are completely automated—are appropriate for Hawaii's increasingly deteriorating traffic conditions, and are capable of safely and efficiently diffusing dangerous traffic control problems while at the same time freeing up police officers to handle more pressing problems.

The photo speed imaging detector system is a unit that mounts in a [sport utility] vehicle or [van] on a pole or bridge that detects, photographs, and records information on speeders. [A vehicle with the speed detector unit is parked at the roadside and monitors the speeds of passing motorists, and is linked to a controlled console with a central processor and speed display.] When a vehicle exceeding a preset threshold speed[2] enters the beam of the unit's speed detector, a high resolution camera photographs the [front of the] vehicle, capturing the [front] license plate[, while a second camera photographs the rear of the vehicle. The scene is lit by a powerful strobe flash for] and providing evidentiary quality images. Tickets are [processed automatically, so there is no need for an officer to make a stop and issue a ticket. In addition, since the violator's face and license plate are on record, compliance rates are considerably higher than with officer-generated tickets.

The legislature finds that a photo speed imaging detector system is safe, quick, cost-effective, and efficient.] generated and mailed to the registered vehicle owner without need for a police officer to stop a speeding vehicle and issue a ticket to the driver. With no stop involved, [the] no police officer is [not] at risk from passing traffic or armed violators. Moreover, while a motivated [traffic] police officer may average fifteen or twenty speeding tickets per shift, the photo speed imaging detector system can [write] generate two speeding tickets per second.

The photo speed imaging detector system [is essentially] can be a turnkey operation; all of the equipment, [including a fully-outfitted police vehicle, speed detector systems, printer, film or image processing,] and all supplies, as well as [officer] training, [are] can be provided by a private company. The private company [identifies] can use pictures of license plates to identify vehicle owners, print[s] and mail[s] tickets, monitor[s] compliance, and make[s] regular status reports[. The company also charges] in exchange for a small fee per paid ticket[, while the violator pays for everything else].

In addition, only one police officer using the photo speed imaging detector system can be as productive, if only in terms of numbers of traffic tickets issued, as an entire traffic division. Officers can be assigned higher priority duties, while the system handles speed enforcement. Finally, these systems have proven their reliability for over twenty years in police departments in countries around the world.

The second major innovation is the photo red light imaging system. In this system, a camera is positioned at [intersections] an intersection where red light

violations are [a major cause of collisions.] common. Rather than placing an officer at the intersection full-time, the red light camera serves as a twenty-four hour deterrent to running a red light. [Sensors are buried under a crosswalk leading] Buried vehicle sensors are connected to traffic signals and to a self-contained camera system that is mounted on a nearby pole. When a vehicle enters the intersection against a red light, the camera takes a telephoto color picture of the [rear of the] car as it rolls over the stop bar, capturing the [rear] license plate as evidence. A second wide-angle photograph takes in the entire intersection, including other traffic.

A sign may be posted at the intersection indicating that it is a photo-monitored intersection; however, the camera can be moved to different poles or intersections that are equipped to hold the camera, so that motorists do not know when they are being photographed. As with the photo speed imaging detector system, the private company that supplies the photo red light [camera] imaging system also processes [the film,] pictures, accesses motor vehicle records, checks the pictures of[3] license [plate] plates against registration records, and mails out citations.

The legislature finds that the photo red light imaging system, like the photo speed imaging detector system, [also] has numerous benefits. As with the photo speed imaging detector system, not only are streets safer after the implementation of the system, but police officers are freed from time-consuming traffic stops and have more time to make priority calls. A violator is less likely to [go to court,] contest tickets since the color photograph of the violation in progress, with appropriate information imprinted, can be used as evidence in court. [Imprinted on the photograph are the time, date, and location of the violation; the number of seconds the light had been red before the violator entered the intersection; and the violator's speed.] Few cases are contested in other jurisdictions using this system, and police officers make fewer court appearances, resulting in cost savings.

The legislature realizes that Hawaii's prior conversion to administrative adjudication of traffic offenses has eliminated the need for police officers to testify in most cases. However, to the extent that fewer citations are actually contested, cost savings will be realized and contested cases will receive a faster hearing. More importantly, [compliance with traffic laws has generally increased in those jurisdictions;] installation of this type of system has had an immediate effect on the behavior of drivers and has nearly eliminated violations in other jurisdictions.

The legislature finds that the implementation of both photo speed imaging detector and photo red light imaging systems will result in an increase in driver awareness, leading to a reduction in [traffic speeds] speeding and red light violations, and [may also result in lower insurance costs for safe drivers with] an overall reduction in crashes and injuries. A reduction in crashes and injuries in turn will result in lower costs for auto insurance, workers' compensation, and public assistance. Moreover, [these programs place the cost of the programs on the violators, not the taxpayers. Traffic] with use of photo speed imaging detector and photo red light imaging systems, traffic laws [are] will be enforced without discrimination, and safety and efficiency [are] will be increased by reducing the number of high-speed chases and the number of personnel required for traffic accident clean-up, investigation, and court testimony.

In addition, the legislature finds that there is a need to exempt contracts entered into with the private [company] companies that [is to] supply the photo speed imaging detector and photo red light imaging systems from the civil service, compensation, and collective bargaining laws. In Konno v. County of Hawaii, 85 Haw. 61, 937 P.2d 397 (1997), the Hawaii Supreme Court adopted the "nature of the services" test, holding that the protection of the civil service laws extends to those services that have been "customarily and historically" provided by civil servants. Because police officers may be held to be customarily and historically responsible for issuing tickets to speeding motorists and other functions that may

now be contracted out to a private entity, there is a need to specifically exempt any such contracts from the civil service and compensation laws so that those contracts are not voided by Konno. Although the Konno opinion did not reach the decision whether privatization is subject to mandatory collective bargaining, this Act also exempts contracts entered into with a private entity from collective bargaining laws as well, to ensure that these contracts are not subsequently voided for failure to comply with those laws as a result of a subsequent court interpretation.

Finally, the legislature finds that [speeding—whether on a highway or through a red light—frequently causes injury and death. When] when speeding occurs, [the] accidents [involved] are almost always more serious. Photo speed imaging detector and photo red light imaging systems have been proven in many locations throughout the United States, Canada, Europe, and numerous other countries around the world as deterrents to red light traffic violations and speeding and, consequently, injuries and death. The legislature finds that there is an immediate need to remedy the steadily worsening traffic conditions in Hawaii, and that the implementation of photo speed imaging detector and photo red light imaging systems will help to protect the health, safety, and welfare of the people of this State, while at the same time offering substantial cost savings and increased revenues.

The purpose of this Act is to:

(1) Establish a [three-year] demonstration project in selected areas on state or county highways [in each of the counties] to provide for the implementation of photo speed imaging detector and photo red light imaging systems to improve traffic enforcement; and

(2) Allow the [county] department of transportation to contract with [an] appropriate [provider] providers of these systems pursuant to the public procurement laws while:

(A) Exempting such contracts from civil service, compensation, and collective bargaining laws;

(B) Permitting the contractor to have access to information as set forth in this Act; and

(C) Allowing the contractor to issue citations or summonses by mail."

SECTION 9. Act 234, Session Laws of Hawaii 1998, section 5, is amended by amending the definitions of "photo speed imaging detector" and "photo red light imaging" to read as follows:

"'"Photo speed imaging detector" means a device used for traffic enforcement consisting substantially of a speed [reduction] measurement unit and a video, conventional, or digital camera [mounted in or on a vehicle] that automatically produces photographic identification of a vehicle traveling in excess of the legal speed limit in violation of section 291C-102, Hawaii Revised Statutes.

"Photo red light imaging" means a device used for traffic enforcement consisting substantially of a vehicle sensor installed to work in conjunction with a traffic-control signal and a video, conventional, or digital camera that automatically produces photographic identification of a vehicle which disregards a steady red signal in violation of section 291C-32(a)(3), Hawaii Revised Statutes."

SECTION 10. Act 234, Session Laws of Hawaii 1998, section 6, as amended by Act 263, Session Laws of Hawaii 1999, section 7, is amended by amending subsection (a) to read as follows:

"(a) Subject to this Act, [each county] the department may establish a [three-year] demonstration project in selected areas of [that county] the State to provide for the implementation of photo red light imaging, photo speed imaging detector, or photo technology systems to improve traffic enforcement as provided in this Act. The demonstration project shall be limited to state or county highways and shall

document the effectiveness of these systems. The contractor shall provide a public information campaign to inform local drivers about the use of these systems before any citation or summons is actually issued."

SECTION 11. Act 234, Session Laws of Hawaii 1998, section 7, is amended by amending subsection (a) to read as follows:

"(a) Subject to this Act, [each county] the department may establish a photo speed imaging detector system imposing monetary liability on the registered owner of a motor vehicle for failure to comply with speeding laws in accordance with this Act. [Each county] The department, in consultation with county police, may provide for the installation and operation of photo speed imaging detector systems on no more than twenty-five state or county highways at any one time in any county."

SECTION 12. Act 234, Session Laws of Hawaii 1998, section 7, is amended by amending subsection (c) to read as follows:

"(c) A contractor may issue a citation or summons pursuant to section 10 on the basis of a photo speed imaging detector if the following conditions are met:

(1) The photo speed imaging detector equipment is operated by a [uniformed] police officer [out of a marked police vehicle;] or a contractor who is authorized to operate the equipment pursuant to this Act; and

[(2) An indication of the speed of the motor vehicle is displayed within one hundred fifty feet of the location of the photo speed imaging detector unit;

(3)] (2) Signs indicating that speeds are enforced by a photo speed imaging detector are posted [on all major routes entering the area in question], as far as practicable, providing notice to a motorist that a photo speed imaging detector may be used[; and

(4) The photo speed imaging detector system is used for no more than four hours per day in any one location from thirty minutes after sunrise to thirty minutes before sunset].

The conditions specified in this subsection shall not apply when the information gathered is used for highway safety research or to issue warning citations not involving a fine, court appearance, or a person's driving record."

SECTION 13. Act 234, Session Laws of Hawaii 1998, section 8, is amended by amending subsection (a) to read as follows:

"(a) Subject to this Act, [each county] the department may establish a photo red light imaging system imposing monetary liability on the operator of a motor vehicle for failure to comply with traffic-control signal laws in accordance with this Act. [Each county] The department, in consultation with county police, may provide for the installation and operation of photo red light imaging systems at no more than twenty-five intersections in any one county at any one time."

SECTION 14. Act 234, Session Laws of Hawaii 1998, section 8A, as added by Act 263, Session Laws of Hawaii 1999, section 7, is amended by amending subsection (a) to read as follows:

"(a) Subject to this Act, [each county] the department may establish photo technology systems imposing monetary liability on the registered owner of a motor vehicle for failure to comply with section 291C-38(c), Hawaii Revised Statutes, regarding longitudinal traffic lane markings, in accordance with this Act. [Each county] The department, in consultation with county police, may provide for the installation and operation of photo technology systems on no more than twenty-five state or county highways at any one time in any county; provided that these systems shall primarily be used on controlled access facilities on Oahu."

SECTION 15. Act 234, Session Laws of Hawaii 1998, section 9, as amended by Act 263, Session Laws of Hawaii 1999, section 7, is amended by amending subsection (a) to read as follows:

"(a) Each county [shall designate] may recommend locations on state or county highways in that county that are appropriate for the installation of[:

(1) Photo red light imaging or photo technology systems, with the assistance of the director; and

(2) Photo speed imaging detector systems, without the assistance of the director.] photo red light imaging, photo speed imaging detector, and photo technology systems."

SECTION 16. Act 234, Session Laws of Hawaii 1998, section 10, as amended by Act 263, Session Laws of Hawaii 1999, section 7, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any law to the contrary, whenever any motor vehicle is determined by means of:

(1) The photo red light imaging system to have disregarded a steady red signal in violation of section 291C-32(a)(3), Hawaii Revised Statutes;

(2) The photo speed imaging detector system to be in excess of the legal speed limit in violation of section 291C-102, Hawaii Revised Statutes; or

(3) The photo technology system to have crossed longitudinal traffic lane markings in violation of section 291C-38(c), Hawaii Revised Statutes,

the contractor shall cause a summons or citation as described in this section to be sent [by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident,] within three days of the date of the incident by certified mail, registered mail, or first class mail with a certificate of mailing obtained as evidence of service to the registered owner of the vehicle at the address on record at the vehicle licensing division. [If the end of the forty-eight hour period falls on a Saturday, Sunday, or holiday, then the ending period shall run until the end of the next day which is not a Saturday, Sunday, or holiday.] Days when the post office is not open to the public shall not be included in calculation of the three days."

SECTION 17. Act 234, Session Laws of Hawaii 1998, section 10, is amended by amending subsections (c) and (d) to read as follows:

"(c) Every citation shall be consecutively numbered and each [carbon] copy shall bear the number of its respective original.

(d) Upon receipt, the registered owner shall respond as provided for in chapter 291D, Hawaii Revised Statutes. [A mail receipt signed by the registered owner] Service of a citation by certified mail, registered mail, or first class mail with a certificate of mailing obtained as evidence of service to the registered owner, at the registered owner's address on record at the vehicle licensing division, is prima facie evidence of notification. The registered owner shall be determined by the identification of the vehicle's registration plates."

SECTION 18. Act 234, Session Laws of Hawaii 1998, section 16, as amended by Act 263, Session Laws of Hawaii 1999, section 7, is amended by amending subsection (b) to read as follows:

"(b) [The request for proposals shall be from a list of applicants prequalified by the department and each county, and shall be applicable to any contract between a county and any contractor entered into under the authority of this Act. Standards for prequalification] Qualification of applicants under this section shall be determined by the department before the commencement of the selection process; provided that

any contract entered into under this Act, at a minimum, shall be negotiated with [the private entity found most qualified. The contractor shall demonstrate that it] a contractor that has the qualifications and experience necessary to carry out and expedite the terms of the contract and the ability to comply with applicable laws and court orders. [Each contract entered into by a county may include any other requirements that the director considers necessary and appropriate for carrying out the purposes of this Act.]"

SECTION 19. Act 234, Session Laws of Hawaii 1998, section 17, as amended by Act 263, Session Laws of Hawaii 1999, section 7, is amended to read as follows:

"SECTION 17. **Authority to contract; duration of contract; approval as to form; contract term, renewal, and termination; exemptions.** (a) [Each county, with prior approval from the] The department, in consultation with county police, may contract with one or more contractors to purchase, lease, rent, use, install, maintain, and operate photo red light imaging, photo speed imaging detector, or photo technology systems as provided in this Act.

(b) Notwithstanding any other law to the contrary, the contractor shall provide the following services and activities to implement the photo speed imaging detector, photo red light imaging, or photo technology systems:

(1) Equipment installation;
(2) Data processing, including custom software development and integration;
(3) Staffing and training of law enforcement personnel and other persons as necessary to provide for effective traffic enforcement;
(4) [Film delivery, retrieval, and processing;] Required support services for use of video cameras, conventional cameras, or digital cameras;
(5) Image evaluation;
(6) License plate identification and verification;
(7) Review of individual motor vehicle registration records, pursuant to sections 286-45 and 286-172, Hawaii Revised Statutes, to obtain access only to the registered motor vehicle owner's name and address; provided this data shall only be used as is necessary to carry out the provisions of the contract and the purposes of this Act and may not otherwise be publicly disclosed;
(8) Citation generation, processing, and tracking;
(9) Data transfer to agency and court;
(10) Violation and statistical data collection, analysis, and reporting;
(11) Twenty-four-hour support services, consulting, technical assistance, and Internet access;
(12) Community awareness and public relations services; and
(13) Any other services, activities, or equipment deemed necessary or desirable by the department [and each county.] or a state court to implement this Act.

(c) [The] Each contract shall specify such matters as are deemed relevant by the State[, each county,] and the contractor, and shall be approved as to form and content by the attorney general; provided that the contract:

(1) Shall not specify any condition for the issuance of a citation or summons other than as provided by this Act or other applicable state law;
(2) Shall prohibit the contractor, or the contractor's agents or employees, from engaging in any activities prescribed for police officers pursuant to chapter 52D or section 291C-164, Hawaii Revised Statutes, or any

other provision of law relating to law enforcement or the use of force, except as otherwise provided in this Act;

(3) Shall specify that personal and confidential information used for the [projects] project shall become the property of [each county] the State at the end of the contract, that all data shall be returned to [that county,] the State, and that the contractor may use information obtained from the State or [that] a county only as is necessary to carry out the provisions of the contract and the purposes of this Act;

(4) Shall make the data accessible to the contractor, as set forth in subsection (b)(7);

(5) Shall provide appropriate security for the data system and equipment; and

(6) Shall specify that motor vehicle registration records obtained pursuant to the contract, and as set forth in sections 286-45 and 286-172, Hawaii Revised Statutes, are personal and confidential information and may be used only for services related to issuance of traffic citations and court purposes.

(d) No contract shall extend or be renewed beyond May 1, 2003, unless [a county, with the concurrence of] the director[,] determines that the contract offers demonstrable benefits to [that county as documented by the county.] the State.

(e) [A county,] The director, upon demonstration that a breach of contract has occurred and that after the passage of a reasonable period of time the breach has not been cured, and without penalty to [that] the department or any county, may cancel a contract at any time after giving three-months' prior written notice.

(f) [The department of budget and finance shall create an account and set aside a portion of the revenues received from the fines obtained from citations initiated as a result of the traffic enforcement demonstration project to offset the contractor's costs of operating the photo speed imaging detector, photo red light imaging, and photo technology systems.

(g)] Notwithstanding any other law to the contrary, any contracts entered into by [a county] the department with a contractor pursuant to this section shall not be subject to chapters 76, 77, and 89, or section 46-33, Hawaii Revised Statutes."

SECTION 20. Act 234, Session Laws of Hawaii 1998, section 23, as amended by Act 263, Session Laws of Hawaii 1999, section 7, is amended to read as follows:

"SECTION 23. **Report.** [Each county] The department, in consultation with county police, shall submit progress, interim, and final reports to the legislature as follows:

(1) The [interim] progress report shall document the progress made in implementing the demonstration project and any contract entered into with a private contractor. The [interim] progress report shall be submitted to the legislature no later than twenty days before the convening of the regular [sessions of 1999 and] session of 2000; [and]

(2) The interim report shall present preliminary findings about the effectiveness of the demonstration project and may include any proposed legislation necessary to facilitate mailed traffic citations. The interim report shall be submitted to the legislature no later than twenty days before the convening of the regular session of 2001; and

[(2)] (3) The final report shall evaluate the effectiveness of the demonstration project, and shall include the following:

(A) The total fine revenue generated by using the photo speed imaging detector, photo red light imaging, or photo technology systems;
(B) The number of citations and summonses issued by the photo speed imaging detector, photo red light imaging, or photo technology systems;
(C) The amount paid to the contractor providing the photo speed imaging detector, photo red light imaging, or photo technology systems;
(D) The effect of the demonstration project on traffic safety;
(E) The degree of public acceptance of the project;
(F) The process of administration of the project;
(G) An evaluation of the costs and benefits of the project;
(H) A review of the effectiveness of contracts entered into under this Act and the performance of the contractor;
(I) Recommendations for design or planning changes that might reduce traffic congestion on state or county highways; and
(J) Findings and recommendations as to whether to [continue any contract entered into pursuant to this Act,] make the project permanent, expand the use of cameras and contractors for enforcement of traffic laws, or adopt another alternative.

The final report shall include any proposed implementing legislation as may be necessary, and shall be submitted to the legislature no later than twenty days before the convening of the regular session of [2001.] 2002."

SECTION 21. Act 234, Session Laws of Hawaii 1998, is amended by amending section 29 to read as follows:

"SECTION 29. This Act shall take effect on July 1, 1998; provided that on July 1, [2001,] 2003, this Act shall be repealed and sections 286-45, 286-172(a), and 291C-163(a), Hawaii Revised Statutes, are reenacted in the form in which they read on June 30, 1998."

SECTION 22. There is appropriated out of the moneys deposited into the photo enforcement revolving fund the sum of $5,000,000 or so much thereof as may be necessary for fiscal year 2000-2001. The sum appropriated by this Act shall be expended by the department of transportation for the purposes of this Act.

SECTION 23. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 24. This Act shall take effect on July 1, 2000.

(Approved June 19, 2000.)

**Notes**

1. Prior to amendment hyphen appeared here.
2. "Speed" should be underscored.
3. "Of" should be underscored.

# ACT 241 H.B. NO. 1938

A Bill for an Act Relating to Revised Uniform Commercial Code Article 9—Secured Transactions.

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

SECTION 1. Chapter 490, Hawaii Revised Statutes, is amended by adding a new article 9 to read as follows:

## "ARTICLE 9.
## SECURED TRANSACTIONS
## PART 1. GENERAL PROVISIONS
## SUBPART 1. SHORT TITLE, DEFINITIONS, AND GENERAL CONCEPTS

**§490:9-101 Short title.** This article may be cited as Uniform Commercial Code - Secured Transactions.

**§490:9-102 Definitions and index of definitions.** (a) In this chapter:

"Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

"Account", except as used in "account for":

(1) Means a right to payment of a monetary obligation, whether or not earned by performance:
   (A) For property that has been or is to be sold, leased, licensed, assigned, or otherwise disposed of;
   (B) For services rendered or to be rendered;
   (C) For a policy of insurance issued or to be issued;
   (D) For a secondary obligation incurred or to be incurred;
   (E) For energy provided or to be provided;
   (F) For the use or hire of a vessel under a charter or other contract;
   (G) Arising out of the use of a credit or charge card or information contained on or for use with the card; or
   (H) As winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state, or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables.

(2) Does not include:
   (A) Rights to payment evidenced by chattel paper or an instrument;
   (B) Commercial tort claims;
   (C) Deposit accounts;
   (D) Investment property;
   (E) Letter-of-credit rights or letters of credit; or
   (F) Rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

"Account debtor" means a person obligated on an account, chattel paper, or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

"Accounting", except as used in "accounting for", means a record:

(1) Authenticated by a secured party;

(2) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(3) Identifying the components of the obligations in reasonable detail.

''Agricultural lien'' means an interest, other than a security interest, in farm products:

(1) Which secures payment or performance of an obligation for:

(A) Goods or services furnished in connection with a debtor's farming operation; or

(B) Rent on real property leased by a debtor in connection with its farming operation;

(2) Which is created by statute in favor of a person that:

(A) In the ordinary course of its business furnished goods or services to a debtor in connection with a debtor's farming operation; or

(B) Leased real property to a debtor in connection with the debtor's farming operation; and

(3) Whose effectiveness does not depend on the person's possession of the personal property.

''As-extracted collateral'' means:

(1) Oil, gas, or other minerals that are subject to a security interest that:

(A) Is created by a debtor having an interest in the minerals before extraction; and

(B) Attaches to the minerals as extracted; or

(2) Accounts arising out of the sale at the wellhead or minehead of oil, gas, or other minerals in which the debtor had an interest before extraction.

''Authenticate'' means:

(1) To sign; or

(2) To execute or otherwise adopt a symbol, or encrypt or similarly process a record in whole or in part, with the present intent of the authenticating person to identify the person and adopt or accept a record.

''Bank'' means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions, and trust companies.

''Cash proceeds'' means proceeds that are money, checks, deposit accounts, or the like.

''Certificate of title'' means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

''Chattel paper'' means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods, or a lease of specific goods and license of software used in the goods. In this paragraph, ''monetary obligation'' means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include charters or other contracts involving the use or hire of a vessel. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

''Collateral'' means the property subject to a security interest or agricultural lien. The term includes:

(1) Proceeds to which a security interest attaches;

(2) Accounts, chattel paper, payment intangibles, and promissory notes that have been sold; and

(3) Goods that are the subject of a consignment.

"Commercial tort claim" means a claim arising in tort with respect to which:

(1) The claimant is an organization; or

(2) The claimant is an individual and the claim:

(A) Arose in the course of the claimant's business or profession; and

(B) Does not include damages arising out of personal injury to or the death of an individual.

"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 another contract if the contract or option is:

(1) 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 federal commodities laws; or

(2) 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 which a commodity intermediary carries a commodity contract on its books.

"Commodity intermediary" means a person that:

(1) Is registered as a futures commission merchant under federal commodities law; or

(2) 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 federal commodities law.

"Communicate" means:

(1) To send a written or other tangible record;

(2) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(3) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

"Consignee" means a merchant to which goods are delivered in a consignment.

"Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(1) The merchant:

(A) Deals in goods of that kind under a name other than the name of the person making delivery;

(B) Is not an auctioneer; and

(C) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(2) With respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(3) The goods are not consumer goods immediately before delivery; and

(4) The transaction does not create a security interest that secures an obligation.

"Consignor" means a person that delivers goods to a consignee in a consignment.

"Consumer debtor" means a debtor in a consumer transaction.

"Consumer goods" means goods that are used or bought for use primarily for personal, family, or household purposes.

"Consumer-goods transaction" means a consumer transaction in which:

(1) An individual incurs an obligation primarily for personal, family, or household purposes; and

(2) A security interest in consumer goods secures the obligation.

"Consumer obligor" means an obligor who is an individual and who incurred the obligation as part of a transaction entered into primarily for personal, family, or household purposes.

"Consumer transaction" means a transaction in which (i) an individual incurs an obligation primarily for personal, family, or household purposes, (ii) a security interest secures the obligation, and (iii) the collateral is held or acquired primarily for personal, family, or household purposes. The term includes consumer-goods transactions.

"Continuation statement" means an amendment of a financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates; and

(2) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

"Debtor" means:

(1) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(2) A seller of accounts, chattel paper, payment intangibles, or promissory notes; or

(3) A consignee.

"Deposit account" means a demand, time, savings, passbook, or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

"Document" means a document of title or a receipt of the type described in section 490:7-201(2).

"Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

"Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

"Equipment" means goods other than inventory, farm products, or consumer goods.

"Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(1) Crops grown, growing, or to be grown, including:

(A) Crops produced on trees, vines, and bushes; and

(B) Aquatic goods produced in aquacultural operations;

(2) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(3) Supplies used or produced in a farming operation; or

(4) Products of crops or livestock in their unmanufactured states.

"Farming operation" means raising, cultivating, propagating, fattening, grazing, or any other farming, livestock, or aquacultural operation.

"File number" means the number assigned to an initial financing statement pursuant to section 490:9-519(a).

"Filing office" means an office designated in section 490:9-501 as the place to file a financing statement.

"Filing-office rule" means a rule adopted pursuant to section 490:9-526.

"Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

"Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 490:9-502(a) and (b). The

term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

"Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

"General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money, and oil, gas, or other minerals before extraction. The term includes payment intangibles and software.

"Good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

"Goods" means all things that are movable when a security interest attaches. The term includes (i) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (i) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general in tangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction.

"Governmental unit" means a subdivision, agency, department, county, parish, municipality, or other unit of the government of the United States, a State, or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

"Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

"Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include:

(1) Investment property;
(2) Letters of credit; or
(3) Writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

"Inventory" means goods, other than farm products, which:

(1) Are leased by a person as lessor;
(2) Are held by a person for sale or lease or to be furnished under a contract of service;
(3) Are furnished by a person under a contract of service; or
(4) Consist of raw materials, work in process, or materials used or consumed in a business.

"Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract, or commodity account.

"Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is organized.

"Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

"Lien creditor" means:

(1) A creditor that has acquired a lien on the property involved by attachment, levy, or the like;

(2) An assignee for benefit of creditors from the time of assignment;

(3) A trustee in bankruptcy from the date of the filing of the petition; or

(4) A receiver in equity from the time of appointment.

"Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under Title 42 of the United States Code.

"Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

"Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

"New debtor" means a person that becomes bound as debtor under section 490:9-203(d) by a security agreement previously entered into by another person.

"New value" means:

(1) Money;

(2) Money's worth in property, services, or new credit; or

(3) Release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

"Noncash proceeds" means proceeds other than cash proceeds.

"Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral:

(1) Owes payment or other performance of the obligation;

(2) Has provided property other than the collateral to secure payment or other performance of the obligation; or

(3) Is otherwise accountable in whole or in part for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

"Original debtor" means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section 490:9-203(d).

"Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

"Person related to", with respect to an individual, means:

(1) The spouse of the individual;

(2) A brother, brother-in-law, sister, or sister-in-law of the individual;

(3) An ancestor or lineal descendant of the individual or the individual's spouse; or
(4) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

"Person related to", with respect to an organization, means:
(1) A person directly or indirectly controlling, controlled by, or under common control with the organization;
(2) An officer or director of, or a person performing similar functions with respect to, the organization;
(3) An officer or director of, or a person performing similar functions with respect to, a person described in paragraph (1);
(4) The spouse of an individual described in paragraph (1), (2), or (3); or
(5) An individual who is related by blood or marriage to an individual described in paragraph (1), (2), (3), or (4) and shares the same home with the individual.

"Proceeds" means the following property:
(1) Whatever is acquired upon the sale, lease, license, exchange, or other disposition of collateral;
(2) Whatever is collected on, or distributed on account of, collateral;
(3) Rights arising out of collateral;
(4) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or
(5) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, the collateral.

"Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

"Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 490:9-620, 490:9-621, and 490:9-622.

"Public-finance transaction" means a secured transaction in connection with which:
(1) Debt securities are issued;
(2) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and
(3) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

"Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

"Record", except as used in "for record", "of record", "record or legal title", and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

"Registered organization" means an organization organized solely under the law of a single state or the United States and as to which the state or the United

States must maintain a public record showing the organization to have been organized.

"Secondary obligor" means an obligor to the extent that:

(1) The obligor's obligation is secondary; or

(2) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor, or property of either.

"Secured party" means:

(1) A person in whose favor a security interest is created or provided for under a security agreement, whether or not any obligation to be secured is outstanding;

(2) A person that holds an agricultural lien;

(3) A consignor;

(4) A person to which accounts, chattel paper, payment intangibles, or promissory notes have been sold;

(5) A trustee, indenture trustee, agent, collateral agent, or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(6) A person that holds a security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), 490:2A-508(e), 490:4-210, or 490:5-118.

"Security agreement" means an agreement that creates or provides for a security interest.

"Send", in connection with a record or notification, means:

(1) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(2) To cause the record or notification to be received within the time that it would have been received if properly sent under paragraph (1).

"Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

"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.

"Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument, or investment property.

"Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

"Termination statement" means an amendment of a financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates; and

(2) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

"Transmitting utility" means a person primarily engaged in the business of:

(1) Operating a railroad, subway, street railway, or trolley bus;

(2) Transmitting communications electrically, electromagnetically, or by light;

(3) Transmitting goods by pipeline or sewer; or

(4) Transmitting or producing and transmitting electricity, steam, gas, or water.

(b) The following definitions in other articles apply to this article:

"Applicant". Section 490:5-102.

"Beneficiary". Section 490:5-102.
"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.
"Customer". Section 490:4-104.
"Entitlement holder". Section 490:8-102.
"Financial asset". Section 490:8-102.
"Holder in due course". Section 490:3-302.
"Issuer" (with respect to a letter of credit or letter-of-credit right). Section 490:5-102.
"Issuer" (with respect to a security). Section 490:8-201.
"Lease". Section 490:2A-103.
"Lease agreement". Section 490:2A-103.
"Lease contract". Section 490:2A-103.
"Leasehold interest". Section 490:2A-103.
"Lessee". Section 490:2A-103.
"Lessee in ordinary course of business". Section 490:2A-103.
"Lessor". Section 490:2A-103.
"Lessor's residual interest". Section 490:2A-103.
"Letter of credit". Section 490:5-102.
"Merchant". Section 490:2-104.
"Negotiable instrument". Section 490:3-104.
"Nominated person". Section 490:5-102.
"Note". Section 490:3-104.
"Proceeds of a letter of credit". Section 490:5-114.
"Prove". Section 490:3-103.
"Sale". Section 490:2-106.
"Securities account". Section 490:8-501.
"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.

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

**§490:9-103 Purchase-money security interest; application of payments; burden of establishing.** (a) In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated, or restructured.

(g) In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) The limitation of the rules in subsections (e), (f), and (g) to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

**§490:9-104 Control of deposit account.** (a) A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party, and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

**§490:9-105 Control of electronic chattel paper.** A secured party has control of electronic chattel paper if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the record or records exists which is unique, identifiable and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;
(2) The authoritative copy identifies the secured party as the assignee of the record or records;
(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;
(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the participation of the secured party;
(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and
(6) Any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

**§490:9-106 Control of investment property.** (a) A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 490:8-106.

(b) A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or
(2) The commodity customer, secured party, and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

**§490:9-107 Control of letter-of-credit right.** A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 490:5-114(c) or otherwise applicable law or practice.

**§490:9-108 Sufficiency of description.** (a) Except as otherwise provided in subsections (c), (d), and (e), a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;
(2) Category;
(3) Except as otherwise provided in subsection (e), a type of collateral defined in this chapter;
(4) Quantity;
(5) Computational or allocational formula or procedure; or
(6) Except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) A description of collateral as ''all the debtor's assets'' or ''all the debtor's personal property'' or using words of similar import does not reasonably identify the collateral.

(d) Except as otherwise provided in subsection (e), a description of a security entitlement, securities account, or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) A description only by type of collateral defined in this chapter is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account, or a commodity account.

## SUBPART 2. APPLICABILITY OF ARTICLE

**§490:9-109 Scope.** (a) Except as otherwise provided in subsections (c) and (d), this article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles, or promissory notes;

(4) A consignment;

(5) A security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508(e), as provided in section 490:9-110; and

(6) A security interest arising under section 490:4-210 or 490:5-118.

(b) The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) This article does not apply to the extent that:

(1) A statute, regulation, or treaty of the United States preempts this article;

(2) Another statute of this State expressly governs the creation, perfection, priority, or enforcement of a security interest created by this State or a governmental unit of this State;

(3) A statute of another state, a foreign country, or a governmental unit of another state or a foreign country, other than a statute generally applicable to security interests, expressly governs creation, perfection, priority, or enforcement of a security interest created by the state, country, or governmental unit; or

(4) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 490:5-114.

(d) This article does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 490:9-333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary, or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles, or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles, or promissory notes which is for the purpose of collection only;

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible, or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health-care provider of a health-care-insurance receivable and any subsequent assignment of the right to payment, but sections 490:9-315 and 490:9-322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, but:
   (A) Section 490:9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and
   (B) Section 490:9-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:
   (A) Liens on real property in sections 490:9-203 and 490:9-308;
   (B) Fixtures in section 490:9-334;
   (C) Fixture filings in sections 490:9-501, 490:9-502, 490:9-512, 490:9-516, and 490:9-519; and
   (D) Security agreements covering personal and real property in section 490:9-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 490:9-315 and 490:9-322 apply with respect to proceeds and priorities in proceeds;

(13) An assignment of a deposit account in a consumer transaction, but sections 490:9-315 and 490:9-322 apply with respect to proceeds and priorities in proceeds;

(14) A transfer by a governmental unit;

(15) A claim or right to receive compensation for injuries or sickness as described in section 386-57 or title 26 United States Code section 104(a)(1) or (2), as amended from time to time; or

(16) A claim or right to receive benefits under a special needs trust as described in title 42 United States Code section 1396p(d)(4), as amended from time to time.

**§490:9-110 Security interests arising under Article 2 or 2A.** A security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508(e) is subject to this article. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if section 490:9-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by Article 2 or 2A; and

(4) The security interest has priority over a conflicting security interest created by the debtor.

## PART 2. EFFECTIVENESS OF SECURITY AGREEMENT; ATTACHMENT OF SECURITY INTEREST; RIGHTS OF PARTIES TO SECURITY AGREEMENT
## SUBPART 1. EFFECTIVENESS AND ATTACHMENT

**§490:9-201 General effectiveness of security agreement.** (a) Except as otherwise provided in this chapter, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) A transaction subject to this article is subject to:

(1) Any applicable rule of law which establishes a different rule for consumers;

(2) Any other statute or regulation that regulates the rates, charges, agreements, and practices for loans, credit sales, or other extensions of credit; and

(3) Any consumer-protection statute or regulation.

(c) In case of conflict between this article and a rule of law, statute, or regulation described in subsection (b), the rule of law, statute, or regulation controls. Failure to comply with a statute or regulation described in subsection (b) has only the effect the statute or regulation specifies.

(d) This article does not:

(1) Validate any rate, charge, agreement, or practice that violates a rule of law, statute, or regulation described in subsection (b); or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

**§490:9-202 Title to collateral immaterial.** Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles, or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

**§490:9-203 Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.** (a) A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Except as otherwise provided in subsections (c) through (i), a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under section 490:9-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 490:8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property, or letter-of-credit rights, and the secured party has control under section 490:9-104, 490:9-105, 490:9-106, or 490:9-107 pursuant to the debtor's security agreement.

(c) Subsection (b) is subject to section 490:4-210 on the security interest of a collecting bank, section 490:5-118 on the security interest of a letter-of-credit issuer or nominated person, section 490:9-110 on a security interest arising under Article 2 or 2A, and section 490:9-206 on security interests in investment property.

(d) A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 490:9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage, or other lien.

(h) The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

**§490:9-204 After-acquired property; future advances.** (a) Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

(2) A commercial tort claim.

(c) A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles, or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

**§490:9-205 Use or disposition of collateral permissible.** (a) A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

(A) Use, commingle, or dispose of all or part of the collateral, including returned or repossessed goods;

(B) Collect, compromise, enforce, or otherwise deal with collateral;

(C) Accept the return of collateral or make repossessions; or

(D) Use, commingle, or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) This section does not relax the requirements of possession if attachment, perfection, or enforcement of a security interest depends upon possession of the collateral by the secured party.

**§490:9-206 Security interest arising in purchase or delivery of financial asset.** (a) A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

(A) In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(B) Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) The security interest described in subsection (c) secures the obligation to make payment for the delivery.

## SUBPART 2. RIGHTS AND DUTIES

**§490:9-207 Rights and duties of secured party having possession or control of collateral.** (a) Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use, or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Except as otherwise provided in subsection (d), a secured party having possession of collateral or control of collateral under section 490:9-104, 490:9-105, 490:9-106, or 490:9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

(1) Subsection (a) does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) do not apply.

**§490:9-208 Additional duties of secured party having control of collateral.** (a) This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under section 490:9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under section 490:9-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under section 490:9-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under section 490:8-106(d)(2) or 490:9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further

obligation to comply with entitlement orders or directions originated by the secured party; and

(5) A secured party having control of a letter-of-credit right under section 490:9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party.

**§490:9-209 Duties of secured party if account debtor has been notified of assignment.** (a) Except as otherwise provided in subsection (c), this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 490:9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) This section does not apply to an assignment constituting the sale of an account, chattel paper, or payment intangible.

**§490:9-210 Request for accounting; request regarding list of collateral or statement of account.** (a) In this section:

(1) "Request" means a record of a type described in paragraph (2), (3), or (4).

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Subject to subsections (c), (d), (e), and (f), a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

(d) A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request, and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's security interest in the collateral.

(e) A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request, and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding $25 for each additional response.

## PART 3. PERFECTION AND PRIORITY
## SUBPART 1. LAW GOVERNING PERFECTION AND PRIORITY

**§490:9-301 Law governing perfection and priority of security interests.** Except as otherwise provided in sections 490:9-303 through 490:9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4), while negotiable documents, goods, instruments, money, or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

**§490:9-302 Law governing perfection and priority of agricultural liens.** While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

**§490:9-303 Law governing perfection and priority of security interests in goods covered by a certificate of title.** (a) This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

**§490:9-304 Law governing perfection and priority of security interests in deposit accounts.** (a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

**§490:9-305 Law governing perfection and priority of security interests in investment property.** (a) Except as otherwise provided in subsection (c), the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in section 490:8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in section 490:8-110(e) governs perfection, the effect of perfection or

nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

(c) The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

**§490:9-306 Law governing perfection and priority of security interests in letter-of-credit rights.** (a) Subject to subsection (c), the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 490:5-116.

(c) This section does not apply to a security interest that is perfected only under section 490:9-308(d).

**§490:9-307 Location of debtor.** (a) In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) An debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Subsection (b) applies only if a debtor's residence, place of business, or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording, or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) A person that ceases to exist, have a residence, or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c).

(e) A registered organization that is organized under the law of a state is located in that state.

(f) Except as otherwise provided in subsection (i), a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch, or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location; or

(3) In the District of Columbia, if neither paragraph (1) nor paragraph (2) applies.

(g) A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture, or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up, or cancellation of the existence of the registered organization.

(h) The United States government is located in the District of Columbia.

(i) A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) This section applies only for purposes of this part.

## SUBPART 2. PERFECTION

**§490:9-308 When security interest or agricultural lien is perfected; continuity of perfection.** (a) Except as otherwise provided in this section and section 490:9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 490:9-310 through 490:9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 490:9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by

another method under this article, without an intermediate period when it was unperfected.

(d) Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage, or other lien on personal or real property securing the right.

(f) Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

**§490:9-309 Security interest perfected upon attachment.** The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in section 490:9-311(b) with respect to consumer goods that are subject to a statute or treaty described in section 490:9-311(a);
(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;
(3) A sale of a payment intangible;
(4) A sale of a promissory note;
(5) A security interest created by the assignment of a health-care-insurance receivable to the provider of the health-care goods or services;
(6) A security interest arising under section 490:2-401, 490:2-505, 490:2-711(3), or 490:2A-508(e), until the debtor obtains possession of the collateral;
(7) A security interest of a collecting bank arising under section 490:4-210;
(8) A security interest of an issuer or nominated person arising under section 490:5-118;
(9) A security interest arising in the delivery of a financial asset under section 490:9-206(c);
(10) A security interest in investment property created by a broker or securities intermediary;
(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;
(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and
(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

**§490:9-310 When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.** (a) Except as otherwise provided in subsection (b) and section 490:9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under section 490:9-308(d), (e), (f), or (g);
(2) That is perfected under section 490:9-309 when it attaches;
(3) In property subject to a statute, regulation, or treaty described in section 490:9-311(a);

(4) In goods in possession of a bailee which is perfected under section 490:9-312(d)(1) or (2);
(5) In certificated securities, documents, goods, or instruments which is perfected without filing or possession under section 490:9-312(e), (f), or (g);
(6) In collateral in the secured party's possession under section 490:9-313;
(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under section 490:9-313;
(8) In deposit accounts, electronic chattel paper investment property, or letter-of-credit rights which is perfected by control under section 490:9-314;
(9) In proceeds which is perfected under section 490:9-315; or
(10) That is perfected under section 490:9-316.

(c) If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

**§490:9-311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.** (a) Except as otherwise provided in subsection (d), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 490:9-310(a);
(2) Chapter 286; or
(3) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with the requirements of a statute, regulation, or treaty described in subsection (a) for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) and sections 490:9-313 and 490:9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Except as otherwise provided in subsection (d) and section 490:9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation, or treaty described in subsection (a) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(d) During any period in which collateral is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling or leasing goods of that kind, this section does not apply to a security interest in that collateral created by that person as debtor.

**§490:9-312 Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights, and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.** (a) A security interest in chattel paper, negotiable documents, instruments, or investment property may be perfected by filing.

(b) Except as otherwise provided in section 490:9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under section 490:9-314;

(2) And except as otherwise provided in section 490:9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 490:9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under section 490:9-313.

(c) While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) A security interest in certificated securities, negotiable documents, or instruments is perfected without filing or the taking of possession for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping manufacturing, processing, or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal, or registration of transfer.

(h) After the twenty-day period specified in subsection (e), (f), or (g) expires, perfection depends upon compliance with this article.

**§490:9-313 When possession by or delivery to secured party perfects security interest without filing.** (a) Except as otherwise provided in subsection (b), a secured party may perfect a security interest in negotiable documents, goods, instruments, money, or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 490:8-301.

(b) With respect to goods covered by a certificate of title issued by this State, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 490:9-316(d).

(c) With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party, or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 490:8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) or section 490:8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

(h) A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) violates the rights of a debtor. A person to which collateral is delivered under subsection (h) does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

**§490:9-314 Perfection by control.** (a) A security interest in investment property, deposit accounts, letter-of-credit rights, or electronic chattel paper may be perfected by control of the collateral under section 490:9-104, 490:9-105, 490:9-106, or 490:9-107.

(b) A security interest in deposit accounts, electronic chattel paper, or letter-of-credit rights is perfected by control under section 490:9-104, 490:9-105, or 490:9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) A security interest in investment property is perfected by control under section 490:9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security the issuer has registered or registers the debtor as the registered owner; or
(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

**§490:9-315 Secured party's rights on disposition of collateral and in proceeds.** (a) Except as otherwise provided in this article and in section 490:2-403(2):
(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license exchange, or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and
(2) A security interest attaches to any identifiable proceeds of collateral.
(b) Proceeds that are commingled with other property are identifiable proceeds:
(1) If the proceeds are goods, to the extent provided by section 490:9-336; and
(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.
(c) A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.
(d) A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:
(1) The following conditions are satisfied:
(A) A filed financing statement covers the original collateral;
(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and
(C) The proceeds are not acquired with cash proceeds;
(2) The proceeds are identifiable cash proceeds; or
(3) The security interest in the proceeds is perfected other than under subsection (c) when the security interest attaches to the proceeds or within twenty days thereafter.
(e) If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) becomes unperfected at the later of:
(1) When the effectiveness of the filed financing statement lapses under section 490:9-515 or is terminated under section 490:9-513; or
(2) The twenty-first day after the security interest attaches to the proceeds.

**§490:9-316 Continued perfection of security interest following change in governing law.** (a) A security interest perfected pursuant to the law of the jurisdiction designated in section 490:9-301(1) or 490:9-305(c) remains perfected until the earliest of:
(1) The time perfection would have ceased under the law of that jurisdiction;
(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or
(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.
(b) If a security interest described in subsection (a) becomes perfected under the law of the other jurisdiction before the earliest time or event described in that

subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Except as otherwise provided in subsection (e), a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this State remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) A security interest described in subsection (d) becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 490:9-311(b) or 490:9-313 are not satisfied before the earlier of:

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this State; or

(2) The expiration of four months after the goods had become so covered.

(f) A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction, or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) If a security interest described in subsection (f) becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

## SUBPART 3. PRIORITY

**§490:9-317 Interests that take priority over or take free of security interest or agricultural lien.** (a) A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 490:9-322; and

(2) Except as otherwise provided in subsection (e), a person that becomes a lien creditor before the earlier of the time the security interest or agricultural lien is perfected or a financing statement covering the collateral is filed.

(b) Except as otherwise provided in subsection (e), a buyer, other than a secured party, of tangible chattel paper, documents, goods, instruments, or a security certificate takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Except as otherwise provided in subsection (e), a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) A licensee of a general intangible or a buyer, other than a secured party, of accounts, electronic chattel paper, general intangibles, or investment property other than a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Except as otherwise provided in sections 490:9-320 and 490:9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee, or lien creditor which arise between the time the security interest attaches and the time of filing.

**§490:9-318 No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.** (a) A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) For purposes of determining the rights of creditors of, and purchasers for value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

**§490:9-319 Rights and title of consignee with respect to creditors and purchasers.** (a) Except as otherwise provided in subsection (b), for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

**§490:9-320 Buyer of goods.** (a) Except as otherwise provided in subsection (e), a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Except as otherwise provided in subsection (e), a buyer of goods from a person who used or bought the goods for use primarily for personal, family, or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;
(2) For value;
(3) Primarily for the buyer's personal, family, or household purposes; and
(4) Before the filing of a financing statement covering the goods.

(c) To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b), the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 490:9-316(a) and (b).

(d) A buyer in ordinary course of business buying oil, gas, or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 490:9-313.

**§490:9-321 Licensee of general intangible and lessee of goods in ordinary course of business.** (a) In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

**§490:9-322 Priorities among conflicting security interests in and agricultural liens on same collateral.** (a) Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) For the purposes subsection (a)(1):

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Except as otherwise provided in subsection (f), a security interest in collateral which qualifies for priority over a conflicting security interest under section 490:9-327, 490:9-328, 490:9-329, 490:9-330, or 490:9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;
(B) The proceeds are cash proceeds or of the same type as the collateral; and
(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral, or an account relating to the collateral.

(d) Subject to subsection (e) and except as otherwise provided in subsection (f), if a security interest in chattel paper, deposit accounts, negotiable documents, instruments, investment property, or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Subsection (d) applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property, or letter-of-credit rights.

(f) Subsections (a) through (e) are subject to:
(1) Subsection (g) and the other provisions of this part;
(2) Section 490:4-210 with respect to a security interest of a collecting bank;
(3) Section 490:5-118 with respect to a security interest of an issuer or nominated person; and
(4) Section 490:9-110 with respect to a security interest arising under Article 2 or 2A.

(g) A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

**§490:9-323 Future advances.** (a) Except as otherwise provided in subsection (c), for purposes of determining the priority of a perfected security interest under section 490:9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:
(1) Is made while the security interest is perfected only:
(A) Under section 490:9-309 when it attaches; or
(B) Temporarily under section 490:9-312(e), (f), or (g); and
(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 490:9-309 or 490:9-312(e), (f), or (g).

(b) Except as otherwise provided in subsection (c), a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:
(1) Without knowledge of the lien; or
(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Subsections (a) and (b) do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor.

(d) Except as otherwise provided in subsection (e), a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:
(1) The time the secured party acquires knowledge of the buyer's purchase; or
(2) Forty-five days after the purchase.

(e) Subsection (d) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

(f) Except as otherwise provided in subsection (g), a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the lease; or

(2) Forty-five days after the lease contract becomes enforceable.

(g) Subsection (f) does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

**§490:9-324 Priority of purchase-money security interests.** (a) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 490:9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) Subject to subsection (c) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 490:9-330, and, except as otherwise provided in section 490:9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Subsection (b)(2) through (4) applies only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 490:9-312(f), before the beginning of the twenty-day period thereunder.

(d) Subject to subsection (e) and except as otherwise provided in subsection (g), a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 490:9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Subsection (d)(2) through (4) applies only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 490:9-312(f), before the beginning of the twenty-day period thereunder.

(f) Except as otherwise provided in subsection (g), a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 490:9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d), or (f):

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, section 490:9-322(a) applies to the qualifying security interests.

**§490:9-325 Priority of security interests in transferred collateral.** (a) Except as otherwise provided in subsection (b), a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Subsection (a) subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under section 490:9-322(a) or 490:9-324; or

(2) Arose solely under section 490:2-711(3) or 490:2A-508(e).

**§490:9-326 Priority of security interests created by new debtor.** (a) Subject to subsection (b), a security interest created by a new debtor which is perfected by a filed financing statement that is effective solely under section 490:9-508 in collateral in which a new debtor has or acquires rights is subordinate to a security interest in the same collateral which is perfected other than by a filed financing statement that is effective solely under section 490:9-508.

(b) The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements that are effective solely under section 490:9-508. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same

original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

**§490:9-327 Priority of security interests in deposit account.** The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under section 490:9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in paragraphs (3) and (4), security interests perfected by control under section 490:9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in paragraph (4), a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under section 490:9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

**§490:9-328 Priority of security interests in investment property.** The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under section 490:9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4), conflicting security interests held by secured parties each of which has control under section 490:9-106 rank according to priority in time of:

(A) If the collateral is a security, obtaining control;

(B) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under section 490:8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under section 490:8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under section 490:8-106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 490:9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.
(5) A security interest in a certificated security in registered form which is perfected by taking delivery under section 490:9-313(a) and not by control under section 490:9-314 has priority over a conflicting security interest perfected by a method other than control.
(6) Conflicting security interests created by a broker securities intermediary, or commodity intermediary which are perfected without control under section 490:9-106 rank equally.
(7) In all other cases, priority among conflicting security interests in investment property is governed by sections 490:9-322 and 490:9-323.

**§490:9-329 Priority of security interests in letter-of-credit right.** The following rules govern priority among conflicting security interests in the same letter-of-credit right:
(1) A security interest held by a secured party having control of the letter-of-credit right under section 490:9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.
(2) Security interests perfected by control under section 490:9-314 rank according to priority in time of obtaining control.

**§490:9-330 Priority of purchaser of chattel paper or instrument.** (a) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:
(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 490:9-105; and
(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 490:9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Except as otherwise provided in section 490:9-327, a purchaser having priority in chattel paper under subsection (a) or (b) also has priority in proceeds of the chattel paper to the extent that:
(1) Section 490:9-322 provides for priority in the proceeds; or
(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Except as otherwise provided in section 490:9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) For purposes of subsections (a) and (b), the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) For purposes of subsections (b) and (d), if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

**§490:9-331 Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under Article 8.** (a) This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated, or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in Articles 3, 7, and 8.

(b) This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under Article 8.

(c) Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b).

**§490:9-332 Transfer of money; transfer of funds from deposit account.** (a) A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

**§490:9-333 Priority of certain liens arising by operation of law.** (a) In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

**§490:9-334 Priority of security interests in fixtures and crops.** (a) A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) In cases not governed by subsections (d) through (h), a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Except as otherwise provided in subsection (h), a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:
   (A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and
   (B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:
   (A) Factory or office machines;
   (B) Equipment that is not primarily used or leased for use in the operation of the real property; or
   (C) Replacements of domestic appliances that are consumer goods;

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) The security interest is:
   (A) Created in a manufactured home in a manufactured-home transaction; and
   (B) Perfected pursuant to a statute described in section 490:9-311(a)(2).

(f) A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) The priority of the security interest under subsection (f) continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f), a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

**§490:9-335 Accessions.** (a) A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Except as otherwise provided in subsection (d), the other provisions of this part determine the priority of a security interest in an accession.

(d) A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 490:9-311(b).

(e) After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) A secured party that removes an accession from other goods under subsection (e) shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

**§490:9-336 Commingled goods.** (a) In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) is perfected.

(e) Except as otherwise provided in subsection (f), the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c).

(f) If more than one security interest attaches to the product or mass under subsection (c), the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d), the security interests rank equally in proportion to value of the collateral at the time it became commingled goods.

**§490:9-337 Priority of security interests in goods covered by certificate of title.** If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this State issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 490:9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

**§490:9-338 Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.** If a security interest or agricultural lien is perfected by a filed financing statement providing

information described in section 490:9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of chattel paper documents, goods, instruments, or a security certificate, receives delivery of the collateral.

**§490:9-339 Priority subject to subordination.** This article does not preclude subordination by agreement by a person entitled to priority.

## SUBPART 4. RIGHTS OF BANK

**§490:9-340 Effectiveness of right of recoupment or set-off against deposit account.** (a) Except as otherwise provided in subsection (c), a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Except as otherwise provided in subsection (c), the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under section 490:9-104(a)(3), if the set-off is based on a claim against the debtor.

**§490:9-341 Bank's rights and duties with respect to deposit account.** Except as otherwise provided in section 490:9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended, or modified by:

(1) The creation, attachment, or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party.

**§490:9-342 Bank's right to refuse to enter into or disclose existence of control agreement.** This article does not require a bank to enter into an agreement of the kind described in section 490:9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

## PART 4. RIGHTS OF THIRD PARTIES

**§490:9-401 Alienability of debtor's rights.** (a) Except as otherwise provided in subsection (b) and sections 490:9-406, 490:9-407, 490:9-408, and 490:9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(b) An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

**§490:9-402 Secured party not obligated on contract of debtor or in tort.** The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

**§490:9-403 Agreement not to assert defenses against assignee.** (a) In this section, "value" has the meaning provided in section 490:3-303(a).

(b) Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;
(2) In good faith;
(3) Without notice of a claim of a property or possessory right to the property assigned; and
(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 490:3-305(a).

(c) Subsection (b) does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 490:3-305(b).

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee, and the record does not include such a statement:

(1) The record has the same effect as if the record included such a statement; and
(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Except as otherwise provided in subsection (d), this section does not displace law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

**§490:9-404 Rights acquired by assignee; claims and defenses against assignee.** (a) Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and
(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Subject to subsection (c) and except as otherwise provided in subsection (d), the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) only to reduce the amount the account debtor owes.

(c) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) This section does not apply to an assignment of a health-care-insurance receivable.

**§409:9-405 Modification of assigned contract.** (a) A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d).

(b) Subsection (a) applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 490:9-406(a).

(c) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(d) This section does not apply to an assignment of a health-care-insurance receivable.

**§490:9-406 Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles, and promissory notes ineffective.** (a) Subject to subsections (b) through (i), an account debtor on an account, chattel paper, or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) Subject to subsection (h), notification is ineffective under subsection (a):

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper, or general intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Subject to subsection (h), if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a).

(d) Except as otherwise provided in subsection (e) and sections 490:2A-303 and 490:9-407, and subject to subsection (h), a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, the account, chattel paper payment intangible, or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default breach, right of recoupment, claim, defense termination, right of termination, or remedy under the account, chattel paper, payment intangible, or promissory note.

(e) Subsection (d) does not apply to the sale of a payment intangible or promissory note.

(f) Except as otherwise provided in sections 490:2A-303 and 490:9-407, and subject to subsections (h) and (i), a rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute, or regulation:

(1) Prohibits, restricts, or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default breach, right of recoupment, claim, defense termination, right of termination, or remedy under the account or chattel paper.

(g) Subject to subsection (h), an account debtor may not waive or vary its option under subsection (b)(3).

(h) This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(i) This section does not apply to an assignment of a health-care-insurance receivable.

**§490:9-407 Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.** (a) Except as otherwise provided in subsection (b), a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts, or requires the consent of a party to the lease to the assignment or transfer of to the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a

default breach, right of recoupment, claim, defense termination, right of termination, or remedy under the lease.

(b) Except as otherwise provided in section 490:2A-303(g), a term described in subsection (a)(2) is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) The creation, attachment, perfection, or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 490:2A-303(d) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

**§490:9-408 Restrictions on assignment of promissory notes, health-care-insurance receivables, and certain general intangibles ineffective.** (a) Except as otherwise provided in subsection (b), a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license, or franchise, and which term prohibits, restricts, or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of, or creation, attachment, or perfection of a security interest in, the promissory note, health-care-insurance receivable, or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note health-care-insurance receivable, or general intangible.

(b) Subsection (a) applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note.

(c) A rule of law, statute, or regulation, that prohibits, restricts, or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable, or general intangible, including a contract, permit, license, or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute, or regulation:

(1) Would impair the creation, attachment, or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination, or remedy under the promissory note health-care-insurance receivable, or general intangible.

(d) To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or general intangible or a rule of law, statute, or regulation described in subsection (c) would be effective under law other than this article but is ineffective under subsec-

tion (a) or (c), the creation, attachment, or perfection of a security interest in the promissory note, health-care-insurance receivable, or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable, or general intangible including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable, or general intangible;

(5) Does not entitle the secured party to use, assign possess, or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable, or general intangible.

**§490:9-409 Restrictions on assignment of letter-of-credit rights ineffective.** (a) A term in a letter of credit or a rule of law, statute, regulation, custom, or practice applicable to the letter of credit which prohibits, restricts, or requires the consent of an applicant, issuer, or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom, or practice:

(1) Would impair the creation, attachment, or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment or the creation attachment, or perfection of the security interest may give rise to a default, breach, right of recoupment claim, defense, termination, right of termination, or remedy under the letter-of-credit right.

(b) To the extent that a term in a letter of credit is ineffective under subsection (a) but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer nominated person, or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant issuer, nominated person, or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person, or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

## PART 5. FILING
## SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT

**§490:9-501 Filing office.** (a) Except as otherwise provided in subsection (b), if the local law of this State governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:
   (A) The collateral is as-extracted collateral or timber to be cut; or
   (B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or
(2) The bureau of conveyances, in all other cases including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the bureau of conveyances. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

**§490:9-502 Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.** (a) Subject to subsection (b), a financing statement is sufficient only if it:

(1) Provides the name of the debtor;
(2) Provides the name of the secured party or a representative of the secured party; and
(3) Indicates the collateral covered by the financing statement.

(b) Except as otherwise provided in section 490:9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) and also:

(1) Indicate that it covers this type of collateral;
(2) Indicate that it is to be filed for record in the real property records;
(3) Provide a description of the real property to which the collateral is related; and
(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;
(2) The goods are or are to become fixtures related to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;
(3) The record satisfies with the requirements for a financing statement in this section other than an indication that it is to be filed in the real property records; and
(4) The record is duly recorded.

(d) A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

**§490:9-503 Name of debtor and secured party.** (a) A financing statement sufficiently provides the name of the debtor:

(1) If the debtor is a registered organization, only if the financing statement provides the name of the debtor indicated on the public record of the debtor's jurisdiction of organization which shows the debtor to have been organized;
(2) If the debtor is a decedent's estate, only if the financing statement provides the name of the decedent and indicates that the debtor is an estate;
(3) If the debtor is a trust or a trustee acting with respect to property held in trust, only if the financing statement:
  (A) Provides the name specified for the trust in its organic documents or, if no name is specified provides the name of the settlor and additional information sufficient to distinguish the debtor from other trusts having one or more of the same settlors; and
  (B) Indicates, in the debtor's name or otherwise that the debtor is a trust or is a trustee acting with respect to property held in trust; and
(4) In other cases:
  (A) If the debtor has a name, only if it provides the individual or organizational name of the debtor; and
  (B) If the debtor does not have a name, only if it provides the names of the partners, members associates, or other persons comprising the debtor.

(b) A financing statement that provides the name of the debtor in accordance with subsection (a) is not rendered ineffective by the absence of:
(1) A trade name or other name of the debtor; or
(2) Unless required under subsection (a)(4)(B), names of partners, members, associates, or other persons comprising the debtor.

(c) A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) A financing statement may provide the name of more than one debtor and the name of more than one secured party.

**§490:9-504 Indication of collateral.** A financing statement sufficiently indicates the collateral that it covers only if the financing statement provides:
(1) A description of the collateral pursuant to section 490:9-108; or
(2) An indication that the financing statement covers all assets or all personal property.

**§490:9-505 Filing and compliance with other statutes and treaties for consignments, leases, other bailments, and other transactions.** (a) A consignor, lessor, or other bailor of goods, a licensor, or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 490:9-311(a), using the terms "consignor", "consignee", "lessor", "lessee", "bailor", "bailee", "licensor", "licensee", "owner", "registered owner", "buyer", "seller", or words of similar import, instead of the terms "secured party" and "debtor".

(b) This part applies to the filing of a financing statement under subsection (a) and, as appropriate, to compliance that is equivalent to filing a financing statement under section 490:9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by

the consignor, lessor, bailor, licensor, owner, or buyer which attaches to the collateral is perfected by the filing or compliance.

**§490:9-506 Effect of errors or omissions.** (a) A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Except as otherwise provided in subsection (c), a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 490:9-503(a) is seriously misleading.

(c) If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 490:9-503(a), the name provided does not make the financing statement seriously misleading.

(d) For purposes of section 490:9-508(b), the "debtor's correct name" in subsection (c) means the correct name of the new debtor.

**§490:9-507 Effect of certain events on effectiveness of financing statement.** (a) A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed, or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Except as otherwise provided in subsection (c) and section 490:9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 490:9-506.

(c) If a debtor so changes its name that a filed financing statement becomes seriously misleading under section 490:9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the change; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the change, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the change.

**§490:9-508 Effectiveness of financing statement if new debtor becomes bound by security agreement.** (a) Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) to be seriously misleading under section 490:9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 490:9-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under section 490:9-203(d) unless an initial

financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 490:9-507(a).

**§490:9-509 Persons entitled to file a record.** (a) A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under section 490:9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) By acquiring collateral in which a security interest or agricultural lien continues under section 490:9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 490:9-315(a)(2).

(d) A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 490:9-513(a) or (c) the debtor authorizes the filing, and the termination statement indicates that the debtor authorized it to be filed.

(e) If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (c).

**§490:9-510 Effectiveness of filed record.** (a) A filed record is effective only to the extent that it was filed by a person that may file it under section 490:9-509.

(b) A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) A continuation statement that is not filed within the six-month period prescribed by section 490:9-515(d) is ineffective.

**§490:9-511 Secured party of record.** (a) A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 490:9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 490:9-514(b), the assignee named in the amendment is a secured party of record.

(c) A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

**§490:9-512 Amendment of financing statement.** (a) Subject to section 490:9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e), otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in section 490:9-501(a)(1), provides the information specified in section 490:9-502(b).

(b) Except as otherwise provided in section 490:9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

**§490:9-513 Termination statement.** (a) A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) To comply with subsection (a), a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value; or

(2) If earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

(c) In cases not governed by subsection (a), within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Except as otherwise provided in section 490:9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective.

**§490:9-514 Assignment of powers of secured party of record.** (a) Except as otherwise provided in subsection (c), an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Except as otherwise provided in subsection (c), a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 490:9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this State other than this chapter.

**§490:9-515 Duration and effectiveness of financing statement; effect of lapsed financing statement.** (a) Except as otherwise provided in subsections (b), (e), (f), and (g), a filed financing statement is effective for a period of five years after the date of filing.

(b) Except as otherwise provided in subsections (e), (f), and (g), an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of thirty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d). Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) or the thirty-year period specified in subsection (b), whichever is applicable.

(e) Except as otherwise provided in section 490:9-510, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c), unless, before the lapse, another continuation statement is filed pursuant to subsection (d). Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) If a debtor is a transmitting utility and a filed financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) A record of a mortgage that is effective as a financing statement filed as a fixture filing under section 490:9-502(c) remains effective as a financing statement filed as a fixture filing until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

**§490:9-516 What constitutes filing; effectiveness of filing.** (a) Except as otherwise provided in subsection (b), communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or correction statement, the record:

(i) Does not identify the initial financing statement as required by section 490:9-512 or 490:9-518, as applicable; or

(ii) Identifies an initial financing statement whose effectiveness has lapsed under section 490:9-515;

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates the record does not identify the debtor's last name; or

(D) In the case of a record filed in the filing office described in section 490:9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates;

(4) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(5) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the debtor is an individual or an organization; or

(C) If the financing statement indicates that the debtor is an organization, provide:

(i) A type of organization for the debtor;

(ii) A jurisdiction of organization for the debtor; or

(iii) An organizational identification number for the debtor or indicate that the debtor has none;

(6) In the case of an assignment reflected in an initial financing statement under section 490:9-514(a) or an amendment filed under section 490:9-514(b), the record does not provide a name and mailing address for the assignee; or

(7) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 490:9-515(d).

(c) For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 490:9-512, 490:9-514, or 490:9-518, is an initial financing statement.

(d) A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b), is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

**§490:9-517 Effect of indexing errors.** The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

**§490:9-518 Claim concerning inaccurate or wrongfully filed record.** (a) A person may file in the filing office a correction statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) A correction statement must:

(1) Identify the record to which it relates by the file number assigned to the initial financing statement to which the record relates;

(2) Indicate that it is a correction statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) The filing of a correction statement does not affect the effectiveness of an initial financing statement or other filed record.

## SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

**§490:9-519 Numbering, maintaining, and indexing records; communicating information provided in records.** (a) For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d), and (e).

(b) A file number must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Except as otherwise provided in subsections (d) and (e), the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this State provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or if indexing is by description, as if the financing statement were a record of a mortgage of the real property described.

(e) If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 490:9-514(a) or an amendment filed under section 490:9-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this State provides for indexing a record of the assignment of a mortgage under the name of the assignee, under the name of the assignee.

(f) The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 490:9-515 with respect to all secured parties of record.

(h) The filing office shall perform the acts required by subsections (a) through (e) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

**§490:9-520 Acceptance and refusal to accept record.** (a) A filing office shall refuse to accept a record for filing for a reason set forth in section 490:9-516(b) and may refuse to accept a record for filing only for a reason set forth in section 490:9-516(b).

(b) If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but in no event more than two business days after the filing office receives the record.

(c) A filed financing statement satisfying section 490:9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a). However, section 490:9-338 applies to a filed financing statement providing information described in section 490:9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

**§490:9-521 Uniform form of written financing statement and amendment.** (a) A filing office that accepts written records for filing may not refuse to accept a written initial financing statement in the following form, except for a reason set forth in section 490:9-516(b):

# UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME

OR

| 1b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX |
|---|---|---|---|
| | | | |

| 1c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY |
|---|---|---|---|---|
| | | | | |

| 1d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 1e. TYPE OF ORGANIZATION | 1f. JURISDICTION OF ORGANIZATION | 1g. ORGANIZATIONAL ID #, if any |
|---|---|---|---|---|
| | | | | ☐ NONE |

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

| 2b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX |
|---|---|---|---|
| | | | |

| 2c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY |
|---|---|---|---|---|
| | | | | |

| 2d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 2e. TYPE OF ORGANIZATION | 2f. JURISDICTION OF ORGANIZATION | 2g. ORGANIZATIONAL ID #, if any |
|---|---|---|---|---|
| | | | | ☐ NONE |

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - Insert only one secured party name (3a or3b)

3a. ORGANIZATION'S NAME

OR

| 3b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX |
|---|---|---|---|
| | | | |

| 3c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY |
|---|---|---|---|---|
| | | | | |

4. This FINANCING STATEMENT covers the following collateral:

5. ALTERNATIVE DESIGNATION [if applicable]: ☐ LESSEE/LESSOR ☐ CONSIGNEE/CONSIGNOR ☐ BAILEE/BAILOR ☐ SELLER/BUYER ☐ AG. LIEN ☐ NON-UCC FILING

6. ☐ This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable]

7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [optional] [ADDITIONAL FEE] ☐ All Debtors ☐ Debtor 1 ☐ Debtor 2

8. OPTIONAL FILER REFERENCE DATA

## UCC FINANCING STATEMENT ADDENDUM

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

| 9. NAME OF FIRST DEBTOR (1a or 1b) ON RELATED FINANCING STATEMENT | | |
|---|---|---|
| 9a. ORGANIZATION'S NAME | | |
| 9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME, SUFFIX |
| 10. MISCELLANEOUS: | | |

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

11. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - Insert only one name (11a or 11b) - do not abbreviate or combine names

| | | | | | |
|---|---|---|---|---|---|
| 11a. ORGANIZATION'S NAME | | | | | |
| OR 11b. INDIVIDUAL'S LAST NAME | | FIRST NAME | MIDDLE NAME | | SUFFIX |
| 11c. MAILING ADDRESS | | CITY | STATE | POSTAL CODE | COUNTRY |
| 11d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 11e. TYPE OF ORGANIZATION | 11f. JURISDICTION OF ORGANIZATION | 11g. ORGANIZATIONAL ID #, if any | ☐ NONE |

12. ☐ ADDITIONAL SECURED PARTY'S or ☐ ASSIGNOR S/P'S NAME - Insert only one name (12a or 12b)

| | | | | |
|---|---|---|---|---|
| 12a. ORGANIZATION'S NAME | | | | |
| OR 12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | | SUFFIX |
| 12c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY |

13. This FINANCING STATEMENT covers ☐ timber to be cut or ☐ as-extracted collateral, or is filed as a ☐ fixture filing.

14. Description of real estate:

15. Name and address of a RECORD OWNER of above-described real estate (if Debtor does not have a record interest):

16. Additional collateral description:

17. Check only if applicable and check only one box.

Debtor is a ☐ Trust or ☐ Trustee acting with respect to property held in trust or ☐ Decedent's Estate

18. Check only if applicable and check only one box.

☐ Debtor is a TRANSMITTING UTILITY

☐ Filed in connection with a Manufactured-Home Transaction — effective 30 years

☐ Filed in connection with a Public-Finance Transaction — effective 30 years

(b) A filing office that accepts written records for filing may not refuse to accept a written financing statement amendment in the following form, except for a reason set forth in section 490:9-516(b):

## UCC FINANCING STATEMENT AMENDMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #

1b. ☐ This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

2. ☐ TERMINATION: Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3. ☐ CONTINUATION: Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4. ☐ ASSIGNMENT (full or partial): Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. AMENDMENT (PARTY INFORMATION): This Amendment affects ☐ Debtor or ☐ Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

☐ CHANGE name and/or address: Give current record name in item 6a or 6b; also give new name (if name change) in item 7a or 7b and/or new address (if address change) in item 7c. ☐ DELETE name: Give record name to be deleted in item 6a or 6b. ☐ ADD name: Complete item 7a or 7b, and also item 7c; also complete items 7d-7g (if applicable).

6. CURRENT RECORD INFORMATION:

6a. ORGANIZATION'S NAME

OR

| 6b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX |
|---|---|---|---|
| | | | |

7. CHANGED (NEW) OR ADDED INFORMATION:

7a. ORGANIZATION'S NAME

OR

| 7b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX |
|---|---|---|---|
| | | | |

| 7c. MAILING ADDRESS | CITY | STATE | POSTAL CODE | COUNTRY |
|---|---|---|---|---|
| | | | | |

| 7d. TAX ID #: SSN OR EIN | ADD'L INFO RE ORGANIZATION DEBTOR | 7e. TYPE OF ORGANIZATION | 7f. JURISDICTION OF ORGANIZATION | 7g. ORGANIZATIONAL ID #, if any |
|---|---|---|---|---|
| | | | | ☐ NONE |

8. AMENDMENT (COLLATERAL CHANGE): check only one box.

Describe collateral ☐ deleted or ☐ added, or give entire ☐ restated collateral description, or describe collateral ☐ assigned.

9. NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here ☐ and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME

OR

| 9b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME | SUFFIX |
|---|---|---|---|
| | | | |

10. OPTIONAL FILER REFERENCE DATA

**UCC FINANCING STATEMENT AMENDMENT ADDENDUM**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

11. INITIAL FINANCING STATEMENT FILE # (same as item 1a on Amendment form)

12. NAME OF PARTY AUTHORIZING THIS AMENDMENT (same as item 9 on Amendment form)

12a. ORGANIZATION'S NAME

OR

| 12b. INDIVIDUAL'S LAST NAME | FIRST NAME | MIDDLE NAME, SUFFIX |
|---|---|---|
| | | |

13. Use this space for additional information

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

(c) A form that a filing office may not refuse to accept under subsection (a) or (b) must conform to the format prescribed for the form by the National Conference of Commissioners on Uniform State Laws.

**§490:9-522 Maintenance and destruction of records.** (a) The filing office shall maintain a record of the information provided in a filed financing statement for

at least one year after the effectiveness of the financing statement has lapsed under section 490:9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and by using the file number assigned to the initial financing statement to which the record relates.

(b) Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a).

**§490:9-523 Information from filing office; sale or license of records.** (a) If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 490:9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to section 490:9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to section 490:9-519(a)(1); and

(3) The date and time of the filing of the record.

(c) The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) Designates a particular debtor;

(B) Has not lapsed under section 490:9-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under section 490:9-515 and a record of which is maintained by the filing office under section 490:9-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) In complying with its duty under subsection (c), the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) The filing office shall perform the acts required by subsections (a) through (d) at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) At least weekly, the filing office shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office.

**§490:9-524 Delay by filing office.** Delay by the filing office beyond a time limit prescribed by this part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions failure of equipment, or other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances.

**§490:9-525 Fees.** (a) Except as otherwise provided in subsection (e), the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in section 490:9-502(c), shall be as specified by rules adopted under section 502-25 by the department of land and natural resources pursuant to chapter 91.

(b) Except as otherwise provided in subsection (e), the fee for filing and indexing an initial financing statement of the kind described in section 490:9-502(c) shall be as specified by rules adopted under section 502-25 by the department of land and natural resources pursuant to chapter 91.

(c) The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b).

(d) The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor shall be as specified by rules adopted under section 502-25 by the department of land and natural resources pursuant to chapter 91.

(e) This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 490:9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

**§490:9-526 Filing-office rules.** (a) The department of land and natural resources shall adopt and publish rules to implement this article. The filing-office rules must be:

(1) Consistent with this article; and

(2) Adopted and published in accordance with chapter 91.

(b) To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the filing office, so far as is consistent with the purposes, policies, and provisions of this article, in adopting, amending, and repealing filing-office rules, shall:

(1) Consult with filing offices in other jurisdictions that enact substantially this part; and

(2) Consult the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators or any successor organization; and

(3) Take into consideration the rules and practices of and the technology used by, filing offices in other jurisdictions that enact substantially this part.

**§490:9-527 Duty to report.** The department of land and natural resources shall report annually, twenty days before the convening of each regular session of the legislature, to the governor and the legislature on the operation of the filing office. The report must contain a statement of the extent to which:

(1) The filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

(2) The filing-office rules are not in harmony with the most recent version of the Model Rules promulgated by the International Association of Corporate Administrators, or any successor organization, and the reasons for these variations.

## PART 6. DEFAULT
## SUBPART 1. DEFAULT AND ENFORCEMENT OF SECURITY INTEREST

**§490:9-601 Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.** (a) After default, a secured party has the rights provided in this part and, except as otherwise provided in section 490:9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) A secured party in possession of collateral or control of collateral under section 490:9-104, 490:9-105, 490:9-106, or 490:9-107 has the rights and duties provided in section 490:9-207.

(c) The rights under subsections (a) and (b) are cumulative and may be exercised simultaneously.

(d) Except as otherwise provided in subsection (g) and section 490:9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Except as otherwise provided in section 490:9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

**§490:9-602 Waiver and variance of rights and duties.** Except as otherwise provided in section 490:9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) Section 490:9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) Section 490:9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Section 490:9-607(c), which deals with collection and enforcement of collateral;

(4) Sections 490:9-608(a) and 490:9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
(5) Sections 490:9-608(a) and 490:9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;
(6) Section 490:9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;
(7) Sections 490:9-610(b), 490:9-611, 490:9-613, and 490:9-614, which deal with disposition of collateral;
(8) Section 490:9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
(9) Section 490:9-616, which deals with explanation of the calculation of a surplus or deficiency;
(10) Section 490:9-620, 490:9-621, and 490:9-622, which deal with acceptance of collateral in satisfaction of obligation;
(11) Section 490:9-623, which deals with redemption of collateral;
(12) Section 490:9-624, which deals with permissible waivers; and
(13) Sections 490:9-625 and 490:9-626, which deal with the secured party's liability for failure to comply with this article.

**§490:9-603 Agreement on standards concerning rights and duties.** (a) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 490:9-602 if the standards are not manifestly unreasonable.

(b) Subsection (a) does not apply to the duty under section 490:9-609 to refrain from breaching the peace.

**§490:9-604 Procedure if security agreement covers real property or fixtures.** (a) If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or
(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Subject to subsection (c), if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this part; or
(2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

**§490:9-605 Unknown debtor or secondary obligor.** A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:
  (A) That the person is a debtor or obligor;
  (B) The identity of the person; and
  (C) How to communicate with the person; or
(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
  (A) That the person is a debtor; and
  (B) The identity of the person.

**§490:9-606 Time of default for agricultural lien.** For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

**§490:9-607 Collection and enforcement by secured party.** (a) If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
(2) May take any proceeds to which the secured party is entitled under section 490:9-315;
(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
(4) If it holds a security interest in a deposit account perfected by control under section 490:9-104(a)(1) may apply the balance of the deposit account to the obligation secured by the deposit account; and
(5) If it holds a security interest in a deposit account perfected by control under section 490:9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) If necessary to enable a secured party to exercise under subsection (a)(3) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
(2) The secured party's sworn affidavit in recordable form stating that:
  (A) A default has occurred; and
  (B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and
(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

(d) A secured party may deduct from the collections made pursuant to subsection (c) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

**§490:9-608 Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.** (a) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under this section in the following order to:
   (A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
   (B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and
   (C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies the secured party need not comply with the holder's demand under paragraph (1)(C).

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

**§490:9-609 Secured party's right to take possession after default.** (a) After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 490:9-610.

(b) A secured party may proceed under subsection (a):

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

**§490:9-610 Disposition of collateral after default.** (a) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) A secured party may disclaim or modify warranties under subsection (d):

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) A record is sufficient to disclaim warranties under subsection (e) if it indicates ''There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition'' or uses words of similar import.

**§490:9-611 Notification before disposition of collateral.** (a) In this section, ''notification date'' means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Except as otherwise provided in subsection (d), a secured party that disposes of collateral under section 490:9-610 shall send to the persons specified in subsection (c) a reasonable authenticated notification of disposition.

(c) To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 490:9-311(a).

(d) Subsection (b) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) A secured party complies with the requirement for notification prescribed by subsection (c)(3)(B) if:

(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B); and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party named in that response whose financing statement covered the collateral.

**§490:9-612 Timeliness of notification before disposition of collateral.** (a) Except as otherwise provided in subsection (b), whether a notification is sent within a reasonable time is a question of fact.

(b) In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

**§490:9-613 Contents and form of notification before disposition of collateral: general.** Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public sale or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in section 490:9-614(3), when completed each provides sufficient information:

**NOTIFICATION OF DISPOSITION OF COLLATERAL**

TO: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: _____

Time: _____
Place: _____
[For a private disposition:]
We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].
You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of $_____ ]. You may request an accounting by calling us at [telephone number]
[End of Form]

**§490:9-614 Contents and form of notification before disposition of collateral: Consumer-goods transaction.** In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:
   (A) The information specified in section 490:9-613(1);
   (B) A description of any liability for a deficiency of the person to which the notification is sent;
   (C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 490:9-623 is available; and
   (D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
(2) A particular phrasing of the notification is not required.
(3) The following form of notification, when completed provides sufficient information:

[Name and address of secured party]
[Date]

**NOTICE OF OUR PLAN TO SELL PROPERTY**

[Name and address of any obligor who is also a debtor]
Subject: [Identification of Transaction]
We have your [describe collateral] , because you broke promises in our agreement.
[For a public disposition:]
We will sell [describe collateral] at public sale sometime after [date].
A sale could include a lease or license.
The sale will be held as follows:
Date: _____
Time: _____
Place: _____
You may attend the sale and bring bidders if you want.

[For a private disposition:]
We will sell [describe collateral] at private sale sometime after [date].
A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at ___[telephone number]___ [or write us at ___[secured party's address]___ ] and request a written explanation. [We will charge you $_____ for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at ___[telephone number]___ [or write us at ___[secured party's address]___ ].

We are sending this notice to the following other people who have an interest in ___[describe collateral]___ or who owe money under your agreement:
___[Names of all other debtors and obligors, if any]___

[End of Form]

(4) A notification in the form of paragraph (3) is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) is sufficient, even if it includes errors in information not required by paragraph (1), unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3), law other than this article determines the effect of including information not required by paragraph (1).

**§490:9-615 Application of proceeds of disposition; liability for deficiency and right to surplus.** (a) A secured party shall apply or pay over for application the cash proceeds of disposition in the following order to:

(1) The reasonable expenses of retaking, holding preparing for disposition, processing, and disposing and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) A secured party need not apply or pay over for application noncash proceeds of disposition under this section unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) and permitted by subsection (c):

(1) Unless subsection (a)(4) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

(2) The obligor is liable for any deficiency.

(e) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party or a secondary obligor would have brought.

(g) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

**§490:9-616 Explanation of calculation of surplus or deficiency.** (a) In this section:

(1) "Explanation" means a writing that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of how the secured party calculated the surplus or deficiency;

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) Authenticated by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under section 490:9-610.

(b) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 490:9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) To comply with subsection (a)(1)(B), a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:
   (A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or
   (B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;
(2) The amount of proceeds of the disposition;
(3) The aggregate amount of the obligations after deducting the amount of proceeds;
(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;
(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1); and
(6) The amount of the surplus or deficiency.

(d) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) is sufficient, even if it includes minor errors that are not seriously misleading.

(e) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (b)(1). The secured party may require payment of a charge not exceeding $25 for each additional response.

**§490:9-617 Rights of transferee of collateral.** (a) A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;
(2) Discharges the security interest under which the disposition is made; and
(3) Discharges any subordinate security interest or other subordinate lien.

(b) A transferee that acts in good faith takes free of the rights and interests described in subsection (a), even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(c) If a transferee does not take free of the rights and interests described in subsection (a), the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;
(2) The security interest or agricultural lien under which the disposition is made; and
(3) Any other security interest or other lien.

**§490:9-618 Rights and duties of certain secondary obligors.** (a) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;
(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) An assignment, transfer, or subrogation described in subsection (a):

(1) Is not a disposition of collateral under section 490:9-610; and
(2) Relieves the secured party of further duties under this article.

**§490:9-619 Transfer of record or legal title.** (a) In this section, ''transfer statement'' means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;
(2) That the secured party has exercised its post-default remedies with respect to the collateral;
(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
(4) The name and mailing address of the secured party debtor, and transferee.

(b) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;
(2) Promptly amend its records to reflect the transfer; and
(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) A transfer of the record or legal title to collateral to a secured party under subsection (b) or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

**§490:9-620 Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.** (a) Except as otherwise provided in subsection (g), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c);
(2) The secured party does not receive, within the time set forth in subsection (d), a notification of objection to the proposal authenticated by:
    (A) A person to which the secured party was required to send a proposal under section 490:9-621; or
    (B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
(4) Subsection (e) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 490:9-624.

(b) A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and
(2) The conditions of subsection (a) are met.
(c) For purposes of this section:
(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and
(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:
(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;
(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and
(C) Does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.
(d) To be effective under subsection (a)(2), a notification of objection must be received by the secured party:
(1) In the case of a person to which the proposal was sent pursuant to section 490:9-621, within twenty days after notification was sent to that person; and
(2) In other cases:
(A) Within twenty days after the last notification was sent pursuant to section 490:9-621; or
(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c).
(e) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 490:9-610 within the time specified in subsection (f) if:
(1) Sixty per cent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
(2) Sixty per cent of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.
(f) To comply with subsection (e), the secured party shall dispose of the collateral:
(1) Within ninety days after taking possession; or
(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.
(g) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

**§490:9-621 Notification of proposal to accept collateral.** (a) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:
(1) Any person from which the secured party has received before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;
(2) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
(A) Identified the collateral;
(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 490:9-311(a).

(b) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a).

**§490:9-622 Effect of acceptance of collateral.** (a) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) A subordinate interest is discharged or terminated under subsection (a), even if the secured party fails to comply with this article.

**§490:9-623 Right to redeem collateral.** (a) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorney's fees described in section 490:9-615(a)(1).

(c) A redemption may occur at any time before a secured party:

(1) Has collected collateral under section 490:9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under section 490:9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under section 490:9-622.

**§490:9-624 Waiver.** (a) A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 490:9-611 only by an agreement to that effect entered into and authenticated after default.

(b) A debtor may waive the right to require disposition of collateral under section 490:9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 490:9-623 only by an agreement to that effect entered into and authenticated after default.

## SUBPART 2. NONCOMPLIANCE WITH ARTICLE

**§490:9-625 Remedies for secured party's failure to comply with article.** (a) If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Subject to subsections (c), (d), and (f), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply with a request under section 490:9-210 may include loss

resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Except as otherwise provided in section 490:9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten per cent of the principal amount of the obligation or the time-price differential plus ten per cent of the cash price.

(d) A debtor whose deficiency is eliminated under section 490:9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 490:9-626 may not otherwise recover under subsection (b) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.

(e) In addition to any damages recoverable under subsection (b), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover $500 in each case from a person that:

(1) Fails to comply with section 490:9-208;

(2) Fails to comply with section 490:9-209;

(3) Files a record that the person is not entitled to file under section 490:9-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by section 490:9-513(a) or (c);

(5) Fails to comply with section 490:9-616(b)(1) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or

(6) Fails to comply with section 490:9-616(b)(2).

(f) A debtor or consumer obligor may recover damages under subsection (b) and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under section 490:9-210. A recipient of a request under section 490:9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 490:9-210, the secured party may claim a security interest only as shown in the statement included in the request as against a person that is reasonably misled by the failure.

**§490:9-626 Action in which deficiency or surplus is in issue.** (a) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in section 490:9-628, if a secured party fails to prove that the collection enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the li-

ability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) The proceeds of the collection, enforcement disposition, or acceptance; or

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement disposition, or acceptance.

(4) For purposes of paragraph (3)(B), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under section 490:9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) The limitation of the rules in subsection (a) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

**§490:9-627 Determination of whether conduct was commercially reasonable.** (a) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.

(b) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors' committee;

(3) By a representative of creditors; or

(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

**§490:9-628 Nonliability and limitation on liability of secured party; liability of secondary obligor.** (a) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and
(2) The secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) A secured party is not liable because of its status as secured party:
(1) To a person that is a debtor or obligor, unless the secured party knows:
(A) That the person is a debtor or obligor;
(B) The identity of the person; and
(C) How to communicate with the person; or
(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
(A) That the person is a debtor; and
(B) The identity of the person.

(c) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:
(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) A secured party is not liable to any person under section 490:9-625(c)(2) for its failure to comply with section 490:9-616.

(e) A secured party is not liable under section 490:9-625(c)(2) more than once with respect to any one secured obligation.

## PART 7. TRANSITION

**§490:9-701 Effective date.** This article takes effect on July 1, 2001.

**§490:9-702 Savings clause.** (a) Except as otherwise provided in this part, this article applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this article takes effect.

(b) Except as otherwise provided in subsection (c) and sections 490:9-703 through 490:9-708:
(1) Transactions and liens that were not governed by former Article 9, were validly entered into or created before this article takes effect, and would be subject to this article if they had been entered into or created after this article takes effect, and the rights, duties, and interests flowing from those transactions and liens, remain valid after this article takes effect; and
(2) The transactions and liens may be terminated, completed, consummated, and enforced as required or permitted by this article or by the law that otherwise would apply if this article had not taken effect.

(c) This article does not affect an action, case, or proceeding commenced before this article takes effect.

**§490:9-703 Security interest perfected before effective date.** (a) A security interest that is enforceable immediately before this article takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this article if, when this article takes effect, the

applicable requirements for enforceability and perfection under this article are satisfied without further action.

(b) Except as otherwise provided in section 490:9-705, if, immediately before this article takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this article are not satisfied when this article takes effect, the security interest:

(1) Is a perfected security interest for one year after this article takes effect;
(2) Remains enforceable thereafter only if the security interest becomes enforceable under section 490:9-203 before the year expires; and
(3) Remains perfected thereafter only if the applicable requirements for perfection under this article are satisfied before the year expires.

**§490:9-704 Security interest unperfected before effective date.** A security interest that is enforceable immediately before this article takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for one year after this article takes effect;
(2) Remains enforceable thereafter if the security interest becomes enforceable under section 490:9-203 when this article takes effect or within one year thereafter; and
(3) Becomes perfected:
    (A) Without further action, when this article takes effect if the applicable requirements for perfection under this article are satisfied before or at that time; or
    (B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

**§490:9-705 Effectiveness of action taken before effective date.** (a) If action, other than the filing of a financing statement, is taken before this article takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this article takes effect, the action is effective to perfect a security interest that attaches under this article within one year after this article takes effect. An attached security interest becomes unperfected one year after this article takes effect unless the security interest becomes a perfected security interest under this article before the expiration of that period.

(b) The filing of a financing statement before this article takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article.

(c) This article does not render ineffective an effective financing statement that, before this article takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in the former section 490:9-103. However, except as otherwise provided in subsections (d) and (e) and section 490:9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
(2) June 30, 2006.

(d) The filing of a continuation statement after this article takes effect does not continue the effectiveness of the financing statement filed before this article takes effect. However, upon the timely filing of a continuation statement after this article takes effect and in accordance with the law of the jurisdiction governing

perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this article takes effect continues for the period provided by the law of that jurisdiction.

(e) Subsection (c)(2) applies to a financing statement that, before this article takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in the former section 490:9-103 only to the extent that part 3 provides that the law of a jurisdiction other than a jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) A financing statement that includes a financing statement filed before this article takes effect and a continuation statement filed after this article takes effect is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

**§490:9-706 When initial financing statement suffices to continue effectiveness of financing statement.** (a) The filing of an initial financing statement in the office specified in section 490:9-501 continues the effectiveness of a financing statement filed before this article takes effect if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this article;

(2) The pre-effective-date financing statement was filed in an office in another state or another office in this State; and

(3) The initial financing statement satisfies subsection (c).

(b) The filing of an initial financing statement under subsection (a) continues the effectiveness of the pre-effective-date financing statement:

(1) If the initial financing statement is filed before this article takes effect, for the period provided in the former section 490:9-403 with respect to a financing statement; and

(2) If the initial financing statement is filed after this article takes effect, for the period provided in section 490:9-515 with respect to an initial financing statement.

(c) To be effective for purposes of subsection (a), an initial financing statement must:

(1) Satisfy the requirements of part 5 for an initial financing statement;

(2) Identify the pre-effective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the pre-effective-date financing statement remains effective.

**§490:9-707 Persons entitled to file initial financing statement or continuation statement.** A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before this article takes effect; or

(B) To perfect or continue the perfection of a security interest.

**§490:9-708 Priority.** (a) This article determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this article takes effect, the former Article 9 determines priority.

(b) For purposes of section 490:9-322(a), the priority of a security interest that becomes enforceable under section 490:9-203 of this article dates from the time this article takes effect if the security interest is perfected under this article by the filing of a financing statement before this article takes effect which would not have been effective to perfect the security interest under the former Article 9. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement."

SECTION 2. Chapter 490, Hawaii Revised Statutes, is amended by adding to article 5 a new section to be appropriately designated and to read as follows:

"**§490:5- Security interest of issuer or nominated person.** (a) An issuer or nominated person has a security interest in a document presented under a letter of credit to the extent that the issuer or nominated person honors or gives value for the presentation.

(b) So long as and to the extent that an issuer or nominated person has not been reimbursed or has not otherwise recovered the value given with respect to a security interest in a document under subsection (a), the security interest continues and is subject to Article 9, but:

(1) A security agreement is not necessary to make the security interest enforceable under section 490:9-203(b)(3);

(2) If the document is presented in a medium other than a written or other tangible medium, the security interest is perfected; and

(3) If the document is presented in a written or other tangible medium and is not a certificated security chattel paper, a document of title, an instrument, or a letter of credit, the security interest is perfected and has priority over a conflicting security interest in the document so long as the debtor does not have possession of the document."

SECTION 3. Section 286-52, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Until the director of finance has issued the new certificate of registration and certificate of ownership as in subsection (d) provided, delivery of such vehicle shall be deemed not to have been made and title thereto shall be deemed not to have passed, and the intended transfer shall be deemed to be incomplete and not to be valid or effective for any purpose, notwithstanding any provision of the Uniform Commercial Code; provided that a security interest in a motor vehicle shall be perfected as provided in the Uniform Commercial Code, [sections 490:9-302(3)(b) and 490:9-302(4),] section 490:9-311 and that the validity, attachment, priority, and enforcement of such security interest shall be governed by Article 9 of the Code."

SECTION 4. Section 476-1, Hawaii Revised Statutes, is amended by amending the definition of "goods" to read as follows:

"'Goods" include all things which are movable at the time the credit sale is entered into or which will be movable when they thereafter come into existence or which are or will be fixtures [(section 490:9-313),] (sections 490:9-334 and 490:9-604), but except as provided in this paragraph does not include money, documents, instruments, accounts, chattel paper, general intangibles, or minerals or the like (including oil and gas) before extraction. "Goods" include standing timber which is to be cut and removed under a conveyance or contract for sale, the unborn young animals, growing crops, and merchandise certificates or coupons, issued by a credit

seller, to be used in the face amount in lieu of cash in exchange for goods sold by such a seller."

SECTION 5. Section 506-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A mortgage may secure the repayment of past debt, a debt incurred at the time the mortgage is executed, or a debt incurred for advances which may be made by the mortgagee subsequent to the execution of the mortgage even though the mortgagee is under no contractual duty to make these advances. Except as otherwise provided in [section 490:9-313] sections 490:9-334 and 490:9-604 of the Uniform Commercial Code with respect to security interests in fixtures, a mortgage which secures future advances, up to but not exceeding the maximum amount of future advances stated in the mortgage, shall be superior to any subsequently recorded mortgage, lien, or other encumbrances or conveyance, other than liens for real property taxes and assessments for public improvements, even though the subsequently recorded mortgage, lien, or other encumbrance or conveyance is recorded prior to the date upon which any advance or advances have been made."

SECTION 6. Section 506-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Subject to the limitations contained in this chapter and to [section 490:9-313] sections 490:9-334 and 490:9-604 of the Uniform Commercial Code respecting security interests in fixtures, if the mortgage so provides, the lien of the mortgage may attach to additions, improvements, and purchases or substitutions made to supply the place of any real property or fixtures disposed of and to all other after-acquired real property or fixtures referred to in the mortgage when the mortgagor acquires an interest therein to the extent of the interest, but subject to existing liens and the lien of a purchase money mortgage given by the mortgagor of any such after-acquired real property or fixtures."

SECTION 7. Section 712A-1, Hawaii Revised Statutes, is amended by amending the definition of "owner" to read as follows:

""Owner" means a person who is not a secured party within the meaning of section [[490:9-105(1)]] 490:9-102 and who has an interest in property, whether legal or equitable. A purported interest which is not in compliance with any statute requiring its recordation or reflection in public records in order to perfect the interest against a bona fide purchaser for value shall not be recognized as an interest against this State in an action pursuant to this chapter. An owner with power to convey property binds other owners, and a spouse binds the person's spouse, by any act or omission."

SECTION 8. 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.

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

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

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests and agricultural liens. Sections 490:9-301 through 490:9-339."

SECTION 9. Section 490:1-201, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "buyer in ordinary course of business" to read:

"(9) "Buyer in ordinary course of business" means a person [who] that buys goods in good faith [and], without knowledge that the sale [to him is in violation of] violates the [ownership] rights [or security interest] of [a third party] another person in the goods [buys], and in the ordinary course from a person, other than a pawnbroker, in the business of selling goods of that kind [but does not include a pawnbroker. All persons who sell minerals or the like (including oil and gas) at wellhead or minehead shall be deemed to be persons]. A person buys goods in the ordinary course if the sale to the person comports with the usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices. A person that sells oil, gas, or other minerals at the wellhead or minehead is a person in the business of selling goods of that kind. ["Buying"] A buyer in ordinary course of business may [be] buy for cash [or], by exchange of other property, or on secured or unsecured credit, and [includes receiving] may acquire goods or documents of title under a preexisting contract for sale [but does not include a transfer in bulk or as security for or in total or partial satisfaction of a money debt]. Only a buyer that takes possession of the goods or has a right to recover the goods from the seller under Article 2 may be a buyer in ordinary course of business. A person that acquires goods in a transfer in bulk or as security for or in total or partial satisfaction of a money debt is not a buyer in ordinary course of business."

2. By amending the definition of "purchase" to read:

"(32) "Purchase" includes taking by sale, discount, negotiation, mortgage, pledge, lien, security interest, issue or reissue, gift, or any other voluntary transaction creating an interest in property."

3. By amending the definition of "security interest" to read:

"(37) "Security interest" means an interest in personal property or fixtures which secures payment or performance of an obligation. [The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 490:2-401) is limited in effect to a reservation of a "security interest".] The term also includes any interest of a consignor and a buyer of accounts [or], chattel paper [which], a payment intangible, or a promissory note in a transaction that is subject to Article 9. The special property interest of a buyer of goods on identification of those goods to a contract for sale under section 490:2-401 is not a "security interest", but a buyer may also acquire a "security interest" by complying with Article 9. [Unless a consignment is intended as security, reservation of title thereunder is not a "security interest", but a consignment in any event is subject to the provisions on consignment sales (section 490:2-326).] Except as otherwise provided in section 490:2-505, the right of a seller or lessor of goods under Article 2 or 2A to retain or acquire possession of the goods is not a "security interest", but a seller or lessor may also acquire a "security interest" by complying with Article 9. The retention or reservation of title by a seller of goods notwithstanding shipment or delivery to the buyer (section 490:2-401) is limited in effect to a reservation of a "security interest".

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

(a) The original term of the lease is equal to or greater than the remaining economic life of the goods;

(b) The lessee is bound to renew the lease for the remaining economic life of the goods or is bound to become the owner of the goods;

(c) The lessee has an option to renew the lease for the remaining economic life of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement; or

(d) The lessee has an option to become the owner of the goods for no additional consideration or nominal additional consideration upon compliance with the lease agreement.

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

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

(b) The lessee assumes risk of loss of the goods, or agrees to pay taxes, insurance, filing, recording, or registration fees, or service or maintenance costs with respect to the goods;

(c) The lessee has an option to renew the lease or to become the owner of the goods;

(d) The lessee has an option to renew the lease for a fixed rent that is equal to or greater than the reasonably predictable fair market rent for the use of the goods for the term of the renewal at the time the option is to be performed; or

(e) The lessee has an option to become the owner of the goods for a fixed price that is equal to or greater than the reasonably predictable fair market value of the goods at the time the option is to be performed.

For purposes of this subsection (37):

(x) Additional consideration is not nominal if (i) when the option to renew the lease is granted to the lessee the rent is stated to be the fair market rent for the use of the goods for the term of the renewal determined at the time the option is to be performed, or (ii) when the option to become the owner of the goods is granted to the lessee the price is stated to be the fair market value of the goods determined at the time the option is to be performed. Additional consideration is nominal if it is less than the lessee's reasonably predictable cost of performing under the lease agreement if the option is not exercised;

(y) "Reasonably predictable" and "remaining economic life of the goods" are to be determined with reference to the facts and circumstances at the time the transaction is entered into; and

(z) "Present value" means the amount as of a date certain of one or more sums payable in the future, discounted to the date certain. The discount is determined by the interest rate specified by the parties if the rate is not manifestly unreasonable at the time the transaction is entered into; otherwise, the discount is determined by a commercially reasonable rate that takes into account the facts and circumstances of each case at the time the transaction was entered into."

SECTION 10. 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 490:8-113) nor to security agreements (section [490:9-203).] 490:9-201 or 490:9-203)."

SECTION 11. 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.] 490:9-102.
"Dishonor". Section 490:3-502.
"Draft". Section 490:3-104."

SECTION 12. Section 490:2-210, Hawaii Revised Statutes, is amended to read as follows:

**"§490:2-210 Delegation of performance; assignment of rights.** (1) A party may perform [his] the party's duty through a delegate unless otherwise agreed or unless the other party has a substantial interest in having [his] the other party's original promisor perform or control the acts required by the contract. No delegation of performance relieves the party delegating of any duty to perform or any liability for breach.

(2) [Unless] Except as otherwise provided in section 490:9-406, unless otherwise agreed, all rights of either seller or buyer can be assigned except where the assignment would materially change the duty of the other party, or increase materially the burden or risk imposed on [him] the other party by [his] the other party's contract, or impair materially [his] the other party's chance of obtaining return performance. A right to damages for breach of the whole contract or a right arising out of the assignor's due performance of [his] the assignor's entire obligation can be assigned despite agreement otherwise.

(3) The creation, attachment, perfection, or enforcement of a security interest in the seller's interest under a contract is not a transfer that materially changes the duty of or increases materially the burden or risk imposed on the buyer or impairs materially the buyer's chance of obtaining return performance within the purview of subsection (2) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the seller. Even in that event, the creation, attachment, perfection, and enforcement of the security interest remain effective, but:

(a) The seller is liable to the buyer for damages caused by the delegation to the extent that the damages could not reasonably be prevented by the buyer; and

(b) A court having jurisdiction may grant other appropriate relief, including cancellation of the contract for sale or an injunction against enforcement of the security interest or consummation of the enforcement.

[(3)] (4) Unless the circumstances indicate the contrary a prohibition of assignment of "the contract" is to be construed as barring only the delegation to the assignee of the assignor's performance.

[(4)] (5) An assignment of "the contract" or of "all my rights under the contract" or an assignment in similar general terms is an assignment of rights and unless the language or the circumstances (as in an assignment for security) indicate the contrary, it is a delegation of performance of the duties of the assignor and its

acceptance by the assignee constitutes a promise by [him] the assignee to perform those duties. This promise is enforceable by either the assignor or the other party to the original contract.

[(5)] (6) The other party may treat any assignment which delegates performance as creating reasonable grounds for insecurity and may without prejudice to his rights against the assignor demand assurances from the assignee (section 490:2-609)."

SECTION 13. Section 490:2-326, Hawaii Revised Statutes, is amended to read as follows:

"**§490:2-326 Sale on approval and sale or return; [consignment sales and] rights of creditors.** (1) Unless otherwise agreed, if delivered goods may be returned by the buyer even though they conform to the contract, the transaction is:

(a) A "sale on approval" if the goods are delivered primarily for use; and

(b) A "sale or return" if the goods are delivered primarily for resale.

(2) [Except as provided in subsection (3), goods] Goods held on approval are not subject to the claims of the buyer's creditors until acceptance; goods held on sale or return are subject to such claims while in the buyer's possession.

[(3) Where goods are delivered to a person for sale and such person maintains a place of business at which he deals in goods of the kind involved, under a name other than the name of the person making delivery, then with respect to claims of creditors of the person conducting the business the goods are deemed to be on sale or return. The provisions of this subsection are applicable even though an agreement purports to reserve title to the person making delivery until payment or resale or uses such words as "on consignment" or "on memorandum". However, this subsection is not applicable if the person making delivery

(a) Complies with an applicable law providing for a consignor's interest or the like to be evidenced by a sign, or

(b) Establishes that the person conducting the business is generally known by his creditors to be substantially engaged in selling the goods of others, or

(c) Complies with the filing provisions of the Article on Secured Transactions (Article 9).

(4)] (3) Any "or return" term of a contract for sale is to be treated as a separate contract for sale within the statute of frauds section of this Article (section 490:2-201) and as contradicting the sale aspect of the contract within the provisions of this Article on parol or extrinsic evidence (section 490:2-202)."

SECTION 14. Section 490:2-502, Hawaii Revised Statutes, is amended to read as follows:

"**§490:2-502 Buyer's right to goods on seller's repudiation, failure to deliver, or insolvency.** (1) Subject to [subsection] subsections (2) and (3), and even though the goods have not been shipped, a buyer who has paid a part or all of the price of goods in which [he] the buyer has a special property under the provisions of the immediately preceding section may on making and keeping good a tender of any unpaid portion of their price recover them from the seller if:

(a) In the case of goods bought for personal, family, or household purposes, the seller repudiates or fails to deliver as required by the contract; or

(b) In all cases, the seller becomes insolvent within ten days after receipt of the first installment on their price.

(2) The buyer's right to recover the goods under subsection (1)(a) vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver.

[(2)] (3) If the identification creating [his] the buyer's special property has been made by the buyer [he], the buyer acquires the right to recover the goods only if they conform to the contract for sale."

SECTION 15. Section 490:2-716, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

"(3) The buyer has a right of replevin for goods identified to the contract if after reasonable effort [he] the buyer is unable to effect cover for such goods or the circumstances reasonably indicate that such effort will be unavailing or if the goods have been shipped under reservation and satisfaction of the security interest in them has been made or tendered. In the case of goods bought for personal, family, or household purposes, the buyer's right of replevin vests upon acquisition of a special property, even if the seller had not then repudiated or failed to deliver."

SECTION 16. Section 490:2A-103, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following definitions in other Articles apply to this Article:
"Account". Section [490:9-106.] 490:9-102(a).
"Between merchants". Section 490:2-104(3).
"Buyer". Section 490:2-103(1)(a).
"Chattel paper". Section [490:9-105(1)(b).] 490:9-102(a).
"Consumer goods". Section [490:9-109(1).] 490:9-102(a).
"Document". Section [490:9-105(1)(f).] 490:9-102(a).
"Entrusting". Section 490:2-403(3).
["General intangibles". Section 490:9-106.]
"General intangible". Section 490:9-102(a).
"Good faith". Section 490:2-103(1)(b).
"Instrument". Section [490:9-105(1)(j).] 490:9-102(a).
"Merchant". Section 490:2-104(1).
"Mortgage". Section [490:9-105(1)(k).] 490:9-102(a).
"Pursuant to commitment". Section [490:9-105(1)(l).] 490:9-102(a).
"Receipt". Section 490:2-103(1)(c).
"Sale". Section 490:2-106(1).
"Sale on approval". Section 490:2-326.
"Sale or return". Section 490:2-326.
"Seller". Section 490:2-103(1)(d).

SECTION 17. Section 490:2A-303, Hawaii Revised Statutes, is amended to read as follows:

**"§490:2A-303 Alienability of party's interest under lease contract or of lessor's residual interest in goods; delegation of performance; transfer of rights.** (a) As used in this section, "creation of a security interest" includes the sale of a lease contract that is subject to Article 9, Secured Transactions, by reason of section [490:9-102(1)(b).] 490:9-109(a)(3).

(b) Except as provided in [subsections] subsection (c) and [(d),] section 490:9-407, a provision in a lease agreement which (i) prohibits the voluntary or involuntary transfer, including a transfer by sale, sublease, creation or enforcement of a security interest, or attachment, levy, or other judicial process, of an interest of a party under the lease contract or of the lessor's residual interest in the goods, or (ii) makes such a transfer an event of default, gives rise to the rights and remedies

provided in subsection [(e),] (d), but a transfer that is prohibited or is an event of default under the lease agreement is otherwise effective.

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

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

[(e)] (d) Subject to [subsections] subsection (c) and [(d):] section 490:9-407:

(1) If a transfer is made which is made an event of default under a lease agreement, the party to the lease contract not making the transfer, unless that party waives the default or otherwise agrees, has the rights and remedies described in section 490:2A-501(b);

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

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

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

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

SECTION 18. Section 490:2A-307, Hawaii Revised Statutes, is amended to read as follows:

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

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

(1) The] the creditor holds a lien that attached to the goods before the lease contract became enforceable[;

(2) The creditor holds a security interest in the goods and the lessee did not give value and receive delivery of the goods without knowledge of the security interest; or

(3) The creditor holds a security interest in the goods which was perfected (section 490:9-303) before the lease contract became enforceable.

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

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

(c) Except as otherwise provided in sections 490:9-317, 490:9-321, and 490:9-323, a lessee takes a leasehold interest subject to a security interest held by a creditor of the lessor."

SECTION 19. Section 490:2A-309, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In this section:

(1) Goods are "fixtures" when they become so related to particular real estate that an interest in them arises under real estate law;

(2) A "fixture filing" is the filing, in the office where a record of a mortgage on the real estate would be filed or recorded, of a financing statement covering goods that are or are to become fixtures and conforming to the requirements of section [490:9-402(5);] 490:9-502(a) and (b);

(3) A lease is a "purchase money lease" unless the lessee has possession or use of the goods or the right to possession or use of the goods before the lease agreement is enforceable;

(4) A mortgage is a "construction mortgage" to the extent it secures an obligation incurred for the construction of an improvement on land including the acquisition cost of the land, if the recorded writing so indicates; and

(5) "Encumbrance" includes real estate mortgages and other liens on real estate and all other rights in real estate that are not ownership interests."

SECTION 20. Section 490:4-210, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Receipt by a collecting bank of a final settlement for an item is a realization on its security interest in the item, accompanying documents, and

proceeds. So long as the bank does not receive final settlement for the item or give up possession of the item or accompanying documents for purposes other than collection, the security interest continues to that extent and is subject to Article 9, but:

(1) No security agreement is necessary to make the security interest enforceable (section [490:9-203(1)(a));] 490:9-203(b)(3)(A));
(2) No filing is required to perfect the security interest; and
(3) The security interest has priority over conflicting perfected security interests in the item, accompanying documents, or proceeds."

SECTION 21. Section 490:7-503, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A document of title confers no right in goods against a person who before issuance of the document had a legal interest or a perfected security interest in them and who neither:

(a) Delivered or entrusted them or any document of title covering them to the bailor or [his] the bailor's nominee with actual or apparent authority to ship, store, or sell, or with power to obtain delivery under this Article (section 490:7-403) or with power of disposition under this chapter (sections 490:2-403 and [490:9-307)] 490:9-320) or other statute or rule of law; nor
(b) Acquiesced in the procurement by the bailor or [his] the bailor's nominee of any document of title."

SECTION 22. Section 490:8-103, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) A commodity contract, as defined in section [490:9-115,] 490:9-102(a), is not a security or a financial asset."

SECTION 23. Section 490:8-106, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (d) to read:

"(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[.]; or
(3) Another person has control of the security entitlement on behalf of the purchaser or, having previously acquired control of the security entitlement, acknowledges that it has control on behalf of the purchaser."

2. By amending subsection (f) to read:

"(f) A purchaser who has satisfied the requirements of subsection [(c)(2)] (c) or [(d)(2)] (d) has control, even if the registered owner in the case of subsection [(c)(2)] (c) or the entitlement holder in the case of subsection [(d)(2)] (d) 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."

SECTION 24. Section 490:8-110, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(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 jurisdic-

tion,] governing the securities account expressly provides that a particular jurisdiction is the securities intermediary's jurisdiction for purposes of this part, this article, or this chapter, that jurisdiction is the securities intermediary's jurisdiction.

(2) If paragraph (1) does not apply and an agreement between the securities intermediary and its entitlement holder governing the securities account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

[(2)] (3) If neither paragraph (1) nor paragraph (2) applies and an agreement between the securities intermediary and its entitlement holder [does not specify the governing law as provided in paragraph (1), but] governing the securities account expressly [specifies] provides that the securities account is maintained at an office in a particular jurisdiction, that jurisdiction is the securities intermediary's jurisdiction.

[(3)] (4) If [an agreement between the securities intermediary and its entitlement holder does not specify a jurisdiction as provided in paragraph (1) or (2),] none of the preceding paragraphs applies, 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[.] is located.

[(4)] (5) 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),] none of the preceding paragraphs applies, the securities intermediary's jurisdiction is the jurisdiction in which [is located] the chief executive office of the securities intermediary[.] is located."

SECTION 25. Section 490:8-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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] is:

(A) Registered in the name of the purchaser;

(B) Payable to the order of the purchaser; or

(C) [specially] Specially indorsed to the purchaser by an effective indorsement[.] and has not been indorsed to the securities intermediary or in blank."

SECTION 26. Section 490:8-302, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided in subsections (b) and (c), [upon delivery] a purchaser 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."

SECTION 27. Section 490:8-510, Hawaii Revised Statutes, is amended to read as follows:

**§490:8-510 Rights of purchaser of security entitlement from entitlement holder.** (a) [An] In a case not covered by the priority rules in Article 9 or the rules stated in subsection (c), 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] 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] Except as otherwise provided in subsection (d), purchasers who have control rank [equally, except that a] according to priority in time of:

(1) The purchaser's becoming the person for whom the securities account, in which the security entitlement is carried, is maintained, if the purchaser obtained control under section 490:8-106(d)(1);

(2) The securities intermediary's agreement to comply with the purchaser's entitlement orders with respect to security entitlements carried or to be carried in the securities account in which the security entitlement is carried, if the purchaser obtained control under section 490:8-106(d)(2); or

(3) If the purchaser obtained control through another person under section 490:8-106(d)(3), the time on which priority would be based under this subsection if the other person were the secured party.

(d) A securities intermediary as purchaser has priority over a conflicting purchaser who has control unless otherwise agreed by the securities intermediary."

SECTION 28. Section 490:10-102, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

"(2) Transactions validly entered into before January 1, 1967, and the rights, duties, and interests flowing from them remain valid thereafter and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law repealed, amended, or modified by this chapter as though such repeal, amendment, or modification had not occurred; provided[, however,] that the perfection of a security interest, as defined in this chapter and however denominated in any law repealed, amended, or modified by this chapter:

(a) Which was perfected on January 1, 1967, by a filing or recording under a law repealed by this chapter and requiring a further filing or recording to continue its perfection, continues until and will lapse on the date provided by the law so repealed for such further filing or recording;

(b) Which was perfected on January 1, 1967, by a filing or recording under a law repealed by this chapter and requiring no further filing or recording to continue its perfection, continues until and will lapse twelve months after January 1, 1967;

(c) Which was perfected on January 1, 1967, without any filing or recording, and for the perfection of which the filing of a financing statement would be required if this chapter applied, continues until and will lapse twelve months after January 1, 1967; unless, in each case, a continuation statement is filed by the secured party before the perfection of the

security interest would otherwise lapse. Any such continuation statement must be signed by the secured party, identify the security agreement, statement or notice, however denominated in any law repealed by this chapter, state the office where and the date when the last filing or recording was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement or notice, however denominated in any law repealed by this chapter, is still effective. Section [490:9-401(1)] 490:9-501 determines the proper place to file [such a] the continuation statement. Except as specified in this subsection [the provisions of section 490:9-403(3)], sections 490:9-515 and 490:9-522 apply to [such a] the continuation statement."

SECTION 29. Section 490:11-106, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (2) to read:

"(2) If a security interest is perfected when the new U.C.C. takes effect, under a law other than the U.C.C. which requires no further filing, refiling, or recording to continue its perfection, perfection continues until and will lapse three years after the new U.C.C. takes effect, unless a financing statement is filed as provided in subsection (4) or unless the security interest is perfected otherwise than by filing, or unless under [subsection (3) of] section [490:9-302] 490:9-311, the other law continues to govern filing."

2. By amending subsection (4) to read:

"(4) A financing statement may be filed within six months before the perfection of a security interest would otherwise lapse. Any such financing statement may be signed by either the debtor or the secured party. It must identify the security agreement, statement, or notice (however denominated in any statute or other law repealed or modified by this Act), state the office where and the date when the last filing, refiling, or recording, if any, was made with respect thereto, and the filing number, if any, or book and page, if any, of recording and further state that the security agreement, statement, or notice, however denominated, in another filing office under the U.C.C. or under any statute or other law repealed or modified by this Act is still effective. Section [490:9-401 and section 490:9-103 determine] 490:9-501 determines the proper place to file [such a] the financing statement. Except as specified in this subsection, [the provisions of] section [490:9-403(3) for continuation statements apply] 490:9-515 applies to [such a] the financing statement."

SECTION 30. Article 9 of chapter 490, Hawaii Revised Statutes, in effect on June 30, 2001, is repealed.

SECTION 31. Statutory material to be repealed is bracketed, except that bracketed instructions in the forms and the "end of form" notations in sections 490:9-613 and 490:9-614 in section 1 of this Act shall not be repealed. New statutory material is underscored,[1] except that the underscoring in the forms in section 1 of this Act shall be set forth as part of the forms.

SECTION 32. This Act shall take effect on July 1, 2001.

(Approved June 19, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 242 H.B. NO. 1984

A Bill for an Act Relating to Elections.

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

SECTION 1. Section 11-204, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) (1) No person[, other than a candidate for the candidate's own campaign, political party, political committees established and maintained by a national political party,] or any other entity shall make contributions to:

[(1)] (A) 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;

[(2)] (B) 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)] (C) 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.

(2) For purposes of this section, the length of term of an office shall be the usual length of term of the office as unaffected by reapportionment, a special election to fill a vacancy, or any other factor causing the term of the office the candidate is seeking to be less than the usual length of term of that office."

SECTION 2. Section 11-214, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) All candidates who withdraw or cease to be candidates, or committees directly associated with such candidates, individuals who receive contributions but fail to file for nomination, or committees or parties which discontinue their activities covered in this subpart, shall return all residual private contributions to the donors of such contributions within four years if their identities are known, provided that if the identity of any donor is not known, or the donor cannot be found, such contribution shall escheat to the Hawaii election campaign fund[.] or may be donated to a nonprofit organization of the candidate's choice. In the event of a death of a candidate, the candidate's committee, if any, shall return all residual private contributions to the donors of such contributions, provided that any residual contributions not returned to the donors within sixty days of the candidate's death shall escheat to the Hawaii election campaign fund or may be donated to a nonprofit organization of the candidate's choice."

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

SECTION 4. This Act shall take effect upon approval.

(Approved June 19, 2000.)

# ACT 243

H.B. NO. 2392

A Bill for an Act Relating to Health.

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

## PART I

SECTION 1. The legislature finds that approximately ninety thousand people living in Hawaii have diabetes. Native Hawaiians and Asians experience a risk of developing diabetes that is twice that of the general U.S. population. Native Hawaiians, compared to all other racial groups in the State during the years 1989 through 1991, had the highest rate of mortality due to diabetes and its complications (34.7 out of every one hundred thousand residents), a rate that was one hundred thirty per cent higher than that of any other racial group in Hawaii (15.1 out of every one hundred thousand residents). Of native Hawaiians, those of pure Hawaiian descent had the highest mortality rate (93.3 out of every one hundred thousand residents), a rate that was five hundred eighteen per cent higher than that of any other racial group in the State.

The legislature finds that effective outpatient self-management by persons with diabetes results directly in a significant reduction in both the economic and human devastation wrought by the disease. There is ample evidence that tight control of blood sugar levels through patient self-management can dramatically lower the incidence of complications, increase life expectancy, and significantly enhance the quality of life of persons with diabetes. In addition, studies show that providing individuals with diabetes with the appropriate supplies and training for self-management results in a decrease in health care services utilization and costs. Hawaii fails to recover these cost savings, however, because most health plans only provide coverage for equipment and supplies, and do not cover diabetes self-management education and training.

The purpose of this Act is to require all individual and group accident and sickness health care policies providing health care coverage, and all individual and group health care contracts issued by health maintenance organizations and mutual benefit societies, to provide coverage for outpatient diabetes self-management training, education, equipment, and supplies.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 10A to be appropriately designated to read as follows:

"**§431:10A- Coverage for diabetes.** Each policy of accident and sickness insurance providing coverage for health care, other than an accident-only, specified disease, hospital indemnity, medicare supplement, long-term care, or other limited benefit health insurance policy, that is issued or renewed in this State, shall provide coverage for outpatient diabetes self-management training, education, equipment, and supplies, if:

(1) The equipment, supplies, training, and education are medically necessary; and

(2) The equipment, supplies, training, and education are prescribed by a health care professional authorized to prescribe."

SECTION 3. 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- Diabetes coverage.** All group health care contracts under this chapter shall provide, to the extent provided under section 431:10A- , coverage for outpatient diabetes self-management training, education, equipment, and supplies."

SECTION 4. Section 432D-23, Hawaii Revised Statutes, is amended to read as follows:

"**§432D-23 Required provisions and benefits.** Notwithstanding any provision of law to the contrary, each policy, contract, plan, or agreement issued in the State after January 1, 1995, by health maintenance organizations pursuant to this chapter, shall include benefits provided in sections 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-116.5, 431:10A-116.6, [and] 431:10A-119, [and] 431:10A-120, and 431:10A- , and chapter 431M."

SECTION 5. Each insurer, health maintenance organization, and mutual benefit society required to provide coverage for outpatient diabetes self-management training, education, equipment, and supplies is requested to conduct a study of their respective diabetes coverages. Each study should be completed and a report made to the legislature no later than twenty days prior to the convening of the regular session of 2003. Each study should evaluate:

(1) The effectiveness of and any cost savings from a continuum of care utilizing a systematic approach to diabetes disease management; and
(2) The quality of care delivered by providers of diabetes self-management, including their levels of training and whether or not they are certified in diabetes education according to established national standards.

## PART II

SECTION 6. Section 431:2-216, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Beginning with fiscal year 2000-2001, and including fiscal year 2001-2002, each mutual benefit society under article 1 of chapter 432, health maintenance organization under chapter 432D, and any other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer health insurance under article 10A, shall deposit with the commissioner by July 1 of each year an assessment of $10,000 for the first zero to seventy thousand private, nongovernment members the entity covers and an additional assessment on a pro rata basis to be determined and imposed by the commissioner for covered members exceeding seventy thousand; provided that in the third year and each year thereafter, assessments shall be borne on a pro rata basis. The aggregate annual assessment shall not exceed $1,000,000. The assessment shall be credited to the insurance regulation fund. If assessments are increased, the commissioner shall provide to any organization or entity subject to the increased assessment, justification for the increase."

SECTION 7. Section 431M-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A health insurance plan shall not impose rates, terms, or conditions including service limits and financial requirements, on serious mental illness benefits, if similar rates, terms, or conditions are not applied to services for other medical or surgical conditions. This [subsection] chapter shall not apply to individual contracts; [or group hospital or medical service plan contracts, and nonprofit mutual

benefit association and health maintenance organization health plan contracts providing coverage to employers with twenty-five or fewer employees, and government employee health benefits plans under chapter 87; and] provided further that this [subsection] chapter shall not apply to QUEST medical plans under the department of human services until July 1, 2002."

SECTION 8. Act 121, Session Laws of Hawaii 1999, is amended as follows:
1. By amending section 4 to read:

"SECTION 4. (a) There is established, within the [department of health] insurance division of the department of commerce and consumer affairs for administrative purposes only, the Hawaii mental health [insurance] task force to study the financial and social implications of mandated equal mental health and substance abuse insurance coverage in Hawaii.

(b) The task force shall be [comprised] composed of the following [twenty-two] twenty-one members[:

(1) One member of the senate committee on health and human services appointed by the president of the senate;
(2) One member of the house of representatives committee on health appointed by the speaker of the house of representatives;
(3) One] with one voting member from each of the following organizations and agencies appointed by the [governor:] organization or agency:
  (A) Hawaii Medical Service Association;
  (B) Kaiser Permanente Medical Care Program;
  (C) Department of human services;
  (D) Department of health;
  (E) Equal Insurance Coalition;
  (F) NAMI, Oahu;
  (G) Hawaii Psychological Association;
  (H) Chamber of Commerce of Hawaii;
  (I) Hawaii Psychiatric Medical Association;
  (J) Hawaii Business Health Council;
  (K) [Hawaii Medical Association;] Hawaii Employers Council;
  (L) Mental Health Association of Hawaii;
  (M) National Federation of Independent Businesses;
  (N) Hawaii Nurses' Association;
  (O) [Hawaii Building and Trades Council;] Healthcare Association of Hawaii;
  (P) Hawaii Business League;
  (Q) A consumer from United Self-Help;
  (R) Hawaii Biodyne Inc.;
  (S) Queen's Health Plans;
  (T) National Association of Social Workers, Hawaii Chapter; and
  (U) A labor union selected by the insurance commissioner.

[(3)[1] The following members to be appointed by the task force:
  (A) Two members representing mental health consumers; and
  (B) One member representing small business organizations in the state;
(4)[2] One member representing the University of Hawaii school of public health, with expertise in biomedical statistics or economics.]

(c) The task force shall:
(1) Investigate ways to define and quantify unmet mental health and substance abuse needs in the State, and shall analyze possible outcome

data collection measures in order to meaningfully measure and describe:

(A) The efficacy of mental health and substance abuse treatment in the State; and

(B) Unmet mental health and substance abuse treatment needs;

(2) Describe mental health and substance abuse coverage in the State, including deductibles, copayments, and covered illnesses and conditions;

(3) Describe the relative costs of mental illness and substance abuse coverage, and other health coverage in the State;

(4) Describe mental health and substance abuse treatment utilization in the State by adults, adolescents, and children;

(5) Produce an analysis of the needs of individuals who have exhausted their mental health or substance abuse treatment benefits; and

(6) Determine the effect of additional mandated [serious] mental [illness] health insurance benefits [parity] on [mental health and substance abuse services] consumers, affected health plans, businesses, health care providers, and other concerned parties, including a review of the experience of health plans in providing the coverage, and an assessment of any impact on costs, services provided, and services utilization[; and

(7) Develop treatment and utilization guidelines for severe, biologically-based mental illnesses in addition to those covered under this Act, including, but not limited to:

(A) Major depression;

(B) Obsessive compulsive disorders;

(C) Severe panic disorders;

(D) Autism and pervasive development disorders;

(E) Multiple personality disorder (disassociative disorder);

(F) Brain damage or disfunction as defined by neuropsychological testing; and

(G) Other severe and disabling mental disorders such as severe anorexia, severe attention-deficit/hyperactivity disorder, and severe dyslexia].

(d) The task force shall perform its duties as follows:

(1) [The task force shall not utilize any moneys from the general fund to support its functions.] Members shall serve without compensation;

(2) A simple majority of the members of the task force shall constitute a quorum for the transaction of business, and all actions of the task force shall require the affirmative vote of a majority of the members present;

(3) The task force may hold public hearings as frequently as deemed necessary and feasible to receive testimony on issues relative to the task force's investigation; and

(4) The task force may invite participants, including the auditor or the auditor's representative, as deemed necessary to effectuate its purposes.

(e) The task force shall submit a report of its findings and recommendations to the speaker of the house of representatives, the president of the senate, and the governor no later than twenty days before the convening of the regular session of 2001[, and shall be dissolved upon submittal of its report. Provided that the task force shall submit the report of its findings and recommendations concerning treatment and utilization guidelines as required under subsection (c)(7) of this section, to the speaker of the house of representatives, the president of the senate, and the governor no later than twenty days before the convening of the regular session of 2000].''

2. By amending section 6 to read:

"SECTION 6. This Act shall take effect on July 1, 1999; provided that insurance, health, or service plan contracts subject to the terms of this Act and issued or renewed after December 31, 1999, shall be amended to be consistent with this Act; and provided that this Act shall be repealed on [July 1, 2005.] June 30, 2003."

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 the Act are severable.

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.[3]

SECTION 11. This Act shall take effect on July 1, 2001; provided that:
(1) Sections 6, 7, and 8 shall take effect upon approval; and
(2) Sections 6 and 7 shall be repealed on June 30, 2003; and sections 431:2-216 and 431M-5, Hawaii Revised Statutes, are reenacted in the form in which they read on the day before approval of this Act.

(Approved June 19, 2000.)

**Notes**

1. Should be "(4)".
2. Should be "(6)". Paragraph (5) is missing.
3. Edited pursuant to HRS §23G-16.5.

## ACT 244 H.B. NO. 2484

A Bill for an Act Relating to the Corporations.

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

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

"CHAPTER
HAWAII REVISED BUSINESS CORPORATION ACT
PART I. GENERAL PROVISIONS

§ **-1 Short title.** This chapter shall be known and may be cited as the "Hawaii Revised Business Corporation Act".

§ **-2 Reservation of power to amend or repeal.** The legislature has the power to amend or repeal all or part of this chapter at any time and all domestic and foreign corporations subject to this chapter are governed by the amendment or repeal.

§ **-3 Definitions.** As used in this chapter:
"Articles of incorporation" include amended and restated articles of incorporation and articles of merger.
"Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

"Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

"Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to this chapter.

"Deliver" includes mail.

"Department director" means the director of commerce and consumer affairs, unless the context otherwise requires.

"Distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

"Effective date of notice" is defined in section -14.

"Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

"Entity" includes corporation and foreign corporation; not-for-profit corporation; profit and not-for-profit unincorporated association; business trust, estate, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign government.

"Foreign corporation" means a corporation for profit incorporated under a law other than the law of this State.

"Governmental subdivision" includes authority, county, district, and municipality.

"Includes" denotes a partial definition.

"Individual" includes the estate of an incompetent or deceased individual.

"Means" denotes an exhaustive definition.

"Notice" is defined in section -14.

"Person" includes individual and entity.

"Principal office" means the office (in or out of this State) so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

"Proceeding" includes civil suit and criminal, administrative, and investigatory action.

"Record date" means the date established under part VI or VII of this chapter on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this chapter. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

"Secretary" means the corporate officer to whom the board of directors has delegated responsibility under section -231(c) for preparation and custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

"Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

"Shares" means the units into which the proprietary interests in a corporation are divided.

"State", when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.

"Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

"United States" includes district, authority, bureau, commission, department, and any other agency of the United States.

"Voting group" means all shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

§ **-4 Notice.** (a) Notice under this chapter must be in writing unless oral notice is reasonable under the circumstances.

(b) Notice may be communicated in person; by telephone, telegraph, teletype, or other form of wire or wireless communication; or by mail or private carrier. If these forms of personal notice are impracticable, notice may be communicated by a newspaper of general circulation in the area where published; or by radio; television, or other form of public broadcast communication.

(c) Written notice by a domestic or foreign corporation to its shareholder, if in a comprehensible form, is effective when mailed, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders.

(d) Written notice to a domestic or foreign corporation (authorized to transact business in this State) may be addressed to its registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report or, in the case of a foreign corporation that has not yet delivered an annual report, in its application for a certificate of authority.

(e) Except as provided in subsection (c), written notice, if in a comprehensible form, is effective at the earliest of the following:

(1) When received;

(2) Five days after its deposit in the United States Mail, as evidenced by the postmark, if mailed postpaid and correctly addressed; or

(3) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(f) Oral notice is effective when communicated if communicated in a comprehensible manner.

(g) If this chapter prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements not inconsistent with this section or other provisions of this chapter, those requirements govern.

§ **-5 Number of shareholders.** (a) For purposes of this chapter, the following identified as a shareholder in a corporation's current record of shareholders constitutes one shareholder:

(1) Three or fewer coowners;

(2) A corporation, partnership, trust, estate, or other entity; or

(3) The trustees, guardians, custodians, or other fiduciaries of a single trust, estate, or account.

(b) For purposes of this chapter, shareholdings registered in substantially similar names constitute one shareholder if it is reasonable to believe that the names represent the same person.

§ **-6 Department director; powers.** The director of commerce and consumer affairs for the State of Hawaii has the power reasonably necessary to perform the duties required of the department director by this chapter, and to administer this

chapter efficiently. The department director shall adopt necessary rules, subject to chapter 91.

## PART II. FILING DOCUMENTS

§ **-11 Filing requirements.** (a) A document must satisfy the requirements of this section, and of any other section that adds to or varies these requirements, to be entitled to filing by the department director.

(b) This chapter must require or permit filing the document in the office of the department director.

(c) The document must contain the information required by this chapter. It may contain other information as well.

(d) The document must be typewritten or printed.

(e) The document must be in the English language. A corporate name need not be in English if written in English letters or Arabic or Roman numerals, and the certificate of existence required of foreign corporations need not be in English if accompanied by a reasonably authenticated English translation.

(f) The document must be certified and executed:

(1) By the chairperson of the board of directors of a domestic or foreign corporation, by its president, or by another of its officers;

(2) If directors have not been selected or the corporation has not been formed, by an incorporator; or

(3) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

(g) The person executing the document shall sign it and state beneath or opposite that person's signature the person's name and the capacity in which the person signs. The document may but need not contain:

(1) The corporate seal;

(2) An attestation by the secretary or an assistant secretary; or

(3) An acknowledgment, verification, or proof.

(h) If the department director has prescribed a mandatory form for the document under section -12, the document must be in or on the prescribed form.

(i) The document must be delivered to the office of the department director for filing and must be accompanied by one exact or conformed copy (except as provided in sections -63 and -439), the correct filing fee, and any penalty required by this chapter.

§ **-12 Forms.** (a) The department director may prescribe and furnish on request forms for:

(1) An application for a certificate of existence;

(2) A foreign corporation's application for a certificate of authority to transact business in this State;

(3) A foreign corporation's application for a certificate of withdrawal; and

(4) The annual report.

If the department director so requires, use of these forms is mandatory.

(b) The department director may prescribe and furnish on request forms for other documents required or permitted to be filed by this chapter but their use is not mandatory.

§ **-13 Filing, service, and copying fees.** (a) The following fees shall be paid to the department director upon the filing of corporate documents:

(1) Articles of incorporation, $100;

(2) Articles of amendment, $50;

(3) Restated articles of incorporation, $50;

(4) Articles of conversion, merger, or consolidation, $200;
(5) Articles of merger (subsidiary corporation), $100;
(6) Articles of dissolution, $50;
(7) Annual report of domestic and foreign corporations organized for profit, $25;
(8) Agent's statement of change of registered office, $50 for each affected domestic corporation or foreign corporation, except if simultaneous filings are made the fee is reduced to $1 for each affected domestic corporation or foreign corporation in excess of two hundred;
(9) Any other statement, report, certificate, application, or other corporate document, except an annual report, of a domestic or foreign corporation, $50;
(10) Application for a certificate of authority, $100;
(11) Application for a certificate of withdrawal, $50;
(12) Reservation of corporate name, $20;
(13) Transfer of reservation of corporate name, $20;
(14) Good standing certificate, $25;
(15) Special handling fee for review of corporation documents, excluding articles of conversion, merger, or consolidation, $50;
(16) Special handling fee for review of articles of conversion, merger, or consolidation, $150;
(17) Special handling fee for certificates issued by the department, $20 per certificate; and
(18) Special handling fee for certification of documents, $1 per page.

(b) All special handling fees shall be credited to the special fund established for use by the department of commerce and consumer affairs in expediting the processing of documents. At least two temporary business registration assistant I positions shall be paid out of the special fund.

(c) The department director shall adjust the fees assessed under this section, as necessary from time to time, through rules adopted under chapter 91.

(d) The department director shall charge and collect:
(1) For furnishing a certified copy of any document, instrument, or paper relating to a corporation, 25 cents per page and $10 for the certificate and affixing the seal thereto; and
(2) At the time of any service of process on the department director as agent for service of process of a corporation, $25, which amount may be recovered as taxable costs by the party to the suit or action causing the service to be made if the party prevails in the suit or action.

§ **-14 Effective time and date of document.** (a) Except as provided in subsection (b) and section -15(c), a document accepted for filing is effective at the time of filing on the date it is filed, as evidenced by the department director's date and time endorsement on the original document.

(b) Articles of dissolution and articles of merger or consolidation may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document is effective at the close of business on that date. A delayed effective date for a document may not be later than the thirtieth day after the date it is filed.

§ **-15 Correcting filed document.** (a) A domestic or foreign corporation may correct a document filed by the department director if the document:
(1) Contains an incorrect statement; or
(2) Was defectively executed, attested, sealed, verified, or acknowledged.

(b) A document is corrected by:
(1) Preparing articles of correction that:
(A) Describe the document (including its filing date) or attach a copy of it to the articles;
(B) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
(C) Correct the incorrect statement or defective execution; and
(2) Delivering the articles of correction to the department director for filing.

(c) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

§ -16 **Filing duty of department director.** (a) If a document delivered to the department director for filing satisfies the requirements of section -11, the department director shall file it.

(b) The department director files a document by stamping or otherwise endorsing "Filed," together with the date and time of receipt, on both the original and the document copy. After filing a document, except as provided in sections -63 and -439, the department director shall deliver the document copy, stamped with the date and time of receipt, to the domestic or foreign corporation or its representative.

(c) If the department director refuses to file a document, the department director shall return it to the domestic or foreign corporation or its representative together with a brief, written explanation of the reason for the department director's refusal.

(d) The department director's duty to file documents under this section is ministerial. The department director's filing or refusing to file a document does not:
(1) Affect the validity or invalidity of the document in whole or part;
(2) Relate to the correctness or incorrectness of information contained in the document; and
(3) Create a presumption that the document is valid or invalid or that information contained in the document is correct or incorrect.

§ -17 **Appeal from department director's refusal to file document.** (a) If the department director refuses to file a document delivered to the department director for filing, the domestic or foreign corporation may appeal the refusal within thirty days after the return of the document in the circuit court. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the department director's explanation of the department director's refusal to file.

(b) The court may summarily order the department director to file the document or take other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

§ -18 **Evidentiary effect of copy of filed document.** A certificate attached to a copy of a document filed by the department director, bearing the department director's signature (which may be in facsimile) and the seal of the department of commerce and consumer affairs, is conclusive evidence that the original document is on file with the department director.

§ -19 **Certificates and certified copies to be received in evidence.** All certificates issued by the department director pursuant to this chapter, and all copies

of documents filed in the department director's office pursuant to this chapter when certified by the department director, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts therein stated. A certificate by the department director, under the seal of the department of commerce and consumer affairs, as to the existence or nonexistence of the facts relating to corporations, shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the existence or nonexistence of the facts therein stated.

§ -20 **Penalty for signing false document.** (a) A person commits an offense if the person signs a document the person knows is false in any material respect with intent that the document be delivered to the department director for filing.

(b) An offense under this section is a class C felony.

## PART III. INCORPORATION

§ -31 **Incorporators.** One or more individuals may act as the incorporator or incorporators of a corporation by delivering articles of incorporation to the department director for filing.

§ -32 **Articles of incorporation.** (a) The articles of incorporation must set forth:

(1) A corporate name for the corporation that satisfies the requirements of section -51;
(2) The number of shares the corporation is authorized to issue;
(3) The street address of the corporation's initial registered office and the name of its initial registered agent at that office; and
(4) The name and address of each incorporator.

(b) The articles of incorporation may set forth:

(1) The names and addresses of the individuals who are to serve as the initial directors;
(2) Provisions not inconsistent with law regarding:
    (A) The purpose or purposes for which the corporation is organized;
    (B) Managing the business and regulating the affairs of the corporation;
    (C) Defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;
    (D) A par value for authorized shares or classes of shares; and
    (E) The imposition of personal liability on shareholders for the debts of the corporation to a specified extent and upon specified conditions;
(3) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
(4) A provision eliminating or limiting the liability of a director to the corporation or its shareholders for money damages for any action taken, or any failure to take any action, as a director, subject to section -222; and
(5) A provision permitting or making obligatory indemnification of a director for liability (as defined in section -241(5)) to any person for any action taken, or any failure to take any action, as a director, except liability for:
    (A) Receipt of a financial benefit to which the director is not entitled;

(B) An intentional infliction of harm on the corporation or its shareholders;
(C) A violation of section -223; or
(D) An intentional violation of criminal law.

(c) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.

§ -33 **Incorporation.** (a) The corporate existence begins when the articles of incorporation are filed.

(b) The department director's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the State to cancel or revoke the incorporation or involuntarily dissolve the corporation.

§ -34 **Liability for pre-incorporation transactions.** All persons purporting to act as or on behalf of a corporation, knowing there was no incorporation under this chapter, are jointly and severally liable for all liabilities created while so acting.

§ -35 **Organization of corporation.** (a) After incorporation:
(1) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;
(2) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators to elect:
(i) Directors and complete the organization of the corporation; or
(ii) A board of directors who shall complete the organization of the corporation.

(b) Action required or permitted by this chapter to be taken by incorporators at an organizational meeting may be taken without a meeting if the action taken is evidenced by one or more written consents describing the action taken and signed by each incorporator.

(c) An organizational meeting may be held in or out of this State.

§ -36 **Bylaws.** (a) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(b) The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

§ -37 **Emergency bylaws.** (a) Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in subsection (d). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:
(1) Procedures for calling a meeting of the board of directors;
(2) Quorum requirements for the meeting; and
(3) Designation of additional or substitute directors.

(b) All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(c) Corporate action taken in good faith in accordance with the emergency bylaws:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

## PART IV. PURPOSES AND POWERS

§ **-41 Purposes.** (a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.

(b) A corporation engaging in a business that is subject to regulation under another statute of this State may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.

§ **-42 General powers.** Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including without limitation, the power:

(1) To sue and be sued, complain and defend in its corporate name;

(2) To have a corporate seal, which may be altered at will, and to use it, or a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

(3) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this State, for managing the business and regulating the affairs of the corporation;

(4) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property, or any legal or equitable interest in property, wherever located;

(5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;

(6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in, or obligations of, any other entity;

(7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations (which may be convertible into or include the option to purchase other securities of the corporation), and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) To be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity;

(10) To conduct its business, locate offices, and exercise the powers granted by this chapter within or without this State;

(11) To elect directors and appoint officers, employees, and agents of the corporation, define their duties, fix their compensation, and lend them money and credit;

(12) To pay pensions and establish pension plans, pension trusts, profit sharing plans, share bonus plans, share option plans, and benefit or

incentive plans for any or all of its current or former directors, officers, employees, and agents;

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes;

(14) To transact any lawful business that will aid governmental policy; and

(15) To make payments or donations, or do any other act, not inconsistent with law, that furthers the business and affairs of the corporation.

§ -43 **Emergency powers.** (a) In anticipation of or during an emergency defined in subsection (d), the board of directors of a corporation may:

(1) Modify lines of succession to accommodate the incapacity of any director, officer, employee, or agent; and

(2) Relocate the principal office, designate alternative principal offices or regional offices, or authorize the officers to do so.

(b) During an emergency defined in subsection (d), unless emergency bylaws provide otherwise:

(1) Notice of a meeting of the board of directors need be given only to those directors whom it is practicable to reach and may be given in any practicable manner, including by publication and radio; and

(2) One or more officers of the corporation present at a meeting of the board of directors may be deemed to be directors for the meeting, in order of rank and within the same rank in order of seniority, as necessary to achieve a quorum.

(c) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

(d) An emergency exists for purposes of this section if a quorum of the corporation's directors cannot readily be assembled because of some catastrophic event.

§ -44 **Ultra vires.** (a) Except as provided in subsection (b), the validity of corporate action may not be challenged on the ground that the corporation lacks or lacked power to act.

(b) A corporation's power to act may be challenged:

(1) In a proceeding by a shareholder against the corporation to enjoin the act;

(2) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, against an incumbent or former director, officer, employee, or agent of the corporation; or

(3) In a proceeding by the attorney general under section -411.

(c) In a shareholder's proceeding under subsection (b)(1) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

## PART V. NAME

§ -51 **Corporate name.** (a) A corporate name:

(1) Must contain the word "corporation", "incorporated", or "limited", or the abbreviation "corp.", "inc.", or "ltd.", or words or abbreviations of like import in another language; and

(2) May not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section -41 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name may not be the same as or substantially identical to:

(1) The name of any domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business or conduct affairs in this State;

(2) A name the exclusive right to which is, at the time, reserved in this State;

(3) The fictitious name adopted by a foreign corporation authorized to transact business in this State because its real name is unavailable; and

(4) Any trade name, trademark, or service mark registered in this State.

(c) A corporation may apply to the department director for authorization to use a name that is substantially identical upon the department director's records from one or more of the names described in subsection (b). The department director shall authorize use of the name applied for if:

(1) The other entity or holder of a reserved or registered name consents to the use in writing and one or more words are added to make the name distinguishable from the name of the applying corporation; or

(2) The applicant delivers to the department director a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) A corporation may use the name (including the fictitious name) of another domestic or foreign corporation that is used in this State if the other corporation is incorporated or authorized to transact business in this State and the proposed user corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(e) This chapter does not control the use of fictitious names.

§ **-52 Reserved name.** (a) A person may reserve the exclusive use of a corporate name, by delivering an application to the department director for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the department director finds that the corporate name applied for is available, the department director shall reserve the name for the applicant's exclusive use for a one hundred twenty-day period.

(b) The owner of a reserved corporate name may transfer the reservation to another person by delivering to the department director a signed notice of the transfer that states the name and address of the transferee.

§ **-53 Administrative order of abatement for infringement of corporate name.** (a) Any domestic corporation in good standing or foreign corporation authorized to do business in this State claiming that the name of any domestic corporation, partnership, limited partnership, limited liability partnership, or limited liability company existing under the laws of this State, or any foreign corporation, partnership, limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar to, its name may file a petition with the department director for an administrative order of abatement to address the infringement of its name. The

petition shall set forth the facts and authority that support the petitioner's claim that further use of the name should be abated. The petitioner, at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by chapter 91 and the registrant shall be given an opportunity to respond to the petition at the hearing. The notice shall be made and the hearing held in accordance with the contested case provisions of chapter 91.

(b) In addition to any other remedy or sanction allowed by law, the order of abatement may:

(1) Allow the entity to retain its registered name, but:
   (A) Require the entity to register a new trade name with the department director; and
   (B) Require the entity to conduct business in this State under this new trade name; or

(2) (A) Require the entity to change its registered name;
   (B) Require the entity to register the new name with the department director; and
   (C) Require the entity to conduct business in this State under its new name.

If the entity fails to comply with the order of abatement within sixty days, the department director may involuntarily dissolve or terminate the entity, or cancel or revoke the entity's registration or certificate of authority; after the time to appeal has lapsed and no appeal has been timely filed. The department director shall mail notice of the dissolution, termination, or cancellation to the entity at its last known mailing address. The entity shall wind up its affairs in accordance with this chapter or chapter 415A, 415B, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the department director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal in circuit court within thirty days after the issuance of the department director's order. The trial by the circuit court of any such proceeding shall be de novo. Review of any final judgment of the circuit court under this section shall be governed by chapter 602.

## PART VI. OFFICE AND AGENT

§ **-61 Registered office and registered agent.** (a) Except as provided in subsection (b), each corporation must continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:
   (A) An individual who resides in this State and whose business office is identical with the registered office;
   (B) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or
   (C) A foreign corporation or not-for-profit foreign corporation authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

(b) A corporation may, but shall not be required, to maintain a registered office and a registered agent in this State during the time that the corporation has at least one officer or director who is a resident of this State.

§ **-62 Designation or change of registered office or registered agent.** (a) A corporation may designate or change its registered office or registered agent by delivering to the department director for filing a statement of change that sets forth:

(1) The name of the corporation;

(2) The street address of its current registered office;
(3) If the current registered office is to be changed, the street address of the new registered office;
(4) The name of its current registered agent;
(5) If the current registered agent is to be changed, the name of the new registered agent; and
(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If the street address of the registered agent's business office changes, the registered agent may change the street address of the corporation's registered office by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

§ **-63 Resignation of registered agent.** (a) A registered agent may resign from the registered agent's appointment by signing and delivering to the department director for filing the signed original and two exact or conformed copies of a statement of resignation. The statement may include a statement that the registered office is also discontinued.

(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the corporation at its principal office.

(c) The appointment of the agent is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ **-64 Service on corporation.** (a) Service of any notice or process authorized by law issued against any corporation, whether domestic or foreign, by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent, officer, or director of the corporation who is found within the jurisdiction of the court, officer, or board; or if any registered agent, officer, or director cannot be found, upon the manager or superintendent of the corporation or any person who is found in charge of the property, business, or office of the corporation within the jurisdiction.

(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and in case the corporation has not filed with the department director pursuant to this chapter, the name of a registered agent upon whom legal notice and process from the courts of the State may be served, and likewise if the person named is not found within the State, service may be made upon the corporation by registered or certified mail, return receipt requested, addressed to the secretary of the corporation at its principal office. Service using registered or certified mail is perfected at the earliest of:

(1) The date the corporation receives the mail;
(2) The date shown on the return receipt, if signed on behalf of the corporation; or
(3) Five days after its deposit in the United States mail, as evidenced by postmark, if mailed postpaid and correctly addressed.

(c) Nothing contained herein shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.

## PART VII. SHARES AND DISTRIBUTIONS
### A. SHARES

§ -71 **Authorized shares.** (a) The articles of incorporation must prescribe the classes of shares and the number of shares of each class that the corporation is authorized to issue. If more than one class of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class, and, prior to the issuance of shares of a class, the preferences, limitations, and relative rights of that class must be described in the articles of incorporation. All shares of a class must have preferences, limitations, and relative rights identical with those of other shares of the same class except to the extent otherwise permitted by section -72.

(b) The articles of incorporation must authorize:

(1) One or more classes of shares that together have unlimited voting rights; and

(2) One or more classes of shares (which may be the same class or classes as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(c) The articles of incorporation may authorize one or more classes of shares that:

(1) Have special, conditional, or limited voting rights, or no right to vote, except to the extent prohibited by this chapter;

(2) Are redeemable or convertible as specified in the articles of incorporation:

(A) At the option of the corporation, the shareholder, or another person or upon the occurrence of a designated event;

(B) For cash, indebtedness, securities, or other property; and

(C) In a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(3) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative; or

(4) Have preference over any other class of shares with respect to distributions, including dividends and distributions upon the dissolution of the corporation.

(d) The description of the designations, preferences, limitations, and relative rights of share classes in subsection (c) is not exhaustive.

§ -72 **Terms of class or series determined by board of directors.** (a) If and to the extent the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, and relative rights (within the limits set forth in section -71) of:

(1) Any class of shares before the issuance of any shares of that class; or

(2) One or more series within a class before the issuance of any shares of that series.

(b) Each series of a class must be given a distinguishing designation.

(c) All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, with those of other series of the same class.

(d) Before issuing any shares of a class or series created under this section, the corporation must deliver to the department director for filing an articles of amendment, or a resolution, which is effective without shareholder action, that sets forth:

(1) The name of the corporation;
(2) The text of the amendment or resolution determining the terms of the class or series or shares;
(3) The date it was adopted; and
(4) A statement that the amendment or resolution was duly adopted by the board of directors.

Upon the filing of the articles of amendment or resolution by the department director, it shall constitute an amendment of the articles of incorporation.

§ -73 **Issued and outstanding shares.** (a) A corporation may issue the number of shares of each class or series authorized by the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired, redeemed, converted, or canceled.

(b) The reacquisition, redemption, or conversion of outstanding shares is subject to the limitations of subsection (c) and section -111.

(c) At all times that shares of the corporation are outstanding, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation upon dissolution must be outstanding.

§ -74 **Fractional shares.** (a) A corporation may:
(1) Issue fractions of a share or pay in money the value of fractions of a share;
(2) Arrange for disposition of fractional shares by the shareholders; or
(3) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(b) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by section -86(b).

(c) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(d) The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:
(1) That the scrip will become void if not exchanged for full shares before a specified date; and,
(2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

## B. ISSUANCE OF SHARES

§ -81 **Subscription for shares before incorporation.** (a) A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

(b) The board of directors may determine the payment terms of subscription for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

(c) Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

(d) If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may sell the shares if the debt remains unpaid for more than twenty days after the corporation sends written demand for payment to the subscriber.

(e) A subscription agreement entered into after incorporation is a contract between the subscriber and the corporation subject to section -82.

§ **-82 Issuance of shares.** (a) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(b) The board of directors may authorize shares to be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(c) Before the corporation issues shares, the board of directors must determine that the consideration received or to be received for shares to be issued is adequate. That determination by the board of directors is conclusive insofar as the adequacy of consideration for the issuance of shares relates to whether the shares are validly issued, fully paid, and nonassessable.

(d) When the corporation receives the consideration for which the board of directors authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.

(e) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

§ **-83 Liability of shareholders.** (a) A purchaser from a corporation of the corporation's own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were authorized to be issued (section -82) or specified in the subscription agreement (section -81).

(b) Unless otherwise provided in the articles of incorporation a shareholder of a corporation is not personally liable for the acts or debts of the corporation except that such shareholder may become personally liable by reason of such shareholder's own acts or conduct.

§ **-84 Share dividends.** (a) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series. An issuance of shares under this subsection is a share dividend.

(b) Shares of one class or series may not be issued as a share dividend in respect of shares of another class or series unless:

(1) The articles of incorporation so authorize;

(2) A majority of the votes entitled to be cast by the class or series to be issued approve the issue; or

(3) There are no outstanding shares of the class or series to be issued.

(c) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

§ -85 **Share options.** A corporation may issue rights, options, or warrants for the purchase of shares of the corporation. The board of directors shall determine the terms upon which the rights, options, or warrants are issued, their form and content, and the consideration for which the shares are to be issued.

§ -86 **Form and content of certificates.** (a) Shares may but need not be represented by certificates. Unless this chapter or another statute expressly provides otherwise, the rights and obligations of shareholders are identical whether or not their shares are represented by certificates.

(b) At a minimum each share certificate must state on its face:

(1) The name of the issuing corporation and that it is organized under the law of this State;

(2) The name of the person to whom issued; and

(3) The number and class of shares and the designation of the series, if any, the certificate represents.

(c) If the issuing corporation is authorized to issue different classes of shares or different series within a class, the designations, relative rights, preferences, and limitations applicable to each class and the variations in rights, preferences, and limitations determined for each series (and the authority of the board of directors to determine variations for future series) must be summarized on the front or back of each certificate. Alternatively, each certificate may state conspicuously on its front or back that the corporation will furnish the shareholder this information on request in writing and without charge.

(d) Each share certificate:

(1) Must be signed (either manually or in facsimile) by two officers designated in the bylaws or by the board of directors; and

(2) May bear the corporate seal or its facsimile.

(e) If the person who signed (either manually or in facsimile) a share certificate no longer holds office when the certificate is issued, the certificate is nevertheless valid.

§ -87 **Shares without certificates.** (a) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may authorize the issuance of some or all of the shares of any or all of its classes or series without certificates. The authorization does not affect shares already represented by certificates until they are surrendered to the corporation.

(b) Within a reasonable time after the issuance or transfer of shares without certificates, the corporation shall send the shareholder a written statement of the information required on certificates by section -86(b) and (c), and, if applicable, section -88.

§ -88 **Restriction on transfer of shares and other securities.** (a) The articles of incorporation, bylaws, an agreement among shareholders, or an agreement between shareholders and the corporation may impose restrictions on the transfer or registration of transfer of shares of the corporation. A restriction does not affect shares issued before the restriction was adopted unless the holders of the shares are parties to the restriction agreement or voted in favor of the restriction.

(b) A restriction on the transfer or registration of transfer of shares is valid and enforceable against the holder or a transferee of the holder if the restriction is authorized by this section and its existence is noted conspicuously on the front or back of the certificate or is contained in the information statement required by section -87(b). Unless so noted, a restriction is not enforceable against a person without knowledge of the restriction.

(c) A restriction on the transfer or registration of transfer of shares is authorized:

(1) To maintain the corporation's status when it is dependent on the number or identity of its shareholders;

(2) To preserve exemptions under federal or state securities law; or

(3) For any other reasonable purpose.

(d) A restriction on the transfer or registration of transfer of shares may:

(1) Obligate the shareholder first to offer the corporation or other persons (separately, consecutively, or simultaneously) an opportunity to acquire the restricted shares;

(2) Obligate the corporation or other persons (separately, consecutively, or simultaneously) to acquire the restricted shares;

(3) Require the corporation, the holders of any class of its shares, or another person to approve the transfer of the restricted shares, if the requirement is not manifestly unreasonable; or

(4) Prohibit the transfer of the restricted shares to designated persons or classes of persons, if the prohibition is not manifestly unreasonable.

(e) For purposes of this section, ''shares'' includes a security convertible into or carrying a right to subscribe for or acquire shares.

§ **-89 Expense of issue.** A corporation may pay the expenses of selling or underwriting its shares, and of organizing or reorganizing the corporation, from the consideration received for shares.

## C. SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS AND CORPORATION

§ **-101 Shareholders' preemptive rights.** (a) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares except to the extent the articles of incorporation so provide.

(b) A statement included in the articles of incorporation that ''the corporation elects to have preemptive rights'' (or words of similar import) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(1) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the right, to acquire proportional amounts of the corporation's unissued shares upon the decision of the board of directors to issue them;

(2) A shareholder may waive the shareholder's preemptive right. A waiver evidenced by a writing is irrevocable even though it is not supported by consideration;

(3) There is no preemptive right with respect to:

(A) Shares issued as compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates;

(B) Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, its subsidiaries or affiliates; or

(C) Shares authorized in articles of incorporation that are issued within six months from the effective date of incorporation;

(D) Shares sold otherwise than for money;

(4) Holders of shares of any class without general voting rights but with preferential rights to distributions or assets have no preemptive rights with respect to shares of any class;

(5) Holders of shares of any class with general voting rights but without preferential rights to distributions or assets have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights; or

(6) Shares subject to preemptive rights that are not acquired by shareholders may be issued to any person for a period of one year after being offered to shareholders at a consideration set by the board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of one year is subject to the shareholders' preemptive rights.

(c) For purposes of this section, "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

(d) Nothing in this section shall affect the validity of any action taken prior to April 21, 1953, by any corporation.

§ **-102 Corporation's acquisition of its own shares.** (a) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(b) If the articles of incorporation prohibit the reissuance of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon delivery to the department director for filing, a statement of cancellation showing the reduction in the authorized shares.

(c) The statement of cancellation must set forth:

(1) The name of the corporation;

(2) The number of acquired shares canceled, itemized by class and series; and

(3) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

## D. DISTRIBUTIONS

§ **-111 Distributions to shareholders.** (a) A board of directors may authorize and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (c).

(b) If the board of directors does not fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's shares), it is the date the board of directors authorizes the distribution.

(c) No distribution may be made if, after giving it effect:

(1) The corporation would not be able to pay its debts as they become due in the usual course of business; or

(2) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(d) The board of directors may base a determination that a distribution is not prohibited under subsection (c) either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(e) Except as provided in subsection (g), the effect of a distribution under subsection (c) is measured:

(1) In the case of distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of:
   (A) The date money or other property is transferred or debt incurred by the corporation; or
   (B) The date the shareholder ceases to be a shareholder with respect to the acquired shares;
(2) In the case of any other distribution of indebtedness, as of the date the indebtedness is distributed; and
(3) In all other cases, as of:
   (A) The date the distribution is authorized if the payment occurs within one hundred twenty days after the date of authorization; or
   (B) The date the payment is made if it occurs more than one hundred twenty days after the date of authorization.

(f) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent subordinated by agreement.

(g) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (c) if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section. If the indebtedness is issued as a distribution, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made.

## PART VIII. SHAREHOLDERS
### A. MEETINGS

§ **-121 Annual meeting.** (a) A corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws.

(b) Annual shareholders' meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

(c) The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

§ **-122 Special meeting.** (a) A corporation shall hold a special meeting of shareholders:

(1) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or
(2) If the holders of at least ten per cent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

(b) If not otherwise fixed under section -123 or -127, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

(c) Special shareholders' meetings may be held in or out of this State at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in

accordance with the bylaws, special meetings shall be held at the corporation's principal office.

(d) Only business within the purpose or purposes described in the meeting notice required by section -125(c) may be conducted at a special shareholders' meeting.

§ **-123 Court-ordered meeting.** (a) The circuit court may summarily order a meeting to be held:

(1) On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting; or

(2) On application of a shareholder who signed a demand for a special meeting valid under section -122, if:

(A) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(B) The special meeting was not held in accordance with the notice.

(b) The court may fix the time and place of the meeting, determine the shares entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting (or direct that the votes represented at the meeting constitute a quorum for action on those matters), and enter other orders necessary to accomplish the purpose or purposes of the meeting.

§ **-124 Action without meeting.** (a) Action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents describing the action taken, signed before or after the intended effective date of the action by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under section -123 or -127, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a).

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

(d) If this chapter requires that notice of proposed action be given to nonvoting shareholders and the action is to be taken by unanimous consent of the voting shareholders, the corporation must give its nonvoting shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to nonvoting shareholders in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

§ **-125 Notice of meeting.** (a) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

(b) Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

(c) Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

(d) If not otherwise fixed under section -123 or -127, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(e) Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section -127, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

§ **-126 Waiver of notice.** (a) A shareholder may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) A shareholder's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting; and

(2) Waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented.

§ **-127 Record date.** (a) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(b) A record date fixed under this section may not be more than seventy days before the meeting or action requiring a determination of shareholders.

(c) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(d) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date.

B. VOTING

§ **-141 Shareholders' list for meeting.** (a) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group (and within each voting group by class or series of shares) and show the address of and number of shares held by each shareholder.

(b) The shareholders' list must be available for inspection by any shareholder, beginning two business days after notice of the meeting is given for which the list was prepared and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the

meeting will be held. A shareholder, the shareholder's agent, or attorney is entitled on written demand to inspect and to copy the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(c) The corporation shall make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(d) If the corporation refuses to allow a shareholder, the shareholder's agent or attorney to inspect the shareholders' list before or at the meeting (or copy the list as permitted by subsection (b)), the circuit court, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(e) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of action taken at the meeting.

§ -142 **Voting entitlement of shares.** (a) Except as provided in subsections (b) and (d) or unless the articles of incorporation provide otherwise, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting. Only shares are entitled to vote.

(b) Absent special circumstances, the shares of a corporation are not entitled to vote if they are owned, directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.

(c) Subsection (b) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(d) Redeemable shares are not entitled to vote after notice of redemption is mailed to the holders and a sum sufficient to redeem the shares has been deposited with a bank, trust company, or other financial institution under an irrevocable obligation to pay the holders the redemption price on surrender of the shares.

§ -143 **Proxies.** (a) A shareholder may vote the shareholder's shares in person or by proxy.

(b) A shareholder may appoint a proxy to vote or otherwise act for the shareholder by signing an appointment form. The appointment form shall be signed by either the shareholder personally or by the shareholder's attorney-in-fact. A shareholder may authorize another person to act as a proxy for the shareholder by:

(1) Executing a writing authorizing another person or persons to act as a proxy for the shareholder, which may be accomplished by the shareholder or the shareholder's authorized attorney-in-fact, officer, director, employee, or agent signing the writing or causing the shareholder's signature to be affixed to the writing by any reasonable means, including without limitation the use of a facsimile signature; or

(2) Transmitting or authorizing the transmission of a telegram, cablegram, facsimile, or other means of electronic transmission authorizing the person or persons to act as a proxy for the shareholders to the person or persons who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization, or similar agent duly authorized by the person who will be the holder of the proxy to receive the transmission; provided that any such transmission shall specify that the transmission was authorized by the shareholder.

A copy, facsimile telecommunication, or other reliable reproduction of the writing or transmission created pursuant to the foregoing may be used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used; provided that any such copy, facsimile telecommunica-

tion, or other reproduction shall be a complete reproduction of the entire original writing or transmission.

(c) An appointment of a proxy is effective when received by the secretary or other officer or agent authorized to tabulate votes. An appointment is valid for eleven months unless a longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable by the shareholder unless the appointment form conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(1) A pledgee;
(2) A person who purchased or agreed to purchase the shares;
(3) A creditor of the corporation who extended it credit under terms requiring the appointment;
(4) An employee of the corporation whose employment contract requires the appointment; or
(5) A party to a voting agreement created under section -162.

(e) The death or incapacity of the shareholder appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises authority under the appointment.

(f) An appointment made irrevocable under subsection (d) is revoked when the interest with which it is coupled is extinguished.

(g) A transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on the certificate representing the shares or on the information statement for shares without certificates.

(h) Subject to section -145 and to any express limitation on the proxy's authority appearing on the face of the appointment form, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

§ **-144 Shares held by nominees.** (a) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure.

(b) The procedure may set forth:

(1) The types of nominees to which it applies;
(2) The rights or privileges that the corporation recognizes in a beneficial owner;
(3) The manner in which the procedure is selected by the nominee;
(4) The information that must be provided when the procedure is selected;
(5) The period for which selection of the procedure is effective; and
(6) Other aspects of the rights and duties created.

§ **-145 Corporation's acceptance of votes, etc.** (a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, acting in good faith, is entitled to accept the vote, consent, waiver, or proxy appointment and to give it effect as the act of the shareholder.

(b) If the name signed on a vote, consent, waiver, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and give it effect as the act of the shareholder if:

(1) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;
(2) The name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
(3) The name signed purports to be that of a receiver or trustee in bankruptcy of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, consent, waiver, or proxy appointment;
(4) The name signed purports to be that of a pledgee, beneficial owner, or attorney-in-fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, consent, waiver, or proxy appointment; or
(5) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the coowners and the person signing appears to be acting on behalf of all the coowners.

(c) The corporation is entitled to reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has reasonable basis to doubt the validity of the signature on the vote, consent, waiver, or proxy appointment or about the signatory's authority to sign for the shareholder.

(d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section are not liable in damages to the shareholder for the consequences of the acceptance or rejection.

(e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

§ **-146 Quorum and voting requirements for voting groups.** (a) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter provide otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(b) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.

(c) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter require a greater number of affirmative votes.

(d) An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in subsection (a) or (c) is governed by section -148.

(e) The election of directors is governed by section -149.

§ **-147 Action by single and multiple voting groups.** (a) If the articles of incorporation or this chapter provide for voting by a single voting group on a matter,

action on that matter is taken when voted upon by that voting group as provided in section -146.

(b) If the articles of incorporation or this chapter provide for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in section -146. Action may be taken by one voting group on a matter even though no action is taken by another voting group entitled to vote on the matter.

§ **-148 Greater quorum or voting requirements.** (a) The articles of incorporation may provide for a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is provided for by this chapter.

(b) An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

§ **-149 Voting for directors; cumulative voting.** (a) Unless otherwise provided in the articles of incorporation, directors shall be elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present.

(b) If, not less than forty-eight hours prior to the time fixed for any annual or special meeting, any shareholder or shareholders deliver to any officer of the corporation, a request that the election of directors to be elected at the meeting be by cumulative voting, then the directors to be elected at the meeting shall be chosen as follows:

(1) Each shareholder present in person or represented by proxy at the meeting shall have a number of votes equal to the number of shares of capital stock owned by the shareholder multiplied by the number of directors to be elected at the meeting;

(2) Each shareholder shall be entitled to cumulate the votes of the shareholder and to give all of the votes to one nominee or to distribute the votes among any or all of the nominees; and

(3) The nominees receiving the highest number of votes on the foregoing basis, up to the total number of directors to be elected at the meeting, shall be the successful nominees.

The right to have directors elected by cumulative voting as provided in this section shall exist notwithstanding that provision therefor is not included in the articles of incorporation or bylaws, and this right shall not be restricted or qualified by any provisions of the articles of incorporation or bylaws; provided that this right may be restricted, qualified, or eliminated by a provision of the articles of incorporation or bylaws of any corporation having a class of equity securities registered pursuant to the Securities Exchange Act of 1934, as amended, which are either listed on a national securities exchange or traded over-the-counter on the National Market of the National Association of Securities Dealers, Inc. Automated Quotation System. This section shall not prevent the filling of vacancies in the board of directors, which vacancies may be filled in a manner that may be provided in the articles of incorporation or bylaws.

## C. VOTING TRUSTS AND AGREEMENTS

§ **-161 Voting trusts.** (a) One or more shareholders may create a voting trust, conferring on a trustee the right to vote or otherwise act for them, by signing an agreement setting out the provisions of the trust (which may include anything

consistent with its purpose) and transferring their shares to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the trust, together with the number and class of shares each shareholder transferred to the trust, and deliver copies of the list and agreement to the corporation's principal office.

(b) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. A voting trust is valid for not more than ten years after its effective date unless extended under subsection (c).

(c) All or some of the parties to a voting trust may extend it for additional terms of not more than ten years each by signing written consent to the extension. An extension is valid for ten years from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.

§ -162 **Voting agreements.** (a) Two or more shareholders may provide for the manner in which they will vote their shares by signing an agreement for that purpose. A voting agreement created under this section is not subject to section -161.

(b) A voting agreement created under this section is specifically enforceable.

§ -163 **Shareholder agreements.** (a) An agreement among the shareholders of a corporation that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this chapter in that it:

(1) Eliminates the board of directors or restricts the discretion or powers of the board of directors;
(2) Governs the authorization or making of distributions whether or not in proportion to ownership of shares, subject to limitations in section -111;
(3) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;
(4) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;
(5) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;
(6) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders;
(7) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency; or
(8) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them, and is not contrary to public policy.

(b) An agreement authorized by this section shall be:

(1) Set forth:

(A) In the articles of incorporation or bylaws and approved by all persons who are shareholders at the time of the agreement; or

(B) In a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(2) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(3) Valid for ten years, unless the agreement provides otherwise.

(c) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by section -87(b). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of ninety days after discovery of the existence of the agreement or two years after the time of purchase of the shares.

(d) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, may adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(e) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom the discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(f) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(g) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made.

## D. DERIVATIVE PROCEEDINGS

§ **-171 Definitions.** As used in this subpart:

"Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided in section -178, in the right of a foreign corporation.

''Shareholder'' includes a beneficial owner whose shares are held in a voting trust or held by a nominee on the beneficial owner's behalf.

§ -172 **Standing.** A shareholder may not commence or maintain a derivative proceeding unless the shareholder:

(1) Was a shareholder of the corporation at the time of the act or omission complained of or became a shareholder through transfer by operation of law from one who was a shareholder at that time; and

(2) Fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

§ -173 **Demand.** No shareholder may commence a derivative proceeding until:

(1) A written demand has been made upon the corporation to take suitable action; and

(2) Ninety days have expired from the date the demand was made unless the shareholder has earlier been notified that the demand has been rejected by the corporation or unless irreparable injury to the corporation would result by waiting for the expiration of the ninety-day period.

§ -174 **Stay of proceedings.** If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for a period that the court deems appropriate.

§ -175 **Dismissal.** (a) A derivative proceeding shall be dismissed by the court on motion by the corporation if one of the groups specified in subsection (b) or (f) has determined in good faith after conducting a reasonable inquiry upon which its conclusions are based that the maintenance of the derivative proceeding is not in the best interests of the corporation.

(b) Unless a panel is appointed pursuant to subsection (f), the determination in subsection (a) shall be made by:

(1) A majority vote of independent directors present at a meeting of the board of directors if the independent directors constitute a quorum; or

(2) A majority vote of a committee consisting of two or more independent directors appointed by majority vote of independent directors present at a meeting of the board of directors, whether or not the independent directors constituted a quorum.

(c) None of the following by itself shall cause a director to be considered not independent for purposes of this section:

(1) The nomination or election of the director by persons who are defendants in the derivative proceeding or against whom action is demanded;

(2) The naming of the director as a defendant in the derivative proceeding or as a person against whom action is demanded; or

(3) The approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

(d) If a derivative proceeding is commenced after a determination has been made rejecting a demand by a shareholder, the complaint shall allege with particularity facts establishing either:

(1) That a majority of the board of directors did not consist of independent directors at the time the determination was made; or

(2) That the requirements of subsection (a) have not been met.

(e) If a majority of the board of directors does not consist of independent directors at the time the determination is made, the corporation shall have the burden

of proving that the requirements of subsection (a) have been met. If a majority of the board of directors consists of independent directors at the time the determination is made, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

(f) The court may appoint a panel of one or more independent persons upon motion by the corporation to make a determination whether the maintenance of the derivative proceeding is in the best interests of the corporation. In the case, the plaintiff shall have the burden of proving that the requirements of subsection (a) have not been met.

§ -176 **Discontinuance or settlement.** A derivative proceeding may not be discontinued or settled without the court's approval. If the court determines that a proposed discontinuance or settlement will substantially affect the interests of the corporation's shareholders or a class of shareholders, the court shall direct that notice be given to the shareholders affected.

§ -177 **Payment of expenses.** On termination of the derivative proceeding the court may:

(1) Order the corporation to pay the plaintiff's reasonable expenses (including counsel fees) incurred in the proceeding if it finds that the proceeding has resulted in a substantial benefit to the corporation;

(2) Order the plaintiff to pay any defendant's reasonable expenses (including counsel fees) incurred in defending the proceeding if it finds that the proceeding was commenced or maintained without reasonable cause or for an improper purpose; or

(3) Order a party to pay an opposing party's reasonable expenses (including counsel fees) incurred because of the filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or other paper was not well grounded in fact, after reasonable inquiry, or warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and was interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation.

§ -178 **Applicability to foreign corporations.** In any derivative proceeding in the right of a foreign corporation, the matters covered by this subpart shall be governed by the laws of the jurisdiction of incorporation of the foreign corporation except for sections -174, -176, and -177.

## PART IX. DIRECTORS AND OFFICERS
### A. BOARD OF DIRECTORS

§ -191 **Requirement for and duties of board of directors.** (a) Except as provided in section -163, each corporation must have a board of directors.

(b) All corporate powers shall be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors, subject to any limitation set forth in the articles of incorporation or in an agreement authorized under section -163.

§ -192 **Qualifications of directors.** The articles of incorporation or bylaws may prescribe qualifications for directors. A director need not be a resident of this State or a shareholder of the corporation unless the articles of incorporation or bylaws so prescribe.

§ -193 **Number and election of directors.** (a) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(b) If a board of directors has power to fix or change the number of directors, the board may increase or decrease by thirty per cent or less the number of directors last approved by the shareholders, but only the shareholders may increase or decrease by more than thirty per cent the number of directors last approved by the shareholders.

(c) The articles of incorporation or bylaws may establish a variable range for the size of the board of directors by fixing a minimum and maximum number of directors. If a variable range is established, the number of directors may be fixed or changed from time to time, within the minimum and maximum, by the shareholders or the board of directors. After shares are issued, only the shareholders may change the range for the size of the board or change from a fixed to a variable-range size board or vice versa.

(d) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless their terms are staggered under section -196.

§ -194 **Election of directors by certain classes of shareholders.** If the articles of incorporation authorize dividing the shares into classes, the articles may also authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares. A class or classes of shares entitled to elect one or more directors is a separate voting group for purposes of the election of directors.

§ -195 **Terms of directors generally.** (a) The terms of the initial directors of a corporation expire at the first shareholders' meeting at which directors are elected.

(b) The terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered under section -196.

(c) A decrease in the number of directors does not shorten an incumbent director's term.

(d) The term of a director elected to fill a vacancy expires at the next shareholders' meeting at which directors are elected.

(e) Despite the expiration of a director's term, the director continues to serve until the director's successor is elected and qualifies or until there is a decrease in the number of directors.

§ -196 **Staggered terms for directors.** If there are nine or more directors, the articles of incorporation may provide for staggering their terms by dividing the total number of directors into two or three groups, with each group containing one half or one-third of the total, as near as may be. In that event, the terms of directors in the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be chosen for a term of two years or three years, as the case may be, to succeed those whose terms expire.

§ -197 **Resignation of directors.** (a) A director may resign at any time by delivering written notice to the board of directors, its chairperson, or the corporation.

(b) A resignation is effective when the notice is delivered unless the notice specifies a later effective date.

§ -198 **Removal of directors by shareholders.** (a) The shareholders may remove one or more directors with or without cause unless the articles of incorporation provide that directors may be removed only for cause.

(b) If a director is elected by a voting group of shareholders, only the shareholders of that voting group may participate in the vote to remove the director.

(c) If cumulative voting is authorized, a director may not be removed if the number of votes sufficient to elect the director under cumulative voting is voted against the director's removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director.

(d) A director may be removed by the shareholders only at a meeting called for the purpose of removing the director and the meeting notice must state that the purpose, or one of the purposes, of the meeting is removal of the director.

§ -199 **Removal of directors by judicial proceeding.** (a) The circuit court may remove a director of the corporation from office in a proceeding commenced either by the corporation or by its shareholders holding at least ten per cent of the outstanding shares of any class if the court finds that:

(1) The director engaged in fraudulent or dishonest conduct, or gross abuse of authority or discretion, with respect to the corporation; and

(2) Removal is in the best interest of the corporation.

(b) The court that removes a director may bar the director from reelection for a period prescribed by the court.

(c) If shareholders commence a proceeding under subsection (a), they shall make the corporation a party defendant.

§ -200 **Vacancy on board.** (a) Unless the articles of incorporation provide otherwise, if a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors:

(1) The shareholders may fill the vacancy;

(2) The board of directors may fill the vacancy; or

(3) If the directors remaining in office constitute fewer than a quorum of the board, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

(b) If the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders.

(c) A vacancy that will occur at a specific later date (by reason of a resignation effective at a later date under section -197(b) or otherwise) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

§ -201 **Compensation of directors.** Unless the articles of incorporation or bylaws provide otherwise, the board of directors may fix the compensation of directors.

## B. MEETINGS AND ACTION OF THE BOARD

§ -211 **Meetings.** (a) The board of directors may hold regular or special meetings in or out of this State.

(b) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all directors participating may simultaneously hear each other during the

meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

§ -212 **Action without meeting.** (a) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter to be taken at a board of directors' meeting may be taken without a meeting if the action is taken by all members of the board. The action must be evidenced by one or more written consents describing the action taken, signed before or after the intended effective date of the action by each director, and included in the minutes or filed with the corporate records reflecting the action taken.

(b) Action taken under this section is effective when the last director signs the consent, unless the consent specifies a different effective date.

(c) A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

§ -213 **Notice of meeting.** (a) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting.

(b) Unless the articles of incorporation or bylaws provide for a longer or shorter period, special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting. The notice need not describe the purpose of the special meeting unless required by the articles of incorporation or bylaws.

§ -214 **Waiver of notice or meeting.** (a) A director may waive any notice required by this chapter, the articles of incorporation, or bylaws before or after the date and time stated in the notice. Except as provided by subsection (b), the waiver must be in writing, signed by the director entitled to the notice, and filed with the minutes or corporate records.

(b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting (or promptly upon the director's arrival) objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to action taken at the meeting.

§ -215 **Quorum and voting.** (a) Unless the articles of incorporation or bylaws require a greater number or unless otherwise specifically provided in this chapter, a quorum of a board of directors consists of:

(1) A majority of the fixed number of directors if the corporation has a fixed board size; or

(2) A majority of the number of directors prescribed, or if no number is prescribed the number in office immediately before the meeting begins, if the corporation has a variable-range size board.

(b) The articles of incorporation or bylaws may authorize a quorum of a board of directors to consist of no fewer than one-third of the fixed or prescribed number of directors determined under subsection (a).

(c) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(d) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:

(1) The director objects at the beginning of the meeting (or promptly upon the director's arrival) to holding it or transacting business at the meeting;
(2) The director's dissent or abstention from the action taken is entered in the minutes of the meeting; or
(3) The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the action taken.

§ -216 **Committees.** (a) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees and appoint members of the board of directors to serve on them. Each committee must have two or more members, who serve at the pleasure of the board of directors.

(b) The creation of a committee and appointment of members to it must be approved by the greater of:
(1) A majority of all the directors in office when the action is taken; or
(2) The number of directors required by the articles of incorporation or bylaws to take action under section -215.

(c) Sections -211 to -215, which govern meetings, action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(d) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under section -191.

(e) A committee may not, however:
(1) Authorize distributions;
(2) Approve or propose to shareholders action that this chapter requires be approved by shareholders;
(3) Fill vacancies on the board of directors or on any of its committees;
(4) Amend articles of incorporation pursuant to section -282;
(5) Adopt, amend, or repeal bylaws;
(6) Approve a plan of merger not requiring shareholder approval;
(7) Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors; or
(8) Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.

(f) The creation of, delegation of authority to, or action by a committee does not alone constitute compliance by a director with the standards of conduct described in section -221.

## C. STANDARDS OF CONDUCT

§ -221 **General standards for directors.** (a) A director shall discharge the director's duties as a director, including the director's duties as a member of a committee:
(1) In good faith;
(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the director reasonably believes to be in the best interests of the corporation.

(b) In determining the best interests of the corporation, a director, in addition to considering the interests of the corporation's shareholders, may consider, in the director's discretion, any of the following factors:

(1) The interests of the corporation's employees, customers, suppliers, and creditors;

(2) The economy of the State and the nation;

(3) Community and societal considerations, including, without limitation, the impact of any action upon the communities in or near which the corporation has offices or operations; and

(4) The long-term as well as short-term interests of the corporation and its shareholders, including, without limitation, the possibility that these interests may be best served by the continued independence of the corporation.

(c) In discharging duties as a director, the director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;

(2) Legal counsel, public accountants, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(d) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (c) unwarranted.

(e) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.

**§ -222 Limitation of liability of directors; shareholder approval required.** (a) A corporation may 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 any action taken, or any failure to take any action, 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 entitled to vote; provided that the vote also constitutes a majority of the shares entitled to vote.

(b) A corporation shall not eliminate or limit the personal liability of a director for:

(1) The amount of a financial benefit received by a director to which the director is not entitled;

(2) An intentional infliction of harm on the corporation or the shareholders;
(3) A violation of section -223; or
(4) An intentional violation of criminal law.

(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 department director.

(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 then existing law prior to July 1, 1996.

§ **-223 Liability for unlawful distributions.** (a) A director who votes for or assents to a distribution made in violation of section -111 or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating section -111 or the articles of incorporation, if it is established that the director did not perform the director's duties in compliance with section -221. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(b) A director held liable under subsection (a) for an unlawful distribution is entitled to contribution:

(1) From every other director who could be held liable under subsection (a) for the unlawful distribution; and
(2) From each shareholder for the amount the shareholder accepted knowing the distribution was made in violation of section -111 or the articles of incorporation.

(c) A proceeding under this section is barred unless it is commenced within two years after the date on which the effect of the distribution was measured under section -111(e) or (g).

(d) Nothing in this chapter shall prohibit the distribution of assets to shareholders permitted or authorized by the Federal Housing Commissioner by any corporation organized for the purpose of providing housing for rent pursuant to regulations of the Federal Housing Commissioner under the provisions of Title VIII of the National Housing Act, as amended, where the principal assets of the corporation consist of real property belonging to the United States and leased to the corporation pursuant to Title VIII of the National Housing Act as amended or supplemented from time to time.

## D. OFFICERS

§ **-231 Required officers.** (a) A corporation has the officers described in its bylaws or appointed by the board of directors in accordance with the bylaws.

(b) A duly appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(c) The bylaws or the board of directors shall delegate to one of the officers responsibility for preparation and custody of minutes of the directors' and shareholders' meetings and for authenticating records of the corporation.

(d) The same individual may simultaneously hold more than one office in a corporation.

§ -232 **Duties of officers.** Each officer has the authority and shall perform the duties set forth in the bylaws or, to the extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.

§ -233 **Standards of conduct for officers.** (a) An officer with discretionary authority shall discharge the officer's duties under that authority:

(1) In good faith;

(2) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.

(b) In discharging the duties of an officer, the officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

(1) One or more officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or

(2) Legal counsel, public accountants, or other persons as to matters the officer reasonably believes are within the person's professional or expert competence.

(c) An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (b) unwarranted.

(d) An officer is not liable for any action taken as an officer, or any failure to take any action, if the officer performed the duties of the officer's office in compliance with this section.

§ -234 **Resignation and removal of officers.** (a) An officer may resign at any time by delivering notice to the corporation. A resignation is effective when the notice is delivered unless the notice specifies a later effective date. If a resignation is made effective at a later date and the corporation accepts the future effective date, its board of directors may fill the pending vacancy before the effective date if the board of directors provides that the successor does not take office until the effective date.

(b) Any officer or agent may be removed by the board of directors whenever in its judgment the best interests of the corporation will be served thereby, but the removal shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment of an officer or agent shall not of itself create contract rights.

§ -235 **Contract rights of officers.** (a) The appointment or election of an officer does not itself create contract rights.

(b) An officer's removal does not affect the officer's contract rights, if any, with the corporation. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

## E. INDEMNIFICATION

§ -241 **Definitions.** As used in this subpart:

"Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger.

"Director" or "officer" means an individual who is or was a director or officer, respectively, of a corporation or who, while a director or officer of the corporation, is or was serving at the corporation's request as a director, officer,

partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity. A director or officer is considered to be serving an employee benefit plan at the corporation's request if the duties of the director or officer to the corporation also impose duties on, or otherwise involve services by, the director or officer to the plan or to participants in or beneficiaries of the plan. "Director" or "officer" includes, unless the context requires otherwise, the estate or personal representative of a director or officer.

"Disinterested director" means a director who, at the time of a vote referred to in section -244(c) or a vote or selection referred to in section -246(b) or (c), is not:

(1) A party to the proceeding; or

(2) An individual having a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made, which relationship would, in the circumstances, reasonably be expected to exert an influence on the director's judgment when voting on the decision being made.

"Expenses" includes counsel fees.

"Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

"Official capacity" means:

(1) When used with respect to a director, the office of director in a corporation; and

(2) When used with respect to an officer, as contemplated in section -247, the office in a corporation held by the officer.

"Official capacity" does not include service for any other domestic or foreign corporation or any partnership, joint venture, trust, employee benefit plan, or other entity.

"Party" means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

"Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

§ **-242 Permissible indemnification.** (a) Except as otherwise provided in this section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if:

(1) (A) The individual conducted the individual's self in good faith; and

(B) The individual reasonably believed:

(i) In the case of conduct of official capacity, that the individual's conduct was in the best interests of the corporation; and

(ii) In all other cases, that the individual's conduct was at least not opposed to the best interests of the corporation; and

(C) In the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful; or

(2) The individual engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the articles of incorporation (as authorized by section -32(b)(5)).

(b) A director's conduct with respect to an employee benefit plan for a purpose the director reasonably believed to be in the interests of the participants in, and the beneficiaries of, the plan is conduct that satisfies the requirement of subsection (a)(1)(B)(ii).

(c) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself, determinative that the director did not meet the relevant standard of conduct described in this section.

(d) Unless ordered by a court under section -245(a)(3), a corporation may not indemnify a director:

(1) In connection with a proceeding by or in the right of the corporation, except for reasonable expenses incurred in connection with the proceeding if it is determined that the director has met the relevant standard of conduct under subsection (a); or

(2) In connection with any proceeding with respect to conduct for which the director was adjudged liable on the basis that the director received a financial benefit to which the director was not entitled, whether or not involving action in the director's official capacity.

§ -243 **Mandatory indemnification.** A corporation shall indemnify a director who was wholly successful, on the merits or otherwise, in the defense of any proceeding to which the director was a party because the director was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding.

§ -244 **Advance for expenses.** (a) A corporation, before final disposition of a proceeding, may advance funds to pay for or reimburse the reasonable expenses incurred by a director who is a party to a proceeding because the director is a director if the director delivers to the corporation:

(1) A written affirmation of the director's good faith belief that the director has met the relevant standard of conduct described in section -242 or that the proceeding involves conduct for which liability has been eliminated under a provision of the articles of incorporation as authorized by section -32(b)(4); and

(2) The director's written undertaking to repay any funds advanced if the director is not entitled to mandatory indemnification under section -243 and it is ultimately determined under section -245 or -246 that the director has not met the relevant standard of conduct described in section -242.

(b) The undertaking required by subsection (a)(2) must be an unlimited general obligation of the director but need not be secured and may be accepted without reference to the financial ability of the director to make repayment.

(c) Authorizations under this section shall be made:

(1) By the board of directors:

(A) If there are two or more disinterested directors, by a majority vote of all the disinterested directors (a majority of whom for this purpose, shall constitute a quorum) or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote; or

(B) If there are fewer than two disinterested directors, by the vote necessary for action by the board in accordance with section . -215(c), in which authorization directors who do not qualify as disinterested directors may participate; or

(2) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the authorization.

§ -245 **Court-ordered indemnification and advance for expenses.** (a) A director who is a party to a proceeding because the director is a director may apply for indemnification or an advance for expenses to the court conducting the proceeding or to another court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court shall:

(1) Order indemnification if the court determines that the director is entitled to mandatory indemnification under section -243;

(2) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by section -249(a); or

(3) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable:

(A) To indemnify the director; or

(B) To advance expenses to the director, even if the director has not met the relevant standard of conduct set forth in section -242(a), failed to comply with section -244 or was adjudged liable in a proceeding referred to in section -242(d)(1) or (2), but if the director was adjudged so liable the director's indemnification shall be limited to reasonable expenses incurred in connection with the proceeding.

(b) If the court determines that the director is entitled to indemnification under subsection (a)(1) or to indemnification or advance for expenses under subsection (a)(2), it shall also order the corporation to pay the director's reasonable expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director is entitled to indemnification or advance for expenses under subsection (a)(3), it may also order the corporation to pay the director's reasonable expenses to obtain court-ordered indemnification or advance for expenses.

§ -246 **Determination and authorization of indemnification.** (a) A corporation may not indemnify a director under section -242 unless authorized for a specific proceeding after a determination has been made that indemnification of the director is permissible because the director has met the relevant standard of conduct set forth in section -242.

(b) The determination shall be made:

(1) If there are two or more disinterested directors, by the board of directors by a majority vote of all the disinterested directors (a majority of whom for this purpose shall constitute a quorum), or by a majority of the members of a committee of two or more disinterested directors appointed by such a vote;

(2) By special legal counsel:

(A) Selected in the manner prescribed in paragraph (1); or

(B) If there are fewer than two disinterested directors, selected by the board of directors (in which selection directors who do not qualify as disinterested directors may participate); or

(3) By the shareholders, but shares owned by or voted under the control of a director who at the time does not qualify as a disinterested director may not be voted on the determination.

(c) Authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible, except that if there are fewer than

two disinterested directors or if the determination is made by special legal counsel, authorization of indemnification shall be made by those entitled under subsection (b)(2)(B) to select special legal counsel.

§ -247 **Officers.** (a) A corporation may indemnify and advance expenses under this subpart to an officer of the corporation who is a party to a proceeding because the officer is an officer of the corporation

(1) To the same extent as a director; and

(2) If the person is an officer but not a director, to such further extent as may be provided by the articles of incorporation, the bylaws, a resolution of the board of directors, or contract except for:

(A) Liability in connection with a proceeding by or in the right of the corporation other than for reasonable expenses incurred in connection with the proceeding; or

(B) Liability arising out of conduct that constitutes:

(i) Receipt by the officer of a financial benefit to which the officer is not entitled;

(ii) An intentional infliction of harm on the corporation or the shareholders; or

(iii) An intentional violation of criminal law.

(b) Subsection (a)(2) shall apply to an officer who is also a director if the basis on which the officer is made a party to the proceeding is an act or omission solely as an officer.

(c) An officer of a corporation who is not a director is entitled to mandatory indemnification under section -243, and may apply to a court under section -245 for indemnification or an advance for expenses, in each case to the same extent to which a director may be entitled to indemnification or advance for expenses under those provisions.

§ -248 **Insurance.** A corporation may purchase and maintain insurance on behalf of an individual who is a director or officer of the corporation, or who, while a director or officer of the corporation, serves at the corporation's request as a director, officer, partner, trustee, employee, or agent of another domestic or foreign corporation, partnership, joint venture, trust, employee benefit plan, or other entity, against liability asserted against or incurred by the director or officer in that capacity or arising from the director's or officer's status as a director or officer, whether or not the corporation would have power to indemnify or advance expenses to the director or officer against the same liability under this subpart.

§ -249 **Variation by corporate action; application of subpart.** (a) A corporation, by a provision in its articles of incorporation or bylaws or in a resolution adopted or a contract approved by its board of directors or shareholders, may obligate itself in advance of the act or omission giving rise to a proceeding to provide indemnification in accordance with section -242 or advance funds to pay for or reimburse expenses in accordance with section -244. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in section -244(c) and -246(c). Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with section -244 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(b) Any provision pursuant to subsection (a) shall not obligate the corporation to indemnify or advance expenses to a director of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifi-

cally provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by section -316(a)(3).

(c) A corporation, by a provision in its articles of incorporation, may limit any of the rights to indemnification or advance for expenses created by or pursuant to this subpart.

(d) This subpart does not limit a corporation's power to pay or reimburse expenses incurred by a director or an officer in connection with the director's or officer's appearance as a witness in a proceeding at a time when the officer or director is not a party.

(e) This subpart does not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of an employee or agent.

§ **-250 Nonexclusivity of subpart.** (a) The indemnification provided by this subpart shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any bylaw, agreement, vote of shareholders, or disinterested directors or otherwise, both as to action in a person's official capacity and as to action in another capacity while holding the office, and shall continue as to a person who has ceased to be an agent and shall inure to the benefit of the heirs and personal representatives of that person.

(b) This subpart does not apply to any proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in that person's capacity, though the person may also be an agent of the employer corporation. Nothing contained in this section shall limit any right to indemnification to which a trustee, investment manager, or other fiduciary may be entitled by contract or otherwise.

## F. DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

§ **-261 Definitions.** As used in this subpart:

"Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) if:

(1) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(2) The transaction is brought (or is of such character and significance to the corporation that it would in the normal course be brought) before the board of directors of the corporation for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction:

(A) An entity (other than the corporation) of which the director is a director, general partner, agent, or employee;
(B) A person that controls one or more of the entities specified in subparagraph (A) or an entity that is controlled by, or is under common control with, one or more of the entities specified in subparagraph (A); or
(C) An individual who is a general partner, principal, or employer of the director.

''Director's conflicting interest transaction'' with respect to a corporation means a transaction effected or proposed to be effected by the corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) respecting which a director of the corporation has a conflicting interest.

''Related person'' of a director means:
(1) The spouse (or a parent or sibling thereof) of the director, or a child, grandchild, sibling, parent (or spouse of any thereof) of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified in this paragraph is a substantial beneficiary; or
(2) A trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

''Required disclosure'' means disclosure by the director who has a conflicting interest of:
(1) The existence and nature of the director's conflicting interest; and
(2) All facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

''Time of commitment'' respecting a transaction means the time when the transaction is consummated or, if made pursuant to contract, the time when the corporation (or its subsidiary or the entity in which it has a controlling interest) becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage.

§ **-262 Judicial action.** (a) A transaction effected or proposed to be effected by a corporation (or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest) that is not a director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because a director of the corporation, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction.

(b) A director's conflicting interest transaction may not be enjoined, set aside, or give rise to an award of damages or other sanctions, in a proceeding by a shareholder or by or in the right of the corporation, because the director, or any person with whom or which the director has a personal, economic, or other association, has an interest in the transaction, if:
(1) Directors' action respecting the transaction was at any time taken in compliance with section -263;
(2) Shareholders' action respecting the transaction was at any time taken in compliance with section -264; or
(3) The transaction, judged according to the circumstances at the time of commitment, is established to have been fair to the corporation.

§ -263 **Directors' action.** (a) The action of directors respecting a transaction is effective for purposes of section -262(b)(1) if the transaction received the affirmative vote of a majority (but no fewer than two) of those qualified directors on the board of directors or on a duly empowered committee of the board who voted on the transaction after either required disclosure to them (to the extent the information was not known by them) or compliance with subsection (b); provided that action by a committee is so effective only if:

(1) All its members are qualified directors; and

(2) Its members are either all the qualified directors on the board or are appointed by the affirmative vote of a majority of the qualified directors on the board.

(b) If a director has a conflicting interest respecting a transaction, but neither the director nor a related person of the director, as set forth in paragraph (2) of the definition of related person in section -261, is a party to the transaction, and if the director has a duty under law or professional canon, or a duty of confidentiality to another person, respecting information relating to the transaction such that the director may not make the required disclosure described in paragraph (2) of the definition of related person in section -261, then disclosure is sufficient for purposes of subsection (a) if the director:

(1) Discloses to the directors voting on the transaction the existence and nature of the director's conflicting interest and informs them of the character and limitations imposed by that duty before their vote on the transaction; and

(2) Plays no part, directly or indirectly, in their deliberations or vote.

(c) A majority (but no fewer than two) of all the qualified directors on the board of directors, or on the committee, constitutes a quorum for purposes of action that complies with this section. The action of directors that otherwise complies with this section is not affected by the presence or vote of a director who is not a qualified director.

(d) For purposes of this section, ''qualified director'' means, with respect to a director's conflicting interest transaction, any director who does not have either:

(1) A conflicting interest respecting the transaction; or

(2) A familial, financial, professional, or employment relationship with a second director who does have a conflicting interest respecting the transaction, which relationship would, in the circumstances, reasonably be expected to exert an influence on the first director's judgment when voting on the transaction.

§ -264 **Shareholders' action.** (a) Shareholders' action respecting a transaction is effective for purposes of section -262(b)(2) if a majority of the votes entitled to be cast by the holders of all qualified shares were cast in favor of the transaction after:

(1) Notice to shareholders describing the director's conflicting interest transaction;

(2) Provision of the information referred to in subsection (d); and

(3) Required disclosure to the shareholders who voted on the transaction (to the extent the information was not known by them).

(b) For purposes of this section, ''qualified shares'' means any shares entitled to vote with respect to the director's conflicting interest transaction except shares that, to the knowledge, before the vote, of the secretary (or other officer or agent of the corporation authorized to tabulate votes), are beneficially owned (or the voting of which is controlled) by a director who has a conflicting interest respecting the transaction or by a related person of the director, or both.

(c) A majority of the votes entitled to be cast by the holders of all qualified shares constitutes a quorum for purposes of action that complies with this section. Subject to subsections (d) and (e), shareholders' action that otherwise complies with this section is not affected by the presence of holders, or the voting, of shares that are not qualified shares.

(d) For purposes of compliance with subsection (a), a director who has a conflicting interest respecting the transaction, before the shareholders' vote, shall inform the secretary (or other officer or agent of the corporation authorized to tabulate votes) of the number, and the identity of persons holding or controlling the vote, of all shares that the director knows are beneficially owned (or the voting of which is controlled) by the director or by a related person of the director, or both.

(e) If a shareholders' vote does not comply with subsection (a) solely because of a failure of a director to comply with subsection (d), and if the director establishes that the director's failure did not determine and was not intended by the director to influence the outcome of the vote, the court, with or without further proceedings respecting section -262(b)(3), may take such action respecting the transaction and the director, and give such effect, if any, to the shareholders' vote, as it considers appropriate in the circumstances.

## PART X. CONVERSIONS

§ **-271 Conversion into and from corporations.** (a) A domestic corporation may adopt a plan of conversion and convert to a foreign corporation or any other entity if:

(1) The board of directors and shareholders of the domestic corporation approve a plan of conversion in the manner prescribed by section -313 and the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;

(2) The conversion is permitted by, and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with those laws;

(3) At the time the conversion becomes effective, each shareholder of the domestic corporation, unless otherwise agreed to by that shareholder, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity;

(4) The shareholders of the domestic corporation, as a result of the conversion, shall not become personally liable, without the shareholders' consent, for the liabilities or obligations of the converted entity; and

(5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign corporation or other entity may adopt a plan of conversion and convert to a domestic corporation if the conversion is permitted by and complies with the laws of the state or country in which the foreign corporation or other entity is incorporated, formed, or organized.

(c) A plan of conversion shall set forth:

(1) The name of the converting entity and the converted entity;

(2) A statement that the converting entity is continuing its existence in the organizational form of the converted entity;

(3) A statement describing the organizational form of the converted entity and the state or country under the laws of which the converted entity is to be incorporated, formed, or organized;

(4) The manner and basis of converting the shares or other forms of ownership of the converting entity into shares or other forms of ownership of the converted entity, or any combination thereof;
(5) If the converted entity is a domestic corporation, the articles of incorporation of the domestic corporation shall be attached; and
(6) If the converted entity is not a domestic corporation, proof that the converted entity is registered in this State shall be attached.

(d) A plan of conversion may set forth any other provisions relating to the conversion that are not prohibited by law, including without limitation the initial bylaws and officers of the converted entity.

(e) After a conversion of a domestic or foreign corporation is approved, and at any time before the conversion becomes effective, the plan of conversion may be abandoned by the converting entity without shareholder action and in accordance with the procedures set forth in the plan of conversion or, if these procedures are not provided in the plan, in the manner determined by the board of directors. If articles of conversion have been filed with the department director but the conversion has not become effective, the conversion may be abandoned if a statement, executed on behalf of the converting entity by an officer or other duly authorized representative and stating that the plan of conversion has been abandoned in accordance with applicable law, is filed with the department director prior to the effective date of the conversion. If the department director finds the statement satisfies the requirements provided by law, the department director, after all fees have been paid shall:
(1) Stamp the word ''Filed'' on the statement and the date of the filing;
(2) File the document in the department director's office; and
(3) Issue a certificate of abandonment to the converting entity or its authorized representatives.

(f) Once the statement provided in subsection (e) is filed with the department director, the conversion shall be deemed abandoned and shall not be effective.

§ -272 **Articles of conversion.** (a) If a plan of conversion has been approved in accordance with section -271 and has not been abandoned, articles of conversion shall be executed by an officer or other duly authorized representative of the converting entity and shall set forth:
(1) A statement certifying the following:
(A) The name, state, or country of incorporation, formation, or organization of the converting entity;
(B) That a plan of conversion has been approved in accordance with section -271;
(C) That an executed plan of conversion is on file at the principal place of business of the converting entity and stating the address thereof; and
(D) That a copy of the plan of conversion shall be furnished by the converting entity prior to the conversion or by the converted entity after the conversion on written request and without cost, to any shareholder, partner, member, or owner of the converting entity or the converted entity;
(2) If the converting entity is a domestic corporation, the number of shares outstanding and, if the shares of any class or series are entitled to vote as a class, the designation and number of outstanding shares of each class or series;
(3) If the converting entity is a domestic corporation, the number of shares outstanding that voted for and against the plan, and, if the shares of any class or series are entitled to vote as a class, the number of shares of each such class or series that voted for and against the plan; and

(4) If the converting entity is a foreign corporation or other entity, a statement that the approval of the plan of conversion was duly authorized and complied with the laws under which it was incorporated, formed, or organized.

(b) The articles of conversion shall be delivered to the department director. If the converted entity is a domestic corporation, the articles of incorporation shall also be delivered to the department director with the articles of conversion.

(c) If the department director finds that the articles of conversion satisfy the requirements provided by law, and that all required documents are filed, the department director, after all fees have been paid, shall:

(1) Stamp the word "Filed" on the articles of conversion and the date of the filing;
(2) File the document in the department director's office; and
(3) Issue a certificate of conversion to the converted entity or its authorized representatives.

§ -273 **Effective date of the conversion.** Upon the issuance of the certificate of conversion by the department director, the conversion shall be effective.

§ -274 **Effect of conversion.** When a conversion becomes effective:

(1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
(2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
(3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to conversion;
(4) The rights of creditors of the converting entity shall continue against the converted entity and shall not be impaired or extinguished by the conversion;
(5) Any action or proceeding pending by or against the converting entity may be continued by or against the converted entity without any need for substitution of parties;
(6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic corporation, the shareholders of the domestic corporation shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section -342;
(7) A shareholder, partner, member, or other owner of the converted entity shall be liable for the debts and obligations of the converting entity that existed before the conversion takes effect only to the extent that the shareholder, partner, member, or other owner:
    (A) Agreed in writing to be liable for the debts or obligations;
    (B) Was liable under applicable law prior to the effective date of the conversion, for the debts or obligations; or
    (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;

(8) If the converted entity is a foreign corporation or other entity, the converted entity shall:
   (A) Appoint a resident of this State, as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the converting domestic corporation; and
   (B) Promptly pay the dissenting shareholders of the converting domestic corporation the amount, if any, to which they are entitled under part XIV of this chapter; and

(9) If the converting entity is a domestic corporation, part XIV of this chapter shall apply as if the converted entity were the survivor of a merger with the converting entity.

## PART XI. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

### A. AMENDMENT OF ARTICLES OF INCORPORATION

§ -281 **Authority to amend.** (a) A corporation may amend its articles of incorporation at any time to add or change a provision that is required or permitted in the articles of incorporation or to delete a provision not required in the articles of incorporation. Whether a provision is required or permitted in the articles of incorporation is determined as of the effective date of the amendment.

(b) A shareholder of the corporation does not have a vested property right resulting from any provision in the articles of incorporation, including provisions relating to management, control, capital structure, dividend, entitlement, or purpose or duration of the corporation.

§ -282 **Amendment by board of directors.** Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) To delete the names and addresses of the initial directors;

(2) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the department director; or

(3) To make any other change expressly permitted by this chapter to be made without shareholder action.

§ -283 **Amendment by board of directors and shareholders.** (a) A corporation's board of directors may propose one or more amendments to the articles of incorporation for submission to the shareholders.

(b) For the amendment to be adopted:

(1) The board of directors must recommend the amendment to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and

(2) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (e).

(c) The board of directors may condition its submission of the proposed amendment on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section -125. The notice of meeting must also state that the purpose, or one of the purposes, of the

meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.

(e) Unless this chapter, the articles of incorporation, or the board of directors (acting pursuant to subsection (c)) require a greater vote or a vote by voting groups, the amendment to be adopted must be approved by:

(1) With respect to corporations incorporated on or after July 1, 1987, at the meeting a vote of the shareholders entitled to vote thereon shall be taken on the proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the proposed amendment shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(2) With respect to corporations incorporated before July 1, 1987, at such meeting a vote of the shareholders entitled to vote thereon shall be taken on a proposed amendment. The proposed amendment shall be adopted upon receiving the affirmative vote of the holders of two-thirds of the shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control; provided that the lesser proportion shall not be less than the proportion set forth in paragraph (1). Any number of amendments may be submitted to the shareholders, and voted upon by them, at one meeting.

§ **-284 Voting on amendments by voting groups.** (a) The holders of the outstanding shares of a class are entitled to vote as a separate voting group (if shareholder voting is otherwise required by this chapter) on a proposed amendment if the amendment would:

(1) Increase or decrease the aggregate number of authorized shares of the class;

(2) Effect an exchange or reclassification of all or part of the shares of the class into shares of another class;

(3) Effect an exchange or reclassification, or create the right of exchange, of all or part of the shares of another class into shares of the class;

(4) Change the designation, rights, preferences, or limitations of all or part of the shares of the class;

(5) Change the shares of all or part of the class into a different number of shares of the same class;

(6) Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(7) Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior, superior, or substantially equal to the shares of the class;

(8) Limit or deny an existing preemptive right of all or part of the shares of the class; or

(9) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(b) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (a), the shares of that series are entitled to vote as a separate voting group on the proposed amendment.

(c) If a proposed amendment that entitles two or more series of shares to vote as separate voting groups under this section would affect those two or more series in the same or a substantially similar way, the shares of all the series so affected must vote together as a single voting group on the proposed amendment.

(d) A class or series of shares is entitled to the voting rights granted by this section although the articles of incorporation provide that the shares are nonvoting shares.

§ -285 **Amendment before issuance of shares.** If a corporation has not yet issued shares, its incorporators or board of directors may adopt one or more amendments to the corporation's articles of incorporation.

§ -286 **Articles of amendment.** A corporation amending its articles of incorporation shall deliver to the department director for filing articles of amendment setting forth:

(1) The name of the corporation;
(2) The text of each amendment adopted;
(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, a statement that provisions necessary to effect the exchange, reclassification, or cancellation have been made;
(4) The date of each amendment's adoption;
(5) If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required; and
(6) If an amendment was approved by the shareholders:
    (A) The designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and number of votes of each voting group indisputably represented at the meeting; and
    (B) Either the total number of votes cast for and against the amendment by each voting group entitled to vote separately on the amendment or the total number of undisputed votes cast for the amendment by each voting group and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group.

§ -287 **Restated articles of incorporation.** (a) A corporation's board of directors may restate its articles of incorporation at any time with or without shareholder action.

(b) The restatement may include one or more amendments to the articles. If the restatement includes an amendment requiring shareholder approval, it must be adopted as provided in section -283.

(c) If the board of directors submits a restatement for shareholder action, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section -125. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(d) A corporation restating its articles of incorporation shall deliver to the department director for filing articles of restatement setting forth the name of the

corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(1) Whether the restatement contains an amendment to the articles requiring shareholder approval and, if it does not, that the board of directors adopted the restatement; or

(2) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by section -286.

(e) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(f) The department director may certify restated articles of incorporation as the articles of incorporation currently in effect, without including the certificate information required by subsection (d).

§ **-288 Amendment pursuant to reorganization.** (a) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute, if the articles of incorporation after amendment contain only provisions required or permitted by section -32.

(b) The individual or individuals designated by the court shall deliver to the department director for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment approved by the court;

(3) The date of the court's order or decree approving the articles of amendment;

(4) The title of the reorganization proceeding in which the order or decree was entered; and

(5) A statement that the court had jurisdiction of the proceeding under federal statute.

(c) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(d) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan.

§ **-289 Effect of amendment.** An amendment to articles of incorporation does not affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not abate a proceeding brought by or against the corporation in its former name.

## B. AMENDMENT OF BYLAWS

§ **-301 Amendment by board of directors or shareholders.** (a) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(1) The articles of incorporation or this chapter reserve this power exclusively to the shareholders in whole or part; or

(2) The shareholders in amending or repealing a particular bylaw provide expressly that the board of directors may not amend or repeal that bylaw.

(b) A corporation's shareholders may amend or repeal the corporation's bylaws even though the bylaws may also be amended or repealed by its board of directors.

§ -302 **Bylaw increasing quorum or voting requirement for shareholders.** (a) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by this chapter. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

(b) A bylaw that fixes a greater quorum or voting requirement for shareholders under subsection (a) may not be adopted, amended, or repealed by the board of directors.

§ -303 **Bylaw increasing quorum or voting requirement for directors.** (a) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(1) If originally adopted by the shareholders, only by the shareholders;

(2) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(b) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(c) Action by the board of directors under subsection (a)(2) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be adopted by the same vote required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

## PART XII. MERGER AND SHARE EXCHANGE

§ -311 **Merger.** (a) One or more corporations may merge into another corporation if the board of directors of each corporation adopts and its shareholders (if required by section -313) approve a plan of merger.

(b) The plan of merger must set forth:

(1) The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge;

(2) The terms and conditions of the merger; and

(3) The manner and basis of converting the shares of each corporation into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property in whole or in part.

(c) The plan of merger may set forth:

(1) Amendments to the articles of incorporation of the surviving corporation and;

(2) Other provisions relating to the merger.

§ -312 **Share exchange.** (a) A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by section -313) approve the exchange.

(b) The plan of exchange must set forth:

(1) The name of the corporation whose shares will be acquired and the name of the acquiring corporation;

(2) The terms and conditions of the exchange; and

(3) The manner and basis of exchanging the shares to be acquired for shares, obligations, or other securities of the acquiring corporation or any other corporation or for cash or other property in whole or in part.

(c) The plan of exchange may set forth other provisions relating to the exchange.

(d) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation through a voluntary exchange or otherwise.

§ -313 **Action plan.** (a) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (g)) or share exchange for approval by its shareholders.

(b) For a plan of merger or share exchange to be approved:

(1) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(2) The shareholders entitled to vote must approve the plan.

(c) The board of directors may condition its submission of the proposed merger or share exchange on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section -125. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and contain or be accompanied by a copy or summary of the plan.

(e) With respect to corporations incorporated on or after July 1, 1987, at such a meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of a majority of each class of the shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. Any class of shares of any such corporation shall be entitled to vote as a class if any such plan contains any provision that, if contained in a proposed amendment to articles of incorporation, would entitle that class of shares to vote as a class and, in the case of an exchange, if the class is included in the exchange.

(f) With respect to corporations incorporated before July 1, 1987, at such meeting, a vote of the shareholders shall be taken on the proposed plan. The plan shall be approved upon receiving the affirmative vote of the holders of three-fourths of all the issued and outstanding shares of stock having voting power even though their right to vote is otherwise restricted or denied by the articles, bylaws, or resolutions of any such corporation. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control; provided that the lesser proportion shall be not less than the proportion set forth in subsection (e).

(g) Separate voting by voting groups is required:

(1) On a plan of merger if the plan contains a provision that, if contained in a proposed amendment to articles of incorporation, would require action by one or more separate voting groups on the proposed amendment under section -284; or

(2) On a plan of share exchange by each class or series of shares included in the exchange, with each class or series constituting a separate voting group.

(h) Action by the shareholders of the surviving corporation on a plan of merger is not required if:

(1) The articles of incorporation of the surviving corporation will not differ (except for amendments enumerated in section -282) from the articles of incorporation before the merger;

(2) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(3) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty per cent the total number of voting shares of the surviving corporation outstanding immediately before the merger; and

(4) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger (either by the conversion of securities issued pursuant to the merger or exercise of rights and warrants issued pursuant to the merger), will not exceed by more than twenty per cent the total number of participating shares outstanding immediately before the merger.

(i) As used in subsection (h):

"Participating shares" means shares that entitle their holders to participate without limitations in distributions.

"Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(j) After a merger or share exchange is authorized, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned (subject to any contractual rights), without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors.

§ **-314 Merger of subsidiary.** (a) A parent corporation owning at least ninety per cent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(b) The board of directors of the parent corporation shall adopt a plan of merger that sets forth:

(1) The names of the parent and subsidiary; and

(2) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or in part.

(c) The parent corporation shall mail a copy of the plan of merger to each shareholder of the subsidiary corporation who does not waive the mailing requirement in writing.

(d) The parent may not deliver articles of merger to the department director for filing until at least thirty days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary corporation who did not waive the mailing requirement.

(e) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in section -282).

§ **-315 Articles of merger or share exchange.** (a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the department director for filing articles of merger or share exchange setting forth:

(1) A statement that the plan of merger or share exchange has been approved by the board of directors of each corporation involved in the merger or share exchange;

(2) If shareholder approval was not required, a statement to that effect;

(3) If approval of the shareholders of one or more corporations party to the merger or share exchange was required:

(A) The designation, number of outstanding shares, and number of votes entitled to be cast by each voting group entitled to vote separately on the plan as to each corporation; and

(B) Either the total number of votes cast for and against the plan by each voting group entitled to vote separately on the plan or the total number of undisputed votes cast for the plan separately by each voting group and a statement that the number cast for the plan by each voting group was sufficient for approval by that voting group; and

(4) If a merger, a statement indicating the changes in the articles of incorporation of the surviving corporation to be effected by the merger.

(b) A merger or share exchange takes effect upon the effective date of the articles of merger or share exchange.

§ **-316 Effect of merger or share exchange.** (a) When a merger takes effect:

(1) Every other corporation party to the merger merges into the surviving corporation and the separate existence of every corporation except the surviving corporation ceases;

(2) The title to all real estate and other property owned by each corporation party to the merger is vested in the surviving corporation without reversion or impairment;

(3) The surviving corporation has all liabilities of each corporation party to the merger;

(4) A proceeding pending against any corporation party to the merger may be continued as if the merger did not occur or the surviving corporation may be substituted in the proceeding for the corporation whose existence ceased;

(5) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger and indicated in the articles of merger; and

(6) The shares of each corporation party to the merger that are to be converted into shares, obligations, or other securities of the surviving or any other corporation or into cash or other property are converted, and the former holders of the shares are entitled only to the rights provided in the articles of merger or to their rights under part XIV of this chapter.

(b) When a share exchange takes effect, the shares of each acquired corporation are exchanged as provided in the plan, and the former holders of the shares are

entitled only to the exchange rights provided in the articles of share exchange or to their rights under part XIV of this chapter.

§ -317 **Merger or share exchange with foreign corporation.** (a) One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:

(1) In a merger, the merger is permitted by the law of the state or country under whose law each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;

(2) In a share exchange, the corporation whose shares will be acquired is a domestic corporation, whether or not a share exchange is permitted by the law of the state or country under whose law the acquiring corporation is incorporated;

(3) The foreign corporation complies with section -315 if it is the surviving corporation of the merger or acquiring corporation of the share exchange; and

(4) Each domestic corporation complies with the applicable provisions of sections -311 to 314 and, if it is the surviving corporation of the merger or acquiring corporation of the share exchange, with section -315.

(b) Upon the merger or share exchange taking effect, the surviving foreign corporation of a merger and the acquiring foreign corporation of a share exchange is deemed:

(1) To appoint the department director as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation party to the merger or share exchange; and

(2) To agree that it will promptly pay to the dissenting shareholders of each domestic corporation party to the merger or share exchange the amount, if any, to which they are entitled under part XIV of this chapter.

(c) This section does not limit the power of a foreign corporation to acquire all or part of the shares of one or more classes or series of a domestic corporation through a voluntary exchange or otherwise.

§ -318 **Merger of subsidiary corporations.** (a) Any corporation owning at least ninety per cent of the outstanding shares of each class of two or more corporations may adopt a plan of merger pursuant to section -314 and deliver to the department director for filing articles of merger. The articles of merger shall be signed by the parent corporation and the surviving subsidiary corporation, and the plan of merger shall set forth:

(1) The name of the parent corporation owning at least ninety per cent of the shares of the subsidiary corporations, the name of any nonsurviving subsidiary corporation, and the name of the surviving subsidiary corporation; and

(2) The manner and basis of converting the shares of any nonsurviving subsidiary corporation into shares, obligations, or other securities of the surviving subsidiary corporation or of any other corporation or, in whole or in part, into cash or other property.

(b) A copy of the plan of merger shall be mailed to each shareholder of record of any nonsurviving subsidiary corporation, except the parent corporation.

(c) On or after the thirtieth day after the mailing of a copy of the plan of merger to shareholders of any nonsurviving subsidiary corporation or upon the waiver thereof by the holders of all outstanding shares, the articles of merger shall be delivered to the department director for filing. Articles of merger shall set forth:

(1) A statement that the plan of merger has been approved by the board of directors of the parent corporation;
(2) The number of outstanding shares of each class of any nonsurviving subsidiary corporation and the number of the shares of each class owned by the parent corporation; and
(3) The date a copy of the plan of merger is mailed to shareholders of any nonsurviving subsidiary corporation entitled to receive the plan of merger.

**§ -319 Merger with or into domestic or foreign limited liability company.** (a) As used in this section, the terms "limited liability company" and "foreign limited liability company" shall have the meanings defined in section 428-101.

(b) One or more corporations or foreign corporations may merge with or into one or more limited liability companies or foreign limited liability companies if in the case of a domestic corporation the board of directors and the shareholders approve a plan of merger as provided in sections -311 and -313, and in the case of a foreign corporation it complies with section -312.

(c) In addition to the requirements of section -311, the plan of merger shall also set forth:

(1) The name of each limited liability company and foreign limited liability company proposing to merge; and
(2) If the surviving entity is a limited liability company or a foreign limited liability company:
    (A) The manner and basis of converting the shares of each corporation or foreign corporation and the interests as members of each limited liability company or foreign limited liability company into interests as members of the surviving domestic limited liability company or foreign limited liability company pursuant to the merger, or a statement that the information is contained in the operating agreement proposed for the surviving entity;
    (B) The contents of the articles of organization of the surviving entity pursuant to the merger in accordance with section 428-203 if a domestic limited liability company is the surviving entity, or in accordance with comparable provisions of applicable law if a foreign limited liability company is the surviving entity; and
    (C) The contents of the operating agreement to be entered into among the persons who will be the members of the surviving entity pursuant to the merger, which, if not separately provided in the plan of merger, shall state the manner and basis for the conversion of the shares of each merging corporation or foreign corporation and the interests as members of each merging limited liability company or foreign limited liability company into interests as members of the surviving entity and that notice of the approval of the merger will be deemed to be execution of the operating agreement by these persons.

(d) After a plan of merger is approved by the shareholders of each corporation and foreign corporation as provided in subsection (b), and by the members of each domestic limited liability company as provided in section 428-904, or as provided in comparable provisions of applicable law for each foreign limited liability company, the surviving entity shall deliver to the office of the department director for filing articles of merger complying with section -315, executed on behalf of each party to the merger.

(e) Section -316 shall be applicable to each corporation that is a party to the plan of merger.

(f) If a foreign corporation is a party to the merger, section -317 shall apply to the foreign corporation.

## PART XIII. SALE OF ASSETS

§ **-331 Sale of assets in regular course of business and mortgage of assets.** (a) A corporation, on the terms and conditions and for the consideration determined by the board of directors, may:

(1) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property in the usual and regular course of business;

(2) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), or otherwise encumber any or all of its property whether or not in the usual and regular course of business; or

(3) Transfer any or all of its property to a corporation all the shares of which are owned by the corporation.

(b) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (a) is not required.

§ **-332 Sale of assets other than in regular course of business.** (a) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will), otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(b) For a transaction to be authorized:

(1) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(2) The shareholders entitled to vote must approve the transaction.

(c) The board of directors may condition its submission of the proposed transaction on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section -125. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(e) With respect to the corporations incorporated on or after July 1, 1987, at the meeting the shareholders may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the terms and conditions thereof and the consideration to be received by the corporation therefor. The authorization shall require the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the authorization shall require the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote as a class thereon and of the total shares entitled to vote thereon.

(f) With respect to corporations incorporated before July 1, 1987, at the meeting the shareholders may authorize the sale, lease, exchange, or other disposition and may fix, or may authorize the board of directors to fix, any or all of the

terms and conditions therefor. The authorization shall require the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote as a class thereon and of the total shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control; provided that the lesser proportion shall not be less than the proportion set forth in subsection (e).

(g) After a sale, lease, exchange, or other disposition of property is authorized, the transaction may be abandoned (subject to any contractual rights) without further shareholder action.

(h) A transaction that constitutes a distribution is governed by section -111 and not by this section.

## PART XIV. DISSENTERS' RIGHTS

### A. RIGHT TO DISSENT AND OBTAIN PAYMENT FOR SHARES

§ **-341 Definitions.** As used in this part:

"Beneficial shareholder" means the person who is a beneficial owner of shares held in a voting trust or by a nominee as the record shareholder.

"Corporation" means the issuer of the shares held by a dissenter before the corporate action, or the surviving or acquiring corporation by merger or share exchange of that issuer.

"Dissenter" means a shareholder who is entitled to dissent from corporate action under section -342 and who exercises that right when and in the manner required by sections -351 to -359.

"Fair value", with respect to a dissenter's shares, means the value of the shares immediately before the effectuation of the corporate action to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable.

"Interest" means interest from the effective date of the corporate action until the date of payment, at the average rate currently paid by the corporation on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

"Record shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

"Shareholder" means the record shareholder or the beneficial shareholder.

§ **-342 Right to dissent.** (a) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(1) Consummation of a plan of merger to which the corporation is a party:
   (A) If shareholder approval is required for the merger by section -313 or the articles of incorporation and the shareholder is entitled to vote on the merger; or
   (B) If the corporation is a subsidiary that is merged with its parent under section -314;
(2) Consummation of a plan of share exchange to which the corporation is a party as the corporation whose shares will be acquired, if the shareholder is entitled to vote on the plan;
(3) Consummation of a sale or exchange of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange,

including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(4) An amendment of the articles of incorporation that materially and adversely affects rights in respect of a dissenter's shares because it:
   (A) Alters or abolishes a preferential right of the shares;
   (B) Creates, alters, or abolishes a right in respect of redemption, including a provision respecting a sinking fund for the redemption or repurchase, of the shares;
   (C) Alters or abolishes a preemptive right of the holder of the shares to acquire shares or other securities;
   (D) Excludes or limits the right of the shares to vote on any matter, or to cumulate votes, other than a limitation by dilution through issuance of shares or other securities with similar voting rights; or
   (E) Reduces the number of shares owned by the shareholder to a fraction of a share if the fractional share so created is to be acquired for cash under section -74;

(5) Any corporate action taken pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares; or

(6) Consummation of a plan of conversion to which the corporation is the converting entity, if the shareholder is entitled to vote on the plan.

(b) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this part may not challenge the corporate action creating the shareholder's entitlement unless the action is unlawful or fraudulent with respect to the shareholder or the corporation.

§ **-343 Dissent by nominees and beneficial owners.** (a) A record shareholder may assert dissenters' rights as to fewer than all the shares registered in the shareholder's name only if the shareholder dissents with respect to all shares beneficially owned by any one person and notifies the corporation in writing of the name and address of each person on whose behalf the record shareholder asserts dissenters' rights. The rights of a partial dissenter under this subsection are determined as if the shares as to which the partial dissenter dissents and the partial dissenter's other shares were registered in the names of different shareholders.

(b) A beneficial shareholder may assert dissenters' rights as to shares held on the beneficial shareholder's behalf only if:

(1) The beneficial shareholder submits to the corporation the record shareholder's written consent to the dissent not later than the time the beneficial shareholder asserts dissenters' rights; and

(2) The beneficial shareholder does so with respect to all shares of which the beneficial shareholder is the beneficial shareholder or over which the beneficial shareholder has power to direct the vote.

B. PROCEDURE FOR EXERCISE OF DISSENTERS' RIGHTS

§ **-351 Notice of dissenters' rights.** (a) If proposed corporate action creating dissenters' rights under section -342 is submitted to a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this part and be accompanied by a copy of this part.

(b) If corporate action creating dissenters' rights under section -342 is taken without a vote of shareholders, the corporation shall notify in writing all shareholders entitled to assert dissenters' rights that the action was taken and send them the dissenters' notice described in section -353.

§ **-352 Notice of intent to demand payment.** (a) If proposed corporate action creating dissenters' rights under section -342 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights:

(1) Must deliver to the corporation before the vote is taken written notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed action is effectuated; and

(2) Must not vote the shareholder's shares in favor of the proposed action.

(b) A shareholder who does not satisfy the requirements of subsection (a) is not entitled to payment for the shareholder's shares under this part.

§ **-353 Dissenters' notice.** (a) If proposed corporate action creating dissenters' rights under section -342 is authorized at a shareholders' meeting, the corporation shall deliver a written dissenters' notice to all shareholders who satisfied the requirements of section -352.

(b) The dissenters' notice must be sent no later than ten days after the corporate action was taken, and must:

(1) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(2) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(3) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(4) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the subsection (a) notice is delivered; and

(5) Be accompanied by a copy of this part.

§ **-354 Duty to demand payment.** (a) A shareholder sent a dissenters' notice described in section -353 must demand payment, certify whether the shareholder acquired beneficial ownership of the shares before the date required to be set forth in the dissenter's notice pursuant to section -353(b)(3), and deposit the shareholder's certificates in accordance with the terms of the notice.

(b) The shareholder who demands payment and deposits the shareholder's share certificates under subsection (a) retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

(c) A shareholder who does not demand payment or deposit the shareholder's share certificates where required, each by the date set in the dissenters' notice, is not entitled to payment for the shareholder's shares under this part.

§ **-355 Share restrictions.** (a) The corporation may restrict the transfer of uncertificated shares from the date the demand for their payment is received until the proposed corporate action is taken or the restrictions released under section -357.

(b) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until these rights are canceled or modified by the taking of the proposed corporate action.

§ -356 **Payment.** (a) Except as provided in section -358, as soon as the proposed corporate action is taken, or upon receipt of a payment demand, the corporation shall pay each dissenter who complied with section -354 the amount the corporation estimates to be the fair value of the dissenter's shares, plus accrued interest.

(b) The payment must be accompanied by:

(1) The corporation's balance sheet as of the end of a fiscal year ending not more than sixteen months before the date of payment, an income statement for that year, a statement of changes in shareholders' equity for that year, and the latest available interim financial statements, if any;

(2) A statement of the corporation's estimate of the fair value of the shares;

(3) An explanation of how the interest was calculated;

(4) A statement of the dissenter's right to demand payment under section -359; and

(5) A copy of this part.

§ -357 **Failure to take action.** (a) If the corporation does not take the proposed action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release the transfer restrictions imposed on uncertificated shares.

(b) If after returning deposited certificates and releasing transfer restrictions, the corporation takes the proposed action, it must send a new dissenters' notice under section -353 and repeat the payment demand procedure.

§ -358 **After-acquired shares.** (a) A corporation may elect to withhold payment required by section -356 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(b) To the extent the corporation elects to withhold payment under subsection (a), after taking the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with its offer a statement of its estimate of the fair value of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under section -359.

§ -359 **Procedure if shareholder dissatisfied with payment or offer.** (a) A dissenter may notify the corporation in writing of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate (less any payment under section -356), or reject the corporation's offer under section -358 and demand payment of the fair value of the dissenter's shares and interest due, if:

(1) The dissenter believes that the amount paid under section -356 or offered under section -358 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(2) The corporation fails to make payment under section -356 within sixty days after the date set for demanding payment; or

(3) The corporation, having failed to take the proposed action, does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

(b) A dissenter waives the dissenter's right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand in writing under subsection (a) within thirty days after the corporation made or offered payment for the dissenter's shares.

C. JUDICIAL APPRAISAL OF SHARES

§ **-371 Court action.** (a) If a demand for payment under section -359 remains unsettled, the corporation shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest. If the corporation does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(b) The corporation shall commence the proceeding in the circuit court. If the corporation is a foreign corporation without a registered office in this State, it shall commence the proceeding in the county in this State where the registered office of the domestic corporation merged with or whose shares were acquired by the foreign corporation was located.

(c) The corporation shall make all dissenters (whether or not residents of this State) whose demands remain unsettled parties to the proceeding as in an action against their shares and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(d) The jurisdiction of the court in which the proceeding is commenced under subsection (b) is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decision on the question of fair value. The appraisers have the powers described in the order appointing them, or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(e) Each dissenter made a party to the proceeding is entitled to judgment:

(1) For the amount, if any, by which the court finds the fair value of the dissenter's shares, plus interest, exceeds the amount paid by the corporation; or

(2) For the fair value, plus accrued interest, of the dissenter's after-acquired shares for which the corporation elected to withhold payment under section -358.

§ **-372 Court costs and counsel fees.** (a) The court in an appraisal proceeding commenced under section -371 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the corporation, except that the court may assess costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment under section -359.

(b) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(1) Against the corporation and in favor of any or all dissenters if the court finds the corporation did not substantially comply with the requirements of sections -351 to -359; or

(2) Against either the corporation or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this part.

(c) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited.

## PART XV. DISSOLUTION
### A. VOLUNTARY DISSOLUTION

§ **-381 Dissolution by incorporators or initial directors.** A majority of the incorporators or initial directors of a corporation that has not issued shares or has not commenced business may dissolve the corporation by delivering to the department director for filing articles of dissolution that set forth:

(1) The name of the corporation;
(2) The date of its incorporation;
(3) Either:
  (A) That none of the corporation's shares has been issued; or
  (B) That the corporation has not commenced business;
(4) That no debt of the corporation remains unpaid;
(5) That the net assets of the corporation remaining after winding up have been distributed to the shareholders, if shares were issued; and
(6) That a majority of the incorporators or initial directors authorized the dissolution.

§ **-382 Dissolution by board of directors and shareholders.** (a) A corporation's board of directors may propose dissolution for submission to the shareholders.

(b) For a proposal to dissolve to be adopted:

(1) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and
(2) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (e).

(c) The board of directors may condition its submission of the proposal for dissolution on any basis.

(d) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with section -125. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

(e) With respect to the corporations incorporated on or after July 1, 1987, at the meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of a majority of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon.

(f) With respect to corporations incorporated before July 1, 1987, at the meeting a vote of shareholders entitled to vote thereat shall be taken on a resolution to dissolve the corporation. The resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of the corporation entitled to vote thereon, unless any class of shares is entitled to vote thereon as a

class, in which event the resolution shall be adopted upon receiving the affirmative vote of the holders of three-fourths of the shares of each class of shares entitled to vote thereon as a class and of the total shares entitled to vote thereon. The articles of incorporation may be amended by the vote set forth in the preceding sentence to provide for a lesser proportion of shares, or of any class or series thereof, than is provided in the preceding sentence, in which case the articles of incorporation shall control; provided that the lesser proportion shall not be less than the proportion set forth in subsection (e).

§ -383 **Articles of dissolution.** (a) At any time after dissolution is authorized, the corporation may dissolve by delivering to the department director for filing articles of dissolution setting forth:

(1) The name of the corporation;
(2) The date dissolution was authorized;
(3) If dissolution was approved by the shareholders;
  (A) The number of votes entitled to be cast on the proposal to dissolve; and
  (B) Either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval; and
(4) If voting by voting groups was required, the information required by paragraph (3) must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

(b) A corporation is dissolved upon the effective date of its articles of dissolution.

§ -384 **Revocation of dissolution.** (a) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(b) Revocation of dissolution must be authorized in the same manner as the dissolution was authorized unless that authorization permitted revocation by action of the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder action.

(c) After the revocation of dissolution is authorized, the corporation may revoke the dissolution by delivering to the department director for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(1) The name of the corporation;
(2) The effective date of the dissolution that was revoked;
(3) The date that the revocation of dissolution was authorized;
(4) If the corporation's board of directors (or incorporators) revoked the dissolution, a statement to that effect;
(5) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and
(6) If shareholder action was required to revoke the dissolution, the information required by section -383(a)(3) or (4).

(d) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(e) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred.

§ -385 **Effect of dissolution.** (a) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(1) Collecting its assets;
(2) Disposing of its properties that will not be distributed in kind to its shareholders;
(3) Discharging or making provision for discharging its liabilities;
(4) Distributing its remaining property among its shareholders according to their interests; and
(5) Doing every other act necessary to wind up and liquidate its business and affairs.

(b) Dissolution of a corporation does not:

(1) Transfer title to the corporation's property;
(2) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;
(3) Subject its director or officers to standards of conduct different from those prescribed in part IX of this chapter;
(4) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;
(5) Prevent commencement of a proceeding by or against the corporation in its corporate name;
(6) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or
(7) Terminate the authority of the registered agent of the corporation.

§ -386 **Known claims against dissolved corporation.** (a) A dissolved corporation may dispose of the known claims against it by following the procedure described in this section.

(b) The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date. The written notice must:

(1) Describe information that must be included in a claim;
(2) Provide a mailing address where a claim may be sent;
(3) State the deadline, which may not be fewer that one hundred twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and
(4) State the claim will be barred if not received by the deadline.

(c) A claim against the dissolved corporation is barred:

(1) If a claimant who was given written notice under subsection (b) does not deliver the claim to the dissolved corporation by the deadline;
(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within ninety days from the effective date of the rejection notice.

(d) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

§ -387 **Unknown claims against dissolved corporation.** (a) A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(b) The notice must:

(1) Be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this State, its registered office) is or was last located;
(2) Describe the information that must be included in a claim and provided a mailing address where the claim may be sent; and
(3) State that a claim against the corporation will be barred unless a proceeding to enforce the claim is commenced within five years after the publication of the notice.

(c) If the dissolved corporation publishes a newspaper notice in accordance with subsection (b), the claim of each of the following claimants is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within five years after the publication date of the newspaper notice:
(1) A claimant who did not receive written notice under section -386;
(2) A claimant whose claim was timely sent to the dissolved corporation but not acted on;
(3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim may be enforced under this section:
(1) Against the dissolved corporation, to the extent of its undistributed assets; or
(2) If the assets have been distributed in liquidation, against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of the shareholder claim or the corporate assets distributed to the shareholder in liquidation, whichever is less, but a shareholder's total liability for all claims under this section may not exceed the total amount of assets distributed to such shareholder.

B. ADMINISTRATIVE DISSOLUTION

§ **-401 Grounds for administrative dissolution.** The department director may commence a proceeding under section -402 to administratively dissolve a corporation if:
(1) The corporation has failed to file its annual report with the department director for a period of two years;
(2) The corporation procured its articles of incorporation through fraud;
(3) The corporation has continued to exceed or abuse the authority conferred upon it by law; or
(4) The corporation does not notify the department director within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

§ **-402 Procedure for and effect of administrative dissolution.** (a) If the department director determines that one or more grounds exist under section -401 for dissolving a corporation, the department director shall give written notice of the department director's determination by mailing the notice to the corporation at its last known address appearing in the records of the department director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director's written notice, the department director shall administratively dissolve the corporation by signing a decree of dissolution that recites the ground for dissolution and its effective date. The decree shall be filed in the department director's office.

(c) A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section -385 and notify claimants under sections -386 and -387.

(d) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(e) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any corporation so dissolved. If a trustee is appointed, the trustee shall pay to the State out of any funds that may come into the trustee's hands as trustee, a sum equal to any penalty imposed under section -473. If a trustee is not appointed by a court of competent jurisdiction, the last directors of the dissolved corporation shall be and act as trustees for the creditors and shareholders of the dissolved corporation with full powers to settle its affairs.

(f) A corporation whose articles of incorporation have expired shall cease to exist by operation of law.

§ **-403 Reinstatement following administrative dissolution.** (a) A corporation administratively dissolved under section -402 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application must:

(1) Recite the name of the corporation and the effective date of its administrative dissolution;
(2) Contain all reports due and unfiled;
(3) Contain the payment of all delinquent fees and penalties; and
(4) Contain a certificate from the department of taxation reciting that all taxes owed by the corporation have been paid.

(b) Within the applicable reinstatement period, should the name of the corporation, or a name substantially identical thereto be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntary dissolved corporation pursuant to the amendment provisions of this chapter.

(c) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred.

§ **-404 Appeal from denial of reinstatement.** (a) If the department director denies a corporation's application for reinstatement following administrative dissolution, the department director shall mail a written notice to the corporation that explains the reason or reasons for denial.

(b) The corporation may appeal the denial of reinstatement to the circuit court within thirty days after service of the notice of denial is perfected. The corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition copies of the department director's certificate of dissolution, the corporation's application for reinstatement, and the department director's notice of denial.

(c) The court may summarily order the department director to reinstate the dissolved corporation or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

C. JUDICIAL DISSOLUTION

§ -411 **Grounds for judicial dissolution.** The circuit court may dissolve a corporation:

(1) In a proceeding by the attorney general if it is established that:
  (A) The corporation obtained its articles of incorporation through fraud; or
  (B) The corporation has continued to exceed or abuse the authority conferred upon it by law;
(2) In a proceeding by a shareholder if it is established that:
  (A) The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;
  (B) The directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;
  (C) The shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired; or
  (D) The corporate assets are being misapplied or wasted;
(3) In a proceeding by a creditor if it is established that:
  (A) The creditor's claim has been reduced to judgment, the execution on the judgment returned unsatisfied, and the corporation is insolvent; or
  (B) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or
(4) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

§ -412 **Procedure for judicial dissolution.** (a) Venue for a proceeding by the attorney general to dissolve a corporation lies in circuit court. Venue for a proceeding brought by any other party named in section -411 lies in the county where a corporation's principal office (or, if none in this State, its registered office) is or was last located.

(b) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation unless relief is sought against them individually.

(c) A court in a proceeding brought to dissolve a corporation may issue injunctions, appoint a receiver or custodian pendente lite with all powers and duties the court directs, take other action required to preserve the corporate assets wherever located, and carry on the business of the corporation until a full hearing can be held.

(d) Within ten days after the commencement of a proceeding under section -411(2) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation must send to all shareholders, other than the petitioner, a notice stating that the shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the petitioner's shares under section -415 and accompanied by a copy of section -415.

§ -413 **Receivership or custodianship.** (a) A court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the business and affairs of the

corporation. The court shall hold a hearing, after notifying all parties to the proceeding and any interested persons designated by the court, before appointing a receiver or custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the corporation and all of its property wherever located.

(b) The court may appoint an individual or a domestic or foreign corporation (authorized to transact business in this State) as a receiver or custodian. The court may require the receiver or custodian to post bond, with or without sureties, in an amount the court directs.

(c) The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers:

(1) The receiver:

(A) May dispose of all or any part of the assets of the corporation wherever located, at a public or private sale, if authorized by the court; and

(B) May sue and defend in the receiver's own name as receiver of the corporation in all courts of this State; and

(2) The custodian may exercise all of the powers of the corporation, through or in place of its board of directors, to the extent necessary to manage the affairs of the corporation in the best interests of its shareholders and creditors.

(d) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is in the best interests of the corporation, its shareholders, and creditors.

(e) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and the receiver's or custodian's counsel from the assets of the corporation or proceeds from the sale of the assets.

§ **-414 Decree of dissolution.** (a) If after a hearing the court determines that one or more grounds for judicial dissolution described in section -411 exist, it may enter a decree dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the decree to the department director, who shall file it.

(b) After entering the decree of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with section -385 and the notification of claimants in accordance with sections -386 and -387.

§ **-415 Election to purchase in lieu of dissolution.** (a) In a proceeding under section -411(2) to dissolve a corporation that has no shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(b) An election to purchase pursuant to this section may be filed with the court at any time within ninety days after the filing of the petition under section -411(2) or at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation, within ten days thereafter, shall give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the

recipients of their right to join in the election to purchase shares in accordance with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than thirty days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under section -411(2) may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of the shareholder's shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit the discontinuance, settlement, sale, or other disposition.

(c) If, within sixty days of the filing of the first election, the parties reach agreement as to the fair value and terms of purchase of the petitioner's shares, the court shall enter an order directing the purchase of petitioner's shares upon the terms and conditions agreed to by the parties.

(d) If the parties are unable to reach an agreement as provided for in subsection (c), the court, upon application of any party, shall stay the section -411(2) proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under section -411(2) was filed or as of any other date the court deems appropriate under the circumstances.

(e) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon the terms and conditions that the court deems appropriate, which may include payment of the purchase price in installments, where necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among them. In allocating petitioner's shares among holders of different classes of shares, the court should attempt to preserve the existing distribution of voting rights among holders of different classes insofar as practicable and may direct that holders of a specific class or classes shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable, but if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under section -411(2)(B) or (D), it may award to the petitioning shareholder reasonable fees and expenses of counsel and of any experts employed by the petitioning shareholder.

(f) Upon entry of an order under subsections (c) or (e), the court shall dismiss the petition to dissolve the corporation under section -411, and the petitioning shareholder shall no longer have any rights or status as a shareholder of the corporation, except the right to receive the amounts awarded to the petitioning shareholder by the order of the court that shall be enforceable in the same manner as any other judgment.

(g) The purchase ordered pursuant to subsection (e), shall be made within ten days after the date the order becomes final unless before that time the corporation files with the court a notice of its intention to adopt articles of dissolution pursuant to sections -382 and -383, which articles must then be adopted and filed within fifty days thereafter. Upon filing of the articles of dissolution, the corporation shall be dissolved in accordance with sections -385 to -387, and the order entered pursuant to subsection (e) shall no longer be of any force or effect, except that the court may award the petitioning shareholder reasonable fees and expenses in accord-

ance with the provisions of the last sentence of subsection (e) and the petitioner may continue to pursue any claims previously asserted on behalf of the corporation.

(h) Any payment by the corporation pursuant to an order under subsections (c) or (e), other than an award of fees and expenses pursuant to subsection (e), is subject to section -111.

D. MISCELLANEOUS

§ **-421 Deposit with director of finance.** Assets of a dissolved corporation that should be transferred to a creditor, claimant, or shareholder of the corporation who cannot be found or who is not competent to receive them shall be reduced to cash and deposited with the director of finance for disposition in accordance with chapter 523A.

## PART XVI. FOREIGN CORPORATIONS

A. CERTIFICATE OF AUTHORITY

§ **-431 Authority to transact business required.** (a) A foreign corporation may not transact business in this State until it obtains a certificate of authority from the department director.

(b) The following activities, among others, do not constitute transacting business within the meaning of subsection (a):

(1) Maintaining, defending, or settling any proceeding;
(2) Holding meetings of the board of directors or shareholders or carrying on other activities concerning internal corporate affairs;
(3) Maintaining bank accounts;
(4) Maintaining offices or agencies for the transfer, exchange, and registration of the corporation's own securities or maintaining trustees or depositories with respect to those securities;
(5) Selling through independent contractors;
(6) Soliciting or obtaining orders, whether by mail or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;
(7) Creating as borrower or lender, or acquiring, as borrower or lender, indebtedness, mortgages, and security interests in real or personal property;
(8) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
(9) Owning, without more, real or personal property;
(10) Conducting an isolated transaction that is completed within thirty days and that is not one in the course of repeated transactions of a like nature; and
(11) Transacting business in interstate commerce.

(c) The list of activities in subsection (b) is not exhaustive.

§ **-432 Consequences of transacting business without authority.** (a) A foreign corporation transacting business in this State without a certificate of authority may not maintain a proceeding in any court in this State until it obtains a certificate of authority.

(b) The successor to a foreign corporation that transacted business in this State without a certificate of authority and the assignee of a cause of action arising out of that business may not maintain a proceeding based on that cause of action in any court in this State until the foreign corporation or its successor obtains a certificate of authority.

(c) A court may stay a proceeding commenced by a foreign corporation, its successor, or assignee until it determines whether the foreign corporation or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign corporation or its successor obtains the certificate.

(d) A foreign corporation that transacts business in this State without a certificate of authority shall be liable to this State, for the years or parts thereof during which it transacted business in this State without a certificate of authority, in an amount equal to all fees that would have been imposed by this chapter upon the corporation had it duly applied for and received a certificate of authority to transact business in this State as required by this chapter and thereafter filed all reports required by this chapter, plus all penalties imposed by this chapter for failure to pay the fees.

The attorney general shall bring proceedings to recover all amounts due this State under this section.

(e) Notwithstanding subsections (a) and (b), the failure of a foreign corporation to obtain a certificate of authority does not impair the validity of its corporate acts or prevent it from defending any proceeding in this State.

§ **-433 Application for certificate of authority.** (a) A foreign corporation may apply for a certificate of authority to transact business in this State by delivering an application to the department director for filing. The application must set forth:

(1) The name of the foreign corporation or, if its name is unavailable for use in this State, a corporate name that satisfies the requirements of section -436;
(2) The name of the state or country under whose law it is incorporated;
(3) Its date of incorporation and period of duration;
(4) The street address of its principal office;
(5) The street address of its registered office in this State and the name of its registered agent at that office; and
(6) The names and usual business addresses of its current directors and officers.

(b) The foreign corporation shall deliver with the completed application a certificate of existence (or a document of similar import) duly authenticated by the secretary of state or other official having custody of corporate records in the state or country under whose law it is incorporated.

§ **-434 Change of name by foreign corporation.** (a) Whenever the name of a foreign corporation authorized to transact business in this State is changed by the amendment of its articles of incorporation, the foreign corporation, within thirty days after the amendment becomes effective, shall deliver to the department director a certificate evidencing the name change, duly authenticated by the proper officer of the state or country under the laws of which it is incorporated. If the certificate is in a foreign language, a translation under oath of the translator shall accompany the certificate.

(b) Whenever a foreign corporation that is authorized to transact business in this State shall change its name to one under which a certificate of authority would not be granted to it on application therefor, the foreign corporation shall not thereafter transact any business in this State until it has changed its name to a name that is available to it under the laws of this State or has otherwise complied with this chapter.

(c) If a foreign corporation is unable to change its name to a name that is available to it under the laws of this State, it may deliver to the department director a copy of a certificate of registration of a trade name for the foreign corporation's file

and thereafter shall become authorized to transact business in the State under that name.

§ -435 **Effect of certificate of authority.** (a) A certificate of authority authorizes the foreign corporation to which it is issued to transact business in this State subject to the right of this State to revoke the certificate as provided in this chapter.

(b) A foreign corporation with a valid certificate of authority has the same but no greater rights and has the same but no greater privileges as, and except as otherwise provided by this chapter is subject to the same duties, restrictions, penalties, and liabilities now or later imposed on, a domestic corporation of like character.

(c) This chapter does not authorize this State to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this State.

§ -436 **Corporate name of foreign corporation.** (a) If the corporate name of a foreign corporation does not satisfy the requirements of section -51, the foreign corporation to obtain or maintain a certificate of authority to transact business in this State may use a fictitious name to transact business in this State if its real name is unavailable and it delivers to the department director for filing a copy of a certificate of registration of a trade name by the foreign corporation under which the foreign corporation will transact business in this State.

(b) Except as authorized by subsections (c) and (d), the corporate name (including a fictitious name) of a foreign corporation may not be the same as, or substantially identical to:

(1) The name of any domestic corporation, partnership, limited liability company, or limited liability partnership existing or registered under the laws of this State, or any foreign corporation, partnership, limited liability company, or limited liability partnership authorized to transact business in this State;

(2) A name the exclusive right to which is, at the time, reserved in this State;

(3) The fictitious name of another foreign corporation authorized to transact business in this State; and

(4) Any trade name, trademark, or service mark registered in this State.

(c) A foreign corporation may apply to the department director for authorization to use in this State the name of another corporation (incorporated or authorized to transact business in this State) that is substantially identical based upon the department director's records from the name applied for. The department director shall authorize use of the name applied for if:

(1) The other entity or holder of a reserved or registered name consents to the use in writing and one or more words are added to the other entity's name to make the name distinguishable from the name of the applicant; or

(2) The applicant delivers to the department director a certified copy of a final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this State.

(d) A foreign corporation may use in this State the name (including the fictitious name) of another domestic or foreign corporation that is used in this State if the other corporation is incorporated or authorized to transact business in this State and the foreign corporation:

(1) Has merged with the other corporation;

(2) Has been formed by reorganization of the other corporation; or

(3) Has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

§ -437 **Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to transaction business in this State must continuously maintain in this State:

(1) A registered office that may be the same as any of its places of business; and

(2) A registered agent, who may be:

(A) An individual who resides in this State and whose business office is identical with the registered office;

(B) A domestic corporation or not-for-profit domestic corporation whose business office is identical with the registered office; or

(C) A foreign corporation or foreign not-for-profit corporation authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.

§ -438 **Change of registered office or registered agent of foreign corporation.** (a) A foreign corporation authorized to transact business in this State may change its registered office or registered agent by delivering to the department director for filing a statement of change that sets forth:

(1) Its name;

(2) The street address of its current registered office;

(3) If the current registered office is to be changed, the street address of its new registered office;

(4) The name of its current registered agent;

(5) If the current registered agent is to be changed, the name of its new registered agent; and

(6) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(b) If a registered agent changes the street address of the agent's business office, the agent may change the street address of the registered office of any foreign corporation for which the agent is the registered agent by notifying the corporation in writing of the change and signing (either manually or in facsimile) and delivering to the department director for filing a statement of change that complies with the requirements of subsection (a) and recites that the corporation has been notified of the change.

§ -439 **Resignation of registered agent of foreign corporation.** (a) The registered agent of a foreign corporation may resign from the registered agent's appointment by signing and delivering to the department director for filing the original and two exact or conformed copies of a statement of resignation. The statement of resignation may include a statement that the registered office is also discontinued.

(b) The registered agent shall attach the filing receipt to one copy and mail the copy and receipt to the registered office if not discontinued. The department director shall mail the other copy to the foreign corporation at its principal office address shown in its most recent annual report.

(c) The appointment of the agent is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ -440 **Service on foreign corporation.** (a) The registered agent of a foreign corporation authorized to transact business in this State is the corporation's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A foreign corporation may be served by registered or certified mail, return receipt requested, addressed to the secretary of the foreign corporation at its principal office shown in its application for a certificate of authority or in its most recent annual report if the foreign corporation:

(1) Has no registered agent or its registered agent cannot with reasonable diligence be served;
(2) Has withdrawn from transacting business in this State under 451; or
(3) Has had its certificate of authority revoked under section -462.

(c) Service is perfected under subsection (b) at the earliest of:

(1) The date the foreign corporation receives the mail;
(2) The date shown on the return receipt, if signed on behalf of the foreign corporation; or
(3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

(d) This section does not prescribe the only means, or necessarily the required means, of serving a foreign corporation.

§ -441 **Application to corporations heretofore authorized to transact business in this State.** Foreign corporations that are duly authorized to transact business in this State at the time this chapter takes effect, for a purpose or purposes for which a corporation might secure the authority under this chapter, shall be entitled to all of the rights and privileges applicable to foreign corporations procuring certificates of authority to transact business in this State under this chapter, and from the time this chapter takes effect the corporations shall be subject to all of the limitations, restrictions, liabilities, and duties prescribed herein for foreign corporations procuring certificates of authority to transact business in this State under this chapter.

B. WITHDRAWAL

§ -451 **Withdrawal of foreign corporation.** (a) A foreign corporation authorized to transact business in this State may not withdraw from this State until it obtains a certificate of withdrawal from the department director.

(b) A foreign corporation authorized to transact business in this State may apply for a certificate of withdrawal by delivering an application to the department director for filing. The application must set forth:

(1) The name of the foreign corporation and the name of the state or country under whose law it is incorporated;
(2) That it is not transacting business in this State and that it surrenders its authority to transact business in this State;
(3) That it revokes the authority of its registered agent to accept service on its behalf and appoints the department director as its agent for service of process in any proceeding based on a cause of action arising during the time it was authorized to transact business in this State;
(4) A mailing address to which the department director may mail a copy of any process served on the department director under paragraph (3); and
(5) A commitment to notify the department director in the future of any change in its mailing address.

(c) After the withdrawal of the corporation is effective, service of process on the department director under this section is service on the foreign corporation. Upon

receipt of process, the department director shall mail a copy of the process to the foreign corporation at the mailing address set forth under subsection (b).

(d) After the filing of the application of withdrawal, the department director shall issue a certificate of withdrawal that shall be effective as of the date of the filing of the application of withdrawal, and the authority of the foreign corporation to transact business in this State shall cease.

C. REVOCATION OF CERTIFICATE OF AUTHORITY

§ **-461 Grounds for revocation.** The department director may commence a proceeding under section -462 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

(1) The foreign corporation has failed to file its annual report with the department director for a period of two years;

(2) The foreign corporation is without a registered agent or registered office in this State as required by this chapter;

(3) The foreign corporation does not inform the department director under section -438 or -439 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(4) An incorporator, director, officer, or agent of the foreign corporation signed a document that incorporator, director, officer, or agent knew was false in any material respect with intent that the document be delivered to the department director for filing; or

(5) The department director receives a duly authenticated certificate from the department director or other official having custody of corporate records in the state or country under whose law the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

§ **-462 Procedure for and effect of revocation.** (a) If the department director determines that one or more grounds exist under section -461 for revocation of a certificate of authority, the department director shall give written notice of the department director's determination by mailing the notice to the foreign corporation at its last known address appearing in the records of the department director.

(b) If the foreign corporation does not correct each ground for revocation or demonstrate to the reasonable satisfaction of the department director that each ground determined by the department director does not exist within sixty days after the date of mailing of the department director's written notice, the department director may revoke the foreign corporation's certificate of authority by signing a certificate of revocation that recites the ground or grounds for revocation and its effective date. The department director shall file the original of the certificate and serve a copy on the foreign corporation under section -440.

(c) The authority of a foreign corporation to transact business in this State ceases on the date shown on the certificate revoking its certificate of authority.

(d) The department director's revocation of a foreign corporation's certificate of authority appoints the department director the foreign corporation's agent for service of process in any proceeding based on a cause of action that arose during the time the foreign corporation was authorized to transact business in this State. Service of process on the department director under this subsection is service on the foreign corporation. Upon receipt of process, the department director shall mail a copy of the process to the secretary of the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communication received from the

corporation stating the current mailing address of its principal office, or, if none are on file, in its application for a certificate of authority.

(e) Revocation of a foreign corporation's certificate of authority does not terminate the authority of the registered agent of the corporation.

§ -463 **Appeal from revocation.** (a) A foreign corporation may appeal the department director's revocation of its certificate of authority to the circuit court within thirty days after the certificate of revocation is signed. The foreign corporation appeals by petitioning the court to set aside the revocation and attaching to the petition copies of its certificate of authority and the department director's certificate of revocation.

(b) The court may summarily order the department director to reinstate the certificate of authority or may take any other action the court considers appropriate.

(c) The court's final decision may be appealed as in other civil proceedings.

## PART XVII. RECORDS AND REPORTS

### A. RECORDS

§ -470 **Books and records.** (a) Each corporation shall keep accurate and complete books and records of account and shall keep and maintain at its principal office, or other place as its board of directors may order, minutes of the proceedings of its shareholders and board of directors. The books and records of account shall include accounts of the corporation's assets, liabilities, receipts, disbursements, gains, and losses. The minutes of the proceedings of the shareholders and board of directors of the corporation shall show, as to each meeting of the shareholders or the board of directors, the time and place thereof, whether regular or special, whether notice thereof was given, and if so in what manner, the names of those present at directors' meetings, the number of shares present or represented at shareholders' meetings, and the proceedings at each meeting.

(b) In every corporation incorporated under this chapter, the board of directors of the corporation shall cause a book to be kept for registering the names of all persons who are or shall become shareholders of the corporation, showing the number of shares of stock held by them respectively, and the time when they respectively became the owner of the shares. The book shall be open at all reasonable times for the inspection of the shareholders. The secretary or the person having the charge thereof shall give a certified transcript of anything therein contained to any shareholder applying therefor; provided that the shareholder pays a reasonable charge for the preparation of the certified transcript. The transcript shall be legal evidence of the facts therein set forth in any suit by or against the corporation.

### B. REPORTS

§ -472 **Annual report.** (a) Each domestic corporation, and each foreign corporation authorized to transact business in this State, shall deliver to the department director for filing an annual report that sets forth:

(1) The name of the corporation and the state or country under whose law it is incorporated;
(2) The address of its registered office and the name of its registered agent at that office in this State;
(3) The address of its principal office;
(4) The names and business addresses of its directors and principal officers;
(5) A brief description of the nature of its business;

(6) The total number of authorized shares, itemized by class and series, if any, within each class; and
(7) The total number of issued and outstanding shares, itemized by class and series, if any, within each class.

(b) Information in the annual report must reflect the state of the corporation's affairs as of December 31, of the year preceding the year of filing.

(c) The first annual report must be delivered to the department director between January 1 and April 1 of the year following the calendar year in which a domestic corporation was incorporated or a foreign corporation was authorized to transact business. Subsequent annual reports must be delivered to the department director between January 1 and April 1 of the following calendar years.

(d) If an annual report does not contain the information required by this section, the department director shall promptly notify the reporting domestic or foreign corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this section and delivered to the department director within thirty days after the effective date of notice, it is deemed to be timely filed.

§ **-473 Penalties imposed upon corporations.** Each corporation, domestic or foreign, that fails or refuses to file its annual report for any year within the time prescribed by this part shall be subject to a forfeiture of an amount to be determined by the department director not exceeding $100 for every violation, neglect, or failure, to be recovered by action brought in the name of the State by the department director. A continuance of a failure to file the required report shall be a separate offense for each thirty days of the continuance. The department director, for good cause shown, may reduce or waive the penalty imposed by this section.

## PART XVIII. TRANSITION PROVISIONS

§ **-481 Application to existing domestic corporations.** This chapter applies to all domestic corporations in existence on its effective date that were incorporated under any general statute of this State providing for incorporation of corporations for profit if the power to amend or repeal the statute under which the corporation was incorporated was reserved.

§ **-482 Application to qualified foreign corporations.** A foreign corporation authorized to transact business in this State on the effective date of this chapter is subject to this chapter but is not required to obtain a new certificate of authority to transact business under this chapter.

§ **-483 Savings provision.** (a) Except as provided in subsection (b), the repeal of a statute by this chapter does not affect:
(1) The operation of the statute or any action taken under it before its repeal;
(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;
(3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;
(4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(b) If a penalty or punishment imposed for violation of a statute repealed by this chapter is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

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

§ **-484 Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of the chapter are severable."

SECTION 2. Chapter 415, Hawaii Revised Statutes, is repealed except for the grouping control share acquisitions, sections 415-171 and 415-172, Hawaii Revised Statutes, which shall remain in effect.

SECTION 3. The revisor of statutes shall prepare a table indicating the Hawaii Revised Statutes section numbers in section 1 of this Act when codified and the equivalent Model Corporation Act as of January 1, 1984, section number. The table shall be placed in the Hawaii Revised Statutes preceding the new chapter added in section 1 of this Act.

SECTION 4. This Act shall take effect on July 1, 2001.

(Approved June 19, 2000.)

## ACT 245 H.B. NO. 2539

A Bill for an Act Relating to the Environmental Response Revolving Fund.

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

SECTION 1. 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 <u>support environmental protection and natural resource protection programs, including but not limited to energy conservation and alternative energy development, and to</u> address concerns related to <u>air quality, global warming, clean water, polluted runoff, solid and hazardous waste,</u> drinking water, <u>and</u> 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 2. New statutory material is underscored.

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

(Approved June 19, 2000.)

## ACT 246 H.B. NO. 2556

A Bill for an Act Relating to Safety Inspection Frequencies for Regulated Equipment.

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

SECTION 1. Section 397-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Administration.

(1) The department shall establish a boiler and elevator inspection branch for the enforcement of the rules adopted under this chapter and other duties as assigned;

(2) The department shall:
   (A) Implement and enforce the requirements of this chapter; and
   (B) Keep adequate and complete records of the type, size, location, identification data, and inspection findings for boilers, pressure systems, amusement rides, and elevators and kindred equipment required to be inspected pursuant to this chapter;

(3) The department shall formulate definitions and adopt and enforce standards and rules pursuant to chapter 91 that may be necessary for carrying out this chapter. Definitions and rules adopted in accordance with chapter 91 under the authority of chapter 396, prior to the adoption of this chapter that pertain to boilers, pressure systems, amusement rides, and elevators and kindred equipment required to be inspected pursuant to this chapter, shall be continued in force under the authority of this chapter;

(4) Emergency temporary standards may be adopted without conforming to chapter 91 and without hearings to take immediate effect upon giving public notice of the emergency temporary standards or upon another date that may be specified in the notice. An emergency temporary standard may be adopted, if the director determines:
   (A) That the public or individuals are exposed to grave danger from exposure to hazardous conditions or circumstances; and
   (B) That the emergency temporary standard is necessary to protect the public or individuals from danger.

   Emergency temporary standards shall be effective until superseded by a standard adopted under chapter 91, but in any case shall be effective no longer than six months;

(5) Variances from standards adopted under this chapter may be granted upon application of an owner, user, contractor, or vendor. Application for variances [must] shall correspond to procedures set forth in the rules adopted pursuant to 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 will provide substantially equivalent safety as that provided by the standards;

(6) Permits.

(A) The department shall issue a "permit to operate" regarding any boiler, pressure system, amusement ride, or elevator and kindred equipment if found to be safe in accordance with rules adopted pursuant to chapter 91;

(B) The department may immediately revoke any "permit to operate" of any boiler, pressure system, amusement ride, or elevator and kindred equipment found to be in an unsafe condition or where a user, owner, or contractor ignores prior department orders to correct specific defects or hazards and continues to use or operate the above mentioned apparatus without abating the hazards or defects;

(C) The department shall reissue a "permit to operate" to any user, owner, or contractor who demonstrates that the user, owner, or contractor is proceeding in good faith to abate all nonconforming conditions mentioned in department orders and the boilers, pressure systems, amusement rides, and elevators and kindred equipment are safe to operate; and

(D) The department shall establish criteria for the periodic reinspection and renewal of the permits to operate, and may provide for the issuance of temporary permits to operate while any noncomplying boiler, pressure system, amusement ride, and elevator and kindred equipment are being brought into full compliance with the applicable standards and rules adopted pursuant to this chapter; provided that effective July 1, 2000, the period between an initial safety inspection or the inspection used as a basis for the issuance of a permit to operate, and any subsequent inspection of a boiler[,] or pressure system[, amusement ride, or elevator] shall not exceed thirteen months, and shall not exceed eight months for elevators and kindred equipment[, or the inspection used as the basis for the issuance of a permit to operate, and any subsequent inspection, shall not exceed seven months nor be less than five months];

(7) No boiler, pressure system, amusement ride, or elevator and kindred equipment which are required to be inspected by this chapter or by any rule adopted pursuant to this chapter shall be operated, except as necessary to install, repair, or test, unless a permit to operate has been authorized or issued by this department and remains valid; and

(8) The department, upon the application of any owner or user or other person affected thereby, may grant time that may reasonably be necessary for compliance with any order. Any person affected by an order may for cause petition the department for an extension of time."

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 19, 2000.)

## ACT 247

H.B. NO. 2624

A Bill for an Act Relating to the University of Hawaii.

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

SECTION 1. The purpose of this Act is to recodify the statutory authorization for the seed distribution program revolving fund of the University of Hawaii, by adding a new section to chapter 304, Hawaii Revised Statutes, and by repealing such language from chapter 150, Hawaii Revised Statutes.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§304- Seed distribution program; revolving fund.** There is established a revolving fund, the purpose of which shall be to enable the seed distribution program to operate at a level that will adequately meet the demand for seed. The fund shall be used for the cultivation and production of seeds and for research and developmental purposes directly related to cultivation and production. The fund shall be administered by the college of tropical agriculture and human resources of the University of Hawaii. All sums withdrawn from the fund shall be reimbursed or restored from the proceeds realized through the sale of seeds."

SECTION 3. Part III of chapter 150, Hawaii Revised Statutes, is repealed.

SECTION 4. New statutory material is underscored.[1]

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

(Approved June 19, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 248

H.B. NO. 3018

A Bill for an Act Relating to Child Abuse.

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

SECTION 1. Section 350-1.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other state law concerning confidentiality to the contrary, the following persons who, in their professional or official capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future, shall immediately report the matter orally to the department [and] or to the police department:

(1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, attends, treats, or provides other professional or specialized services, including but not limited to physicians, including physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;

(2) Employees or officers of any public or private school;
(3) Employees or officers of any public or private agency or institution, or other individuals, providing social, medical, hospital, or mental health services, including financial assistance;
(4) Employees or officers of any law enforcement agency, including but not limited to the courts, police departments, correctional institutions, and parole or probation offices;
(5) Individual providers of child care, or employees or officers of any licensed or registered child care facility, foster home, or similar institution;
(6) Medical examiners or coroners; and
(7) Employees of any public or private agency providing recreational or sports activities."

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 19, 2000.)

## ACT 249 S.B NO. 2486

A Bill for an Act Relating to Taxation.

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

SECTION 1. Chapter 245, Hawaii Revised Statutes, is amended by adding two[1] new parts to be appropriately designated and to read as follows:

### "PART . STAMPING OF CIGARETTES

**§245-A Payment of tax through use of stamps; exemptions.** (a) The tax imposed under section 245-3 upon the sale or use of cigarettes shall be paid by licensees through the use of stamps.

(b) The department may provide by rule that the tax imposed under section 245-3 upon the sale or use of cigarettes may be paid without the use of stamps in connection with a particular type of transaction.

**§245-B Affixation; required prior to distribution; method and manner.** (a) Beginning January 1, 2001, a licensee or the authorized agent or designee of a licensee shall affix a stamp to the bottom of each individual package of cigarettes prior to distribution.

(b) Beginning April 1, 2001, no individual package of cigarettes may be sold or offered for sale to the general public unless affixed with the stamp required under this section.

(c) Beginning April 1, 2001, no cigarette package may be placed or stored in a vending machine unless affixed with the stamp required under subsection (a).

(d) The department shall adopt rules describing the method and manner in which stamps are to be affixed to packages of cigarettes.

**§245-C Department to furnish stamps; designs, specifications, and denominations; procurement.** The department shall furnish stamps for sale to li-

censees. Stamps shall be of such designs, specifications, and denominations as may be prescribed by the department. Purchase by the department of stamps from a vendor shall be exempt from the requirements of chapter 103D.

**§245-D Sales through financial institutions.** The department may enter into agreements to permit the sale of stamps by designated financial institutions located within the State. A list of financial institutions designated to sell stamps shall be made available at the department.

**§245-E Purchase of stamps; when; by licensee or designee.** (a) A licensee may apply to the department to purchase stamps beginning December 15, 2000.

(b) A licensee may authorize a designee to order purchases of stamps for the licensee at a location where stamps are sold. Authorization of a designee shall be in writing. The written authorization shall continue in effect until written notice of revocation of the authority is delivered at the sales location in the manner prescribed by rule.

**§245-F Price; payment; deferred payment purchases.** (a) Stamps shall be sold at their denominated values, plus a stamp fee of 1.7 per cent of the denominated value of each stamp sold, composed of the aggregate of:

(1) .2 per cent of the denominated value of the stamp to pay for the cost to the State of providing the stamps; and

(2) 1.5 per cent of the denominated value of the stamp to pay for the cost of enforcing the stamp tax;

provided that the department by rule may modify the stamp fee to reflect actual costs incurred by the State in providing the stamps.

(b) Payment for stamps shall be made at the time of purchase; provided that a licensee may defer payments pursuant to section 245-G.

**§245-G Maximum amount of deferred-payment purchases; bond.** (a) A licensee may apply to the department to set the maximum amount of deferred-payment purchases of stamps that may remain unpaid by the licensee during the time specified under section 245-H. Upon receipt of the application and any bond required pursuant to subsection (b), the department shall set the amount for deferred-payment purchases.

(b) The department may require that a licensee who submits an application for deferred-payment purchases of stamps post a bond in an amount of up to one hundred per cent of the maximum amount of allowed deferred-payment purchases as a condition of department approval of the application.

**§245-H Time for payment of deferred-payment purchases; manner of payment.** Amounts owing for stamps purchased on the deferred-payment basis in any calendar month shall be due and payable on or before the last day of the following calendar month. Payment shall be made by a remittance payable to the department.

**§245-I Suspension or reduction of privilege to purchase on deferred-payment basis.** The department may suspend, without prior notice, the privilege to purchase stamps on the deferred-payment basis or may reduce the amount of deferred-payment purchases allowed the licensee if:

(1) The licensee fails to promptly pay for stamps when payment is due;

(2) The bond or bonds required of the licensee are canceled or become void, impaired, or unenforceable for any reason; or

(3) In the opinion of the department, collection of any amounts unpaid or due from the licensee under this chapter is jeopardized.

**§245-J Penalty for failure to make timely payment.** A licensee who fails to pay any amount owing for the purchase of stamps within the time required shall pay a penalty of:

(1) Ten per cent of the amount due in addition to the amount due; and
(2) Interest at the rate specified in section 231-39 from the date on which the amount became due and payable until the date of payment.

**§245-K Monthly report on distributions of cigarettes and tobacco products, and purchases of stamps.** (a) On or before the last day of each month, every licensee shall file on forms prescribed by the department:

(1) A report of the licensee's distributions of cigarettes and purchases of stamps during the preceding month; and
(2) Any other information that the department may require to carry out this part.

(b) On or before the last day of each month, every licensee shall file on forms prescribed by the department:

(1) A report of the licensee's distributions of tobacco products and the wholesale costs of tobacco products during the preceding month; and
(2) Any other information that the department may require to carry out this part.

**§245-L Tax refund or credit for cigarettes and tobacco products shipped for sale or use outside the State.** (a) The department shall adopt rules to provide a tobacco tax refund or credit to a licensee who has paid a tobacco tax on the distribution of cigarettes or tobacco products that are shipped to a point outside the State for subsequent sale or use outside the State.

(b) This part shall not apply to cigarettes or tobacco products that are distributed in this State to consumers and that are subsequently taken outside the State.

**§245-M Unused stamps; cancellation of stamps.** The department shall adopt rules for a refund or credit to a licensee in the amount of the denominated values of any unused stamps. The department may provide by rule for the cancellation of stamps.

**§245-N Approval of department required for transfer of stamps.** Unaffixed stamps shall not be sold, exchanged, or in any manner transferred by a licensee to another person without prior written approval of the department. Any person who violates this section shall be subject to a fine of not less than $500 and not more than $1,000 for each violation.

**§245-O Unlicensed possession or use of stamps.** A person who is not licensed under this chapter and who knowingly possess or uses a stamp shall be guilty of a class B felony.

**§245-P Counterfeiting stamps.** A person shall be guilty of a class B felony if the person:

(1) Intentionally or knowingly makes, alters, or reuses a stamp as defined in section 245-1; or
(2) Knowingly possesses or distributes a stamp that has been falsely made, altered, or reused.

**§245-Q Sale or purchase of packages of cigarettes without stamps; fines and penalties.** (a) Beginning April 1, 2001, a person shall be guilty of a class C felony if the person:

(1) Is not a licensee, and knowingly possesses, keeps, stores, acquires, or transports three thousand or more cigarettes that do not have stamps affixed to the cigarette packages as required by this part; or

(2) Knowingly sells one thousand or more cigarettes that do not have stamps affixed to the cigarette packages as required by this part.

(b) Beginning April 1, 2001, a person shall be guilty of a misdemeanor if the person:

(1) Is not a licensee, and knowingly possesses, keeps, stores, acquires, or transports one thousand or more cigarettes that do not have stamps affixed to the cigarette packages as required by this part; or

(2) Knowingly sells less than one thousand cigarettes that do not have stamps affixed to the cigarette packages as required by this part.

(c) In addition to any other authorized disposition, a corporation found in violation of:

(1) Subsection (a) is subject to a fine in an amount not to exceed $50,000; and

(2) Subsection (b) is subject to a fine in an amount not to exceed $25,000.

**§245-R Vending unstamped cigarettes.** (a) Beginning April 1, 2001, any person who knowingly places for sale in a cigarette vending machine any cigarettes not contained in cigarette packages to which are affixed stamps as required by this part, shall be guilty of a class C felony.

(b) In addition to any other authorized disposition, a corporation found in violation of subsection (a) may be fined in an amount not to exceed $50,000.

**§245-S Penalty exemptions.** (a) Sections 245-Q and 245-R shall not apply to cigarettes that are exempt from taxes as provided by section 245-3(b).

(b) Sections 245-Q and 245-R shall not apply to the resale of tax-exempt cigarettes that were purchased from sales outlets operated under the regulations of the Armed Services of the United States.

**§245-T Forfeitures; disposition.** Any cigarette, package of cigarettes, or carton of cigarettes unlawfully possessed, kept, stored, acquired, transported, or sold in violation of this part may be ordered forfeited pursuant to chapter 712A.

**§245-U Enforcement; injunction; disposition of fines.** (a) Enforcement of this part shall be under the jurisdiction of the attorney general.

(b) Notwithstanding the existence of other remedies at law, the attorney general may apply for a temporary or permanent injunction restraining any person from violating or continuing to violate this part. The injunction shall be issued without bond.

(c) Where the attorney general initiates and conducts an investigation resulting in the imposition and collection of a criminal fine pursuant to this part, one hundred per cent of the fine shall be distributed to the attorney general; provided that if the attorney general engages the prosecuting attorney for the investigation or prosecution, or both, resulting in the imposition and collection of a criminal fine under this part, the fine shall be shared equally between the attorney general and the prosecuting attorney.

**§245-V Rules.** The department shall adopt rules pursuant to chapter 91 to implement this part."

SECTION 2. Chapter 245, Hawaii Revised Statutes, is amended by designating sections 245-1 to 245-15 as part I and inserting a title before section 245-1 to read as follows:

"PART I. GENERAL PROVISIONS"

SECTION 3. Section 245-1, Hawaii Revised Statutes, is amended by adding twelve new definitions to be appropriately inserted and to read as follows:

"""Attorney general" means the state attorney general or deputy attorneys general.

"Cigarette package" means a sealed package of cigarettes originating from the manufacturer and bearing the health warning required by law.

"Department" means the department of taxation.

"Falsely alter" means to change a stamp in any manner so that the altered stamp falsely appears or purports to have a value or validity that is not authorized or consented to by the department.

"Falsely make" means to print, manufacture, or make what purports to be a stamp without the authority or consent of the department.

"Falsely reuse" means to affix a stamp that was previously affixed to a package of cigarettes, to another package of cigarettes.

"License" means a license granted under this chapter, that authorizes the holder to engage in the business of a wholesaler or dealer of cigarettes or tobacco products in the State.

"Licensee" means the holder of a license granted under this chapter.

"Prosecuting attorney" means the prosecuting attorney or the deputy prosecuting attorneys of each of the respective counties.

"Sale" includes every act of selling.

"Sell" means to:

(1) Solicit and receive an order for;
(2) Have, keep, offer, or expose for sale;
(3) Deliver for value or deliver in any other way than purely gratuitously;
(4) Peddle;
(5) Keep with intent to sell; and
(6) Traffic in.

"Stamp" means a stamp printed, manufactured, or made by authority of the department, as provided in this chapter, that is issued, sold, or circulated by the department, and by the use of which the tax levied under this chapter is paid."

SECTION 4. Section 245-3, Hawaii Revised Statutes, is amended by amending the title and subsection (a) 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] An excise tax equal to[:
    (A) 4.00 cents for each cigarette sold, used, or possessed by the wholesaler or dealer, after 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; and
(2) [Excise] An 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.] The tax shall be applied to cigarettes through the use of stamps."

SECTION 5. Section 245-5, Hawaii Revised Statutes, is amended to read as follows:

"**§245-5 Returns.** Every [licensee,] wholesaler or dealer, on or before the last day of each month, shall file with the department [of taxation] a return showing the cigarettes and tobacco products sold, possessed, or used by the [licensee] wholesaler or dealer during the preceding calendar month and of the taxes chargeable against the taxpayer in accordance with this chapter. The form of the return shall be prescribed by the department and shall [contain such information, including a] include:

(1) A separate statement of the number and wholesale price of cigarettes[, and the];
(2) The amount of stamps purchased and used;
(3) The wholesale price of tobacco products, sold, possessed, or used[, as it]; and
(4) Any other information that the department may deem necessary, for the proper administration of this chapter."

SECTION 6. Section 245-6, Hawaii Revised Statutes, is amended to read as follows:

"**§245-6 Payment of taxes; penalties.** At the time of the filing of the return required under section 245-5 and within the time prescribed [therefor], each [licensee] wholesaler or dealer shall pay to the department [of taxation] the taxes imposed by this chapter, required to be shown by the return[.], including the unpaid amount of taxes imposed by this chapter.

Penalties and interest shall be added to and become a part of the taxes, when and as provided by section 231-39."

SECTION 7. Section 245-7, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) If it should appear upon [such] the examination or [thereafter] within five years after the filing of the return, or at any time if no return has been filed, as a result of the examination, or as a result of any examination of the records of the [licensee] wholesaler or dealer, or of any other inquiry or investigation, that the correct amount of the taxes is greater than that shown on the return, or that any taxes imposed by this chapter have not been paid, an assessment of [such] the taxes may be made[,] in the manner provided in section 235-108(b). The amount of the taxes for the period covered by the assessment shall not be reduced below the amount determined by an assessment so made, except upon appeal or in a proceeding brought pursuant to section 40-35.

(c) If the [licensee] wholesaler or dealer has paid or returned with respect to any month more than the amount determined to be the correct amount of taxes for the month, the amount of the taxes so returned and any assessment of taxes made

pursuant to the return may be reduced, and any overpayment of taxes may be credited upon the taxes imposed by this chapter, or at the election of the [licensee,] wholesaler or dealer, the [licensee] wholesaler or dealer not being delinquent in the payment of any taxes owing to the State, may be refunded in the manner provided in section 231-23(c); provided that no reduction of taxes may be made when forbidden by subsection (b) or more than five years after the filing of the return."

SECTION 8. Section 245-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [Every] Each wholesaler [and] or dealer shall keep a record of [every]:

(1) Every sale or use of cigarettes and tobacco products by the wholesaler or dealer[, the];

(2) The number and wholesale price of cigarettes[, and the];

(3) The wholesale price of tobacco products, sold, possessed, or used[, and of the];

(4) The taxes payable [thereon,] on tobacco products sold, possessed, or used, if any[,]; and

(5) The amounts of stamps purchased and used,

in [such] a form as the department [of taxation] may prescribe. The records shall be offered for inspection and examination at any time upon demand by the department or the attorney general, and shall be preserved for a period of five years, except that the department[,] and the attorney general, in writing, [may] shall both consent to their destruction within the five-year period or either the department or the attorney general may require that they be kept longer. The department, by rule, may require the [licensee] wholesaler or dealer to keep [such] other records as it may deem necessary for the proper enforcement of this chapter."

SECTION 9. Section 245-9, Hawaii Revised Statutes, is amended to read as follows:

"**§245-9 Inspection.** The department [of taxation] and the attorney general may examine all records, including tax returns and reports under section 245-K, required to be kept or filed under this chapter, and books, papers, and records of any person engaged in the business of wholesaling or dealing cigarettes and tobacco products, to verify the accuracy of the payment of the taxes imposed by this chapter. Every person in possession of any books, papers, and records, and the person's agents and employees, are directed and required to give to the department and the attorney general the means, facilities, and opportunities for the examinations."

SECTION 10. Section 245-15, Hawaii Revised Statutes, is amended to read as follows:

"**§245-15 Disposition of revenues.** All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations to be kept and accounted for as provided by law[.], except for the amounts designated by section 245-U for distribution to the attorney general."

SECTION 11. Section 712A-5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) The following is subject to forfeiture:

(a) Property described in a statute authorizing forfeiture;

(b) Property used or intended for use in the commission of, attempt to commit, or conspiracy to commit a covered offense, or which facilitated or assisted such activity;

(c) Any firearm which is subject to forfeiture under any other subsection of this section or which is carried during, visible, or used in furtherance of the commission, attempt to commit, or conspiracy to commit a covered offense, or any firearm found in proximity to contraband or to instrumentalities of an offense;

(d) Contraband[, which] or untaxed cigarettes in violation of chapter 245, shall be seized and summarily forfeited to the State without regard to the procedures set forth in this chapter;

(e) Any proceeds or other property acquired, maintained, or produced by means of or as a result of the commission of the covered offense;

(f) Any property derived from any proceeds which were obtained directly or indirectly from the commission of a covered offense;

(g) Any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which has been established, participated in, operated, controlled, or conducted in order to commit a covered offense;

(h) All books, records, bank statements, accounting records, microfilms, tapes, computer data, or other data which are used, intended for use, or which facilitated or assisted in the commission of a covered offense, or which document the use of the proceeds of a covered offense."

SECTION 12. Section 712A-16, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) All property forfeited to the State under this chapter shall be transferred to the attorney general who:

(a) May transfer property, other than currency, which shall be distributed in accordance with subsection (2) to any local or state government entity, municipality, or law enforcement agency within the State;

(b) May sell forfeited property to the public by public sale; provided that for leasehold real property:

(i) The attorney general shall first offer the holder of the immediate reversionary interest the right to acquire the leasehold interest and any improvements built or paid for by the lessee for the then fair market value of the leasehold interest and improvements. The holder of the immediate reversionary interest shall have thirty days after receiving written notice within which to accept or reject the offer in writing; provided that the offer shall be deemed to be rejected if the holder of the immediate reversionary interest has not communicated acceptance to the attorney general within the thirty-day period. The holder of the immediate reversionary interest shall have thirty days after acceptance to tender to the attorney general the purchase price for the leasehold interest and any improvements, upon which tender the leasehold interest and improvements shall be conveyed to the holder of the immediate reversionary interest.

(ii) If the holder of the immediate reversionary interest fails to exercise the right of first refusal provided in subparagraph (i), the attorney general may proceed to sell the leasehold interest and any improvements by public sale.

(iii) Any dispute between the attorney general and the holder of the immediate reversionary interest as to the fair market value of the leasehold interest and improvements shall be settled by arbitration pursuant to chapter 658;

(c) May sell or destroy all raw materials, products, and equipment of any kind used or intended for use in manufacturing, compounding, or processing a controlled substance[;] or any untaxed cigarettes in violation of chapter 245;
(d) May compromise and pay valid claims against property forfeited pursuant to this chapter; or
(e) May make any other disposition of forfeited property authorized by law."

SECTION 13. The director of taxation shall submit findings and recommendations to the legislature no later than twenty days prior to the regular session of 2006 as to the effectiveness of this Act in reducing the loss of cigarette tax revenue to the State from illegal sales of untaxed cigarettes. The director of taxation may submit an interim report to the legislature on any findings relating to the effectiveness of this Act before 2006.

SECTION 14. The attorney general shall report to the legislature no later than twenty days before the convening of each of the regular sessions of 2002 and 2003 on its activities relating to this Act, including expenses, fines, and penalties collected, and forfeitures.

SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of $35,000, or so much thereof as may be necessary for fiscal year 2000-2001 for start-up costs for implementing the cigarette stamp tax system, including a one-year supply of stamps and stamp cylinders.

The sum appropriated shall be expended by the department of taxation for the purposes of this Act.

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of $200,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the attorney general to effectuate the provisions of this Act, including the hiring of necessary staff.

The sum appropriated shall be expended by the attorney general for the purposes of this Act.

SECTION 17. This Act does not affect the rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 18. In codifying the new sections added to chapter 245, Hawaii Revised Statutes, by section 1 of this Act, and referred to in this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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) Sections 15 and 16 shall take effect on July 1, 2000; and
(2) On June 30, 2006, this Act shall be repealed and sections 245-1, 245-3, 245-5, 245-6, 245-7(b) and (c), 245-8(a), 245-9, 245-15, 712A-5(1), and 712A-16(1), Hawaii Revised Statutes, shall be reenacted in the

form in which they read on the day before the approval of this Act.

(Approved June 19, 2000.)

**Note**

1. So in original.

# ACT 250

S.B NO. 2655

A Bill for an Act Relating to Health.

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

## PART I

SECTION 1. The legislature, in section 12 of Act 137, Session Laws of Hawaii 1999, directed the Hawaii patient rights and responsibilities task force to develop proposed legislation addressing issues within the scope of the task force's responsibilities under Act 178, Session Laws of Hawaii 1998. This part is submitted in response to the legislature's mandate.

SECTION 2. Chapter 432E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately inserted and to read as follows:

"**§432E- Expedited appeal, when authorized; standard for decision.** (a) An enrollee may request that the following be conducted as an expedited appeal:

(1) The internal review under section 432E-5 of the enrollee's complaint; or

(2) The external review under section 432E-6 of the managed care plan's final internal determination.

If a request for expedited appeal is approved by the managed care plan or the commissioner, the appropriate review shall be completed within seventy-two hours of receipt of the request for expedited appeal.

(b) An expedited appeal shall be authorized if the application of the forty-five day standard review time frame may:

(1) Seriously jeopardize the life or health of the enrollee;

(2) Seriously jeopardize the enrollee's ability to gain maximum functioning; or

(3) Subject the enrollee to severe pain that cannot be adequately managed without the care or treatment that is the subject of the expedited appeal.

(c) The decision as to whether an enrollee's complaint is an expedited appeal shall be made by applying the standard of a reasonable individual who is not a trained health professional. The decision may be made for the managed care plan by an individual acting on behalf of the managed care plan. If a licensed health care provider with knowledge of a claimant's medical condition requests an expedited appeal on behalf of an enrollee, the request shall be treated as an expedited appeal."

Section[1] 432E-1, Hawaii Revised Statutes, is amended by adding six new definitions to be appropriately inserted and to read as follows:

"'"Appointed representative" means a person who is expressly permitted by the enrollee or who has the power under Hawaii law to make health care decisions on behalf of the enrollee, including:

(1) A court-appointed legal guardian;

(2) A person who has a durable power of attorney for health care; or

(3) A person who is designated in a written advance directive.

"Expedited appeal" means the internal review of a complaint or an external review of the final internal determination of an enrollee's complaint, which is completed within seventy-two hours after receipt of the request for expedited appeal.

"External review" means an administrative review requested by an enrollee under section 432E-6 of a managed care plan's final internal determination of an enrollee's complaint.

"Health care provider" means an individual licensed or certified to provide health care in the ordinary course of business or practice of a profession.

"Independent review organization" means an independent entity that:

(1) Is unbiased and able to make independent decisions;

(2) Engages adequate numbers of practitioners with the appropriate level and type of clinical knowledge and expertise;

(3) Applies evidence-based decision making;

(4) Demonstrates an effective process to screen external reviews for eligibility;

(5) Protects the enrollee's identity from unnecessary disclosure; and

(6) Has effective systems in place to conduct a review.

"Internal review" means the review under section 432E-5 of an enrollee's complaint by a managed care plan.

"Medical necessity" means a health intervention as defined in section 432E- ."

SECTION 4[2]. Section 432E-5, Hawaii Revised Statutes, is amended to read as follows:

"**§432E-5 Complaints and appeals procedure for enrollees.** (a) A managed care plan with enrollees in this State shall establish and maintain a procedure to provide for the resolution of an enrollee's complaints and appeals. The procedure shall provide for expedited appeals under section 432E- . The definition of medical necessity in section 432E- shall apply in a managed care plan's complaints and appeals procedures.

(b) The managed care plan shall at all times [shall] make available its complaints and appeals procedures. The complaints and appeals procedures shall be reasonably understandable to the average layperson and shall be provided in [languages] a language other than English upon request.

(c) A managed care plan shall decide any expedited appeal as soon as possible after receipt of the complaint, taking into account the medical exigencies of the case, but not later than seventy-two hours after receipt of the request for expedited appeal.

[(c)] (d) A managed care plan shall send notice of its final internal determination within forty-five days of the submission of the complaint to the enrollee, the enrollee's appointed representative, if applicable, the enrollee's treating provider, and the commissioner. The notice shall include the following information regarding the enrollee's rights and procedures [under section 432E-6.]:

(1) The enrollee's right to request an external review;

(2) The sixty-day deadline for requesting the external review;

(3) Instructions on how to request an external review; and

(4) Where to submit the request for an external review."

SECTION 5[2]. Section 432E-6, Hawaii Revised Statutes, is amended to read as follows:

"**§432E-6 [Appeals to the commissioner.] External review procedure.** (a) After exhausting all internal complaint and appeal procedures available, an enrollee,

or the enrollee's treating provider or appointed representative, may [appeal an adverse decision] file a request for external review of a managed care [plan] plan's final internal determination to a three-member review panel appointed by the commissioner composed of a representative from a [health] managed care plan not involved in the complaint, a provider licensed to practice and practicing medicine in Hawaii not involved in the complaint, and the commissioner or the commissioner's designee in the following manner:

(1) The enrollee shall submit a request for external review to the commissioner within [thirty] sixty days from the date of the final internal determination by the managed care plan;

(2) The commissioner may retain:

(A) Without regard to chapters 76 and 77, an independent medical expert trained in the field of medicine most appropriately related to the matter under review. Presentation of evidence for this purpose shall be exempt from section 91-9(g); and

(B) The services of an independent review organization from an approved list maintained by the commissioner;

(3) Within seven days after receipt of the request for external review, a managed care plan or its designee utilization review organization shall provide to the commissioner or the assigned independent review organization:

(A) Any documents or information used in making the final internal determination including the enrollee's medical records;

(B) Any documentation or written information submitted to the managed care plan in support of the enrollee's initial complaint; and

(C) A list of the names, addresses, and telephone numbers of each licensed health care provider who cared for the enrollee and who may have medical records relevant to the external review;

provided that where an expedited review is involved, the managed care plan or its designee utilization review organization shall provide the documents and information within forty-eight hours of receipt of the request for external review.

Failure by the managed care plan or its designee utilization review organization to provide the documents and information within the prescribed time periods shall not delay the conduct of the external review. Where the plan or its designee utilization review organization fails to provide the documents and information within the prescribed time periods, the commissioner may issue a decision to reverse the final internal determination, in whole or part, and shall promptly notify the independent review organization, the enrollee, the enrollee's appointed representative, if applicable, the enrollee's treating provider, and the managed care plan of the decision;

[(2)] (4) Upon receipt of the request for external review and upon a showing of good cause, the commissioner shall appoint the members of the panel and shall conduct a review hearing pursuant to chapter 91. If the amount in controversy is less than $500, the commissioner may conduct a review hearing without appointing a review panel;

[(3)] (5) The review hearing shall be conducted as soon as practicable, taking into consideration the medical exigencies of the case; provided that [the]:

(A) The hearing shall be held no later than sixty days from the date of the request for the hearing; and

(B) An external review conducted as an expedited appeal shall be determined no later than seventy-two hours after receipt of the request for external review;

[(4) The commissioner may retain, without regard to chapters 76 and 77, an independent medical expert trained in the field of medicine most appropriately related to the matter under review. Presentation of evidence for this purpose shall be exempt from section 91-9(g);

(5)] (6) After considering the enrollee's complaint, the managed care plan's response, and any affidavits filed by the parties, the commissioner may dismiss the [appeal] request for external review if it is determined that the [appeal] request is frivolous or without merit; and

[(6)] (7) The review panel shall review every [adverse] final internal determination to determine whether [or not] the managed care plan involved acted reasonably [and with sound medical judgment]. The review panel and the commissioner or the commissioner's designee shall consider [the]:

(A) The terms of the agreement of the enrollee's insurance policy, evidence of coverage, or similar document;

(B) Whether the medical director properly applied the medical necessity criteria in section 432E- in making the final internal determination;

(C) All relevant medical records;

(D) The clinical standards of the plan[, the];

(E) The information provided[, the];

(F) The attending physician's recommendations[,]; and

(G) [generally] Generally accepted practice guidelines.

The commissioner, upon a majority vote of the panel, shall issue an order affirming, modifying, or reversing the decision within thirty days of the hearing.

(b) The procedure set forth in this section shall not apply to claims or allegations of health provider malpractice, professional negligence, or other professional fault against participating providers.

(c) No person shall serve on the review panel or in the independent review organization who, through a familial relationship within the second degree of consanguinity or affinity, or for other reasons, has a direct and substantial professional, financial, or personal interest in:

(1) The plan involved in the complaint, including an officer, director, or employee of the plan; or

(2) The treatment of the enrollee, including but not limited to the developer or manufacturer of the principal drug, device, procedure, or other therapy at issue.

[(c)] (d) Members of the review panel shall be granted immunity from liability and damages relating to their duties under this section.

[(d)] (e) An enrollee may be allowed, at the commissioner's discretion, an award of a reasonable sum for attorney's fees and reasonable costs [of suit in an action brought against the managed care plan.] incurred in connection with the external review under this section, unless the commissioner in an administrative proceeding determines that the appeal was unreasonable, fraudulent, excessive, or frivolous.

(f) Disclosure of an enrollee's protected health information shall be limited to disclosure for purposes relating to the external review."

SECTION 6[2]. Section 5, Act 178, Session Laws of Hawaii 1998, is amended by amending subsection (c) to read as follows:

"(c) The task force shall be [comprised] composed of interested parties with the total membership of the task force between twelve and [twenty] twenty-seven members. The insurance commissioner or the commissioner's designated representative[,] shall be a member and serve as the chair of the task force and appoint [it] its remaining members. At least one representative from each of the following shall be appointed as a member; members of other groups may also be appointed:

(1) The department of health;
(2) The department of labor and industrial relations, disability compensation division;
(3) A health insurance company that provides accident and sickness policies under chapter 431, article 10A, Hawaii Revised Statutes;
(4) A mutual benefit society that provides health insurance under chapter 432, Hawaii Revised Statutes;
(5) A health maintenance organization that holds a certificate of authority under chapter 432D, Hawaii Revised Statutes;
(6) The American Association of Retired Persons;
(7) The Hawaii Coalition for Health;
(8) The Hawai'i Business Health Coalition;
(9) The Legal Aid Society of Hawaii;
(10) The Hawaii Medical Association;
(11) An organization that represents nurses; [and]
(12) A hospital or an organization that represents hospitals[.]; and
(13) Hawaii Psychiatric Medical Association;
(14) American Academy of Pediatrics; and
(15) Family Voices."

## PART II

SECTION 7[2]. In Senate Concurrent Resolution No. 152, S.D. 1, the 1999 legislature requested the Hawaii patient rights and responsibilities task force to make a thorough study of the issues relating to the use of the term "medical necessity" and determine the most appropriate definition of "medical necessity", or develop new terms to better resolve the issues examined.

The purpose of this part is to establish a statutory definition of the term "medical necessity" to:

(1) Promote uniformity among the various health plans; and
(2) Serve as the standard of review governing a health plan's internal appeals process and the external appeals process.

SECTION 8[2]. Chapter 432E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§432E- Medical necessity.** (a) For contractual purposes, a health intervention shall be covered if it is an otherwise covered category of service, not specifically excluded, recommended by the treating licensed health care provider, and determined by the health plan's medical director to be medically necessary as defined in subsection (b). A health intervention may be medically indicated and not qualify as a covered benefit or meet the definition of medical necessity. A managed care plan may choose to cover health interventions that do not meet the definition of medical necessity.

(b) A health intervention is medically necessary if it is recommended by the treating physician or treating licensed health care provider, is approved by the health plan's medical director or physician designee, and is:

(1) For the purpose of treating a medical condition;

(2) The most appropriate delivery or level of service, considering potential benefits and harms to the patient;

(3) Known to be effective in improving health outcomes; provided that:

(A) Effectiveness is determined first by scientific evidence;

(B) If no scientific evidence exists, then by professional standards of care; and

(C) If no professional standards of care exist or if they exist but are outdated or contradictory, then by expert opinion;

and

(4) Cost-effective for the medical condition being treated compared to alternative health interventions, including no intervention. For purposes of this paragraph, cost-effective shall not necessarily mean the lowest price.

(c) When the treating licensed health care provider and the health plan's medical director or physician designee do not agree on whether a health intervention is medically necessary, a reviewing body, whether internal to the plan or external, shall give consideration to, but shall not be bound by, the recommendations of the treating licensed health care provider and the health plan's medical director or physician designee.

(d) For the purposes of this section:

"Cost-effective" means a health intervention where the benefits and harms relative to the costs represent an economically efficient use of resources for patients with the medical condition being treated through the health intervention; provided that the characteristics of the individual patient shall be determinative when applying this criterion to an individual case.

"Effective" means a health intervention that may reasonably be expected to produce the intended results and to have expected benefits that outweigh potential harmful effects.

"Health intervention" means an item or service delivered or undertaken primarily to treat a medical condition or to maintain or restore functional ability. A health intervention is defined not only by the intervention itself, but also by the medical condition and patient indications for which it is being applied. New interventions for which clinical trials have not been conducted and effectiveness has not been scientifically established shall be evaluated on the basis of professional standards of care or expert opinion. For existing interventions, scientific evidence shall be considered first and to the greatest extent possible, shall be the basis for determinations of medical necessity. If no scientific evidence is available, professional standards of care shall be considered. If professional standards of care do not exist or are outdated or contradictory, decisions about existing interventions shall be based on expert opinion. Giving priority to scientific evidence shall not mean that coverage of existing interventions shall be denied in the absence of conclusive scientific evidence. Existing interventions may meet the definition of medical necessity in the absence of scientific evidence if there is a strong conviction of effectiveness and benefit expressed through up-to-date and consistent professional standards of care, or in the absence of such standards, convincing expert opinion.

"Health outcomes" mean outcomes that affect health status as measured by the length or quality of a patient's life, primarily as perceived by the patient.

"Medical condition" means a disease, illness, injury, genetic or congenital defect, pregnancy, or a biological or psychological condition that lies outside the range of normal, age-appropriate human variation.

"Physician designee" means a physician or other health care practitioner designated to assist in the decision making process who has training and credentials at least equal to the treating licensed health care provider.

"Scientific evidence" means controlled clinical trials that either directly or indirectly demonstrate the effect of the intervention on health outcomes. If controlled clinical trials are not available, observational studies that demonstrate a causal relationship between the intervention and the health outcomes may be used. Partially controlled observational studies and uncontrolled clinical series may be suggestive, but do not by themselves demonstrate a causal relationship unless the magnitude of the effect observed exceeds anything that could be explained either by the natural history of the medical condition or potential experimental biases. Scientific evidence may be found in the following and similar sources:

(1) Peer-reviewed scientific studies published in or accepted for publication by medical journals that meet nationally recognized requirements for scientific manuscripts and that submit most of their published articles for review by experts who are not part of the editorial staff;

(2) Peer-reviewed literature, biomedical compendia, and other medical literature that meet the criteria of the National Institute of Health's National Library of Medicine for indexing in Index Medicus, Excerpta Medicus (EMBASE), Medline, and MEDLARS database Health Services Technology Assessment Research (HSTAR);

(3) Medical journals recognized by the Secretary of Health and Human Services under section 1861(t)(2) of the Social Security Act, as amended;

(4) Standard reference compendia including the American Hospital Formulary Service-Drug Information, American Medical Association Drug Evaluation, American Dental Association Accepted Dental Therapeutics, and United States Pharmacopoeia-Drug Information;

(5) Findings, studies, or research conducted by or under the auspices of federal agencies and nationally recognized federal research institutes including but not limited to the Federal Agency for Health Care Policy and Research, National Institutes for Health, National Cancer Institute, National Academy of Sciences, Health Care Financing Administration, Congressional Office of Technology Assessment, and any national board recognized by the National Institutes of Health for the purpose of evaluating the medical value of health services; and

(6) Peer-reviewed abstracts accepted for presentation at major medical association meetings.

"Treat" means to prevent, diagnose, detect, provide medical care, or palliate.

"Treating licensed health care provider" means a licensed health care provider who has personally evaluated the patient."

## PART III

SECTION 9[2]. Statutory material to be repealed is bracketed. New statutory material is underscored.[3]

SECTION 10[2]. This Act shall take effect upon its approval.

(Approved June 19, 2000.)

**Notes**

1. "SECTION 3." missing.
2. Section number redesignated.
3. Edited pursuant to HRS §23G-16.5.

# ACT 251

S.B NO. 2766

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. The legislature finds that the function of county zoning and county land development ordinances and rules is to protect public health, safety, and welfare. The purpose of this Act is to clarify that projects created and established as condominium property regimes are subject to county land use regulatory authority, and to ensure that projects created and established as condominium property regimes conform to the provisions of underlying county zoning ordinances and development requirements and are consistent with the purposes of adopted county land use policies and the state land use law.

SECTION 2. Chapter 514A, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

"**§514A- Conformance with county land use ordinances.** Any condominium property regime established under this chapter shall conform to the existing underlying county zoning for the property and all applicable county permitting requirements adopted by the county in which the property is located, including any supplemental rules adopted by the county, pursuant to section 514A-45, to ensure the conformance of condominium property regimes to the purposes and provisions of county zoning and development ordinances and chapter 205. In the case of a property which includes one or more existing structures being converted to condominium status, the condominium property regime shall comply with section 514A-11(13) or section 514A-40(b)."

SECTION 3. Section 514A-11, Hawaii Revised Statutes, is amended to read as follows:

"**§514A-11 Recordation and contents of declaration.** The bureau of conveyances and the land court shall immediately set up the mechanics and method by which recordation of a master deed or lease and the declaration may be made. Provisions shall be made for the recordation of instruments affecting the individual apartments on subsequent resales, mortgages, and other encumbrances, as is done with all other real estate recordations; provided that land court certificates of title shall not be issued for apartments. The declaration to which section 514A-20 refers shall express the following particulars:

(1) Description of the land, whether leased or in fee simple, on which the building or buildings and improvements are or are to be located;
(2) Description of the building or buildings, stating the number of stories and basements, the number of apartments, and the principal materials of which it or they is or are constructed or to be constructed;
(3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, [and] immediate common element to which it has access, designated parking stall[,] if considered a limited common element, and any other data necessary for its proper identification;
(4) Description of the common elements;
(5) Description of the limited common elements, if any, stating to which apartments their use is reserved;

(6) The percentage of undivided interest in the common elements appertaining to each apartment and its owner for all purposes, including voting;

(7) Statement of the purposes for which the building or buildings and each of the apartments are intended and restricted as to use;

(8) The name of a person to receive service of process in the cases hereinafter provided, together with the residence or place of business of the person which shall be within the county in which the property is located;

(9) Provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, or restore the property in the event of damage or destruction of all or part of the property;

(10) Any further details in connection with the property [which] that the person executing the declaration may deem desirable to set forth consistent with this chapter;

(11) The method by which the declaration may be amended, consistent with this chapter; provided that an amendment to the declarations of all condominium projects existing as of May 22, 1991, and all condominium projects created thereafter shall require a vote or written consent of seventy-five per cent of all apartment owners, except as otherwise provided in this chapter; provided further that the declarations of condominium projects having five or fewer apartments may provide for the amendment thereof by a vote or written consent of more than seventy-five per cent of all apartment owners;

(12) Description as to any additions, deletions, modifications, and reservations as to the property, including without limitation provisions concerning the merger or addition of later phases of the project. To the extent provided in the declaration, an amendment to the declaration [which] that is made to implement those additions, deletions, modifications, reservations, or merger provisions shall require the vote or written consent of only the declarant or such percentage of apartment owners as is provided in the declaration; and

(13) [In the case of a project which includes one or more existing structures being converted to condominium status, a statement] A declaration subject to the penalties set forth in section 514A-49(b) that the [project] condominium property regime is in compliance with all zoning and building ordinances and codes [applicable to the project], and all other permitting requirements pursuant to section 514A- , and specifying[, if applicable:] in the case of a property which includes one or more existing structures being converted to condominium status:

(A) Any variances which have been granted to achieve such compliance; and

(B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming uses or structures[.];

except that a property that is registered pursuant to section 514A-31 shall instead provide this declaration pursuant to 514A-40."

SECTION 4. 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 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) An 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 (A) 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;
(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[.]; and
(9) A declaration subject to the penalties set forth in section 514A-49(b) that the project is in compliance with all county zoning and building ordinances and codes, and all other county permitting requirements applicable to the project, pursuant to section 514A- ."

SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

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

(Approved June 19, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 252

S.B NO. 2819

A Bill for an Act Relating to Insurance.

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

SECTION 1. The purpose of this Act is to update the insurance code to address developing trends in life insurance sales. Section 2 of this Act:

(1) Establishes standards for life insurance policy illustrations that will protect consumers and foster consumer education;
(2) Provides illustration formats;
(3) Prescribes standards to be followed when illustrations are used; and
(4) Specifies the disclosures that are required in connection with illustrations.

Section 2 seeks to ensure that illustrations do not mislead purchasers of life insurance. Standardization of sales illustrations will also allow consumers to more accurately compare competing products.

Section 3 of this Act:

(1) Regulates the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and
(2) Protects the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions by:
    (A) Assuring that purchasers receive information with which a decision can be made in the purchaser's own best interest;
    (B) Reducing the opportunity for misrepresentation and incomplete disclosure; and
    (C) Establishing penalties for failure to comply with requirements of this regulation.

The two new parts being established in article 10D of chapter 431, Hawaii Revised Statutes, work in concert to ensure that consumers are accurately and sufficiently informed when making decisions regarding life insurance planning.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 10D to be appropriately designated and to read as follows:

**"PART . LIFE INSURANCE POLICY ILLUSTRATIONS**

**§431:10D-A Scope.** This part shall apply to all group and individual life insurance policies and certificates except:

(1) Variable life insurance;
(2) Individual and group annuity contracts;
(3) Credit life insurance; and
(4) Life insurance policies with no illustrated death benefits for any individual exceeding $10,000.

**§431:10D-B Definitions.** For the purposes of this part:

"Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and adopt standards of actuarial practice.

"Basic illustration" means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements.

"Contract premium" means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

"Currently payable scale" means a scale of nonguaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next ninety-five days.

"Disciplined current scale" means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

(1) Are consistent with all provisions of this part;
(2) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;
(3) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and
(4) Do not permit assumed expenses to be less than minimum assumed expenses.

"Generic name" means a short title descriptive of the policy being illustrated such as "whole life", "term life", or "flexible premium adjustable life."

"Guaranteed elements" means the premiums, benefits, values, credits, or charges under a policy of life insurance that are guaranteed and determined at issue.

"Illustrated scale" means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

(1) The disciplined current scale; or
(2) The currently payable scale.

"Illustration" means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is a basic illustration, a supplemental illustration, or an in force illustration.

"Illustration actuary" means an actuary meeting the requirements of section 431:10D-I, who certifies to illustrations based on the standard of practice adopted by the Actuarial Standards Board.

"In force illustration" means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

"Lapse-supported illustration" means an illustration of a policy form failing the test of self-supporting illustration as defined in this part, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and one hundred per cent policy persistency thereafter.

"Minimum assumed expenses" means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

(1) Fully allocated expenses;
(2) Marginal expenses; and
(3) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.

Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

"Nonguaranteed elements" means the premiums, benefits, values, credits, or charges under a policy of life insurance that are not guaranteed or not determined at issue.

"Non-term group life" means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

(1) Every plan of coverage was selected by the employer or other group representative;

(2) Some portion of the premium is paid by the group or through payroll deduction; and

(3) Group underwriting or simplified underwriting is used.

"Policy owner" means the owner named in the policy or the certificate holder in the case of a group policy.

"Premium outlay" means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

"Self-supporting illustration" means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value shall include cash surrender values and any other illustrated benefit amounts available at the policy owner's election.

"Supplemental illustration" means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this part, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.

**§431:10D-C Policies to be illustrated.** (a) Each insurer marketing policies to which this part is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on the effective date of this part, the insurer shall identify in writing the forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this part, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

(b) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

(c) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this part is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(d) Potential enrollees of non-term group life subject to this part shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this part, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any non-term group life enrollee who requests it.

**§431:10D-D General requirements and prohibitions.** (a) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this part, be clearly labeled "life insurance illustration", and contain the following basic information:

(1) Name of insurer;
(2) Name and business address of producer and insurer's authorized representative, if any;
(3) Name, age, and sex of proposed insured, except where a composite illustration is permitted under this part;
(4) Underwriting or rating classification upon which the illustration is based;
(5) Generic name of policy, the company product name, if different, and form number;
(6) Initial death benefit; and
(7) Dividend option election or application of non-guaranteed elements, if applicable.

(b) When using an illustration in the sale of a life insurance policy, an insurer, its producers, or other authorized representatives shall not:

(1) Represent the policy as anything other than a life insurance policy;
(2) Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
(3) State or imply that the payment or amount of nonguaranteed elements is guaranteed;
(4) Use an illustration that does not comply with the requirements of this part;
(5) Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
(6) Provide an applicant with an incomplete illustration;
(7) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is a fact;
(8) Use the term "vanish" or "vanishing premium," or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;
(9) Except for policies that can never develop nonforfeiture values, use an illustration that is "lapse-supported"; or
(10) Use an illustration that is not "self-supporting."

(c) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

**§431:10D-E Standards for basic illustrations.** (a) The format of a basic illustration shall conform with the following requirements:

(1) The illustration shall be labeled with the date on which it was prepared;
(2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven page illustration shall be labeled "page 4 of 7 pages");
(3) The assumed dates of payment receipt and benefit pay out within a policy year shall be clearly identified;
(4) If the age of the proposed insured is shown as a component of the tabular detail, the age shown shall be the age of the insured at the time

the policy is issued plus the numbers of years the policy is assumed to have been in force;

(5) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay;

(6) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed;

(7) If the illustration shows any nonguaranteed elements, they shall not be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed;

(8) The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (e.g., ''see page one for guaranteed elements'');

(9) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender;

(10) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable;

(11) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form;

(12) Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:

(A) The benefits and values are not guaranteed;

(B) The assumptions on which they are based are subject to change by the insurer; and

(C) Actual results may be more or less favorable;

(13) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration shall clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up; and

(14) If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.

(b) A basic illustration shall include a narrative summary which shall include the following:

(1) A brief description of the policy being illustrated, including a statement that it is a life insurance policy;

(2) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium

outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code of 1986, as amended;

(3) A brief description of any policy features, riders, or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;

(4) Identification and a brief definition of column headings and key terms used in the illustration; and

(5) A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(c) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable, provided that:

(1) For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years five, ten, and twenty and at age seventy, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years five, ten, twenty, and thirty. The illustration shall include:

(A) Policy guarantees;

(B) The insurer's illustrated scale;

(C) The insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:

(i) Dividends at fifty per cent of the dividends contained in the illustrated scale used;

(ii) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and

(iii) All nonguaranteed charges, including but not limited to, term insurance charges and mortality and expense charges, at rates that are the average of the guaranteed rates, and the rates contained in the illustrated scale used; and

(2) If coverage would cease prior to policy maturity or age one hundred, the year in which coverage ceases shall be identified for each of the three bases.

(d) The following statements shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this part:

(1) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."; and

(2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration.".

(e) A basic illustration shall include the following details:

(1) For at least each policy year from one to ten and for every fifth policy year thereafter ending at age one hundred, policy maturity or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:
   (A) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;
   (B) The corresponding guaranteed death benefit, as provided in the policy; and
   (C) The corresponding guaranteed value available upon surrender, as provided in the policy;
(2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium; and
(3) Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends, provided that:
   (A) If any nonguaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any; and
   (B) If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

**§431:10D-F Standards for supplemental illustrations.** (a) A supplemental illustration may be provided so long as:
(1) It is appended to, accompanied by, or preceded by a basic illustration that complies with this part;
(2) The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;
(3) It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and
(4) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(b) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

**§431:10D-G Delivery of illustration and record retention.** (a) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this part, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant.

(b) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall:
(1) Conform to the requirements of this part;
(2) Be labeled "Revised Illustration"; and

(3) Be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered.

A copy of the revised illustration shall be provided to the insurer and the policy owner.

(c) If the policy is identified as one to be marketed with an illustration, and no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer; provided that:

(1) On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application;

(2) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered; and

(3) A copy shall be provided to the insurer and the policy owner.

(d) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(e) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

**§431:10D-H Annual reports and notice to policy owners.** (a) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:

(1) For universal life policies, the report shall include the following:

(A) The beginning and end date of the current report period;

(B) The policy value at the end of the previous report period and at the end of the current report period;

(C) The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense, and riders);

(D) The current death benefit at the end of the current report period on each life covered by the policy;

(E) The net cash surrender value of the policy as of the end of the current report period; and

(F) The amount of outstanding loans, if any, as of the end of the current report period; and

(2) For fixed premium policies: if assuming guaranteed interest, mortality, and expense loads, and continued scheduled premium payments, the

policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

(3) For flexible premium policies: if, assuming guaranteed interest, mortality, and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report; or

(4) For all other policies, where applicable:
   (A) Current death benefit;
   (B) Annual contract premium;
   (C) Current cash surrender value;
   (D) Current dividend;
   (E) Application of current dividend; and
   (F) Amount of outstanding loan;
   and

(5) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

(b) If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address], or contacting your agent. If you do not receive a current illustration of your policy within thirty days from your request, you should contact your state insurance department."

(c) Upon the request of the policy owner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of sections 431:10D-D(a), 431:10D-D(b), 431:10D-E(a), and 431:10D-E(e). No signature or other acknowledgment of receipt of this illustration shall be required.

(d) If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change shall be prominently displayed.

**§431:10D-I Annual certifications.** (a) The board of directors of each insurer shall appoint one or more illustration actuaries.

(b) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the National Association of Insurance Commissioners Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this part.

(c) The illustration actuary shall:

(1) Be a member in good standing of the American Academy of Actuaries;

(2) Be familiar with the standard of practice regarding life insurance policy illustrations;

(3) Not have been found by the commissioner, following appropriate notice and hearing, to have:

(A) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of acting as an illustration actuary;
(B) Been found guilty of fraudulent or dishonest practices;
(C) Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or
(D) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;

(4) Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under paragraph (3);

(5) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged, or credited to the same or similar forms, this must be disclosed in the annual certification; and

(6) Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:
(A) Fully allocated expenses;
(B) Marginal expenses; or
(C) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.

(d) The illustration actuary shall file a certification with the board and with the commissioner:

(1) Annually for all policy forms for which illustrations are used; and

(2) Before a new policy form is illustrated.

(e) If an error in a previous certification is discovered, the illustration actuary shall immediately notify the board of directors of the insurer and the commissioner.

(f) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall immediately notify the board of directors of the insurer and the commissioner of the inability to certify.

(g) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:

(1) That the illustration formats meet the requirements of this part and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and

(2) That the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (c)(6).

(h) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.

(i) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.

**§431:10D-J Penalties.** In addition to any other penalties provided by the laws of this State, an insurer or producer that violates a requirement of this part shall be guilty of unfair trade practice in violation of article 13 of this chapter.

**§431:10D-K Authority to adopt rules.** The commissioner may adopt rules under chapter 91 implementing this part.

**§431:10D-L[1] Notice and disclosure; written form required.** All consumer notices and disclosures required in this part shall be provided in written form and transmitted through non-electronic means."

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 10D to be appropriately designated and to read as follows:

"PART . REPLACEMENT OF LIFE INSURANCE POLICIES AND ANNUITIES

**§431:10D-A Purpose and Scope.** (a) The purpose of this part is to:

(1) Regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and

(2) Protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions that will:

(A) Assure that purchasers receive information with which a decision can be made in the purchasers' best interests;

(B) Reduce the opportunity for misrepresentation and incomplete disclosure; and

(C) Establish penalties for failure to comply with requirements of this part.

(b) Unless otherwise specifically included, this part shall not apply to transactions involving:

(1) Credit life insurance;

(2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals when initiated by an individual member of the group assisting with the selection of investment options offered by a single annuity provider in connection with enrolling the individuals. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to section 431:10D-G;

(3) Group life insurance used to fund prearranged funeral contracts;

(4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner;

(5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;

(6) Policies or contracts used to fund:

(A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

(B) A plan described by sections 401(a), 401(k) or 403(b) of the Internal Revenue Code of 1986, as amended, where the plan, for purposes of ERISA, is established or maintained by an employer;

(C) A governmental or church plan defined in section 414 of the Internal Revenue Code of 1986, as amended, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code of 1986, as amended; or

(D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

provided that, notwithstanding the exemptions listed in subparagraphs (A) to (D), this part shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee assisting with the selection of investment options offered by a single annuity provider in connection with enrolling that individual employee;

(7) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;

(8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;

(9) Immediate annuities that are purchased with proceeds from an existing contract; provided that immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this part; and

(10) Structured settlements.

(c) Registered contracts shall be exempt from the requirements of sections 431:10D-E(a)(2) and 431:10D-F(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

**§431:10D-B Definitions.** For the purposes of this part:

''Direct-response solicitation'' means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet, or other mass communication media.

''Existing insurer'' means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of replacement.

''Existing policy or contract'' means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

''Financed purchase'' means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction

only, if a withdrawal, surrender, or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or thirteen months after the effective date of the new policy, it shall be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in section 431:10D-D(1)(E).

"Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in part of this article.

"Policy summary" for the purposes of this part:

(1) For policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information: current death benefit, annual contract premium, current cash surrender value, current dividend, application of current dividend, and amount of outstanding loan.

(2) For universal life policies, means a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense, and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

"Producer" means general agent, subagent, agent, solicitor, insurance broker or brokers or any other person, firm, association, or corporation licensed pursuant to article 9.

"Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

"Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

"Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

(1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;

(2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;

(3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) Reissued with any reduction in cash value; or

(5) Used in a financed purchase.

"Sales material" means a sales illustration and any other written, printed, or electronically presented information created, completed, or provided by the com-

pany or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

**§431:10D-C Duties of producers.** (a) A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is ''no,'' the producer's duties with respect to replacement are complete.

(b) If the applicant answered ''yes'' to the question regarding existing coverage referred to in subsection (a), the producer shall present and read to the applicant, not later than at the time of taking the application, a notice in a form approved by the commissioner. However, no approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and the notice was left with the applicant.

(c) The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available. The notice shall include a statement as to whether a policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(d) In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.

(e) Except as provided in section 431:10D-D(6), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific contract or policy purchased.

**§431:10D-D Duties of insurers that use producers.** Each insurer shall:

(1) Maintain a system of supervision and control to insure compliance with the requirements of this part that shall include at least the following:
   (A) Inform its producers of the requirements of this part and incorporate the requirements of this part into all relevant producer training manuals prepared by the insurer;
   (B) Provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;
   (C) A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with paragraph (2);
   (D) Procedures to confirm that the requirements of this part have been met; and
   (E) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer.

Compliance with this section may include but shall not be limited to systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring.

(2) Have the capacity to monitor each producer's life insurance policy and annuity contract for replacements for the insurer, and shall produce, upon request, and make such records available to the commissioner. The capacity to monitor shall include the ability to produce records for each producer's:
   (A) Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
   (B) Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
   (C) Annuity contract replacements as a percentage of the producer's total annual contract sales;
   (D) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by paragraph (1)(E); and
   (E) Replacements, indexed by replacing producer and existing insurer.

(3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;

(4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice as required by section 431:10D-C(b) regarding replacements;

(5) When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material as required by section 431:10D-C(e), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;

(6) Ascertain that the sales material and illustrations required by section 431:10D-C(e) meet the requirements of this part and are complete and accurate for the proposed policy or contract;

(7) If an application does not meet the requirements of this part, notify the producer and applicant and fulfill the outstanding requirements; and

(8) Maintain records in paper, photograph, microprocess, mechanical, or electronic media, or by any process that accurately reproduces the actual paper document.

**§431:10D-E Duties of replacing insurers that use producers.** (a) Where a replacement is involved in the transaction, the replacing insurer shall:

(1) Verify that the required forms are received and are in compliance with this part;

(2) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;

(3) Be able to produce copies of the notification regarding replacement required in section 431:10D-C(b), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(4) Provide to the policy or contract owner notice of the right to return the policy or contract within thirty days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under the policy or contract; provided that such notice may be included in forms approved by the commissioner pursuant to this part.

(b) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(c) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to section 431:10D-D, the insurer may:

(1) Require with each application a statement signed by the producer that:
   (A) Represents that the producer used only company-approved sales material; and
   (B) States that copies of all sales material were left with the applicant in accordance with section 431:10D-C(d); and

(2) Within ten days of the issuance of the policy or contract:
   (A) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with section 431:10D-C(d);
   (B) Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
   (C) Stress the importance of retaining copies of the sales material for future reference; and

(3) Be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

**§431:10D-F Duties of the existing insurer.** Where a replacement is involved in the transaction, the existing insurer shall:

(1) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance commissioner of its state of domicile, whichever is later;

(2) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five business days of receipt of a

notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner; and

(3) Upon receipt of a request to borrow, surrender, or withdraw any policy values, send a notice, advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount, or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

**§431:10D-G Duties of insurers with respect to direct response solicitations.** (a) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice in a form approved by the commissioner, which shall state the following:

**"NOTICE REGARDING REPLACEMENT**
**REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY**

"Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

"Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

"Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest."

(b) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

(1) Provide to applicants or prospective applicants with the policy or contract a notice, in a form similar to that required by section 431:10D-C(b). In these instances the insurer may delete the references to the producer, including the producer's signature, without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and

(2) Comply with the requirements of section 431:10D-E(a)(2), if the applicant furnishes the names of the existing insurers, and the requirements of sections 431:10D-E(a)(3), 431:10D-E(a)(4), and 431:10D-E(b).

**§431:10D-H Violations and penalties.** (a) Any failure to comply with this part shall be considered a violation of article 13 of this chapter. Examples of violations include:

(1) Any deceptive or misleading information set forth in sales material;
(2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
(3) The intentional incorrect recording of an answer;
(4) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or
(5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(b) Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this part.

(c) Where it is determined that the requirements of this part have not been met the replacing insurer shall provide to the policy owner an in force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements required under this part.

(d) Violations of this part shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values, and pay appropriate interest on the amount refunded in cash.

**§431:10D-I Authority to adopt rules.** The commissioner may adopt rules under chapter 91 implementing this part.

**§431:10D-J[1] Notice and disclosure; written form required.** All consumer notices and disclosures required in this part shall be provided in written form and transmitted through non-electronic means."

SECTION 4. In codifying the new sections of the new parts added to article 10D of chapter 431, Hawaii Revised Statutes, by section 2 and section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters in the designations of those new sections in this Act. All references to specific citations refer to those citations in the same section of this Act, except that the revisor of statutes shall substitute the appropriate part number assigned to Section 2 of this Act for the blank in Section 3 at section 431:10D-B in the definition of the term "illustration".

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved June 19, 2000.)

**Note**

1. Act 282 requires the deletion of this section.

# ACT 253

S.B NO. 2859

A Bill for an Act Relating to Public Employment.

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

SECTION 1. The purpose of this Act is to enact statewide legislation to reform the existing public employment laws that were enacted to implement two constitutional mandates—that there be a civil service based on merit and that public employees have the right to bargain collectively.

## PART I

SECTION 2. Section 26-5, Hawaii Revised Statutes, is amended to read as follows:

"**§26-5 Department of human resources development.** (a) The department of human resources development shall be headed by a single executive to be known as the director of human resources development.

[The director shall have the authority to adopt rules as heretofore exercised by the civil service commission. Whenever consistent with economic and efficient administration, the director may delegate any of the duties imposed upon the director by chapter 76 or chapter 77 to the department heads, or any of them, in accordance with standards and procedures issued by the director. The director shall institute and maintain a system of inspection to determine that the personnel laws are applied and administered by the departments in a manner consistent with the purposes and provisions of the civil service law. Whenever an inspection indicates failure on the part of a department to comply with established policies, rules, and standards, the director shall take any action that may be appropriate, including suspension or revocation of any delegation of the director's authority.]

(b) The department shall administer the state human resources program, including human resources development and training, and central human resources services such as recruitment, examination, [position] classification, [and] pay administration [for all departments.], and payment of any claims as required under chapter 386.

(c) There shall be within the department of human resources development a [commission] board to be known as the [civil service commission] merit appeals board which shall sit as an appellate body on matters [within the jurisdiction of the department of human resources development.] set forth in section 76-14. The [commission] board shall consist of [seven] three members[, one from each county and three at large. At least one member of the commission shall be selected from among persons employed in private industry in skilled or unskilled laboring positions as distinguished from executive or professional positions. The functions, duties, and powers of the commission with respect to appeals shall be as heretofore provided by law for the civil service commission and for the loyalty board existing immediately prior to November 25, 1959.

The functions and authority heretofore exercised by the department of civil service and loyalty board as heretofore constituted are transferred to the department of human resources development established by this chapter]. All members shall have knowledge of public employment laws and prior experience with public employment; provided that at least one member's experience was with an employee organization as a member or an employee of that organization and at least one member's experience was with management. The governor shall consider the names of qualified individuals submitted by employee organizations or management before

appointing the members of the board. The chairperson of the board shall be designated as specified in the rules of the board.

(d) The provisions of section 26-34 shall not apply and the board members shall be appointed by the governor for four-year terms and may be re-appointed without limitation; provided that the initial appointments shall be for staggered terms, as determined by the governor. The governor shall fill any vacancy by appointing a new member for a four-year term. The governor may remove for cause any member after due notice and public hearing.

(e) Nothing in this section shall be construed as in any manner affecting the civil service laws applicable to the several counties, the judiciary, or the Hawaii health systems corporation, which shall remain the same as if this chapter had not been enacted.

(f) There is created in the state treasury a special fund, which shall consist of two separate accounts to be expended by the department as follows:

(1) All revenues received by the department as a result of entrepreneurial efforts in securing new sources of funds not provided for in the department's budget for services rendered by the department shall be deposited into the entrepreneurial account and expended for the department's related activities and programs; provided that the department may use the moneys in the fund to employ necessary personnel or for other purposes in support of departmental entrepreneurial initiatives and programs; and

(2) All revenues received by the department from the charging of participant fees for in-service training, that are in addition to general fund appropriations in the department's budget for developing and operating in-service training programs, shall be deposited into the in-service training account and expended for the department's training activities and programs."

## PART II

SECTION 3. Chapter 76, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§76- Classification.** (a) Each director shall establish, implement, and maintain one or more classification systems covering all civil service positions, not otherwise exempted by rules. The classification systems shall be constructed with the objective of achieving equal pay for equal work as provided in section 76-1. The director shall adopt rules that allow for the administrative review of classification and initial pricing actions.

(b) Wherever reference is made in statutes that positions are either subject to or exempt from "chapter 77" prior to the effective date of this Act, the positions shall be subject or exempt from the appropriate classification systems established under this section."

SECTION 4. Chapter 76, Part I, is amended by amending the title to read:

"**PART I. GENERAL CIVIL SERVICE PROVISIONS**"

SECTION 5. Section 76-1, Hawaii Revised Statutes, is amended to read as follows:

"**§76-1 [Purpose of this chapter; statement of policy.] Purposes; merit principle.** It is the purpose of this chapter to [establish in the State and each of the

counties a system of personnel administration based on merit principles and scientific methods governing the classification of positions and the employment, conduct, movement, and separation of public officers and employees.] require each jurisdiction to establish and maintain a separately administered civil service system based on the merit principle. The merit principle is the selection of persons based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance. It is also the purpose of this chapter to build a career service in government [which will attract, select, and retain the best of our citizens on merit], free from coercive political influences, [with incentives in the form of genuine opportunities for promotions in the service, which will eliminate unnecessary and inefficient employees, and which will provide technically competent and loyal personnel] to render impartial service to the public at all times, [and to render that service] according to the dictates of ethics and morality[.] and in compliance with all laws.

In order to achieve these purposes, it is the declared policy of the State that the [personnel system hereby established be applied and] human resource program within each jurisdiction be administered in accordance with the following [merit principles]:

(1) Equal opportunity for all [regardless of race, sex, age, religion, color, ancestry, or politics.] in compliance with all laws prohibiting discrimination. No person shall be discriminated against [in any case because of any disability,] in examination, appointment, reinstatement, reemployment, promotion, transfer, demotion, or removal, with respect to any position [the duties of which, in the opinion of the director of human resources development] when the work may be efficiently performed by [a person with such a disability; provided that the employment will not be hazardous to the appointee or endanger the health or safety of the appointee's co-workers or others;] the person without hazard or danger to the health and safety of the person or others;

(2) Impartial selection of [the ablest person for government] individuals for public service by means of competitive tests which are fair, objective, and practical;

(3) [Just opportunity] Incentives for competent employees [to be promoted] within the service[;], whether financial or promotional opportunities and other performance based group and individual awards that encourage continuous improvement to achieve superior performance;

(4) Reasonable job security for [the] competent [employee, including] employees and discharge of unnecessary or inefficient employees with the right [of appeal from] to grieve and appeal personnel actions[;] through the:

(A) Contractual grievance procedure for employees covered by chapter 89; or

(B) Internal complaint procedures and the merit appeals board for employees excluded from coverage under chapter 89;

(5) [Systematic] Equal pay for equal work shall apply between classes in the same bargaining unit among jurisdictions for those classes determined to be equal through systematic classification of [all] positions [through] based on objective criteria and adequate job evaluation[; and], unless it has been agreed in accordance with chapter 89 to negotiate the repricing of classes; and

(6) [Proper balance in employer-employee relations between the people as the employer and employees as the individual citizens, to achieve a well trained, productive, and happy working force.] Harmonious and cooperative relations between government and its employees, including

employee organizations representing them, to develop and maintain a well-trained, efficient, and productive work force that utilizes advanced technology to ensure effective government operations and delivery of public services."

SECTION 6. Section 76-5, Hawaii Revised Statutes, is amended to read as follows:

"**§76-5 [Furnishing of services and facilities.] Alternatives in providing human resources program services.** (a) Whenever consistent with economic and efficient administration, the director may delegate the performance of services under this chapter to the departments. The departments shall perform the services in compliance with any policies, standards, and procedures issued by the director. The delegation may be withdrawn at any time as determined by the director.

(b) Whenever consistent with economic and efficient administration and upon the recommendation of its director, the chief executive may decentralize powers of the director under this chapter, except for rule-making, to an appointing authority. The appointing authority shall exercise the powers, including the issuance of policies, standards, and procedures that would apply to the department or agency. Accountability for all actions taken by the appointing authority or any subordinate employee, as a result of empowerment by the chief executive, shall rest with the appointing authority to the same extent as though the action had been taken by the director.

(c) [Subject to the rules of the state department of human resources development, the director of human resources development may enter into agreements with the judiciary, any county, and the Hawaii health systems corporation to furnish] Whenever consistent with economic and efficient administration, a jurisdiction, if authorized by rules of the jurisdiction, may enter into agreements on furnishing services and facilities [of the state department to the judiciary, any county, and the Hawaii health systems corporation in the administration of civil service including position classification in the judiciary, any county, and the Hawaii health systems corporation.] for human resources. The human resource services furnished under an agreement on behalf of a jurisdiction shall be as fully effective as though these services had been performed by the jurisdiction. The agreements may provide for [the reimbursement to the State of] reciprocity or reimbursement from authorized funds for the [reasonable] value of the services and facilities for human resources furnished[, as determined by the director. The judiciary, all counties, and the Hawaii health systems corporation are authorized to enter into the agreements]. If authorized by the legislature, an agreement on furnishing services and facilities for human resources may be with a private entity and shall be subject to any requirements and parameters set by the legislature or the respective legislative body, as applicable.

(d) When determining how human resource services are to be provided for the state executive branch, consideration shall be given to options, such as restructuring the workforce in conjunction with providing affected employees the option of electing a voluntary severance benefit or an early retirement incentive, or initiating a reduction-in-force.

(e) Whenever human resource services are delegated, decentralized, or performed by agreements as authorized in this section, the director shall institute and maintain a system of inspection to determine that the personnel laws and rules are applied and administered by the departments in a manner consistent with the provisions of this chapter. In the event of any failure to comply with the provisions of this chapter, the director shall take or recommend appropriate action. Such action may include requiring immediate correction be taken, retracting the delegation of

authority, recommending cessation of decentralization, or terminating an agreement for human resource services. ''

SECTION 7. Section 76-6, Hawaii Revised Statutes, is amended to read as follows:

**''§76-6 Chapter inoperative, when.** If any provision of this chapter [or chapter 77] jeopardizes the receipt by the State or any county of any federal grant-in-aid or other federal allotment of money, the provision shall, insofar as the fund is jeopardized, be deemed to be inoperative.''

SECTION 8. Chapter 76, Part II, Hawaii Revised Statutes, is amended by repealing the title:

**[''PART II. CIVIL SERVICE FOR THE STATE'']**

SECTION 9. Section 76-11, Hawaii Revised Statutes, is amended to read as follows:

**''§76-11 Definitions.** As used in this [part,] chapter, unless the context clearly requires otherwise:

[(1) ''Commission'' means the civil service commission of the State;]

[(5)] ''Appointing authority'' means a department head or [person] designee having the power to make appointments or changes in the status of employees [in the state service and includes such subordinate, or, under rule of the department of human resources development, subordinates, as the department or person may designate to act for it or the person. Notwithstanding any other provision of law, any department or person may make such a designation;].

''Chief executive'' means the governor, the respective mayors, the chief justice of the supreme court, and the chief executive officer of the Hawaii health systems corporation. It may include the superintendent of education and the president of the University of Hawaii with respect to their employees on any matter that applies to employees in general, including employees who are not covered by this chapter.

[(6)] ''Civil service'' includes all positions [in the state service] within a jurisdiction that are not exempted by section 46-33, 76-16[;], or 76-77, or by other law and must be filled through civil service recruitment procedures based on merit.

''Civil service employee'' means an employee who has met all requirements for membership in the civil service under section 76-27.

[(7)] ''Class'' [or ''class of work'' means the logical and reasonable grouping of duties and responsibilities and their identification with respect to

(A) Kind or subject matter of work,

(B) Level of difficulty and responsibility, and

(C) Qualification requirements of the work, so that positions which conform substantially to the same class would receive like treatment in the matter of title, and such personnel processes as salary assignment;] means a group of positions that reflect sufficiently similar duties and responsibilities such that the same title and the same pay range may apply to each position allocated to the class.

''Classification system'' means classes of positions arranged in a logical and systematic order.

''Day'' means a calendar day unless otherwise specified.

[(4)] ''Department'' [includes the judicial branch and] means any department, board, commission, or agency of [the State;] a jurisdiction.

[(2)] "Director" means the [director of human resources development of the State;] head of the central personnel agency for a jurisdiction regardless of title, whether it is the director of human resources development, director of personnel, director of personnel services, or personnel director.

[(3) "State service" means all offices and other positions in the public service of the State;

(19)] "Employee" or "public employee" means [a] any person holding a position in [accordance with this chapter whether permanently or otherwise and whether as an officer or otherwise;] the service of a jurisdiction, irrespective of status or type of appointment; provided that, if the context clearly applies only to an employee who is a member of the civil service, "employee" means a civil service employee.

"Employer" or "public employer" means the governor in the case of the State, the respective mayors in the case of the counties, the chief justice of the supreme court in the case of the judiciary, the board of education in the case of the department of education, the board of regents in the case of the University of Hawaii, the Hawaii health systems corporation board in the case of the Hawaii health systems corporation, and any individual who represents one of the employers or acts in their interest in dealing with public employees. In the case of the judiciary, the administrative director of the courts shall be the employer in lieu of the chief justice for purposes which the chief justice determines would be prudent or necessary to avoid conflict.

"Exclusive representative" means the employee organization certified by the board under section 89-8 as the collective bargaining agent to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

"Jurisdiction" means the State, the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, the department of education, the University of Hawaii, and the Hawaii health systems corporation.

"Legislative body" means the legislature in the case of the State, including the judiciary, the department of education, the University of Hawaii, and the Hawaii health systems corporation; the city council in the case of the city and county of Honolulu; and the respective county councils in the case of the counties of Hawaii, Maui, and Kauai.

"Merit appeals board" means a jurisdiction's appellate body for purposes of section 76-14 regardless of whether it is named merit appeals board, civil service commission, or appeals board.

[(8) "Promotional examination" means an examination for positions in a particular class, admission to which is limited to regular employees in civil service;

(9) "Open-competitive examination" means an examination for positions in a particular class, admission to which is not limited to persons employed in civil service;

(10) "Open-competitive list" means a list of persons who have been found qualified by an open-competitive examination for appointment to a position in a particular class;

(11) "Promotional list" means a list of persons who have been found qualified by a promotional examination for appointment to a position in a particular class;

(12) "Reemployment list" means a list of persons who have been regular employees in the civil service and who are entitled to have their names certified for appointment to a position in the class in which they last held permanent status, or, as provided by section 76-25, in a related

class in the same or lower range for which they meet the qualification requirements;

(13) "Eligible list" means a list of persons who have been found qualified for appointment to a position in a particular class, such a list being either open-competitive, promotional, or reemployment;

(14) "Eligible" means a person whose name is on an active eligible list;

(15) "Regular employee" means an employee who has been appointed to a position in the civil service in accordance with this chapter and who has successfully completed the employee's initial probation period;

(16) "Initial probation period" means a period of not less than six months nor more than one year from the beginning of an employee's service in civil service;

(17) "New probation period" means any probation period other than that defined in paragraph (16);

(18)] "Position" means a specific [office or employment, whether occupied or vacant, consisting of a group of all the current duties and responsibilities assigned or delegated by competent authority,] job requiring the full or part-time employment of one person[;].

[(20) "Position classification plan" means classes of positions arranged in a logical and systematic order.]"

SECTION 10. Section 76-12, Hawaii Revised Statutes, is amended to read as follows:

"**§76-12 General powers and duties of director.** The director [of human resources development] shall:

(1) Represent the public interest in the improvement of human resources administration in the civil service;

(2) Assist in fostering the interest of institutions of learning and civic, professional, and employee organizations in the improvement of human resources standards in civil service;

(3) Advise the [governor] chief executive on policies and problems concerning the human resources [administration;] program; and

(4) Make investigations concerning the administration of human resources policies in the civil service, including any matter respecting the enforcement or effect of this chapter or the rules adopted thereunder, or the action or failure to act of any officer or employee with respect thereto."

SECTION 11. Section 76-13, Hawaii Revised Statutes, is amended to read as follows:

"**§76-13 Specific duties and powers of director.** (a)[1] The director [of human resources development] shall direct and supervise all the administrative and technical activities of the director's department. In addition to other duties imposed upon the director by this chapter [and chapter 77], the director shall:

[(1) Attend all meetings of the commission;

(2)] (1) Establish and maintain a roster of all persons in the civil service [in which shall be set forth, as to each, the class of position held, the salary or pay, any change in class, title, pay, or status, and any other necessary data];

[(3)] (2) Appoint [assistants and] employees necessary to assist the director in the proper performance of the director's duties and for which appropriations shall have been made;

[(4)] (3) Foster and develop, in cooperation with appointing authorities and others, programs for the improvement of employee efficiency;

[(5)] (4) Cooperate fully with appointing authorities, giving full recognition to their requirements and needs, in the administration of this chapter [and chapter 77 in order] to promote public service [and establish] by establishing conditions of service that will attract and retain employees of character and [capacity,] capability, and to increase efficiency and [economy] productivity in governmental departments by [the improvement of] continuously improving methods of human resources administration [with full recognition of the requirements and needs of management;] and maximizing the use of advanced technology;

[(6)] (5) Encourage and exercise leadership in the development of effective human resources administration within the several departments [in civil service] and make available the facilities of the director's department to this end;

[(7)] (6) Investigate from time to time the operation and effect of this chapter and [chapter 77 and of] the rules adopted thereunder;

[(8)] (7) Develop and maintain [a position] classification [plan; and

(A) Create and adjust classes of positions and adopt class specifications including title, description of typical duties and responsibilities, statement of training and experience, and other requirements to be met by applicants, covering all positions;

(B) Allocate each position and each newly created position to the appropriate class;

(C) Reallocate positions to recognize material changes in duties and responsibilities or to correct a previous action; provided that reallocations shall be made effective retroactively to the beginning of the pay period immediately following the date the application for reallocation was filed with the director or any other date provided by the rules; and provided further that an employee who is otherwise properly compensated shall not be required to make reimbursement of overpayment in salary when the overpayment is due to salary increments or repricing actions nullified by the retroactive feature of a classification action; and provided further that the proper salary adjustment shall be made as of the first pay period following the action taken by the director; and

(D) Determine the status of employees holding positions affected by classification actions;] systems;

[(9) Pay any claims against the State as required under chapter 386; and]

(8) Make recommendations and advise the chief executive on appropriate adjustments for employees excluded from collective bargaining as authorized under chapter 89C; and

[(10)] (9) Perform any other lawful acts deemed by the director to be necessary or desirable to carry out the purposes and provisions of this [part.] chapter."

SECTION 12. Section 76-14, Hawaii Revised Statutes, is amended to read as follows:

"**§76-14 [General duties of commission.] Merit appeals board; duties, and jurisdiction.** (a) The [civil service commission shall hear and decide] merit appeals board of each jurisdiction shall decide appeals from any action [of the director of human resources development] under this chapter[, as well as from dismissals, demotions, and suspensions as hereinafter provided.] taken by the chief

executive, the director, an appointing authority, or a designee acting on behalf of one of these individuals, relating to:

(1) Recruitment and examination;

(2) Classification and reclassification of a particular position;

(3) Initial pricing of classes; and

(4) Other employment actions under this chapter, including disciplinary actions and adverse actions for failure to meet performance requirements, taken against civil service employees who are excluded from collective bargaining coverage under section 89-6.

(b) Any person suffering legal wrong by an action under subsection (a)(1) or aggrieved by such action shall be entitled to appeal to the merit appeals board. Any employee covered by chapter 76 suffering legal wrong by an action under subsection (a)(2) or (3) shall be entitled to appeal to the merit appeals board. Only employees covered by chapter 76, who are excluded from collective bargaining, suffering legal wrong by an action under subsection (a)(4) shall be entitled to appeal to the merit appeals board. Appeals under this section shall be filed within time limits and in the manner provided by rules of the merit appeals board.

(c) The rules adopted by the merit appeals board shall provide for the following:

(1) The merit appeals board shall not act on an appeal, but shall defer to other authority, if the action complained of constitutes a prohibited act that is subject to the jurisdiction of another appellate body or administrative agency or the grievance procedure under a collective bargaining agreement;

(2) The merit appeals board shall not proceed on an appeal or shall hold proceedings in abeyance if there is any controversy regarding its authority to hear the appeal until the controversy is resolved by the Hawaii labor relations board;

(3) The merit appeals board shall prescribe time limits for filing an appeal that require exhaustion of all internal complaint procedures, including administrative review and departmental complaint procedures, before an appeal is filed; and

(4) The merit appeals board shall use the conditions listed in section 76-41(c) in reaching a decision on whether actions taken by the appointing authority based on a failure by the employee to meet the performance requirements of the employee's position is with or without merit."

SECTION 13. Section 76-15, Hawaii Revised Statutes, is amended to read as follows:

"**§76-15 Examination consultants.** (a) The director [of human resources development] or an appointing authority may select [officers or] employees in the [state] jurisdiction's service or any individual to act as volunteer subject-matter consultants in the preparation and rating of applications and examinations. Notwithstanding the provisions of chapter 92F, the identity of any volunteer subject-matter consultant, and any information which would result in actual identification of any volunteer subject-matter consultant, are confidential and shall not be disclosed[, unless deemed appropriate by the director].

(b) An appointing authority may excuse any [officer or] employee in the appointing authority's department from the [officer's or] employee's regular duties for the time required for the [officer's or] employee's work as a volunteer subject-matter consultant.

[Officers and employees] Employees shall not be entitled to extra pay for services as volunteer consultants but shall be entitled to reimbursement for necessary traveling and other expenses."

SECTION 14. Section 76-16, Hawaii Revised Statutes, is amended to read as follows:

"**§76-16 Civil service and exemptions.** (a) The State Constitution mandates that the employment of persons in the civil service, as defined by law, be governed by the merit principle. The legislature declares that the public policy of the State is that all positions in the civil service systems of the respective jurisdictions shall be filled through civil service recruitment procedures based on merit and that the civil service system of the respective jurisdictions shall comprise all positions, whether permanent or temporary, in the jurisdiction now existing or hereafter established and embrace all personal services performed for the jurisdiction, except employees or positions exempted under this section, or sections 46-33 and 76-77.

(b) The civil service to which this [part] chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

(1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
(2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
(3) Positions [of a temporary nature needed in the public interest where the need for the position does not exceed one year, but before any person may be employed to render the temporary service, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable;] that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or non-compliance, such as the Felix-Cayetano consent decree;
(4) Positions filled by the legislature or by either house or any committee thereof;
(5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
(6) Positions filled by popular vote;
(7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
(8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
(9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative direc-

tor of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);

(10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;

(11) Teachers, principals, vice-principals, district superintendents, chief deputy superintendents, other certificated personnel, [and] not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, and alternative school project coordinators in the department of education[,]; the special assistant to the state librarian, one secretary for the special assistant to the state librarian, and members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;

(12) Employees engaged in special, research, or demonstration projects approved by the governor;

(13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;

(14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;

(15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;

(16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the State Constitution; three additional deputies or assistants either in

charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;

(17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;

(18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;

(19) Household employees at the official residence of the president of the University of Hawaii;

(20) Employees in the department of education engaged in the supervision of students during lunch periods and in the cleaning of classrooms after school hours on a less than half-time basis;

(21) Employees hired under the tenant hire program of the housing and community development corporation of Hawaii; provided that not more than twenty-six per cent of the corporation's work force in any housing project maintained or operated by the corporation shall be hired under the tenant hire program;

(22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;

(23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;

(24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;

(25) Sheriff, first deputy sheriff, and second deputy sheriff; and

(26) A gender and other fairness coordinator hired by the judiciary.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955.

(c) No position shall be exempted from civil service recruitment procedures unless it is in accordance with this section. In addition to the exemptions under subsection (b), sections 46-33 and 76-77, or other law, the director may exempt additional positions if the reason for exempting the position is for the same reason as a position that is included in the list of exemptions for the respective jurisdiction.

(d) The director may provide for an exemption from civil service recruitment procedures if the appointment to the position has a limitation date and it would be impracticable to recruit under civil service recruitment procedures because the required probation period that is part of the examination process can not be completed by the limitation date. The rules shall not permit additional exemptions from civil service recruitment procedures for the same position when the position will be filled for a duration that would be sufficient to recruit under civil service recruitment procedures and allow for completion of the required probation period.

(e) It is also the public policy of the State that all civil service positions be covered under the classification systems of the jurisdictions, unless the position was exempted from the classification systems by law prior to the effective date of this Act or based on reasons set forth in rules. The rules may include reasons for a temporary exemption of a position, such as the establishment of a new class is pending, or for a permanent exemption when the establishment of a class is impracticable.

(f) The exemption of a position from the classification systems, whether temporary or permanent, or an appointment with a limitation date shall not itself result in an exemption from civil service recruitment procedures. Civil service recruitment procedures based on merit shall be followed for all positions unless exempted under subsection (b), (c), or (d). Applicants referred under civil service recruitment procedures shall be informed if the appointment has a limitation date or if the position is temporarily or permanently exempted from the classification systems.

(g) Each director shall be responsible for ensuring that all exemptions from civil service recruitment procedures or from the classification systems are consistent with this section. With respect to positions exempted under this section prior to the effective date of this Act by any other law, the director shall review these positions to determine whether the positions should continue to be exempt and if so, whether from civil service recruitment procedures or the classification systems, or both. If the director determines that a position should no longer be exempt from either or both based on the intent of this section, the director shall consult with the appropriate appointing authority and its chief executive on removing the exemptions. With the approval of the chief executive, the director shall take whatever action is necessary to remove the exemptions, including submittal of proposed legislation to remove the exemptions.

(h) The director shall establish rules to implement this section that shall be in accordance with the following:

(1) Whenever a position exempted under subsection (b) or (c) is no longer exempted from the civil service, normal civil service recruitment procedures shall apply, unless the incumbent is to be retained without the necessity for examination by action of the legislature; provided that in such event, the incumbent shall be retained, but only if the incumbent meets the minimum qualification requirements of the position; and

(2) The manner for setting the compensation of incumbents upon their inclusion in the classification systems shall be fair and equitable in comparison to the compensation of other incumbents with comparable experience in the same or essentially similar classes; provided that the compensation of incumbents who are in the same bargaining unit, prior to and after their inclusion in the classification systems, shall be in accordance with the applicable collective bargaining agreement.

(i) Employees in positions subject to civil service recruitment procedures shall be entitled to become and remain members of the civil service for the duration of their appointments as provided in section 76-27. Employees in positions exempted from civil service recruitment procedures shall not be entitled to membership in the civil service.

(j) Employees in positions that are exempted from the classification plan, whether temporarily or permanently, may be entitled to membership in the civil service as provided in subsection (i).''

SECTION 15. Section 76-17, Hawaii Revised Statutes, is amended to read as follows:

"**§76-17 Rules [and regulations]; policies [and], standards[.], and procedures.** (a) In conformity with chapter 91, the director [of human resources development] shall prescribe rules [and regulations] to carry out this chapter which shall have the force and effect of law. The rules [and regulations] may include any matter not inconsistent with law concerning the establishment and maintenance of a system of personnel management based on the merit [principles,] principle, including but not limited to matters set forth in this chapter, and may be amended or repealed in like manner as the same were adopted. The rules [and regulations] shall be in conformity with principles of good public administration [and shall be in conformity with sections 76-18 to 76-43].

(b) The director may also issue, without regard to chapter 91, policies, standards, and procedures consistent with rules to facilitate and ensure appropriate functioning of the human resources program.

(c) The section shall not apply to matters that are negotiable under chapter 89 or adjusted under chapter 89C."

SECTION 16. Section 76-18, Hawaii Revised Statutes, is amended to read as follows:

"**§76-18 Examinations[, general character].** There shall be [competitive] examinations for testing [of the relative fitness] the fitness and ability of applicants for positions in civil service. [The examinations shall be practical in their character and shall provide for ascertaining the physical and educational qualifications, experience, knowledge, and skill of applicants and their relative capacity and fitness for the proper performance of the characteristic duties of the class of positions in which they seek to be employed; except that in the case of a promotional examination, the examination shall be limited, at the request of the department head, to the characteristic duties of the class and nothing else. All examinations shall be public and, except as otherwise provided by law, free and open to all citizens of the State but with such limitations as to health, physical condition, age, sex, education, training, experience, habits, and character as the director of human resources development may deem necessary and proper for the class for which the examination is to be given. Disabled veterans or persons with a disability shall not be disqualified for reason of the disability if they possess the physical capacities to perform the duties of the class. Examinations may be oral or written or partly oral and partly written, or tests of manual skill and physical strength, or evaluations of training and experience backgrounds. Except when clearly required by the nature of the service to be performed, written examinations shall not be required of applicants for unskilled labor classes. All examinations shall be under the control of the director or any suitable person or persons as the director may designate to conduct them. All persons who have passed the examination shall be required to take physical examinations as may be required by the director or, in case of the counties, by the civil service commission. The reports of the physical examinations shall be filed with the director.

The director, for purposes of expediting the examination process, may require applicants to take a written examination prior to filing a formal application. Upon successful completion of the written examination, the applicant shall then file a formal application.] The director shall adopt rules to administer the examination programs."

SECTION 17. Section 76-22.5, Hawaii Revised Statutes, is amended to read as follows:

"**§76-22.5 Recruitment [flexibility].** [Notwithstanding section 76-23, the] The director [of human resources development] shall adopt rules in accordance with sections 76-1 and 78-1 to determine, establish, and maintain the manner in which civil service positions [shall] are to be filled [in accordance with section 78-1 and the following standards:

(1) Equal opportunity for all regardless of race, sex, age, religion, color, ancestry, physical handicap, or politics;

(2) First consideration for competent employees already within public service; and

(3) Impartial selection of the ablest person through competitive means which are fair, objective, and practical]. The director shall seek continuous improvements to streamline the recruitment process so that positions are filled in the most economic, efficient, and expeditious manner possible. This includes maximizing use of new technologies and developing more efficient alternatives to ensure the availability of qualified applicant pools whether it involves a change in the manner in which initial appointments are to be made, increased delegation to departments, or decentralization to appointing authorities, as necessary and appropriate."

SECTION 18. Section 76-23.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§76-23.5[] Travel and transportation expenses.] Recruitment incentives.** [Appointing authorities, with the prior approval] Within limits set forth in rules of the director, appointing authorities may pay for all or a portion of the travel and transportation expenses or to provide a monetary incentive to enhance the recruitment of persons employed or appointed to [positions in a class declared to be in a shortage category and on continuous recruitment.] critical-to-fill and labor shortage positions."

SECTION 19. Section 76-27, Hawaii Revised Statutes, is amended to read as follows:

"**§76-27 Probationary service and other requirements for membership[.] in the civil service.** (a) All employees [shall successfully serve an initial probation period before becoming members of the civil service. In addition, membership in the civil service shall require that the employee shall have been appointed in accordance with law and shall have satisfied all the requirements for employment prescribed by this chapter or by the rules adopted thereunder, including those qualifications prescribed by section 78-1.] appointed to civil service positions shall constitute the membership of the civil service, but no employee shall be entitled to membership in civil service until the employee has:

(1) Successfully completed the initial probation period required as part of the examination process to determine the employee's fitness and ability for the position; and

(2) Satisfied all requirements for employment prescribed by this chapter and the qualifications prescribed by section 78-1.

(b) Upon becoming a member in the civil service, the employee shall be entitled to hold the member's position for the duration of the member's appointment, subject to section 76-46. In addition, civil service employees with permanent appointments, including an employee who has return rights to a position in which the employee has a permanent appointment, shall have layoff rights under section 76-43. All other civil service employees whose appointments have a limitation date shall

not have layoff rights and shall be released at the end of their appointments or earlier if there is lack of work, lack of funds, or other legitimate reasons.

(c) To retain membership in the civil service, all employees must continue to demonstrate their fitness and ability for their current positions by meeting all performance requirements of their positions. If an employee fails to meet performance requirements, section 76-41 shall apply.

(d) A member who is promoted or transferred to another position in the civil service may be required to successfully serve a new probation period [in] as part of the examination process to determine the employee's fitness and ability for the new position but shall be entitled to all the rights and privileges of a member of the civil service, except the right to appeal a [dismissal] discharge from the new position (as distinguished from [dismissal] discharge from the service) for inefficiency during the probationary period, in which case the member shall be returned to the former position[.] or a comparable position.

(e) An employee [who is] serving [a temporary] an appointment with a limitation date may subsequently be [given a probationary appointment in] appointed to the same position or a related position in the same class within the department [whenever] when a permanent position is established or is vacated; provided that the employee [has been] was hired initially [from the appropriate eligible list] through civil service recruitment procedures and the [temporary] period of service [has] as a temporary appointee immediately preceded the [change to probationary status. Upon certification by the appointing authority] appointment to the permanent position. The period of service performed as a temporary appointee may be credited toward the probation period if the appointing authority certifies that the employee has been performing satisfactorily and that the duties the employee has been performing are essentially similar to those required of the probationary appointment[,]. Upon such certification, the period of service performed as a temporary appointee shall be [subtracted from the probationary period required by this section,] credited toward fulfilling the required probation period and the employee shall serve only the [remaining period, if any, as a probationary employee.] remainder of the probation period, if any."

SECTION 20. Section 76-28, Hawaii Revised Statutes, is amended to read as follows:

"**§76-28 Forms required of appointing authorities.** [The director of human resources development] Each director shall develop and administer an employment records management system and require appointing authorities to transmit such records as the director may request. Appointing authorities shall maintain records of all appointments, terminations of employment, transfers, resignations, suspensions, demotions, and [dismissals. Appointing authorities shall file necessary forms of such personnel actions as the director may request.] discharges, other employment records and forms deemed appropriate by the director."

SECTION 21. Section 76-29, Hawaii Revised Statutes, is amended to read as follows:

"**§76-29 Person ineligible for appointment.** [No] A person [who has committed or attempted any deception or fraud in connection with any application or examination,] shall be [eligible] ineligible for any appointment in the civil service[.] for a specified period of time as determined appropriate by the director for reasons including, but not limited to, the following:

(1) Deception, fraud, or providing false or misleading statements of material facts in the application or examination process;

(2) Unauthorized or improper assistance in an examination; or
(3) A determination of unsuitability for employment."

SECTION 22. Section 76-30, Hawaii Revised Statutes, is amended to read as follows:

"**§76-30 Tenure; resignations.** (a) Every member of the civil service shall be entitled to hold the member's position [during good behavior, subject to suspension, demotion, or dismissal only as provided in this chapter and in the rules and regulations of the department of human resources development.] for the duration of the member's appointment as provided in section 76-27. Resignations shall be in writing[. In case] in accordance with rules.

(b) If an employee resigns without submitting the employee's resignation in writing, if an employee does not report to work for fifteen days without notifying the appointing authority of the employee's employment intentions, if the resignation is submitted while an investigation was pending against the employee, or if the resignation is not accepted for reasons allowed by rules, the [department head] appointing authority shall, within fifteen days following the [resignation,] last day the employee reported to work, file with the director [of human resources development] a statement showing either resignation or termination of employment[.], as appropriate under the circumstances.

(c) If the employee does not report for work without authorization, but, within fifteen days following the last day the employee reported for work, expresses a desire to continue employment, the employee shall not be deemed to have resigned. The appointing authority may take appropriate disciplinary action, including discharge, in consideration of the reasons for the employee's absence.

(d) Actions taken by the appointing authority under this section shall, if grieved, be filed pursuant to the departmental complaint procedure and the merit appeals board for employees excluded from coverage under chapter 89, as applicable.

(e) Whenever there are provisions in a collective bargaining agreement that conflict with this section, the terms of the agreement shall prevail. Actions taken by the appointing authority shall, if grieved, be filed pursuant to the contractual grievance procedure."

SECTION 23. Section 76-41, Hawaii Revised Statutes, is amended to read as follows:

"**§76-41 Performance [ratings.] appraisal systems; failure to meet performance requirements.** (a) There shall be established and maintained [a system of performance ratings] performance appraisal systems for the purpose of [appraising the service] evaluating the performance of employees in the civil service and improving the employees' performance. [Each department shall rate each employee under its jurisdiction in accordance with the system and shall, upon request by the director of the respective jurisdiction, transmit the final performance ratings to the director of human resources development. A copy of the final performance rating shall be given to the affected employee, and the original shall be filed in the employee's official personnel file.

The department head shall inform an employee in writing whenever the employee's performance in the employee's position is substandard. The employee shall also be notified in the notice and from time to time thereafter as may be necessary, of the manner in which the employee's performance is substandard.] The performance appraisal systems shall be the basis for evaluating whether employees in the civil service meet the performance requirements of their respective positions

as required in section 76-27. For the purposes of this section, "performance requirements" includes any qualification required for the position such as a license.

(b) An appointing authority may release an employee from the employee's position or discharge an employee from service if the employee fails to meet the performance requirements of the employee's position under the following conditions:

(1) The evaluation process and its consequences were discussed with the employee;

(2) The employee was made aware of the employee's current job description and job-related performance requirements;

(3) The evaluation procedures were observed, including providing the employee the opportunity to meet, discuss, and rebut the performance evaluation and apprising the employee of the consequences of failure to meet performance requirements;

(4) The evaluation was fair and objective;

(5) The employee was provided performance feedback during the evaluation period and, as appropriate, the employee was offered in-service remedial training in order for the employee to improve and meet performance requirements;

(6) The evaluation was applied without discrimination; and

(7) Prior to the end of the evaluation period that the employee is being considered for discharge due to failure to meet performance requirements, the feasibility of transferring or demoting the employee to another position for which the employee qualifies was considered.

(c) Any civil service employee who fails to meet performance requirements shall have the right to grieve under:

(1) A collective bargaining grievance procedure that culminates in a final and binding decision by a performance judge pursuant to section 89- ; or

(2) The departmental complaint procedure that culminates in a final and binding decision by the merit appeals board under section 76-14.

The performance judge or the merit appeals board, as the case may be, shall use the conditions in subsection (b) as tests in reaching a decision on whether the employer's action, based on a failure by the employee to meet performance requirements of the employee's position, was with or without merit."

SECTION 24. Section 76-42, Hawaii Revised Statutes, is amended to read as follows:

"**§76-42 [Grievance] Internal complaint procedures.** (a) The director [of human resources development] shall promulgate a uniform plan for the creation of [grievance] internal complaint procedures in the various departments[.] that shall apply to matters within the jurisdiction of the merit appeals board. The internal complaint procedures may also be used for other matters, such as, when a complaint procedure is required by law to be available or when a jurisdiction deems it would be beneficial to avoid the time and expense of litigation; provided that matters subject to collective bargaining grievance procedures shall not be processed under the internal complaint procedures. The rules [and regulations] relating to [grievance] internal complaint procedures shall conform to the following [principles]:

(1) [An employee may, without resort to formal procedures, discuss informally any problem relating to the employee's conditions of employment with any of the employee's supervisors.] The procedures shall encourage informal discussions and expeditious resolution of all complaints. Informal resolution includes the use of any administrative re-

view process available. A written decision shall be issued to the complainant on the outcome of any efforts to resolve the complaint informally and, if not resolved, the decision shall be accompanied by information on the filing of a formal complaint with the department or the merit appeals board, as applicable.

(2) In presenting a [grievance, the employee] complaint, the complainant shall be assured freedom from coercion, discrimination, or reprisal.

(3) [An employee] The complainant shall have the right to be represented by a person or persons of the [employee's] complainant's own choosing at any stage in the presentation of the [employee's grievance.] complaint.

(4) To minimize confusion and possible loss of rights, the time and manner for filing a formal complaint shall be as uniform and easily understandable as possible to the employees or general public. Complaint forms, instructions, and the complaint procedures should be easily accessible to the employees or general public and the procedures should allow for complaints to be filed at central locations convenient to the public. The complaint shall be referred to the appropriate individual at the lowest level of the internal complaint procedures who has the authority to act on the complaint and who shall be responsible for contacting the complainant. If it is discovered after filing of the complaint that the matter complained of is not within the authority of a department to act, the department shall notify the complainant accordingly and refer the complaint to the appropriate agency, if known. The deadline for filing a formal complaint under the internal complaint procedures shall be tolled after receipt of a reply to the informal complaint if efforts were made to resolve the complaint informally.

[(4)] (5) All proceedings relating to the handling of a complaint by a person who is not an employee shall as far as practicable be conducted during office hours at times convenient to the complainant. All proceedings relating to the handling of employee [grievances] complaints shall so far as practicable be conducted during [office hours.] the employee's work hours to permit the employee time off from work with pay.

(6) The departmental complaint procedure shall culminate in a written decision by the chief executive or the chief executive's designee, whether the director or other appropriate authority who is assigned responsibility for making the final decision on the action being complained of.

(b) The internal complaint procedures shall be exhausted before an appeal is filed with the merit appeals board. If the appeal is not under the jurisdiction of the merit appeals board, but some other administrative agency or appellate body, the complainant is responsible for the timely filing of an appeal with the appropriate agency regardless of whether the internal complaint procedures under this section are used."

SECTION 25. Section 76-43, Hawaii Revised Statutes, is amended to read as follows:

"**§76-43 Layoff.** [Rules and regulations shall be promulgated by the director of human resources development to govern the conditions under which an employee is to be released from the employee's position] When it is necessary to release employees due to lack of work [or], lack of funds[.], or other legitimate reasons, employees with permanent appointments in civil service positions shall have layoff

rights. Layoffs shall be made in accordance with procedures negotiated under chapter 89 or established under chapter 89C, as applicable."

SECTION 26. Section 76-45, Hawaii Revised Statutes, is amended to read as follows:

"**§76-45 Suspension.** An appointing authority may, for disciplinary purposes, suspend any employee without pay [for such length of time as the appointing authority considers appropriate, but not exceeding thirty days at any one time nor more than sixty days in any calendar year. No single suspension for a period of five working days or more, whether consecutively or not, shall take effect unless the appointing authority gives the employee a written notice setting forth the specific reasons upon which the suspension is based. With the approval of the director, an employee may be suspended for a period longer than thirty days pending an investigation or hearing of any charge against the employee. Where an employee has been suspended pending an investigation or hearing of any charge against the employee and the charge is subsequently dropped or not substantiated, the employee shall be reinstated in the employee's position without loss of pay.

An employee who is suspended for a period not in excess of four working days, whether consecutively or not, shall be entitled to a written notice from the appointing authority setting forth the specific reasons upon which the suspension is based. The written notice shall be given to the employee or mailed to the employee within forty-eight hours after the suspension.] or place an employee on leave without pay pending an investigation. Suspensions and leaves without pay pending an investigation shall be in accordance with procedures negotiated under chapter 89 or established under chapter 89C, as applicable."

SECTION 27. Section 76-46, Hawaii Revised Statutes, is amended to read as follows:

"**§76-46 [Dismissals;] Discharges; demotions.** An appointing authority may [dismiss] discharge or demote any employee when the appointing authority considers that the good of the service will be served thereby. [Dismissals] Discharges may be made only for such causes [as] that will promote the efficiency of government service.

[No dismissal or demotion of a regular employee shall be effective for any purpose unless at least ten days before the effective date thereof the appointing authority shall have given to the employee a written statement setting forth the specific reasons upon which the dismissal or demotion is based.] Demotions or discharges shall be in accordance with procedures negotiated under chapter 89 or established under chapter 89C, as applicable."

SECTION 28. Section 76-47, Hawaii Revised Statutes, is amended to read as follows:

"**§76-47 [Appeals from suspensions, dismissals and demotions.] Merit appeals boards; appointment, authority, procedures.** (a) Each jurisdiction shall establish a merit appeals board that shall have exclusive authority to hear and decide appeals relating to matters set forth in section 76-14 concerning the civil service of the jurisdiction.

(b) Members of the merit appeals board shall be persons that can objectively apply the merit principle to public employment. Other qualifications of board members and other matters pertaining to the establishment of the merit appeals board, whether composition of the board, manner of appointment, term of office,

limitation on terms, chairperson, removal of members, and name for its merit appeals board, shall be left to the determination of each jurisdiction based on its own preferences and needs. A jurisdiction may continue to use its civil service commission or appeals board, with or without modification, as its merit appeals board to assume all of the functions and responsibilities under section 76-14; provided that the merit appeals board for the State shall be as provided in section 26-5.

(c) The merit appeals board shall adopt rules of practice and procedure consistent with section 76-14 and in accordance with chapter 91, except that, in the case of the judiciary and the Hawaii health systems corporation, the adoption, amendment, or repeal of rules shall be subject to the approval of their respective chief executives. The rules shall recognize that the merit appeals board shall sit as an appellate body and that matters of policy, methodology, and administration are left for determination by the director. The rules may provide for the sharing of specific expenses among the parties that are directly incurred as a result of an appeal as the merit appeals board deems would be equitable and appropriate, including but not limited to expenses for transcription costs or for services, including traveling and per diem costs, provided by persons other than the board members or permanent staff of the board. Official business of the merit appeals board shall be conducted in meetings open to the public, except as provided in chapter 92.

(d) Whenever the board determines that mediation may result in a satisfactory resolution of an appeal, may narrow the issues on appeal, or otherwise expedite a decision, the board may require the parties to submit the issues to mediation, which shall not be subject to chapter 92. Mediation may be provided by any member or members of the merit appeals board or by a public or nonprofit agency which offers mediation or similar services for resolving or narrowing differences among the parties.

(e) Any [regular] civil service employee, who is suspended, [dismissed,] discharged, or demoted and who is not included in an appropriate bargaining unit under section 89-6, may appeal to the [civil service commission] merit appeals board within twenty days after [notice has been sent the employee of the suspension, dismissal, or demotion provided that the twenty-day period shall be extended to twenty days from the final notice on the employee's grievance should the employee exercise the grievance channel.] a final decision is made under the internal complaint procedures.

Upon the appeal, both the appealing employee and the appointing authority shall have the right to be heard publicly, present evidence and be represented by counsel, who shall have the right to examine and cross-examine witnesses. At the hearing technical rules of evidence shall not apply and the evidence shall be taken stenographically or recorded by machine. For the purpose of hearing the appeals fairly and expeditiously, the [commission] board may at any time appoint a competent and qualified disinterested person to act as its hearing officer. The hearing officer shall hear the matter in the same manner as if it were before the [commission] board and upon the conclusion of the hearing, shall report the hearing officer's findings of fact and the hearing officer's conclusions and recommendations based thereon to the [commission] board and to the employee. The [commission] board shall render the final decision in accordance with section 91-11.

If the [commission finds that the action appealed from was taken by the appointing authority for any political, religious or racial reason, the employee shall be reinstated to the employee's position without loss of pay for the period of the employee's suspension or separation therefrom. In all other cases, if the commission] board finds that the reasons for the action are not substantiated in any material respect, the [commission] board shall order that the employee be reinstated in the employee's position, without loss of pay, but if the [commission] board finds that the reasons are substantiated or are only partially substantiated, the [commission] board

shall sustain the action of the appointing authority, provided that the [commission] board may modify the action of the appointing authority if it finds the circumstances of the case so require and may thereupon order such disposition of the case as it may deem just.

[When an employee is dismissed and not reinstated after the appeal, the commission, in its discretion, may direct that the employee's name be placed on an appropriate reemployment list for employment in any similar position other than one from which the employee has been removed.]

The findings and decisions of the [commission] board shall be final on all appeals, unless an appeal is taken as provided in chapter 91.

Notwithstanding any other law to the contrary, when an appeal hearing is before a merit appeals board of a county [civil service commission, including the civil service commission of] or the city and county of Honolulu, the attorney general shall be counsel for the [commission] board and the county attorney or corporation counsel shall be counsel for the appointing authority. If, however, an appeal hearing is before the state [commission,] merit appeals board, the attorney general shall be counsel for the appointing authority and the county attorney or corporation counsel of the county, including the city and county of Honolulu, in which the appeal hearing is being conducted shall be counsel for the [commission.] state merit appeals board.

Notwithstanding any other law to the contrary, when the decision and order of the merit appeals board of a county [civil service commission, including the civil service commission of] or the city and county of Honolulu, is appealed as provided in chapter 91, the attorney general shall be counsel for the [commission] board and the county attorney or corporation counsel shall be counsel for the appointing authority. When the decision and order of the state [civil service commission] merit appeals board is appealed as provided in chapter 91, the attorney general shall be counsel for the appointing authority and the county attorney or corporation counsel of the county, including the city and county of Honolulu, in which the chapter 91 appeal is being conducted, shall be counsel for the state [civil service commission.] merit appeals board."

SECTION 29. Section 76-49, Hawaii Revised Statutes, is amended to read as follows:

"**§76-49 Subpoenas, oaths.** The [civil service commission] merit appeals board shall have such powers as may be provided by law with respect to compelling the attendance of witnesses and administering oaths to witnesses, and as to all matters within the scope of [their] its authority the director [of human resources development] and any hearing officer shall have similar powers."

SECTION 30. Section 76-50, Hawaii Revised Statutes, is amended to read as follows:

"**§76-50 Compensation and expenses of [commission.] a merit appeals board.** Each member of [the civil service commission shall be paid compensation at the rate of $10 per day for each day's actual attendance at a meeting, but not to exceed, in the aggregate, $100 in any month and when any member is required to travel from any island to another island in the State in the performance of such duties, the member shall be allowed the member's reasonable traveling expenses.] a merit appeals board shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties."

SECTION 31. Section 76-51, Hawaii Revised Statutes, is amended to read as follows:

"**§76-51 [Political] Prohibited activities by [commissioners prohibited.] members of a merit appeals board.** No person who occupies any elective or appointive office [or any position] under the state or county government shall be eligible for membership on or continue to be a member of the [civil service commission.] merit appeals board. The term "appointive office" for the purpose of this section, shall not include notaries public. No member of the [commission] merit appeals board shall, during the member's term of office, serve as an officer or committee member of any political party organization, including a precinct organization, or present oneself as a candidate or be a candidate for nomination or election to any public office at any election. The office of any member who violates this section or [part IV of this chapter,] section 84-13 or 84-14 shall be conclusively presumed to have been abandoned and vacated by reason thereof and the [governor] chief executive shall thereupon appoint a qualified person to fill the vacancy. As an alternative remedy, proceedings in the nature of quo warranto may be brought by any person to oust any member who violates this section or [part IV of this chapter.] section 84-13 or 84-14."

SECTION 32. Chapter 76, Part III, Hawaii Revised Statutes, is amending by amending the title to read:

"**[PART III.] PART II. SPECIAL CIVIL SERVICE PROVISIONS FOR THE COUNTIES OF HAWAII, MAUI, AND KAUAI**"

SECTION 33. Section 76-71, Hawaii Revised Statutes, is amended to read as follows:

"**§76-71 Department of civil service.** There shall be a department of civil service for each of the counties of Hawaii, Maui, and Kauai, which shall include a personnel director and a [commission consisting of five members appointed by the mayor with the approval of the council of the respective counties.] merit appeals board established under section 76-47."

SECTION 34. Section 76-75, Hawaii Revised Statutes, is amended to read as follows:

"**§76-75 Personnel director.** The [commission] merit appeals board shall appoint and may at pleasure remove a personnel director, who shall be the chief administrative officer of the department of civil service. The director shall, at the time of the director's appointment, and thereafter, be thoroughly familiar with the principles and methods of personnel administration and shall believe in applying merit principles and scientific administrative methods to public personnel administration."

SECTION 35. Section 76-77, Hawaii Revised Statutes, is amended to read as follows:

"**§76-77 Civil service and exemptions.** The civil service to which this part applies comprises all positions in the public service of each county, now existing or hereafter established, and embraces all personal services performed for each county, except the following:

(1) Positions in the office of the mayor; provided that the positions shall be included in the [position] classification [plan;] systems;
(2) Positions of officers elected by public vote, positions of heads of departments, and positions of one first deputy or first assistant of heads of departments;

(3) Positions of deputy county attorneys, deputy corporation counsel, deputy prosecuting attorneys, and law clerks;
(4) Positions of members of any board, commission, or agency;
(5) Positions filled by students; positions filled through federally funded programs which provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973; and employees engaged in special research or demonstration projects approved by the mayor, for which projects federal funds are available;
(6) Positions of district judges, jurors, and witnesses;
(7) Positions filled by persons employed by contract where the personnel director has certified [and where the certification has received the approval of the commission] that the service is special or unique, is essential to the public interest, and that because of the circumstances surrounding its fulfillment, personnel to perform the service cannot be recruited through normal civil service procedures; provided that no contract pursuant to this paragraph shall be for any period exceeding one year;
(8) Positions of a temporary nature needed in the public interest where the need does not exceed ninety days; provided that before any person may be employed to render temporary service pursuant to this paragraph, the director shall certify that the service is of a temporary nature and that recruitment through normal civil service recruitment procedures is not practicable; and provided further that the employment of any person pursuant to this paragraph may be extended for good cause for an additional period not to exceed ninety days upon similar certification by the director [and approval of the commission];
(9) Positions of temporary election clerks in the office of the county clerk employed during election periods;
(10) Positions specifically exempted from this part by any other state statutes;
(11) Positions of one private secretary for each department head; provided that the positions shall be included in the [position] classification [plan;] systems;
(12) Positions filled by persons employed on a fee, contract, or piecework basis who may lawfully perform their duties concurrently with their private business or profession or other private employment, if any, and whose duties require only a portion of their time, where it is impracticable to ascertain or anticipate the portion of time devoted to the service of the county and that fact is certified by the director;
(13) Positions filled by persons with a severe disability who are certified by the state vocational rehabilitation office as able to safely perform the duties of the positions;
(14) Positions of the housing and community development office or department of each county; provided that this exemption shall not preclude each county from establishing these positions as civil service positions; and
(15) The following positions in the office of the prosecuting attorney: private secretary to the prosecuting attorney, secretary to the first deputy prosecuting attorney, and administrative or executive assistants to the prosecuting attorney; provided that the positions shall be included in the [position] classification [plan.] systems.

The director shall determine the applicability of this section to specific positions and shall determine whether or not positions [excluded] exempted by

paragraphs (7) and (8) shall be included in the [position] classification [plan.] systems.

Nothing in this section shall be deemed to affect the civil service status of any incumbent private secretary of a department head who held that position on May 7, 1977."

SECTION 36. Section 76-2, Hawaii Revised Statutes, is repealed.

SECTION 37. Section 76-3, Hawaii Revised Statutes, is repealed.

SECTION 38. Section 76-4, Hawaii Revised Statutes, is repealed.

SECTION 39. Section 76-5.5, Hawaii Revised Statutes, is repealed.

SECTION 40. Section 76-7, Hawaii Revised Statutes, is repealed.

SECTION 41. Section 76-8, Hawaii Revised Statutes, is repealed.

SECTION 42. Section 76-8.5, Hawaii Revised Statutes, is repealed.

SECTION 43. Section 76-9, Hawaii Revised Statutes, is repealed.

SECTION 44. Section 76-10, Hawaii Revised Statutes, is repealed.

SECTION 45. Section 76-11.5, Hawaii Revised Statutes, is repealed.

SECTION 46. Section 76-19, Hawaii Revised Statutes, is repealed.

SECTION 47. Section 76-20, Hawaii Revised Statutes, is repealed.

SECTION 48. Section 76-21, Hawaii Revised Statutes, is repealed.

SECTION 49. Section 76-23, Hawaii Revised Statutes, is repealed.

SECTION 50. Section 76-24, Hawaii Revised Statutes, is repealed.

SECTION 51. Section 76-25, Hawaii Revised Statutes, is repealed.

SECTION 52. Section 76-26, Hawaii Revised Statutes, is repealed.

SECTION 53. Section 76-31, Hawaii Revised Statutes, is repealed.

SECTION 54. Section 76-32, Hawaii Revised Statutes, is repealed.

SECTION 55. Section 76-33, Hawaii Revised Statutes, is repealed.

SECTION 56. Section 76-35, Hawaii Revised Statutes, is repealed.

SECTION 57. Section 76-36, Hawaii Revised Statutes, is repealed.

SECTION 58. Section 76-37, Hawaii Revised Statutes, is repealed.

SECTION 59. Section 76-39, Hawaii Revised Statutes, is repealed.

SECTION 60. Section 76-44, Hawaii Revised Statutes, is repealed.

SECTION 61. Section 76-48, Hawaii Revised Statutes, is repealed.

SECTION 62. Section 76-52, Hawaii Revised Statutes, is repealed.

SECTION 63. Section 76-53, Hawaii Revised Statutes, is repealed.

SECTION 64. Section 76-54, Hawaii Revised Statutes, is repealed.

SECTION 65. Section 76-55, Hawaii Revised Statutes, is repealed.

SECTION 66. Section 76-56, Hawaii Revised Statutes, is repealed.

SECTION 67. Section 76-72, Hawaii Revised Statutes, is repealed.

SECTION 68. Section 76-73, Hawaii Revised Statutes, is repealed.

SECTION 69. Section 76-74, Hawaii Revised Statutes, is repealed.

SECTION 70. Section 76-78, Hawaii Revised Statutes, is repealed.

SECTION 71. Section 76-79, Hawaii Revised Statutes, is repealed.

SECTION 72. Section 76-80, Hawaii Revised Statutes, is repealed.

SECTION 73. Section 76-81, Hawaii Revised Statutes, is repealed.

## PART III

SECTION 74. Chapter 78, Hawaii Revised Statutes, is amended by adding twelve new sections to be appropriately designated and to read as follows:

"**§78- Definitions.** As used herein, unless the context clearly requires otherwise, the terms "appointing authority," "chief executive," "director," "employee," "employer," and "jurisdiction" shall have the same meaning as those terms are defined in section 76-11.

**§78- Prospective employees; suitability for public employment.** (a)[1] All prospective employees, regardless of the positions they will assume, shall demonstrate their suitability for public employment by:

(1) Passing a pre-employment controlled substance drug test if required by the employing jurisdiction; and

(2) Attesting that during the three-year period immediately preceding the date of application for employment, the person was not convicted of any controlled substance-related offense.

If an applicant fails to meet the suitability requirements of the employing jurisdiction, the applicant shall be disqualified from further employment consideration or deemed ineligible for appointment under section 76-29 on the basis of unsuitability for public employment.

**§78- Experimental modernization projects.** (a) It is the intent of this section to encourage and facilitate improvements in the human resource programs of the several jurisdictions. With the approval of the chief executive, the director may

conduct experimental modernization projects to determine whether specific changes in its human resource program would result in a more desirable program for the jurisdiction.

(b) Prior to the implementation of any experimental modernization project, the director shall:

(1) Develop a plan identifying the purposes of the project, the methodology to be used, the duration of the project, the criteria for evaluation of the project, and the cost of the project, if any;

(2) Consult with the employees who would be involved in the conduct of the project; and

(3) Negotiate with the exclusive representative if a modification or waiver of any provision in a collective bargaining agreement is necessary to conduct the project.

(c) While the project is in progress, it shall not be limited by state or local personnel laws and rules, but shall be in compliance with all equal employment opportunity laws and laws prohibiting discrimination.

§78- **Office hours.** Offices of the State and counties shall be open for the transaction of public business as determined by the chief executive. Offices need not be open for the transaction of public business on the state holidays designated under section 8-1 and as observed under section 8-2.

§78- **Leaves of absence.** (a) Employees shall be eligible for vacation leave, sick leave, and other leaves of absence, with or without pay, as negotiated under chapter 89 or adjusted under chapter 89C, as applicable.

(b) When an employee is transferred from one department to another within the same jurisdiction or to another jurisdiction within the State, the employee shall be given credit for the vacation earned or accumulated in the department from which the employee transferred, and the director of finance of the State or the equivalent officers of the several jurisdictions shall make the appropriate transfer of funds to implement the employee transfer. Moneys received from any such transfer of funds by a state agency financed by the general fund of the State shall be deposited with the director of finance of the State to the credit of the general fund of the State; provided that, when an employee is transferred from one department to another within the same jurisdiction, the transfer of funds shall not be made if the employee's salary is paid from the same fund. Compensation for any period of vacation allowance shall be paid at the rate to which the employee is entitled at the time the allowance is granted.

(c) Upon discharge, an employee 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 discharge, notwithstanding that the current accrued vacation allowance may not have been recorded at the time. 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 employee, or, failing the designation, to the employee's estate.

(d) Whenever an employee is to be discharged, voluntarily or involuntarily, the employee, at the option of the appointing authority, may be discharged and 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 discharge. For an employee hired after June 30, 1997, who is to be discharged, 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 discharged. Prompt notice upon such forms and in such manner as may be required shall be given by the department head of any action taken under this provision.

**§78- Injured employee; liability of third persons.** (a) Whenever any police officer, firefighter, or any other officer or employee who is temporarily exposed to unusually hazardous conditions, or who is a member of a class, recognized by the action of pricing, to be a class exposed to unusually hazardous conditions, receives personal injury arising out of and in the performance of duty and without negligence on the employee's part, the employee shall be placed on accidental injury leave unless suspended or discharged for cause. The employee shall be continued on the department's payroll, as though the employee did not sustain an industrial injury, as follows:

(1) During the first four months of the disability, at the employee's full regular monthly salary; and
(2) Thereafter, during the period of total disability from work at sixty per cent of the employee's regular monthly salary.

The employee shall be entitled to all rights and remedies allowed under chapter 386; provided that any salary paid under this section shall be applied on account of any compensation allowed under chapter 386 or any benefits awarded under part III of chapter 88 to the employee.

(b) When the employer pays benefits to or incurs medical expenses on behalf of any of its employees under this section for any injury sustained under circumstances creating in some person or entity other than the employer a legal liability to pay damages in respect thereto, the employer or the employee may proceed against such third persons and recover all payments made, paid, or due under this section. The employer or employee shall have all of the rights and remedies contained in or provided for under section 386-8.

**§78- Credits for employees receiving workers' compensation benefits; wage supplement.** (a) Where an employee is absent from work because of injuries incurred within the scope of the employee's employment and the employee is receiving workers' compensation benefits, the employee shall continue to earn vacation, sick leave, and retirement credits as though the employee were not absent but performing duties of the employee's regular employment. Section 386-57 or any other law to the contrary notwithstanding, the employee may elect to have deducted from the employee's workers' compensation benefit checks an amount calculated in the same manner as if the employee were not absent but performing duties of the employee's regular employment to be used as the employee's contribution to the retirement system.

(b) An employee who is receiving workers' compensation wage loss replacement benefits may use the employee's accumulated sick leave or vacation credits to supplement the workers' compensation wage loss replacement benefits to a sum not to exceed the employee's regular salary.

**§78- Leave sharing program.** (a) The chief executive of a jurisdiction may establish a leave sharing 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 a jurisdiction desiring to establish a leave sharing program shall develop rules 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. If it is administratively infeasible to allow leave sharing between different departments or different bargaining units, the rules may limit leave sharing to employees within the same department or same bargaining unit, as necessary. 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 that sick leave need not be exhausted when the illness or injury involves a family member;
(3) A personal illness or injury or a family member's 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
(4) No disciplinary record of sick leave abuse within the past two years.

**§78- Temporary inter- and intra-governmental assignments and exchanges.** (a) With the approval of the respective employer, a governmental unit of this State may participate in any program of temporary inter- or intra-governmental assignments or exchanges of employees as a sending or receiving agency. "Agency" means any local, national, or foreign governmental agency or private agency with government sponsored programs or projects.

(b) As a sending agency, a governmental unit of this State may consider its employee on a temporary assignment or exchange as being on detail to a regular work assignment or on leave of absence without pay from the employee's position. The employee on temporary assignment or exchange shall be entitled to the same rights and benefits as any other employee of the sending agency.

(c) As a receiving agency, a governmental unit of this State shall not consider the employee on a temporary assignment or exchange who is detailed from the sending agency as its employee, except for the purpose of disability or death resulting from personal injury arising out of and in the course of the temporary assignment or exchange. The employee on detail may not receive a salary from the receiving agency, but the receiving agency may pay for or reimburse the sending agency for the costs, or any portion of the costs, of salaries, benefits, and travel and transportation expenses if it will benefit from the assignment or exchange.

(d) An agreement consistent with this section and policies of the employer shall be made between the sending and receiving agencies on matters relating to the assignment or exchange, including but not limited to supervision of duties, costs of salary and benefits, and travel and transportation expenses; provided that the agreement shall not diminish any rights or benefits to which an employee of a governmental unit of this State is entitled under this section.

(e) As a receiving agency, a governmental unit of this State may give the employee of the sending agency on a temporary assignment or exchange an exempt appointment and grant the employee rights and benefits as other exempt appointees of the receiving agency if it will benefit from the assignment or exchange.

§78- **In-service training programs.** Each director shall monitor, make recommendations, and develop policies and guidelines for suitable in-service training programs and activities so that the quality of service rendered by government employees may be continually improved. Participating agencies may be charged fees for training programs.

§78- **Incentive and service awards.** (a) Each chief executive may establish incentive and service awards programs to recognize employees who contribute to the efficiency, economy, or other improvement of government operations or who perform exceptionally meritorious special acts or services in the public interest in connection with or related to their official employment. The programs may allow appointing authorities to establish their own programs consistent with the policies of the chief executive.

(b) The programs may provide for cash awards to recognize suggestions, inventions, superior accomplishments, length of service, and other personal or group efforts. A cash award shall be in addition to the employee's regular compensation of the recipients. The acceptance of a cash award shall constitute an agreement that use by the government of any idea, method, or device for which the award is made shall not form the basis of a further claim upon the government by the employees or the employees' heirs and assigns.

(c) Awards and expenses for programs may be paid from funds available to the departments and agencies benefiting from or responsible for recognizing the employee's or group of employees' contribution, as determined by the chief executive or appointing authority, as applicable. All administrative decisions made on the issuance of awards under this section shall be final and deemed a performance of a discretionary function of the chief executive or appointing authority.

§78- **Cafeteria plans.** (a) Each chief executive may establish a wage and salary reduction benefit program which qualifies as a cafeteria plan within the meaning of section 125 of the Internal Revenue Code of 1986, as amended. The cafeteria plan shall allow eligible employees to elect to reduce their pretax compensation in return for payment by the jurisdiction of the expenses of eligible benefits.

(b) In addition to any other powers and duties authorized by law, each chief executive may enter into all contracts necessary to establish, administer, or maintain the cafeteria plans.

(c) The contributions, interest earned, and forfeited participant balances may be held in trust outside of the jurisdiction's treasury for the benefit of the participants and the plan. The funds in trust shall not be subject to the jurisdiction's general creditors. Interest earned or forfeited participant balances may be used to defray participant fees and other administrative costs."

SECTION 75. Section 78-1, Hawaii Revised Statutes, is amended to read as follows:

"**§78-1 Citizenship and residence [of government officials and employees]; exceptions.** (a) All elective officers in the service of the government of the State or [in the service of] any county [or municipal subdivision of the State] shall be citizens of the United States and residents of the State for at least three years immediately preceding assumption of office.

(b) All appointive officers in the service of the government of the State or [in the service of] any county [or municipal subdivision of the State] who are employed as department heads[, first assistants, first deputies, second assistants, or second deputies] and deputies or assistants to a department head shall be citizens of the United States and residents of the State for at least one year immediately preceding

their appointment[; however, all]. All others appointed in the service of the government of the State or in the service of any county or municipal subdivision of the State shall be citizens, nationals, or permanent resident aliens of the United States and residents of the State at the time of their appointment. A national or permanent resident alien [appointed pursuant to this section] appointee shall not be eligible for continued employment unless such person diligently seeks citizenship upon becoming eligible to apply for United States citizenship.

(c) All [employees in the service of] persons seeking employment with the government of the State or in the service of any county [or municipal subdivision of the State] shall be citizens, nationals, or permanent resident aliens of the United States, or eligible under federal law for unrestricted employment in the United States, and residents of the State at the time of their application for employment[.] and as a condition of eligibility for continued employment.

"Resident" means a person who is physically present in the State at the time the person claims to have established the person's domicile in the State and shows the person's intent is to make Hawaii the person's permanent residence. In determining this intent, the following factors shall be considered:

(1) Maintenance of a domicile or permanent place of residence in the State;

(2) Absence of residency in another state[.]; and

(3) Former residency in the State.

(d) [For the purpose of obtaining services which are essential to the public interest for which no competent person with the qualifications under subsection (c) applies within forty-five days after the first public notice of the position or a notice of an examination therefor, which notice has been given more than once, and not more often than once a week, statewide, a person without the qualifications, upon prior certification by the state director of human resources development or the personnel director of the appropriate county, and with the approval of the chief executive officer for the State or the political subdivision concerned, may be employed.] The appointing authority may approve the appointment of persons without consideration of the requirements under subsection (c) when services essential to the public interest require highly specialized technical and scientific skills or knowledge for critical-to-fill and labor shortage positions.

(e) For the positions involved in the performance of services in planning and executing measures for the security of Hawaii and the United States, the employees shall be citizens of the United States in addition to meeting the requirement of residency in subsection (c).

(f) [A preference shall be granted to state residents who have filed resident income tax returns within the State or who have been claimed as a dependent on such a return at the time of their application for employment with the State or any county or municipal subdivision of the State.

For residents applying for positions covered by chapters 76 and 77, the preference shall be accomplished as provided in section 76-23.

For residents applying for positions not covered by chapters 76 and 77, the preference shall be accomplished by giving first consideration to such residents, if all other factors are relatively equal.

(g)] This section shall not apply to persons recruited by the University of Hawaii under the authority of section 304-11."

SECTION 76. Section 78-4, Hawaii Revised Statutes, is amended to read as follows:

"**§78-4 Boards and commissions; service limited.** (a) Any other provision of law to the contrary notwithstanding, no person shall be allowed to serve on more

than one state board or commission expressly created by a state statute or the state constitution.

(b) [Any other provision of the law to the contrary notwithstanding, no nomination or appointment to a state or county board or commission, whether temporary or permanent and which requires part-time service, shall be denied to a person of or over the age of majority due to that person's age; provided that this subsection shall not apply when a law relating to a particular board or commission requires a member or members thereof to be of a specified age or age groups.

(c) This section shall not apply when in conflict with any federal law.] Any prohibition in any law against the holding of outside employment or dual public office, employment, or position by an employee shall not bar the appointment of an employee to membership on a board or commission unless service on the board or commission would be inconsistent or incompatible with or would tend to interfere with the duties and responsibilities of the other office, employment, or position held by the employee.

(c) When any employee must be away from the employee's regular work because of service as a member on a board or commission, the employee shall not, as a result of the absence, suffer any loss of the employee's regular salary or wages. The time spent in service as a board or commission member outside of the employee's regular work hours shall not be considered as time worked."

SECTION 77. Section 78-12, Hawaii Revised Statutes, is amended to read as follows:

"**§78-12 Salary withheld for indebtedness to the government.** (a) In case any officer, agent, employee or other person in the service of [the State, any county, or any independent board or commission,] a jurisdiction is indebted to [the State, any county, or to any independent board or commission,] a jurisdiction and the indebtedness has been determined by a hearing pursuant to chapter 91, upon demand of the officer charged with the duty of collecting the indebtedness, the [comptroller or other] disbursing officer charged with the duty of paying the indebted officer, agent, employee, or other person, after notice to the indebted person, shall withhold one-quarter of the salary, wages, or compensation due the indebted person and pay the same, from time to time as the same shall become due, to the officer charged with the duty of collecting the indebtedness, until the full amount of the indebtedness, together with penalties and interest thereon, is paid.

(b) If the indebtedness has arisen or been incurred by reason of the indebted officer, agent, employee, or other person having embezzled, stolen, or otherwise unlawfully acquired any moneys or other property of the[1] [State, any county, or any independent board or commission,] a jurisdiction the whole amount of the salary, wages, or compensation, or so much thereof as may be required to pay the indebtedness in full, shall be withheld and paid over to the officer charged with the duty of collecting the indebtedness.

(c) The officer, agent, employee or other person in the service of the [State, any county, or any independent board or commission] alleged[1] to be indebted to [the State, any county, or to any independent board or commission] a jurisdiction may waive the right to a hearing to determine the indebtedness and instead assign by contract to the officer charged with the duty of collecting debts:

(1) The priority right to payment of the total amount of the alleged indebtedness; and

(2) The right of the officer to deduct from each and every periodic payment normally due the assignor an amount equal to the maximum legally permissible amount deductible under garnishment law until the total amount owing is paid in full.

For purposes of this section, a person shall be deemed to waive the hearing if the person fails to request a hearing within fifteen days from the date the person was notified of the indebtedness and the opportunity to request a hearing.

(d) The operation of all garnishment process served upon the [comptroller or other paying] disbursing officer shall be stayed until the indebtedness has been fully paid.

(e) If the indebtedness has occurred as a result of salary or wage overpayment, the [comptroller or other] disbursing officer shall determine the amount of indebtedness and notify the employee in writing of the indebtedness. If the employee contests the [comptroller or other] disbursing officer's determination of indebtedness, the employee may request a hearing pursuant to chapter 91[, and upon conclusion of the hearing or if the employee waives the hearing, if].

(f) Regardless of whether a contested determination of indebtedness is pending, the disbursing officer shall commence immediate recovery of the indebtedness as provided in this subsection. If the indebtedness is equal to or less than $1,000, the [comptroller or other] disbursing officer shall immediately deduct from any subsequent periodic payment normally due the employee any amount up to the total amount of indebtedness[. For] and for indebtedness greater than $1,000, the [comptroller or other] disbursing officer shall deduct:

(1) An amount agreed to by the employee and [employer,] the appointing authority, but not less than $100 per pay period; or

(2) One-quarter of the salary, wages, or compensation due the employee until the indebtedness is repaid in full.

In addition to paragraph (1), an employee and the appointing authority may agree to offset any remaining amount of indebtedness by applying the current value of appropriate leave or compensatory time credits posted in the employee's respective accounts as balances that would otherwise be payable in cash upon separation from service; provided that credits shall not be applied to any extent that would require a refund of any moneys already deducted or repaid or that would require the payment of any moneys to the employee equivalent to a cashing out of leave or compensatory time credits.

(g) If the determination of indebtedness was contested and is subsequently found to be incorrect:

(1) Any moneys repaid or deducted under subsection (e) for any indebtedness in excess of the correct amount shall be promptly refunded with interest, to be calculated at a rate and in such manner as the disbursing officer establishes by rules; or

(2) All leave or compensatory time credits applied to offset any indebtedness in excess of the correct amount shall be re-credited to the employee's respective leave or compensatory time accounts and shall not result in a cash payment.

(h) If an employee is entitled to contest the determination of indebtedness under a collective bargaining grievance procedure, that procedures[1] shall be used in lieu of a hearing under subsection (e). A collective bargaining agreement may include overpayment recovery procedures; provided that the parties do not agree on any provision that would be inconsistent with subsections (f) and (g).''

SECTION 78. Section 78-17, Hawaii Revised Statutes, is amended to read as follows:

**''§78-17 Payment of salaries or wages upon [termination of] discharge from service.** Whenever in any case, and for whatever cause, the employment of any officer, agent, employee, or other person in the public service is [terminated, he] discharged, the discharged person shall be paid immediately upon the approval of

the head of the department in which [he] the person was engaged whatever salary or wages that are due [him.] the person."

SECTION 79. Chapter 78, Part I, Hawaii Revised Statutes, is amended by repealing the title:

**["[PART I.] GENERAL PROVISIONS"]**

SECTION 80. Section 78-2, Hawaii Revised Statutes, is repealed.

SECTION 81. Section 78-2.5, Hawaii Revised Statutes, is repealed.

SECTION 82. Section 78-5, Hawaii Revised Statutes, is repealed.

SECTION 83. Section 78-6, Hawaii Revised Statutes, is repealed.

SECTION 84. Section 78-14, Hawaii Revised Statutes, is repealed.

SECTION 85. Section 78-15, Hawaii Revised Statutes, is repealed.

SECTION 86. Section 78-16, Hawaii Revised Statutes, is repealed.

SECTION 87. Section 78-19, Hawaii Revised Statutes, is repealed.

SECTION 88. Section 78-22, Hawaii Revised Statutes, is repealed.

SECTION 89. Section 78-51, Hawaii Revised Statutes, is repealed.

SECTION 90. Chapter 78, Part II, Hawaii Revised Statutes, is repealed.

**PART IV**

SECTION 91. Chapter 89, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§89- Resolution of disputes; grievances.** (a) A public employer shall enter into written agreement with the exclusive representative setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. The grievance procedure shall be valid and enforceable and shall be consistent with the following:

(1) A dispute over the terms of an initial or renewed agreement shall not constitute a grievance;
(2) No employee in a position exempted from chapter 76, who serves at the pleasure of the appointing authority, shall be allowed to grieve a suspension or discharge unless the collective bargaining agreement specifically provides otherwise; and
(3) With respect to any adverse action resulting from an employee's failure to meet performance requirements of the employee's position, the grievance procedure shall provide that the final and binding decision shall be made by a performance judge as provided in this section.

(b) The performance judge shall be a neutral third party selected from a list of persons whom the parties have mutually agreed are eligible to serve as a performance judge for the duration of the collective bargaining agreement. The parties, by

mutual agreement, may modify the performance judge list at any time and shall determine a process for selection from the list.

(c) The performance judge shall use the conditions in section 76-41(b) as tests in reaching a decision on whether the employer's action, based on a failure by the employee to meet the performance requirements of the employee's position, was with or without merit.

(d) If it is alleged that the adverse action was not due to a failure to meet performance requirements but for disciplinary reasons without just and proper cause, the performance judge shall first proceed with a determination on the merits of the employer's action under subsection (c). If the performance judge determines that the adverse action may be based on reasons other than a failure to meet performance requirements, the performance judge shall then determine, based on appropriate standards of review, whether the disciplinary action was with or without proper cause and render a final and binding decision."

SECTION 92. Section 89-1, Hawaii Revised Statutes, is amended to read as follows:

"**§89-1 Statement of findings and policy.** (a) The legislature finds that joint decision-making is the modern way of administering government. Where public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have become more responsive and better able to exchange ideas and information on operations with their administrators. Accordingly, government is made more effective. The legislature further finds that the enactment of positive legislation establishing guidelines for public employment relations is the best way to harness and direct the energies of public employees eager to have a voice in determining their conditions of work[,]; to provide a rational method for dealing with disputes and work stoppages[,]; and to maintain a favorable political and social environment.

(b) The legislature declares that it is the public policy of the State to promote harmonious and cooperative relations between government and its employees and to protect the public by assuring effective and orderly operations of government. These policies are best effectuated by:

(1) [recognizing] Recognizing the right of public employees to organize for the purpose of collective bargaining[,];

(2) [requiring the] Requiring public employers to negotiate with and enter into written agreements with exclusive representatives on matters of wages, hours, and other conditions of employment, while, at the same time, [(3)] maintaining the merit [principles and the principle of equal pay for equal work among state and county employees pursuant to sections 76-1, 76-2, 77-31, and 77-33,] principle pursuant to section 76-1; and [(4) creating]

(3) Creating a labor relations board to administer the provisions of chapters 89 and 377."

SECTION 93. Section 89-2, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read:

"'"Day" means a calendar day unless otherwise specified.

"Jurisdiction" means the State, the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, and the Hawaii health systems corporation."

2. By amending the definitions of "arbitration", "collective bargaining", "cost items", "employee" or "public employee", "employer" or "public em-

ployer", "exclusive representative", "fact-finding", "impasse", "legislative body", "mediation", and "strike" to read:

""Arbitration" means the procedure whereby parties involved in an impasse [mutually agree to] submit their differences to a third party, whether a single arbitrator or an arbitration panel, for [a final and binding] an arbitration decision. It may include mediation whereby the neutral third party is authorized to assist the parties in a voluntary resolution of the impasse.

"Collective bargaining" means the performance of the mutual obligations of the public employer and [the] an exclusive representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment, except that by any such obligation neither party shall be compelled to agree to a proposal, or be required to make a concession. For the purposes of this definition, "wages" includes the number of incremental and longevity steps, the number of pay ranges, and the movement between steps within the pay range and between the pay ranges on a pay schedule under a collective bargaining agreement.

"Cost items" [includes wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment, the implementation of which requires an appropriation by a] means all items agreed to in the course of collective bargaining that an employer cannot absorb under its customary operating budgetary procedures and that require additional appropriations by its respective legislative body[.] for implementation.

"Employee" or "public employee" means any person employed by a public employer, except elected and appointed officials and [such] other employees [as may be] who are excluded from coverage in section 89-6(c).

"Employer" or "public employer" means the governor in the case of the State, the respective mayors in the case of the [city and county of Honolulu and the] counties [of Hawaii, Maui, and Kauai], the chief justice of the supreme court in the case of the judiciary, the board of education in the case of the department of education, [and] the board of regents in the case of the University of Hawaii, the Hawaii health systems corporation board in the case of the Hawaii health systems corporation, and any individual who represents one of these employers or acts in their interest in dealing with public employees. In the case of the judiciary, the [governor shall be the employer for the purposes of this chapter.] administrative director of the courts shall be the employer in lieu of the chief justice for purposes which the chief justice determines would be prudent or necessary to avoid conflict.

"Exclusive representative" means the employee organization[, which as a result of certification by the board, has the right to be] certified by the board under section 89-8 as the collective bargaining agent [of] to represent all employees in an appropriate bargaining unit without discrimination and without regard to employee organization membership.

"Fact-finding" means identification of the major issues in a particular impasse, review of the positions of the parties and resolution of factual differences by one or more [impartial] neutral fact-finders, and the making of recommendations for settlement of the impasse.

"Impasse" means failure of a public employer and an exclusive representative to achieve agreement in the course of [negotiations.] collective bargaining. It includes any declaration of an impasse under section 89-11.

"Legislative body" means the legislature in the case of the State, including the judiciary, the department of education, the University of Hawaii, and the Hawaii health systems corporation; the city council, in the case of the city and county of

Honolulu[,]; and the respective county councils, in the case of the counties of Hawaii, Maui, and Kauai.

"Mediation" means assistance by [an impartial] a neutral third party to [reconcile] resolve an impasse between the public employer and the exclusive representative [regarding wages, hours, amounts of contributions by the State and counties to the Hawaii public employees health fund, and other terms and conditions of employment] through interpretation, suggestion, and advice [to resolve the impasse].

"Strike" means a public employee's refusal, in concerted action with others, to report for duty, or the employee's wilful absence from the employee's position, or the employee's stoppage of work, or the employee's abstinence in whole or in part from the full, faithful, and proper performance of the duties of employment, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment; and except in the case of absences authorized by public employers, includes such refusal, absence, stoppage, or abstinence by any public employee out of sympathy or support for any other public employee who is on strike or because of the presence of any picket line maintained by any other public employee; provided that, nothing herein shall limit or impair the right of any public employee to express or communicate a complaint or opinion on any matter related to the conditions of employment."

3. By repealing the definitions of "certification", "professional employee", and "supervisory employee".

["'"Certification" means official recognition by the board that the employee organization is, and shall remain, the exclusive representative for all of the employees in an appropriate bargaining unit for the purpose of collective bargaining, until it is replaced by another employee organization, decertified, or dissolved.

"Professional employee" includes (A) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work, (ii) involving the consistent exercise of discretion and judgment in its performance, (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time, (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or (B) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (A)(iv), and (ii) is performing related work under the supervision of a professional employee as defined in (A).

"Supervisory employee" means any individual having authority in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."']

SECTION 94. Section 89-3, Hawaii Revised Statutes, is amended to read as follows:

"**§89-3 Rights of employees.** Employees shall have the right of self-organization and the right to form, join, or assist any employee organization for the purpose of bargaining collectively through representatives of their own choosing on questions of wages, hours, and other terms and conditions of employment, and to engage in lawful, concerted activities for the purpose of collective bargaining or

other mutual aid or protection, free from interference, restraint, or coercion. An employee shall have the right to refrain from any or all of such activities, except [to the extent of making such payment of amounts] for having a payroll deduction equivalent to regular dues remitted to an exclusive representative as provided in section 89-4."

SECTION 95. Section 89-5, Hawaii Revised Statutes, is amended to read as follows:

"**§89-5 Hawaii labor relations board.** (a) There is created a Hawaii labor relations board to ensure that collective bargaining is conducted in accordance with this chapter and that the merit principle under section 76-1 is maintained.

(b) The board shall be composed of three members of which (1) one member shall be representative of management, (2) one member shall be representative of labor, and (3) the third member, the chairperson, shall be representative of the public. All members shall be appointed by the governor for terms of six years each. Public employers and employee organizations representing public employees may submit to the governor for consideration names of persons [representing their interests] to serve as members of the board and the governor shall first consider these persons in selecting the members of the board [to represent management and labor].

(c) Each member shall hold office until the member's successor is appointed and qualified. Because cumulative experience and continuity in office are essential to the proper administration of this chapter, it is declared to be in the public interest to continue board members in office as long as efficiency is demonstrated, notwithstanding the provision of section 26-34, which limits the appointment of a member of a board or commission to two terms.

(d) The members shall devote full time to their duties as members of the board. Effective January 1, 1989, and January 1, 1990, the salary of the chairperson of the board shall be set by the governor within the range from $69,748 to $74,608 and $72,886 to $77,966 a year, respectively, and the salary of each of the other members shall be ninety-five per cent of the chairperson's salary. No member shall hold any other public office or be in the employment of the State or a county, or any department or agency thereof, or any employee organization during the member's term.

(e) Any action taken by the board shall be by a simple majority of the members of the board. All decisions of the board shall be reduced to writing and shall state separately its finding of fact and conclusions. Any vacancy in the board shall not impair the authority of the remaining members to exercise all the powers of the board. The governor may appoint an acting member of the board during the temporary absence from the State or the illness of any regular member. An acting member, during the acting member's term of service, shall have the same powers and duties as the regular member.

(f) The chairperson of the board shall be responsible for the administrative functions of the board. The board may appoint an executive officer, mediators, members of fact-finding boards, arbitrators, and hearing officers, and employ other assistants as it may deem necessary in the performance of its functions, prescribe their duties, and fix their compensation and provide for reimbursement of actual and necessary expenses incurred by them in the performance of their duties within the amounts made available by appropriations therefor. Section 103D-209(b) notwithstanding, an attorney employed by the board as a full-time staff member may represent the board in litigation, draft legal documents for the board, and provide other necessary legal services to the board and shall not be deemed to be a deputy attorney general.

(g) The board shall be within the department of labor and industrial relations for budgetary and administrative purposes only. [The] All members of the board and employees other than clerical and stenographic employees shall be exempt from chapters 76[, 77,] and 89. Clerical and stenographic employees shall be appointed in accordance with [chapters 76 and 77.] chapter 76.

(h) At the close of each fiscal year, the board shall make a written report to the governor [of such facts as it may deem essential to describe] on its activities, including the cases and their dispositions, and the names, duties, and salaries of its officers and employees. Copies of the report shall be transmitted to the [legislative bodies.] other chief executives, the exclusive representatives, and the legislative body of each jurisdiction.

[(b)] (i) In addition to the powers and functions provided in other sections of this chapter, the board shall:

(1) Establish procedures for, investigate, and resolve, any dispute concerning the designation of an appropriate bargaining unit and the application of section 89-6 to specific employees and positions;

[(2) Resolve any dispute concerning cost items;

(3)] (2) Establish procedures for, resolve disputes with respect to, and supervise the conduct of, elections for the determination of employee representation;

(3) Resolve controversies under this chapter;

(4) Conduct proceedings on complaints of prohibited practices by employers, employees, and employee organizations and take such actions with respect thereto as it deems necessary and proper;

(5) Hold such hearings and make such inquiries, as it deems necessary, to carry out properly its functions and powers, and for the purpose of such hearings and inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, compel attendance of witnesses and the production of documents by the issuance of subpoenas, and delegate such powers to any member of the board or any person appointed by the board for the performance of its functions;

(6) [Establish,] Determine qualifications and establish, after reviewing nominations submitted by the public employers and employee organizations, lists of qualified persons, broadly representative of the public, to be available to serve as mediators, members of fact-finding [boards,] panels, or arbitrators;

(7) Establish a fair and reasonable range of daily or hourly rates at which mediators, members of fact-finding [boards,] panels, and arbitrators [serving pursuant to section 89-11(b)(3)] on the lists established under paragraph (6) are to be compensated [and apportion the costs of arbitration to the parties involved];

(8) Conduct studies on problems pertaining to public employee-management relations, and make recommendations with respect thereto to the legislative bodies; request information and data from state and county departments and agencies and employee organizations necessary to carry out its functions and responsibilities; make available to [employee organizations, as may exist,] all concerned parties, including mediators, members of fact-finding [boards,] panels and arbitrators, [and other concerned parties] statistical data relating to wages, benefits, and employment practices in public and private employment to assist them in resolving issues in negotiations; [and]

(9) Adopt rules relative to the exercise of its powers and authority and to govern the proceedings before it in accordance with chapter 91[.]; and

(10) Execute all of its responsibilities in a timely manner so as to facilitate and expedite the resolution of issues before it.

(j) For the purpose of minimizing travel and per diem expenses for parties who are not located on Oahu, the board shall utilize more cost efficient means such as teleconferencing which does not require appearances on Oahu, whenever practicable, to conduct its proceedings. Alternatively, it shall consider conducting its proceedings on another island whenever it is more cost efficient in consideration of the parties and the witnesses involved."

SECTION 96. Section 89-6, Hawaii Revised Statutes, is amended to read as follows:

"**§89-6 Appropriate bargaining units.** (a) All employees throughout the State within any of the following categories shall constitute an appropriate bargaining unit:

(1) Nonsupervisory employees in [blue-collar] blue collar positions;
(2) Supervisory employees in [blue-collar] blue collar positions;
(3) Nonsupervisory employees in [white-collar] white collar positions;
(4) Supervisory employees in [white-collar] white collar positions;
(5) Teachers and other personnel of the department of education under the same [salary] pay schedule, including part-time employees working less than twenty hours a week who are equal to one-half of a full-time equivalent;
(6) Educational officers and other personnel of the department of education under the same [salary] pay schedule;
(7) Faculty of the University of Hawaii and the community college system;
(8) Personnel of the University of Hawaii and the community college system, other than faculty;
(9) Registered professional nurses;
(10) Institutional, health, and correctional workers;
(11) Firefighters;
(12) Police officers; and
(13) Professional and scientific employees, [other than registered professional nurses.] who cannot be included in any of the other bargaining units.

(b) Because of the nature of work involved and the essentiality of certain occupations that require specialized training, [units (9) through (13) are designated as optional appropriate bargaining units. Employees in any of these optional units may vote either for separate units or for inclusion in their respective units (1) through (4). If a majority of the employees in any optional unit desire to constitute a separate appropriate bargaining unit, supervisory employees may be included in the unit by mutual agreement among supervisory and nonsupervisory employees within the unit; if supervisory employees are excluded, the appropriate bargaining unit for these supervisory employees shall be (2) or (4), as the case may be.] supervisory employees who are eligible for inclusion in units (9) through (13) shall be included in units (9) through (13), respectively, instead of unit (2) or (4).

(c) The [compensation plans for blue-collar positions pursuant to section 77-5 and for white-collar positions pursuant to section 77-13, the salary schedules for teachers pursuant to section 302A-624 and for educational officers pursuant to section 302A-625, and the appointment and classification of faculty pursuant to sections 304-11 and 304-13, existing on July 1, 1970,] classification systems of each jurisdiction shall be the bases for differentiating [blue-collar] blue collar from [white-collar] white collar employees, professional from institutional, health and correctional workers, supervisory from nonsupervisory employees, teachers from

educational officers, and faculty from nonfaculty. In differentiating supervisory from nonsupervisory employees, class titles alone shall not be the basis for determination[, but, in addition, the]. The nature of the work, including whether [or not] a major portion of the working time of a supervisory employee is spent as part of a crew or team with nonsupervisory employees, shall [also] be considered[.] also.

[(b)] (d) For the purpose of [negotiations,] negotiating a collective bargaining agreement, the public employer of an appropriate bargaining unit shall mean the governor [or the governor's designated representatives of not less than three together with not more than two members of the board of education in the case of units (5) and (6), the governor or the governor's designated representatives of not less than three together with not more than two members of the board of regents of the University of Hawaii in the case of units (7) and (8), and the governor or the governor's designated representatives together with the mayors of all the counties or their designated representatives in the case of the remaining units. The designated employer representatives for units (5), (6), (7), and (8) shall each have one vote and in the case of the remaining units, the governor shall be entitled to four votes and the mayor of each county shall each have one vote, which may be assigned to their designated representatives.] together with the following employers:

(1) For bargaining units (1), (2), (3), (4), (9), (10), and (13), the governor shall have six votes and the mayors, the chief justice, and the Hawaii health systems corporation board shall each have one vote if they have employees in the particular bargaining unit;

(2) For bargaining units (11) and (12), the governor shall have four votes and the mayors shall each have one vote;

(3) For bargaining units (5) and (6), the governor shall have three votes, the board of education shall have two votes, and the superintendent of education shall have one vote;

(4) For bargaining units (7) and (8), the governor shall have three votes, the board of regents of the University of Hawaii shall have two votes, and the president of the University of Hawaii shall have one vote.

Any decision to be reached by the applicable employer group shall be on the basis of simple majority[.], except when a bargaining unit includes county employees from more than one county. In such case, the simple majority shall include at least one county.

(e) In addition to a collective bargaining agreement under subsection (d), each employer may negotiate, independently of one another, supplemental agreements that apply to their respective employees; provided that any supplemental agreement reached between the employer and the exclusive representative shall not extend beyond the term of the applicable collective bargaining agreement and shall not require ratification by employees in the bargaining unit.

[(c) No elected] (f) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

(1) Elected or appointed official[, member];

(2) Member of any board or commission[, representative of a public employer,];

(3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county [department or] agency[,] or [any] major division [thereof, as well as any first deputy, first assistant], and legal counsel[, and other top-level managerial and administrative personnel, secretary];

(4) Secretary to top-level managerial and administrative personnel[, individual] under paragraph (3);

(5) Individual concerned with confidential matters affecting employee-employer relations[, part-time];
(6) Part-time employee working less than twenty hours per week, except part-time employees included in unit (5)[, temporary];
(7) Temporary employee of three months' duration or less[, employee];
(8) Employee of the executive office of the governor[,] or a household employee at Washington Place[, employee];
(9) Employee of the executive office of the lieutenant governor;
(10) Employee of the executive office of the mayor[, staff];
(11) Staff of the legislative branch of the State[, employee of the executive office of the lieutenant governor, inmate,];
(12) Staff of the legislative branches of the counties, except employees of the clerks' offices of the counties;
(13) Any commissioned and enlisted personnel of the Hawaii national guard;
(14) Inmate, kokua, patient, ward or student of a state institution[, student];
(15) Student help[, any commissioned and enlisted personnel of the Hawaii national guard, or staff of the legislative branches of the city and county of Honolulu and counties of Hawaii, Maui, and Kauai, except employees of the clerks' offices of said city and county and counties, shall be included in any appropriate bargaining unit or entitled to coverage under this chapter.]; or
(16) Staff of the Hawaii labor relations board.

[(d)] (g) Where any controversy arises under this section, the board shall, pursuant to chapter 91, make an investigation and, after a hearing upon due notice, make a final determination on the applicability of this section to specific [positions and] individuals, employees[.], or positions."

SECTION 97. Section 89-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) In any election [in which] where none of the choices on the ballot receives a majority of the votes cast, a runoff election shall be conducted[,] with the ballot providing for a selection between the two choices receiving the largest number of valid votes cast in the election. The board shall certify the [results of the] election[, and where an] results and the employee organization [receives] receiving a majority of the votes cast[, the board] shall [certify the employee organization] be certified as the exclusive representative of all employees in the appropriate bargaining unit for the purpose of collective bargaining. The employee organization shall remain certified as the exclusive representative until it is replaced by another employee organization, decertified, or dissolved."

SECTION 98. Section 89-9, Hawaii Revised Statutes, is amended to read as follows:

"**§89-9 Scope of negotiations[.]; consultation.** (a) The employer and the exclusive representative shall meet at reasonable times, including meetings sufficiently in advance of the [employer's budget-making process,] April 16 impasse date under section 89-11, and shall negotiate in good faith with respect to wages, hours, [the number of incremental and longevity steps and movement between steps within the salary range,] the amounts of contributions by the State and respective counties to the Hawaii public employees health fund to the extent allowed in subsection (e), and other terms and conditions of employment which are subject to [negotiations under this chapter] collective bargaining and which are to be embodied

in a written agreement[, or any question arising thereunder,] as specified in section 89-10, but such obligation does not compel either party to agree to a proposal or make a concession; provided that the parties may not negotiate with respect to cost items as defined by section 89-2 for the biennium 1999 to 2001, and the cost items of employees in bargaining units under section 89-6 in effect on June 30, 1999, shall remain in effect until July 1, 2001.

(b) The employer or the exclusive representative desiring to initiate negotiations shall notify the other party in writing, setting forth the time and place of the meeting desired and [generally] the nature of the business to be discussed, [and shall mail the notice by certified mail to the last known address of the other party] sufficiently in advance of the meeting.

(c) Except as otherwise provided [herein,] in this chapter, all matters affecting employee relations, including those that are, or may be, the subject of a [regulation promulgated] rule adopted by the employer or any [personnel] director, [are] shall be subject to consultation with the exclusive representatives of the employees concerned. The employer shall make every reasonable effort to consult with [the] exclusive representatives and consider their input, along with the input of other affected parties, prior to effecting changes in any major policy affecting employee relations.

(d) Excluded from the subjects of negotiations are matters of classification [and], reclassification, benefits of but not contributions to the Hawaii public employees health fund, recruitment, examination, initial pricing, and retirement benefits except as provided in section 88-8(h)[, and the salary ranges now provided by law; provided that the number of incremental and longevity steps, the amount of wages to be paid in each range and step, and movement between steps within the salary range shall be negotiable]. The employer and the exclusive representative shall not agree to any proposal which would be inconsistent with the merit [principles] principle or the principle of equal pay for equal work pursuant to [sections 76-1, 76-2, 77-31, and 77-33,] section 76-1 or which would interfere with the rights and obligations of a public employer to:

(1) [direct] Direct employees;
(2) [determine qualification,] Determine qualifications, standards for work, the nature and contents of examinations[, hire,];
(3) Hire, promote, transfer, assign, and retain employees in positions [and suspend,];
(4) Suspend, demote, discharge, or take other disciplinary action against employees for proper cause; [(3) relieve]
(5) Relieve an employee from duties because of lack of work or other legitimate reason; [(4) maintain]
(6) Maintain efficiency [of] and productivity, including maximizing the use of advanced technology, in government operations; [(5) determine]
(7) Determine methods, means, and personnel by which the employer's operations are to be conducted; and [take]
(8) Take such actions as may be necessary to carry out the missions of the employer in cases of emergencies[; provided that the].

The employer and the exclusive representative may negotiate procedures governing the promotion and transfer of employees to positions within a bargaining unit[, procedures governing]; the suspension, demotion, discharge, or other disciplinary actions taken against employees[, and procedures governing] within the bargaining unit; and the layoff of employees[; provided further that violations] within the bargaining unit. Violations of the procedures so negotiated may be [the] subject [of a] to the grievance [process agreed to by the employer and the exclusive representative.] procedure in the collective bargaining agreement.

(e) Negotiations relating to contributions to the Hawaii public employees health fund shall be for the purpose of agreeing upon the amounts which the State and counties shall contribute under section 87-4, toward the payment of the costs for a health benefits plan, as defined in section 87-1(8), and group life insurance benefits, and the parties shall not be bound by the amounts contributed under prior agreements; provided that section 89-11 for the resolution of disputes by way of fact-finding or arbitration shall not be available to resolve impasses or disputes relating to the amounts the State and counties shall contribute to the Hawaii public employees health fund.

(f) The repricing of classes within an appropriate bargaining unit may be negotiated as follows:

(1) At the request of the exclusive representative and at times allowed under the collective bargaining agreement, the employer shall negotiate the repricing of classes within the bargaining unit. The negotiated repricing actions that constitute cost items shall be subject to the requirements in section 89-10.

(2) If repricing has not been negotiated under paragraph (1), the employer of each jurisdiction shall ensure establishment of procedures to periodically review, at least once in five years, unless otherwise agreed to by the parties, the repricing of classes within the bargaining unit. The repricing of classes based on the results of the periodic review shall be at the discretion of the employer. Any appropriations required to implement the repricing actions that are made at the employer's discretion shall not be construed as cost items."

SECTION 99. Section 89-10, Hawaii Revised Statutes, is amended to read as follows:

"**§89-10 Written agreements; [appropriations for implementation; enforcement.] enforceability; cost items.** (a) Any collective bargaining agreement reached between the employer and the exclusive representative shall be subject to ratification by the employees concerned[.], except for an agreement reached pursuant to an arbitration decision. Ratification is not required for other agreements effective during the term of the collective bargaining agreement, whether a supplemental agreement, an agreement on reopened items, or a memorandum of agreement, and any agreement to extend the term of the collective bargaining agreement. The agreement shall be reduced to writing and executed by both parties. [The agreement may contain] Except for cost items, all provisions in the agreement that are in conformance with this chapter, including a grievance procedure and an impasse procedure culminating in [final and binding] an arbitration[, and] decision, shall be valid and enforceable [when entered into in accordance with provisions of this chapter.] and shall be effective as specified in the agreement, regardless of the requirements to submit cost items under this section and section 89-11.

(b) All cost items shall be subject to appropriations by the appropriate legislative bodies. The employer shall submit within ten days of the date on which the agreement is ratified by the employees concerned all cost items contained therein to the appropriate legislative bodies, except that if any cost items require appropriation by the state legislature and it is not in session at the time, the cost items shall be submitted for inclusion in the governor's next operating budget within ten days after the date on which the agreement is ratified. The state legislature or the legislative bodies of the counties acting in concert, as the case may be, may approve or reject the cost items submitted to them, as a whole. If the state legislature or the legislative body of any county rejects any of the cost items submitted to them, all cost items submitted shall be returned to the parties for further bargaining.

(c) Because effective and orderly operations of government are essential to the public, it is declared to be in the public interest that in the course of collective bargaining, the public employer and the exclusive representative for each bargaining unit shall by mutual agreement include provisions in the collective bargaining agreement for that bargaining unit for an expiration date which will be on June 30th of an odd-numbered year.

The parties may include provisions for [the] reopening [date] during the term of a collective bargaining agreement[,]; provided that [such provisions shall not allow for the reopening of] cost items as defined in section 89-2[.] shall be subject to the requirements of this section.

(d) [All existing rules and regulations adopted by the employer, including civil service or other personnel regulations, which are not contrary to this chapter, shall remain applicable. If] Whenever there is a conflict between the collective bargaining agreement and any of the rules [and regulations,] adopted by the employer, including civil service or other personnel policies, standards, and procedures, the terms of the agreement shall prevail; provided that the terms are not inconsistent with section 89-9(d).

Whenever there are provisions in a collective bargaining agreement concerning a matter under chapter 76 or 78 that is negotiable under chapter 89, the terms of the agreement shall prevail; provided that the terms are not inconsistent with section 89-9(d)."

SECTION 100. Section 89-11, Hawaii Revised Statutes, is amended to read as follows:

"**§89-11 Resolution of disputes; [grievances;] impasses.** (a) [A public employer shall have the power to enter into written agreement with the exclusive representative of an appropriate bargaining unit setting forth a grievance procedure culminating in a final and binding decision, to be invoked in the event of any dispute concerning the interpretation or application of a written agreement. In the absence of such a procedure, either party may submit the dispute to the board for a final and binding decision. A dispute over the terms of an initial or renewed agreement does not constitute a grievance.

(b)] A public employer [shall have the power to] and an exclusive representative may enter, at any time, into a written agreement [with the exclusive representative of an appropriate bargaining unit] setting forth an alternate impasse procedure culminating in [a final and binding] an arbitration decision[,] pursuant to subsection (f), to be invoked in the event of an impasse over the terms of an initial or renewed agreement. The alternate impasse procedure shall specify whether the parties desire an arbitrator or arbitration panel, how the neutral arbitrator is to be selected or the name of the person whom the parties desire to be appointed as the neutral arbitrator, and other details regarding the issuance of an arbitration decision. When an impasse exists, the parties shall notify the board if they have agreed on an alternate impasse procedure. The board shall permit the parties to proceed with their procedure and assist at times and to the extent requested by the parties in their procedure. In the absence of [such a procedure, either party may request the assistance of the board by submitting to the board and to the other party to the dispute a clear, concise statement of each issue on which an impasse has been reached together with a certificate as to the good faith of the statement and the contents therein. The board, on its own motion, may determine that an impasse exists on any matter in a dispute. If the board determines on its own motion that an impasse exists, it may render assistance by notifying both parties to the dispute of its intent.] an alternate impasse procedure, the board shall assist in the resolution of the impasse at times and in the manner prescribed in subsection (d) or (e), as the case may be. If the parties

subsequently agree on an alternate impasse procedure, the parties shall notify the board. The board shall immediately discontinue the procedures initiated pursuant to subsection (d) or (e) and permit the parties to proceed with their procedure.

(b) An impasse during the term of a collective bargaining agreement on reopened items or items regarding a supplemental agreement shall not be subject to the impasse procedures in this section. The parties may mutually agree on an impasse procedure, but if the procedure culminates in an arbitration decision, the decision shall be pursuant to subsection (f).

(c) An impasse over the terms of an initial or renewed agreement and the date of impasse shall be as follows:

(1) More than ninety days after written notice by either party to initiate negotiations, either party may give written notice to the board that an impasse exists. The date on which the board receives notice shall be the date of impasse;

(2) If neither party gives written notice of an impasse and there are unresolved issues on April 15 of an even-numbered year, the board shall declare on April 15 that an impasse exists and April 16 shall be the date of impasse.

(d) [The board shall render assistance to resolve the impasse according to the following schedule:] If an impasse exists between a public employer and the exclusive bargaining representative of bargaining unit (1), nonsupervisory employees in blue collar positions; bargaining unit (5), teachers and other personnel of the department of education; or bargaining unit (7), faculty of the University of Hawaii and the community college system, the board shall assist in the resolution of the impasse as follows:

(1) [Mediation. Assist the parties involved] Voluntary mediation. During the first twenty days of the date of impasse, either party may request the board to assist in a voluntary resolution of the impasse by appointing a mediator or mediators, representative of the public[,] from a list of qualified persons maintained by the board[, within three days after the date of the impasse, which shall be deemed to be the day on which notification is received or a determination is made that an impasse exists].

(2) Fact-finding. If the [dispute] impasse continues [fifteen] twenty days after the date of [the] impasse, the board shall immediately appoint[, within three days,] a fact-finding [board] panel of not more than three members, representative of the public[,] from a list of qualified persons maintained by the board. The fact-finding [board,] panel shall, in addition to powers delegated to it by the board, [have the power to] make recommendations for the resolution of the [dispute.] impasse pursuant to subsection (f). The fact-finding [board,] panel, acting by a majority of its members, shall transmit a report on its findings of fact and [any] recommendations for the resolution of the [dispute] impasse to both parties within [ten] sixty days after its appointment[.] and notify the board of the date when it transmitted the fact-finding report. [If the dispute remains unresolved five days after the transmittal of the findings of fact and any recommendations, the board shall publish the findings of fact and any recommendations for public information if the dispute is not referred to final and binding arbitration.

(3) Arbitration. If the dispute continues thirty days after the date of the impasse, the parties may mutually agree to submit the remaining differences to arbitration, which shall result in a final and binding decision. The arbitration panel shall consist of three arbitrators, one selected by each party, and the third and impartial arbitrator selected by the other

two arbitrators. If either party fails to select an arbitrator or for any reason there is a delay in the naming of an arbitrator, or if the arbitrators fail to select a neutral arbitrator within the time prescribed by the board, the board shall appoint the arbitrator or arbitrators necessary to complete the panel, which shall act with the same force and effect as if the panel had been selected by the parties as described above. The arbitration panel shall take whatever actions necessary, including but not limited to inquiries, investigations, hearings, issuance of subpoenas, and administering oaths, in accordance with procedures prescribed by the board to resolve the impasse. If the dispute remains unresolved within fifty days after the date of the impasse, the arbitration panel shall transmit its findings and its final and binding decision on the dispute to both parties. The parties shall enter into an agreement or take whatever action is necessary to carry out and effectuate the decision. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies, and the employer shall submit all such items agreed to in the course of negotiations within ten days to the appropriate legislative bodies.

The time frame prescribed in the foregoing schedule may be altered by mutual agreement of the parties, subject to the approval of the board.

The costs for mediation and fact-finding shall be borne by the board. All other costs, including that of a neutral arbitrator, shall be borne equally by the parties involved in the dispute.

(c) If the parties have not mutually agreed to submit the dispute to final and binding arbitration, either party shall be free to take whatever lawful action it deems necessary to end the dispute; provided that no action shall involve the disruption or interruption of public services within sixty days after the fact-finding board has made public its findings of fact and any recommendations for the resolution of the dispute. The employer]

(3) Mediation. If the impasse continues ten days after the transmittal of the fact-finding report, the board shall appoint a mediator or mediators representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse. The parties shall make the fact-finding report available to the mediator or mediators.

(4) Fact-finding report made public. If the impasse continues sixty days after the transmittal of the fact-finding report, the parties shall make available to the board the fact-finding report which shall be released by the board for public information.

(5) Submission of fact-finding report and response of the parties. If the impasse continues and the parties have not mutually agreed to submit the dispute to arbitration for a decision by January 31 of an odd-numbered year, the employers shall submit on February 1 to the appropriate legislative bodies the [employer's] employers' recommendations for the settlement of the [dispute] impasse on all cost items together with the [findings of fact and any recommendations made by the fact-finding board.] fact-finding report. The exclusive representative may submit to the appropriate legislative [body] bodies its recommendations for the settlement of the [dispute on all] cost items[.] in impasse.

[(d)] (e) If [a dispute] an impasse exists between a public employer and the exclusive representative of [appropriate] bargaining unit (2), supervisory employees in blue collar positions; [appropriate] bargaining unit (3), nonsupervisory employees in white collar positions; [appropriate] bargaining unit (4), supervisory employees in

white collar positions; [appropriate] bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; [appropriate] bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; [optional appropriate] bargaining unit (9), registered professional nurses; [optional appropriate] bargaining unit (10), institutional, health, and correctional workers; [optional appropriate] bargaining unit (11), firefighters; [optional appropriate] bargaining unit (12), police officers; or [optional appropriate] bargaining unit (13), professional and scientific employees, [other than registered professional nurses, exists over the terms of an initial or renewed agreement more than ninety working days after written notification by either party to initiate negotiations, either party may give written notice to the board that an impasse exists and] the board shall assist in the [voluntary] resolution of the impasse [by appointing a mediator within three days after the date of impasse. If the dispute continues to exist fifteen working days after the date of impasse, the dispute shall be submitted to arbitration proceedings as provided herein.

The board shall immediately determine whether the parties to the dispute have mutually agreed upon an arbitration procedure and whether the parties have agreed upon a person or persons whom the parties desire to be appointed as the arbitrator or as a panel of arbitrators, as the case may be.

If the board determines that an arbitration procedure mutually agreed upon by the parties will result in a final and binding decision, and that an arbitrator or arbitration panel has been mutually agreed upon, it shall appoint such arbitrator or arbitration panel and permit the parties to proceed with the arbitration procedure mutually agreed upon.] as follows:

(1) Mediation. During the first twenty days after the date of impasse, the board shall immediately appoint a mediator, representative of the public from a list of qualified persons maintained by the board, to assist the parties in a voluntary resolution of the impasse.

(2) Arbitration. If[, after eighteen working days from the date of impasse, the parties have not mutually agreed upon an arbitration procedure and an arbitrator or arbitration panel,] the impasse continues twenty days after the date of impasse, the board shall immediately notify the employer and the exclusive representative that the [issues in dispute] impasse shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.

(A) Arbitration panel. [Within twenty-one working days from the date of impasse, two] Two members of the arbitration panel shall be selected by the parties; one shall be selected by the employer and one shall be selected by the exclusive representative. The [impartial] neutral third member of the arbitration panel [shall be selected by the two previously selected panel members and], who shall chair the arbitration panel[.], shall be selected by mutual agreement of the parties. In the event that the [two previously selected arbitration panel members] parties fail to select [an impartial third arbitrator] the neutral third member of the arbitration panel within [twenty-four working] thirty days from the date of impasse, the board shall request the American Arbitration Association, or its successor in function, to furnish a list of five qualified arbitrators from which the [impartial] neutral arbitrator shall be selected. Within five [calendar] days after receipt of such list, the parties shall alternately strike names [therefrom] from the list until a single name is left, who shall be immediately appointed by the board as the [impartial] neutral arbitrator and chairperson of the arbitration panel.

(B) Final positions. Upon the selection and appointment of the arbitration panel, each party shall submit to the panel, in writing, with copy to the other party, a final [offer] position which shall include all provisions in any existing collective bargaining agreement not being modified, all provisions already agreed to in negotiations, and all further provisions [other than those relating to contributions by the State and respective counties to the Hawaii public employees health fund] which each party is proposing for inclusion in the final agreement.

(C) Arbitration hearing. Within one hundred twenty [calendar] days of its appointment, the arbitration panel shall commence a hearing at which time the parties may submit either in writing or through oral testimony, all information or data supporting their respective final [offers. Nothing in this section shall be construed to prohibit the parties from reaching a voluntary settlement on the unresolved issues, with or without the assistance of a mediator, at any time prior to the conclusion of the hearing conducted by the arbitration panel.] positions. The arbitrator, or the chairperson of the arbitration panel together with the other two members, are encouraged to assist the parties in a voluntary resolution of the impasse through mediation, to the extent practicable throughout the entire arbitration period until the date the panel is required to issue its arbitration decision.

(D) Arbitration decision. Within thirty [calendar] days after the conclusion of the hearing, a majority of the arbitration panel shall [issue a final and binding] reach a decision[.] pursuant to subsection (f) on all provisions that each party proposed in its respective final position for inclusion in the final agreement and transmit a preliminary draft of its decision to the parties. The parties shall review the preliminary draft for completeness, technical correctness, and clarity and may mutually submit to the panel any desired changes or adjustments that shall be incorporated in the final draft of its decision. Within fifteen days after the transmittal of the preliminary draft, a majority of the arbitration panel shall issue the arbitration decision.

(f) [In reaching a decision, the arbitration panel] A fact-finding panel in making its report and an arbitrator or arbitration panel in reaching its decision shall give weight to the following factors [listed below] and shall include in [a written opinion] its written report or decision an explanation of how the factors were taken into account [in reaching the decision]:

(1) The lawful authority of the employer[.], including the ability of the employer to use special funds only for authorized purposes or under specific circumstances because of limitations imposed by federal or state laws or county ordinances, as the case may be.

(2) Stipulations of the parties.

(3) The interests and welfare of the public.

(4) The financial ability of the employer to meet these costs[.]; provided that the employer's ability to fund cost items shall not be predicated on the premise that the employer may increase or impose new taxes, fees, or charges, or develop other sources of revenues.

(5) The present and future general economic condition of the counties and the State.

(6) Comparison of wages, hours, and conditions of employment of the employees involved in the arbitration proceeding with the wages,

hours, and conditions of employment of other persons performing similar services, and of other state and county employees in Hawaii.

(7) The average consumer prices for goods or services, commonly known as the cost of living.

(8) The overall compensation presently received by the employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(9) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(10) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment.

(g) The decision of the arbitration panel shall be final and binding upon the parties on all provisions submitted to the arbitration panel. If the parties have reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii public employees health fund by the tenth working day after the arbitration panel issues its decision, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions agreed to by the parties. If the parties have not reached agreement with respect to the amounts of contributions by the State and counties to the Hawaii public employees health fund by the close of business on the tenth working day after the arbitration panel issues its decision, the parties shall have five days to submit their respective recommendations for such contributions to the legislature, if it is in session, and if the legislature is not in session, the parties shall submit their respective recommendations for such contributions to the legislature during the next session of the legislature. In such event, the final and binding agreement of the parties on all provisions shall consist of the panel's decision and the amounts of contributions established by the legislature by enactment, after the legislature has considered the recommendations for such contributions by the parties. It is strictly understood that no member of a bargaining unit subject to this subsection shall be allowed to participate in a strike on the issue of the amounts of contributions by the State and counties to the Hawaii public employees health fund. The parties shall take whatever action is necessary to carry out and effectuate the final and binding agreement. The parties may, at any time and by mutual agreement, amend or modify the panel's decision.

Agreements reached pursuant to the decision of an arbitration panel and the amounts of contributions by the State and counties to the Hawaii public employees health fund, as provided herein, shall not be subject to ratification by the employees concerned. All items requiring any moneys for implementation shall be subject to appropriations by the appropriate legislative bodies and the employer shall submit all such items within ten days after the date on which the agreement is entered into as provided herein, to the appropriate legislative bodies.

(h) Any time frame provided in an impasse procedure, whether an alternate procedure or the procedures in this section, may be modified by mutual agreement of the parties. In the absence of a mutual agreement to modify time frames, any delay, failure, or refusal by either party to participate in the impasse procedure shall not be permitted to halt or otherwise delay the process, unless the board so orders due to an unforeseeable emergency. The process shall commence or continue as though all parties were participating.

(i) Nothing in this section shall be construed to prohibit the parties from reaching a voluntary settlement on the unresolved issues at any time prior to the issuance of an arbitration decision.

(j) The costs and expenses for mediation and fact-finding services provided under subsection (d) or (e) shall be borne by the board. The costs and expenses for any other services performed by neutrals pursuant to mutual agreement of the parties and the costs for a neutral arbitrator shall be borne equally by the parties. All other costs incurred by either party in complying with [these provisions,] this section, including the costs of its selected member on the arbitration panel, shall be borne by the party incurring them[, except that all costs and expenses of the impartial arbitrator shall be borne equally by the parties].''

SECTION 101. Section 89-12, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

''(a) [Participation in a strike] It shall be unlawful for any employee [who] to participate in a strike if the employee:

(1) [is] Is not included in [an] the appropriate bargaining unit [for which an exclusive representative has been certified by the board,] involved in an impasse; or

(2) [is] Is included in [an] the appropriate bargaining unit [for which process for resolution of a dispute is by referral to final and binding arbitration, or] involved in an impasse that has been referred to arbitration for a decision; or

(3) [is] Is an essential employee[.], but only when the employee is designated to fill an essential position.

(b) It shall be lawful for an employee, who is not prohibited from striking under [paragraph] subsection (a) and who is in the appropriate bargaining unit involved in an impasse, to participate in a strike [after] under the following conditions:

(1) [the] The requirements of section 89-11 relating to the resolution of disputes have been complied with in good faith[,];

(2) [the] The proceedings for the prevention of any prohibited practices have been exhausted[,];

(3) [sixty days have elapsed since the fact-finding board has made public its findings and any recommendation,] The collective bargaining agreement and any extension of the agreement has expired; and

(4) [the] The exclusive representative has given a ten-day notice of intent to strike to the board and to the employer.''

SECTION 102. Section 89-15, Hawaii Revised Statutes, is amended to read as follows:

**''§89-15 Financial reports to employees.** Every employee organization shall keep an adequate record of its financial transactions [and]. It shall make available [annually,] to [the] all employees who [are members of the organization, within sixty days after the end of its fiscal year, a detailed written] pay the employee organization dues or its equivalent an annual financial report [thereof] in the form of a balance sheet and an operating statement, certified as to accuracy by a certified public accountant[.], within one hundred twenty days after the end of its fiscal year. In the event of failure [of compliance] to comply with this section, [any] an employee [within the organization] may petition the board for an order compelling [such] compliance. [An] The order [of the board on such petition] shall be enforceable in the same manner as other orders of the board under this chapter.''

SECTION 103. Section 89-18, Hawaii Revised Statutes, is amended to read as follows:

"**§89-18 Penalty.** Any person who wilfully assaults, resists, prevents, impedes, or interferes with [a mediator, member of the fact-finding board, or arbitrator, or] any member of the board or any of [the] its agents or employees [of the board] in the performance of duties pursuant to this chapter, shall be fined not more than $500 or imprisoned not more than one year, or both. The term "agent" includes a neutral third party who assists in a resolution of an impasse under section 89-11."

SECTION 104. Section 89A-1, Hawaii Revised Statutes, is amended to read as follows:

"**§89A-1 Office of collective bargaining [in the state government established.] and managed competition.** (a) There shall be established an office of collective bargaining and managed competition in the office of the governor to assist the governor in [negotiating with and entering into written agreements between the public employers] implementation and review of the managed process of public-private competition for particular government services through the managed competition process and negotiations between the State and the exclusive representatives on matters of wages, hours, and other negotiable terms and conditions of employment.

(b) The position of chief negotiator for the State is hereby established to head the office. The chief negotiator shall be experienced in labor relations. [The governor shall appoint and remove the chief negotiator and the deputy negotiators, who shall not be subject to chapters 76, 77, and 89. Effective January 1, 1989, and January 1, 1990, the salary of the chief negotiator shall be set by the governor within the range from $69,748 to $74,608 and $72,886 to $77,966 a year, respectively. The chief negotiator and deputy negotiators shall be included in any benefit program generally applicable to the officers and employees of the State. All other employees shall be appointed in accordance with chapters 76 and 77. The chief negotiator shall serve as one of the governor's designated representatives as set forth in section 89-6(b).] The governor shall appoint the chief negotiator and may also appoint deputy negotiators to assist the chief negotiator. The governor, at pleasure, may remove the chief negotiator and any deputy negotiator. All other employees shall be appointed by the chief negotiator. All employees in the office of collective bargaining shall be included in any benefit programs generally applicable to employees of the State.

(c) Subject to the approval of the governor, the office of collective bargaining and managed competition shall:

(1) Assist the governor in formulating the State's philosophy for public collective bargaining and for the managed process for public-private competition for government services, including which particular service can be provided more efficiently, effectively, and economically considering all relevant costs; and

(2) Coordinate the managed competition process to ensure the negotiations of subject matters that are negotiable under the collective bargaining laws in the public sectors.

(d) No employee of the office of collective bargaining shall be included in the civil service, any civil service classification system, or any appropriate bargaining unit; provided that any civil service position on the effective date of this Act shall not be exempted from civil service until the incumbent in that position on the effective date of this Act vacates that position."

SECTION 105. Chapter 89C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§89C- Definitions.** As used in this chapter:

"Adjustment" means a change in wages, hours, benefits, or other term and condition of employment.

"Appropriate authority" means the governor, the respective mayors, the chief justice of the supreme court, the board of education, the board of regents, the Hawaii health system corporation board, the auditor, the ombudsman, and the director of the legislative reference bureau. These individuals or boards may make adjustments for their respective excluded employees.

"Excluded employee" or "employee" means any individual who is employed by an appropriate authority and is not included in an appropriate bargaining unit under section 89-6 and, therefore, is not entitled to collective bargaining coverage under chapter 89."

SECTION 106. Section 89C-1, Hawaii Revised Statutes, is amended to read as follows:

"**§89C-1 Purpose.** [The legislature finds that existing statutes do not permit the chief executives of the State and counties, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, and the chief justice of the supreme court sufficient flexibility to make appropriate and timely adjustments in the compensation, hours, terms, and conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, and other benefits for public officers and employees who are excluded from collective bargaining coverage under chapter 89. To this end, the legislature grants to the respective chief executives, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, and the chief justice, the authority to make such adjustments for officers and employees excluded from collective bargaining in conformance with this chapter.

Nothing in this chapter shall be construed to interfere with or diminish any authority already provided by statutes to the chief executives, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, or the chief justice.] The legislature finds that the appropriate authorities do not have sufficient flexibility to adjust the wages, hours, benefits, and other terms and conditions of employment for their respective excluded public officers and employees. The organizational status and employment conditions of these individuals in the excluded group are diverse and include: cabinet members, board and commission members, managerial employees, and non-managerial employees; appointees, civil service employees, and employees exempt from civil service; permanent and temporary employees; and full-time, part-time, seasonal, casual, and intermittent employees. Sufficient flexibility must be provided so that timely and relevant adjustments can be made. To this end, the legislature grants appropriate authorities the necessary flexibility to make adjustments as provided in this chapter; provided that nothing in this chapter shall be construed to interfere with or diminish authority already provided to them."

SECTION 107. Section 89C-2, Hawaii Revised Statutes, is amended to read as follows:

"**§89C-2 Adjustments authorized; limitations, restrictions.** [Any provision of law to the contrary notwithstanding, the compensation, hours, terms, and

conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, and other benefits for public officers and employees who are excluded from collective bargaining shall be adjusted by the chief executives of the State or counties, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, or the chief justice, as applicable. The chief executives, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the ombudsman, and the chief justice, or their designated representatives, shall determine the adjustments to be made and which excluded officers or employees are to be granted adjustments under this chapter, in accordance with the following guidelines and limitations:

(1) For excluded officers and employees under the same compensation plans as officers and employees within collective bargaining units, such adjustments shall be not less than those provided under collective bargaining agreements for officers and employees hired on a comparable basis.

(2) For excluded officers and employees in the excluded managerial compensation plan, such adjustments shall be not less than those provided under collective bargaining to officers and employees in the professional and scientific employees bargaining unit. Alternate adjustments may be granted to officers and employees whose work is related to that of officers and employees in the other optional bargaining units in order to maintain appropriate pay relationships with such officers and employees.

(3) No adjustment in compensation, hours, terms, and conditions of employment, amounts of contributions by the State and respective counties to the Hawaii public employees health fund, or other benefits shall be established which is in conflict with the system of personnel administration based on merit principles and scientific methods governing the classification of positions and the employment conduct, movement, and separation of public officers and employees.

(4) The compensation of officers or employees whose salaries presently are limited or fixed by legislative enactment shall not be adjusted under this chapter, but shall continue to be adjusted by the appointing authority within limits established by law or by legislative enactment.

(5) The compensation of officers or employees, who are not covered under the same compensation plans as officers and employees within collective bargaining units and whose salaries presently are authorized to be fixed by the appointing authority, need not be adjusted under this chapter. The appointing authority may continue to make specific adjustments in the salaries of individual officers or employees from available funds appropriated.

(6) Adjustments to the amounts of contributions by the State and respective counties to the Hawaii public employees health fund on behalf of officers or employees who are not covered by adjustments made under this chapter shall be made by legislative enactment.]

Each appropriate authority may make adjustments for their respective excluded employees subject to the following guidelines and limitations:

(1) The compensation of excluded employees, whose pay is presently limited or fixed by legislative action, shall not be adjusted under this chapter and shall continue to be limited or fixed by the respective legislative body;

(2) The compensation of excluded employees exempt from civil service coverage, whose pay is set at the discretion of the appointing authority,

shall continue to be adjusted at the discretion of the appointing authority from funds allowed for this purpose;

(3) Any adjustment made for excluded civil service employees shall be consistent with the merit principle and shall not diminish any rights provided under chapter 76;

(4) For excluded employees under the same classification systems as employees within collective bargaining units, adjustments shall be not less than those provided under collective bargaining agreements for employees hired on a comparable basis;

(5) For excluded employees other than those under paragraph (4), adjustments shall, to the extent practicable, uniformly apply to every excluded employee within a homogeneous grouping, such as, cabinet members or managerial employees, to ensure fairness. This does not preclude variable adjustments based on performance or other job criteria and specific adjustments warranted based on the nature of work performed or working conditions; and

(6) No adjustment shall be made in benefits provided under chapter 88 unless specifically authorized by that chapter, or with respect to any other matter that the legislature may specifically prohibit or limit by law."

SECTION 108. Section 89C-3, Hawaii Revised Statutes, is amended to read as follows:

"**§89C-3 Adjustments for [officers and] excluded civil service employees [covered by chapter 77].** [The state director of human resources development and the directors of personnel services of the counties who shall serve as representatives of their respective chief executives, and the administrative director of the courts who shall serve as the representative of the chief justice, shall decide by majority vote on the adjustments to be made under this chapter for officers and employees covered under chapter 77. Any adjustments and their effective dates shall be uniform among the jurisdictions.] (a) Each jurisdiction shall determine the adjustments that are relevant for its respective excluded civil service employees based on recommendations from its respective personnel director.

(b) In formulating recommendations to the appropriate authority, the respective director shall:

(1) Establish procedures that allow excluded civil service employees and employee organizations representing them the opportunity to provide input on the kinds of adjustments that are relevant and important to them for the director's consideration;

(2) Ensure that adjustments for excluded civil service employees result in compensation and benefit packages that are appropriate for what they do and the contribution they make in consideration of the compensation and benefit packages provided under collective bargaining agreements for counterparts and subordinates within the jurisdiction; and

(3) Confer with other directors on proposed adjustments to ensure adjustments are consistent with chapter 76."

SECTION 109. Section 89C-4, Hawaii Revised Statutes, is amended to read as follows:

"**§89C-4 Adjustments for [other officers and employees.** (a) The respective representatives of the State, counties, and the judiciary shall submit to their respective chief executives and to the chief justice, recommendations on the adjust-

ments to be made under this chapter for other officers and employees within their respective personnel systems. The conference of personnel directors shall confer prior to the submittal of any recommended adjustment by each director to the director's chief executive or by the administrative director of the courts to the chief justice. Any adjustments and their effective dates shall be uniform, if practicable, among the jurisdictions.

(b) The superintendent of education and the president of the University of Hawaii shall submit to the board of education and the board of regents, respectively, recommendations on the adjustments to be made under this chapter for officers and employees within their respective personnel systems. The superintendent and the president shall confer with the state director of human resources development prior to the submittal of any recommended adjustment. Any adjustments adopted by the board of education or the board of regents which presently require the approval of the governor shall remain subject to the approval of the governor.

(c) The auditor, the director of the legislative reference bureau, and the ombudsman shall decide by majority vote on the adjustments to be made under this chapter for officers and employees within their respective offices, including employees of the state ethics commission which is administratively within the office of the auditor. The auditor, the director of the legislative reference bureau, and the ombudsman shall confer with the state director of human resources development prior to voting on any adjustment. Any adjustments and their effective dates shall be uniform for employees under sections 23-8, 23G-2, 84-35, and 96-3.] **excluded employees exempt from civil service.** Each appropriate authority shall determine the adjustments that are relevant for their respective excluded employees who are exempt from civil service in consideration of the compensation and benefit packages provided for other employees in comparable agencies."

SECTION 110. Section 89C-5, Hawaii Revised Statutes, is amended to read as follows:

"**§89C-5 [Implementation; effective date, appropriations, approval.** (a) Adjustments made under this chapter which do not exceed those for officers and employees in collective bargaining units shall take effect on the same dates as appropriate collective bargaining agreements. Any such adjustments which constitute cost items shall be subject to appropriations by the appropriate legislative bodies. Such cost items shall be submitted separately from any cost items under collective bargaining to the appropriate legislative bodies, except that if appropriation by the state legislature is required, and it is not in session at the time, such cost items shall be submitted for inclusion in the governor's next operating budget. The state legislature or the legislative bodies of the counties acting in concert, as the case may be, may approve or reject the cost items submitted to them, as a whole. If the state legislature or the legislative body of any county rejects any of the cost items submitted to them, all cost items shall be returned for revision.

(b) Any other adjustments made under this chapter which constitute cost items or which were specifically provided for by legislative enactment shall be subject to approval or rejection as a whole by the appropriate legislative body. Such adjustments for officers and employees covered under chapter 77 shall be subject to the approval or rejection as a whole by all appropriate legislative bodies acting in concert. If the state legislature or the legislative body of any county rejects any of the adjustments submitted to it, all adjustments for officers and employees covered under chapter 77 or all adjustments for other officers and employees, as the case may be, shall be returned for revision.

(c) The chief executives of the State or counties, the board of education, the board of regents, the auditor, the director of the legislative reference bureau, the

ombudsman, or the chief justice, shall not make any adjustments nor use funds for purposes of this chapter without the prior approval of the appropriate legislative bodies as required in this section.] **Implementation; approval and appropriations.** (a) Adjustments that do not require appropriations by the respective legislative bodies may be implemented without legislative action.

(b) All other adjustments requiring appropriations shall be submitted to the respective legislative body for appropriations, at such time and in such manner as the legislative body may require. The legislative body shall appropriate funds of the amount requested or funds of a different amount after discussing the reasons with the appropriate authority.

(c) No adjustment shall be made and no funds shall be used for purposes of this chapter unless the legislative body has appropriated the funds necessary to implement the adjustment."

SECTION 111. Section 89C-6, Hawaii Revised Statutes, is amended to read as follows:

"**§89C-6 Chapter takes precedence, when.** Adjustments made in accordance with this chapter shall take precedence over all contrary local ordinances, executive orders, legislation, or rules adopted by the State or a county, or any department, agency, board, or commission thereof, including the personnel departments [of human resources development or of personnel services or the civil service commissions.] or the merit appeals boards."

## PART V. SEPARATION INCENTIVES

SECTION 112. The purpose of this part is to provide the tools necessary to facilitate the restructuring of government. Specifically, this part authorizes the state executive branch to offer a voluntary severance or a special retirement incentive benefit to state employees who elect to voluntarily separate from service when their positions are identified for abolishment or when they are directly affected by a reduction-in-force or a workforce restructuring plan.

This part also extends to other jurisdictions the option to provide a special retirement incentive to their respective employees under a reduction-in-force or a workforce restructuring plan.

SECTION 113. As used herein:

"Directly affected" means an employee who receives official reduction-in-force notification of displacement from the employee's position as a result of a senior employee exercising reduction-in-force rights.

"Employee" means an individual in a position covered by chapter 88, Hawaii Revised Statutes, that has been identified for abolishment or directly affected as a result of a reduction-in-force or workforce restructuring plan, but excludes any elected or appointed official and school level personnel with the department of education engaged in administrative or instructional work, such as, principals and teachers.

"Jurisdiction" means the city and county of Honolulu, the county of Hawaii, the county of Maui, the county of Kauai, the judiciary, the Hawaii health systems corporation, the office of Hawaiian affairs, and the legislative branches of the State and county governments.

"Reduction-in-force" includes layoff under chapter 76, Hawaii Revised Statutes.

"State executive branch" includes the department of education and the University of Hawaii, but excludes the Hawaii health systems corporation which is considered a separate jurisdiction under this part.

SECTION 114. Voluntary severance benefits. (a) Any civil service employee entitled to reduction-in-force rights under chapter 76, Hawaii Revised Statutes, and who receives official notification that the employee's position is being abolished or who is directly affected by a reduction-in-force or workforce restructuring plan proposed by a department, may elect to receive a voluntary severance benefit provided under this section in lieu of exercising any reduction-in-force rights under chapter 89 or 89C, Hawaii Revised Statutes, as applicable, and in lieu of receiving any special retirement incentive benefit under section 115.

(b) A one-time lump sum cash bonus voluntary severance benefit shall be calculated at five per cent of the employee's base salary for every year of service worked, up to ten years, and shall not exceed fifty per cent of the employee's annual base salary.

For the purposes of this section, "base salary" means an employee's annual salary for the position from which the employee is to be separated, excluding all other forms of compensation paid or accrued, whether a bonus, allowance, differential, or value of leave or compensatory time off credits. Compensation excluded from base salary includes but is not limited to: shortage category differential, night shift differential, overtime, compensatory time off credits, vacation or sick leave credits, and workers' compensation benefits.

(c) A voluntary severance benefit shall be in addition to any payment owing to the employee upon separation from service, including accumulated unused vacation allowances or compensatory time credits.

(d) All voluntary severance benefits paid under this section shall be subject to applicable state income tax laws and rules.

(e) A voluntary severance benefit provided under this section shall not be considered as a part of a discharged employee's salary, service credit, or a cost item under section 89-2, Hawaii Revised Statutes, when calculating retirement benefits or sick and vacation leave.

SECTION 115. Special retirement incentive benefit. (a) Any employee who receives official notification that the employee's position is being abolished or who is directly affected by the result of a reduction-in-force or workforce restructuring plan proposed by a department may elect, if the employee is a vested member of the employees' retirement system and meets any of the criteria specified in subsection (c), the special retirement benefit provided by this section in lieu of exercising any reduction-in-force rights under chapter 89 or 89C, Hawaii Revised Statutes, as applicable, and in lieu of receiving any voluntary severance benefits under section 114. To receive the special retirement incentive benefit offered under this section, the employee shall comply with the application and time frame requirements specified in subsection (b).

(b) Any employee who elects to retire and receive the special retirement incentive benefit under this section shall notify the employee's employing department and file a formal application for retirement with the employees' retirement system not less than thirty days nor more than ninety days prior to the date of retirement.

(c) Notwithstanding the age and length of service requirements of sections 88-73 and 88-281, Hawaii Revised Statutes, an employee member shall qualify for the special retirement incentive benefit if, on the employee's retirement date, the employee meets any one of the following criteria:

(1) Has at least ten years of credited service as a contributory class A or B member and is at least fifty years of age;
(2) Has at least twenty years of credited service as a contributory class A or B member, irrespective of age;
(3) Has at least ten years of credited service as a noncontributory class C member and is at least fifty-seven years of age; or
(4) Has at least twenty-five years of credited service as a noncontributory class C member, irrespective of age.

(d) Any employee who exercises the option of the special retirement incentive benefit under this section because the employee does not qualify with respect to the age and length of service requirements under sections 88-73 and 88-281, Hawaii Revised Statutes, to receive a retirement benefit without penalty, shall not have the retirement benefit reduced in accordance with the actuarial formula normally used by the employees' retirement system for the calculation of early retirement benefits.

(e) The head of each affected department shall transmit a list of employees who elected and received the special retirement incentive benefit to the board of trustees of the employees' retirement system not less than thirty days but not more than ninety days prior to the employee's retirement date. The head of each affected department shall certify that the employees on the list have in fact selected the special retirement incentive benefit in lieu of receiving the voluntary severance benefit and exercising any reduction-in-force rights under chapter 89 or 89C, Hawaii Revised Statutes, as applicable.

(f) The board of trustees of the employees' retirement system shall make payments with respect to all eligible employees who retire pursuant to this section. The board shall determine the portion of the additional actuarial present value of benefits to be charged to the State based on retirements authorized under this section. If necessary, the State shall make additional payments to the employee's retirement system in the amounts required to amortize the additional actuarial present value of benefits over a period of five years. The unfunded actuarial present values of benefits payable under this section are part of the unfunded accrued liability of the employees' retirement system under sections 88-122 and 88-123, Hawaii Revised Statutes.

SECTION 116. No voluntary severance or special retirement incentive benefit shall be payable to an employee discharged for disciplinary reasons or for reasons other than a reduction-in-force or workforce restructuring plan.

SECTION 117. No employee who has received any benefit under this part shall be reemployed by the State in any capacity as follows:

(1) For an employee receiving a voluntary severance benefit under section 114, unless the gross amount of the voluntary severance benefit paid under section 114 is returned to the appropriate fund prior to the commencement of reemployment if the employee is reemployed within five years from the date of separation; or
(2) For an employee receiving a special retirement incentive benefit under section 115, unless all benefits derived from the specific[1] retirement incentive benefit under section 115, as determined by the board of trustees of the employees' retirement system, are forfeited prior to the commencement of reemployment.

SECTION 118. After payments of all costs associated with the voluntary severance and special retirement incentive benefits, the remaining payroll balances shall not be expended for any purpose and shall be lapsed into the appropriate fund.

SECTION 119. The head of each affected state department who provided benefits under this part shall:

(1) Transmit a report of every position identified for abolishment and vacated under this part to the directors of finance and human resources development who shall abolish these positions from the appropriate budget and personnel files. The governor shall report this information to the legislature no later than twenty days prior to the convening of each regular session beginning with 2001;

(2) Reduce its personnel count by every position identified for abolishment and vacated under this part, whether the former incumbent vacated the position as a result of accepting a voluntary severance benefit or special retirement incentive benefit authorized under this part or of exercising reduction-in-force rights; and

(3) Transmit a list that includes each employee who received benefits under this part and the benefit received by the employee to the directors of finance and human resources development.

SECTION 120. The departments of human resources development and budget and finance shall develop and administer guidelines and timeframes for participating agencies to implement the voluntary separation and special retirement incentive benefits under this part.

The department of human resources development, the employees' retirement system, and the public employees health fund shall work cooperatively to ensure briefings are provided prior to the implementation of any workforce restructuring plan to educate the employees whose positions are being abolished or who are directly affected by a reduction-in-force or workforce restructuring plan.

The department of human resources development shall report to the legislature on any restructuring or reengineering activities initiated as a consequence of this part within the various departments of the state executive branch no later than twenty days prior to the convening of each regular session beginning with the 2001 regular session.

The report shall include but not be limited to a description of the abolished positions and how the new workforce structure will more efficiently serve the needs of the agency's clients and appropriate criteria by which to measure the new workforce structure's effectiveness.

SECTION 121. The governor is authorized to provide funds to obtain matching federal moneys to retrain employees in the state executive branch who separated from service under this part.

SECTION 122. Optional participation by a county, the judiciary, the Hawaii health systems corporation, the office of Hawaiian affairs, or the legislative branch of the State or a county. The city and county of Honolulu, the county of Hawaii, the county of Kauai, the county of Maui, the judiciary, the Hawaii health systems corporation, the office of Hawaiian affairs, or the legislative branch of the State or a county may opt to provide the special retirement incentive benefit under section 115 to their respective employees under a workforce restructuring plan; provided that the special retirement incentive is in lieu of any voluntary severance benefit that may be offered under its plan and is consistent with all of the provisions in section 115. All references to the State in section 115 shall include the jurisdiction opting to provide the special retirement incentive benefit. The chief executive or other appropriate authority of the respective jurisdictions shall ensure that approval of its respective legislative body is obtained, if required, before offering the special retirement incentive under section 115.

SECTION 123. The auditor shall conduct a study on the effects on state government caused by this part and shall submit a report to the legislature and the governor not later than twenty days prior to the convening of the 2004 regular session.

SECTION 124. This part shall be repealed on June 30, 2003.

## PART VI

SECTION 125. Chapter 302A, part III, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§302A- School personnel engaged in instructional work, other than teachers and educational officers.** (a) The board of education shall appoint teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work/study assistants, alternative school educational/supportive services specialists, and alternative school project coordinators as may be required to carry out the purposes of this chapter. The board, in consultation with the department of human resources development, shall prescribe the duties and qualifications for positions, adopt classification systems, classify and fix the compensation of positions accordingly, provide a classification appeals procedure, and establish probationary and other requirements for tenure that protects employees from being disciplined without proper cause.

(b) Employees in positions under subsection (a) shall be board of education appointees exempt from chapter 76, but the application of section 89-6 with respect to collective bargaining coverage and the employer for purposes of collective bargaining shall not be affected. Except for rights or benefits specifically conditioned upon membership in the civil service, the wages, hours, benefits, and other terms and conditions of employment for these employees in existence on the effective date of this Act shall remain in effect, but may be changed as provided in chapter 89 or 89C, as applicable. Any employee who is a member of the civil service on the effective date of this Act shall be granted tenure by the board of education without the necessity of meeting any probationary or other requirements for tenure that the board of education establishes."

## PART VII

SECTION 126. Section 88E-3, Hawaii Revised Statutes, is amended to read as follows:

"**§88E-3 Board of trustees.** (a) The authority to establish the plan and [make] implement this chapter [effective] is vested in the board of trustees. The board shall be placed within the department of human resources development for administrative purposes.

(b) The board shall adopt such rules to carry out this chapter in accordance with chapter 91[.]; provided that rules necessary for the plan to be in compliance with federal laws or regulations may be adopted without regard to chapter 91. The board may engage services, as necessary, to establish, administer, or maintain the plan under its direction. An administrator may be engaged only after a solicitation of proposals from interested persons in accordance with specifications deemed appropriate by the board."

SECTION 127. 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 be held in trust outside the state treasury in accordance with section 457 of the Internal Revenue Code of 1986, as amended, for the exclusive benefit of participants and their beneficiaries."

SECTION 128. Section 88F-3, Hawaii Revised Statutes, is amended by amending subsection (b) as follows:

"(b) The board shall adopt, in accordance with chapter 91, rules [as are] necessary to implement this chapter[.]; provided that rules necessary for the plan to be in compliance with federal laws or regulations may be adopted without regard to chapter 91. The board may engage services, as necessary, to establish, administer, or maintain the plan under its direction. An administrator may be engaged only after a solicitation of proposals from interested persons in accordance with specifications deemed appropriate by the board."

SECTION 129. 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 be held in trust outside the state treasury in accordance with section 457 of the Internal Revenue Code of 1986, as amended, for the exclusive benefit of participants and their beneficiaries."

SECTION 130. Section 398-1, Hawaii Revised Statutes, is amended by amending the definition of "employer" to read as follows:

""Employer" means any individual or organization, [including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions,] any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign, or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who employs one hundred or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year."

## PART VIII

SECTION 131. Chapter 77, Hawaii Revised Statutes, is repealed.

SECTION 132. Chapter 79, Hawaii Revised Statutes, is repealed.

SECTION 133. Chapter 80, Hawaii Revised Statutes, is repealed.

SECTION 134. Chapter 81, Hawaii Revised Statutes, is repealed.

SECTION 135. Chapter 82, Hawaii Revised Statutes, is repealed.

SECTION 136. Chapter 83, Hawaii Revised Statutes, is repealed.

SECTION 137. Section 88E-10, Hawaii Revised Statutes, is repealed.

SECTION 138. Section 88F-8, Hawaii Revised Statutes, is repealed.

SECTION 139. Section 302A-634, Hawaii Revised Statutes, is repealed.

SECTION 140. Section 302A-635, Hawaii Revised Statutes, is repealed.

## PART IX

SECTION 141. There is appropriated out of the general revenues of the State of Hawaii the sum of $600,000, or so much thereof as may be necessary for fiscal year 2000-2001, to be paid into the special fund created in section 2 of this Act, section 26-5(f), Hawaii Revised Statutes. The sum appropriated shall be expended by the department of human resources development for the purposes of the fund.

SECTION 142. There is appropriated out of the general revenues of the State of Hawaii the sum of $128,000, or so much thereof as may be necessary for fiscal year 2000-2001, for the REACH (Resource for Employee Assistance and Counseling Help) program that provides short-term counseling for troubled state employees who need help in dealing with personal problems affecting their work performance. The sum appropriated shall be expended by the department of human resources development.

SECTION 143. There is appropriated out of the employees' retirement system's investment earnings the sum of $150,000, or so much thereof as may be necessary for fiscal year 2000-2001, and the same sum, or so much as may be necessary for fiscal year 2001-2002, for the employees' retirement system to process the special retirement incentive benefit provided to state employees in the executive branch whose positions are being eliminated as authorized in section 115 of this Act. The sum appropriated shall be expended by the employees' retirement system.

SECTION 144. The department of human resources shall submit, no later than twenty days prior to the convening of each regular session beginning with the regular session of 2001, a report of the positions that were permanently exempted from the civil service prior to the effective date of this Act which it reviewed during the year. The report shall include, but not be limited to, when the position was established, the purpose of the position, the reason for the exemption from civil service, and findings and recommendations on whether the position should remain exempt or be converted to a civil service position. With respect to positions that should remain exempt, the department shall indicate whether the position should be exempted permanently and, if so, whether from civil service recruitment procedures or the classification systems, or both. With respect to positions recommended for inclusion into the civil service, the department shall submit proposed legislation to convert exempt positions to civil service positions and address the impact of the conversion on the incumbents in these positions, if any.

SECTION 145. All acts passed by the legislature during the regular session of 2000, whether enacted before or after the effective date of this Act, shall be amended to conform to this Act unless such acts specifically provide that this Act is being amended.

SECTION 146. If any part of this Act is found to be in conflict with federal requirements that are a prescribed condition for the allocation of federal funds to the State or a county, the conflicting part of this Act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does

not affect the operation of the remainder of this Act in its application to the agencies concerned. The rules prescribed to implement this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

SECTION 147. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 148. On or before July 1, 2002, any existing rule, ordinance, executive order or directive, or provision in a collective bargaining agreement, that is not consistent with this Act shall be amended to conform with this Act. Any new or amended rule, ordinance, executive order or directive that must be adopted, enacted, or negotiated to carry out this Act shall take effect no later than July 1, 2002.

SECTION 149. The provisions of sections 131, 132, 133, 134, 135, and 136 of this Act notwithstanding, the rights, benefits, and privileges currently enjoyed by civil servants under chapters 77, 79, 80, 81, 82, and 83 shall not be diminished or impaired, unless comparable rights, benefits, and privileges are either negotiated into collective bargaining agreements or established by executive order for civil servants.

SECTION 150. Upon the repeal of chapter 77, Hawaii Revised Statutes, wherever the words "chapters 76 and 77" appear in the Hawaii Revised Statutes, the revisor of statutes shall substitute the words "chapter 76" as the context requires.

SECTION 151. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

SECTION 152. This Act shall take effect on July 1, 2002; provided that section 26-5(f), Hawaii Revised Statutes, in Section 2 and Parts V and IX of this Act shall take effect on July 1, 2000.

(Approved June 19, 2000.)

**Notes**

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

## ACT 254 S.B NO. 2927

A Bill for an Act Relating to Chapter 92F, Uniform Information Practices Act (Modified).

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

SECTION 1. Section 92F-23, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§92F-23[]] Access to personal record; initial procedure.** Upon the request of an individual to gain access to the individual's personal record, an agency shall permit the individual to review the record and have a copy made within ten

working days following the date of [the request] receipt of the request by the agency unless the personal record requested is exempted under section 92F-22. The ten-day period may be extended for an additional twenty working days if the agency provides to the individual, within the initial ten working days, a written explanation of unusual circumstances causing the delay."

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 19, 2000.)

## ACT 255 H.B. NO. 1763

A Bill for an Act Relating to Bicycles.

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

SECTION 1. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to part XIII to be appropriately designated and to read as follows:

"**§291C- Bicycle helmets.** (a) No person under sixteen years of age shall operate a bicycle upon a street, bikeway, or any other public property unless that person is wearing a properly fitted and fastened bicycle helmet that has been tested by a nationally recognized agency such as the National Highway Traffic Safety Administration, the National Safety Council, or the Children's Safety Network, and is designed to fit the user and protect against head trauma. This requirement also applies to a person who rides upon a bicycle while in a restraining seat that is attached to the bicycle or who rides in a trailer towed by the bicycle.

(b) A person who provides bicycles for hire shall not rent a bicycle to any person unless every person who is under age sixteen is wearing a bicycle helmet, as required in subsection (a), while operating the rented bicycle, occupying a restraining seat that is attached to the rented bicycle, or riding in a trailer towed by the rented bicycle.

(c) A violation of this section is punishable by a fine of not more than $25. The parent or legal guardian having control or custody of an unemancipated minor whose conduct violates this section shall be liable for the amount of the fine imposed pursuant to this section.

(d) Notwithstanding any law to the contrary, the fines collected for a violation of this section shall be paid into the state treasury to the credit of the state general fund."

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.[1]

SECTION 4. This Act shall take effect on January 1, 2001.

(Approved June 20, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.

## ACT 256 H.B. NO. 1905

A Bill for an Act Relating to School Fees.

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

SECTION 1. (a) Notwithstanding any law to the contrary, there is established a pilot project at any public school whereby seventy per cent of the net receipts collected by a school from rental fees for usage of facilities by private organizations or individuals shall be deposited with that school for its own use rather than deposited into the State's general fund. These moneys include but are not limited to classroom, parking lot, auditorium, and dining room rental fees.

The remaining thirty per cent of the net receipts shall be allocated to the district office to assist schools that service type 1 and type 2 users. Type 1 users are organizations such as the Parent, Teacher, Student Association; school community-based councils; DOE inservice workshops; A+ programs; and primary and general elections. Type 2 users are organizations such as federal, state, and county agencies; non-profit community organizations; youth athletic teams; private pre-school and after school programs endorsed by the DOE; public hearings and meetings; and other educational or recreational activities approved by the school where no fees are assessed or collected.

(b) Rental fees collected, deposited, and expended at a school shall be:

(1) In accordance with the department of education's rules; and

(2) Approved by the department of education.

(c) Each school shall set its own rental fee schedule and shall not be subject to the department of education's fee schedule or rental fees, for usage of facilities during the pilot project; provided that type 1 and type 2 users shall be subject to the department of education's fee schedule. A school may reduce rental fees in view of any improvements made by a renter.

SECTION 2. The department of education shall report to the legislature the total rental fees collected and how the moneys were expended pursuant to this pilot project no later than twenty days prior to the convening of the regular sessions of 2001 and 2002.

SECTION 3. This Act shall take effect upon its approval and shall be repealed on June 30, 2002.

(Approved June 20, 2000.)

## ACT 257 H.B. NO. 2095

A Bill for an Act Relating to Education.

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

SECTION 1. Section 302A-1101, Hawaii Revised Statutes, is amended to read as follows:

"[[]§302A-1101[]] **Department of education; board of education; superintendent of education.** (a) There shall be a principal executive department to be known as the department of education, which shall be headed by an elected policy-making board to be known as the board of education. The board shall have power in accordance with law to formulate statewide educational policy, adopt student performance standards and assessment models, monitor school success, and to appoint the superintendent of education as the chief executive officer of the public school system.

(b) The board shall appoint, and may remove, the superintendent by a majority vote of its members. The superintendent:

(1) May be appointed without regard to the state residency provisions of section 78-1(b);

(2) May be appointed for a term of up to four years; and

(3) May be terminated only for cause.

(c) The board shall invite the senior military commander in Hawaii to appoint a non-voting military representative to the board, who shall serve for a two year term without compensation. As the liaison to the board, the military representative shall advise the board regarding state education policies and departmental actions affecting students who are enrolled in public schools as family members of military personnel. The military representative shall carry out these duties as part of the representative's official military duties and shall be guided by applicable state and federal statutes, regulations, and policies and may be removed only for cause by a majority vote of the members of the board."

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

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

(Approved June 20, 2000.)

## ACT 258 H.B. NO. 2802

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Processing Enterprises.

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

SECTION 1. The legislature finds that First Commercial Kitchen, Hawaii's first food processing incubator, has proven to be very successful. First Commercial Kitchen has helped to develop, produce, market, and distribute over one hundred twenty-five value-added products for approximately fifty clients. First Commercial Kitchen provides the foundation for the development of the Hawaii Food Resource Center. The Hawaii Food Resource Center will be a multi-function facility designed for food processing. The facility will utilize the incubator process and other means of food preservation, including canning, pasteurization, heat sealing, shrink wrapping, repacking, dehydration, baking, freezing, refrigeration, frying, smoking, sun drying, and irradiation. The Hawaii Food Resource Center will also provide temporary storage, distribution, transshipment, product development, and retail/wholesale showcasing.

In addition, the Hawaii Food Resource Center will also provide business support services for people who are interested in entering into the food industry.

SECTION 2. Pursuant to part IV, 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 $3,500,000, in one or more series, for the purpose of assisting the Hawaii Food Resource Center in planning and building a multi-function food processing facility on Oahu.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act constitutes a processing enterprise project as defined in part IV, chapter 39A, Hawaii Revised Statutes, and is in the public interest and general welfare of the State.

SECTION 3. The department of budget and finance shall process applications for special purpose revenue bonds under this Act in accordance with the requirements of its "Formal Application for Financing of a Processing Enterprise". The department shall report to the legislature twenty days before the convening of the regular sessions of 2001 and 2002 regarding any progress made with respect to the issuance of the special purpose revenue bonds authorized by this Act.

SECTION 4. The special purpose revenue bonds issued under section 2 of this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 5. The department of budget and finance is authorized to issue from time to time, refunding special purpose revenue bonds authorized in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2005.

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

(Approved June 20, 2000.)

## ACT 259 H.B. NO. 2820

A Bill for an Act Relating to Education.

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

SECTION 1. The legislative reference bureau is requested to conduct a study on how independent schools can work together to create a consortium to finance the construction and renovation of educational facilities at independent not-for-profit elementary schools, secondary schools, universities, and colleges. The study shall include the following:

(1) Conducting a survey of how other states finance the construction and renovation for both private sectarian and private non-sectarian elementary, secondary, and post-secondary schools;
(2) Researching and determining applicable federal and state case law on this issue; and
(3) Working with the Hawaii Association of Independent Schools and other stakeholders to determine their interests in using special purpose revenue bonds to finance construction and renovation of their facilities.

The legislative reference bureau shall submit to the legislature, no later than twenty days prior to the regular session of 2001, a comprehensive report on this study.

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

(Approved June 20, 2000.)

## ACT 260 H.B. NO. 2906

A Bill for an Act Relating to Towing Companies.

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

SECTION 1. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§291C- Signage requirements for tow trucks.** (a)[1] Notwithstanding any other law to the contrary, the registered owner or lessee of a tow truck shall:

(1) Permanently affix on each door of the truck a sign with the name and telephone number of the tow business. The letters and numbers used in the sign shall be no less than two inches in height; and

(2) Maintain insurance coverage sufficient to protect owners of towed vehicles in the event of vehicle loss or damage due to towing. If a tow operator fails to comply with the insurance requirements of this section, no charges, including storage charges, may be collected by the tow operator as a result of the tow or as a condition of the release of the towed vehicle. Any person, including the registered owner, lien holder, or insurer of the vehicle, who has been injured by the tow operator's failure to comply with this section is entitled to sue for damages sustained. If a judgment is obtained by the plaintiff, the court shall award the plaintiff a sum of not less than $1,000 or threefold damages sustained by the plaintiff, whichever sum is greater, and reasonable attorney's fees and costs."

SECTION 2. Section 290-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Towing companies engaged by the owner, occupant, or person in charge of the property shall:

[(1) Have permanently affixed on each door of the towing vehicle a sign with the name and telephone number of the towing business. The letters and numbers used in the sign shall be no less than two inches in height;

(2) Maintain insurance coverage sufficient to protect owners of towed vehicles in the event of vehicle loss or damage due to towing;

(3)] (1) Charge not more than $50 for a tow, or $60 for a tow using a dolly, plus a mileage charge of $5 per mile towed and $15 per day or fraction thereof for storage for the first seven days and $10 per day thereafter. When the tow occurs between the hours of six o'clock p.m. and six o'clock a.m., the towing company shall be entitled to an overtime charge of $15. If the vehicle is in the process of being hooked up to the tow truck and the owner appears on the scene before the vehicle has been moved by the tow truck, the towing company shall [be entitled to] unhook the vehicle upon payment by the owner of an "unhooking" fee of not more than $50. If the owner is unwilling or unable to pay the

"unhooking" fee, the vehicle may be towed. In the case of a difficult hookup, meaning an above or below ground hookup in a multilevel facility, a towing surcharge of $25 shall be applicable;

[(4)] (2) Determine the name of the legal owner and the registered owner of the vehicle from the department of transportation or the county department of finance. The legal owner and the registered owner shall be notified in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed twenty days following the tow. The notice shall state:

(A) The maximum towing charges and fees allowed by law;

(B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and

(C) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Where the owners have not been so notified, then the owner may recover the owner's car from the towing company without paying tow or storage fees; provided that the notice need not be sent to a legal or registered owner or any person with an unrecorded interest in the vehicle whose name or address cannot be determined. Absent evidence to the contrary, a notice shall be deemed received by the legal or registered owner five days after the mailing. A person, including but not limited to the owner's or driver's insurer, who has been charged in excess of the charges permitted under this section may sue for damages sustained and, if the judgment is for the plaintiff, the court shall award the plaintiff a sum not to exceed the amount of the damages and reasonable attorney's fees together with the cost of suit[.

If a tow operator fails to comply with the insurance requirements of this section, no charges, including storage charges, may be collected by the tow operator as a result of the tow or as a condition of the release of the towed vehicle. Any person, including the registered owner, lien holder, or insurer of the vehicle, who has been injured by the tow operator's failure to comply with this section is entitled to sue for damages sustained. If a judgment is for the plaintiff, the court shall award the plaintiff a sum of not less than $1,000 or threefold damages sustained by the plaintiff, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit];

[(5)] (3) Provide, when a vehicle is recovered by the owner before written notice is sent by registered or certified mail, the owner with a receipt stating:

(A) The maximum towing charges and fees allowed by law; and

(B) The telephone number of the consumer information service of the department of commerce and consumer affairs; and

[(6)] (4) Accommodate payment by the owner for charges under paragraph [(3)] (1) by cash and by either credit card or automated teller machine located on the premises."

SECTION 3. Section 291C-165.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The towing company shall determine the name of the lien holder and the registered owner of the vehicle from the department of transportation or the county department of finance. The lien holder and the registered owner shall be

notified by the towing company in writing at the address on record with the department of transportation or with the county department of finance by registered or certified mail of the location of the vehicle, together with a description of the vehicle, within a reasonable period not to exceed twenty days following the tow. The notice shall state:

(1) The maximum towing charges and fees allowed by law;

(2) The telephone number of the county finance department that arranged for or authorized the tow; and

(3) That if the vehicle is not recovered within thirty days after the mailing of the notice, the vehicle shall be deemed abandoned and will be sold or disposed of as junk.

Any towing company engaged in towing pursuant to this section shall comply with the requirements of [section 290-11(b)(1) and (2).] section 291C- . When the vehicle is recovered after the tow by the registered owner or lien holder, the party recovering the vehicle shall pay the tow and storage charges which shall not exceed the charges as provided by section 290-11(b) or the rates agreed upon with the respective counties, whichever is lower, except that tow operators may charge additional reasonable amounts for excavating vehicles from off-road locations; provided that if the notice required by this section was not sent within twenty days after the tow, neither the registered owner nor the lien holder shall be required to pay the tow and storage charges. No notice shall be sent to a legal or registered owner or any person with any unrecorded interest in the vehicle whose name or address cannot be determined. A person, including but not limited to the owner's or driver's insurer, who has been charged in excess of the charges permitted under this section may sue for damages sustained, and, if the judgment is for the plaintiff, the court shall award the plaintiff a sum not to exceed the amount of these damages and reasonable attorney's fees together with the cost of the suit.

[If a tow operator fails to comply with the insurance requirements of section 290-11(b), no charges, including storage charges, may be collected by the tow operator as a result of the tow or as a condition of the release of the towed vehicle. Any person, including the registered owner, lien holder, or insurer of the vehicle, who has been injured by the tow operator's failure to comply with this section is entitled to sue for damages sustained. If a judgment is for the plaintiff, the court shall award the plaintiff a sum of not less than $1,000 or threefold damages sustained by the plaintiff, whichever sum is the greater, and reasonable attorneys fees together with the costs of suit.]''

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

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

(Approved June 20, 2000.)

**Notes**

1. No subsection (b).
2. Edited pursuant to HRS §23G-16.5.

# ACT 261 H.B. NO. 3001

A Bill for an Act Relating to Noncommercial Piers.

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

SECTION 1. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§171- Private residential noncommercial piers.** Notwithstanding any limitations to the contrary, the board of land and natural resources may lease, by direct negotiation and without recourse to public auction, state submerged lands or lands beneath tidal waters for private residential noncommercial piers on such terms and conditions as may be prescribed by the board."

SECTION 2. Section 171-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Except as otherwise provided[,] by law, 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 in accordance with current industry standards, as determined by the board; 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; and

(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 3. Section 171-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The board, with the prior approval of the governor and the prior authorization of the legislature by concurrent resolution, may lease state submerged lands and lands beneath tidal waters under the terms, conditions, and restrictions provided in this chapter; provided that the authorization of the legislature shall not be required for leases issued under chapter 190D; and provided further that the approval of the governor and authorization of the legislature shall not be required for any grant of easement or lease of state submerged lands or lands beneath tidal waters used for moorings, cables, [or] pipelines[;], or noncommercial piers; provided further that this exemption shall not apply to easements for cables used for interisland electrical transmission or slurry pipelines used for transportive materials, mined at sea, or waste products from the processing of the same.

The lease shall provide that the lands shall be reclaimed at the expense of the lessee. Title to the reclaimed lands shall remain in the State."

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

SECTION 5. This Act shall take effect upon its approval; provided that the authority granted to the department of land and natural resources to enter into lease agreements with owners of private residential noncommercial piers shall be repealed on June 30, 2005, and the amendments made by sections 1, 2, and 3 of this Act to the Hawaii Revised Statutes, shall be repealed as of that date and sections 171-36(a) and 171-53(c), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day prior to the effective date of this Act; provided further that any lease agreement executed pursuant to this Act prior to June 30, 2005, or any lease extension executed thereon after the repeal of this Act, shall remain exempt from section 171-36(a)(9), Hawaii Revised Statutes, after the repeal of this Act.

(Approved June 20, 2000.)

Note

1. Edited pursuant to HRS §23G-16.5.

# ACT 262

S.B NO. 2160

A Bill for an Act Relating to General Excise Tax.

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

SECTION 1. The legislature finds that many contractors, particularly those engaged in long-term building contracts, use an accrual basis accounting system as opposed to a cash basis accounting system. One particular disadvantage to the accrual basis system is that the contractor-taxpayer must pay the general excise tax on sales that it accrues even if the contractor-taxpayer has not yet received the proceeds of the sales. This leaves the contractor-taxpayer in the financially undesirable position of having to pay the general excise tax whether the contractor-taxpayer has collected any sales proceeds.

This Act gives equality and fairness to the contractor-taxpayers by allowing them to elect to pay the tax on a cash basis, like most other taxpayers, while continuing to use an accrual based accounting system.

The purpose of this Act is to provide tax relief for the construction industry, that has been one of the hardest hit sectors of the down economy in Hawaii. This Act is not a tax reduction for the industry but rather a tax deferral.

SECTION 2. Section 237-3, Hawaii Revised Statutes, is amended to read as follows:

**"§237-3 "Gross income", "gross proceeds of sale", defined.** (a) "Gross income" means the gross receipts, cash or accrued, of the taxpayer received as compensation for personal services and the gross receipts of the taxpayer derived from trade, business, commerce, or sales and the value proceeding or accruing from the sale of tangible personal property, or service, or both, and all receipts, actual or accrued as hereinafter provided, by reason of the investment of the capital of the business engaged in, including interest, discount, rentals, royalties, fees, or other emoluments however designated and without any deductions on account of the cost of property sold, the cost of materials used, labor cost, taxes, royalties, interest, or discount paid or any other expenses whatsoever. Every taxpayer shall be presumed to be dealing on a cash basis unless the taxpayer proves to the satisfaction of the department of taxation that the taxpayer is dealing on an accrual basis and the taxpayer's books are so kept, or unless the taxpayer employs or is required to employ the accrual basis for the purposes of the tax imposed by chapter 235 for any taxable year in which event the taxpayer shall report the taxpayer's gross income for the purposes of this chapter on the accrual basis for the same period.

"Gross proceeds of sale" means the value actually proceeding from the sale of tangible personal property without any deduction on account of the cost of property sold or expenses of any kind.

(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 indebted-

ness 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. Accounts found to be worthless and actually charged off for income tax purposes may[, at corresponding periods,] be deducted, at corresponding periods, 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.

(c) For purposes of the tax imposed by this chapter, a taxpayer under section 237-13(3) may report on a cash basis; provided the taxpayer notifies the department of taxation of the basis upon which the tax imposed by this chapter is to be reported."

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

SECTION 4. This Act shall take effect on January 1, 2001, and shall apply to general excise taxes imposed under chapter 237, Hawaii Revised Statutes, on gross proceeds or gross income arising after January 1, 2001.

(Approved June 20, 2000.)

## ACT 263

S.B NO. 2283

A Bill for an Act Relating to the Public Utilities Commission.

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

SECTION 1. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§269- Alternative dispute resolution.** The commission may require the parties in any matter before the commission to participate in non-binding arbitration, mediation, or other alternative dispute resolution process prior to the hearing."

SECTION 2. New statutory material is underscored.[1]

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

(Approved June 20, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 264

S.B NO. 2293

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to article 2 to be appropriately designated and to read as follows:

"**§431:2- Approval; when deemed effective.** Unless specifically exempted from this section, any approval required by law shall be deemed granted on the thirtieth calendar day following the filing of the request for approval if the commissioner does not take any affirmative action to grant or deny the approval within thirty calendar days of the request."

SECTION 2. Section 431:14-120, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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. [When all the requirements of this article are met, 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.]"

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

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

(Approved June 20, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 265

S.B NO. 2369

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

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

SECTION 1. Chapter 88, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§88- Withdrawal of contributions and transfer to the noncontributory plan.** (a) Notwithstanding any other provisions of this chapter to the contrary, a member who is in a position covered by Title II of the Social Security Act may apply to the system for a one-time withdrawal of the member's contributions in the event of economic hardship.

(b) Upon approval of the member's election, all rights as a class A member shall be extinguished and the member shall:

(1) Become a class C member;

(2) Be refunded the member's contributions; and

(3) Not be required to make any further contributions.

(c) The system shall administer this section and shall:

(1) Prescribe the verification needed for the withdrawal election authorized under this section;

(2) Provide the member with information explaining the effects of the election;

(3) Review the facts and make a case-by-case determination; and

(4) Notify the member in writing of the approval of the withdrawal or the disapproval and the reasons for the disapproval.

(d) For the purposes of this section, "economic hardship" means a financial hardship resulting from any of the following conditions that cannot be satisfied by other resources, including:

(1) A sudden and unexpected illness or accident of the member or the member's dependent;

(2) The loss of the member's property due to a casualty; or

(3) Any other extraordinary and unforeseeable circumstance arising as a result of events beyond the member's control."

SECTION 2. Section 88-271, Hawaii Revised Statutes, is amended to read as follows:

"**§88-271 Election.** (a) Any class A or class B member who:

(1) Is in service on June 30, 1984, or who returns to service after June 30, 1984, and has vested benefit status as provided in section 88-96(b); and

(2) Is in a position covered by Title II of the Social Security Act, may elect to become a class C member effective January 1, 1985; or upon return to service, by filing an election form with the board.

The election shall be made prior to December 1, 1984, or within thirty days of return to service and shall be irrevocable. A class A or class B member who makes such an election shall be refunded all accumulated contributions and shall not be required to make further contributions upon becoming a class C member. The refund shall be made by March 31, 1985, or within ninety days after return to service. Upon the effective date of the election, all rights as a class A or class B member shall be extinguished.

(b) After June 30, 1984, a class A or class B member, who returns to service but does not have vested benefit status as provided in section 88-96(b), shall become a class C member upon return to service and shall be refunded all accumulated contributions.

[(c) The board shall provide information explaining the effects of the election described in subsection (a).

(d)] (c) Any water safety officer who is in service on July 1, 1994, may elect to become a class C member by filing an election form with the board. The election shall be made prior to September 1, 1994, and shall be irrevocable. The accumulated contributions of a water safety officer who makes this election shall be returned to the water safety officer through payroll adjustments or another procedure as determined by the board. Upon the effective date of the election, all rights as a class A member shall be extinguished. All persons first employed as a water safety officer after July 1, 1994, shall be class C members.

(d) Any class A member who elects and is approved to withdraw the member's contributions may become a class C member in accordance with section 88- . Upon approval of the election:[1]

(1) All rights as a class A member shall be extinguished;

(2) The member's accumulated contributions shall be refunded; and

(3) The member shall not be required to make further contributions to the system.

This election shall be irrevocable.

(e) The system shall provide information explaining the effects of any election made under subsection (a), (c), or (d).''

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.[2]

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

(Approved June 20, 2000.)

**Notes**

1. Colon should be underscored.
2. Edited pursuant to HRS §23G-16.5.

## ACT 266 S.B NO. 2411

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

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

SECTION 1. The legislature finds that coffee production throughout Hawaii was valued at over $24,000,000 in 1998. While this is a significant contribution to the economy, coffee sales have fallen in recent years due to strong competition in world markets.

The legislature also finds that in order to develop additional markets for Hawaii-grown coffee, the industry must add new products such as freeze dried coffee. Prospective buyers for freeze dried coffee include the United States military, overseas markets, and niche markets such as eco-tourism that rely on portable and durable food products.

The legislature further finds and declares that the issuance of special purpose revenue bonds under this Act constitutes a processing enterprise pursuant to part IV, chapter 39A, Hawaii Revised Statutes, and is in the public interest.

SECTION 2. Pursuant to part IV, 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 $10,000,000, in one or more series, for the purpose of assisting Kauai Coffee Company, Incorporated in planning and building a processing plant for freeze dried coffee, at a site to be determined; provided that the department of budget and finance shall:

(1) Evaluate Kauai Coffee Company Inc.'s application for financing of the processing plant using the information submitted on Form P-501, entitled ''Formal Application for Financing of an Processing Enterprise'', dated June 1, 1999; and

(2) Report its findings and recommendation to the legislature not less than twenty days before the convening of the Regular Session of 2001;

before issuing special purpose revenue bonds under this Act.

The legislature finds and determines that the planning and building of a processing plant to freeze dry coffee constitutes a processing enterprise project as defined in part IV, chapter 39A, Hawaii Revised Statutes, and is in the public interest.

SECTION 3. The special purpose revenue bonds issued under section 2 of this Act shall be issued pursuant to part IV, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist processing enterprises.

SECTION 4. The department of budget and finance is authorized to issue from time to time, refunding special purpose revenue bonds authorized in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2005.

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

(Approved June 20, 2000.)

## ACT 267 S.B NO. 2432

A Bill for an Act Relating to a Sentencing Simulation Model.

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

SECTION 1. The legislature finds that for the past twenty years, expansion of the correctional system has failed to keep pace with the increase in the number of inmates. The proposed new 2,300-bed prison barely provides the number of beds necessary to meet today's inmate population needs, let alone the number anticipated by the projected opening in 2002. The combined jail and prison population in Hawaii grew from 2,284 on June 30, 1989, to 4,729 on June 30, 1999, a 107 percent increase. Alternatives to incarceration, which can provide cost-effective means of sentencing some convicted defendants, are equally overburdened.

The legislature further finds that an accurate profile of existing convicted defendants and the development of tools to predict future criminal offender populations are essential to the efficient management of limited correctional and alternative resources. In addition, implementation of criminal justice initiatives like "truth-in-sentencing" requires accurate information and forecasting. Thus, the legislature agrees that the goals of effective sentencing and control of spiraling correctional costs can best be accomplished through the establishment of a sentencing simulation model. The simulation model will provide the legislature and the law enforcement community with the necessary tools to forecast prison populations and ensure efficient allocation of the existing and proposed resources for all convicted defendants. These resources include not only prison beds, but alternatives to incarceration (e.g., probation, drug courts, and other diversionary programs) and community-based programs.

Of equal importance, the simulation model will permit an assessment of the impact of current and proposed sentencing policies, including truth-in-sentencing and other initiatives, on existing correctional system and community resources. It will permit officials to use different combinations of criminal justice indicators, such as crime rates, convictions, prison populations, juvenile crime, and other actual objective data to project the impact of proposed policy changes on Hawaii's resources. Sentencing simulation models in other jurisdictions have demonstrated high accuracy raters for their projections—variances have been well below two percent. The modeling capability will allow legislators and other criminal justice and correc-

tions officials to propose more meaningful and effective criminal justice and correctional initiatives.

Establishment of a sentencing simulation model is at least a two-step process. The first step requires the consolidation of data presently maintained in separate databases by the attorney general, the judiciary, and the department of public safety. Tasks that must be completed in the first step include:

(1) Gathering current data about the State's prison, probation, parole, and community-based criminal defendant populations;

(2) Establishing a centralized computer-based criminal defendant population database; and

(3) Establishing a computerized network for maintaining the centralized database, including direct connectivity among the components of the criminal justice and correctional systems, to assure that the centralized database is current and accurate.

The second step requires the development of computer modeling techniques that use information in the centralized criminal defendant population database, and project the impact of different sentencing policies and proposals on future criminal justice and correctional populations.

The legislature further finds that the governor's committee on crime recommended that the Edward Byrne memorial state and local law enforcement assistance formula grant program award the department of public safety $122,130 to develop, implement, and operate a sentencing simulation model. The Edward Byrne memorial state and local law enforcement assistance formula grant program is a federal grant program that provides funding for state and local law enforcement agencies. It has pledged $122,130 to the department of public safety for creating a sentencing simulation model, provided the State commit $71,018 towards the sentencing simulation model.

SECTION 2. In conjunction with the corrections population management commission's responsibility to recommend cost-effective mechanisms, legislation, and policies to control over crowding of correctional facilities, and the requirement that such recommendations include estimates of fiscal impact under section 353F-3, Hawaii Revised Statutes, the department of public safety shall establish a sentencing simulation model that includes a centralized computer-based criminal defendant population database, a computerized network for maintaining the centralized database, including direct connectivity among the components of the state's criminal justice and correctional systems to assure that the centralized database's information is current and accurate, and computer modeling techniques that use information in the centralized database to project the impact of different sentencing policies and proposals on future criminal justice and corrections populations and resources.

The establishment of the sentencing simulation model shall include the compilation of data on current populations of convicted defendants in the criminal justice system and in community-based programs, as well as the development of a modeling capability to predict future populations and the impact of criminal justice policy initiatives on those populations. The judiciary and state executive departments with relevant information for the centralized database shall cooperate with the department of public safety in the establishment and maintenance of the sentencing simulation model. Once established, the data from the model shall be available to the legislature and all components of the criminal justice and corrections systems of the state.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $71,018, or so much thereof as may be necessary for fiscal year 2000-2001, to develop, implement, and maintain a sentencing simulation model;

provided that state funds shall be made available under this Act only to the extent that they are matched by federal funds from the Edward Byrne memorial state and local law enforcement assistance formula grant program. The sum appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2000.

(Approved June 20, 2000.)

## ACT 268 S.B NO. 2499

A Bill for an Act Making an Appropriation to the Legislative Agencies.

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

SECTION 1. This Act corrects a technical drafting error in Act 138, Session Laws of Hawaii 1999. Act 138 appropriated funds to the legislative agencies for salary increases and other cost adjustments authorized by chapter 89C, Hawaii Revised Statutes, for officers and employees of these agencies excluded from collective bargaining.

The appropriations under Act 138 were for fiscal years 1998-1999, 1999-2000, and 2000-2001. Since Act 138 required the lapsing of funds within the fiscal year it was appropriated, the Act's effective date of July 1, 1999 precluded the expenditure of the 1998-1999 appropriations, which included adjustments commencing January 1, 1998. This Act corrects this inadvertent error.

This Act is also necessary to maintain parity with other state employees and is based on a settlement for a two-year collectively bargained agreement with the exclusive representative of bargaining units 3, 4, and 13.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii to the legislative agencies indicated below the following sums or so much thereof as may be necessary, to fund the retroactive salary increases and other cost adjustments for fiscal years 1998-1999, which includes cost adjustments commencing January 1, 1998, authorized by chapter 89C, Hawaii Revised Statutes, for officers and employees of these agencies excluded from collective bargaining:

| | |
|---|---|
| Office of the Auditor | $65,633 |
| Ethics Commission | 22,644 |
| Legislative Reference Bureau | 79,512 |
| Ombudsman | 34,321 |

SECTION 3. Funds appropriated by this Act that are not expended or encumbered by June 30, 2001, shall lapse as of that date. The sums appropriated shall be expended by the respective heads of the legislative agencies for the purposes of this Act.

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

(Approved June 20, 2000.)

# ACT 269 S.B NO. 2513

A Bill for an Act Relating to Conveyance Tax.

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

SECTION 1. The legislature finds that with over half of Hawaii's remaining natural lands in private ownership, the legislature in 1991, established the natural area partnership program and the forest stewardship program to provide incentives for private landowners to provide long-term protection of important natural resources on private lands. These incentives were in the form of state matching funds to landowners willing to dedicate their lands to conservation.

The legislature provided for a permanent, dedicated source of funding for the programs by earmarking twenty-five per cent of the conveyance tax revenues for these programs. The legislature's intent was to enhance private participation in the protection and management of conservation lands.

The legislature finds that since the inception of the natural area partnership and forest stewardship programs, significant efforts have given rise to another innovative public-private undertaking involving the collaboration of major landowners and stakeholders to protect thousands of acres of critical watershed areas. The legislature further finds that this effort began with the formation of the East Maui Watershed Partnership in 1991, followed by West Maui Watershed Partnership in 1998, and Koolau Watershed Partnership and East Molokai Watershed Partnership in 1999. Collectively, these partnerships involve some 260,000 acres of land and include an array of major landowners and government agencies including the United States Fish & Wildlife Services, National Park Services, department of land and natural resources, department of Hawaiian home lands, county boards of water supply, and numerous other agencies.

The purpose of this Act is to enable that portion of the conveyance tax revenues that is deposited into the natural area reserve fund to fund watershed management projects. Since the natural area partnership and forest stewardship programs require the dedication of private lands for conservation as well as private matching funds, it is the intent of this Act that in any given fiscal year that the funding needs of these programs be met prior to funding watershed management projects. The legislature finds that this Act is consistent with the original purpose and intent of Act 195, Session Laws of Hawaii 1993, that sought to enhance private sector participation in the protection and management of conservation lands.

SECTION 2. 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, twelve and one-half per cent shall be paid into the rental housing trust fund established by section 201G-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[.] in the following priority:

(1) To natural area partnership and forest stewardship programs; and

(2) Projects undertaken in accordance with watershed management plans pursuant to section 171-58 or watershed management plans negotiated with private landowners."

SECTION 3. 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 201G-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[.] in the following priority:

(1) To natural area partnership and forest stewardship programs; and

(2) Projects undertaken in accordance with watershed management plans pursuant to section 171-58 or watershed management plans negotiated with private landowners."

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

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 2001.

(Approved June 20, 2000.)

## ACT 270 S.B NO. 2607

A Bill for an Act Relating to the Commission on the Status of Women.

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

SECTION 1. Chapter 367, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§367- Commission on the status of women trust fund.** (a) There is established a commission on the status of women trust fund. All funds contributed to the trust fund, including income and capital gains earned therefrom, shall be used exclusively for commission programs as defined in the articles, bylaws, resolutions, and other instruments executed on behalf of the commission on the status of women or any nonprofit organization established thereunder. The trust fund may receive any and all types of private contributions, and the income and capital gains earned by the fund; provided that funds or properties donated for the commission's use shall be deposited and accounted for in accordance with policies and procedures adopted by the comptroller. The trust fund shall be subject to the following restrictions:

(1) All funds, and the income and capital gains earned by investment of those funds, shall be expended only for the support of the commission or its nonprofit organization's programs; and

(2) Other restrictions imposed by the legislature with respect to the transfer or appropriation of funds.

(b) Any funds deposited in the trust fund, and any income and capital gains earned therefrom, not used for the commission or its nonprofit organization's programs, shall be invested in accordance with the provisions of the articles, bylaws, resolutions, or other instruments executed on behalf of the commission or its nonprofit organization, and in a manner intended to maximize the rate of return on investment of the fund.

(c) If the trust fund is terminated or the commission or its nonprofit organization is dissolved, all funds, including the income and capital gains earned by the investment of funds, shall be distributed in accordance with the articles and bylaws of the commission or its nonprofit organization.

(d) The commission shall require an annual audit of the trust fund, the results of which shall be submitted to the department of budget and finance not more than thirty days after receipt by the commission. The commission shall retain for a period of three years, any documents, papers, books, records, and other evidence that are pertinent to the trust fund, and permit inspection or access thereto by the department of budget and finance, the department of accounting and general services, state legislators, and the auditor, or their duly authorized representatives.

(e) The trust fund shall be subject to the terms and conditions provided in this section. The trust fund shall not be placed in the state treasury and the State shall not administer the fund nor be liable for its operation or solvency. The fund shall be a private charitable trust fund administered by a private trust company as trustee.

(f) Subsections (a) to (e) shall take effect upon the creation of a commission on the status of women foundation, a tax-exempt, nonprofit foundation that is subject to the terms and conditions provided in this section."

SECTION 2. Section 367-1, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§367-1[]] Findings and purpose.** The legislature finds that the work of the [governor's] state commission on the status of women, established by the governor by executive order on May 15, 1964, demonstrates the need for a continuing body to aid in the implementation of its recommendations, to develop long-range goals, and to coordinate research planning, programming, and action on the opportunities, needs, problems, and contributions of women in Hawaii [in (1) education, (2) homemaking, (3) civil and legal rights, (4) labor and employment, and (5) expanded community horizons]. It is the purpose of this chapter to provide for a statewide program, on a permanent and continuing basis, on the status of women in Hawaii."

SECTION 3. Section 367-3, Hawaii Revised Statutes, is amended to read as follows:

"**§367-3 [Duties] Powers and duties of commission.** The commission shall:

(1) Act as a central clearinghouse and coordinating body for governmental and nongovernmental activities and information relating to the status of women;

[(2) Accumulate, compile, and publish information concerning instances of actual discrimination, and discrimination in the law, against women;

(3) Cooperate with the department of labor and industrial relations and other state departments and agencies and appropriate federal offices and agencies in correcting unlawful employment practices, in public and private employment, involving discrimination because of sex;

(4)] (2) Create public awareness and understanding of the responsibilities, needs, potentials, and contributions of women [as homemakers, workers, and active participants in community life and of the importance of each of these] and their roles in the changing society;

[(5)] (3) Recommend legislative and administrative action on equal treatment and opportunities for women;

[(6) Seek improvements in educational and counseling programs and policies to meet the needs of girls and women in order better to prepare them for their roles in the home and community;

(7)] (4) Encourage a long-range program of education of women in their political rights and responsibilities, particularly with respect to their voting duties;

[(8)] (5) Maintain contacts with appropriate federal, state, local, and international agencies concerned with the status of women;

[(9)] (6) Cooperate and collaborate with national groups on the status of women and arrange for participation by representatives of the State in White House conferences and other national conferences from time to time;

[(10)] (7) Administer funds allocated for its work; be authorized to accept, disburse, and allocate funds [which] that may become available from other governmental and private sources; provided that all such funds shall be disbursed or allocated in compliance with any specific designation stated by the donor and in the absence of such specific designation, such funds shall be disbursed or allocated on projects related to any of the purposes of this chapter; and

[(11)] (8) Submit an annual report with recommendations to the governor and the legislature."

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

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

(Approved June 20, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 271 S.B NO. 2716

A Bill for an Act Relating to Taxation.

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

SECTION 1. Section 237-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) "Wholesaler" or "jobber" applies only to a person making sales at wholesale. Only the following are sales at wholesale:

(1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;

(2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) during the course of its preservation, manufacture, or processing,

including preparation for market, and that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;

(3) Sales to a licensed producer or cooperative association of materials or commodities that are to be incorporated by the producer or by the cooperative association into a finished or saleable product that is to be sold and not otherwise used by the producer or cooperative association, including specifically materials or commodities expended as essential to the planting, growth, nurturing, and production of commodities that are sold by the producer or by the cooperative association;

(4) Sales to a licensed contractor, of materials or commodities that are to be incorporated by the contractor into the finished work or project required by the contract and that will remain in such finished work or project in such form as to be perceptible to the senses;

(5) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to a licensed producer, or to a licensed person operating a feed lot, of poultry or animal feed, hatching eggs, semen, replacement stock, breeding services for the purpose of raising or producing animal or poultry products for disposition as described in section 237-5 or for incorporation into a manufactured product as described in paragraph (2) or for the purpose of breeding, hatching, milking, or egg laying other than for the customer's own consumption of the meat, poultry, eggs, or milk so produced; provided that in the case of a feed lot operator, only the segregated cost of the feed furnished by the feed lot operator as part of the feed lot operator's service to a licensed producer of poultry or animals to be butchered or to a cooperative association described in section 237-23(a)(7) of such licensed producers shall be deemed to be a sale at wholesale; and provided further that any amount derived from the furnishing of feed lot services, other than the segregated cost of feed, shall be deemed taxable at the service business rate. This paragraph shall not apply to the sale of feed for poultry or animals to be used for hauling, transportation, or sports purposes;

(6) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to the producer, of seed for producing agricultural products, or bait for catching fish (including the catching of bait for catching fish), which agricultural products or fish are to be disposed of as described in section 237-5 or to be incorporated in a manufactured product as described in paragraph (2);

(7) Sales to a licensed producer, or to a cooperative association described in section 237-23(a)(7) for sale to such producer; of polypropylene shade cloth; of polyfilm; of polyethylene film; of cartons and such other containers, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural products; of seedlings and cuttings for producing nursery plants; or of chick containers; which cartons and such other containers, wrappers, and sacks, binders, seedlings, cuttings, and containers are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);

(8) Sales of tangible personal property:

(A) To a licensed seller engaged in a service business or calling; provided that:

(i) The property is not consumed or incidental to the performance of the services;
(ii) There is a resale of the article at the retail rate of four per cent; and
(iii) The resale of the article is separately charged or billed by the person rendering the services; and

(B) Where:
(i) Tangible personal property is sold upon the order or request of a licensed seller for the purpose of rendering a service in the course of the person's service business or calling or upon the order or request of a person, subject to tax under section 237D-2, for the purpose of furnishing transient accommodations;
(ii) The property becomes or is used as an identifiable element of the service rendered; and
(iii) The cost of the property does not constitute overhead to the licensed seller;

the sale shall be subject to section 237-13.3. Where the taxpayer is subject to both subparagraphs (A) and (B), then the taxpayer shall be taxed under subparagraph (A). Subparagraph (A) shall be repealed on January 1, 2006.

(9) Sales to a licensed leasing company of capital goods that have a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others;

(10) Sales of services to a licensed seller engaging in a business or calling whenever:

(A) Either:
(i) In the context of a service-to-service transaction, a service is rendered upon the order or request of a licensed seller for the purpose of rendering another service in the course of the seller's service business or calling;
(ii) In the context of a service-to-goods transaction, a service is rendered upon the order or request of a licensed seller for the purpose of manufacturing, producing, preparing, or acquiring tangible personal property to be sold;
(iii) In the context of a services-to-contracting transaction, a service is rendered upon the order or request of a licensed contractor as defined in section 237-6 for the purpose of assisting that licensed contractor in executing a contract; or
(iv) In the context of a services-to-transient accommodations rental transaction, a service is rendered upon the order or request of a person subject to tax under section 237D-2 for the purpose of furnishing transient accommodations;

(B) The benefit of the service passes to the customer of the licensed seller, licensed contractor, or person furnishing transient accommodations as an identifiable element of the other service or property to be sold, the contracting, or the furnishing of transient accommodations; and

(C) The cost of the service does not constitute overhead to the licensed seller, licensed contractor, or person furnishing transient accommodations.

Sales subject to this paragraph shall be subject to section 237-13.3;

(11) Sales to a licensed retail merchant, jobber, or other licensed seller of bulk condiments or prepackaged single-serving packets of condiments

that are provided to customers by the licensed retail merchant, jobber, or other licensed seller; [and]

(12) Sales to a licensed retail merchant, jobber, or other licensed seller of tangible personal property that will be incorporated or processed by the licensed retail merchant, jobber, or other licensed seller into a finished or saleable product during the course of its preparation for market (including disposable, nonreturnable containers, packages, or wrappers, in which the product is contained and that are generally known and most commonly used to contain food or beverage for transfer or delivery), and which finished or saleable product is to be sold and not otherwise used by the licensed retail merchant, jobber, or other licensed seller[.]; and

(13) Sales by a printer to a publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials."

SECTION 2. Section 238-2, Hawaii Revised Statutes, is amended to read as follows:

"**§238-2 Imposition of tax; exemptions.** There is hereby levied an excise tax on the use in this State of tangible personal property which is imported, or purchased from an unlicensed seller, for use in this State. The tax imposed by this chapter shall accrue when the property is acquired by the importer or purchaser and becomes subject to the taxing jurisdiction of the State. The rates of the tax hereby imposed and the exemptions thereof are as follows:

(1) If the importer or purchaser is licensed under chapter 237 and is:
   (A) A wholesaler or jobber importing or purchasing for purposes of resale; or
   (B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold in such manner as to result in a further tax on the activity of the manufacturer as the manufacturer or as a wholesaler, and not as a retailer,

   there shall be no tax; provided that if the wholesaler, jobber, or manufacturer is also engaged in business as a retailer (so classed under chapter 237), paragraph (2) shall apply to the wholesaler, jobber, or manufacturer, but the director of taxation shall refund to the wholesaler, jobber, or manufacturer, in the manner provided under section 231-23(c) such amount of tax as the wholesaler, jobber, or manufacturer shall, to the satisfaction of the director, establish to have been paid by the wholesaler, jobber, or manufacturer to the director with respect to property which has been used by the wholesaler, jobber, or manufacturer for the purposes stated in this paragraph;

(2) If the importer or purchaser is licensed under chapter 237 and is:
   (A) A retailer or other person importing or purchasing for purposes of resale, not exempted by paragraph (1);
   (B) A manufacturer importing or purchasing material or commodities which are to be incorporated by the manufacturer into a finished

or saleable product (including the container or package in which the product is contained) wherein it will remain in such form as to be perceptible to the senses, and which finished or saleable product is to be sold at retail in this State, in such manner as to result in a further tax on the activity of the manufacturer in selling such products at retail;

(C) A contractor importing or purchasing material or commodities which are to be incorporated by the contractor into the finished work or project required by the contract and which will remain in such finished work or project in such form as to be perceptible to the senses; [or]

(D) A person engaged in a service business or calling as defined in section 237-7, or a person furnishing transient accommodations subject to the tax imposed by section 237D-2, in which the import or purchase of tangible personal property would have qualified as a sale at wholesale as defined in section 237-4(a)(8) had the seller of the property been subject to the tax in chapter 237[.][1]; or

(E) A publisher of magazines or similar printed materials containing advertisements, when the publisher is under contract with the advertisers to distribute a minimum number of magazines or similar printed materials to the public or defined segment of the public, whether or not there is a charge to the persons who actually receive the magazines or similar printed materials.

the tax shall be one-half of one per cent of the purchase price of the property, if the purchase and sale are consummated in Hawaii; or, if there is no purchase price applicable thereto, or if the purchase or a person furnishing transient accommodations subject to the tax imposed by section 237D-2, or sale is consummated outside of Hawaii, then one-half of one per cent of the value of such property; and

(3) In all other cases, four per cent of the value 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; provided that this Act shall apply to gross income or gross proceeds received, or gross value accruing, after June 30, 2000.

(Approved June 20, 2000.)

**Note**

1. Prior to amendment "," appeared here.

## ACT 272

S.B NO. 2808

A Bill for an Act Relating to the Consumer Advocate.

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

SECTION 1. 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) By the auditor;
(14) By the office of ombudsman;
(15) By the insurance division;
(16) By the University of Hawaii; [or]
(17) By the division of consumer advocacy; or
[(17)] (18) 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, insurance division, the division of consumer advocacy, the University of Hawaii, the Hawaiian home lands trust individual claims review panel, or as grand jury counsel, shall be a deputy attorney general."

SECTION 2. Section 269-53, Hawaii Revised Statutes, is amended to read as follows:

"**§269-53 Legal counsel.** [The attorney general and the attorney general's deputies shall act as legal counsel for the consumer advocate.] The director may appoint or retain, without regard to chapters 76 and 77, attorneys to provide legal services for the division of consumer advocacy. Nothing in this section precludes the director of commerce and consumer affairs from requesting and securing legal services from the attorney general and the department of the attorney general."

SECTION 3. There is appropriated out of the public utilities commission special fund the sum of $137,089 or so much thereof as may be necessary for fiscal year 2000-2001 to hire two staff attorneys who shall be exempt from chapters 76 and 77, Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

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

SECTION 5. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 2000.

(Approved June 20, 2000.)

## ACT 273 S.B NO. 2982

A Bill for an Act Relating to Child Support.

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

SECTION 1. 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, a lien shall arise on the obligor's real and personal property and the obligor's real and personal property shall be subject to 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.

(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. 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] when it arises under subsections (a) or (b) 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 that is provided for by and becomes effective under 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 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 20, 2000.)

## ACT 274 S.B NO. 3038

A Bill for an Act Relating to Education.

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

SECTION 1. The legislature finds that the primary duty of school officials and teachers is the education and training of our youths. The legislature further finds that the rapid increase in the number of disruptive students in our public schools is having a detrimental effect on those students seeking a quality education. Without first establishing discipline and maintaining order, teachers cannot begin to educate our children. The legislature believes that to ensure that schools remain a safe and conducive place of learning, the problem of student discipline that arises from substance abuse, including the consumption of alcohol, while on or off school campuses needs to be addressed.

In 1996, the legislature adopted a zero tolerance policy which provided that a principal may suspend a student who is found to be in possession of a dangerous weapon, intoxicating liquor, or illicit drugs. The constitutionality of this act was subsequently challenged in the case of James P. and Lucille P. versus Paul Le-Mahieu and Robert Ginlack (Civil No. 99-00861 DAE LEK). In this case, a minor was suspended from school for attending a school-related function, held off-campus, while under the influence of alcohol. The federal district court granted the plaintiff's request for an injunction because the court reasoned that Act 90, Session Law of Hawaii 1996, only prohibited the "possession of...intoxicating liquor...while attending school." The court further stated that the defendants did not have evidence of a statutory violation since the minor did not "possess intoxicating liquor while attending school" even if he did drink liquor prior to the school event. At worse, the minor was guilty of being intoxicated at a school function, which is not covered by the statute.

Therefore, the purpose of this Act is to expand the scope of the zero tolerance policy by allowing a principal to suspend a student once it has been determined that the student consumed or used intoxicating liquor or illicit drugs prior to or while attending school or a department-supervised activity.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§302A- Zero tolerance policy.** (a) Any child who possesses, sells, or uses a dangerous weapon or switchblade knife, while attending school or while attending department-supervised activities held on or off school property, may be

excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board.

(b) Any child who possesses, sells, consumes, or uses intoxicating liquor or illicit drugs, while attending school or while attending department-supervised activities held on or off school property, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board.

(c) Any child who reasonably appears to have consumed or used intoxicating liquor or illicit drugs prior to attending school or attending department-supervised activities held on or off school property, may be excluded from attending school for up to ninety-two school days, as determined by the principal and approved by the superintendent or other individuals designated pursuant to rules adopted by the board.

(d) In any case of exclusion from school, the due process procedures as set forth in the provisions of Hawaii administrative rules relating to student discipline shall apply.

(e) If a child is excluded from attending school for more than ten days, the superintendent or the superintendent's designee shall ensure that substitute educational activities or other appropriate assistance are provided, such as referral for appropriate intervention and treatment services, as determined by the principal in consultation with the appropriate school staff.

(f) For purposes of this section:

(1) "Dangerous weapon" means a dirk, dagger, butterfly knife, blackjack, slug shot, billy, metal knuckles, or other instrument whose sole design and purpose is to inflict bodily injury or death; provided that firearms are excluded from this definition;

(2) "Illicit drugs" means substances, the possession, distribution, ingestion, manufacture, sale, or delivery of which are prohibited under chapter 329 and chapter 712, part IV; and

(3) "Switchblade knife" is as defined in section 134-52."

SECTION 3. Section 302A-1134.5, Hawaii Revised Statutes, is repealed.

SECTION 4. The board of education shall adopt rules in accordance with chapter 91, Hawaii Revised Statutes, to implement section 302A- , Hawaii Revised Statutes.

SECTION 5. Notwithstanding section 2, until such time as the board of education has adopted rules pursuant to section 4, the superintendent, deputy superintendent, and district superintendent may exclude students from attending school for up to ninety-two school days for the infractions described in section 302A- , Hawaii Revised Statutes.

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

SECTION 8. This Act shall take effect upon its approval.

(Approved June 20, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 275 S.B NO. 3045

A Bill for an Act Relating to the Auditor.

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

SECTION 1. Section 23-5, Hawaii Revised Statutes, is amended to read as follows:

"**§23-5 Auditor; powers.** (a) The auditor may examine and inspect all accounts, books, records, files, papers, and documents and all financial affairs of every department, office [and], agency, and political subdivision[, and may, by precept under the auditor's hand in the form contained in section 40-93, require all such persons as the auditor may think fit to appear personally before the auditor at any time and place to be named in the precept, and to produce to the auditor all such accounts, books, records, files, papers, and documents in the possession or control of such persons as shall appear to be necessary for the purpose of examination].

(b) The auditor may cause search to be made and extracts to be taken from any account, book, file, paper, [or] record, or document in the custody of any public officer without paying any fee for the same; and every officer having the custody of the accounts, books, records, files, papers, and documents shall make such search and furnish such extracts as thereto requested.

(c) The auditor may issue:

(1) Subpoenas compelling at a specified time and place the appearance and sworn testimony of any person whom the auditor reasonably believes may be able to provide information relating to any audit or other investigation undertaken pursuant to this chapter; and

(2) Subpoenas duces tecum compelling the production of accounts, books, records, files, papers, documents, or other evidence, which the auditor reasonably believes may relate to an audit or other investigation being conducted under this chapter.

Upon application by the auditor, obedience to the subpoena may be enforced by the circuit court in the county in which the person subpoenaed resides or is found in the same manner as a subpoena issued by the clerk of the circuit court.[1]"

SECTION 2. Section 23-10, Hawaii Revised Statutes, is amended to read as follows:

"**§23-10 Penalty for violation and false evidence.** Any person summoned or subpoenaed as provided in section 23-5 to give testimony or to produce any accounts, books, records, files, papers, [or other] documents, or other evidence relating to any matter under inquiry, who wilfully makes default, or who, having appeared, refuses to answer any question pertaining to the matter under inquiry, shall be fined not less than $100 nor more than $1,000, or imprisoned not less than one month nor more than twelve months, or both. If any person, in the course of the person's examination before the auditor, wilfully gives false evidence, the person so

offending shall incur the same penalties as are or may be provided against persons convicted of perjury."

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, 2000.)

**Note**

1. Comma should be underscored.

## ACT 276

S.B NO. 3123

A Bill for an Act Relating to Post-Secondary Education.

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

SECTION 1. The Federal Personal Responsibility and Work Opportunity Act of 1996 abolished the sixty-one-year-old Aid to Families with Dependent Children entitlement program and replaced it with a transitional aid program called the Temporary Assistance to Needy Families program that requires recipients who are able to work to secure employment at the earliest opportunity. The new law places a heavy burden on the states to meet strict work participation requirements.

The federal requirements have set a laudable goal. Work is the cornerstone of the community's shared values of personal responsibility and self-sufficiency. In addition, work promotes self-discipline and self-esteem.

The vast majority of public assistance recipients share the community values of parental responsibility and work ethic, and will accept financial responsibility for themselves and their children when given a real opportunity to achieve self-sufficiency. However, many barriers to work frustrate the best efforts of public assistance recipients to join the work force on a permanent basis. Moreover, strong competition for scarce jobs often leaves behind those with little experience or education.

Over ninety per cent of assistance households are currently headed by women. Since approximately two-thirds of all women in Hawaii are working in sales, clerical, and service type jobs, which receive the lowest wages, it is unlikely that the majority of assistance households will be able to move out of poverty and be self-sufficient without adding to their knowledge and skills to increase their earning capacity.

Toward that end, the legislature finds that transitional benefits are needed to provide the necessary support to enable recipients to secure education and training beyond high school.

The purpose of this Act is to support the successful transition from public assistance to self-sufficiency through a transitional benefits program for public assistance recipients.

It is the intent of this Act to encourage the department of human services, through the financial assistance advisory committee, to work in collaboration with the University of Hawaii to establish policies that encourage the pursuit and successful completion of higher education for single parents and their children to achieve a stable future.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§346- **Bridge to hope program; transitional benefits.** (a) There is created within the department a post-secondary education benefits program, to be known as the bridge-to-hope program, for heads of households in the Temporary Assistance to Needy Families program.

(b) To receive assistance under this program, the single parent shall:

(1) Be enrolled as a student each term;

(2) Maintain passing grades or better throughout the course of study; and

(3) Meet work activity requirements as defined by the department.

(c) Internships, externships, practicums, or any other work training required by the course of study shall count toward the recipient's work requirement.

(d) The department shall adopt rules in accordance with chapter 91 to carry out the purpose of this section."

SECTION 3. The University of Hawaii shall submit a report to the legislature on the expenditure of funds for the bridge to hope program to the legislature no later than twenty days prior to the convening of the regular session of 2001.

The report shall include the following, enumerated by campus:

(1) The amount of federal matching funds used;

(2) The number of students who participate in the program;

(3) The average amount of hourly pay for work performed by participating students to meet program requirements; and

(4) The number of participating students who are unable to meet the Temporary Assistance to Needy Family program work requirements and must be excluded from the program.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $300,000, or so much thereof as may be necessary, for fiscal year 2000-2001, for the bridge-to-hope program.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 5. New statutory material is underscored.[1]

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

(Approved June 20, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 277 H.B. NO. 1947

A Bill for an Act Relating to Fisheries.

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

SECTION 1. The legislature finds that the vast ocean area surrounding the State has historically contained bountiful natural resources and productive fisheries that have had great commercial, recreational, social, cultural, and sustenance values to Hawaii's people. Many of these fisheries are now in decline and in critical need of effective conservation and management measures to prevent further decline and to create a pattern of sustainable use for future generations. One of the fisheries that has shown the most urgent need for conservation and management is the shark fishery.

Sharks are one of the top predators in the marine food chain and play an important role in our ocean's ecosystem. Sharks have characteristics that make them more vulnerable to overfishing than most fish, and data from state, federal, and

international agencies show a decline in the shark populations both locally and worldwide. Unlike other fish species, most sharks do not reach sexual maturity until seven to twelve years of age and then only give birth to a small litter of young. Thus, sharks cannot rebuild their populations quickly once they are overfished.

About one hundred thousand sharks (two thousand metric tons) are taken each year by Hawaii-based longliners. Data from log books and observers indicate that eighty-six per cent of the shark are alive when brought to the boat but are killed just for their fins; approximately sixty per cent are then finned. That means once caught, the fins are removed, and the carcasses are discarded. These fins are landed in Hawaii as unreported, untaxed catch. An additional one hundred fifty metric tons of shark fins are taken elsewhere in the Pacific, and are then transshipped unreported and untaxed into and through the State.

The legislature finds shark finning to be a wasteful and inhumane practice, and the landing of unreported shark fins contributes little if anything to the economy of this State. The purpose of this Act is to prevent the practice of shark finning by requiring that sharks caught in the territorial waters of the State be landed whole.

SECTION 2. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§188- Sharks; prohibitions; administrative penalties.** (a) No person shall knowingly harvest shark fins from the territorial waters of the State, or land shark fins in the State, unless the fins were taken from a shark landed whole in the State.

(b) Any person violating this section or any rule adopted thereunder shall be subject to:

(1) Seizure and forfeiture of shark fins, commercial marine license, vessel, and fishing equipment; and

(2) An administrative fine of not less than $5,000 and not more than $15,000. In addition, the violator may be assessed administrative fees and costs, and attorney's fees and costs.

(c) Any criminal prosecution or penalty imposed for violation of this section or any rule adopted thereunder shall not preclude seizure and forfeiture pursuant to chapter 712A, or the imposition of any administrative fines and costs or attorney's fees and costs under this section.

(d) This section shall apply to the following vessels when fishing outside the territorial waters of the State:

(1) Vessels that hold a fishing license or permit issued by the State as a prerequisite to participation in the fishery, or that have owners or captains who hold a fishing license or permit issued by the State as a prerequisite to participation in the fishery;

(2) Vessels that are registered under section 200-31; or

(3) Vessels with federal documentation that lists as a homeport a location within the State;

provided that the enforcement of this section on these vessels outside the territorial waters of the State shall not apply if enforcement of this section is in violation of, or in conflict with, federal law.

(e) Notwithstanding anything to the contrary, this section shall apply only to vessels that off-load cargo in the State or its territorial waters.

(f) As used in this section:

"Land" or "landed" means when the shark or any part thereof is first brought to shore.

"Shark fin" means the raw or dried fin of a shark with the shark carcass removed.

"Whole" means the entire shark with its head and flesh intact, allowing for the removal of the blood, internal organs, and tail at sea."

SECTION 3. Section 187A-1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"""Harvest" means the taking and retaining of marine life by any means whatsoever.

"Shark" means any member of the class Chondrichthyes, including but not limited to: inshore species of galapagos shark (Carcharhinus galapagensis), reef blacktip shark (Carcharhinus melanopterus), gray reef shark (Carcharhinus amblyrhynchos), big-nosed shark (Carcharhinus altimus), tiger shark (Galeocerdo cuvier), blacktip shark (Carcharhinus limbatus), smooth hammerhead shark (Sphyrna zygaena), reef whitetip shark (Triaenodon obesus), scalloped hammerhead shark (Sphyrna lewini), sandbar shark (Carcharhinus plumbeus), offshore species of white shark (Carcharodon carcharias), shortfin mako shark (Isurus oxyrinchus), silky shark (Carcharhinus falciformis), blue shark (Prionace glauca), whale shark (Rhincodon typus), thresher shark (Alopias vulpinus), oceanic whitetip shark (Carcharhinus longimanus), cookie cutter shark (Isistius brasiliensis), and megamouth shark (Megachasma pelagios)."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. New statutory material is underscored.[1]

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

(Approved June 22, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 278 S.B NO. 2134

A Bill for an Act Relating to Agriculture and Animals.

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

SECTION 1. The legislature declares that keeping Hawaii rabies-free is a public health and safety concern, and that the cost of animal quarantine should be borne by all the people of Hawaii and not only those people who are required to use the services and facilities of the animal quarantine station. The legislature also recognizes the hardships that animal quarantine user fees place on military personnel and others when being transferred to Hawaii.

The purpose of this Act is to appropriate funds from the general fund into the animal quarantine special fund to reduce quarantine user fees.

SECTION 2. Section 142-28.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§142-28.5[]] Animal quarantine special fund.** There is established the animal quarantine special fund to be administered by the board of agriculture. All moneys received by the board of agriculture as fees for the quarantine of cats, dogs,

and other carnivores pursuant to this chapter, or any state appropriations or other moneys made available for the cost of quarantine, shall be deposited into the special fund. All interest earned or accrued on moneys deposited in the special fund shall become part of the special fund. Moneys in the special fund shall be expended to cover all costs of quarantine but not limited to the costs of salaries, fringe benefits, operating expenses, <u>including the defraying of quarantine fees,</u> equipment, motor vehicles, contract with any qualified person or entity for animal care services, operation and maintenance of the quarantine station, and promotional expenses. A reserve shall be appropriated and maintained in the special fund to cover contingency costs including but not limited to accrued vacation leave, unemployment insurance, and workers' compensation."

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 2000-2001 for deposit into the animal quarantine special fund to be used to reduce quarantine user fees; provided that the reductions shall be made on the basis of the following factors to be considered by the department of agriculture:

(1) The public health, safety, and welfare;
(2) Fairness and equity to users; and
(3) Economic factors, including the ability to pay by a person or class of persons, to ensure that individuals and families moving to Hawaii relocate without creating an economic hardship.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

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

SECTION 5. This Act shall take effect on July 1, 2000.

(Approved June 22, 2000.)

## ACT 279 S.B NO. 2873

A Bill for an Act Relating to Hawaii Health Systems Corporation.

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

SECTION 1. Hawaii health systems corporation is authorized to issue $38,000,000 in revenue bonds under the Supplemental Appropriations Act of 2000. The legislature finds that Hawaii health systems corporation is unable to issue the revenue bonds without those bonds being secured by a guaranty from the State.

The legislature finds and declares that the issuance of bond guarantees under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 2. Bonds guaranteed by the department. (a) The department of budget and finance, through its director, may guaranty payment of principal of and interest on bonds issued by Hawaii health systems corporation under section 323F-7, Hawaii Revised Statutes, by guaranteeing payment of principal of and interest on the bonds or by guaranteeing the provider of any credit facility securing the bonds to reimburse any amounts drawn on such credit facility to pay principal of or interest

on the bonds. The amount of liability under the guaranty shall not exceed $47,500,000.

(b) The terms for the guaranty shall include a requirement that the Hawaii health systems corporation deposit and maintain, in a trust fund to be established and held by the department or by a bank trustee on behalf of the department an amount equal to the lesser of maximum annual debt service on, or one hundred twenty-five per cent of average annual debt service on, or ten per cent of the principal amount at issuance of, the bonds guaranteed. If the interest rate on the bonds is variable, an assumed interest rate or formula determined by the department shall be used in calculating the balance required to be maintained in the trust fund. This deposit may be made from proceeds of the bonds or any other available funds of Hawaii health systems corporation. Amounts in the trust fund shall be invested by the department in any securities in which proceeds of the bonds may be invested and shall be held in trust for the benefit of the State and pledged to payment of principal of and interest on the bonds prior to any payment under the guaranty. In the event of default by Hawaii health systems corporation in payment of any amount in respect of debt service on guaranteed bonds, the trustee for the guaranteed bonds shall notify the department of the default and shall be entitled to any amounts in the trust fund necessary to cure the default and, to the extent such amounts are not sufficient, to take all steps necessary or appropriate to collect the amounts necessary to cure the default pursuant to the guaranty or any applicable credit facility (in which case the credit provider shall be entitled to reimbursement pursuant to the guaranty). In the event of any transfer of amounts in the trust fund to the trustee for the guaranteed bonds (or to the credit facility provider) due to any deficiency in payment from Hawaii health systems corporation, the department shall seek an appropriation or appropriations from the legislature in such amounts and at such times as the department determines to be necessary or agrees pursuant to its guaranty in order to fund the guaranty or the trust fund.

Amounts remaining in the trust fund may be used for final payment of the bonds on maturity or early redemption or acceleration and to the extent not so used shall be returned to Hawaii health systems corporation after all guaranteed bonds have been paid. Amounts in the trust fund in excess of the required balance, from time to time, shall be returned to the Hawaii health systems corporation subject to any other agreement with bondholders, credit providers, or the department. Appropriations received by the department pursuant to this section may be added to the trust fund or held by or on behalf of the department in a supplemental trust fund in order to maintain the aggregate balance in the trust fund or funds at the required amount. To the extent not used to make payments under the guaranty, such appropriations (including any earnings thereon) shall be returned to the State when the Hawaii health systems corporation returns the trust fund to the required balance with its own funds or after all guaranteed bonds have been paid in full.

(c) The department may set additional terms and conditions on the granting of the guaranty, which may include requiring the Hawaii health systems corporation (and in such event, notwithstanding any other provision of law, the Hawaii health systems corporation is authorized) to pledge, mortgage, or grant a security interest in, sell, assign, lease, or otherwise dispose of any or all property, whether real, personal or mixed, tangible or intangible, and of any interest therein, to secure payment of the principal of any interest on the bonds or reimbursement to the provider of any credit facility securing the bonds or reimbursement to the State, of any payments made pursuant to the credit facility or the State guaranty, as the case may be.

SECTION 3. Pursuant to Article VII, section 13, clause 8, of the State Constitution that states: "Bonds constituting instruments of indebtedness under

which the State or any political subdivision 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 this section; provided that the State or political subdivision shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State or political subdivision as provided by law", the legislature finds and declares that the moneys deposited into the trust fund or funds, pursuant to section 2(c) of this Act, satisfies the reasonable reserve requirement of the State Constitution.

SECTION 4. 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 per cent 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 1999-2000 and estimated for each fiscal year from 2000-2001 to 2002-2003, is as follows:

| Fiscal Year | Net General Fund Revenues | Debt Limit |
|---|---|---|
| 1996-1997 | 3,115,264,737 | |
| 1997-1998 | 3,195,967,036 | |
| 1998-1999 | 3,254,256,686 | |
| 1999-2000 | 3,141,743,000 | $589,871,788 |
| 2000-2001 | 3,228,232,000 | 591,504,615 |
| 2001-2002 | 3,285,586,000 | 593,494,287 |
| 2002-2003 | (Not Applicable) | 595,426,262 |

For fiscal years 1999-2000, 2000-2001, 2001-2002 and 2002-2003 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 1996-1997, 1997-1998, and 1998-1999 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, 1999, dated November 24, 1999. The net general fund revenues for fiscal years 1999-2000 to 2001-2002 are estimates, based on general fund revenue estimates made as of March 10, 2000, 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 December 1, 1999 is as follows for fiscal year 2000-2001 to fiscal year 2006-2007:

| Fiscal Year | Principal and Interest |
|---|---|
| 2000-2001 | $352,508,780 |
| 2001-2002 | 367,994,493 |
| 2002-2003 | 411,701,970 |
| 2003-2004 | 378,223,219 |
| 2004-2005 | 373,053,164 |
| 2005-2006 | 347,383,328 |
| 2006-2007 | 344,154,560 |

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 2007-2008 to fiscal year 2019-2020 when the final installment of $27,612,984 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 $191,000,000, 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 29, 2000, adjusted for (i) appropriations to be funded by general obligation bonds and reimbursable general obligation bonds as provided in Act 99, Session Laws of Hawaii 1999 (General Appropriations Act of 1999), to be expended in the fiscal year 2000-2001; (ii) appropriation to be funded by reimbursable general obligation bonds as provided in Act 151, Session Laws of Hawaii 1999 (Relating to Hawaii Hurricane Relief Fund Bonds), to be expended in the fiscal year 2000-2001; and Act 156, Session Laws of Hawaii 1999 (Judiciary Appropriations Act of 1999), to be expended in the fiscal year 2000-2001, the total amount of authorized but unissued general obligation bonds is $1,390,315,020. (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 $191,000,000, 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. The total amount of guaranties authorized by this Act is $47,500,000 and are herein validated. The total

amount of guaranties previously authorized and validated by this Act is $238,500,000.

(5) Proposed general obligation bond issuance. As reported therein for the fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002 and 2002-2003, the State proposed to issue $200,000,000 in general obligation bonds during the remainder of fiscal year 1999-2000, $350,000,000 during the first half of fiscal year 2000-2001, $150,000,000 during the second half of fiscal year 2000-2001, $150,000,000 during the first half of fiscal year 2001 -2002, $150,000,000 during the second half of fiscal year 2001-2002, $100,000,000 during the first half of fiscal year 2002-2003, and $300,000,000 during the second half of fiscal year 2002-2003. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the third year, the bonds payable in substantially equal annual installments of principal and interest payment with interest payments commencing six months from the date of issuance and being paid semi-annually thereafter. It is assumed that this practice will continue to be applied to the bonds which are proposed to be issued except that principal repayments will begin in the fourth year.

(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 1999-2000 to 2001-2002 is $1,000,000,000. An additional $400,000,000 is proposed to be issued in fiscal year 2002-2003. The total amount of $1,000,000,000 which is proposed to be issued through fiscal year 2001-2002 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is $1,390,315,020, as reported in paragraph (4), except for $390,315,020. It is assumed that the appropriations to which an additional $390,315,020 in bond issuance needs to be applied will have been encumbered as of June 30, 2002. The $400,000,000 which is proposed to be issued in fiscal year 2002-2003 will be sufficient to meet the requirements of the June 30, 2002, encumbrances in the amount of $390,315,020. The amount of assumed encumbrances as of June 30, 2002, 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, 2002, and the amount of June 30, 2002, encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 2002-2003, 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 6.97 per cent for the ten years from

fiscal year 2000-2001 to fiscal year 2009-2010. For the purpose of this declaration, the assumption is made that five per cent 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 per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this 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 1999-2000, 2000-2001, 2001-2002 and 2002-2003 are as follows:

| Fiscal year | Total Amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13, of the State Constitution |
|---|---|
| 1999-2000 | 3,309,433,537 |
| 2000-2001 | 3,600,550,972 |
| 2001-2002 | 3,677,655,955 |
| 2002-2003 | 3,843,443,582 |

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 per cent 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 6.0 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, 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 1999-2000 $190,000,000 | 589,871,788 | 423,101,970 (2002-2003) |
| 1st half FY 2000-2001 $332,500,000 | 591,504,615 | 443,051,970 (2002-2003) |
| 2nd half FY 2000-2001 $142,500,000 | 591,504,615 | 451,601,970 (2002-2003) |
| 1st half FY 2001-2002 $142,500,000 | 593,494,287 | 455,876,970 (2002-2003) |
| 2nd half FY 2001-2002 $142,500,000 | 593,494,287 | 464,426,970 (2002-2003) |
| 1st half FY 2002-2003 $95,000,000 | 595,426,262 | 549,374,614 (2004-2005) |
| 2nd half FY 2002-2003 $285,000,000 | 595,426,262 | 479,324,614 (2004-2005) |

(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 5. 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 6. Section 323F-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other law to the contrary, the corporation shall have and exercise the following duties and powers:

(1) Developing its own policies, procedures, and rules necessary or appropriate to plan, operate, manage, and control the system of public health facilities and services without regard to chapter 91;
(2) Evaluating the need for health facilities and services;
(3) Entering into and performing any contracts, leases, cooperative agreements, or other transactions whatsoever that may be necessary or appropriate in the performance of its purposes and responsibilities, and on terms it may deem appropriate, with either:
    (A) Any agency or instrumentality of the United States, or with any state, territory, or possession, or with any subdivision thereof; or
    (B) Any person, firm, association, or corporation, whether operated on a for-profit or not-for-profit basis;

provided that the transaction furthers the public interest;

(4) Conducting activities and entering into business relationships as the corporation board deems necessary or appropriate, including but not limited to:
   (A) Creating nonprofit corporations, including but not limited to charitable fund-raising foundations, to be controlled wholly by the corporation or jointly with others;
   (B) Establishing, subscribing to, and owning stock in business corporations individually or jointly with others; and
   (C) Entering into partnerships and other joint venture arrangements, or participating in alliances, purchasing consortia, health insurance pools, or other cooperative arrangements, with any public or private entity; provided that any corporation, venture, or relationship entered into under this section furthers the public interest; provided further that this paragraph shall not be construed to authorize the corporation to abrogate any responsibility or obligation under paragraph (15);

(5) Participating in and developing prepaid health care service and insurance programs and other alternative health care delivery programs, including programs involving the acceptance of capitated payments or premiums that include the assumption of financial and actuarial risk;

(6) Executing, in accordance with all applicable bylaws, rules, and laws, all instruments necessary or appropriate in the exercise of any of the corporation's powers;

(7) Preparing and executing all corporation budgets, policies, and procedures;

(8) Setting rates and charges for all services provided by the corporation without regard to chapter 91;

(9) Developing a corporation-wide hospital personnel system that is subject to chapters 76, 77, and 89;

(10) Developing the corporation's capital and strategic plans;

(11) Suing and being sued; provided that the corporation shall enjoy the same sovereign immunity available to the State;

(12) Making and altering corporation board bylaws for its organization and management without regard to chapter 91;

(13) Adopting rules, without regard to chapter 91, governing the exercise of its powers and the fulfillment of its purpose under this chapter;

(14) Entering into any contract or agreement whatsoever, not inconsistent with this chapter or the laws of this State, and authorizing the corporation chief executive officer to enter into all contracts, execute all instruments, and do all things necessary or appropriate in the exercise of the powers granted in this chapter, including securing the payment of bonds;

(15) Issuing revenue bonds subject to the approval of the legislature; provided that all revenue bonds shall be issued pursuant to part III, chapter 39;

(16) Reimbursing the state general fund for debt service on general obligation bonds or reimbursable general obligation bonds issued by the State for the purposes of the corporation;

(17) Pledging or assigning all or any part of the receipts and revenues of the corporation for purposes of meeting bond or health systems liabilities;

(18) Owning, purchasing, leasing, exchanging, or otherwise acquiring property, whether real, personal or mixed, tangible or intangible, and of any interest therein, in the name of the corporation, which property is not

owned or controlled by the State but is owned or controlled by the corporation;

(19) Maintaining, improving, pledging, mortgaging, selling, or otherwise holding or disposing of property, whether real, personal or mixed, tangible or intangible, and of any interest therein, at any time and manner, in furtherance of the purposes and mission of the corporation; provided that the a[1] corporation legally holds or controls the property in its own name; and provided further that the corporation shall not sell, assign, lease, hypothecate, mortgage, pledge, give, or dispose of [a substantial portion] all or substantially all of its property [of any nature];

(20) Purchasing insurance and creating captive insurers in any arrangement deemed in the best interest of the corporation, including but not limited to funding and payment of deductibles and purchase of reinsurance;

(21) Acquiring by condemnation, pursuant to chapter 101, any real property required by the corporation to carry out the powers granted by this chapter;

(22) Depositing any moneys of the corporation in any banking institution within or without the State, and appointing, for the purpose of making deposits, one or more persons to act as custodians of the moneys of the corporation;

(23) Contracting for and accepting any gifts, grants, and loans of funds, property, or any other aid in any form from the federal government, the State, any state agency, or any other source, or any combination thereof, and complying, subject to this chapter, with the terms and conditions thereof;

(24) Providing health and medical services for the public directly or by agreement or lease with any person, firm, or private or public corporation or association through or in the health facilities of the corporation or otherwise;

(25) Approving medical staff bylaws, rules, and medical staff appointments and reappointments for all public health facilities, including without limitation, determining the conditions under which a health professional may be extended the privilege of practicing within a health facility, and adopting and implementing reasonable rules, without regard to chapter 91, for the credentialing and peer review of all persons and health professionals within the facility;

(26) (A) Investing any funds not required for immediate disbursement in property or in securities that meet the standard for investments established in chapter 88 as provided by the corporation board; provided the investment assists the corporation in carrying out its public purposes; selling from time to time securities thus purchased and held, and depositing any securities in any bank or financial institution within or without the State. Any funds deposited in a banking institution or in any depository authorized in this section shall be secured in a manner and subject to terms and conditions as the corporation board may determine, with or without payment of any interest on the deposit, including, without limitation, time deposits evidenced by certificates of deposit. Any bank or financial institution incorporated under the laws of this State may act as depository of any funds of the corporation and may issue indemnity bonds or may pledge securities as may be required by the corporation board.

(B) Notwithstanding subparagraph (A), contracting with the holders of any of its notes or bonds as to the custody, collection, securing, investment, and payment of any moneys of the corporation and of any moneys held in trust or otherwise for the payment of notes or bonds and carrying out the contract. Moneys held in trust or otherwise for the payment of notes or bonds or in any way to secure notes or bonds, and deposits of such moneys, may be secured in the same manner as moneys of the corporation, and all banks and trust companies are authorized to give security for the deposits;

(27) Entering into any agreement with the State including but not limited to contracts for the provision of goods, services, and facilities in support of the corporation's programs, and contracting for the provision of services to or on behalf of the State;

(28) Having a seal and altering the same at pleasure;

(29) Waiving, by means that the corporation deems appropriate, the exemption from federal income taxation of interest on the corporation's bonds, notes, or other obligations provided by the Internal Revenue Code of 1986, as amended, or any other federal statute providing a similar exemption;

(30) Developing internal policies and procedures for the procurement of goods and services, consistent with the goals of public accountability and public procurement practices, but not subject to chapter 103D. However, where possible, the corporation is encouraged to use the provisions of chapter 103D; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the corporation to any other provision of chapter 103D;

(31) Authorizing and establishing positions;

(32) Calling upon the attorney general for such legal services as the corporation may require; and

(33) Having and exercising all rights and powers necessary or incidental to or implied from the specific powers granted in this chapter, which specific powers shall not be considered as a limitation upon any power necessary or appropriate to carry out the purposes and intent of this chapter."

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

SECTION 8. 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 9. This Act shall take effect upon its approval.

(Approved June 22, 2000.)

**Note**

1. So in original.

# ACT 280

H.B. NO. 749

A Bill for an Act Relating to Dietitians.

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

SECTION 1. The legislature finds that nutrition plays a critical role in growth and brain development, the prevention of diseases such as cancer, the control and treatment of many diseases including arteriosclerosis and diabetes, and the attainment and maintenance of health. Due to the growing awareness of the relationship between sound nutrition and health, there has also been a virtual explosion in the amount of information available to the public about nutrition. Unfortunately, but understandably, much of this information is contradictory, confusing, and misleading and, when followed, may actually undermine rather than improve a person's health.

The purpose of this Act is to provide for the regulation of persons offering dietetic services to:

(1) Safeguard the public health, safety, and welfare;
(2) Protect those seeking dietetic services from incompetent and unscrupulous persons, and persons unauthorized to perform these services;
(3) Assure the highest degree of professional conduct on the part of dietitians; and
(4) Assure the availability of high quality dietetic services.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 19 to be appropriately designated and to read as follows:

"CHAPTER
DIETITIANS

§ **-1 Definitions.** As used in this chapter:

"Association" means the American Dietetic Association.

"Commission on Accreditation" means the Commission on Accreditation/Approval for Dietetics Education.

"Licensed dietitian" means a person who uses the title of licensed dietitian or dietitian and has been licensed to practice dietetics under this chapter.

"Department" means the department of health.

"Dietetic practice" means the integration and application of scientific principles of nutrition, biochemistry, physiology, food, behavioral, and social sciences, in managing disease, and achieving and maintaining human health throughout the life cycle.

"Director" means the director of health.

§ **-2 Dietitian licensure program.** There is established a dietitian licensure program within the department to be administered by the director.

§ **-3 Powers and duties of the director.** In addition to any other powers and duties authorized by law, the director shall have the following powers and duties:

(1) Examine and approve the qualifications of all applicants under this chapter and issue a license to each successful applicant granting permission to use the title of "licensed dietitian" or "dietitian" in this State pursuant to this chapter and the rules adopted pursuant thereto;

(2) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out this chapter;
(3) Administer, coordinate, and enforce this chapter and rules adopted pursuant thereto;
(4) Discipline a licensed dietitian for any cause described by this chapter or for any violation of the rules, and refuse to license a person for failure to meet licensure requirements or for any cause that would be grounds for disciplining a licensed dietitian; and
(5) Appoint an advisory committee consisting of licensed dietitians to assist with the implementation of this chapter and the rules adopted pursuant thereto.

§ **-4 Licensure required.** No person shall purport to be a "licensed dietitian" or use the letters "L.D." in connection with the person's name, or use any words or symbols indicating or tending to indicate that the person is a licensed dietitian without meeting the applicable requirements and holding a license as set forth in this chapter.

§ **-5 Licensure requirements.** In addition to the application requirements provided by section 436B-10, the director shall adopt rules as deemed necessary for the licensure of dietitians to protect public health and safety, and may consider the following as minimum evidence that an applicant is qualified to be licensed:

(1) The applicant received a baccalaureate degree or post-baccalaureate degree from a regionally accredited college or university with a major course of study in dietetics, human nutrition, food and nutrition, or food systems management, or academic requirements related thereto, approved by the Commission on Accreditation, or meets equivalent core requirements for the dietetics option at the University of Hawaii. In addition to basic dietetic principles of nutrition, human physiology, biochemistry, and behavioral and social sciences, course work shall include at least nine semester credits (or twelve quarter hours) relating to food science and food preparation. Applicants who have obtained their education outside of the United States and its territories shall have their academic degree validated by an agency authorized to validate foreign academic degrees as being equivalent to a baccalaureate, master's, or doctoral degree conferred by a regionally accredited college or university in the United States. Validation of a foreign degree shall include a verification statement of completion of the major course of study or related academic requirements, basic dietetic principles, and course work specified in this paragraph;
(2) Satisfactorily complete a documented supervised practice experience component in dietetic practice of not less than nine hundred hours approved by the Commission on Accreditation;
(3) Pass the registration examination for dietitians administered by the Commission on Dietetic Registration; and
(4) Submit a report of any disciplinary action relating to dietetics practice taken against the applicant in another jurisdiction.

An individual who provides evidence of current registration in the Association shall be deemed to have met the educational and supervised practice experience requirements of this section.

§ **-6 Licensure by endorsement.** The director shall grant, upon application and payment of proper fees, licensure to a person who, at the time of application, holds a valid certification or license as a dietitian issued by another

state, territory, or jurisdiction if the requirements for that certification or license are equal to, or greater than, the requirements of this chapter.

§ -7 **Issuance of license.** The director shall issue a license to any person who meets the requirements of this chapter, upon payment of the prescribed fees.

§ -8 **Renewal of license.** (a) Every license issued under this chapter shall be renewed triennially on or before June 30, with the first renewal deadline occurring on June 30, 2003. Failure to renew a license shall result in a forfeiture of the license. Licenses that have been so forfeited may be restored within one year of the expiration date upon payment of renewal and penalty fees. Failure to restore a forfeited license within one year of the date of its expiration shall result in the automatic termination of the license, and relicensure may require the person to apply as a new applicant and satisfy all licensure requirements again.

(b) Upon request, the director may grant inactive status to a person licensed under this chapter.

§ -9 **Fees; disposition.** (a) Application, examination, reexamination, license, renewal, late renewal penalty fees, inactive, and other reasonable and necessary fees relating to administration of this chapter, none of which are refundable, shall be as provided in rules adopted by the director pursuant to chapter 91.

(b) Fees assessed shall defray all costs to be incurred by the director to support the operation of the dietitian licensure program.

§ -10 **Dietitian licensure special fund.** There is established in the state treasury a special fund to be known as the dietitian licensure special fund to be administered by the department. Fees collected under section -9 shall be deposited in the dietitian licensure special fund and may be expended for the costs associated with administering the licensure program, including but not limited to education.

§ -11 **Revocation, suspension, denial, or condition of licenses; fines.** In addition to any other acts or conditions provided by law, the director may refuse to renew, reinstate, or restore, or may deny, revoke, suspend, fine, or condition in any manner any license for any one or more of the following acts or conditions on the part of the applicant or licensed dietitian:

(1) Conviction by a court of competent jurisdiction of a crime that the director has determined to be of a nature that renders the person convicted unfit to practice dietetics;
(2) Failure to report in writing to the director any disciplinary decision related to dietetic practice issued against the licensed dietitian or the applicant in any jurisdiction within thirty days of the disciplinary decision or within twenty days of licensure;
(3) Violation of recognized ethical standards for dietitians as set by the Association;
(4) Use of fraud, deception, or misrepresentation in obtaining a license;
(5) Revocation, suspension, or other disciplinary action by another state, territory, federal agency, or country against the licensed dietitian or applicant for any reason provided under this section; or
(6) Other just and sufficient cause that renders a person unfit to practice dietetics.

§ -12 **Prohibited acts; penalties.** (a) No person shall:

(1) Use in connection with the person's name any designation tending to imply that the person is a licensed dietitian unless the person is duly licensed and authorized under this chapter; or

(2) Represent oneself as a licensed dietitian during the time the person's license issued under this chapter is forfeited, inactive, terminated, suspended, or revoked.

(b) Any person who violates this section shall be subject to a fine of not more than $1,000 and each day's violation shall be deemed a separate offense."

SECTION 3. This Act shall take effect on July 1, 2000.

(Approved June 22, 2000.)

# ACT 281

H.B NO. 1900

A Bill for an Act Relating to the State Budget.

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

SECTION 1. This Act shall be known and may be cited as the Supplemental Appropriations Act of 2000.

SECTION 2. This Act amends Act 91, Session Laws of Hawaii 1999, and other appropriations and authorizations effective during fiscal biennium 1999-2001.

SECTION 3. Act 91, Session Laws of Hawaii 1999, is amended by amending section 3 to read as follows:

"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, 1999, and ending June 30, 2001. 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 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| A. ECONOMIC DEVELOPMENT | | | | | | | |
| 1. | BED102 | COMMERCE AND INDUSTRY | | | | | |
| | | | | 32.00* | | 32.00* | |
| | | OPERATING | BED | 4,636,265A | | 3,781,029A | |
| | | | BED | 195,578B | | 195,578B | |
| | | | | 3.00* | | 3.00* | |
| | | | BED | 6,621,666W | | 9,226,139W | |
| 2. | BED113 | TOURISM | | | | | |
| | | | | 7.00* | | 7.00* | |
| | | OPERATING | BED | 99,058,551B | | 100,782,012B | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | INVESTMENT CAPITAL | BED | 1,765,000 | C | | |
| 3. | BED143 | HIGH TECHNOLOGY DEVELOPMENT CORPORATION | | 1.50* | | 1.50* | |
| | | OPERATING | BED | 1,354,363 | A | 1,354,363 | A |
| | | | | 1.50* | | 1.50* | |
| | | | BED | 1,750,501 | B | 1,750,501 | B |
| | | | BED | 2,000,000 | N | 2,000,000 | N |
| | | INVESTMENT CAPITAL | BED | 1,000,000 | C | | |
| 4. | BED107 | FOREIGN TRADE | | 22.00* | | 22.00* | |
| | | OPERATING | BED | 1,936,865 | B | 1,936,865 | B |
| 5. | AGR101 | FINANCIAL ASSISTANCE FOR AGRICULTURE | | 12.00* | | 12.00* | |
| | | OPERATING | AGR | 976,270 | B | 976,270 | B |
| | | | AGR | 59,400 | T | 59,400 | T |
| | | | AGR | 5,000,000 | W | 5,000,000 | W |
| 6. | AGR122 | PLANT PEST AND DISEASE CONTROL | | 94.00* | | 94.00* | |
| | | OPERATING | AGR | 3,641,805 | A | 3,647,325 | A |
| | | | AGR | 279,964 | N | 279,964 | N |
| | | | AGR | 348,600 | T | 363,600 | T |
| | | | | 1.00* | | 1.00* | |
| | | | AGR | 116,276 | U | 196,486 | U |
| 7. | AGR131 | ANIMAL QUARANTINE | | 46.00* | | 48.00* | |
| | | OPERATING | AGR | 2,676,790 | B | 2,782,144 | B |
| 8. | AGR132 | ANIMAL DISEASE CONTROL | | 25.50* | | 23.50* | |
| | | OPERATING | AGR | 1,154,447 | A | 1,184,747 | A |
| | | | AGR | 15,000 | T | 15,000 | T |
| | | | AGR | 261,936 | U | 261,936 | U |
| 9. | LNR172 | FORESTRY - PRODUCTS DEVELOPMENT | | 20.00* | | 19.00* | |
| | | OPERATING | LNR | 654,711 | A | 773,955 | A |
| | | | LNR | 400,000 | B | 400,000 | B |
| | | | | 2.00* | | 3.00* | |
| | | | LNR | 374,505 | N | 413,617 | N |
| 10. | AGR151 | QUALITY AND PRICE ASSURANCE | | 31.00* | | 31.00* | |
| | | OPERATING | AGR | 1,257,618 | A | 1,259,058 | A |
| | | | | 2.00* | | 2.00* | |
| | | | AGR | 222,400 | B | 222,400 | B |
| | | | AGR | 19,424 | N | 19,424 | N |
| | | | AGR | 300,000 | T | 300,000 | T |
| | | | AGR | 573,201 | W | 573,201 | W |
| 11. | AGR171 | AGRICULTURAL DEVELOPMENT & MARKETING | | 20.00* | | 20.00* | |
| | | OPERATING | AGR | 1,142,559 | A | 1,144,809 | A |
| | | | AGR | 75,000 | N | 75,000 | N |
| 12. | AGR141 | AGRICULTURAL RESOURCE MANAGEMENT | | | | | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | | | 7.00* | | 2.00* | |
| | | OPERATING | AGR | 253,428A | | 253,428A | |
| | | | | 2.50* | | 2.50* | |
| | | | AGR | 283,907B | | 320,907B | |
| | | | | 13.50* | | 18.50* | |
| | | | AGR | 1,189,598W | | 1,339,851W | |
| | | INVESTMENT CAPITAL | AGR | 1,877,000C | | 1,663,000C | |
| | | | AGR | 1,725,000N | | 1,500,000N | |
| 13. | AGR161 | AGRIBUSINESS DEVELOPMENT & RESEARCH | | | | | |
| | | | | 1.00* | | 1.00* | |
| | | OPERATING | AGR | 1,538,447A | | 848,447A | |
| | | | AGR | 963,766W | | 956,778W | |
| 14. | AGR192 | GENERAL ADMINISTRATION FOR AGRICULTURE | | | | | |
| | | | | 29.00* | | 29.00* | |
| | | OPERATING | AGR | 1,299,151A | | 1,343,138A | |
| | | INVESTMENT CAPITAL | AGS | 800,000C | | | |
| | | | AGS | | | 400,000N | |
| 15. | AGR102 | FINANCIAL ASSISTANCE FOR AQUACULTURE | | | | | |
| 16. | LNR153 | COMMERCIAL FISHERIES AND AQUACULTURE | | | | | |
| | | | | 9.00* | | 9.00* | |
| | | OPERATING | LNR | 730,029A | | 690,029A | |
| | | | LNR | 100,000B | | 100,000B | |
| | | | LNR | 268,210N | | 308,210N | |
| | | INVESTMENT CAPITAL | LNR | 804,000C | | | |
| 17. | AGR153 | AQUACULTURE DEVELOPMENT PROGRAM | | | | | |
| | | | | 7.00* | | 7.00* | |
| | | OPERATING | AGR | 427,088A | | 427,088A | |
| | | | AGR | 74,962N | | 74,962N | |
| 18. | BED120 | ENERGY DEVELOPMENT AND MANAGEMENT | | | | | |
| | | | | 7.00* | | 7.00* | |
| | | OPERATING | BED | 1,699,664A | | 1,874,664A | |
| | | | BED | 1,732,875B | | 1,782,875B | |
| | | | BED | 9,088,389N | | 9,088,389N | |
| | | | BED | 100,000W | | 100,000W | |
| | | INVESTMENT CAPITAL | BED | 6,671,000C | | 8,703,000C | |
| 19. | LNR141 | WATER AND LAND DEVELOPMENT | | | | | |
| | | | | 3.00* | | 3.00* | |
| | | OPERATING | LNR | 266,227A | | 266,227A | |
| | | | LNR | 110,000W | | 110,000W | |
| | | INVESTMENT CAPITAL | LNR | 1,032,000C | | ~~12,627,000C~~ 7,627,000C[1] | |
| 20. | BED130 | ECON PLANNING & RESEARCH FOR ECON DEVELOPMENT | | | | | |
| | | | | 18.00* | | 18.00* | |
| | | OPERATING | BED | 925,491A | | 925,491A | |
| | | | | 3.00* | | 3.00* | |
| | | | BED | 956,034B | | 1,146,034B | |
| 21. | BED142 | GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT | | | | | |
| | | | | 31.00* | | 31.00* | |
| | | OPERATING | BED | 1,539,357A | | ~~1,750,914A~~ | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | | | | | 1,700,914A[1] | |
| | | | | 1.00* | | 1.00* | |
| | | | BED | 3,599,595 | B | 3,599,595 | B |
| **B. EMPLOYMENT** | | | | | | | |
| 1. | LBR111 - PLACEMENT SERVICES | | | | | | |
| | | | | 4.30* | | 4.30* | |
| | OPERATING | | LBR | 627,356 | A | 277,356 | A |
| | | | LBR | 9,698,814 | B | 9,698,814 | B |
| | | | | 119.20* | | 119.20* | |
| | | | LBR | 36,448,210 | N | 36,448,210 | N |
| | | | LBR | 1,228,307 | U | 1,228,307 | U |
| 2. | LBR135 - WORKFORCE DEVELOPMENT COUNCIL | | | | | | |
| | | | | 3.00* | | 3.00* | |
| | OPERATING | | LBR | 145,701 | A | 145,701 | A |
| | | | LBR | 171,160 | N | 172,450 | N |
| 3. | LBR143 - OCCUPATIONAL SAFETY & HEALTH | | | | | | |
| | | | | 26.00* | | 26.00* | |
| | OPERATING | | LBR | 975,736 | A | 975,736 | A |
| | | | LBR | 501,428 | B | 501,428 | B |
| | | | | 26.00* | | 26.00* | |
| | | | LBR | 1,694,407 | N | 1,639,407 | N |
| | | | | 18.00* | | 18.00* | |
| | | | LBR | 1,200,000 | W | 1,200,000 | W |
| 4. | LBR152 - WAGE STANDARDS & FAIR EMPLOYMENT PRACTICES | | | | | | |
| | | | | 28.35* | | 28.35* | |
| | OPERATING | | LBR | 1,016,924 | A | 1,016,924 | A |
| | | | LBR | 53,131 | U | 53,131 | U |
| 5. | LBR153 - CIVIL RIGHTS COMMISSION | | | | | | |
| | | | | 21.50* | | 21.50* | |
| | OPERATING | | LBR | 958,736 | A | 958,736 | A |
| | | | | 4.00* | | 4.00* | |
| | | | LBR | 414,888 | N | 414,888 | N |
| 6. | LBR161 - PUBLIC AND PRIVATE EMPLOYMENT | | | | | | |
| | | | | 2.00* | | 2.00* | |
| | OPERATING | | LBR | 498,808 | A | 498,808 | A |
| 7. | LBR171 - UNEMPLOYMENT COMPENSATION | | | | | | |
| | OPERATING | | LBR | 166,520,147 | B | 166,520,147 | B |
| | | | | 231.90* | | 231.90* | |
| | | | LBR | 12,818,961 | N | 14,430,644 | N |
| 8. | LBR183 - DISABILITY COMPENSATION | | | | | | |
| | | | | 116.00* | | 116.00* | |
| | OPERATING | | LBR | 4,091,734 | A | 4,091,734 | A |
| | | | | 3.00* | | 3.00* | |
| | | | LBR | 20,675,713 | B | 20,675,713 | B |
| 9. | HMS802 - VOCATIONAL REHABILITATION | | | | | | |
| | | | | 26.17* | | 26.17* | |
| | OPERATING | | HMS | 3,689,539 | A | 3,709,792 | A |
| | | | | 90.33* | | 90.33* | |
| | | | HMS | 8,843,430 | N | 8,896,922 | N |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | | HMS | 1,330,200 | W | 1,330,200 | W |
| 10. | LBR901 | DLIR-DATA GATHERING, RESEARCH AND ANALYSIS | | 8.88* | | 8.88* | |
| | | OPERATING | LBR | 609,443 | A | 609,443 | A |
| | | | | 29.12* | | 29.12* | |
| | | | LBR | 2,278,136 | N | 2,245,236 | N |
| 11. | LBR902 | GENERAL ADMINISTRATION | | 29.12* | | 29.12* | |
| | | OPERATING | LBR | 1,276,294 | A | 1,319,332 | A |
| | | | | 35.06* | | 35.06* | |
| | | | LBR | 2,537,314 | N | 2,533,505 | N |
| 12. | LBR903 | OFFICE OF COMMUNITY SERVICES | | 5.00* | | 5.00* | |
| | | OPERATING | LBR | 5,021,429 | A | 6,321,429 | A |
| | | | | 3.00* | | 3.00* | |
| | | | LBR | 5,810,273 | N | 5,810,273 | N |
| | | INVESTMENT CAPITAL | LBR | 950,000 | C | | |
| | | | LBR | | R | | |
| | | | LBR | | S | | |
| 13. | LBR812 | LABOR & INDUSTRIAL RELATIONS APPEALS BOARD | | 12.00* | | 12.00* | |
| | | OPERATING | LBR | 618,828 | A | 609,328 | A |
| **C.** | | **TRANSPORTATION FACILITIES** | | | | | |
| 1. | TRN102 | HONOLULU INTERNATIONAL AIRPORT | | 646.75* | | 646.75* | |
| | | OPERATING | TRN | 69,774,472 | B | 74,217,772 | B |
| | | INVESTMENT CAPITAL | TRN | 2,160,000 | B | 23,015,000 | B |
| | | | TRN | | | 56,000,000 | E |
| | | | TRN | | | 4,900,000 | N |
| 2. | TRN104 | GENERAL AVIATION | | 30.00* | | 30.00* | |
| | | OPERATING | TRN | 4,469,393 | B | 4,835,539 | B |
| 3. | TRN111 | HILO INTERNATIONAL AIRPORT | | 79.00* | | 79.00* | |
| | | OPERATING | TRN | 10,949,926 | B | 8,529,492 | B |
| | | INVESTMENT CAPITAL | TRN | 350,000 | B | 17,200,000 | B |
| 4. | TRN114 | KONA INTERNATIONAL AIRPORT AT KE'AHOLE | | 94.00* | | 94.00* | |
| | | OPERATING | TRN | 9,161,627 | B | 7,735,901 | B |
| 5. | TRN116 | WAIMEA-KOHALA AIRPORT | | 2.00* | | 2.00* | |
| | | OPERATING | TRN | 182,844 | B | 251,149 | B |
| 6. | TRN118 | UPOLU AIRPORT | | | | | |
| | | OPERATING | TRN | 223,562 | B | 275,437 | B |
| 7. | TRN131 | KAHULUI AIRPORT | | 172.00* | | 172.00* | |
| | | OPERATING | TRN | 14,106,535 | B | 13,391,849 | B |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | INVESTMENT CAPITAL | TRN | 13,800,000 | B | 27,805,000 | B |
| 8. | TRN133 | - HANA AIRPORT | | | | | |
| | | | | 2.00* | | 2.00* | |
| | | OPERATING | TRN | 130,454 | B | 140,308 | B |
| 9. | TRN135 | - KAPALUA AIRPORT | | | | | |
| | | | | 5.00* | | 5.00* | |
| | | OPERATING | TRN | 760,981 | B | 638,073 | B |
| 10. | TRN141 | - MOLOKAI AIRPORT | | | | | |
| | | | | 15.00* | | 15.00* | |
| | | OPERATING | TRN | 1,653,295 | B | 1,186,719 | B |
| 11. | TRN143 | - KALAUPAPA AIRPORT | | | | | |
| | | | | 1.00* | | 1.00* | |
| | | OPERATING | TRN | 75,715 | B | 43,365 | B |
| 12. | TRN151 | - LANAI AIRPORT | | | | | |
| | | | | 10.00* | | 10.00* | |
| | | OPERATING | TRN | 1,364,839 | B | 1,115,782 | B |
| 13. | TRN161 | - LIHUE AIRPORT | | | | | |
| | | | | 108.00* | | 108.00* | |
| | | OPERATING | TRN | 10,678,411 | B | 9,624,449 | B |
| | | INVESTMENT CAPITAL | TRN | 200,000 | B | 11,184,000 | B |
| 14. | TRN163 | - PORT ALLEN AIRPORT | | | | | |
| | | OPERATING | TRN | 1,860 | B | 1,860 | B |
| 15. | TRN195 | - AIRPORTS ADMINISTRATION | | | | | |
| | | | | 114.00* | | 114.00* | |
| | | OPERATING | TRN | 142,005,276 | B | 146,100,154 | B |
| | | INVESTMENT CAPITAL | TRN | 11,400,000 | B | 12,300,000 | B |
| | | | TRN | 4,800,000 | N | | |
| 16. | TRN301 | - HONOLULU HARBOR | | | | | |
| | | | | 125.00* | | 125.00* | |
| | | OPERATING | TRN | 11,596,895 | B | 11,690,916 | B |
| | | INVESTMENT CAPITAL | TRN | 13,490,000 | B | 2,100,000 | B |
| | | | TRN | 20,500,000 | E | | |
| | | | TRN | 3,000,000 | N | | |
| 17. | TRN303 | - KALAELOA BARBERS POINT HARBOR | | | | | |
| | | | | 3.00* | | 3.00* | |
| | | OPERATING | TRN | 434,308 | B | 434,308 | B |
| | | INVESTMENT CAPITAL | TRN | 500,000 | B | | |
| 18. | TRN305 | - KEWALO BASIN | | | | | |
| | | | | 2.00* | | 2.00* | |
| | | OPERATING | TRN | 795,951 | B | 846,951 | B |
| | | INVESTMENT CAPITAL | TRN | 1,700,000 | B | | |
| 19. | TRN311 | - HILO HARBOR | | | | | |
| | | | | 11.00* | | 11.00* | |
| | | OPERATING | TRN | 1,453,331 | B | 1,407,631 | B |
| | | INVESTMENT CAPITAL | TRN | 600,000 | B | 3,500,000 | B |
| 20. | TRN313 | - KAWAIHAE HARBOR | | | | | |
| | | | | 5.00* | | 5.00* | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | OPERATING | TRN | 498,961B | | 548,961B | |
| 21. | TRN331 | KAHULUI HARBOR | | 15.00* | | 15.00* | |
| | | OPERATING | TRN | 1,754,537B | | 1,765,437B | |
| | | INVESTMENT CAPITAL | TRN | | | 3,000,000B | |
| | | | TRN | 5,000,000E | | | |
| 22. | TRN341 | KAUNAKAKAI HARBOR | | 1.00* | | 1.00* | |
| | | OPERATING | TRN | 249,549B | | 219,249B | |
| 23. | TRN361 | NAWILIWILI HARBOR | | 14.00* | | 14.00* | |
| | | OPERATING | TRN | 1,271,537B | | 1,303,037B | |
| 24. | TRN363 | PORT ALLEN HARBOR | | 1.00* | | 1.00* | |
| | | OPERATING | TRN | 417,199B | | 298,199B | |
| | | INVESTMENT CAPITAL | TRN | 250,000B | | 1,500,000B | |
| 25. | TRN351 | KAUMALAPAU HARBOR | | | | | |
| | | INVESTMENT CAPITAL | TRN | 1,500,000B | | | |
| | | | TRN | 1,500,000R | | | |
| 26. | TRN395 | HARBORS ADMINISTRATION | | 58.00* | | 58.00* | |
| | | OPERATING | TRN | 34,676,758B | | 34,980,284B | |
| | | INVESTMENT CAPITAL | TRN | 3,375,000B | | 3,725,000B | |
| | | | TRN | 3,000,000N | | | |
| 27. | TRN501 | OAHU HIGHWAYS | | 275.00* | | 275.00* | |
| | | OPERATING | TRN | 38,534,043B | | 38,294,440B | |
| | | INVESTMENT CAPITAL | TRN | ~~24,960,000~~E | | ~~35,612,000~~E | |
| | | | | 16,960,000E[1] | | 27,106,000E[1] | |
| | | | TRN | 29,670,000N | | 43,640,000N | |
| | | | TRN | 3,000,000X | | 2,225,000X | |
| 28. | TRN511 | HAWAII HIGHWAYS | | 128.00* | | 128.00* | |
| | | OPERATING | TRN | 15,921,190B | | 16,907,302B | |
| | | INVESTMENT CAPITAL | TRN | 3,200,000E | | 5,023,000E | |
| | | | TRN | 5,315,000N | | 4,705,000N | |
| 29. | TRN531 | MAUI HIGHWAYS | | 79.00* | | 79.00* | |
| | | OPERATING | TRN | 11,319,326B | | 12,106,687B | |
| | | INVESTMENT CAPITAL | TRN | | | 10,700,000B | |
| | | | TRN | 4,730,000E | | ~~4,690,000~~E | |
| | | | | | | 3,690,000E[1] | |
| | | | TRN | 4,445,000N | | 34,610,000N | |
| 30. | TRN541 | MOLOKAI HIGHWAYS | | 12.00* | | 12.00* | |
| | | OPERATING | TRN | 3,769,351B | | 3,246,303B | |
| | | INVESTMENT CAPITAL | TRN | 75,000E | | 145,000E | |
| | | | TRN | | | 565,000N | |
| 31. | TRN551 | LANAI HIGHWAYS | | | | | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | | | 5.00* | | 5.00* | |
| | | OPERATING | TRN | 875,139 | B | 773,775 | B |
| 32. | TRN561 | - KAUAI HIGHWAYS | | | | | |
| | | | | 51.00* | | 51.00* | |
| | | OPERATING | TRN | 8,361,647 | B | 8,290,369 | B |
| | | INVESTMENT CAPITAL | TRN | 14,895,000 | E | 3,755,000 | E |
| | | | TRN | 5,125,000 | N | 2,340,000 | N |
| | | | TRN | | | 4,020,000 | X |
| 33. | TRN595 | - HIGHWAYS ADMINISTRATION | | | | | |
| | | | | 70.00* | | 70.00* | |
| | | OPERATING | TRN | 57,788,561 | B | 64,196,144 | B |
| | | | TRN | 800,000 | N | 800,000 | N |
| | | INVESTMENT CAPITAL | TRN | 20,110,000 | E | 17,110,000 | E |
| | | | TRN | 12,530,000 | N | 12,730,000 | N |
| 34. | TRN597 | - HIGHWAY SAFETY | | | | | |
| | | | | 36.00* | | 36.00* | |
| | | OPERATING | TRN | 5,061,332 | B | 5,067,300 | B |
| | | | | 3.00* | | 3.00* | |
| | | | TRN | 242,215 | N | 243,629 | N |
| 35. | TRN995 | - GENERAL ADMINISTRATION | | | | | |
| | | | | 90.00* | | 90.00* | |
| | | OPERATING | TRN | 11,313,020 | B | 11,317,289 | B |
| **D.** | **ENVIRONMENTAL PROTECTION** | | | | | | |
| 1. | HTH840 | - ENVIRONMENTAL MANAGEMENT | | | | | |
| | | | | 56.00* | | 56.00* | |
| | | OPERATING | HTH | 2,627,781 | A | 2,621,781 | A |
| | | | | 49.20* | | 50.20* | |
| | | | HTH | 6,371,466 | B | 6,441,609 | B |
| | | | | 34.40* | | 40.40* | |
| | | | HTH | 5,115,839 | N | 5,038,387 | N |
| | | | | 49.40* | | 49.40* | |
| | | | HTH | 47,572,946 | W | 47,891,545 | W |
| | | INVESTMENT CAPITAL | HTH | 3,846,000 | C | 3,846,000 | C |
| | | | HTH | 19,225,000 | N | 19,225,000 | N |
| 2. | AGR846 | - PESTICIDES | | | | | |
| | | | | 20.00* | | 16.00* | |
| | | OPERATING | AGR | 761,054 | A | 673,814 | A |
| | | | AGR | 350,000 | N | 350,000 | N |
| | | | | | | 4.00* | |
| | | | AGR | 250,000 | W | 450,751 | W |
| 3. | LNR401 | - AQUATIC RESOURCES | | | | | |
| | | | | 27.00* | | 27.00* | |
| | | OPERATING | LNR | 2,070,437 | A | 1,987,437 | A |
| | | | | 1.00* | | 1.00* | |
| | | | LNR | 1,081,717 | N | 1,164,717 | N |
| 4. | LNR402 | - FORESTS AND WILDLIFE RESOURCES | | | | | |
| | | | | 54.50* | | 54.50* | |
| | | OPERATING | LNR | 2,784,513 | A | 2,909,513 | A |
| | | | | 6.50* | | 6.50* | |
| | | | LNR | 1,360,977 | N | 1,360,977 | N |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | INVESTMENT CAPITAL | LNR | 25,000C | | | |
| 5. | LNR404 | - WATER RESOURCES | | 19.00* | | 19.00* | |
| | | OPERATING | LNR | 1,416,525A | | 1,416,525A | |
| | | | LNR | 110,704B | | 110,704B | |
| | | INVESTMENT CAPITAL | LNR | 270,000C | | | |
| 6. | LNR405 | - CONSERVATION & RESOURCES ENFORCEMENT | | 97.50* | | 97.50* | |
| | | OPERATING | LNR | 4,452,711A | | 4,475,708A | |
| | | | | 18.00* | | 18.00* | |
| | | | LNR | 1,570,896B | | 1,570,896B | |
| | | | | 2.50* | | 2.50* | |
| | | | LNR | 630,390N | | 630,390N | |
| | | | | 1.00* | | 1.00* | |
| | | | LNR | 11,660W | | 11,660W | |
| | | INVESTMENT CAPITAL | LNR | 35,000C | | | |
| | | | LNR | | | 780,000N | |
| 7. | LNR407 | - NATURAL AREA RESERVES & MANAGEMENT | | 27.00* | | 27.00* | |
| | | OPERATING | LNR | 1,138,826A | | 1,138,826A | |
| | | | LNR | 1,500,000B | | 1,500,000B | |
| 8. | HTH850 | - POLICY DVLPMENT, COORD & ANLYS FOR NAT P ENVR | | 5.00* | | 5.00* | |
| | | OPERATING | HTH | 231,586A | | 231,586A | |
| 9. | LNR906 | - LNR-NATURAL PHYSICAL ENVIRONMENT | | 34.00* | | 34.00* | |
| | | OPERATING | LNR | 1,503,441A | | 1,660,103A | |
| | | | LNR | | | 79,397B | |
| | | INVESTMENT CAPITAL | LNR | 1,560,000C | | 2,560,000C | |
| 10. | HTH849 | - ENVIRONMENTAL HEALTH ADMINISTRATION | | 15.50* | | 15.50* | |
| | | OPERATING | HTH | 660,336A | | 660,336A | |
| | | | | 18.50* | | 18.50* | |
| | | | HTH | 1,598,532N | | 1,598,532N | |
| | | | | 10.00* | | 10.00* | |
| | | | HTH | 2,857,945W | | 2,857,945W | |
| **E. HEALTH** | | | | | | | |
| 1. | HTH101 | - TUBERCULOSIS/HANSEN'S DISEASE CONTROL | | 36.00* | | 36.00* | |
| | | OPERATING | HTH | 2,118,451A | | 2,429,271A | |
| | | | | 3.00* | | 3.00* | |
| | | | HTH | 1,795,669N | | 1,795,669N | |
| | | INVESTMENT CAPITAL | AGS | 255,000C | | 2,657,000C | |
| 2. | HTH111 | - HANSEN'S DISEASE INSTITUTIONAL SERVICES | | 69.00* | | 69.00* | |
| | | OPERATING | HTH | 3,966,290A | | 3,966,290A | |
| 3. | HTH121 | - STD/AIDS PREVENTION SERVICES | | 15.00* | | 15.00* | |
| | | OPERATING | HTH | 5,431,608A | | 5,552,608A | |
| | | | | 4.50* | | 4.50* | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | | HTH | 3,382,140 | N | 4,672,303 | N |
| 4. | HTH131 - EPIDEMIOLOGY SERVICES | | | | | | |
| | | | | 19.00 | * | 19.00 | * |
| | OPERATING | | HTH | 1,204,975 | A | 1,204,975 | A |
| | | | | 21.00 | * | 21.00 | * |
| | | | HTH | 4,200,000 | N | 4,200,000 | N |
| 5. | HTH141 - DENTAL DISEASES | | | | | | |
| | | | | 25.60 | * | 25.60 | * |
| | OPERATING | | HTH | 1,156,334 | A | 2,156,334 | A |
| 6. | HTH180 - HEALTH PROMOTION & ED, INJURY PREV & CONTROL | | | | | | |
| | | | | 22.80 | * | 22.80 | * |
| | OPERATING | | HTH | 1,089,103 | A | 1,089,103 | A |
| | | | | 5.00 | * | 5.00 | * |
| | | | HTH | 3,704,524 | N | 3,704,524 | N |
| 7. | HTH165 - WOMAN, INFANTS & CHILDREN'S BRANCH | | | | | | |
| | | | | 116.50 | * | 116.50 | * |
| | OPERATING | | HTH | 33,677,385 | N | 33,677,385 | N |
| 8. | HTH501 - DEVELOPMENTAL DISABILITIES | | | | | | |
| | | | | 299.75 | * | 270.75 | * |
| | OPERATING | | HTH | 27,117,661 | A | 30,694,318 | A |
| 9. | HTH530 - CHILDREN WITH SPECIAL HEALTH NEEDS SERVICES | | | | | | |
| | | | | 84.25 | * | 82.25 | * |
| | OPERATING | | HTH | 5,908,309 | A | 6,094,446 | A |
| | | | | 3.00 | * | 3.00 | * |
| | | | HTH | 603,121 | B | 603,121 | B |
| | | | | 23.00 | * | 25.00 | * |
| | | | HTH | 5,432,299 | N | 5,380,323 | N |
| 10. | HTH540 - SCHOOL HEALTH SERVICES | | | | | | |
| | | | | 61.00 | * | 63.00 | * |
| | OPERATING | | HTH | 2,051,346 | A | 2,321,842 | A |
| | | | | 2.00 | * | | * |
| | | | HTH | 100,024 | N | | N |
| 11. | HTH550 - MATERNAL & CHILD HEALTH SERVICES | | | | | | |
| | | | | 21.00 | * | 20.00 | * |
| | OPERATING | | HTH | 12,152,316 | A | 11,629,010 | A |
| | | | HTH | 300,000 | B | 300,000 | B |
| | | | | 28.00 | * | 27.00 | * |
| | | | HTH | 4,097,628 | N | 5,197,628 | N |
| | | | HTH | 250,000 | U | 250,000 | U |
| | INVESTMENT CAPITAL | | HTH | 887,000 | C | | |
| 12. | HTH570 - COMMUNITY HEALTH NURSING | | | | | | |
| | | | | 442.50 | * | 442.00 | * |
| | OPERATING | | HTH | 12,407,671 | A | 12,455,354 | A |
| | | | | 1.00 | * | | * |
| | | | HTH | 29,675 | N | | N |
| 13. | HTH730 - EMERGENCY MEDICAL SERVICES | | | | | | |
| | | | | 12.00 | * | 12.00 | * |
| | OPERATING | | HTH | 35,521,864 | A | 35,688,037 | A |
| | | | HTH | 295,786 | N | 295,786 | N |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| 14. | HTH595 | HEALTH RESOURCES ADMINISTRATION | | 44.00* | | 43.00* | |
| | | OPERATING | HTH | 8,243,419 | A | 4,562,395 | A |
| | | | | 2.00* | | 2.00* | |
| | | | HTH | 4,678,499 | B | 4,678,499 | B |
| | | | | 3.00* | | 4.00* | |
| | | | HTH | 591,804 | N | 591,804 | N |
| | | | HTH | 4,500,000 | T | 4,500,000 | T |
| | | INVESTMENT CAPITAL | HTH | | | 323,000 | C |
| 15. | HTH210 | HOSPITAL CARE - HAWAII HEALTH SYSTEMS CORP | | | | | |
| | | OPERATING | HTH | 7,750,000 | A | 13,000,000 | A |
| | | | | 2,836.25* | | 2,836.25* | |
| | | | HTH | 235,409,387 | B | 239,123,387 | B |
| | | INVESTMENT CAPITAL | HTH | 1,384,000 | C | 1,482,000 | C |
| | | | HTH | 15,000,000 | E | 53,000,000 | E |
| 16. | SUB601 | PRIVATE HOSPITALS & MEDICAL SERVICES | | | | | |
| | | OPERATING | SUB | | | 2,535,000 | A |
| 17. | HTH420 | ADULT MENTAL HEALTH - OUTPATIENT | | 227.00* | | 232.00* | |
| | | OPERATING | HTH | 17,016,359 | A | 36,174,272 | A |
| | | | HTH | 2,507,430 | B | 2,507,430 | B |
| | | | HTH | 1,026,514 | N | 1,026,514 | N |
| 18. | HTH430 | ADULT MENTAL HEALTH - INPATIENT | | 617.50* | | 561.50* | |
| | | OPERATING | HTH | 30,533,376 | A | 27,658,878 | A |
| | | INVESTMENT CAPITAL | AGS | | C | | |
| 19. | HTH440 | ALCOHOL & DRUG ABUSE | | 7.00* | | 7.00* | |
| | | OPERATING | HTH | 6,072,559 | A | 6,098,572 | A |
| | | | HTH | | | 150,000 | B |
| | | | | 2.00* | | 2.00* | |
| | | | HTH | 6,164,754 | N | 6,566,345 | N |
| 20. | HTH460 | CHILD & ADOLESCENT MENTAL HEALTH | | 156.00* | | 230.00* | |
| | | OPERATING | HTH | 83,336,964 | A | 87,342,546 | A |
| | | | HTH | 3,852,095 | B | 7,462,518 | B |
| | | | HTH | 4,598,644 | N | 512,486 | N |
| 21. | HTH495 | BEHAVIORAL HEALTH SERVICES ADMINISTRATION | | 75.00* | | 108.00* | |
| | | OPERATING | HTH | 6,707,363 | A | 11,691,934 | A |
| | | | HTH | 330,347 | B | 679,172 | B |
| | | | | 4.00* | | 4.00* | |
| | | | HTH | 1,698,299 | N | 1,698,299 | N |
| | | | HTH | 1,771,150 | U | 1,771,150 | U |
| 22. | HTH610 | ENVIRONMENTAL HEALTH SERVICES | | 148.00* | | 139.00* | |
| | | OPERATING | HTH | 5,234,494 | A | 5,295,583 | A |
| | | | | 6.00* | | 6.00* | |
| | | | HTH | 544,975 | B | 588,475 | B |
| | | | | 7.00* | | 7.00* | |
| | | | HTH | 515,230 | N | 515,230 | N |
| | | | | 2.00* | | 2.00* | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | | HTH | 70,298U | | 70,298U | |
| 23. | HTH710 - STATE LABORATORY SERVICES | | | | | | |
| | | | | 90.00* | | 86.00* | |
| | | OPERATING | HTH | 4,413,433A | | 4,413,433A | |
| | | INVESTMENT CAPITAL | HTH | | | 154,000C | |
| 24. | HTH720 - MED FACILITIES - STDS, INSPECTION, LICENSING | | | | | | |
| | | | | 16.90* | | 15.90* | |
| | | OPERATING | HTH | 898,688A | | 898,688A | |
| | | | | 20.70* | | 20.70* | |
| | | | HTH | 1,559,994N | | 1,559,994N | |
| 25. | HTH906 - COMPREHENSIVE HEALTH PLANNING | | | | | | |
| | | | | 8.00* | | 8.00* | |
| | | OPERATING | HTH | 439,450A | | 410,450A | |
| | | | HTH | | | 29,000B | |
| 26. | HTH760 - HEALTH STATUS MONITORING | | | | | | |
| | | | | 29.00* | | 29.00* | |
| | | OPERATING | HTH | 1,339,753A | | 1,339,753A | |
| | | | HTH | 250,000B | | 250,000B | |
| | | | HTH | 397,214N | | 397,214N | |
| | | INVESTMENT CAPITAL | AGS | 120,000C | | | |
| 27. | HTH905 - POLICY DEV & ADVOCACY FOR DEV DISABILITIES | | | | | | |
| | | | | 1.50* | | 1.50* | |
| | | OPERATING | HTH | 80,151A | | 80,151A | |
| | | | | 6.50* | | 6.50* | |
| | | | HTH | 433,728N | | 433,728N | |
| 28. | HTH907 - GENERAL ADMINISTRATION | | | | | | |
| | | | | 114.00* | | 113.00* | |
| | | OPERATING | HTH | 5,127,611A | | 5,332,056A | |
| | | | HTH | 441,401N | | 441,401N | |
| | | INVESTMENT CAPITAL | AGS | 1,080,000C | | | |
| | | | HTH | 150,000C | | | |
| **F.** | **SOCIAL SERVICES** | | | | | | |
| 1. | HMS301 - CHILD WELFARE SERVICES | | | | | | |
| | | | | 199.44* | | 201.61* | |
| | | OPERATING | HMS | 17,472,121A | | 18,274,308A | |
| | | | HMS | 300,000B | | 300,000B | |
| | | | | 172.56* | | 172.39* | |
| | | | HMS | 21,242,841N | | 21,748,726N | |
| | | | HMS | 425,000W | | 425,000W | |
| 2. | HMS302 - CHILD CARE SERVICES | | | | | | |
| | | | | 24.00* | | 24.00* | |
| | | OPERATING | HMS | 2,332,535A | | 2,240,866A | |
| | | | | 1.00* | | 1.00* | |
| | | | HMS | 3,723,252N | | 3,723,252N | |
| 3. | HMS303 - CHILD PLACEMENT BOARD AND RELATED CLIENT PAYMENTS | | | | | | |
| | | OPERATING | HMS | 14,574,464A | | 18,306,722A | |
| | | | HMS | 9,132,148N | | 10,211,401N | |
| 4. | HMS305 - CHILD CARE PAYMENTS | | | | | | |
| | | OPERATING | HMS | 11,579,970A | | 16,824,607A | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | | HMS | 16,809,954N | | 22,409,954N | |
| 5. | HMS501 | YOUTH SERVICES ADMINISTRATION | | 22.00* | | 22.00* | |
| | | OPERATING | HMS | 1,185,930A | | 1,187,118A | |
| | | | HMS | 2,336,746N | | 4,452,146N | |
| 6. | HMS502 | YOUTH SERVICES PROGRAM | | | | | |
| | | OPERATING | HMS | 3,522,574A | | 3,522,574A | |
| | | | HMS | 870,342N | | 870,342N | |
| 7. | HMS503 | YOUTH RESIDENTIAL PROGRAMS | | 75.50* | | 75.50* | |
| | | OPERATING | HMS | 4,655,939A | | 4,976,830A | |
| | | | HMS | 1,802,704N | | 1,802,704N | |
| 8. | DEF112 | SERVICES TO VETERANS | | 24.00* | | 24.00* | |
| | | OPERATING | DEF | 1,125,776A | | 1,134,369A | |
| | | INVESTMENT CAPITAL | AGS | 200,000C | | | |
| | | | DEF | 3,150,000C | | | |
| 9. | HMS601 | ADULT COMMUNITY CARE SERVICES BRANCH | | 81.16* | | 80.58* | |
| | | OPERATING | HMS | 6,987,048A | | 7,529,016A | |
| | | | | .34* | | .92* | |
| | | | HMS | 5,008,264N | | 5,023,209N | |
| | | | HMS | 279,687U | | 279,687U | |
| 10. | HMS201 | TEMP ASSISTANCE TO NEEDY FAMILIES | | | | | |
| | | OPERATING | HMS | 13,291,181A | | 11,769,081A | |
| | | | HMS | 75,910,687N | | 70,910,687N | |
| 11. | HMS202 | PAYMNTS TO ASSIST THE AGED, BLIND & DISABLED | | | | | |
| | | OPERATING | HMS | 24,160,871A | | 23,540,752A | |
| 12. | HMS204 | GENERAL ASSISTANCE PAYMENTS | | | | | |
| | | OPERATING | HMS | 24,761,632A | | 24,761,632A | |
| 13. | HMS206 | FEDERAL ASSISTANCE PAYMENTS | | | | | |
| | | OPERATING | HMS | 1,491,331N | | 1,491,331N | |
| 14. | HMS203 | TEMP ASSISTANCE TO OTHER NEEDY FAMILIES | | | | | |
| | | OPERATING | HMS | 44,381,664A | | 39,405,440A | |
| 15. | BED220 | RENTAL HOUSING SERVICES | | | | | |
| | | OPERATING | BED | 1,007,337A | | 1,007,337A | |
| | | | | 201.00* | | 197.00* | |
| | | | BED | 21,277,601N | | 21,123,126N | |
| | | | | 23.00* | | 23.00* | |
| | | | BED | 3,681,800W | | 3,681,800W | |
| | | INVESTMENT CAPITAL | BED | 180,000C | | 900,000C | |
| 16. | BED807 | TEACHER HOUSING | | | | | |
| | | OPERATING | BED | 249,972W | | 249,972W | |
| 17. | BED229 | HCDCH ADMINISTRATION | | | | | |
| | | | | 26.00* | | 29.00* | |
| | | OPERATING | BED | 10,059,620N | | 10,176,304N | |
| | | | | 20.00* | | 20.00* | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | | BED | 2,701,326 | W | 2,701,326 | W |
| | | INVESTMENT CAPITAL | BED | | | 1,000,000 | C |
| | | | BED | 27,847,000 | N | 14,902,000 | N |
| 18. | BED225 - PRIVATE HOUSING DEVELOPMENT & OWNERSHIP | | | 10.00* | | 11.00* | |
| | | OPERATING | BED | 1,172,693 | N | 1,350,658 | N |
| | | | | 13.00* | | 13.00* | |
| | | | BED | 2,253,311 | W | 2,064,006 | W |
| 19. | BED223 - BROADENED HOMESITE OWNERSHIP | | | | | | |
| | | OPERATING | BED | 233,953 | W | 233,953 | W |
| 20. | BED227 - HOUSING FINANCE | | | | | | |
| | | OPERATING | BED | 3,000,000 | N | 3,000,000 | N |
| | | | | 11.00* | | 11.00* | |
| | | | BED | 1,338,741 | W | 1,387,872 | W |
| 21. | BED222 - RENTAL ASSISTANCE SERVICES | | | 5.25* | | 5.25* | |
| | | OPERATING | BED | 2,017,698 | A | 1,984,698 | A |
| | | | | 10.75* | | 10.75* | |
| | | | BED | 17,391,306 | N | 17,391,306 | N |
| 22. | BED224 - HOMELESS SERVICES | | | 4.00* | | 4.00* | |
| | | OPERATING | BED | 4,019,475 | A | 3,952,475 | A |
| | | | BED | 1,025,000 | N | 1,025,000 | N |
| 23. | BED231 - RENTAL HOUSING TRUST FUND | | | | | | |
| | | OPERATING | BED | 6,653,827 | T | 6,653,827 | T |
| 24. | HMS230 - HEALTH CARE PAYMENTS | | | | | | |
| | | OPERATING | HMS | 149,923,074 | A | 138,362,295 | A |
| | | | HMS | 168,683,650 | N | 150,295,539 | N |
| | | | HMS | 7,411,460 | U | 7,641,215 | U |
| 25. | HMS603 - HOME AND COMMUNITY BASED CARE SERVICES | | | | | | |
| | | OPERATING | HMS | 10,643,174 | A | 11,177,039 | A |
| | | | HMS | 21,479,723 | N | 27,930,829 | N |
| | | | HMS | 10,836,549 | U | 15,167,729 | U |
| 26. | HMS245 - QUEST HEALTH CARE PAYMENTS | | | | | | |
| | | OPERATING | HMS | 142,642,982 | A | 148,893,561 | A |
| | | | HMS | 149,505,647 | N | 157,653,958 | N |
| 27. | HMS236 - ELIG DETER. & EMPLOYMT RELATED SVCS | | | 334.74* | | 334.74* | |
| | | OPERATING | HMS | 11,155,293 | A | 11,171,003 | A |
| | | | | 260.26* | | 260.26* | |
| | | | HMS | 12,842,579 | N | 12,842,579 | N |
| 28. | HMS238 - DISABILITY DETERMINATION | | | 45.00* | | 45.00* | |
| | | OPERATING | HMS | 4,538,187 | N | 4,538,187 | N |
| 29. | ATG500 - CHILD SUPPORT ENFORCEMENT SERVICES | | | 50.66* | | 50.66* | |
| | | OPERATING | ATG | 1,654,284 | A | 1,637,692 | A |
| | | | | 125.40* | | 125.40* | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | | ATG | 13,197,573N | | 13,141,473N | |
| | | | | 13.94* | | 13.94* | |
| | | | ATG | 2,654,987T | | 2,626,087T | |
| 30. | HMS237 - EMPLOYMENT & TRAINING | | | | | | |
| | | | | 2.00* | | 2.00* | |
| | OPERATING | | HMS | 503,723A | | 503,723A | |
| | | | HMS | 2,157,361N | | 2,157,361N | |
| 31. | HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDS | | | | | | |
| | | | | 33.00* | | 33.00* | |
| | OPERATING | | HHL | 1,298,554A | | 1,298,554A | |
| | | | | 85.00* | | 85.00* | |
| | | | HHL | 5,822,627B | | 5,856,415B | |
| | INVESTMENT CAPITAL | | HHL | 300,000C | | | |
| | | | HHL | | | 25,000,000E | |
| 32. | HTH904 - EXECUTIVE OFFICE ON AGING | | | | | | |
| | | | | 3.55* | | 3.55* | |
| | OPERATING | | HTH | 4,981,871A | | 5,072,592A | |
| | | | | 7.45* | | 7.45* | |
| | | | HTH | 5,875,828N | | 5,875,828N | |
| 33. | HTH520 - PLAN, PROG DEV & COORD OF SVS FOR PERS W/DISABILITIES | | | | | | |
| | | | | 5.00* | | 5.00* | |
| | OPERATING | | HTH | 614,238A | | 614,238A | |
| 34. | HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS | | | | | | |
| | | | | 59.00* | | 103.00* | |
| | OPERATING | | HMS | 7,161,780A | | 8,492,749A | |
| | | | | 63.00* | | 107.00* | |
| | | | HMS | 11,222,854N | | 15,239,691N | |
| 35. | HMS903 - GEN SPPT FOR BEN, EMPLOYMT & SPPT SVCS | | | | | | |
| | | | | 55.80* | | 55.80* | |
| | OPERATING | | HMS | 8,074,132A | | 8,133,697A | |
| | | | | 47.20* | | 47.20* | |
| | | | HMS | 12,333,711N | | 11,733,711N | |
| 36. | HMS904 - GENERAL ADMINISTRATION (DHS) | | | | | | |
| | | | | 170.50* | | 170.50* | |
| | OPERATING | | HMS | 6,634,720A | | 6,671,679A | |
| | | | | 15.50* | | 15.50* | |
| | | | HMS | 993,015N | | 993,015N | |
| 37. | HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES | | | | | | |
| | | | | 14.97* | | 17.56* | |
| | OPERATING | | HMS | 1,231,546A | | 1,297,829A | |
| | | | | 10.03* | | 10.44* | |
| | | | HMS | 1,307,736N | | 1,307,736N | |
| **G.** | **FORMAL EDUCATION** | | | | | | |
| 1. | EDN100 - SCHOOL-BASED BUDGETING | | | | | | |
| | | | | 11,418.50* | | 11,421.50* | |
| | OPERATING | | EDN | 554,402,063A | | ~~782,927,104A~~ 779,927,104A[1] | |
| | | | EDN | 5,372,924B | | 5,372,924B | |
| | | | EDN | 54,405,062N | | 60,158,283N | |
| | | | EDN | 3,410,000T | | 3,410,000T | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | | EDN | 928,135U | | 928,135U | |
| | | | EDN | 2,000,000W | | 2,000,000W | |
| | | INVESTMENT CAPITAL | AGS | 110,750,000B | | 80,731,000B | |
| | | | AGS | ~~11,584,000C~~ | | ~~22,568,000C~~ | |
| | | | | 10,509,000C[1] | | 12,005,000C[1] | |
| | | | AGS | 750,000N | | | |
| | | | EDN | 250,000B | | 250,000B | |
| 2. | EDN150 - COMPREHENSIVE SCHOOL SUPPORT SERVICES | | | 3,603.50* | | 4,248.50* | |
| | OPERATING | | EDN | 137,840,809A | | 154,035,833A | |
| | | | | | | 2.00* | |
| | | | EDN | 21,347,768N | | 25,918,685N | |
| | | | EDN | 1,000,000U | | 1,000,000U | |
| 3. | EDN200 - INSTRUCTIONAL SUPPORT | | | 208.00* | | 208.00* | |
| | OPERATING | | EDN | 16,185,466A | | 17,703,268A | |
| | | | EDN | 2,032,124N | | 2,340,205N | |
| | | | EDN | 800,000U | | 800,000U | |
| | | | EDN | 750,000W | | 750,000W | |
| 4. | EDN300 - STATE AND DISTRICT ADMINISTRATION | | | 416.50* | | 416.50* | |
| | OPERATING | | EDN | 22,186,091A | | 22,199,067A | |
| | | | EDN | 418,621N | | 418,621N | |
| 5. | EDN400 - SCHOOL SUPPORT | | | 1,541.10* | | 1,586.60* | |
| | OPERATING | | EDN | 77,972,061A | | 100,670,944A | |
| | | | | 720.50* | | 720.50* | |
| | | | EDN | 19,102,730B | | 18,888,750B | |
| | | | | 3.00* | | 3.00* | |
| | | | EDN | 32,262,220N | | 32,632,649N | |
| 6. | EDN500 - SCHOOL COMMUNITY SERVICE | | | 36.50* | | 36.50* | |
| | OPERATING | | EDN | 16,305,996A | | 16,418,870A | |
| | | | EDN | 953,642B | | 1,939,006B | |
| | | | EDN | 1,789,147N | | 1,889,147N | |
| | | | EDN | 400,000W | | 530,000W | |
| 7. | AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS | | | 239.00* | | 239.00* | |
| | OPERATING | | AGS | 25,380,208A | | 22,761,583A | |
| | INVESTMENT CAPITAL | | AGS | | | 15,000,000C | |
| 8. | AGS808 - STUDENT TRANSPORTATION | | | 10.00* | | * | |
| | OPERATING | | AGS | 20,263,549A | | A | |
| 9. | EDN407 - PUBLIC LIBRARIES | | | 519.05* | | 519.05* | |
| | OPERATING | | EDN | 19,617,274A | | 20,743,810A | |
| | | | EDN | 3,125,000B | | 3,125,000B | |
| | | | EDN | 662,764N | | 662,764N | |
| | INVESTMENT CAPITAL | | AGS | 1,820,000C | | 1,400,000C | |
| 10. | UOH100 - UNIVERSITY OF HAWAII, MANOA | | | 3,438.09* | | 3,438.09* | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | OPERATING | UOH | 168,887,909A | | ~~172,868,693A~~ 172,793,693A[1] | |
| | | | | 81.75* | | 81.75* | |
| | | | UOH | 60,358,059B | | 60,086,024B | |
| | | | | 78.06* | | 78.06* | |
| | | | UOH | 5,411,667N | | 5,411,667N | |
| | | | | 205.75* | | 205.75* | |
| | | | UOH | 58,203,897W | | 58,203,897W | |
| | | INVESTMENT CAPITAL | AGS | 1,808,000C | | | |
| | | | UOH | 500,000B | | | |
| | | | UOH | 7,853,000C | | 1,889,000C | |
| | | | UOH | 6,750,000E | | | |
| | | | UOH | 730,000R | | | |
| | | | UOH | 150,000W | | | |
| 11. | UOH210 - UNIVERSITY OF HAWAII, HILO | | | | | | |
| | | | | 327.00* | | 349.50* | |
| | | OPERATING | UOH | 16,656,670A | | 18,225,468A | |
| | | | | 14.00* | | 14.00* | |
| | | | UOH | 6,840,557B | | 7,340,557B | |
| | | | UOH | 394,543N | | 394,543N | |
| | | | | 11.50* | | 11.50* | |
| | | | UOH | 4,084,938W | | 4,084,938W | |
| | | INVESTMENT CAPITAL | AGS | 5,376,000C | | 719,000C | |
| | | | AGS | 1,800,000N | | | |
| | | | AGS | 400,000S | | | |
| | | | UOH | 500,000C | | 1,000,000C | |
| | | | UOH | | | 625,000N | |
| 12. | UOH700 - UNIVERSITY OF HAWAII, WEST OAHU | | | | | | |
| | | | | 47.50* | | 47.50* | |
| | | OPERATING | UOH | 2,242,522A | | 2,242,522A | |
| | | | UOH | 849,815B | | 1,200,000B | |
| | | | UOH | 7,000N | | 7,000N | |
| | | | UOH | 125,000W | | 125,000W | |
| 13. | UOH800 - UH - COMMUNITY COLLEGES | | | | | | |
| | | | | 1,514.25* | | 1,518.25* | |
| | | OPERATING | UOH | 64,933,376A | | 67,389,595A | |
| | | | | 50.50* | | 50.50* | |
| | | | UOH | 32,283,340B | | 32,283,340B | |
| | | | | 15.60* | | 15.60* | |
| | | | UOH | 3,540,927N | | 3,540,927N | |
| | | | | 29.00* | | 29.00* | |
| | | | UOH | 10,773,091W | | 10,773,091W | |
| | | INVESTMENT CAPITAL | AGS | 17,939,000C | | 700,000C | |
| | | | UOH | 1,050,000C | | | |
| 14. | UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT | | | | | | |
| | | | | 319.00* | | 319.00* | |
| | | OPERATING | UOH | 24,675,998A | | 125,898,736A | |
| | | | | 4.00* | | 4.00* | |
| | | | UOH | 1,266,333B | | 1,266,333B | |
| | | | | 4.00* | | 4.00* | |
| | | | UOH | 457,667N | | 457,667N | |
| | | | | 100.00* | | 100.00* | |
| | | | UOH | 44,852,645W | | 44,852,645W | |
| | | INVESTMENT CAPITAL | AGS | 13,945,000C | | 3,673,000C | |
| | | | UOH | 13,893,000C | | 19,474,000C | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | | UOH | 500,000 | W | | |
| 15. | UOH220 | SMALL BUSINESS DEVELOPMENT | | | | | |
| | | OPERATING | UOH | 390,000 | A | 650,000 | A |
| **H.** | **CULTURE AND RECREATION** | | | | | | |
| 1. | UOH881 | AQUARIA | | | | | |
| | | | | 13.00* | | 13.00* | |
| | | OPERATING | UOH | 494,504 | A | 494,504 | A |
| | | | | 7.00* | | 7.00* | |
| | | | UOH | 1,718,689 | B | 1,718,689 | B |
| | | INVESTMENT CAPITAL | AGS | | | 245,000 | C |
| 2. | CCA701 | HAWAII PUBLIC BROADCASTING | | | | | |
| | | | | 16.00* | | | |
| | | OPERATING | CCA | 897,103 | A | | |
| | | | | 17.00* | | | |
| | | | CCA | 5,465,601 | W | | |
| 3. | AGS881 | PERFORMING & VISUAL ARTS EVENTS | | | | | |
| | | | | 10.00* | | 10.00* | |
| | | OPERATING | AGS | 2,091,651 | A | ~~2,216,651~~ 1,916,651 | ~~A~~ A[1] |
| | | | | 8.00* | | 8.00* | |
| | | | AGS | 4,074,309 | B | 4,074,309 | B |
| | | | AGS | 783,891 | N | 783,891 | N |
| | | INVESTMENT CAPITAL | AGS | 350,000 | B | 200,000 | B |
| | | | AGS | | C | | |
| 4. | LNR802 | HISTORIC PRESERVATION | | | | | |
| | | | | 13.00* | | 13.00* | |
| | | OPERATING | LNR | 543,632 | A | 543,632 | A |
| | | | | | | 2.00* | |
| | | | LNR | 58,624 | B | 58,624 | B |
| | | | LNR | 428,301 | N | 428,301 | N |
| 5. | LNR804 | FOREST RECREATION | | | | | |
| | | | | 38.00* | | 36.00* | |
| | | OPERATING | LNR | 1,237,162 | A | 1,168,366 | A |
| | | | | 2.00* | | 3.50* | |
| | | | LNR | 217,057 | B | 288,742 | B |
| | | | | 3.00* | | 3.50* | |
| | | | LNR | 495,506 | N | 511,308 | N |
| | | | LNR | 500,000 | W | 500,000 | W |
| | | INVESTMENT CAPITAL | LNR | 150,000 | C | | |
| 6. | LNR805 | RECREATIONAL FISHERIES | | | | | |
| | | | | 7.00* | | 7.00* | |
| | | OPERATING | LNR | 171,327 | A | 140,327 | A |
| | | | LNR | 37,000 | B | 68,000 | B |
| | | | LNR | 412,878 | N | 412,878 | N |
| 7. | LNR806 | PARK DEVELOPMENT AND OPERATION | | | | | |
| | | | | 113.00* | | 111.00* | |
| | | OPERATING | LNR | 5,131,476 | A | 5,480,209 | A |
| | | | LNR | 181,164 | B | 181,164 | B |
| | | INVESTMENT CAPITAL | LNR | 1,000,000 | B | | |
| | | | LNR | 2,775,000 | C | 1,500,000 | C |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| 8. | LNR801 | OCEAN-BASED RECREATION | | 90.00* | | 90.00* | |
| | | OPERATING | LNR | 11,608,933B | | 12,386,671B | |
| | | | LNR | 700,000N | | 700,000N | |
| | | INVESTMENT CAPITAL | LNR | 2,500,000C | | 5,725,000C | |
| | | | LNR | 445,000D | | 3,025,000D | |
| | | | LNR | 4,600,000N | | | |
| 9. | AGS889 | SPECTATOR EVENTS & SHOWS - ALOHA STADIUM | | 39.50* | | 39.50* | |
| | | OPERATING | AGS | 5,242,124B | | 6,006,896B | |
| | | INVESTMENT CAPITAL | AGS | 85,000B | | 815,000B | |
| 10. | LNR807 | PARK INTERPRETATION | | 12.00* | | 17.00* | |
| | | OPERATING | LNR | 1,201,270B | | 1,628,411B | |
| | | INVESTMENT CAPITAL | LNR | 600,000B | | 760,000B | |
| | | | LNR | | C | 469,000C | |
| 11. | LNR809 | PARKS ADMINISTRATION | | 10.00* | | 7.00* | |
| | | OPERATING | LNR | 453,932A | | 318,923A | |
| | | | LNR | 285,201N | | 285,201N | |
| **I.** | **PUBLIC SAFETY** | | | | | | |
| 1. | PSD402 | HALAWA CORRECTIONAL FACILITY | | 404.00* | | 404.00* | |
| | | OPERATING | PSD | 15,582,256A | | 15,572,056A | |
| | | | PSD | 814,242W | | 814,242W | |
| | | INVESTMENT CAPITAL | AGS | 727,000C | | 300,000C | |
| 2. | PSD403 | KULANI CORRECTIONAL FACILITY | | 79.00* | | 79.00* | |
| | | OPERATING | PSD | 3,236,142A | | 3,191,502A | |
| | | INVESTMENT CAPITAL | AGS | 512,000C | | | |
| 3. | PSD404 | WAIAWA CORRECTIONAL FACILITY | | 108.00* | | 108.00* | |
| | | OPERATING | PSD | 3,945,418A | | 3,848,962A | |
| | | | PSD | 179,392W | | 179,392W | |
| 4. | PSD405 | HAWAII COMMUNITY CORRECTIONAL CENTER | | 166.00* | | 166.00* | |
| | | OPERATING | PSD | 5,808,120A | | 5,673,906A | |
| 5. | PSD406 | MAUI COMMUNITY CORRECTIONAL CENTER | | 187.00* | | 187.00* | |
| | | OPERATING | PSD | 5,754,763A | | 5,613,132A | |
| | | | PSD | 92,000S | | 200,000S | |
| | | INVESTMENT CAPITAL | AGS | | | 150,000C | |
| 6. | PSD407 | OAHU COMMUNITY CORRECTIONAL CENTER | | 497.00* | | 497.00* | |
| | | OPERATING | PSD | 19,504,935A | | 20,508,888A | |
| | | | PSD | 615,069W | | 615,069W | |
| | | INVESTMENT CAPITAL | AGS | 311,000C | | | |
| 7. | PSD408 | KAUAI COMMUNITY CORRECTIONAL CENTER | | 68.00* | | 68.00* | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | OPERATING | PSD | 2,363,221 | A | 2,313,697 | A |
| 8. | PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER | | | 132.00* | | 132.00* | |
| | | OPERATING | PSD | 5,353,452 | A | 5,300,301 | A |
| 9. | PSD410 - INTAKE SERVICE CENTERS | | | 42.00* | | 42.00* | |
| | | OPERATING | PSD | 1,892,885 | A | 1,868,876 | A |
| 10. | PSD420 - CORRECTION PROGRAM SERVICES | | | 205.50* | | 205.50* | |
| | | OPERATING | PSD | 15,891,605 | A | 16,052,002 | A |
| 11. | PSD421 - HEALTH CARE | | | 158.18* | | 158.93* | |
| | | OPERATING | PSD | 9,222,772 | A | 9,788,366 | A |
| 12. | PSD501 - PROTECTIVE SERVICES | | | 95.50* | | 95.50* | |
| | | OPERATING | PSD | 3,857,470 | A | 3,192,464 | A |
| | | | PSD | 29,890 | N | 49,890 | N |
| | | | | 13.00* | | 13.00* | |
| | | | PSD | 1,334,482 | U | 1,334,482 | U |
| 13. | PSD502 - NARCOTICS ENFORCEMENT | | | 12.00* | | 12.00* | |
| | | OPERATING | PSD | 513,452 | A | 507,345 | A |
| | | | | 3.00* | | 4.00* | |
| | | | PSD | 236,680 | W | 287,542 | W |
| 14. | PSD503 - SHERIFF | | | 149.00* | | 146.00* | |
| | | OPERATING | PSD | 4,551,280 | A | 4,553,014 | A |
| | | | | | | 27.00* | |
| | | | PSD | | | 1,629,804 | U |
| 15. | PSD611 - ADULT PAROLE DETERMINATIONS | | | 2.00* | | 2.00* | |
| | | OPERATING | PSD | 198,223 | A | 196,355 | A |
| 16. | PSD612 - ADULT PAROLE SUPERVISION & COUNSELING | | | 44.00* | | 44.00* | |
| | | OPERATING | PSD | 1,621,668 | A | 1,604,343 | A |
| 17. | PSD613 - CRIME VICTIM COMPENSATION COMMISSION | | | | | | |
| | | OPERATING | PSD | 1,000 | A | | |
| | | | | 6.00* | | 6.00* | |
| | | | PSD | 337,042 | B | 1,550,937 | B |
| 18. | PSD900 - GENERAL ADMINISTRATION | | | 142.10* | | 142.10* | |
| | | OPERATING | PSD | 28,781,618 | A | 28,429,085 | A |
| | | | | 3.00* | | 3.00* | |
| | | | PSD | 126,401 | N | 126,401 | N |
| | | | PSD | 25,065 | T | 75,065 | T |
| | | | | 9.00* | | 9.00* | |
| | | | PSD | 9,560,204 | W | 9,560,204 | W |
| | | | PSD | 742,980 | X | 742,980 | X |
| | | INVESTMENT CAPITAL | AGS | | | 188,000 | C |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | | PSD | 300,000C | | 300,000C | |
| 19. | ATG231 - STATE CRIMINAL JUSTICE INFO & IDENTIFICATION | | | 29.00* | | 29.00* | |
| | | OPERATING | ATG | 1,463,192A | | 1,424,272A | |
| | | | ATG | 2,000,000N | | 2,000,000N | |
| | | | | 8.00* | | 10.00* | |
| | | | ATG | 1,452,522W | | 1,774,110W | |
| 20. | LNR810 - PREVENTION OF NATURAL DISASTERS | | | 3.25* | | 3.25* | |
| | | OPERATING | LNR | 177,575A | | 177,575A | |
| | | | | .75* | | .75* | |
| | | | LNR | 75,000N | | 75,000N | |
| | | INVESTMENT CAPITAL | LNR | | | 3,000,000C | |
| 21. | DEF110 - AMELIORATION OF PHYSICAL DISASTERS | | | 118.55* | | 118.55* | |
| | | OPERATING | DEF | 6,341,578A | | 6,598,932A | |
| | | | | 32.45* | | 32.45* | |
| | | | DEF | 6,249,015N | | 7,133,728N | |
| | | INVESTMENT CAPITAL | AGS | 704,000C | | 1,702,000C | |
| | | | AGS | 75,000N | | 610,000N | |
| | | | DEF | 4,000,000C | | 2,990,000C | |
| | | | DEF | 41,000,000N | | 25,000N | |
| **J.** | **INDIVIDUAL RIGHTS** | | | | | | |
| 1. | CCA102 - CABLE TELEVISION | | | 4.00* | | 4.00* | |
| | | OPERATING | CCA | 734,312B | | 959,312B | |
| 2. | CCA103 - CONSUMER ADVOCATE FOR COMM, UTIL & TRANS SVC | | | 20.00* | | 23.00* | |
| | | OPERATING | CCA | 2,266,749B | | 2,353,410B | |
| 3. | CCA104 - FINANCIAL INSTITUTION SERVICES | | | 19.00* | | | |
| | | OPERATING | CCA | 917,594A | | | |
| | | | | 8.00* | | 27.00* | |
| | | | CCA | 605,047B | | 1,688,203B | |
| 4. | CCA105 - PROFESSIONAL, VOCATIONAL & PERSONAL SVCS | | | 58.00* | | 56.00* | |
| | | OPERATING | CCA | 4,229,216B | | 3,540,164B | |
| | | | | 2.00* | | 4.00* | |
| | | | CCA | 1,306,404T | | 1,245,325T | |
| 5. | BUF901 - TRANSPORTATION, COMMUNICATIONS, & UTILITIES | | | 44.00* | | 44.00* | |
| | | OPERATING | BUF | 5,735,548B | | 5,960,559B | |
| 6. | CCA106 - INSURANCE REGULATORY SERVICES | | | 15.00* | | 67.00* | |
| | | OPERATING | CCA | 3,171,796B | | 8,962,984B | |
| | | | CCA | 135,518T | | 135,393T | |
| | | | | 35.00* | | * | |
| | | | CCA | 5,956,511W | | W | |
| 7. | CCA110 - OFFC OF CONSUMER PROT - UNFAIR/DECEP PRAC | | | | | | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | | | 15.00* | | 15.00* | |
| | OPERATING | | CCA | 1,354,862 | B | 1,177,650 | B |
| | | | CCA | 50,681 | T | 50,681 | T |
| 8. | AGR812 - MEASUREMENT STANDARDS | | | | | | |
| | | | | 18.00* | | 18.00* | |
| | OPERATING | | AGR | 661,233 | A | 663,753 | A |
| 9. | CCA111 - BUSINESS REGISTRATION | | | | | | |
| | | | | 76.00* | | 76.00* | |
| | OPERATING | | CCA | 5,794,925 | B | 4,878,396 | B |
| 10. | CCA112 - REGULATED INDUSTRIES COMPLAINTS OFFICE | | | | | | |
| | | | | 14.00* | | 14.00* | |
| | OPERATING | | CCA | 5,119,147 | B | 5,064,646 | B |
| 11. | CCA191 - GENERAL SUPPORT - PROTECTION OF THE CONSUMER | | | | | | |
| | OPERATING | | CCA | 386,884 | A | | A |
| | | | | 30.00* | | 30.00* | |
| | | | CCA | 2,734,565 | B | 2,570,858 | B |
| | | | | 1.00* | | 1.00* | |
| | | | CCA | 73,471 | X | 73,471 | X |
| 12. | LTG105 - ENFORCEMENT OF INFORMATION PRACTICES | | | | | | |
| | | | | 5.00* | | 5.00* | |
| | OPERATING | | LTG | 346,727 | A | 332,859 | A |
| 13. | BUF151 - LEGAL ASSISTANCE IN CRIMINAL ACTIONS | | | | | | |
| | | | | 82.00* | | 82.00* | |
| | OPERATING | | BUF | 7,181,965 | A | 7,181,965 | A |
| 14. | LNR111 - CONVEYANCES AND RECORDINGS | | | | | | |
| | | | | 48.00* | | 48.00* | |
| | OPERATING | | LNR | 1,594,488 | A | 1,572,244 | A |
| | | | | 3.00* | | 3.00* | |
| | | | LNR | 1,818,390 | B | 1,495,802 | B |
| | | | | 4.00* | | 4.00* | |
| | | | LNR | 149,328 | U | 149,328 | U |
| 15. | LTG888 - COMMISSION ON THE STATUS OF WOMEN | | | | | | |
| | | | | 1.00* | | 1.00* | |
| | OPERATING | | LTG | 99,949 | A | 99,949 | A |
| **K.** | **GOVERNMENT-WIDE SUPPORT** | | | | | | |
| 1. | GOV100 - OFFICE OF THE GOVERNOR | | | | | | |
| | | | | 35.00* | | 35.00* | |
| | OPERATING | | GOV | 3,063,742 | A | 3,024,033 | A |
| | INVESTMENT CAPITAL | | GOV | 1,000 | C | 1,000 | C |
| 2. | LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR | | | | | | |
| | | | | 5.00* | | 5.00* | |
| | OPERATING | | LTG | 599,904 | A | 607,477 | A |
| 3. | GOV102 - GOV - OTH POLICY DEVELOPMENT & COORDINATION | | | | | | |
| | | | | 4.00* | | 4.00* | |
| | OPERATING | | GOV | 279,198 | A | 279,198 | A |
| 4. | BED144 - STATEWIDE PLANNING AND COORDINATION | | | | | | |
| | | | | 20.00* | | 19.00* | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | OPERATING | | BED | 1,965,313 | A | 1,582,387 | A |
| | | | | 4.00* | | 4.00* | |
| | | | BED | 972,000 | N | 972,000 | N |
| | INVESTMENT CAPITAL | | BED | 375,000 | C | | |
| 5. | BED103 - STATEWIDE LAND USE MANAGEMENT | | | | | | |
| | | | | 7.00* | | 7.00* | |
| | OPERATING | | BED | 408,042 | A | 408,042 | A |
| 6. | BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY | | | | | | |
| | | | | 2.00* | | 2.00* | |
| | OPERATING | | BED | 211,774 | A | 211,774 | A |
| | | | BED | 3,300,000 | B | 3,300,000 | B |
| | | | BED | 400,000 | N | 400,000 | N |
| | | | BED | 100,000 | U | | |
| | | | BED | 1,500,000 | W | 1,750,000 | W |
| | INVESTMENT CAPITAL | | BED | 11,006,000 | C | 1,421,000 | C |
| | | | BED | 14,400,000 | N | | |
| | | | BED | 2,000,000 | W | | |
| 7. | BUF101 - PROGRAM PLANNING, ANALYSIS AND BUDGETING | | | | | | |
| | | | | 53.00* | | 53.00* | |
| | OPERATING | | BUF | 223,195,842 | A | 112,609,785 | A |
| | | | BUF | | | 128,438,459 | U |
| | INVESTMENT CAPITAL | | BUF | 103,900,000 | C | 149,825,000 | C |
| 8. | LTG101 - CAMPAIGN SPENDING COMMISSION | | | | | | |
| | | | | 4.00* | | 4.00* | |
| | OPERATING | | LTG | 399,810 | T | 4,414,810 | T |
| 9. | LTG102 - OFFICE OF ELECTIONS | | | | | | |
| | | | | 4.00* | | 4.00* | |
| | OPERATING | | LTG | 2,374,772 | A | 3,427,660 | A |
| 10. | TAX102 - INCOME ASSESSMENT AND AUDIT | | | | | | |
| | | | | 111.00* | | 111.00* | |
| | OPERATING | | TAX | 4,065,425 | A | 4,065,425 | A |
| 11. | TAX103 - TAX COLLECTIONS ENFORCEMENT | | | | | | |
| | | | | 93.00* | | 93.00* | |
| | OPERATING | | TAX | 2,686,070 | A | 2,686,070 | A |
| 12. | TAX105 - TAX SERVICES & PROCESSING | | | | | | |
| | | | | 99.00* | | 99.00* | |
| | OPERATING | | TAX | 4,845,610 | A | 4,818,060 | A |
| 13. | TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION | | | | | | |
| | | | | 40.00* | | 40.00* | |
| | OPERATING | | TAX | 4,713,810 | A | 5,012,837 | A |
| 14. | AGS101 - ACCT SYSTEM DEVELOPMENT & MAINTENANCE | | | | | | |
| | | | | 7.00* | | 7.00* | |
| | OPERATING | | AGS | 945,226 | A | 639,343 | A |
| 15. | AGS102 - EXPENDITURE EXAMINATION | | | | | | |
| | | | | 19.00* | | 19.00* | |
| | OPERATING | | AGS | 963,091 | A | 960,793 | A |
| 16. | AGS103 - RECORDING AND REPORTING | | | | | | |
| | | | | 12.00* | | 12.00* | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | MOF | APPROPRIATIONS FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | OPERATING | AGS | 500,697 | A | 500,697 | A |
| 17. | AGS104 - INTERNAL POST AUDIT | | | 13.00* | | 13.00* | |
| | | OPERATING | AGS | 1,059,583 | A | 1,059,583 | A |
| 18. | BUF115 - FINANCIAL ADMINISTRATION | | | 20.00* | | 20.00* | |
| | | OPERATING | BUF | 383,675,656 | A | 254,076,680 | A |
| | | | BUF | 8,680,000 | T | 3,000,000 | T |
| | | | BUF | 5,525 | U | 135,308,932 | U |
| 19. | ATG100 - LEGAL SERVICES | | | 195.84* | | 196.47* | |
| | | OPERATING | ATG | 18,139,813 | A | 21,235,560 | A |
| | | | | 4.00* | | 4.00* | |
| | | | ATG | 314,091 | B | 479,091 | B |
| | | | | 12.00* | | 12.00* | |
| | | | ATG | 7,592,065 | N | 7,705,997 | N |
| | | | ATG | 3,318,000 | T | 3,918,000 | T |
| | | | | 32.16* | | 34.53* | |
| | | | ATG | 5,383,192 | U | 5,767,955 | U |
| | | | | 4.00* | | 4.00* | |
| | | | ATG | 3,140,260 | W | 3,174,492 | W |
| 20. | AGS131 - INFORMATION PROCESSING SERVICES | | | 165.00* | | 165.00* | |
| | | OPERATING | AGS | 11,604,972 | A | 12,084,972 | A |
| | | | | 33.00* | | 33.00* | |
| | | | AGS | 2,035,654 | U | 2,035,654 | U |
| 21. | AGS161 - COMMUNICATION | | | 10.00* | | 10.00* | |
| | | OPERATING | AGS | 2,763,151 | A | 2,197,699 | A |
| | | | AGS | 1,250,000 | U | 1,250,000 | U |
| | | INVESTMENT CAPITAL | AGS | | | 3,000,000 | C |
| 22. | HRD102 - WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION AND EFF. | | | 121.00* | | 111.00* | |
| | | OPERATING | HRD | 12,459,269 | A | 11,952,682 | A |
| | | | HRD | 4,858,381 | U | 4,969,281 | U |
| | | | HRD | 100,000 | W | 100,000 | W |
| 23. | HRD191 - SUPPORTING SERVICES - HUMAN RESOURCES DEVELOPMENT | | | 11.00* | | 11.00* | |
| | | OPERATING | HRD | 1,139,794 | A | 1,213,954 | A |
| 24. | BUF141 - RETIREMENT | | | | | | |
| | | OPERATING | BUF | 108,648,288 | A | 39,947,011 | A |
| | | | BUF | | | 69,669,635 | U |
| | | | | 53.00* | | 55.00* | |
| | | | BUF | 11,490,868 | X | 9,250,520 | X |
| 25. | BUF142 - HEALTH & LIFE INSURANCE BENEFITS | | | 15.00* | | 15.00* | |
| | | OPERATING | BUF | 625,224 | A | 615,224 | A |
| | | | BUF | 353,280,300 | T | 386,988,600 | T |
| 26. | LNR101 - PUBLIC LANDS MANAGEMENT | | | 36.00* | | * | |

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| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | OPERATING | LNR | 1,317,631A | | | A |
| | | | | 16.00* | | 54.00* | |
| | | | LNR | 5,115,332B | | 5,789,970B | |
| | | | LNR | 72,634N | | 72,634N | |
| | | INVESTMENT CAPITAL | LNR | 1,350,000B | | 900,000B | |
| | | | LNR | 3,000,000C | | ~~661,000~~C | |
| | | | | | | 0[1] | |
| 27. | AGS203 | - RISK MANAGEMENT | | | | | |
| | | | | 4.00* | | 4.00* | |
| | | OPERATING | AGS | 5,395,618A | | 272,232A | |
| | | | AGS | 7,825,000W | | 7,825,000W | |
| 28. | AGS211 | - LAND SURVEY | | | | | |
| | | | | 18.00* | | 18.00* | |
| | | OPERATING | AGS | 733,975A | | 733,975A | |
| 29. | AGS223 | - OFFICE LEASING | | | | | |
| | | | | 4.00* | | 4.00* | |
| | | OPERATING | AGS | 13,315,521A | | 12,649,745A | |
| | | | AGS | 5,500,000U | | 5,500,000U | |
| 30. | AGS221 | - CONSTRUCTION | | | | | |
| | | | | 19.00* | | 19.00* | |
| | | OPERATING | AGS | 1,071,713A | | 1,071,713A | |
| | | | AGS | 4,000,000W | | 4,000,000W | |
| | | INVESTMENT CAPITAL | AGS | 15,457,000C | | ~~28,077,000~~C | |
| | | | | | | 13,427,000C[1] | |
| | | | LBR | 75,000C | | | |
| 31. | AGS231 | - CUSTODIAL SERVICES | | | | | |
| | | | | 155.50* | | 155.50* | |
| | | OPERATING | AGS | 10,820,024A | | 10,820,024A | |
| | | | AGS | 430,501U | | 430,501U | |
| 32. | AGS232 | - GROUNDS MAINTENANCE | | | | | |
| | | | | 28.50* | | 28.50* | |
| | | OPERATING | AGS | 840,122A | | 806,518A | |
| 33. | AGS233 | - BUILDING REPAIRS AND ALTERATIONS | | | | | |
| | | | | 27.00* | | 27.00* | |
| | | OPERATING | AGS | 2,438,119A | | 2,194,307A | |
| | | INVESTMENT CAPITAL | AGS | | | 5,000,000C | |
| 34. | AGS240 | - STATE PROCUREMENT | | | | | |
| | | | | 21.00* | | 21.00* | |
| | | OPERATING | AGS | 956,890A | | 932,557A | |
| 35. | AGS244 | - SURPLUS PROPERTY MANAGEMENT | | | | | |
| | | | | 5.00* | | 5.00* | |
| | | OPERATING | AGS | 273,692W | | 573,692W | |
| 36. | AGS251 | - MOTOR POOL | | | | | |
| | | | | 13.50* | | 13.50* | |
| | | OPERATING | AGS | 1,306,090W | | 1,316,694W | |
| 37. | AGS252 | - PARKING CONTROL | | | | | |
| | | | | 22.50* | | 22.50* | |
| | | OPERATING | AGS | 2,754,556W | | 2,730,507W | |

PROGRAM APPROPRIATIONS

| ITEM NO. | PROG. ID | PROGRAM | EXPENDING AGENCY | APPROPRIATIONS FISCAL YEAR 1999-00 | M O F | APPROPRIATIONS FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 38. | AGS111 | RECORDS MANAGEMENT | | | | | |
| | | | | 20.00* | | 20.00* | |
| | | OPERATING | AGS | 674,958 | A | 675,082 | A |
| 39. | AGS901 | GENRL ADM SVCS - ACCOUNTING & GENERAL SVCS | | | | | |
| | | | | 45.00* | | 45.00* | |
| | | OPERATING | AGS | 2,047,652 | A | 2,047,652 | A |
| | | | | 1.00* | | 1.00* | |
| | | | AGS | 46,615 | U | 46,615 | U |
| | | | AGS | 11,257,500 | W | 11,257,500 | W |
| 40. | SUB201 | CITY AND COUNTY OF HONOLULU | | | | | |
| | | OPERATING | SUB | | | 25,000 | A |
| | | INVESTMENT CAPITAL | CCH | 700,000 | C | ~~5,373,000~~ 3,586,000[1] | C |
| | | | CCH | | | ~~1,000,000~~ 0[1] | R |
| 41. | SUB301 | COUNTY OF HAWAII | | | | | |
| | | INVESTMENT CAPITAL | COH | 950,000 | C | ~~1,933,000~~ 1,333,000[1] | C |
| 42. | SUB401 | COUNTY OF MAUI | | | | | |
| | | INVESTMENT CAPITAL | COM | 2,000,000 | C | | |
| 43. | SUB501 | COUNTY OF KAUAI | | | | | |
| | | INVESTMENT CAPITAL | COK | 610,000 | C | ~~855,000~~ 605,000[1] | C |

SECTION 4. Part III, Act 91, Session Laws of Hawaii 1999, is amended:

(1) By amending section 4 to read as follows:

"SECTION 4. Provided that for tourism (BED 113), the convention center authority shall submit a detailed progress report on the implementation of the action plan to minimize the operational shortfalls of the Hawaii convention center and the resulting deficits in the convention center operations special fund; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the [2000] 2001 regular session."

(2) By adding a new section to read as follows:

"SECTION 4.1. The Governor is authorized to transfer general fund savings as may be available from the appropriated funds of any program in this Act to tourism (BED 113) for the operation and events at the Hawaii convention center; provided further that the total amount transferred shall not exceed $14,500,000; and provided further that five existing convention center authority staff (position numbers 25324, 25325, 25326, 25327, 25383) shall be retained in (BED 113) without the loss of salary, seniority, prior service credit, accrued vacation, sick leave, or other prior employee benefits or privileges and without the necessity of examination."

(3) By adding a new section to read as follows:

"SECTION 5.1. Provided that of the general fund appropriation for forestry-products development (LNR 172), the sum of $150,000 for fiscal year 2000-2001 shall be expended for the state match for Hawaii forestry communities initiative."

(4) By adding a new section to read as follows:

"SECTION 5.2. Provided that of the general fund appropriation for agricultural resource management (AGR 141), the sum of $107,400 for fiscal year 2000-2001 shall be deposited into the irrigation system revolving fund to be expended for purposes of the fund."

(5) By adding a new section to read as follows:

"SECTION 6.1. Provided that of the general fund appropriation for agriculture (AGR 192), up to $20,000 for fiscal year 2000-2001 shall be expended by the department of agriculture for the purposes of developing the composition, role and costs of an agricultural lands commission to identify mechanisms by which to fulfill the intent and purpose of Article XI, section 3, of the Hawaii State Constitution, which seeks to conserve and protect agricultural lands and promote diversified agriculture and agricultural self-sufficiency; analyze agricultural land use issues and assess funding for costs that would be incurred by the commission and other agencies in carrying out duties, including public meetings and hearings."

(6) By adding a new section to read as follows:

"SECTION 16.1. Provided that of the general fund appropriation for forests and wildlife resources (LNR 402), the sum of $500,000 for fiscal year 2000-2001 shall be expended for miconia eradication."

(7) By adding a new section to read as follows:

"SECTION 16.2. Provided that of the general and special fund appropriations for conservation and resources enforcement (LNR 405), no state funds shall be expended during the period January 1, 2001, to June 30, 2001, for "operation green harvest" or other marijuana eradication programs that involve the use of helicopters unless the board of land and natural resources holds a public hearing on the island of Hawaii and adopts procedures for the use of the helicopters that address the concerns of those living in the areas over which the helicopters fly."

(8) By adding a new section to read as follows:

"SECTION 16.3. Provided that of the general fund appropriation for the natural physical environment (LNR 906), the sum of $75,000 for fiscal year 2000-2001 shall be expended for the purpose of the youth conservation corps program on the islands of Maui, Hawaii, and Kauai."

(9) By adding a new section to read as follows:

"SECTION 17.1. Provided that STD/AIDS prevention services (HTH 121) shall maintain a general funding level of $5,552,608 for fiscal year 2000-2001; which is necessary to preserve the Ryan White federal grant funding, and preserve funding for Neighbor Island operations; provided further that the sum shall be used exclusively for this purpose, and shall not be transferred or used for any other purposes; and provided further that the department shall submit a report on all expenditures to the legislature no later than twenty days prior to the convening of the regular session of 2001."

(10) By adding a new section to read as follows:

"SECTION 18.1. Provided that of the general fund appropriation for developmental disabilities (HTH 501), the sum of $4,277,900 for fiscal year 2000-2001

shall be expended for matching funds for the title XIX medicaid home and community-based waiver program; and provided further that these funds shall be utilized to decrease the waiver program's waitlist in conformance with a settlement proposal for the Makin v. State of Hawaii lawsuit."

(11) By amending section 20 to read as follows:

"SECTION 20. Provided that of the general fund appropriation for health resources administration (HTH 595), [not less than] the sum of $500,000 for fiscal year 1999-2000 and [not less than] the sum of [$500,000] $1,300,000 for fiscal year 2000-2001 shall be expended for purchase of service primary health care services for the medically uninsured or in health care shortage areas."

(12) By amending section 21 to read as follows:

"SECTION 21. Provided that of the special fund appropriation for Hawaii health systems corporation (HTH 210), [not less than] the sum of $500,000 for fiscal year 1999-2000 and [not less than] the sum of $500,000 for fiscal year 2000-2001 shall be expended for worker's compensation liabilities."

(13) By adding a new section to read as follows:

"SECTION 21.1. Provided that the legislative auditor shall conduct a follow-up study on the Hawaii health systems corporation (HTH 210); provided further that this study shall include, but not be limited to, an analysis of information systems operation, procurement practices, cash collections, the maximization of accounts receivables, and the effect of Act 229, Session Laws of Hawaii 1998, on personnel management; 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 2001 regular session."

(14) By adding a new section to read as follows:

"SECTION 21.2. Provided that the Hawaii health systems corporation (HTH 210) shall submit a report concerning all critical access hospitals within the public hospital system; provided further that the report shall include, but not be limited to, the following:

1) an expenditure report per hospital detailing the cost of critical access hospital certification, including, but not limited to, capital improvements projects, staffing needs, and state matching funds for Medicaid;
2) an analysis per hospital of all changes in bed space necessary for critical access hospital certification; and
3) a comparison per hospital between current profit margins and profit margins after critical access certification;

and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2001 regular session."

(15) By adding a new section to read as follows:

"SECTION 21.3. Provided that of the general fund appropriation for private hospitals and medical services (SUB 601), the sum of $2,535,000 for fiscal year 2000-2001 shall be expended for subsidies for the following:

| | FY 2000-2001 |
|---|---|
| Hana health center | $750,000 |
| Molokai general hospital | $700,000 |
| Waianae district comprehensive health | $735,000 |
| Kahuku hospital | $350,000; |

and provided further that any funds not expended for these purposes shall be lapsed to the general fund."

(16) By adding a new section to read as follows:

"SECTION 21.4. Provided that of the general fund appropriation for adult mental health-outpatient (HTH 420), the sum of $2,192,732 for fiscal year 2000-2001 shall be expended on a psychosocial rehabilitation program to satisfy the stipulations and orders of the Hawaii state hospital department of justice settlement agreement that requires enhanced psychosocial programming at the Hawaii state hospital."

(17) By adding a new section to read as follows:

"SECTION 21.5. Provided that the department of health shall prepare and submit quarterly expenditure reports concerning the purchase of community-based adult mental health services for adult mental health-outpatient (HTH 420); provided further that the report shall include, but not be limited to, the following information:

1) the number of discharged and diverted patients entering the system by month;
2) the amount of funds expended by type of service;
3) the amount of funds expended by provider; and
4) an assessment of the available capacity for these services in the community;

and provided further that the report shall be submitted to the legislature forty-five days after the end of each quarter during fiscal year 2000-2001."

(18) By adding a new section to read as follows:

"SECTION 21.6. Provided that of the general fund appropriation for adult mental health-outpatient (HTH 420), the sum of $19,157,913 for fiscal year 2000-2001 shall be expended to satisfy the requirements of the department of justice settlement agreement; and provided further that no positions or funds appropriated to adult mental health-outpatient (HTH 420) shall be expended for any other purpose than the provision of services to discharged and diverted patients of the Hawaii state hospital."

(19) By adding a new section to read as follows:

"SECTION 21.7. Provided that the department of health shall prepare and submit quarterly reports concerning the transition of the Hawaii state hospital in adult mental health-inpatient (HTH 430) to a secure psychiatric rehabilitation facility; provided further that the report shall include, but not be limited to, the following information:

1) the number of patients discharged and admitted to the facility by month;
2) all personnel changes that occur as a result of any downsizing of HSH and the change in direct service staffing ratio; and
3) assessments of the state's efforts to comply with the department of justice settlement agreement stipulations, orders, and benchmarks of the Hawaii State Hospital Clinical/Organization Plan;

and provided further that the report shall be submitted to the legislature thirty days after the end of each quarter during fiscal year 2000-2001."

(20) By adding a new section to read as follows:

"SECTION 24.1. Provided that of the supplemental appropriation for service to emotionally disturbed children and adolescents for (HTH 460 and HTH 495) shall be used exclusively for services to emotionally disturbed children and adoles-

cents; provided further that the sum shall be used exclusively for this purpose and shall not be transferred or used for any other purpose; provided further that not less than five percent and not more than ten percent of any funds to be expended for new initiatives or programs shall be set aside for process and outcome evaluations to be conducted by any agency or agencies external to the department of health; provided further that the evaluations shall be submitted to the legislature at least twenty days prior to the convening of the regular session of 2001; provided further that the auditor shall assist the legislature in assessing the evaluation reports as well as in overseeing the effectiveness and efficiency for the adult mental health program; and provided further that the auditor may request progress reports from the department of health from time to time."

(21) By adding a new section to read as follows:

"SECTION 28.1. Provided that the department of human services shall use sixty per cent of the most recent available profile of the customary fees of health care practitioners, adjusted to the seventy-fifth percentile within the limits of this appropriation, in establishing fees for individual practitioners for health care payments (HMS 230), in fiscal year 1999-2000 and in fiscal year 2000-2001."

(22) By adding a new section to read as follows:

"SECTION 28.2. Provided that of the general fund appropriation for general support for health care payments (HMS 230), the sum of $200,000 for fiscal year 2000-2001 shall be expended to begin the process of planning, designing and developing an acuity-based managed long term care program as phase III of the Hawaii QUEST program; provided further that funds expended shall be used to start the process of planning, designing and developing a new medicaid reimbursement system to comply with section 346D-1.5, HRS to require medicaid reimbursement for institutionalized skilled nursing facilities based solely on the level of care rather than the location; provided further that in as much as devising a medicaid acuity-based institutional long term care reimbursement system is part of the solution that addresses the need for the integration of the continuum of care and cost effectiveness, the department of human services shall pursue a more complete and permanent solution; and provided further that the department of human services shall submit a status report to the legislature no later than twenty days prior to the convening of the 2001 regular session."

(23) By adding a new section to read as follows:

"SECTION 32.1. Provided that of the general fund appropriation for school-based budgeting (EDN 100), not less than the sum of $7,636,306 for fiscal year 1999-2000 and not less than the sum of ~~$10,636,306~~ 7,636,306[1] for fiscal year 2000-2001 shall be expended for elementary and secondary funds of the school priority fund; provided further that the department of education shall prepare a report which shall include, but not be limited to, the following information:

1) allocation of funds made to each school; and
2) school-by-school detailed accounting of the expenditure of these funds to include type, purpose, and amount of the expenditure;

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 2001 regular session."

(24) By adding a new section to read as follows:

"SECTION 32.2. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of $2,590,731 for fiscal year 2000-2001 shall be expended for the purpose of allocating regular education teachers in order to

reduce the student-teacher ratio for kindergarten, grade 1, and grade 2 from the current 21 students per teacher to 20 students per teacher."

(25) By adding a new section to read as follows:

"SECTION 32.3. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the following sums for fiscal year 2000-2001 shall be expended for the Hawaiian language immersion program as follows:

| | |
|---|---|
| 1.0 education specialist positions | $58,010 |
| 3.0 resource teacher positions | $94,209 |
| student transportation | $83,572; |

and provided further that the sum of $94,209 shall be expended for 3.0 resource teacher positions for the Hawaiian studies program."

(26) By amending section 34 to read as follows:

"SECTION 34. Provided that of the general fund appropriation for comprehensive school support services (EDN 150), the sum of $143,048,713 for fiscal year 1999-2000 and $156,589,587 for fiscal year 2000-2001 shall be distributed on a pro-rata basis to each school district to provide instructional and program support to Individuals with Disabilities Education Act (IDEA) students; provided further that based on the projected IDEA student enrollment of 22,400 in fiscal year 1999-2000, the per pupil costs distributed to each district shall be not less than $5,018 and based on the projected IDEA student enrollment of 23,000 in fiscal year 2000-2001, the per pupil costs distributed to each district shall be not less than $5,330; [and] provided further that funds in addition to the pro-rata share shall be provided for children that require private school placement or services that may exceed the pro-rata cost[.]; provided further that the department of education shall submit a detailed report on the distributions made to each district; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the regular session of 2001."

(27) By adding a new section to read as follows:

"SECTION 34.1. Provided that the department of education is authorized to establish two (2.0) full-time equivalent permanent neurotraining therapist positions for the special education program in comprehensive student support services (EDN 150); provided further that incumbent employees of the two temporary neurotraining therapist positions currently being funded with federal fund appropriations shall be granted permanent status in these positions without the loss of salary, seniority, prior service credit, accrued vacation, sick leave, or other prior employee benefits or privileges and without the necessity of examination; and provided further that such employees possess the minimum qualifications for the position to which appointed."

(28) By adding a new section to read as follows:

"SECTION 34.2. Provided that of the general fund appropriation for public libraries (EDN 407), not less than the sum of $1,250,000 for fiscal year 2000-2001 shall be expended for the purpose of purchasing library books and materials for all state public libraries."

(29) By adding a new section to read as follows:

"SECTION 36.1. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of $94,348,402 for fiscal year 2000-2001 shall be transferred to program planning, analysis and budgeting (BUF 101) of the department of budget and finance to pay for health fund benefits for department of

education employees; and provided further that the funds shall be transferred no later than July 16, 2000."

(30) By adding a new section to read as follows:

"SECTION 36.2. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of $87,067,527 for fiscal year 2000-2001 shall be transferred to financial administration (BUF 115) of the department of budget and finance to pay for debt service on general obligation bonds issued for department of education projects; and provided further that the funds shall be transferred no later than July 16, 2000."

(31) By adding a new section to read as follows:

"SECTION 36.3. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sums of $2,465,525 and $47,719,871 for fiscal year 2000-2001 shall be transferred to retirement (BUF 141) of the department of budget and finance to pay for pension accumulation contributions and social security/ medicare contributions, respectively, for department of education employees; and provided further that the funds shall be transferred no later than July 16, 2000."

(32) By adding a new section to read as follows:

"SECTION 36.4. Provided that of the general fund appropriation for University of Hawaii, Manoa (UOH 100), the sum of $225,000 for fiscal year 2000-2001 shall be expended for the purpose of establishing and operating a natural heritage data and training center at the University of Hawaii center for conservation research and training."

(33) By adding a new section to read as follows:

"SECTION 36.5. Provided that of the general fund appropriation for the university of Hawaii, Manoa (UOH 100), the sum of $3,000,000 for fiscal year 2000-2001 shall be expended for the following programs:

| Program | FY 2000-2001 |
|---|---|
| College of engineering | $ 1,000,000 |
| John A. Burns school of medicine | $ 1,000,000 |
| College of business administration | $ 1,000,000; |

and provided further that funds may be used to leverage matching funds from the federal government and/or the private sector."

(34) By adding a new section to read as follows:

"SECTION 36.6. Provided that of the general fund appropriation for University of Hawaii, Hilo (UOH 210), the sum of $431,192 for fiscal year 2000-2001 shall be expended to strengthen high technology workforce training, marine science, and astronomy."

(35) By amending section 37 to read as follows:

"SECTION 37. Provided that of the general fund appropriation for small business development (UOH 220), the sum of $390,000 for fiscal year 1999-2000 and the sum of [$390,000] $650,000 for fiscal year 2000-2001 shall be used as a state match for federal funds to operate the small business development center and business research library."

(36) By adding a new section to read as follows:

"SECTION 37.1. Provided that of the general fund appropriation for the university of Hawaii, community colleges (UOH 800), the sum of $1,000,000 for fiscal year 2000-2001 shall be expended for the pacific center for advanced technology training; and provided further that funds may be used to leverage matching funds from the private sector."

(37) By adding a new section to read as follows:

"SECTION 38.1. Provided that of the general fund appropriation for systemwide support (UOH 900), the sum of $34,090,057 for fiscal year 2000-2001 shall be transferred to program planning, analysis and budgeting (BUF 101) of the department of budget and finance to pay for health fund benefits for university of Hawaii employees; and provided further that the funds shall be transferred no later than July 16, 2000."

(38) By adding a new section to read as follows:

"SECTION 38.2. Provided that of the general fund appropriation for systemwide support (UOH 900), the sum of $48,235,880 for fiscal year 2000-2001 shall be transferred to financial administration (BUF 115) of the department of budget and finance to pay for debt service on general obligation bonds issued for university of Hawaii projects; and provided further that the funds shall be transferred no later than July 16, 2000."

(39) By adding a new section to read as follows:

"SECTION 38.3. Provided that of the general fund appropriation for systemwide support (UOH 900), the sums of $1,043,481 and $18,440,758 for fiscal year 2000-2001 shall be transferred to retirement (BUF 141) of the department of budget and finance to pay for pension accumulation contributions and social security/medicare contributions, respectively, for university of Hawaii employees; and provided further that the funds shall be transferred no later than July 16, 2000."

(40) By adding a new section to read as follows:

"SECTION 39.1. Provided that of the general fund appropriation for Oahu community correctional center (PSD 407), the sum of $152,290 for fiscal year 2000-2001 shall be provided for three community service worklines and one fifteen passenger van; provided further that the release of the funds necessary for each workline is contingent on the availability of one vehicle for each workline; provided further that PSD is responsible for acquiring the two additional vehicles either through internal re-allocation or through memoranda of agreement with other agencies."

(41) By amending section 44 to read as follows:

"SECTION 44. Provided that of the general fund appropriation for the amelioration of physical disasters program (DEF 110), the sum of $600,000 for fiscal year 1999-2000 and the sum of [$600,000] $597,000 for fiscal year 2000-2001 shall be expended exclusively for relief from major disasters pursuant to chapter 127-11, Hawaii Revised Statutes."

(42) By adding a new section to read as follows:

"SECTION 44.1. Provided that of the special fund appropriation for cable television (CCA 102), the sum of $225,000 for fiscal year 2000-2001 shall be expended to continue the deployment of the institutional network facilities; provided further that funds expended shall include, but not be limited to, fiber connectivity, equipment, and Internet access for the public library system."

(43) By adding a new section to read as follows:

"SECTION 45.1. Provided that of the special fund appropriation for conveyances and recordings (LNR 111), the sum of $215,356 for fiscal year 2000-2001 shall be expended for administrative assessment and central services costs; provided further that the sum of $842,823 for fiscal year 2000-2001 shall be expended for modernization of the program; and provided further that expenditures for modernization are non-recurring costs."

(44) By repealing section 49.

(45) By adding a new section to read as follows:

"SECTION 50.1. Provided that of the general fund appropriation for statewide planning and coordination (BED 144), the sum of $78,984 and one position (#25567) shall be transferred to support services-human resources development (HRD 191); provided further that position (#25567) shall be granted permanent status in this position without the loss of salary, seniority, prior service credit, accrued vacation, sick leave, or other prior employee benefits or privileges and without the necessity of examination; and provided further that said employee possess the minimum qualifications for the position to which appointed."

(46) By amending section 51 to read as follows:

"SECTION 51. [Provided that of the general fund appropriation for program planning, analysis and budgeting (BUF 101), the sum of $214,279,464 for fiscal year 1999-2000 and the sum of $234,505,137 for fiscal year 2000-2001 shall be expended for health fund premiums for actives and retirees;] Provided that the following sums appropriated or authorized for program planning, analysis and budgeting (BUF 101) shall be expended for health fund premiums for actives and retirees, from the sources of funding indicated below:

| | FY 1999-2000 | FY 2000-2001 |
|---|---|---|
| General fund | $214,279,464 | $103,470,931 |
| Interdepartmental transfers | | $128,438,459; |

provided further that funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the department of budget and finance shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the [2000 and] 2001 regular [sessions] session."

(47) By adding a new section to read as follows:

"SECTION 53.1. Provided that of the general fund appropriation for the office of elections (LTG 102), the sum of $842,329 for fiscal year 2000-2001 shall be expended for the expenses of the reapportionment commission to convene in 2001."

(48) By amending section 55 to read as follows:

"SECTION 55. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of $2,511,579 for fiscal year 1999-2000 [and the sum of $2,511,579 for fiscal year 2000-2001] shall be expended to meet the requirements of the uniform disposition of unclaimed property program pursuant to chapter 523A, Hawaii Revised Statutes; provided further that funds shall not be expended for any other purpose; provided further that any unexpended funds shall be lapsed to the general fund; and provided further that the department of budget and finance shall submit a report of the number and total amount of deposits of all unclaimed property into the general fund and the number and total amount of

expenditures to the legislature no later than twenty days prior to the convening of the 2000 [and 2001] regular [sessions] session."

(49) By amending section 56 to read as follows:

"SECTION 56. [Provided that of the general fund appropriation for financial administration (BUF 115) the sum of $378,949,913 for fiscal year 1999-2000 and the sum of $398,999,648 for fiscal year 2000-2001 shall be expended for interest and principal on general obligation bonds;] Provided that the following sums appropriated or authorized for financial administration (BUF 115) shall be expended for interest and principal on general obligation bonds, from the sources of funding indicated below:

| | FY 1999-2000 | FY 2000-2001 |
|---|---|---|
| General fund | $378,949,913 | $252,039,650 |
| Interdepartmental transfers | | $135,303,407; |

provided further that funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that the department of budget and finance shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the [2000 and] 2001 regular [sessions] session."

(50) By adding a new section to read as follows:

"SECTION 59.1. Provided that the department of the attorney general shall submit a report concerning all trust funds within legal services (ATG 100) for the period July 1, 1996, to November 30 2000, including, but not limited, to the following:

(1) The source and amount of all revenue for each trust fund;
(2) The limitations on the use of moneys in each trust fund;
(3) Detailed accounts of all expenditures from each trust fund;
(4) The purpose of all expenditures from each trust fund; and
(5) The source of revenue for each expenditure from each trust fund;

and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the regular session of 2001."

(51) By amending section 60 to read as follows:

"SECTION 60. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of $4,993,726 for fiscal year 1999-2000 and the sum of [$4,993,726] $4,933,726 for fiscal year 2000-2001 shall be expended for workers' compensation claims; and provided further that the department of human resources development shall submit a detailed report of all expenditures and number of claims for workers' compensation claim payments to the legislature no later than twenty days prior to the convening of the [2000 and] 2001 regular [sessions] session."

(52) By amending section 61 to read as follows:

"SECTION 61. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of $2,631,049 for fiscal year 1999-2000 and the sum of [$2,631,049] $2,221,620 for fiscal year 2000-2001 shall be expended for unemployment compensation claims of former state employees; provided further [than] that any unrequired and unencumbered funds shall be lapsed to the general fund; and provided further that the department of human resources development shall submit a detailed report of all expenditures and number of claims for unemployment compensation claim pay-

ments to the legislature no later than twenty days prior to the convening of the [2000 and] 2001 regular [sessions] session."

(53) By amending section 62 to read as follows:

"SECTION 62. Provided that of the general fund appropriation for retirement (BUF 141), the sum of $106,425,888 for fiscal year 1999-2000 and the sum of [$162,111,766] $57,657,465 for fiscal year 2000-2001 shall be expended only for the following purposes:

| Purpose | FY 1999-2000 | FY 2000-2001 |
|---|---|---|
| Pension accumulation | $ 3,663,760 | [$57,790,720] $1,786,594 |
| Social Security/medicare Contributions | $102,792,128 | [$104,321,046;] $ 38,160,417; |

provided further that any unexpended funds shall lapse to the general fund; and provided further that the department of budget and finance shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the [2000 and] 2001 regular [sessions] session."

(54) By adding a new section to read as follows:

"SECTION 62.1. Provided that of the interdepartmental transfers authorized for retirement (BUF 141), the sum of $104,454,301 for fiscal year 2000-2001 shall be expended only for the following purposes:

| Purpose | FY 2000-2001 |
|---|---|
| Pension accumulation | $ 3,509,006 |
| Social security/medicare contributions | $ 66,160,629; |

provided further that any unexpended funds shall lapse to the general fund; and provided further that the department of budget and finance shall submit a report of all expenditures to the legislature no later than twenty days prior to the convening of the 2001 regular session."

(55) By adding a new section to read as follows:

"SECTION 62.2. Provided that public lands management (LNR 101) shall submit a detailed report on the progress towards completion of the land information management system; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2001 regular session."

(56) By adding a new section to read as follows:

"SECTION 63.1. Provided that of the general fund appropriation for office leasing (AGS 223), the sum of $2,300,000 for fiscal year 2000-2001 may be expended for principal and interest payments on the certificates of participation financing agreement for the purchase of No. 1 Capitol District building (also known as the Hemmeter Building)."

SECTION 5. Part IV, Act 91, Session Laws of Hawaii 1999, is amended by amending section 64 to read as follows:

"SECTION 64. **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 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| **A. ECONOMIC DEVELOPMENT** | | | | | | | |
| **BED113 - TOURISM** | | | | | | | |
| 1. | HTA01B | HAWAII FILM STUDIO IMPROVEMENTS, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE HAWAII FILM STUDIO. APPROPRIATIONS MAY BE USED TO REIMBURSE PRIVATE ORGANIZATIONS FOR IMPROVEMENTS MADE. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER COST ELEMENT. | | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 780 | | | |
| | | EQUIPMENT | | 75 | | | |
| | | TOTAL FUNDING | BED | 857C | | | C |
| 2. | HTA02 | HALEIWA FILM PRODUCTION FACILITY, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A FILM PRODUCTION FACILITY IN HALEIWA, OAHU. APPROPRIATIONS MAY BE USED TO REIMBURSE PRIVATE ORGANIZATIONS FOR IMPROVEMENTS MADE. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER COST ELEMENT. | | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 864 | | | |
| | | EQUIPMENT | | 42 | | | |
| | | TOTAL FUNDING | BED | 908C | | | C |
| **BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION** | | | | | | | |
| 4. | P99002 | WEST KAUAI TECHNOLOGY AND VISITOR CENTER, KAUAI | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR DEVELOPMENT OF A SECOND BUILDING AT THE WEST KAUAI TECHNOLOGY AND VISITOR CENTER. | | | | | |
| | | PLANS | | 1 | | | |
| | | LAND | | 1 | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 996 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | BED | 1,000C | | | C |
| **AGR141 - AGRICULTURAL RESOURCE MANAGEMENT** | | | | | | | |
| 5. | HA0001 | DRAINAGE IMPROVEMENTS, WAIMANALO IRRIGATION SYSTEM, OAHU | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION OF DRAINAGE IMPROVEMENTS, CONSISTING OF A SEDIMENT BASIN RESERVOIR TOGETHER WITH APPURTENANT WORKS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. PHASE II OF THIS PROJECT CONSISTS OF CONSTRUCTION OF DRAINAGE FLUMES FOR FLOOD CONTROL. | | | | | | |
| | | PLANS | | 50 | | | |
| | | LAND | | 25 | | | |
| | | DESIGN | | 100 | | | |
| | | CONSTRUCTION | | 475 | | 275 | |
| | | TOTAL FUNDING | AGR | 425C | | 275C | |
| | | | AGR | 225N | | | N |
| 6. | 980002 | LOWER HAMAKUA DITCH WATERSHED PROJECT, HAWAII | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE LOWER HAMAKUA DITCH SYSTEM, TOGETHER WITH APPURTENANT WORKS, INCLUDING DRAINAGE AND INFRASTRUCTURE WITHIN THE WAIPIO VALLEY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | | |
| | | PLANS | | 20 | | 20 | |
| | | LAND | | 100 | | 50 | |
| | | DESIGN | | 50 | | 50 | |
| | | CONSTRUCTION | | 2,500 | | 2,500 | |
| | | TOTAL FUNDING | AGR | 1,170C | | 1,120C | |
| | | | AGR | 1,500N | | 1,500N | |
| 7. | P99003 | WOOD VALLEY AGRICULTURAL WATER SYSTEM, HAWAII | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION TO CONSTRUCT AND UPGRADE AN AGRICULTURAL WATER PIPELINE AND 150,000 GALLON RESERVOIR TO SERVE AGRICULTURAL NEEDS IN WOOD VALLEY, KA'U DISTRICT. PROJECT TO INCLUDE ANY RELATED OR INCIDENTAL WORK. | | | | | | |
| | | PLANS | | 2 | | | |
| | | DESIGN | | 5 | | | |
| | | CONSTRUCTION | | 75 | | 68 | |
| | | TOTAL FUNDING | AGR | 82C | | 68C | |
| 8. | P99004 | AGRICULTURAL WATER SYSTEM, MAUI | | | | | |
| | | PLANS FOR MASTER PLANNING OF AN AGRICULTURAL WATER SUPPLY AND DELIVERY SYSTEM FOR UPCOUNTRY, MAUI. | | | | | |
| | | PLANS | | 200 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | AGR | 200C | | | C |
| 8A. | 920011 | LALAMILO DISTRIBUTION PIPELINE, WAIMEA IRRIGATION SYSTEM, HAWAII | | | | | |
| | | CONSTRUCTION | | | | 200 | |
| | | TOTAL FUNDING | AGR | C | | 200C | |
| **AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE** | | | | | | | |
| 9. | 981921 | MISCELLANEOUS HEALTH, SAFETY, CODE AND OTHER REQUIREMENTS, STATEWIDE | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 78 | | | |
| | | CONSTRUCTION | | 720 | | 400 | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | AGS | 800C | | | C |
| | | | AGS | N | | 400N | |
| **LNR153 - COMMERCIAL FISHERIES AND AQUACULTURE** | | | | | | | |
| 10. | C36A | FEED MILL LABORATORY, HAWAII | | | | | |
| | | CONSTRUCTION | | 804 | | | |
| | | TOTAL FUNDING | LNR | 804C | | | C |
| **BED120 - ENERGY DEVELOPMENT AND MANAGEMENT** | | | | | | | |
| 11. | | NELH10 NELHA ONSHORE DISTRIBUTION SYSTEM, HAWAII | | | | | |
| | | PLANS | | 30 | | 5 | |
| | | DESIGN | | 60 | | 10 | |
| | | CONSTRUCTION | | 1,924 | | 4,995 | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | EQUIPMENT | | 4,657 | | 3,693 | |
| | | TOTAL FUNDING | BED | 6,671C | | 8,703C | |
| **LNR141 - WATER AND LAND DEVELOPMENT** | | | | | | | |
| 12. | J36 | LEEWARD POTABLE WATER WELL, OAHU | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A POTABLE WATER WELL AND ITS DEVELOPMENT, TO INCLUDE CASING INSTALLATION, PUMP CONTROLS, AND OTHER INCIDENTAL AND RELATED WORK. | | | | | |
| | | PLANS | | 50 | | | |
| | | LAND | | 1 | | | |
| | | DESIGN | | 200 | | | |
| | | CONSTRUCTION | | | | 2,000 | |
| | | TOTAL FUNDING | LNR | 251C | | 2,000C | |
| 13. | G4317H | WINDWARD WELL DEVELOPMENT, OAHU | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PUMP CONTROLS, CONNECTING PIPELINE AND RELATED WORK. | | | | | |
| | | PLANS | | 50 | | | |
| | | LAND | | 1 | | | |
| | | DESIGN | | 200 | | | |
| | | CONSTRUCTION | | | | 2,000 | |
| | | TOTAL FUNDING | LNR | 251C | | 2,000C | |
| 14. | P99006 | REDUCE VEHICLE CONTAMINANTS, OAHU | | | | | |
| | | CONSTRUCTION TO REDUCE VEHICLE CONTAMINANTS IN ACCORDANCE WITH THE ALA WAI CANAL WATERSHED IMPROVEMENT PROJECT MANAGEMENT AND IMPLEMENTATION PLAN. PROJECT TO INCLUDE THE INSTALLATION OF ABSORBENT MAT FILTERS IN SELECTED DRAIN CATCH BASINS TO TEST THEIR EFFECTIVENESS IN REMOVING CONTAMINANTS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES | | | | | |
| | | CONSTRUCTION | | 250 | | | |
| | | TOTAL FUNDING | LNR | 250C | | | C |
| 15. | P99007 | SEDIMENT RETENTION BASINS FOR MANOA AND PALOLO STREAMS, OAHU | | | | | |
| | | PLANS FOR SEDIMENT RETENTION BASINS FOR DISCHARGE FROM MANOA AND PALOLO STREAMS. THIS PROJECT IS IN ACCORDANCE WITH THE ALA WAI CANAL WATERSHED IMPROVEMENT PROJECT MANAGEMENT AND IMPLEMENTATION PLAN. | | | | | |
| | | PLANS | | 250 | | | |
| | | TOTAL FUNDING | LNR | 250C | | | C |
| 16. | P99008 | KANAHA STREAM RESORATION AND LANDSCAPING, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION AND EQUIPMENT TO STABILIZE ERODING STREAM BANKS OF KANAHA STREAM. PROJECT TO INCLUDE STORM DRAIN FILTERS, SIGNAGE, AND OTHER RELATED IMPROVEMENTS. | | | | | |
| | | CONSTRUCTION | | | 29 | | |
| | | EQUIPMENT | | | 1 | | |
| | | TOTAL FUNDING | LNR | | 30C | | C |
| 16A. | G76 | HONOKAA EXPLORATORY WELL IMPROVEMENTS, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION FOR AN EXPLORATORY WELL, INCLUDING CASING INSTALLATION, PUMP TESTING, AND OTHER RELATED WORK TO DEVELOP THE WELL. | | | | | |
| | | DESIGN | | | | 100 | |
| | | CONSTRUCTION | | | | 1,000 | |
| | | TOTAL FUNDING | LNR | | C | 1,100C | |
| 16B. | J32 | WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS, OAHU | | | | | |
| | | PLANS AND DESIGN FOR INCREMENTAL IMPROVEMENTS, INCLUDING INJECTION WELLS, BACKWASH FILTER STRUCTURE AND FILTER CELLS, CHLORINE MIXING AND CONTACT CHAMBER, DISSOLVED AIR FLOTATION THICKENER, CLARIFIERS, PUMP STATION, FLOOD PROOFING, EQUALIZATION BASIN SYSTEM UPGRADES, AND OTHER RELATED WORK. | | | | | |
| | | PLANS | | | | 500 | |
| | | DESIGN | | | | 1,250 | |
| | | TOTAL FUNDING | LNR | | C | 1,750C | |
| 16C. | | ALA WAI WATERSHED FEDERAL FEASIBILITY STUDY, OAHU | | | | | |
| | | PLANS FOR LOCAL FUNDING MATCH FOR U.S. ARMY CORPS OF ENGINEERS FEASIBILITY STUDY AND PRELIMINARY DESIGNS FOR ECOSYSTEM RESTORATION AND FLOOD CONTROL ALTERNATIVES FOR THE ALA WAI CANAL WATERSHED. | | | | | |
| | | PLANS | | | | 737 | |
| | | TOTAL FUNDING | LNR | | C | 737C | |
| 16D. | | PUKELE STREAM LO'I RESTORATION AND TRAIL, OAHU | | | | | |
| | | CONSTRUCTION TO RESTORE NATIVE HAWAIIAN WETLAND TARO TERRACES TO FUNCTION AS WETLANDS BEFORE WATERS REACH THE STREAM. | | | | | |
| | | CONSTRUCTION | | | | 5 | |
| | | TOTAL FUNDING | LNR | | C | 5C | |
| 16E. | | WAIOMAO STREAM RESTORATION, TRAIL, AND COMMUNITY GARDEN, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION TO CLEAN AND PREPARE WAIOMAO BRANCH OF PALOLO STREAM ABOVE THE END OF THE CONCRETE BOX CHANNEL FOR COMMUNITY GARDEN AND TRAIL. | | | | | |
| | | CONSTRUCTION | | | | 10 | |
| | | TOTAL FUNDING | LNR | | C | 10C | |
| 16F. | | PALOLO WATER DEVELOPMENT, OAHU | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION OF PUMPS, CONTROLS, CONNECTING PIPELINE, AND OTHER INCIDENTAL AND RELATED WORK. | | | | | |
| | | PLANS | | | | ~~1~~ 0[1] | |
| | | LAND | | | | ~~1~~ 0[1] | |
| | | DESIGN | | | | ~~1~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~4,997~~ 0[1] | |
| | | TOTAL FUNDING | LNR | | C | ~~5,000C~~ 0[1] | |
| 16G. | | WAIKIKI LANDSCAPING IMPROVEMENTS, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR LANDSCAPING IMPROVEMENTS TO THE WAIKIKI IMPROVEMENT DISTRICT. | | | | | |
| | | DESIGN | | | | 5 | |
| | | CONSTRUCTION | | | | 20 | |
| | | TOTAL FUNDING | LNR | | C | 25C | |
| **B. EMPLOYMENT** | | | | | | | |
| **LBR903 - OFFICE OF COMMUNITY SERVICES** | | | | | | | |
| 1. | P99009 | ORI ANUENUE HALE, INC., OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE TRAINING FACILITIES OF ORI, ANUENUE HALE, INC. PROJECT TO INCLUDE TRAINING CENTERS AND SPACES FOR SUPPORT SERVICES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | DESIGN | | 150 | | | |
| | | CONSTRUCTION | | 800 | | | |
| | | TOTAL FUNDING | LBR | 950C | | | C |
| **C. TRANSPORTATION FACILITIES** | | | | | | | |
| **TRN102 - HONOLULU INTERNATIONAL AIRPORT** | | | | | | | |
| 1. | A10A | HIA, TERMINAL ROADWAY IMPROVEMENTS, OAHU | | | | | |
| | | DESIGN OF PEDESTRIAN RAILING, TRAFFIC SIGNAL, IMPROVED LIGHTING AND OTHER MISCELLANEOUS IMPROVEMENTS AT THE GROUND AND SECOND LEVEL ROADWAYS. | | | | | |
| | | DESIGN | | 200 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | TRN | 200B | | | B |
| 2. | A11D | HIA, CARGO FACILITY SITE PREPARATION AND APRON, OAHU | | | | | |
| | | DESIGN OF SITE PREPARATION (GRADING, ACCESS, AND UTILITIES) AND APRON NEEDED FOR A CARGO FACILITY AT THE NORTH RAMP. | | | | | |
| | | DESIGN | | 400 | | | |
| | | TOTAL FUNDING | TRN | 400B | | | B |
| 3. | A41B | HIA, EWA CONCOURSE CONCESSION IMPROVEMENTS, OAHU | | | | | |
| | | CONSTRUCTION TO EXPAND AND RENOVATE THE EWA CONCOURSE CONCESSION SPACE. | | | | | |
| | | CONSTRUCTION | | 1,100 | | | |
| | | TOTAL FUNDING | TRN | 1,100B | | | B |
| 4. | A41E | HIA, DIAMOND HEAD CONCOURSE, PHASE I, OAHU | | | | | |
| | | CONSTRUCTION FOR A THREE AND A HALF GATE EXTENSION TO THE DIAMOND HEAD CONCOURSE. | | | | | |
| | | CONSTRUCTION | | | | 56,000 | |
| | | TOTAL FUNDING | TRN | | E | 56,000E | |
| 5. | A41J | HIA, PUBLIC TOILET AND CUSTODIAL SUPPORT FACILITY PHASE II, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR RENOVATION OF EXISTING PUBLIC RESTROOMS AND CUSTODIAL FACILITIES THROUGHOUT THE AIRPORT. | | | | | |
| | | DESIGN | | 460 | | | |
| | | CONSTRUCTION | | | | 7,110 | |
| | | TOTAL FUNDING | TRN | 460B | | 7,110B | |
| 5A. | A23F | HIA, ENGINE RUNUP PAD, OAHU | | | | | |
| | | CONSTRUCTION FOR AN ENGINE RUNUP PAD AT THE REEF RUNWAY. | | | | | |
| | | CONSTRUCTION | | | | 1,950 | |
| | | TOTAL FUNDING | TRN | | B | 1,050B | |
| | | | TRN | | N | 900N | |
| 5B. | A23K | HIA, LAHSO LIGHTS, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION TO INSTALL LAHSO (LAND AND HOLD SHORT OPERATIONS) LIGHTS AT HONOLULU INTERNATIONAL AIRPORT. | | | | | |
| | | DESIGN | | | | 5 | |
| | | CONSTRUCTION | | | | 1,000 | |
| | | TOTAL FUNDING | TRN | | B | 1,005B | |
| 5C. | A35B | HIA, SIGNAGE AND GRAPHICS, PHASE IV, OAHU | | | | | |
| | | CONSTRUCTION FOR SIGNAGE AND GRAPHICS, HONOLULU INTERNATIONAL AIRPORT. | | | | | |
| | | CONSTRUCTION | | | | 3,000 | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | TRN | | B | 3,000 | B |
| 5D. | A41C | HIA, OVERSEAS TERMINAL CONCESSION IMPROVEMENTS, OAHU | | | | | |
| | | CONSTRUCTION TO EXPAND THE EXISTING CONCESSION SPACE IN THE CENTRAL TERMINAL AREA. | | | | | |
| | | CONSTRUCTION | | | | 8,000 | |
| | | TOTAL FUNDING | TRN | | B | 8,000 | B |
| 5E. | A41K | HIA, ARCHITECTURAL BARRIER REMOVAL, PHASE II, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION OF ARCHITECTURAL BARRIER REMOVAL TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT (ADA) REQUIREMENTS AT HONOLULU INTERNATIONAL AIRPORT. | | | | | |
| | | DESIGN | | | | 650 | |
| | | CONSTRUCTION | | | | 6,200 | |
| | | TOTAL FUNDING | TRN | | B | 2,850 | B |
| | | | TRN | | N | 4,000 | N |
| **TRN111 - HILO INTERNATIONAL AIRPORT** | | | | | | | |
| 6. | B10L | HILO INT'L AIRPORT DRAINAGE AND ROAD IMPROVEMENTS, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION FOR DRAINAGE AND ROAD RECONSTRUCTION OF BRIG ROAD AT THE AIRPORT. | | | | | |
| | | DESIGN | | 150 | | | |
| | | CONSTRUCTION | | | | 2,000 | |
| | | TOTAL FUNDING | TRN | 150 | B | 2,000 | B |
| 7. | B10M | HILO INT'L AIRPORT ARFF FACILITY IMPROVEMENTS, HAWAII | | | | | |
| | | DESIGN FOR IMPROVEMENTS TO SLEEPING QUARTERS, OFFICE STORAGE, TRAINING, DECONTAMINATION, AND EXERCISE ROOMS AT THE AIRPORT RESCUE AND FIRE FIGHTING (ARFF) STATION. | | | | | |
| | | DESIGN | | 200 | | | |
| | | TOTAL FUNDING | TRN | 200 | B | | B |
| 7A. | B10G | HILO INT'L AIRPORT SEWER CONNECTION, HAWAII | | | | | |
| | | CONSTRUCTION FOR A SEWER CONNECTION TO THE COUNTY OF HAWAII SEWER SYSTEM. | | | | | |
| | | CONSTRUCTION | | | | 1,400 | |
| | | TOTAL FUNDING | TRN | | B | 1,400 | B |
| 7B. | B10K | HILO INT'L AIRPORT TERMINAL ROOF RECONSTRUCTION, HAWAII | | | | | |
| | | CONSTRUCTION FOR ASBESTOS ABATEMENT NEEDED FOR THE RECONSTRUCTION OF THE HILO TERMINAL ROOF AND SIDING. | | | | | |
| | | CONSTRUCTION | | | | 13,800 | |
| | | TOTAL FUNDING | TRN | | B | 13,800 | B |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| **TRN131 - KAHULUI AIRPORT** | | | | | | | |
| 8. | D08E | KAHULUI AIRPORT AVIATION CARGO APRON, TAXIWAY AND BUILDING, MAUI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR AN AVIATION FACILITY INCLUDING AIRCRAFT PARKING, TAXIWAY CONNECTIONS, GENERAL CARGO BUILDING, AND NECESSARY ACCESS AND PARKING. | | | | | |
| | | DESIGN | | 100 | | | |
| | | CONSTRUCTION | | 13,600 | | | |
| | | TOTAL FUNDING | TRN | 13,700B | | | B |
| 9. | D08G | KAHULUI AIRPORT TERMINAL HARDSTANDS IMPROVEMENTS, MAUI | | | | | |
| | | DESIGN FOR AN EXTENSION OF THE EXISTING TERMINAL CONCRETE HARDSTANDS. | | | | | |
| | | DESIGN | | 100 | | | |
| | | TOTAL FUNDING | TRN | 100B | | | B |
| 9A. | D04A | KAHULUI AIRPORT TERMINAL DEVELOPMENT, MAUI | | | | | |
| | | CONSTRUCTION FOR TERMINAL IMPROVEMENTS INCLUDING ADDITIONAL TICKET LOBBIES, CONCESSION AND BAGGAGE CLAIM FACILITIES, AND SYSTEM IMPROVEMENTS. | | | | | |
| | | CONSTRUCTION | | | | 15,000 | |
| | | TOTAL FUNDING | TRN | | B | 15,000B | |
| 9B. | D08A | KAHULUI AIRPORT RENTAL CAR FACILITY MODIFICATIONS PHASE I, MAUI | | | | | |
| | | CONSTRUCTION FOR SITE WORK (GRADING, UTILITIES, AND ACCESS) FOR THE RENTAL CAR FACILITY RELOCATION. | | | | | |
| | | CONSTRUCTION | | | | 5,220 | |
| | | TOTAL FUNDING | TRN | | B | 5,220B | |
| 9C. | D08D | KAHULUI AIRPORT RELOCATE HOLD CARGO BUILDING, MAUI | | | | | |
| | | CONSTRUCTION TO RELOCATE HOLD CARGO BUILDING. | | | | | |
| | | CONSTRUCTION | | | | 7,585 | |
| | | TOTAL FUNDING | TRN | | B | 7,585B | |
| **TRN161 - LIHUE AIRPORT** | | | | | | | |
| 10. | E03H | LIHUE AIRPORT MAINTENANCE BASEYARD IMPROVEMENTS, KAUAI | | | | | |
| | | CONSTRUCTION FOR A THREE BAY STORAGE FACILITY AT THE MAINTENANCE BASEYARD. | | | | | |
| | | CONSTRUCTION | | 200 | | | |
| | | TOTAL FUNDING | TRN | 200B | | | B |
| 10A. | E03C | LIHUE AIRPORT POSTAL ACCESS ROAD, KAUAI | | | | | |
| | | CONSTRUCTION FOR A CONNECTOR ROAD TO THE LIHUE POST OFFICE SERVICE ROAD. | | | | | |
| | | CONSTRUCTION | | | | 1,134 | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | TRN | | B | 1,134 | B |
| 10B. | E03F | LIHUE AIRPORT HELIPORT IMPROVEMENTS, KAUAI | | | | | |
| | | CONSTRUCTION FOR A HELIPORT AT THE AIRPORT. | | | | | |
| | | CONSTRUCTION | | | | 9,500 | |
| | | TOTAL FUNDING | TRN | | B | 9,500 | B |
| 10C. | E03G | LIHUE AIRPORT GENERAL AVIATION APRON, KAUAI | | | | | |
| | | DESIGN FOR A GENERAL AVIATION APRON AT THE AIRPORT. | | | | | |
| | | DESIGN | | | | 550 | |
| | | TOTAL FUNDING | TRN | | B | 550 | B |
| **TRN195 - AIRPORTS ADMINISTRATION** | | | | | | | |
| 11. | F04J | AIRPORT PLANNING STUDY, STATEWIDE | | | | | |
| | | PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, DEVELOPMENT PLANS, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS. | | | | | |
| | | PLANS | | 1,500 | | 1,500 | |
| | | TOTAL FUNDING | TRN | 1,500 | B | 1,500 | B |
| 12. | F04K | HILO INT'L AIRPORT ENVIRONMENTAL IMPACT STATEMENT, HAWAII | | | | | |
| | | PLANS FOR AN ENVIRONMENTAL IMPACT STATEMENT AT HILO INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | PLANS | | 800 | | | |
| | | TOTAL FUNDING | TRN | 500 | B | | B |
| | | | TRN | 300 | N | | N |
| 13. | F04L | AIRPORT PAVEMENT MANAGEMENT SYSTEM, STATEWIDE | | | | | |
| | | PLANS FOR A PAVEMENT MANAGEMENT SYSTEM NEEDED TO COMPLY WITH FAA REQUIREMENTS FOR LARGE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | PLANS | | 5,000 | | | |
| | | TOTAL FUNDING | TRN | 500 | B | | B |
| | | | TRN | 4,500 | N | | N |
| 14. | F04M | AIRPORT GEOGRAPHIC INFORMATION SYSTEM PHASE II, STATEWIDE | | | | | |
| | | PLANS NEEDED TO POPULATE DATA INTO THE AIRPORTS DIVISION GEOGRAPHIC INFORMATION SYSTEM (GIS) FOR HONOLULU INT'L, KONA INT'L AT KEAHOLE, HILO INT'L, WAIMEA-KOHALA, UPOLU, KAPALUA WEST MAUI, HANA, LANAI, MOLOKAI, KALAUPAPA, DILLINGHAM, LIHUE, AND PORT ALLEN AIRPORT. | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | PLANS | | 1,000 | | | |
| | | TOTAL FUNDING | TRN | 1,000B | | | B |
| 15. | F04N | AIRPORT ENVIRONMENTAL SERVICES, STATEWIDE | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR ENVIRONMENTAL SERVICES AT THE STATEWIDE AIRPORT SYSTEM INCLUDING CESSPOOL AND INJECTION WELL CLOSURE, LABORATORY TESTS, ENVIRONMENTAL SITE ASSESSMENTS, AND OTHER RELATED ENVIRONMENTAL SERVICES. | | | | | |
| | | PLANS | | 100 | | 100 | |
| | | DESIGN | | 200 | | 200 | |
| | | CONSTRUCTION | | 300 | | 300 | |
| | | TOTAL FUNDING | TRN | 600B | | 600B | |
| 16. | F06G | LAND ACQUISITION, STATEWIDE | | | | | |
| | | LAND ACQUISITION FOR AVIGATION EASEMENTS, PROPERTY ACQUISITION, AND RELATED COSTS SUCH AS TITLE SEARCH, BOUNDARY SURVEYS, AND LAND APPRAISALS AT AIRPORTS STATEWIDE. | | | | | |
| | | LAND | | 100 | | 100 | |
| | | TOTAL FUNDING | TRN | 100B | | 100B | |
| 17. | F06H | KAHULUI AIRPORT LAND ACQUISITION AND AVIGATION EASEMENT, MAUI | | | | | |
| | | LAND ACQUISITION AND AVIGATION EASEMENT FOR THE RUNWAY APPROACH LIGHTING SYSTEM AT KAHULUI AIRPORT. | | | | | |
| | | LAND | | 500 | | | |
| | | TOTAL FUNDING | TRN | 500B | | | B |
| 18. | F08F | AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM 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 RELATED POSITIONS. | | | | | |
| | | PLANS | | 144 | | 144 | |
| | | DESIGN | | 726 | | 726 | |
| | | CONSTRUCTION | | 880 | | 880 | |
| | | TOTAL FUNDING | TRN | 1,750B | | 1,750B | |
| 19. | F08G | MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION OF MISCELLANEOUS IMPROVEMENTS AT VARIOUS AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND UNANTICIPATED PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT. | | | | | |
| | | DESIGN | | 300 | | 300 | |
| | | CONSTRUCTION | | 2,700 | | 2,700 | |
| | | TOTAL FUNDING | TRN | 3,000B | | 3,000B | |
| 20. | F08N | AIRPORT ARCHITECTURAL BARRIER REMOVAL PHASE II, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR ARCHITECTURAL BARRIER REMOVAL AT KAHULUI, KAPALUA-WEST MAUI, HANA, MOLOKAI, KALAUPAPA, DILLINGHAM, WAIMEA-KOHALA, HILO INTERNATIONAL, KONA INTERNATIONAL AIRPORT AT KEAHOLE, UPOLU, LIHUE, PORT ALLEN, AND HONOLULU INTERNATIONAL AIRPORT. | | | | | |
| | | DESIGN | | 500 | | | |
| | | CONSTRUCTION | | 1,200 | | 5,100 | |
| | | TOTAL FUNDING | TRN | 1,700B | | 5,100B | |
| 21. | F08O | CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE | | | | | |
| | | CONSTRUCTION FOR CONSTRUCTION MANAGEMENT SUPPORT AT AIRPORT FACILITIES, STATEWIDE. | | | | | |
| | | CONSTRUCTION | | 250 | | 250 | |
| | | TOTAL FUNDING | TRN | 250B | | 250B | |
| **TRN301 - HONOLULU HARBOR** | | | | | | | |
| 22. | J01 | PIERS 39-40 LAND ACQUISITION, HONOLULU HARBOR, OAHU | | | | | |
| | | LAND ACQUISITION AT PIERS 39-40 TO ACCOMMODATE THE EXPANSION OF MARITIME ACTIVITIES AT HONOLULU HARBOR. | | | | | |
| | | LAND | | 5,500 | | | |
| | | TOTAL FUNDING | TRN | 5,500E | | | E |
| 23. | J04 | IMPROVEMENTS TO FACILITIES AT PIERS 19-29, HONOLULU HARBOR, OAHU | | | | | |
| | | CONSTRUCTION FOR IMPROVEMENTS TO YARD AND PIER AREAS INCLUDING EXCURSION VESSEL FACILITIES, UTILITIES, ROADWAYS, PAVED PARKING, AND OTHER IMPROVEMENTS. | | | | | |
| | | CONSTRUCTION | | 2,750 | | | |
| | | TOTAL FUNDING | TRN | 2,750B | | | B |
| 24. | J06 | SAND ISLAND CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION FOR IMPROVEMENTS TO CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, LIGHTING, AND OTHER IMPROVEMENTS. | | | | | |
| | | CONSTRUCTION | | 15,000 | | | |
| | | TOTAL FUNDING | TRN | 15,000E | | | E |
| 25. | J09 | NAVIGATIONAL IMPROVEMENTS, HONOLULU HARBOR, OAHU | | | | | |
| | | PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS OF THE NAVIGATIONAL AREAS AT HONOLULU HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | PLANS | | 525 | | | |
| | | TOTAL FUNDING | TRN | 525B | | | B |
| 26. | J20 | REPLACEMENT OF FENDERS AT PIER 40, HONOLULU HARBOR, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR PIER IMPROVEMENTS INCLUDING REPLACEMENT OF FENDERING SYSTEM AND OTHER IMPROVEMENTS. | | | | | |
| | | DESIGN | | 25 | | | |
| | | CONSTRUCTION | | 950 | | | |
| | | TOTAL FUNDING | TRN | 975B | | | B |
| 27. | J23 | PASSENGER TERMINAL IMPROVEMENTS, HONOLULU HARBOR, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO FACILITIES FOR THE ACCOMMODATION OF PASSENGER FERRY AND CRUISE PASSENGERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 250 | | | |
| | | CONSTRUCTION | | 3,500 | | | |
| | | TOTAL FUNDING | TRN | 750B | | | B |
| | | | TRN | 3,000N | | | N |
| 28. | J30 | DREDGING OF BERTHING AREAS, HONOLULU HARBOR, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE DREDGING OF BERTHING AREAS AT PIERS 38, 39, AND 51A IN HONOLULU HARBOR, AND OTHER IMPROVEMENTS. | | | | | |
| | | DESIGN | | 150 | | | |
| | | CONSTRUCTION | | | | 1,300 | |
| | | TOTAL FUNDING | TRN | 150B | | 1,300B | |
| 29. | J33 | KAPALAMA MILITARY RESERVATION, HONOLULU HARBOR, OAHU | | | | | |
| | | LAND ACQUISITION TO ACCOMMODATE THE EXPANSION OF MARITIME ACTIVITIES AT HONOLULU HARBOR. | | | | | |
| | | LAND | | 8,190 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | TRN | 8,190B | | | B |
| 30. | J38 | MULTI-PURPOSE PIER AT PIER 12, HONOLULU HARBOR, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION OF A MULTI-PURPOSE PIER STRUCTURE AT PIER 12 INCLUDING APPURTENANCES AND OTHER IMPROVEMENTS. | | | | | |
| | | DESIGN | | 150 | | | |
| | | CONSTRUCTION | | | | 800 | |
| | | TOTAL FUNDING | TRN | 150B | | 800B | |
| **TRN303 - KALAELOA BARBERS POINT HARBOR** | | | | | | | |
| 31. | J15 | SHIP REPAIR FACILITIES, BARBERS POINT HARBOR, OAHU | | | | | |
| | | PLANS AND DESIGN FOR IMPROVEMENTS INCLUDING UTILITIES, LIGHTING, ACCESS ROADWAYS, DREDGING, AND OTHER RELATED IMPROVEMENTS. | | | | | |
| | | PLANS | | 250 | | | |
| | | DESIGN | | 250 | | | |
| | | TOTAL FUNDING | TRN | 500B | | | B |
| **TRN305 - KEWALO BASIN** | | | | | | | |
| 32. | J12 | KEWALO BASIN IMPROVEMENTS, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR REPLACEMENT OF CATWALKS, IMPROVEMENTS TO UTILITIES, REMOVAL OF UNDERGROUND STORAGE TANKS, AND OTHER IMPROVEMENTS. | | | | | |
| | | DESIGN | | 50 | | | |
| | | CONSTRUCTION | | 1,650 | | | |
| | | TOTAL FUNDING | TRN | 1,700B | | | B |
| **TRN311 - HILO HARBOR** | | | | | | | |
| 33. | L02 | BARGE TERMINAL IMPROVEMENTS, HILO HARBOR, HAWAII | | | | | |
| | | DESIGN FOR IMPROVEMENTS TO BARGE TERMINAL PIER, YARD, ROADWAY, UTILITIES, AND OTHER IMPROVEMENTS. | | | | | |
| | | DESIGN | | 600 | | | |
| | | TOTAL FUNDING | TRN | 600B | | | B |
| 34. | L06 | HILO HARBOR CONTAINER FACILITY IMPROVEMENTS, HAWAII | | | | | |
| | | CONSTRUCTION FOR HARBOR IMPROVEMENTS INCLUDING MODIFICATIONS TO PIERS, YARDS, SHEDS, UTILITIES, AND OTHER IMPROVEMENTS. | | | | | |
| | | CONSTRUCTION | | | | 3,500 | |
| | | TOTAL FUNDING | TRN | | B | 3,500B | |
| **TRN331 - KAHULUI HARBOR** | | | | | | | |
| 35. | J20 | KAHULUI HARBOR PIER IMPROVEMENT, MAUI | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION FOR NEW PIERS AND STORAGE YARDS, STRENGTHENING OF EXISTING PIERS AND YARDS, AND OTHER IMPROVEMENTS. | | | | | |
| | | CONSTRUCTION | | 5,000 | | | |
| | | TOTAL FUNDING | TRN | 5,000 | E | | E |
| 36. | M09 | KAHULUI HARBOR BARGE TERMINAL IMPROVEMENTS, MAUI | | | | | |
| | | CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING PIERS, YARDS, SHEDS, AND OTHER IMPROVEMENTS. | | | | | |
| | | CONSTRUCTION | | | | 3,000 | |
| | | TOTAL FUNDING | TRN | | B | 3,000 | B |
| **TRN363 - PORT ALLEN HARBOR** | | | | | | | |
| 37. | K03 | PORT ALLEN HARBOR IMPROVEMENTS, KAUAI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR A PASSENGER LOADING DOCK AND OTHER IMPROVEMENTS. | | | | | |
| | | DESIGN | | 250 | | | |
| | | CONSTRUCTION | | | | 1,500 | |
| | | TOTAL FUNDING | TRN | 250 | B | 1,500 | B |
| **TRN351 - KAUMALAPAU HARBOR** | | | | | | | |
| 38. | | KAUMALAPAU BREAKWATER IMPROVEMENTS, LANAI | | | | | |
| | | CONSTRUCTION FOR THE RECONSTRUCTION OF THE BREAKWATER AND OTHER SITE IMPROVEMENTS AT KAUMALAPAU HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | CONSTRUCTION | | 3,000 | | | |
| | | TOTAL FUNDING | TRN | 1,500 | B | | B |
| | | | TRN | 1,500 | R | | R |
| **TRN395 - HARBORS ADMINISTRATION** | | | | | | | |
| 39. | I00 | HARBOR DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE | | | | | |
| | | PLANS 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 RELATED POSITIONS. | | | | | |
| | | PLANS | | 750 | | 750 | |
| | | TOTAL FUNDING | TRN | 750 | B | 750 | B |
| 40. | I01 | HARBOR PLANNING, STATEWIDE | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | 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 | |
| 41. | 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 | |
| 42. | 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 | |
| 43. | I08 | REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE SYSTEMS, STATEWIDE. | | | | | |
| | | DESIGN | | 75 | | | |
| | | CONSTRUCTION | | | | 500 | |
| | | TOTAL FUNDING | TRN | 75B | | 500B | |
| 44. | I09 | VIDEO MONITORING SYSTEM FOR HONOLULU HARBOR AND BARBERS POINT HARBOR, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION OF A COMMUNICATIONS SYSTEM TO MONITOR THE MOVEMENT AND POSITIONING OF VESSELS. | | | | | |
| | | DESIGN | | 75 | | | |
| | | CONSTRUCTION | | 300 | | | |
| | | TOTAL FUNDING | TRN | 375B | | | B |
| 45. | I10 | REMOVAL OF ARCHITECTURAL BARRIERS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE REMOVAL OF BARRIERS TO PERSONS WITH DISABILITIES AT STATE COMMERCIAL HARBOR FACILITIES. | | | | | |
| | | DESIGN | | 100 | | | |
| | | CONSTRUCTION | | 500 | | | |
| | | TOTAL FUNDING | TRN | 600B | | | B |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 46. | I11 | ENVIRONMENTAL MONITORING FOR HARBOR IMPROVEMENTS, STATEWIDE | | | | | |
| | | CONSTRUCTION FOR CONSULTANT SERVICES FOR ENVIRONMENTAL MONITORING DURING CONSTRUCTION PROJECTS AT MISCELLANEOUS STATEWIDE HARBOR FACILITIES. | | | | | |
| | | CONSTRUCTION | | 100 | | | |
| | | TOTAL FUNDING | TRN | 100B | | | B |
| 47. | P99012 | MOLOKAI-MAUI FERRY SERVICE, MAUI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR LANDSIDE IMPROVEMENTS AND/OR VESSEL FOR A COMMUTER FERRY SERVICE TO BE USED BETWEEN MOLOKAI AND MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 250 | | | |
| | | CONSTRUCTION | | 3,500 | | | |
| | | TOTAL FUNDING | TRN | 750B | | | B |
| | | | TRN | 3,000N | | | N |
| 47A. | I12 | BULLRAILS INSTALLATION AT COMMERCIAL HARBORS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF BULLRAILS AT COMMERCIAL HARBORS, STATEWIDE. | | | | | |
| | | DESIGN | | | | 150 | |
| | | CONSTRUCTION | | | | 1,600 | |
| | | TOTAL FUNDING | TRN | | B | 1,750B | |
| **TRN501 - OAHU HIGHWAYS** | | | | | | | |
| 48. | R53 | KAMEHAMEHA HIGHWAY, HELEMANO-WAILUA JUNCTION TO HALEIWA BEACH PARK, OAHU | | | | | |
| | | LAND ACQUISITION AND CONSTRUCTION FOR ENHANCED WETLANDS IN THE VICINITY OF UKOA POND. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | LAND | | 435 | | | |
| | | CONSTRUCTION | | 2,500 | | | |
| | | TOTAL FUNDING | TRN | 935E | | | E |
| | | | TRN | 2,000N | | | N |
| 49. | S011 | HAUULA BASEYARD IMPROVEMENTS, OAHU | | | | | |
| | | CONSTRUCTION FOR A NEW BASEYARD FACILITY, INCLUDING OFFICE BUILDING, MAINTENANCE STORAGE BUILDING, SEPTIC TANK, AND OTHER IMPROVEMENTS. | | | | | |
| | | CONSTRUCTION | | 120 | | | |
| | | TOTAL FUNDING | TRN | 120E | | | E |
| 50. | S074 | OAHU BIKEWAYS, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | LAND ACQUISITION AND CONSTRUCTION FOR A MULTI-USE PATH FROM THE VICINITY OF WAIPAHU DEPOT ROAD TO HAKIMO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | LAND | | 3,780 | | | |
| | | CONSTRUCTION | | 1,550 | | | |
| | | TOTAL FUNDING | TRN | 1,065E | | | E |
| | | | TRN | 4,265N | | | N |
| 51. | S230 | WAIAHOLE BRIDGE REPLACEMENT, KAMEHAMEHA HIGHWAY, OAHU | | | | | |
| | | CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING CONCRETE STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | CONSTRUCTION | | 2,500 | | 3,940 | |
| | | TOTAL FUNDING | TRN | 500E | | 790E | |
| | | | TRN | 2,000N | | 3,150N | |
| 52. | S239 | FREEWAY MANAGEMENT SYSTEM, INTERSTATE H-1, H-2, AND MOANALUA FREEWAY, OAHU | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR A FREEWAY MANAGEMENT SYSTEM INCLUDING INTELLIGENT TRANSPORTATION SYSTEMS TECHNOLOGIES AND INTERAGENCY COORDINATION TO MONITOR AND MANAGE TRAFFIC OPERATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | CONSTRUCTION | | 7,499 | | 7,499 | |
| | | EQUIPMENT | | 1 | | 1 | |
| | | TOTAL FUNDING | TRN | 1,500E | | 1,500E | |
| | | | TRN | 6,000N | | 6,000N | |
| 53. | S248 | INTERSTATE ROUTE H-1 WIDENING, WAIAWA INTERCHANGE TO HALAWA INTERCHANGE, OAHU | | | | | |
| | | LAND ACQUISITION AND CONSTRUCTION FOR THE INTERSTATE ROUTE H-1 WIDENING WESTBOUND, WAIMALU VIADUCT TO PEARL CITY OFF-RAMP. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | LAND | | 7,500 | | | |
| | | CONSTRUCTION | | | | 25,000 | |
| | | TOTAL FUNDING | TRN | 1,500E | | 5,000E | |
| | | | TRN | 6,000N | | 20,000N | |
| 54. | 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 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING THE EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPOSTS, CRASH ATTENUATORS, RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 250 | | 250 | |
| | | CONSTRUCTION | | 3,000 | | 3,000 | |
| | | TOTAL FUNDING | TRN | 850E | | 850E | |
| | | | TRN | 2,400N | | 2,400N | |
| 55. | S268 | KAMEHAMEHA HIGHWAY, REPLACEMENT OF HALAWA STREAM BRIDGE (INBOUND), OAHU | | | | | |
| | | CONSTRUCTION FOR REPLACEMENT OF HALAWA STREAM BRIDGE (INBOUND). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | CONSTRUCTION | | 2,820 | | | |
| | | TOTAL FUNDING | TRN | 560E | | | E |
| | | | TRN | 2,260N | | | N |
| 56. | S269 | KAMEHAMEHA HIGHWAY, SOUTH PUNALUU BRIDGE REPLACEMENT, OAHU | | | | | |
| | | LAND ACQUISITION AND CONSTRUCTION FOR REPLACEMENT OF SOUTH PUNALUU BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | LAND | | 610 | | | |
| | | CONSTRUCTION | | | | 4,225 | |
| | | TOTAL FUNDING | TRN | 125E | | 845E | |
| | | | TRN | 485N | | 3,380N | |
| 57. | S270 | TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HWYS., OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS FOR MORE EFFICIENT FLOW OF TRAFFIC. | | | | | |
| | | DESIGN | | 200 | | 200 | |
| | | CONSTRUCTION | | 1,000 | | 1,000 | |
| | | TOTAL FUNDING | TRN | 1,200E | | 1,200E | |
| 58. | S273 | KAMEHAMEHA HIGHWAY, INTERSECTION IMPROVEMENTS AT KUILIMA DRIVE, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | LAND ACQUISITION AND CONSTRUCTION FOR A LEFT TURN LANE ON KAMEHAMEHA HIGHWAY INTO KULIMA DRIVE AND OTHER RELATED IMPROVEMENTS. | | | | | |
| | | LAND | | | | 625 | |
| | | CONSTRUCTION | | 3,000 | | 1,600 | |
| | | TOTAL FUNDING | TRN | 3,000X | | 2,225X | |
| 59. | S274 | KAMEHAMEHA HWY TRAFFIC IMPROVEMENTS, KAHALUU TO WAIMEA BAY, OAHU | | | | | |
| | | LAND ACQUISITION AND DESIGN FOR IMPROVING TRAFFIC OPERATIONS AND INCREASING SAFETY ALONG THIS STRETCH OF KAMEHAMEHA HIGHWAY. IMPROVEMENTS TO INCLUDE CONSTRUCTING PASSING AND TURNING LANES, MODIFYING EXISTING TRAFFIC SIGNALS, CONSTRUCTING SIDEWALKS, INSTALLING SIGNS, FLASHERS, AND OTHER WARNING DEVICES, AND OTHER IMPROVEMENTS. | | | | | |
| | | LAND | | | | 500 | |
| | | DESIGN | | 1,000 | | | |
| | | TOTAL FUNDING | TRN | 230E | | 100E | |
| | | | TRN | 770N | | 400N | |
| 60. | S275 | KALANIANAOLE HIGHWAY IMPROVEMENTS, REALIGN HIGHWAY, MAKAPUU, OAHU | | | | | |
| | | LAND ACQUISITION AND DESIGN FOR REALIGNING KALANIANAOLE HIGHWAY IN THE VICINITY OF OCEANIC INSTITUTE, MAKAPUU. IMPROVEMENTS INCLUDE CONSTRUCTING THE ROADWAY MORE INLAND FROM THE SHORELINE. | | | | | |
| | | LAND | | 1 | | | |
| | | DESIGN | | 299 | | | |
| | | TOTAL FUNDING | TRN | 300E | | | E |
| 61. | S276 | KALANIANAOLE HIGHWAY IMPROVEMENTS, RETAINING WALL, MAKAPUU, OAHU | | | | | |
| | | DESIGN FOR CONSTRUCTING AND/OR REPAIRING A RETAINING WALL ALONG KALANIANAOLE HIGHWAY IN THE VICINITY OF MAKAPUU POINT. PROJECT TO INCLUDE SUBSURFACE INVESTIGATION AND SLOPE PROTECTION. | | | | | |
| | | DESIGN | | | | 900 | |
| | | TOTAL FUNDING | TRN | | E | 900E | |
| 62. | S277 | KAMEHAMEHA HIGHWAY, SIDEWALK, MILILANI, OAHU | | | | | |
| | | CONSTRUCTION FOR A SIDEWALK AND PAVED SHOULDERS FOR BICYCLE ACCESSIBILITY ALONG KAMEHAMEHA HIGHWAY IN THE VICINITY OF MEHEULA PARKWAY TO THE VICINITY OF KUAHELANI AVENUE. | | | | | |
| | | CONSTRUCTION | | 1,250 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | TRN | 1,250E | | | E |
| 63. | S280 | INTERSTATE ROUTE H-1, PEARL CITY AND WAIMALU VIADUCT IMPROVEMENTS, OAHU | | | | | |
| | | PLANS FOR A STUDY TO ASSESS THE PEARL CITY AND WAIMALU VIADUCTS' STRUCTURAL AND FUNCTIONAL CAPACITIES AND TO IDENTIFY IMPROVEMENT OPTIONS. | | | | | |
| | | PLANS | | 200 | | | |
| | | TOTAL FUNDING | TRN | 200E | | | E |
| 64. | S281 | WAHIAWA BASEYARD IMPROVEMENTS, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR OFFICE BUILDING, VEHICLE STORAGE STRUCTURE, ABOVE GROUND FUEL STORAGE TANK, AND IMPROVEMENTS TO THE EXISTING FACILITY. | | | | | |
| | | DESIGN | | 100 | | | |
| | | CONSTRUCTION | | | | 650 | |
| | | TOTAL FUNDING | TRN | 100E | | 650E | |
| 65. | S282 | ROCKFALL PROTECTION AT VARIOUS LOCATIONS, OAHU | | | | | |
| | | PLANS FOR STUDIES TO DETERMINE ROCKFALL/ SLOPE PROTECTION MITIGATION MEASURES AT VARIOUS LOCATIONS. | | | | | |
| | | PLANS | | 350 | | | |
| | | TOTAL FUNDING | TRN | 350E | | | E |
| 66. | S283 | NIMITZ HIGHWAY IMPROVEMENTS, KALIHI STREET TO SAND ISLAND ACCESS ROAD, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR INTERSECTION AND TRAFFIC SIGNAL IMPROVEMENTS FROM KALIHI STREET TO SAND ISLAND ACCESS ROAD. | | | | | |
| | | DESIGN | | 250 | | | |
| | | CONSTRUCTION | | | | 2,150 | |
| | | TOTAL FUNDING | TRN | 250E | | 2,150E | |
| 67. | S284 | INTERSTATE H-1 AND H-2, DESTINATION SIGN UPGRADE/ REPLACEMENT, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR REPLACING AND/OR UPGRADING THE EXISTING DESTINATION SIGNS AND SIGN SUPPORT STRUCTURES ON INTERSTATE ROUTES H-1 AND H-2. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 500 | | | |
| | | CONSTRUCTION | | | | 5,000 | |
| | | TOTAL FUNDING | TRN | 50E | | 500E | |
| | | | TRN | 450N | | 4,500N | |
| 68. | S285 | KAHEKILI HIGHWAY LANDSCAPING VICINITY OF KULUKEOE STREET TO HAIKU ROAD, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR KAHEKILI HIGHWAY BEAUTIFICATION, INCLUDING RECONSTRUCTING THE MEDIAN, LANDSCAPING, AND IRRIGATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 300 | | | |
| | | CONSTRUCTION | | | | 2,500 | |
| | | TOTAL FUNDING | TRN | 300 | E | 500 | E |
| | | | TRN | | N | 2,000 | N |
| 69. | S286 | NIMITZ HIGHWAY BIKEWAY, WAIAKAMILO ROAD TO THE H-1 FREEWAY AIRPORT VIADUCT, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR EXTENDING THE NIMITZ HIGHWAY BIKE LANE FROM WAIAKAMILO ROAD TO THE EXISTING MULTI-USE PATH UNDER THE AIRPORT VIADUCT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 225 | | | |
| | | CONSTRUCTION | | | | 1,500 | |
| | | TOTAL FUNDING | TRN | 225 | E | 300 | E |
| | | | TRN | | N | 1,200 | N |
| 70. | S287 | KAMEHAMEHA HIGHWAY BIKEWAY, VICINITY OF RADFORD DRIVE TO ARIZONA MEMORIAL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR A BIKE LANE ON KAMEHAMEHA HIGHWAY FROM THE VICINITY OF RADFORD DRIVE TO THE ARIZONA MEMORIAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 60 | | | |
| | | CONSTRUCTION | | | | 600 | |
| | | TOTAL FUNDING | TRN | 60 | E | 120 | E |
| | | | TRN | | N | 480 | N |
| 71. | S288 | WILIKINA DRIVE INTERSECTION IMPROVEMENTS AT MCNAIR GATE, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS, INCLUDING INSTALLING A TRAFFIC SIGNAL AND MODIFYING THE INTERSECTION. | | | | | |
| | | DESIGN | | 150 | | | |
| | | CONSTRUCTION | | | | 1,150 | |
| | | TOTAL FUNDING | TRN | 150 | E | 1,150 | E |
| 72. | S289 | KAMEHAMEHA HIGHWAY INTERSECTION IMPROVEMENTS AT KAMANANUI ROAD, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR INSTALLING A TRAFFIC SIGNAL SYSTEM, SIGNING, PAVEMENT MARKINGS, AND OTHER MISCELLANEOUS IMPROVEMENTS. | | | | | |
| | | DESIGN | | 50 | | | |
| | | CONSTRUCTION | | | | 350 | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | TRN | | 50E | | 350E |
| 73. | S290 | FARRINGTON HIGHWAY IMPROVEMENTS, WAIKELE ROAD TO ANIANI PLACE, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR RELOCATING A PEDESTRIAN CROSSING SIGNAL TO THE FARRINGTON HIGHWAY AND WAIKELE ROAD INTERSECTION, TRAFFIC SIGNAL SYSTEM UPGRADE, AND OTHER IMPROVEMENTS. | | | | | |
| | | DESIGN | | | 70 | | |
| | | CONSTRUCTION | | | | | 690 |
| | | TOTAL FUNDING | TRN | | 70E | | 690E |
| 74. | S291 | KANEOHE BAY DRIVE IMPROVEMENTS, VICINITY OF AUMOKU STREET TO MOKULELE DRIVE, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR ROADWAY WIDENING, LEFT TURN STORAGE LANES, DRAINAGE FACILITIES, RETAINING WALLS, SIGNING, STRIPING, AND PAVEMENT MARKINGS. | | | | | |
| | | DESIGN | | | 350 | | |
| | | CONSTRUCTION | | | | | 3,450 |
| | | TOTAL FUNDING | TRN | | 350E | | 3,450E |
| 75. | S294 | MOANALUA FREEWAY, NORTH FRONTAGE ROAD IMPROVEMENTS, OAHU | | | | | |
| | | PLANS AND DESIGN FOR ROADWAY IMPROVEMENTS IN THE VICINITY OF ALA AOLANI STREET AND ALA KAPUNA STREET, INCLUDING IMPROVING ACCESS TO KAISER HOSPITAL. | | | | | |
| | | PLANS | | | 50 | | |
| | | DESIGN | | | | | 100 |
| | | TOTAL FUNDING | TRN | | 50E | | 100E |
| 76. | SP9101 | NORTH/SOUTH ROAD, KAPOLEI PARKWAY TO VICINITY OF INTERSTATE ROUTE H-1, OAHU | | | | | |
| | | LAND ACQUISITION AND DESIGN FOR NORTH/ SOUTH ROAD, PHASE II, FROM FARRINGTON HIGHWAY TO VICINITY OF THE H-1 FREEWAY. IMPROVEMENTS INCLUDE A MULTI-LANE HIGHWAY AND AN INTERCHANGE AT THE H-1 FREEWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | LAND | | | 500 | | |
| | | DESIGN | | | 3,300 | | |
| | | TOTAL FUNDING | TRN | | 760E | | E |
| | | | TRN | | 3,040N | | N |
| 77. | SP9710 | FARRINGTON HIGHWAY RETAINING WALL, OAHU | | | | | |
| | | CONSTRUCTION FOR A RETAINING WALL AND DRAINAGE IMPROVEMENTS ALONG FARRINGTON HIGHWAY ABOVE THE WAIPAHU HIGH SCHOOL ATHLETIC FIELD. | | | | | |
| | | CONSTRUCTION | | | 400 | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | TRN | | 400E | | E |
| 78. | X092 | OAHU DISTRICT WAREHOUSE BUILDING, OAHU | | | | | |
| | | CONSTRUCTION FOR A WAREHOUSE BUILDING AT THE OAHU DISTRICT BASEYARD AND FOR THE RENOVATION OF AN EXISTING WAREHOUSE INTO A HEAVY EQUIPMENT REPAIR SHOP. | | | | | |
| | | CONSTRUCTION | | | 870 | | |
| | | TOTAL FUNDING | TRN | | 870E | | E |
| 79. | SP9901 | FORT WEAVER ROAD WIDENING, INTERSTATE H-1 TO GEIGER ROAD, OAHU | | | | | |
| | | PLANS FOR THE WIDENING OF FORT WEAVER ROAD FROM FOUR LANES TO SIX LANES FROM INTERSTATE ROUTE H-1 TO GEIGER ROAD. | | | | | |
| | | PLANS | | | 500 | | |
| | | TOTAL FUNDING | TRN | | 500E | | E |
| 80. | SP9902 | WAHIAWA SECOND ACCESS ROAD, OAHU | | | | | |
| | | PLANS AND DESIGN FOR A SECOND ACCESS ROAD TO WAHIAWA FROM HONOLULU. | | | | | |
| | | PLANS | | | ~~750~~ 0[1] | | |
| | | DESIGN | | | ~~2,250~~ 0[1] | | |
| | | TOTAL FUNDING | TRN | | ~~3,000~~E 0[1] | | E |
| 81. | SP9903 | LEEWARD COMMUNITY COLLEGE, SECONDARY EXIT, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR A SECONDARY EXIT FOR LEEWARD COMMUNITY COLLEGE. | | | | | |
| | | PLANS | | | ~~250~~ 0[1] | | |
| | | DESIGN | | | ~~250~~ 0[1] | | |
| | | CONSTRUCTION | | | ~~4,500~~ 0[1] | | |
| | | TOTAL FUNDING | TRN | | ~~5,000~~E 0[1] | | E |
| 82. | SP9904 | TRAFFIC CONGESTION STUDY, MOANALUA FRWY. AT FORT SHAFTER/H-1 VIADUCT, OAHU. | | | | | |
| | | PLANS FOR A TRAFFIC CONGESTION STUDY FOR MOANALUA FREEWAY AT FORT SHAFTER CORRIDOR AND H-1 VIADUCT. | | | | | |
| | | PLANS | | | 250 | | |
| | | TOTAL FUNDING | TRN | | 250E | | E |
| 83. | SP9905 | AIEA INTERCHANGE BEAUTIFICATION, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR LANDSCAPING IMPROVEMENTS TO AN AREA ALONG THE AIEA INTERCHANGE TO INCLUDE THE AREA OF THE AIEA OFF-RAMP FROM MOANALUA FREEWAY, WESTBOUND, AND KAMEHAMEHA HIGHWAY ON-RAMP, EASTBOUND. | | | | | |
| | | DESIGN | | 200 | | | |
| | | CONSTRUCTION | | 1,000 | | | |
| | | TOTAL FUNDING | TRN | 1,200E | | | E |
| 84. | SP9906 | H-3 FREEWAY, PERMANENT KAILUA CUTOFF, OAHU | | | | | |
| | | PLANS AND DESIGN FOR A PERMANENT KAILUA CUTOFF TO BE INTEGRATED INTO THE H-3 FREEWAY. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 249 | | | |
| | | TOTAL FUNDING | TRN | 250E | | | E |
| 85. | SP9907 | CAMPUS ACCESS BIKEWAY PROJECTS, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR CAMPUS ACCESS BIKEWAY PROJECTS ALONG UNIVERSITY AVENUE, DOLE STREET, AND ST. LOUIS DRIVE (CAMPUS ACCESS PROJECT NUMBERS 2, 13, 14, 15, AND 16). | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 388 | | | |
| | | TOTAL FUNDING | TRN | 390E | | | E |
| 85A. | S295 | LIKELIKE HIGHWAY, WILSON TUNNEL IMPROVEMENTS, OAHU | | | | | |
| | | DESIGN FOR WILSON TUNNEL IMPROVEMENTS, INCLUDING WALLS, STRUCTURAL COMPONENTS, PAVEMENT, ELECTRICAL AND MECHANICAL SYSTEMS, DRAINAGE SYSTEM AND OTHER INCIDENTALS. | | | | | |
| | | DESIGN | | | | | 800 |
| | | TOTAL FUNDING | TRN | | E | | 800E |
| 85B. | S296 | KAMEHAMEHA HIGHWAY, KAIPAPAU STREAM BRIDGE REPLACEMENT, OAHU | | | | | |
| | | DESIGN FOR THE REPLACEMENT OF KAIPAPAU STREAM BRIDGE. | | | | | |
| | | DESIGN | | | | | 525 |
| | | TOTAL FUNDING | TRN | | E | | 525E |
| 85C. | S297 | KAMEHAMEHA HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, OAHU | | | | | |
| | | DESIGN FOR REPLACEMENT OF KAWELA STREAM BRIDGE. | | | | | |
| | | DESIGN | | | | | 300 |
| | | TOTAL FUNDING | TRN | | E | | 300E |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| 85D. | S298 | KAMEHAMEHA HIGHWAY, KOKOLOLIO STREAM BRIDGE REPLACEMENT, OAHU | | | | | |
| | | DESIGN FOR REPLACEMENT OF KOKOLOLIO STREAM BRIDGE. | | | | | |
| | | DESIGN | | | | | 300 |
| | | TOTAL FUNDING | TRN | | E | | 300E |
| 85E. | S299 | KAMEHAMEHA HIGHWAY, NORTH KAHANA STREAM BRIDGE REPLACEMENT, OAHU | | | | | |
| | | DESIGN FOR REPLACEMENT OF NORTH KAHANA STREAM BRIDGE. | | | | | |
| | | DESIGN | | | | | 650 |
| | | TOTAL FUNDING | TRN | | E | | 650E |
| 85F. | SP9705 | FARRINGTON HWY, DRAINAGE IMPROVEMENTS, ULEHAWA STREAM TO ULEHAWA BCH PARK, OAHU | | | | | |
| | | DESIGN FOR DRAINAGE IMPROVEMENTS ALONG THE MAKAI SIDE OF FARRINGTON HIGHWAY. | | | | | |
| | | DESIGN | | | | | 20 |
| | | TOTAL FUNDING | TRN | | E | | 20E |
| 85G. | SP9707 | FARRINGTON HWY, DRAINAGE IMPROVEMENTS, NANAKULI RANCH TO THE GTE BUILDING, OAHU | | | | | |
| | | LAND ACQUISITION AND DESIGN FOR DRAINAGE IMPROVEMENTS ALONG THE MAUKA AND MAKAI SHOULDERS OF FARRINGTON HIGHWAY FROM NANAKULI RANCH TO THE GTE BUILDING AND CONSTRUCTION OF OCEAN OUTLET ON THE NORTHWEST SIDE OF NANAKULI BEACH PARK. | | | | | |
| | | LAND | | | | | 110 |
| | | DESIGN | | | | | 20 |
| | | TOTAL FUNDING | TRN | | E | | 130E |
| 85H. | S247 | SHOULDER IMPROVEMENTS FOR BICYCLE ROUTES AT VARIOUS LOCATIONS, OAHU | | | | | |
| | | CONSTRUCTION FOR BICYCLE LANES FOR WAIALAE AVENUE FROM KEALAOLU AVENUE TO KALANIANAOLE HIGHWAY FROM 17TH AVENUE TO 21ST AVENUE. IMPROVEMENTS CONSIST OF CONSTRUCTING SHOULDERS, PAVING, RECONSTRUCTING SIDEWALKS, CONSTRUCTING WHEELCHAIR RAMPS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | CONSTRUCTION | | | | | 166 |
| | | TOTAL FUNDING | TRN | | E | | 36E |
| | | | TRN | | N | | 130N |
| 85I. | | PALI HWY. IMPROVEMENTS, VICINITY OF WAOKANAKA STREET TO SCHOOL STREET, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | PLANS AND DESIGN FOR IMPROVING OPERATIONS AND SAFETY ON THE PALI HIGHWAY INCLUDING CROSSWALK, SIDEWALK, MEDIAN, RECONSTRUCTION, STRIPING, PAVEMENT MARKINGS, SIGNS, FLASHERS, AND OTHER WARNING DEVICES, AND OTHER IMPROVEMENTS. | | | | | |
| | | PLANS | | | | 100 | |
| | | DESIGN | | | | 350 | |
| | | TOTAL FUNDING | TRN | | E | 450 | E |
| 85J. | | FORT WEAVER ROAD WIDENING NEAR LAULAUNUI STREET, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR ROADWAY WIDENING, DRAINAGE IMPROVEMENTS, RELOCATION OF BUS SHELTER, BIKE PATH, HIGHWAY LIGHTS AND TRAFFIC SIGNALS, PAVEMENT MARKING AND SIGNALING, AND OTHER ROADWAY RELATED ITEMS. | | | | | |
| | | DESIGN | | | | 100 | |
| | | CONSTRUCTION | | | | 1,000 | |
| | | TOTAL FUNDING | TRN | | E | 1,100 | E |
| 85K. | | FARRINGTON HIGHWAY, MEDIAL STRIP, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR A MEDIAL STRIP FROM KAMEHAMEHA HIGHWAY TO FORT WEAVER ROAD. | | | | | |
| | | PLANS | | | | ~~700~~ 0[1] | |
| | | DESIGN | | | | ~~2,100~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~4,200~~ 0[1] | |
| | | TOTAL FUNDING | TRN | | E | ~~7,000~~ 0[1] | E |
| 85L. | | TRAFFIC SIGNALS AT HONOWAI STREET AND KUNIA ROAD, OAHU | | | | | |
| | | DESIGN FOR TRAFFIC SIGNALS AT THE INTERSECTION OF HONOWAI STREET AND KUNIA ROAD. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~300~~ 0[1] | |
| | | TOTAL FUNDING | TRN | | E | ~~300~~ 0[1] | E |
| 85M. | | TRAFFIC SIGNALS AT FARRINGTON HIGHWAY AND WAIKELE ROAD, OAHU | | | | | |
| | | DESIGN FOR TRAFFIC SIGNALS AT THE INTERSECTION OF FARRINGTON HIGHWAY AND WAIKELE ROAD. | | | | | |
| | | DESIGN | | | | ~~300~~ 0[1] | |
| | | TOTAL FUNDING | TRN | | E | ~~300~~ 0[1] | E |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 85N. | | KAMEHAMEHA HIGHWAY IMPROVEMENTS IN VICINITY OF HONOMANU ST., OAHU | | | | | |
| | | PLANS FOR KAMEHAMEHA HIGHWAY IMPROVEMENTS IN THE VICINITY OF HONOMANU STREET. | | | | | |
| | | PLANS | | | | ~~225~~ 0[1] | |
| | | TOTAL FUNDING | TRN | | E | ~~225~~E 0[1] | |
| 85O. | | KAMEHAMEHA HIGHWAY, LEFT TURN LANE AT WAIHEE ROAD, OAHU | | | | | |
| | | DESIGN FOR LEFT TURN LANE ON KAMEHAMEHA HIGHWAY AND WAIHEE ROAD. | | | | | |
| | | DESIGN | | | | 250 | |
| | | TOTAL FUNDING | TRN | | E | 250E | |
| 85P. | | KAMEHAMEHA HIGHWAY, DRAINAGE IMPROVEMENT IN THE VICINITY OF KAHUKU HOSPITAL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION TO REPLACE HOSPITAL DITCH CULVERT. | | | | | |
| | | DESIGN | | | | 420 | |
| | | CONSTRUCTION | | | | 980 | |
| | | TOTAL FUNDING | TRN | | E | 1,400E | |
| 85Q. | | TRAFFIC SIGNALS IN THE VICINITY OF KAPOLEI ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF TRAFFIC LIGHTS AT TWO INTERSECTIONS: KULOA AVENUE AND KAMAAHA AVENUE; AND KUMU IKI STREET AND KAMAAHA AVENUE. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~43~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~638~~ 0[1] | |
| | | TOTAL FUNDING | TRN | | E | ~~681~~E 0[1] | |
| **TRN511 - HAWAII HIGHWAYS** | | | | | | | |
| 86. | T027 | HAWAII BELT ROAD: REPLACEMENT OF FIVE BRIDGES, HAMAKUA, HAWAII | | | | | |
| | | CONSTRUCTION FOR HAWAII BELT ROAD IMPROVEMENTS, HAMAKUA. REPLACE EXISTING CONCRETE BRIDGE AT KEALAKAHA STREAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | CONSTRUCTION | | 4,600 | | | |
| | | TOTAL FUNDING | TRN | 920E | | | E |
| | | | TRN | 3,680N | | | N |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 87. | T077 | GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPOSTS AND CRASH ATTENUATORS, AND RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 110 | | 110 | |
| | | CONSTRUCTION | | 1,465 | | 1,465 | |
| | | TOTAL FUNDING | TRN | 440E | | 440E | |
| | | | TRN | 1,135N | | 1,135N | |
| 88. | T080 | KAWAIHAE ROAD, WAIAKA STREAM BRIDGE APPROACHES, HAWAII | | | | | |
| | | LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR REPLACING EXISTING WAIAKA STREAM BRIDGE, REALIGNING BRIDGE APPROACHES, RECONSTRUCTING THE ROUTE 19/ ROUTE 250 INTERSECTION, AND INSTALLING SAFETY IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | LAND | | 370 | | | |
| | | DESIGN | | 260 | | | |
| | | CONSTRUCTION | | | | 3,940 | |
| | | TOTAL FUNDING | TRN | 130E | | 790E | |
| | | | TRN | 500N | | 3,150N | |
| 89. | T118 | TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HWYS., HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS. | | | | | |
| | | DESIGN | | 120 | | 120 | |
| | | CONSTRUCTION | | 950 | | 950 | |
| | | TOTAL FUNDING | TRN | 1,070E | | 1,070E | |
| 90. | T122 | KAMEHAMEHA AVE. BIKEWAY, KALANIANAOLE AVE. TO HILO BAYFRONT HIGHWAY, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE ADDITION OF A BIKE LANE IN THE VICINITY OF KALANIANAOLE AVENUE TO HILO BAYFRONT HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN | | | 60 | | |
| | | CONSTRUCTION | | | | | 525 |
| | | TOTAL FUNDING | TRN | | 60E | | 105E |
| | | | TRN | | N | | 420N |
| 91. | T123 | VOLCANO ROAD INTERSECTION IMPROVEMENTS AT HUINA ROAD, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION FOR INTERSECTION IMPROVEMENTS AT VOLCANO ROAD AND HUINA ROAD. PROJECT TO PROVIDE EITHER SIGNALIZATION OR THE CONSTRUCTION OF A FULLY CHANNELIZED INTERSECTION, INCLUDING RELOCATING UTILITIES, INSTALLING SIGNS, PAVEMENT MARKERS, STRIPING, HIGHWAY LIGHTING, AND EXTENDING A DRAINAGE CULVERT. | | | | | | |
| | | DESIGN | | | 180 | | |
| | | CONSTRUCTION | | | | | 1,170 |
| | | TOTAL FUNDING | TRN | | 180E | | 1,170E |
| 92. | TP9901 | KEAAU-PAHOA ROAD IMPROVEMENTS, HAWAII | | | | | |
| | | PLANS AND DESIGN FOR AN ALTERNATE ACCESS ROAD. PROJECT TO INCLUDE EITHER THE EXPANSION OF KEAAU-PAHOA ROAD TO FOUR (4) LANES OR THE BUILDING OF AN ALTERNATE ROAD. | | | | | |
| | | PLANS | | | 60 | | |
| | | DESIGN | | | 340 | | |
| | | TOTAL FUNDING | TRN | | 400E | | E |
| 92A. | T124 | HONOKAA/WAIPIO ROAD, DRAINAGE IMPROVEMENTS, HAWAII | | | | | |
| | | CONSTRUCTION FOR REPAIRING TWO 180-INCH STRUCTURAL PLATE CULVERTS AND OTHER DRAINAGE IMPROVEMENTS IN THE VICINITY OF MILEPOINT 6.28. | | | | | |
| | | CONSTRUCTION | | | | | 800 |
| | | TOTAL FUNDING | TRN | | E | | 800E |
| 92B. | T125 | AKONI PULE HIGHWAY, REALIGNMENT AND WIDENING AT AAMAKOA GULCH, HAWAII | | | | | |
| | | DESIGN FOR REALIGNMENT AND WIDENING OF AKONI PULE HIGHWAY ON THE POLOLO VALLEY SIDE OF AAMAKOA GULCH, INCLUDING INSTALLING GUARDRAILS AND SIGNS. | | | | | |
| | | DESIGN | | | | | 160 |
| | | TOTAL FUNDING | TRN | | E | | 160E |
| 92C. | T126 | KUAKINI HWY, ROADWAY & DRAINAGE IMPROV., VICINITY OF KAMEHAMEHA III RD., HAWAII | | | | | |
| | | DESIGN FOR BUILDING UP PAVEMENT CROSS SLOPE TO IMPROVE DRAINAGE AND OTHER INCIDENTAL IMPROVEMENTS. | | | | | |
| | | DESIGN | | | | | 150 |
| | | TOTAL FUNDING | TRN | | E | | 150E |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 92D. | | KOHALA MT. RD. REALIGNMENTS, VICINITY OF KAWAIHAE UKA BRIDGE & KAHUA RCH., HAWAII | | | | | |
| | | PLANS FOR THE REALIGNMENT AND WIDENING OF ROADWAY AT TWO (2) CURVED SECTIONS OF THE KOHALA MOUNTAIN ROAD IN THE VICINITY OF KAWAIHAE UKA BRIDGE AND KAHUA RANCH. WORK ALSO INCLUDES THE INSTALLATION OF GUARDRAILS, CULVERTS, SIGNS, AND PAVEMENT MARKINGS. | | | | | |
| | | PLANS | | | | | 338 |
| | | TOTAL FUNDING | TRN | | E | | 338E |
| **TRN531 - MAUI HIGHWAYS** | | | | | | | |
| 93. | V048 | GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MAUI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPOSTS AND CRASH ATTENUATORS, AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 100 | | | 100 |
| | | CONSTRUCTION | | 1,590 | | | 1,590 |
| | | TOTAL FUNDING | TRN | 580E | | | 580E |
| | | | TRN | 1,110N | | | 1,110N |
| 94. | V73 | PUUNENE AVENUE/MOKULELE HWY. WIDENING, KUIHELANI HWY. TO PIILANI HWY., MAUI | | | | | |
| | | LAND ACQUISITION AND CONSTRUCTION FOR WIDENING OF PUUNENE AVENUE AND MOKULELE HIGHWAY FROM TWO LANES TO FOUR LANES, PHASE I. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (SPECIAL FUNDS FROM DUTY FREE). | | | | | |
| | | LAND | | 4,170 | | | |
| | | CONSTRUCTION | | | | | 43,000 |
| | | TOTAL FUNDING | TRN | | B | | 10,700B |
| | | | TRN | 835E | | | E |
| | | | TRN | 3,335N | | | 32,300N |
| 95. | V75 | HANA HIGHWAY ROCKFALL MITIGATION, HUELO TO HANA, MAUI | | | | | |
| | | DESIGN AND CONSTRUCTION TO REMOVE OVERHANGING, PROTRUDING, AND/OR UNSTABLE ROCKS FROM THE SLOPES ABOVE HANA HIGHWAY. | | | | | |
| | | DESIGN | | 250 | | | |
| | | CONSTRUCTION | | | | | 1,550 |
| | | TOTAL FUNDING | TRN | 250E | | | 1,550E |
| 96. | V82 | HONOAPIILANI HWY. STABILIZING EMBANKMENT SLOPE, HONOKOWAI TO KAPALUA, MAUI | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION FOR THE STABILIZATION OF THE HIGHWAY EMBANKMENT, INCLUDING FLATTENING OF EMBANKMENT SLOPES AND CONSTRUCTING RETAINING WALLS. | | | | | |
| | | CONSTRUCTION | | 1,665 | | | |
| | | TOTAL FUNDING | TRN | 1,665E | | | E |
| 97. | V83 | TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HWYS., MAUI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS. | | | | | | |
| | | DESIGN | | 100 | | 100 | |
| | | CONSTRUCTION | | 960 | | 960 | |
| | | TOTAL FUNDING | TRN | 1,060E | | 1,060E | |
| 98. | V84 | HANA HIGHWAY IMPROVEMENTS, HUELO TO HANA, MAUI | | | | | |
| | | DESIGN FOR IMPROVING, UPGRADING, AND/OR REPAIRING ROADWAYS, BRIDGES, WALLS, DRAINAGE STRUCTURES, GUARDRAILS, AND OTHER ROAD STRUCTURES ON HANA HIGHWAY. | | | | | |
| | | DESIGN | | 85 | | | |
| | | TOTAL FUNDING | TRN | 85E | | | E |
| 99. | V85 | HONOAPIILANI HIGHWAY DRAINAGE IMPROVEMENTS AT UKUMEHAME, MAUI | | | | | |
| | | DESIGN FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES ON HONOAPIILANI HIGHWAY, INCLUDING CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS, AND CULVERTS. | | | | | |
| | | DESIGN | | 80 | | | |
| | | TOTAL FUNDING | TRN | 80E | | | E |
| 100. | VP9901 | PIILANI HIGHWAY EXPANSION, MAUI | | | | | |
| | | DESIGN FUNDS TO IMPROVE PIILANI HIGHWAY FROM TWO LANES TO FOUR LANES BETWEEN PIIKEA AND LIPOA. | | | | | |
| | | DESIGN | | 175 | | | |
| | | TOTAL FUNDING | TRN | 175E | | | E |
| 100A. | V52 | HANA HIGHWAY, REPLACEMENT OF THREE TIMBER BRIDGES, HAIKU, MAUI | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION FOR THE REPLACEMENT OF KAUPAKALUA BRIDGE AND APPROACHES, INCLUDING A TEMPORARY DETOUR ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | CONSTRUCTION | | | | 1,500 | |
| | | TOTAL FUNDING | TRN | | E | 300E | |
| | | | TRN | | N | 1,200N | |
| 100B. | | WEST MAUI ALTERNATIVE TRAFFIC ROUTE FEASIBILITY STUDY, MAUI | | | | | |
| | | PLANS FOR A WEST MAUI ALTERNATIVE TRAFFIC ROUTE FEASIBILITY STUDY. | | | | | |
| | | PLANS | | | | 200 | |
| | | TOTAL FUNDING | TRN | | E | 200E | |
| 100C. | | PIILANI HIGHWAY EXTENSION, MAUI | | | | | |
| | | PLANS FOR THE EXTENSION OF PIILANI HIGHWAY FROM WAILEA TO ULUPALAKUA, MAUI. | | | | | |
| | | PLANS | | | | ~~1,000~~ 0[1] | |
| | | TOTAL FUNDING | TRN | | E | ~~1,000E~~ 0[1] | |
| **TRN541 - MOLOKAI HIGHWAYS** | | | | | | | |
| 101. | W08 | GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MOLOKAI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR CONSTRUCTING ASPHALT CONCRETE PAVED SHOULDERS, AND INSTALLING AND/OR UPGRADING METAL GUARDRAILS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 75 | | | |
| | | CONSTRUCTION | | | | 710 | |
| | | TOTAL FUNDING | TRN | 75E | | 145E | |
| | | | TRN | N | | 565N | |
| **TRN561 - KAUAI HIGHWAYS** | | | | | | | |
| 102. | X06 | KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI | | | | | |
| | | DESIGN 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. | | | | | |
| | | DESIGN | | 5,100 | | | |
| | | TOTAL FUNDING | TRN | 1,020E | | | E |
| | | | TRN | 4,080N | | | N |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| 103. | X51 | GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, KAUAI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPOSTS AND CRASH ATTENUATORS, AND RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 110 | | 110 | |
| | | CONSTRUCTION | | 1,500 | | 1,500 | |
| | | TOTAL FUNDING | TRN | 565E | | 565E | |
| | | | TRN | 1,045N | | 1,045N | |
| 104. | X106 | KUHIO HIGHWAY, MOIKEHA BRIDGE WIDENING, KAUAI | | | | | |
| | | CONSTRUCTION FOR WIDENING MOIKEHA BRIDGE FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | CONSTRUCTION | | | | 1,620 | |
| | | TOTAL FUNDING | TRN | | E | 325E | |
| | | | TRN | | N | 1,295N | |
| 105. | X110 | KUHIO HIGHWAY SHOULDER IMPROVEMENTS, PRINCEVILLE TO HAENA, KAUAI | | | | | |
| | | CONSTRUCTION FOR STABILIZING AND/OR PAVING SHOULDERS; REMOVING AND INSTALLING GUARDRAILS AND REFLECTOR MARKERS; CONSTRUCTING CONCRETE GUTTERS; EXTENDING EXISTING DRAINAGE PIPES AND STRUCTURES; AND TRIMMING AND DRESSING SHOULDERS. | | | | | |
| | | CONSTRUCTION | | 2,500 | | | |
| | | TOTAL FUNDING | TRN | 2,500E | | | E |
| 106. | X111 | CENTRALIZED DISTRICT OFFICE AND BASEYARD COMPLEX, KAUAI | | | | | |
| | | LAND ACQUISITION AND CONSTRUCTION FOR A NEW CENTRALIZED DISTRICT OFFICE AND BASEYARD COMPLEX FOR THE HIGHWAYS DIVISION, KAUAI DISTRICT OFFICE. | | | | | |
| | | LAND | | 155 | | | |
| | | CONSTRUCTION | | 9,300 | | | |
| | | TOTAL FUNDING | TRN | 9,455E | | | E |
| 107. | X112 | TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HWYS., KAUAI | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS. | | | | | | |
| | | DESIGN | | 100 | | 100 | |
| | | CONSTRUCTION | | 865 | | 865 | |
| | | TOTAL FUNDING | TRN | 965E | | 965E | |
| 108. | X115 | KUHIO HIGHWAY INTERSECTION IMPROVEMENTS AT KALIHIWAI ROAD, KAUAI | | | | | |
| | | LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A LEFT TURN STORAGE LANE AT THE NORTH INTERSECTION OF KALIHIWAI ROAD AND KUHIO HIGHWAY. | | | | | |
| | | LAND | | 270 | | | |
| | | DESIGN | | 120 | | | |
| | | CONSTRUCTION | | | | 2,160 | |
| | | TOTAL FUNDING | TRN | 390E | | | E |
| | | | TRN | | X | 2,160 | X |
| 108A. | X113 | KAUMUALII HIGHWAY DRAINAGE AND SAFETY IMPROVEMENTS, VICINITY OF MP 22, KAUAI | | | | | |
| | | CONSTRUCTION FOR DRAINAGE IMPROVEMENTS AT MP 22. IMPROVEMENTS INCLUDE INSTALLATION, UPGRADING AND/OR EXTENSION OF CULVERTS AND HEADWALLS, GUARDRAIL IMPROVEMENTS, REGRADING AND MINOR REALIGNMENT OF ADJACENT PLANTATION ROAD, APPROACHES AND SHOULDER IMPROVEMENTS. | | | | | | |
| | | CONSTRUCTION | | | | 740 | |
| | | TOTAL FUNDING | TRN | | X | 740 | X |
| 108B. | X116 | TEMPORARY KAPAA BYPASS ROAD IMPROVEMENTS, WAIPOULI TO HAUAALA ROAD, KAUAI | | | | | |
| | | LAND ACQUISITION AND DESIGN FOR THE TEMPORARY KAPAA BYPASS ROAD, INCLUDING EXTENDING THE BYPASS ROAD TO KUHIO HIGHWAY IN THE VICINITY OF HAUAALA ROAD. | | | | | |
| | | LAND | | | | 1,500 | |
| | | DESIGN | | | | 400 | |
| | | TOTAL FUNDING | TRN | | E | 1,900 | E |
| 108C. | X117 | KUHIO HIGHWAY, LUMAHAI SCENIC VIEW PLANE, KAUAI | | | | | |
| | | LAND ACQUISITION FOR PRESERVING THE SCENIC VIEW PLANE OF LUMAHAI BEACH FROM KUHIO HIGHWAY. | | | | | |
| | | LAND | | | | 1,120 | |
| | | TOTAL FUNDING | TRN | | X | 1,120 | X |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| **TRN595 - HIGHWAYS ADMINISTRATION** | | | | | | | |
| 109. | S293 | ALIIAIMOKU BUILDING, AIR CONDITIONING SYSTEM REPLACEMENT, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE AIR CONDITIONING SYSTEM AT THE ALIIAIMOKU BUILDING, INCLUDING REPLACING THE AIR HANDLING SYSTEM, FLOOR REINFORCEMENT, AND REMOVING AND/OR RECONSTRUCTING WALLS. | | | | | |
| | | DESIGN | | 100 | | | |
| | | CONSTRUCTION | | 1,900 | | | |
| | | TOTAL FUNDING | TRN | 2,000E | | | E |
| 110. | X91 | PEDESTRIAN FACILITIES AND ADA COMPLIANCE AT VARIOUS LOCATIONS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING CURB RAMPS AND BUS STOPS ON STATE HIGHWAYS AND UPGRADING THE HIGHWAYS DIVISION BUILDING FACILITIES TO MEET COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 100 | | 100 | |
| | | CONSTRUCTION | | 1,000 | | 1,000 | |
| | | TOTAL FUNDING | TRN | 300E | | 300E | |
| | | | TRN | 800N | | 800N | |
| 111. | X96 | CLOSE-OUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE | | | | | |
| | | LAND ACQUISITION FOR COMPLETION OF ACQUISITION OF OUTSTANDING RIGHT-OF-WAY PARCELS ON PREVIOUSLY CONSTRUCTED PROJECTS. ALSO, TO PROVIDE FOR THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM. | | | | | |
| | | LAND | | 200 | | 200 | |
| | | TOTAL FUNDING | TRN | 200E | | 200E | |
| 112. | X97 | MISCELLANEOUS DRAINAGE IMPROVEMENTS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS TO EXISTING HIGHWAY FACILITIES INCLUDING INSTALLATION OF DRAINAGE FACILITIES, CATCH BASINS, GRATED DROP INLETS, LINED SWALES, HEADWALLS, AND CULVERTS AT VARIOUS LOCATIONS. | | | | | |
| | | DESIGN | | 130 | | 130 | |
| | | CONSTRUCTION | | 1,560 | | 1,560 | |
| | | TOTAL FUNDING | TRN | 1,690E | | 1,690E | |
| 113. | X98 | IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR TRAFFIC SAFETY. 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 | |
| 114. | X99 | HIGHWAY PLANNING, STATEWIDE | | | | | |
| | | PLANS FOR ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH, ADVANCED PLANNING AND SCOPING OF FEDERAL-AID AND NON-FEDERAL-AID HIGHWAY PROJECTS, AND PROGRAMS AND STUDIES REQUIRED BY THE FEDERAL HIGHWAY ADMINISTRATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | PLANS | | 2,250 | | 1,750 | |
| | | TOTAL FUNDING | TRN | 920E | | 420E | |
| | | | TRN | 1,330N | | 1,330N | |
| 115. | X200 | TRAFFIC COUNTING STATIONS AT VARIOUS LOCATIONS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR INSTALLING TRAFFIC DETECTOR LOOPS, ASSOCIATED WIRING, JUNCTION BOXES, CABINETS, AND TELEMETRY STATIONS AT VARIOUS LOCATIONS ON STATE ROADWAYS, INCLUDING AUTOMATIC TRAFFIC RECORDERS AND OTHER DATA PROCESSING IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 350 | | 100 | |
| | | CONSTRUCTION | | 750 | | 1,000 | |
| | | TOTAL FUNDING | TRN | 500E | | 300E | |
| | | | TRN | 600N | | 800N | |
| 116. | 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, INCLUDING UPGRADING EXISTING CELLULAR TELEPHONES TO MEET CURRENT AMERICANS WITH DISABILITIES ACT (ADA) GUIDELINES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 75 | | 75 | |
| | | CONSTRUCTION | | 750 | | 750 | |
| | | TOTAL FUNDING | TRN | 225E | | 225E | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | | TRN | 600N | | 600N | |
| 117. | X221 | TRAFFIC SIGNAL MODERNIZATION AT VARIOUS HIGHWAY LOCATIONS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR REPLACING EXISTING TRAFFIC SIGNAL SYSTEMS; PROVIDING INTERCONNECTION OF SIGNALIZED INTERSECTIONS; UPGRADING EXISTING TRAFFIC SIGNAL SYSTEMS TO MEET CURRENT ADA STANDARDS AND INSTALLING CLOSED CIRCUIT TELEVISION FOR THE FREEWAY MANAGEMENT SYSTEM. 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 | |
| 118. | X225 | HIGHWAY DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE | | | | | |
| | | 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 RELATED POSITIONS. | | | | | | |
| | | PLANS | | 1 | | 1 | |
| | | LAND | | 1 | | 1 | |
| | | DESIGN | | 1 | | 1 | |
| | | CONSTRUCTION | | 18,547 | | 18,547 | |
| | | TOTAL FUNDING | TRN | 12,550E | | 12,550E | |
| | | | TRN | 6,000N | | 6,000N | |
| 119. | X226 | CLOSEOUT OF HIGHWAY CONSTRUCTION PROJECTS, STATEWIDE | | | | | |
| | | CONSTRUCTION FOR COMPLETION OF OUTSTANDING CONSTRUCTION PROJECTS FOR POSTING OF AS-BUILT PLANS, OUTSTANDING UTILITY BILLINGS, AND PAYMENTS TO OTHERS FOR PROJECT RELATED WORK. | | | | | | |
| | | CONSTRUCTION | | 250 | | 250 | |
| | | TOTAL FUNDING | TRN | 250E | | 250E | |

**D. ENVIRONMENTAL PROTECTION**

**HTH840 - ENVIRONMENTAL MANAGEMENT**

1. 840801 WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | 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 | | 13,935 | | 13,935 | |
| | | TOTAL FUNDING | HTH | 2,323C | | 2,323C | |
| | | | HTH | 11,612N | | 11,612N | |
| 2. | 840902 | 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 | | 9,136 | | 9,136 | |
| | | TOTAL FUNDING | HTH | 1,523C | | 1,523C | |
| | | | HTH | 7,613N | | 7,613N | |
| **LNR402 - FORESTS AND WILDLIFE RESOURCES** | | | | | | | |
| 3. | D-71 | HILO BASEYARD IMPROVEMENT, HAWAII | | | | | |
| | | EQUIPMENT FOR HYDRAULIC LIFT TO SERVICE DOFAW VEHICLES. | | | | | |
| | | EQUIPMENT | | 25 | | | |
| | | TOTAL FUNDING | LNR | 25C | | | C |
| **LNR404 - WATER RESOURCES** | | | | | | | |
| 4. | G55D | LAHAINA MONITOR WELL, MAUI | | | | | |
| | | CONSTRUCTION FOR A MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE. | | | | | |
| | | CONSTRUCTION | | 100 | | | |
| | | TOTAL FUNDING | LNR | 100C | | | C |
| 5. | G55F | MONITOR WELL, OAHU | | | | | |
| | | CONSTRUCTION FOR MONITOR WELL TO COLLECT HYDROLOGIC AND GEOLOGIC INFORMATION AND TO OBSERVE AQUIFER PERFORMANCE. | | | | | |
| | | CONSTRUCTION | | 170 | | | |
| | | TOTAL FUNDING | LNR | 170C | | | C |
| **LNR405 - CONSERVATION & RESOURCES ENFORCEMENT** | | | | | | | |
| 6. | H10 | DOCARE MAUI - MOLOKAI BASEYARD, MOLOKAI | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION FOR RENOVATION OF MOLOKAI BOATHOUSE. | | | | | |
| | | CONSTRUCTION | | 35 | | | |
| | | TOTAL FUNDING | LNR | 35C | | | C |
| 6A. | H09 | CONSERVATION EDUCATION FACILITY, WAIMEA, HAWAII | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HUNTER AND AQUATIC EDUCATION PROGRAMS TO INCLUDE OFFICE, CLASSROOM/TRAINING, AND STORAGE FACILITIES. FEDERAL FUNDING AVAILABLE THROUGH USFWS PITTMAN-ROBERTSON AND DINGELL. | | | | | |
| | | PLANS | | | | | 5 |
| | | DESIGN | | | | | 70 |
| | | CONSTRUCTION | | | | | 680 |
| | | EQUIPMENT | | | | | 25 |
| | | TOTAL FUNDING | LNR | | N | | 780N |
| **LNR906 - LNR-NATURAL PHYSICAL ENVIRONMENT** | | | | | | | |
| 7. | 950026 | CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE | | | | | |
| | | 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 IMPROVEMENT PROGRAM RELATED POSITIONS. | | | | | |
| | | PLANS | | 1,560 | | | 1,560 |
| | | TOTAL FUNDING | LNR | 1,560C | | | 1,560C |
| 7A. | J00 | ADA PUBLIC ACCESSIBILITY AT DLNR FACILITIES, STATEWIDE | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION TO PROVIDE PUBLIC ACCESSIBILITY AT DLNR FACILITIES. | | | | | |
| | | PLANS | | | | | 1 |
| | | DESIGN | | | | | 1 |
| | | CONSTRUCTION | | | | | 998 |
| | | TOTAL FUNDING | LNR | | C | | 1,000C |
| **E. HEALTH** | | | | | | | |
| **HTH101 - TUBERCULOSIS/HANSEN'S DISEASE CONTROL** | | | | | | | |
| 1. | 101801 | LANAKILA HEALTH CENTER, RENOVATE TB CONTROL PROGRAM SPACE, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION TO RENOVATE THE TB CONTROL PROGRAM SPACE TO MEET INFECTION CONTROL GUIDELINES. | | | | | |
| | | DESIGN | | 255 | | | |
| | | CONSTRUCTION | | | | | 2,657 |
| | | TOTAL FUNDING | AGS | 255C | | | 2,657C |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| **HTH550 - MATERNAL & CHILD HEALTH SERVICES** | | | | | | | |
| 2. | P99022 | KOKUA KALIHI VALLEY, OAHU | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW HEALTH CENTER IN KALIHI VALLEY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | PLANS | | 1 | | | |
| | | LAND | | 1 | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 496 | | | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | HTH | 500C | | | C |
| 3. | P99023 | MAUI FAMILY SUPPORT SERVICES, MAUI | | | | | |
| | | LAND ACQUISITION FOR THE DIRECT ACQUISITION OF AN OFFICE BUILDING AND SERVICE CENTER IN THE WAILUKU MILLYARD. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | LAND | | 387 | | | |
| | | TOTAL FUNDING | HTH | 387C | | | C |
| **HTH595 - HEALTH RESOURCES ADMINISTRATION** | | | | | | | |
| 3A. | | PACIFIC HEALTH MINISTRY, OAHU | | | | | |
| | | LAND ACQUISITION FOR THE DIRECT ACQUISITION OF A BUILDING FOR THE PACIFIC HEALTH MINISTRY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | LAND | | | | 323 | |
| | | TOTAL FUNDING | HTH | C | | 323C | |
| **HTH210 - HOSPITAL CARE - HAWAII HEALTH SYSTEMS CORP** | | | | | | | |
| 4. | P99024 | HAWAII HEALTH SYSTEMS CORPORATION, FACILITY IMPROVEMENTS, STATEWIDE | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENEWAL AND RENOVATION OF HAWAII HEALTH SYSTEMS CORPORATION'S FACILITIES. | | | | | |
| | | PLANS | | 1 | | 1 | |
| | | DESIGN | | 1 | | 1 | |
| | | CONSTRUCTION | | 14,997 | | 14,997 | |
| | | EQUIPMENT | | 1 | | 1 | |
| | | TOTAL FUNDING | HTH | 15,000E | | 15,000E | |
| 5. | P99025 | MAUI MEMORIAL HOSPITAL, TRANSFORMER PAD AND ELECTRICAL EQUIPMENT, MAUI | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT TO INSTALL TRANSFORMER PAD AND ELECTRICAL EQUIPMENT TO TIE MAUI MEMORIAL MEDICAL CENTER'S ELECTRICAL POWER INTO THE ALTERNATIVE MAIN FEEDER SERVICE LINE SUPPLIED BY THE MAUI ELECTRIC COMPANY POWER PLANT TO PROVIDE A BACKUP ELECTRICAL POWER SYSTEM. | | | | | |
| | | DESIGN | | 30 | | | |
| | | CONSTRUCTION | | 290 | | | |
| | | EQUIPMENT | | 28 | | | |
| | | TOTAL FUNDING | HTH | 348C | | | C |
| 6. | P99026 | MAUI MEMORIAL HOSPITAL, ELECTRICAL UPGRADE, MAUI | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE ELECTRICAL PANELS THROUGHOUT THE FACILITY TO MEET CURRENT ELECTRICAL CODE AND LIFE SAFETY CODE. | | | | | |
| | | DESIGN | | 26 | | | |
| | | CONSTRUCTION | | 390 | | | |
| | | EQUIPMENT | | 10 | | | |
| | | TOTAL FUNDING | HTH | 426C | | | C |
| 7. | P99027 | MAUI MEMORIAL HOSPITAL, UPGRADE OF FIRE ALARM SYSTEM, MAUI | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTALLATION OF A NEW FIRE ALARM SYSTEM AND APPURTENANCES, TO COMPLY WITH CURRENT CODE REQUIREMENTS. | | | | | |
| | | DESIGN | | 50 | | | |
| | | CONSTRUCTION | | 550 | | | |
| | | EQUIPMENT | | 10 | | | |
| | | TOTAL FUNDING | HTH | 610C | | | C |
| 7A. | | MAUI MEMORIAL HOSPITAL, HOSPITAL IMPROVEMENTS, MAUI | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FACILITY IMPROVEMENTS AND RENOVATIONS AT MAUI MEMORIAL HOSPITAL. | | | | | |
| | | PLANS | | | | 1 | |
| | | LAND | | | | 1 | |
| | | DESIGN | | | | 1 | |
| | | CONSTRUCTION | | | | 37,996 | |
| | | EQUIPMENT | | | | 1 | |
| | | TOTAL FUNDING | HTH | | E | 38,000 | E |
| 7B. | | MAUI MEMORIAL HOSPITAL, INSTALL NEW FIRE WATERLINE, MAUI | | | | | |
| | | CONSTRUCTION TO INSTALL A NEW FIRE WATERLINE AND FIRE HYDRANTS AT MAUI MEMORIAL HOSPITAL. | | | | | |
| | | CONSTRUCTION | | | | 274 | |
| | | TOTAL FUNDING | HTH | | C | 274 | C |
| 7C. | | MAUI MEMORIAL HOSPITAL, CORRECTION OF LIFE SAFETY PROBLEMS, MAUI | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT TO CORRECT FIRE, LIFE/SAFETY CODE AND HANDICAPPED/ACCESSIBILITY DEFICIENCIES. | | | | | |
| | | DESIGN | | | | 172 | |
| | | CONSTRUCTION | | | | 855 | |
| | | EQUIPMENT | | | | 1 | |
| | | TOTAL FUNDING | HTH | | C | 1,028C | |
| 7D. | | LEAHI HOSPITAL, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF EXISTING SPACE TO ACCOMMODATE OUTPATIENT GERIATRIC CARE, AND RESPITE BEDS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | DESIGN | | | | 50 | |
| | | CONSTRUCTION | | | | 100 | |
| | | EQUIPMENT | | | | 30 | |
| | | TOTAL FUNDING | HTH | | C | 180C | |
| **HTH710 - STATE LABORATORY SERVICES** | | | | | | | |
| 8A. | 710001 | DEPARTMENT OF HEALTH LABORATORY - UPGRADE AND RENOVATE LAB, OAHU | | | | | |
| | | DESIGN AND EQUIPMENT TO UPGRADE AND RENOVATE THE EXISTING LABORATORY. | | | | | |
| | | DESIGN | | | | 119 | |
| | | EQUIPMENT | | | | 35 | |
| | | TOTAL FUNDING | HTH | | C | 154C | |
| **HTH760 - HEALTH STATUS MONITORING** | | | | | | | |
| 9. | 760901 | KINAU HALE, INSTALL FIREPROOF VAULT FOR THE VITAL RECORDS OFFICE, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF A FIREPROOF VAULT TO STORE IRREPLACEABLE BIRTH CERTIFICATE, MARRIAGE, DIVORCE, DEATH, AND ADOPTION RECORDS FOR THE VITAL RECORDS OFFICE. | | | | | |
| | | DESIGN | | 20 | | | |
| | | CONSTRUCTION | | 100 | | | |
| | | TOTAL FUNDING | AGS | 120C | | | C |
| **HTH907 - GENERAL ADMINISTRATION** | | | | | | | |
| 10. | 907501 | CORRECTIONS ACCOMMODATING THE PHYSICALLY CHALLENGED IN DOH FACILITIES, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR MODIFICATION FOR THE PHYSICALLY CHALLENGED TO CORRECT EXISTING ARCHITECTURAL BARRIERS AT DEPARTMENT OF HEALTH FACILITIES. | | | | | |
| | | DESIGN | | 80 | | | |
| | | CONSTRUCTION | | 1,000 | | | |
| | | TOTAL FUNDING | AGS | 1,080C | | | C |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 11. | P99028 | WAIMANALO HEALTH CENTER, OAHU | | | | | |
| | | CONSTRUCTION FOR CODE AND RELATED IMPROVEMENTS FOR THE WAIMANALO HEALTH CENTER. THIS PROJECT QUALIFIES AS A GRANT PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | CONSTRUCTION | | 150 | | | |
| | | TOTAL FUNDING | HTH | 150C | | | C |

**F. SOCIAL SERVICES**

**DEF112 - SERVICES TO VETERANS**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 1. | | WAIPAHU CENTENNIAL MEMORIAL, OAHU | | | | | |
| | | CONSTRUCTION OF A MEMORIAL INCORPORATING AN EXISTING MEMORIAL IN WAIPAHU, HONORING THOSE WHO GAVE THEIR LIVES DURING WWI, WWII, KOREAN WAR, VIETNAM WAR, AND DESERT STORM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | CONSTRUCTION | | 200 | | | |
| | | TOTAL FUNDING | DEF | 200C | | | C |
| 2. | P99030 | HAWAII ISLAND VETERANS MEMORIAL INC. COMBINED VETERANS CENTER (CVC), HAWAII | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW VETERANS CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | PLANS | | 80 | | | |
| | | LAND | | 80 | | | |
| | | DESIGN | | 230 | | | |
| | | CONSTRUCTION | | 2,515 | | | |
| | | EQUIPMENT | | 45 | | | |
| | | TOTAL FUNDING | DEF | 2,950C | | | C |
| 3. | P99031 | OAHU VETERANS CENTER, AIEA BAY STATE RECREATION AREA, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR THE DEMOLITION AND BEAUTIFICATION OF SITE DESIGNATED FOR THE VETERANS MEMORIAL AT AIEA BAY STATE RECREATION AREA. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | 50 | | | |
| | | DESIGN | | 50 | | | |
| | | CONSTRUCTION | | 100 | | | |
| | | TOTAL FUNDING | AGS | 200C | | | C |

**BED220 - RENTAL HOUSING SERVICES**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 4. | P99032 | VARIOUS STUDIES FOR IWILEI LANDS, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | PLANS AND CONSTRUCTION FOR VARIOUS STUDIES OF THE IWILEI PROJECT. STUDIES TO INCLUDE: ENVIRONMENTAL ASSESSMENT, ARCHAEOLOGY, TRAFFIC, ENGINEERING, LAND COSTS, APPRAISAL, AND RFP DEVELOPMENT. | | | | | |
| | | PLANS | | 180 | | | |
| | | CONSTRUCTION | | | | 300 | |
| | | TOTAL FUNDING | BED | 180 | C | 300 | C |
| 4A. | HCH007 | ACCESSIBILITY UPGRADES, STATEWIDE | | | | | |
| | | DESIGN TO UPGRADE THE SITES, COMMON AREAS, AND STRUCTURES TO MEET THE ACCESSIBILITY REQUIREMENTS OF THE AMERICANS WITH DISABILITIES ACT, STATEWIDE. | | | | | |
| | | DESIGN | | | | 600 | |
| | | TOTAL FUNDING | BED | | C | 600 | C |
| **BED229 - HCDCH ADMINISTRATION** | | | | | | | |
| 5. | HCH004 | HOUSING IMPROVEMENTS FOR FEDERAL LOW RENT PROJECTS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR HOUSING IMPROVEMENTS INCLUDING BUT NOT LIMITED TO PHYSICAL, HEALTH, AND SAFETY IMPROVEMENTS AND COMPLIANCE WITH CURRENT CODES AND STANDARDS. | | | | | |
| | | DESIGN | | 2,723 | | 1,299 | |
| | | CONSTRUCTION | | 25,124 | | 13,603 | |
| | | TOTAL FUNDING | BED | 27,847 | N | 14,902 | N |
| 5A. | | STATE HOUSING PROJECTS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE PURCHASE, REHABILITATION, OR NEW CONSTRUCTION OF STATE HOUSING PROJECTS FOR PEOPLE WITH INCOMES BELOW FIFTY PERCENT OF MEDIAN. | | | | | |
| | | DESIGN | | | | 100 | |
| | | CONSTRUCTION | | | | 900 | |
| | | TOTAL FUNDING | BED | | C | 1,000 | C |
| **HHL602 - PLANNG, DEV, MGT & GEN SPPT FOR HAWN HMSTDS** | | | | | | | |
| 6. | P99033 | 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 | | | | 2,500 | |
| | | LAND | | | | 2,500 | |
| | | DESIGN | | | | 2,500 | |
| | | CONSTRUCTION | | | | 17,500 | |
| | | TOTAL FUNDING | HHL | | E | 25,000 | E |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| 7. | P99034 | WAIMANALO HAWAIIAN HOMES ASSOCIATION, OAHU | | | | | |
| | | CONSTRUCTION FOR THE WAIMANALO HOMESTEAD ASSOCIATION COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | CONSTRUCTION | | 300 | | | |
| | | TOTAL FUNDING | HHL | 300C | | | C |
| **G. FORMAL EDUCATION** | | | | | | | |
| **EDN100 - SCHOOL-BASED BUDGETING** | | | | | | | |
| 1. | 101 | LUMP SUM CIP-RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES, STATEWIDE | | | | | |
| | | 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; GROUND AND SITE WORK; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 150 | | 150 | |
| | | CONSTRUCTION | | 2,700 | | 2,700 | |
| | | EQUIPMENT | | 150 | | 150 | |
| | | TOTAL FUNDING | AGS | 3,000B | | 3,000B | |
| 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; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 150 | | 150 | |
| | | CONSTRUCTION | | 1,090 | | 1,600 | |
| | | EQUIPMENT | | 100 | | 100 | |
| | | TOTAL FUNDING | AGS | 1,340B | | 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. | | | | | |
| | | PLANS | | 495 | | 495 | |
| | | LAND | | 5 | | 5 | |
| | | TOTAL FUNDING | AGS | 500B | | 500B | |
| 4. | 004 | LUMP SUM CIP-RENOVATIONS FOR NOISE AND HEAT ABATEMENT, STATEWIDE | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE, VENTILATION, AND/OR HIGH TEMPERATURE PROBLEMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 200 | | 200 | |
| | | CONSTRUCTION | | 800 | | 1,300 | |
| | | TOTAL FUNDING | AGS | 1,000B | | 1,500B | |
| 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; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 300 | | 300 | |
| | | CONSTRUCTION | | 1,200 | | 1,700 | |
| | | TOTAL FUNDING | AGS | 1,500B | | 2,000B | |
| 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 PHYSICALLY CHALLENGED PERSONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 500 | | 500 | |
| | | CONSTRUCTION | | 3,500 | | 3,500 | |
| | | TOTAL FUNDING | AGS | 4,000B | | 4,000B | |
| 7. | 007 | LUMP SUM CIP-SPECIAL EDUCATION CLASSROOMS, STATEWIDE | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND/OR CONSTRUCTION OF CLASSROOMS FOR SPECIAL EDUCATION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 40 | | 40 | |
| | | CONSTRUCTION | | 200 | | 200 | |
| | | EQUIPMENT | | 10 | | 10 | |
| | | TOTAL FUNDING | AGS | 250B | | 250B | |
| 8. | 008 | LUMP SUM CIP-ASBESTOS AND/OR LEAD PAINT REMOVAL IN SCHOOL BUILDINGS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR CORRECTION, IMPROVEMENT, AND RENOVATION TO ALL EXISTING SCHOOL BUILDINGS, STATEWIDE. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND/OR LEAD PAINT. | | | | | |
| | | DESIGN | | 100 | | 100 | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION | | 650 | | 900 | |
| | | TOTAL FUNDING | AGS | 750B | | 1,000B | |
| 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; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 100 | | 100 | |
| | | CONSTRUCTION | | 650 | | 900 | |
| | | TOTAL FUNDING | AGS | 750B | | 1,000B | |
| 10. | 010 | 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 | | 1,000 | | 1,000 | |
| | | EQUIPMENT | | 50 | | 50 | |
| | | TOTAL FUNDING | AGS | 1,250B | | 1,250B | |
| 11. | 011 | LUMP SUM CIP-TELECOMMUNICATIONS AND POWER INFRASTRUCTURE, STATEWIDE | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 325 | | 250 | |
| | | CONSTRUCTION | | 4,000 | | 2,700 | |
| | | EQUIPMENT | | 175 | | 50 | |
| | | TOTAL FUNDING | AGS | 4,500B | | 3,000B | |
| 12. | 014 | LUMP SUM CIP-CAPITAL IMPROVEMENTS PROGRAM COSTS, STATEWIDE | | | | | |
| | | PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS. | | | | | |
| | | PLANS | | 250 | | 250 | |
| | | TOTAL FUNDING | EDN | 250B | | 250B | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 13. | 060 | LUMP SUM CIP-STATE/DISTRICT RELOCATING AND IMPROVEMENTS, STATEWIDE | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STATE AND DISTRICT OFFICE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 15 | | | |
| | | CONSTRUCTION | | 59 | | | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | AGS | 75B | | | B |
| 14. | 014050 | LUMP SUM CIP-ELECTRICAL UPGRADES, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES AT SCHOOLS, STATEWIDE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 125 | | 200 | |
| | | CONSTRUCTION | | 2,875 | | 1,800 | |
| | | TOTAL FUNDING | AGS | 3,000B | | 2,000B | |
| 14A. | 009002 | LUMP SUM CIP-PLAYGROUND EQUIPMENT, STATEWIDE | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/ EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG), GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | | |
| | | DESIGN | | | | 40 | |
| | | CONSTRUCTION | | | | 160 | |
| | | EQUIPMENT | | | | 200 | |
| | | TOTAL FUNDING | AGS | | B | 400 | B |
| 15. | 252014 | CAMPBELL HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR UPGRADE OF ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 140 | | | |
| | | CONSTRUCTION | | | | 800 | |
| | | TOTAL FUNDING | AGS | 140B | | 800B | |
| 16. | 404060 | IAO INTERMEDIATE SCHOOL, MAUI | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR THE RENOVATION AND EXPANSION OF THE ARMORY; GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES. | | | | | |
| | | CONSTRUCTION | | 6,900 | | 4,300 | |
| | | EQUIPMENT | | 100 | | | |
| | | TOTAL FUNDING | AGS | 7,000B | | 4,300B | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| 17. | 279014 | ILIMA INTERMEDIATE SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR UPGRADE OF ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 95 | | | |
| | | CONSTRUCTION | | | | 400 | |
| | | TOTAL FUNDING | AGS | 95 | B | 400 | B |
| 18. | 821100 | KAPOLEI HIGH SCHOOL, OAHU | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR FIRST INCREMENT OF NEW HIGH SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | CONSTRUCTION | | 34,000 | | | |
| | | EQUIPMENT | | 1,000 | | | |
| | | TOTAL FUNDING | AGS | 35,000 | B | | B |
| 19. | 821300 | KAPOLEI HIGH SCHOOL, OAHU | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR FIRST AND/OR SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES. | | | | | |
| | | CONSTRUCTION | | 14,750 | | | |
| | | EQUIPMENT | | 250 | | | |
| | | TOTAL FUNDING | AGS | 15,000 | B | | B |
| 20. | 354200 | KEAAU HIGH SCHOOL, HAWAII | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR SECOND AND THIRD INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | CONSTRUCTION | | 17,150 | | | |
| | | EQUIPMENT | | 350 | | | |
| | | TOTAL FUNDING | AGS | 17,500 | B | | B |
| 21. | 354300 | KEAAU HIGH SCHOOL, HAWAII | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR THE THIRD INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | CONSTRUCTION | | 9,900 | | 1,900 | |
| | | EQUIPMENT | | 100 | | 100 | |
| | | TOTAL FUNDING | AGS | 10,000 | B | 2,000 | B |
| 22. | 354400 | KEAAU HIGH SCHOOL, HAWAII | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR FOURTH INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 600 | | | |
| | | CONSTRUCTION | | | | 7,000 | |
| | | EQUIPMENT | | | | 1,000 | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | AGS | | 600B | | 8,000B |
| 22A. | 392451 | KEALAKEHE HIGH SCHOOL, HAWAII | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE FOURTH INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | | 1 |
| | | CONSTRUCTION | | | | | 6,800 |
| | | EQUIPMENT | | | | | 999 |
| | | TOTAL FUNDING | AGS | | B | | 7,800B |
| 23. | 391351 | KEONEPOKO ELEMENTARY SCHOOL, HAWAII | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR AN ADMINISTRATION/LIBRARY FACILITY; COVERED WALKWAYS; RENOVATION OF TEMPORARY FACILITIES INTO CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | CONSTRUCTION | | | | | 3,900 |
| | | EQUIPMENT | | | | | 100 |
| | | TOTAL FUNDING | AGS | | B | | 4,000B |
| 23A. | 411015 | KUALAPUU ELEMENTARY SCHOOL, MOLOKAI | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SIX CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | | 1 |
| | | CONSTRUCTION | | | | | 3,045 |
| | | EQUIPMENT | | | | | 40 |
| | | TOTAL FUNDING | AGS | | B | | 3,086B |
| 23B. | 240100 | MILILANI MAUKA II ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN FOR FIRST (1ST) INCREMENT; GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES AND MASTER PLAN. | | | | | |
| | | DESIGN | | | | | 1,800 |
| | | TOTAL FUNDING | AGS | | B | | 1,800B |
| 24. | 262451 | NANAKULI ELEMENTARY SCHOOL, OAHU | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR AN EIGHT-CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | CONSTRUCTION | | | | | 2,750 |
| | | EQUIPMENT | | | | | 100 |
| | | TOTAL FUNDING | AGS | | B | | 2,850B |
| 25. | 823100 | NANAKULI IV ELEMENTARY SCHOOL, OAHU | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR FIRST AND SECOND INCREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION | | | | 20,000 | |
| | | EQUIPMENT | | | | 1,000 | |
| | | TOTAL FUNDING | AGS | | B | 21,000 | B |
| 26. | 424651 | WAIHEE ELEMENTARY SCHOOL, MAUI | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR A CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | CONSTRUCTION | | | | 2,895 | |
| | | EQUIPMENT | | | | 50 | |
| | | TOTAL FUNDING | AGS | | B | 2,945 | B |
| 27. | 424131 | WAIHEE ELEMENTARY SCHOOL, MAUI | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR A PLAYFIELD, WATER RETENTION BASIN, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES. | | | | | |
| | | CONSTRUCTION | | 3,350 | | | |
| | | EQUIPMENT | | 150 | | | |
| | | TOTAL FUNDING | AGS | 3,500 | B | | B |
| 27A. | | PLAYGROUND EQUIPMENT, STATEWIDE | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/ EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG), GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | 300 | |
| | | CONSTRUCTION | | | | 1,200 | |
| | | EQUIPMENT | | | | 1,500 | |
| | | TOTAL FUNDING | AGS | | C | 3,000 | C |
| 28A. | | AUGUST AHRENS ELEMENTARY SCHOOL, OAHU | | | | | |
| | | EQUIPMENT FOR TWENTY PORTABLE AIR CONDITIONERS FOR AUGUST AHRENS ELEMENTARY SCHOOL. | | | | | |
| | | EQUIPMENT | | | | ~~420~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~420~~ 0[1] | C |
| 28B. | | 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~~ 0[1] | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION | | | | ~~399~~ 0[1] | |
| | | EQUIPMENT | | | | ~~100~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~500C~~ 0[1] | |
| 28C. | | BEN PARKER ELEMENTARY SCHOOL, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO UPGRADE ELECTRICAL WIRING SYSTEM TO SUPPORT TECHNOLOGY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | | | ~~1~~ 0[1] | |
| | | DESIGN | | | | ~~1~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~397~~ 0[1] | |
| | | EQUIPMENT | | | | ~~1~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~400C~~ 0[1] | |
| 29. | P99034 | CAMPBELL HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR ATHLETIC FACILITY IMPROVEMENTS. PROJECT TO INCLUDE A VENTILATION SYSTEM FOR THE GYMNASIUM; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 40 | | | |
| | | CONSTRUCTION | | 380 | | | |
| | | TOTAL FUNDING | AGS | 420C | | | C |
| 29A. | | FARRINGTON HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BUILDING I, ROOMS 101, 102, 103, 104, 201, 202, 301, AND 302; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~53~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~377~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~430C~~ 0[1] | |
| 30. | P99035 | HIGHLANDS INTERMEDIATE SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION TO PROVIDE DRAINAGE IMPROVEMENTS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 15 | | | |
| | | CONSTRUCTION | | 85 | | | |
| | | TOTAL FUNDING | AGS | 100C | | | C |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 30A. | | HIGHLANDS INTERMEDIATE SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BUILDING G TECH CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~40~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~160~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~200C~~ 0[1] | |
| 30B. | | HILO HIGH SCHOOL, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE GYMNASIUM TO PROVIDE WOODEN BLEACHERS ON THE WAIANUENUE AVENUE SIDE OF THE GYM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~80~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~360~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~440C~~ 0[1] | |
| 32. | P99037 | HOLUALOA ELEMENTARY SCHOOL, HAWAII | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR THE RENOVATION OF THE ADMINISTRATION BUILDING AND LIBRARY. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | 10 | | | |
| | | DESIGN | | 30 | | | |
| | | CONSTRUCTION | | 360 | | | |
| | | TOTAL FUNDING | AGS | 400C | | | C |
| 33. | P99038 | JARRETT MIDDLE SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION TO INSTALL ONE HUNDRED AND FIFTY STUDENT LOCKERS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 5 | | | |
| | | CONSTRUCTION | | 25 | | | |
| | | TOTAL FUNDING | AGS | 30C | | | C |
| 34. | P99039 | JARRETT MIDDLE SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF METAL SECURITY GATES; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 5 | | | |
| | | CONSTRUCTION | | 65 | | | |
| | | TOTAL FUNDING | AGS | 70C | | | C |
| 35. | 211914 | KAALA ELEMENTARY SCHOOL, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR ELECTRICAL UPGRADES TO SUPPORT ADDITIONAL EQUIPMENT AND CLASSROOM LIGHTING NEEDS. | | | | | |
| | | DESIGN | | | 10 | | |
| | | CONSTRUCTION | | | 95 | | |
| | | TOTAL FUNDING | AGS | | 105C | | C |
| 36. | P99041 | KAHUKU HIGH SCHOOL, OAHU | | | | | |
| | | LAND ACQUISITION TO IMPLEMENT THE KAHUKU SCHOOL MASTER PLAN TO MEET EDUCATIONAL STANDARDS FOR INTERMEDIATE/SECONDARY SCHOOLS. | | | | | |
| | | LAND | | | 1,000 | | |
| | | TOTAL FUNDING | AGS | | 1,000C | | C |
| 37. | P99042 | KAIMUKI HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE RECONFIGURATION OF AIR CONDITIONING SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | 150 | | |
| | | CONSTRUCTION | | | 850 | | |
| | | TOTAL FUNDING | AGS | | 1,000C | | C |
| 40A. | | KAIMUKI HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE EXISTING CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~1~~<br>0[1] | |
| | | CONSTRUCTION | | | | ~~199~~<br>0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~200C~~<br>0[1] | |
| 40B. | | KAIMUKI INTERMEDIATE SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR AIR CONDITIONING OF BUILDING R; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~40~~<br>0[1] | |
| | | CONSTRUCTION | | | | ~~624~~<br>0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~664C~~<br>0[1] | |
| 40C. | | KALIHI-KAI ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT TO UPGRADE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~15~~<br>0[1] | |
| | | CONSTRUCTION | | | | ~~130~~ | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | EQUIPMENT | | | | 0[1] | |
| | | | | | | ~~5~~ | |
| | | | | | | 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~150C~~ | |
| | | | | | | 0[1] | |
| 40D. | | KAPUNAHALA ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR AN ENCLOSED ADMINISTRATION/LIBRARY BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~70~~ | |
| | | | | | | 0[1] | |
| | | CONSTRUCTION | | | | ~~360~~ | |
| | | | | | | 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~430C~~ | |
| | | | | | | 0[1] | |
| 40E. | | KAPUNAHALA ELEMENTARY SCHOOL, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PORTABLE CLASSROOM FOR KAPUNAHALA ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | | | ~~1~~ | |
| | | | | | | 0[1] | |
| | | DESIGN | | | | ~~1~~ | |
| | | | | | | 0[1] | |
| | | CONSTRUCTION | | | | ~~107~~ | |
| | | | | | | 0[1] | |
| | | EQUIPMENT | | | | ~~1~~ | |
| | | | | | | 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~110C~~ | |
| | | | | | | 0[1] | |
| 41. | P99046 | KAWANANAKOA MIDDLE SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION TO RENOVATE THE MUSIC BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 38 | | | |
| | | CONSTRUCTION | | 188 | | | |
| | | TOTAL FUNDING | AGS | 226C | | | C |
| 42. | P99047 | KAWANANAKOA MIDDLE SCHOOL, OAHU | | | | | |
| | | DESIGN FOR A STUDENT LANAI. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 50 | | | |
| | | TOTAL FUNDING | AGS | 50C | | | C |
| 43. | P99048 | KAULUWELA ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN FOR A NEW CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | DESIGN | | 175 | | | |
| | | TOTAL FUNDING | AGS | 175C | | | C |
| 43A. | | KEKAHA ELEMENTARY SCHOOL, KAUAI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE DEMOLITION AND REPLACEMENT OF BUILDINGS B AND C; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~196~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~3,215~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~3,411C~~ 0[1] | |
| 43B. | | KILAUEA ELEMENTARY SCHOOL, KAUAI | | | | | |
| | | DESIGN AND CONSTRUCTION TO CONVERT THE LIBRARY INTO SPECIAL EDUCATION CLASSROOMS WITH BATHROOM FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~10~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~45~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~55C~~ 0[1] | |
| 43C. | | KILAUEA ELEMENTARY SCHOOL, KAUAI | | | | | |
| | | DESIGN FOR A NEW CAFETERIA FOR KILAUEA ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENACNES. | | | | | |
| | | DESIGN | | | | ~~150~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~150C~~ 0[1] | |
| 44. | 376060 | KONAWAENA MIDDLE SCHOOL, HAWAII | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR RENOVATION OF CURRENT KONAWAENA ELEMENTARY BUILDINGS AND CLASSROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | 80 | | | |
| | | DESIGN | | 100 | | | |
| | | CONSTRUCTION | | | | 2,000 | |
| | | TOTAL FUNDING | AGS | 180C | | 2,000C | |
| 45. | P99050 | KONAWAENA MIDDLE SCHOOL, HAWAII | | | | | |
| | | DESIGN FOR LOCKERS AND SHOWERS FOR KONAWAENA MIDDLE SCHOOL. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 483 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | AGS | 483C | | | C |
| 46. | P99051 | KUHIO ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR A SECOND FLOOR ANNEX TO THE ADMINISTRATION AND LIBRARY BUILDING. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | ~~105~~ 0[1] | | | |
| | | CONSTRUCTION | | ~~595~~ 0[1] | | | |
| | | TOTAL FUNDING | AGS | ~~700C~~ 0[1] | | | C |
| 47. | 377051 | LAUPAHOEHOE HIGH AND ELEMENTARY SCHOOL, HAWAII | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A BAND BUILDING. PROJECT TO INCLUDE: RESTROOMS; COVERED WALKWAYS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 200 | | | |
| | | CONSTRUCTION | | 2,200 | | | |
| | | EQUIPMENT | | 100 | | | |
| | | TOTAL FUNDING | AGS | 2,500C | | | C |
| 48. | P99043 | LEILEHUA HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION TO CONVERT THE OLD LIBRARY BUILDING INTO A CULINARY ARTS FACILITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 70 | | | |
| | | CONSTRUCTION | | 450 | | | |
| | | TOTAL FUNDING | AGS | 520C | | | C |
| 48A. | | LIKELIKE ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT TO UPGRADE THE ELECTRICAL SYSTEM AT LIKELIKE ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~25~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~215~~ 0[1] | |
| | | EQUIPMENT | | | | ~~10~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~250C~~ 0[1] | |
| 49. | P99054 | LINCOLN ELEMENTARY SCHOOL, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR A SECURITY SYSTEM FOR CLASSROOMS. PROJECT MAY INCLUDE MICROWAVE/INFRARED AND PARTIAL PERIMETER DETECTION BY MAGNETIC DOOR SWITCHES ON EXTERIOR DOORS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | 11 | |
| | | CONSTRUCTION | | | | 34 | |
| | | TOTAL FUNDING | AGS | | C | 45C | |
| 49A. | | LINCOLN ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION TO REROOF BUILDING E AT LINCOLN ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~14~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~56~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~70C~~ 0[1] | |
| 50. | P99055 | LUNALILO ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING OF SECOND FLOOR COMPUTER ROOM; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 5 | | | |
| | | CONSTRUCTION | | 40 | | | |
| | | EQUIPMENT | | 5 | | | |
| | | TOTAL FUNDING | AGS | 50C | | | C |
| 51. | P99056 | MAEMAE ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR A DRAINAGE SYSTEM FOR MAEMAE ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 150 | | | |
| | | CONSTRUCTION | | 450 | | | |
| | | TOTAL FUNDING | AGS | 600C | | | C |
| 51A. | | MAILI ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UPGRADE OF THE ELECTRICAL SYSTEM AND THE AIR CONDITIONING OF THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | 200 | |
| | | CONSTRUCTION | | | | 2,800 | |
| | | EQUIPMENT | | | | 160 | |
| | | TOTAL FUNDING | AGS | | C | 3,160C | |
| 52. | P99057 | MANOA ELEMENTARY SCHOOL, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE EXISTING FIRE ACCESS ROAD TO PROVIDE ADDITIONAL PARKING AND MEET CODE REQUIREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | ~~25~~ 0[1] | | | |
| | | CONSTRUCTION | | ~~50~~ 0[1] | | | |
| | | TOTAL FUNDING | AGS | ~~75C~~ 0[1] | | | C |
| 52A. | | MANOA ELEMENTARY SCHOOL, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE RECREATIONAL MULTI-PURPOSE FACILITY FOR USE BY THE MANOA ELEMENTARY SCHOOL. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | | | ~~1~~ 0[1] | |
| | | DESIGN | | | | ~~1~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~35~~ 0[1] | |
| | | EQUIPMENT | | | | ~~13~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~50C~~ 0[1] | |
| 52B. | | MAUI WAENA INTERMEDIATE SCHOOL, MAUI | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ADMINISTRATION BUILDING AND RENOVATION OF THE CLASSROOMS CURRENTLY USED FOR ADMINISTRATIVE PURPOSES FOR INSTRUCTIONAL/LEARNING PURPOSES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | 225 | |
| | | CONSTRUCTION | | | | 2,300 | |
| | | EQUIPMENT | | | | 75 | |
| | | TOTAL FUNDING | AGS | | C | 2,600 | C |
| 53. | 218960 | MOANALUA HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR AN EDUCATIONAL TECHNOLOGY CENTER IN THE MULTI- PURPOSE STUDENT CENTER. PROJECT TO INCLUDE EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 37 | | | |
| | | CONSTRUCTION | | 338 | | | |
| | | TOTAL FUNDING | AGS | 375C | | | C |
| 56. | P99061 | NUUANU ELEMENTARY SCHOOL, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR LANDSCAPING IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 5 | | | |
| | | CONSTRUCTION | | 45 | | | |
| | | TOTAL FUNDING | AGS | 50C | | | C |
| 57. | P99062 | PAUOA ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION TO RESURFACE THE PARKING LOT AT PAUOA ELEMENTARY SCHOOL. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 8 | | | |
| | | CONSTRUCTION | | 67 | | | |
| | | TOTAL FUNDING | AGS | 75C | | | C |
| 57A. | | PEARL CITY ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION TO EXPAND SCHOOL LIBRARY. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~50~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~200~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~250C~~ 0[1] | |
| 57B. | | PEARL CITY ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PARKING LOT AND HANDICAP BUS LOADING AREA. | | | | | |
| | | DESIGN | | | | ~~50~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~200~~ 0[1] | |
| | | EQUIPMENT | | | | ~~5~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~255C~~ 0[1] | |
| 58. | P99063 | PEARL CITY HIGHLANDS, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR A COVERED WALKWAY CONNECTING THE LIBRARY TO THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 5 | | | |
| | | CONSTRUCTION | | 60 | | | |
| | | TOTAL FUNDING | AGS | 65C | | | C |
| 58A. | | PEARL CITY HIGH SCHOOL, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A WEIGHT TRAINING ROOM FOR PEARL CITY HIGH SCHOOL. | | | | | |
| | | PLANS | | | | ~~1~~<br>0[1] | |
| | | DESIGN | | | | ~~1~~<br>0[1] | |
| | | CONSTRUCTION | | | | ~~397~~<br>0[1] | |
| | | EQUIPMENT | | | | ~~1~~<br>0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~400C~~<br>0[1] | |
| 59. | P99064 | RADFORD HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF RESTROOM FACILITIES AND RELATED SYSTEMS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 10 | | | |
| | | CONSTRUCTION | | 740 | | | |
| | | TOTAL FUNDING | AGS | 750N | | | N |
| 60. | P99065 | ROOSEVELT HIGH SCHOOL, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR GYMNASIUM EXPANSION. PROJECT TO INCLUDE PARKING STRUCTURE AND WEIGHT ROOM. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | ~~50~~<br>0[1] | | | |
| | | DESIGN | | ~~50~~<br>0[1] | | | |
| | | CONSTRUCTION | | ~~200~~<br>0[1] | | ~~200~~<br>0[1] | |
| | | TOTAL FUNDING | AGS | ~~300C~~<br>0[1] | | ~~200C~~<br>0[1] | |
| 60A. | | ROOSEVELT HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION OF A BAND ROOM AND RELATED FACILITIES INCLUDING OFFICE SPACE. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~45~~<br>0[1] | |
| | | CONSTRUCTION | | | | ~~490~~<br>0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~535C~~<br>0[1] | |
| 60B. | | ROOSEVELT HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND REPAIR OF BUILDING A, PHASE I. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | DESIGN | | | | 200 | |
| | | CONSTRUCTION | | | | 999 | |
| | | EQUIPMENT | | | | 1 | |
| | | TOTAL FUNDING | AGS | | C | 1,200 | C |
| 61. | P99066 | ROYAL ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR WATER DRAINAGE IMPROVEMENTS BETWEEN BUILDING B AND C. PROJECT TO INCLUDE DRAIN INLETS, UNDERGROUND PIPING, AND HEADWALL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 5 | | | |
| | | CONSTRUCTION | | 45 | | | |
| | | TOTAL FUNDING | AGS | 50 | C | | C |
| 62. | P99067 | ROYAL ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR PLAYGROUND SURFACING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 5 | | | |
| | | CONSTRUCTION | | 30 | | | |
| | | TOTAL FUNDING | AGS | 35 | C | | C |
| 62A. | | SALT LAKE ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE RENOVATION OF CLASSROOMS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | ~~100~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~864~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~964~~ 0[1] | C |
| 63. | P99068 | STEVENSON MIDDLE SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF SECURITY SCREENS; INSTALLATION OF RAILS TO SPECIFICATIONS; AND INSTALLATION OF SECOND FLOOR SECURITY GATES. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 26 | | | |
| | | CONSTRUCTION | | 174 | | | |
| | | TOTAL FUNDING | AGS | 200 | C | | C |
| 64. | P99069 | WAIALAE ELEMENTARY SCHOOL, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION OF CAMPUS COVERED WALKWAYS FROM BUILDING A AND B AND C TO BUILDING D (CAFETERIA) APPROXIMATELY 75' LONG AND 8' WIDE. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 10 | | | |
| | | CONSTRUCTION | | 100 | | | |
| | | TOTAL FUNDING | AGS | 110C | | | C |
| 65. | P99070 | WAIANAE HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW MEDIA BUILDING. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 100 | | | |
| | | CONSTRUCTION | | 1,000 | | | |
| | | EQUIPMENT | | 100 | | | |
| | | TOTAL FUNDING | AGS | 1,200C | | | C |
| 66. | P99071 | WAIALUA INTERMEDIATE AND HIGH SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR DUGOUTS, FENCING, AND FOUL LINE IN-FIELD FENCING FOR BASEBALL FIELD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 22 | | | |
| | | CONSTRUCTION | | 168 | | | |
| | | TOTAL FUNDING | AGS | 190C | | | C |
| 67. | 233914 | WAIMALU ELEMENTARY SCHOOL, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE UPGRADING OF THE SCHOOL ELECTRICAL SYSTEM TO MEET BUILDING CODES, FIRE CODES, AND TECHNOLOGICAL PROGRAM NEEDS. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 30 | | | |
| | | CONSTRUCTION | | 170 | | | |
| | | TOTAL FUNDING | AGS | 200C | | | C |
| 68. | P99073 | WAIMANALO INTERMEDIATE SCHOOL, OAHU | | | | | |
| | | CONSTRUCTION FOR THE RESURFACING OF AN OUTDOOR BASKETBALL COURT. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | CONSTRUCTION | | 50 | | | |
| | | TOTAL FUNDING | AGS | 50C | | | C |
| 68A. | | WASHINGTON MIDDLE SCHOOL, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT TO COMPLETE LOCAL AREA NETWORK (LAN). GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | | | | ‡ |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | | | | | | 0[1] |
| | | CONSTRUCTION | | | | | ~~27~~ |
| | | | | | | | 0[1] |
| | | EQUIPMENT | | | | | ~~1~~ |
| | | | | | | | 0[1] |
| | | TOTAL FUNDING | AGS | | C | | ~~29C~~ |
| | | | | | | | 0[1] |
| **AGS807 - PHYSICAL PLANT OPERATIONS & MAINTENANCE-AGS** | | | | | | | |
| 68B. | CSD03 | LUMP SUM CIP-SCHOOL BUILDING IMPROVEMENTS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE IMPROVEMENT OF PUBLIC SCHOOL FACILITIES, STATEWIDE. PROJECT MAY INCLUDE ROOFING, AIR CONDITIONING, PAINTING, PLUMBING, AND OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES MAINTAINED BY DAGS AND/OR DOE. | | | | | | |
| | | DESIGN | | | | | 500 |
| | | CONSTRUCTION | | | | | 14,500 |
| | | TOTAL FUNDING | AGS | | C | | 15,000C |
| **EDN407 - PUBLIC LIBRARIES** | | | | | | | |
| 69. | 01-H&S | HEALTH AND SAFETY REQUIREMENTS, STATEWIDE | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH, SAFETY, ACCESSIBILITY AND OTHER CODE REQUIREMENTS. PROJECT MAY INCLUDE, BUT NOT LIMITED TO, THE REMOVAL OF HAZARDOUS MATERIALS, RENOVATIONS FOR LIBRARY PATRONS AND EMPLOYEES, ENVIRONMENTAL CONTROLS, FIRE PROTECTION, IMPROVEMENTS TO BUILDING AND GROUNDS, AND OTHER RELATED WORK. THIS PROJ. IS DEEMED NECESSARY TO QUALIFY FOR FED. AID FINANCING &/OR REIMBURSEMENT. | | | | | | |
| | | PLANS | | 125 | | 1 | |
| | | DESIGN | | 275 | | 249 | |
| | | CONSTRUCTION | | 1,000 | | 800 | |
| | | EQUIPMENT | | 100 | | | |
| | | TOTAL FUNDING | AGS | 1,500C | | 1,050C | |
| 70. | P99074 | KAILUA PUBLIC LIBRARY, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE EXPANSION OF KAILUA PUBLIC LIBRARY. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | | |
| | | DESIGN | | 10 | | | |
| | | CONSTRUCTION | | 110 | | | |
| | | TOTAL FUNDING | AGS | 120C | | | C |
| 71. | P99075 | HANAPEPE PUBLIC LIBRARY, KAUAI | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | PLANS AND DESIGN FOR EXPANSION AND ARCHITECTURAL BARRIER REMOVAL. | | | | | |
| | | PLANS | | 50 | | | |
| | | DESIGN | | 150 | | | |
| | | TOTAL FUNDING | AGS | 200C | | | C |
| 71A. | 01-ADA | AMERICANS WITH DISABILITIES ACT RENOVATIONS, STATEWIDE | | | | | |
| | | PLANS FOR COSTING OUT AMERICANS WITH DISABILITIES ACT (ADA) DEFICIENCIES. | | | | | |
| | | PLANS | | | | 250 | |
| | | TOTAL FUNDING | AGS | | C | 250C | |
| 71B. | | MANOA PUBLIC LIBRARY, OAHU | | | | | |
| | | PLANS AND DESIGN FOR EXPANSION AND IMPROVEMENTS, INCLUDING ADDITIONAL PARKING AND ACCESS TO THE LIBRARY. | | | | | |
| | | PLANS | | | | 50 | |
| | | DESIGN | | | | 50 | |
| | | TOTAL FUNDING | AGS | | C | 100C | |
| **UOH100 - UNIVERSITY OF HAWAII, MANOA** | | | | | | | |
| 72. | M86 | UHM, FOOD SERVICE FACILITIES, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS TO FOOD SERVICES FACILITIES. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 497 | | | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | UOH | 500B | | | B |
| 73. | M88 | UHM, PARKING STRUCTURES, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PARKING STRUCTURES AND PARKING IMPROVEMENTS ON THE MANOA CAMPUS. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 656 | | | |
| | | CONSTRUCTION | | 6,092 | | | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | UOH | 6,750E | | | E |
| 74. | 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 | | | |
| | | CONSTRUCTION | | 1 | | | |
| | | EQUIPMENT | | 1,806 | | | |
| | | TOTAL FUNDING | AGS | 1,808C | | | C |
| 75. | 183 | UHM, YIAN CHINESE TEA HOUSE, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CHINESE TEA HOUSE. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 727 | | | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | UOH | 730R | | | R |
| 76. | 292 | UHM, FREAR HALL RENOVATION, OAHU | | | | | |
| | | PLANS FOR A PROJECT DEVELOPMENT REPORT FOR THE RENOVATION OF FREAR HALL. | | | | | |
| | | PLANS | | 150 | | | |
| | | TOTAL FUNDING | UOH | 150W | | | W |
| 77. | 161 | UHM, INSTITUTE OF REPRODUCTIVE BIOLOGY, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS FOR THE INSTITUTE OF REPRODUCTIVE BIOLOGY. PROJECT MAY INCLUDE AN ADDITION TO AND/ OR RENOVATION OF THE BIOMEDICAL SCIENCES BUILDING. PROJECT TO INCLUDE SITEWORK, INFRASTRUCTURE, BUILDING IMPROVEMENTS, RENOVATION, EQUIPMENT, AND OTHER RELATED WORK. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 100 | | | |
| | | CONSTRUCTION | | 4,699 | | | |
| | | EQUIPMENT | | 100 | | | |
| | | TOTAL FUNDING | UOH | 4,900C | | | C |
| 78. | 295 | UHM, SOCCER AND FOOTBALL FIELD IMPROVEMENTS, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE EXISTING GRASS SOCCER AND FOOTBALL PRACTICE FIELDS. PROJECT TO INCLUDE SITEWORK, INFRASTRUCTURE, WALKWAYS, FENCING, DRAINAGE IMPROVEMENTS, LANDSCAPING, STORAGE, AND OTHER RELATED WORK. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 142 | | | |
| | | CONSTRUCTION | | 2,009 | | | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | UOH | 2,153C | | | C |
| 79. | 294 | UHM, SOFTBALL BATTING CAGES, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR SOFTBALL BATTING CAGES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | 10 | | | |
| | | DESIGN | | 20 | | | |
| | | CONSTRUCTION | | 219 | | | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | UOH | 250C | | | C |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 80. | P99076 | UHM, HALEAKALA LONG RANGE DEVELOPMENT PLAN, MAUI | | | | | |
| | | PLANS FOR A LONG RANGE DEVELOPMENT PLAN FOR HALEAKALA. | | | | | |
| | | PLANS | | 550 | | | |
| | | TOTAL FUNDING | UOH | 550C | | | C |
| 80A. | R05 | UHM, LASER LABORATORY, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF A LASER LABORATORY. THE PROJECT MAY INCLUDE THE RELOCATION/ REDEVELOPMENT OF FACILITIES FOR PROGRAMS AFFECTED BY THIS PROJECT. | | | | | |
| | | DESIGN | | | | 60 | |
| | | CONSTRUCTION | | | | 703 | |
| | | EQUIPMENT | | | | 250 | |
| | | TOTAL FUNDING | UOH | | C | 1,013C | |
| 80B. | 074 | UHM, BIOMEDICAL SCIENCES, OAHU | | | | | |
| | | PLANS AND DESIGN FOR BIOMEDICAL SCIENCES. PROJECT MAY INCLUDE NEW FACILITIES, ADDITIONS, AND RENOVATION OF EXISTING FACILITIES. | | | | | |
| | | PLANS | | | | 875 | |
| | | DESIGN | | | | 1 | |
| | | TOTAL FUNDING | UOH | | C | 876C | |
| **UOH210 - UNIVERSITY OF HAWAII, HILO** | | | | | | | |
| 81. | 342 | UHH, CLASSROOM/OFFICE BUILDING, HAWAII | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTRUCTIONAL FACILITIES AT THE UNIVERSITY OF HAWAII AT HILO. | | | | | |
| | | DESIGN | | 200 | | | |
| | | CONSTRUCTION | | 1 | | | |
| | | EQUIPMENT | | 1,600 | | | |
| | | TOTAL FUNDING | AGS | 1,801C | | | C |
| 82. | 440 | UHH, UNIVERSITY PARK, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE UNIVERSITY OF HAWAII AT HILO'S UNIVERSITY PARK. | | | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 399 | | | |
| | | TOTAL FUNDING | AGS | 400S | | | S |
| 83. | 449 | UHH, UNIVERSITY PARK, PHASE III, HAWAII | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR INFRASTRUCTURE AND OTHER IMPROVEMENTS ON THE MAUKA CAMPUS. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 249 | | | |
| | | CONSTRUCTION | | 2,500 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | AGS | 2,750C | | | C |
| 84. | 698 | UHH, PACIFIC AQUACULTURE AND COASTAL RESOURCES CENTER, HAWAII | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS FOR THE PACIFIC AQUACULTURE AND COASTAL RESOURCES CENTER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | PLANS | | 25 | | | |
| | | DESIGN | | 325 | | | |
| | | CONSTRUCTION | | 1,950 | | | |
| | | TOTAL FUNDING | AGS | 500C | | | C |
| | | | AGS | 1,800N | | | N |
| 85. | 448 | UHH, MULTIPURPOSE SPORTS AND RECREATION CONFERENCE COMPLEX, HAWAII | | | | | |
| | | PLANS FOR A PROJECT DEVELOPMENT REPORT FOR THE MULTI-PURPOSE SPORTS, RECREATION, AND CONFERENCE COMPLEX. | | | | | |
| | | PLANS | | 300 | | | |
| | | TOTAL FUNDING | UOH | 300C | | | C |
| 86. | 413 | UHH, STUDENT SERVICES BUILDING RENOVATION/ADDITION, HAWAII | | | | | |
| | | PLANS FOR IMPROVEMENTS TO THE STUDENT SERVICES BUILDING. PROJECT MAY INCLUDE THE RENOVATION AND/OR ADDITION FOR STUDENT SERVICES PROGRAMS, CHANCELLOR'S OFFICE, UNIVERSITY RELATIONS, BUSINESS OFFICE, HUMAN RESOURCES, AND OTHER ADMINISTRATIVE UNITS. | | | | | |
| | | PLANS | | 200 | | | |
| | | TOTAL FUNDING | UOH | 200C | | | C |
| 87. | 412 | UHH, SOFTBALL FIELD, HAWAII | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SOFTBALL FIELD. PROJECT TO INCLUDE BLEACHERS, RESTROOMS, LIGHTING, ACCESSIBLE ROUTE, AND OTHER NECESSARY IMPROVEMENTS. | | | | | |
| | | PLANS | | 50 | | | |
| | | DESIGN | | 27 | | | |
| | | CONSTRUCTION | | 247 | | | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | AGS | 325C | | | C |
| 87A. | 343 | UHH, COLLEGE OF AGRICULTURE WELL AND PUMP, HAWAII | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR A NEW WELL, PUMP, AND RELATED IMPROVEMENTS FOR THE AGRICULTURAL FARM AT PANAEWA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION | | | | 428 | |
| | | EQUIPMENT | | | | 1 | |
| | | TOTAL FUNDING | AGS | | C | 429 | C |
| 87B. | 345 | UHH, MARINE SCIENCE BUILDING, HAWAII | | | | | |
| | | EQUIPMENT FOR NEW CLASSROOM/OFFICE BUILDING FOR THE MARINE SCIENCE PROGRAM. | | | | | |
| | | EQUIPMENT | | | | 290 | |
| | | TOTAL FUNDING | AGS | | C | 290 | C |
| 87C. | 372 | UHH, SMALL BUSINESS INCUBATOR, HAWAII | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE BANK OF HAWAII BUILDING AT DOWNTOWN HILO FOR THE DEVELOPMENT OF A SMALL BUSINESS INCUBATOR. PROJECT TO INCLUDE IMPROVEMENTS FOR ACCESS, INFRASTRUCTURE AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | PLANS | | | | 1 | |
| | | DESIGN | | | | 1 | |
| | | CONSTRUCTION | | | | 1,622 | |
| | | EQUIPMENT | | | | 1 | |
| | | TOTAL FUNDING | UOH | | C | 1,000 | C |
| | | | UOH | | N | 625 | N |
| **UOH800 - UH - COMMUNITY COLLEGES** | | | | | | | |
| 88. | M100 | MAU, CAMPUS DEVELOPMENT, MAUI | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW FACILITIES AT MAUI COMMUNITY COLLEGE INCLUDING SITE WORK, UTILITIES, BUILDINGS, AND RENOVATION OF EXISTING FACILITIES. | | | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 13,507 | | | |
| | | EQUIPMENT | | 1 | | 700 | |
| | | TOTAL FUNDING | AGS | 13,509 | C | 700 | C |
| 89. | W100 | WIN, CAMPUS DEVELOPMENT, OAHU | | | | | |
| | | EQUIPMENT FOR NEW FACILITIES AT WINDWARD COMMUNITY COLLEGE. PROJECT TO INCLUDE SITEWORK, UTILITIES, AND RENOVATION OF EXISTING FACILITIES. | | | | | |
| | | EQUIPMENT | | 2,192 | | | |
| | | TOTAL FUNDING | AGS | 2,192 | C | | C |
| 90. | 477 | HAW, UNIVERSITY OF HAWAII CENTER AT WEST HAWAII, HAWAII | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | PLANS AND DESIGN FOR NEW FACILITIES FOR THE PERMANENT CAMPUS OF THE WEST HAWAII EDUCATION CENTER. PROJECT TO INCLUDE SITE WORK, INFRASTRUCTURE, UTILITIES, BUILDINGS, AND OTHER RELATED WORK. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 1,437 | | | |
| | | TOTAL FUNDING | AGS | 1,438C | | | C |
| 91. | L52 | LEE, OBSERVATORY BUILDING, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW OBSERVATORY FACILITY AT LEEWARD COMMUNITY COLLEGE. PROJECT TO INCLUDE SITEWORK, UTILITIES, REBUILDING EXISTING TELESCOPE, BUILDING, AND OTHER RELATED WORK. | | | | | |
| | | PLANS | | 10 | | | |
| | | DESIGN | | 80 | | | |
| | | CONSTRUCTION | | 620 | | | |
| | | EQUIPMENT | | 90 | | | |
| | | TOTAL FUNDING | AGS | 800C | | | C |
| 92. | P99077 | HON, CAMPUS WATER DISTRIBUTION SYSTEM, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE CAMPUS WATER DISTRIBUTION SYSTEM AT HONOLULU COMMUNITY COLLEGE. | | | | | |
| | | DESIGN | | 124 | | | |
| | | CONSTRUCTION | | 926 | | | |
| | | TOTAL FUNDING | UOH | 1,050C | | | C |
| **UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT** | | | | | | | |
| 93. | 511 | SYS, UNIVERSITY OF HAWAII BOOKSTORES, STATEWIDE | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS TO UNIVERSITY OF HAWAII BOOKSTORES, SYSTEMWIDE. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 497 | | | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | UOH | 500W | | | W |
| 94. | 531 | SYS, MODIFICATIONS FOR ACCESSIBILITY, STATEWIDE | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MODIFICATIONS FOR ACCESSIBILITY IMPROVEMENTS. PROJECT TO IDENTIFY AND CORRECT EXISTING ARCHITECTURAL BARRIERS AT ALL UNIVERSITY CAMPUSES, EXTENSION SITES, AND OTHER RELATED FACILITIES. | | | | | |
| | | DESIGN | | 100 | | 100 | |
| | | CONSTRUCTION | | 5,000 | | 1,899 | |
| | | EQUIPMENT | | 1 | | 1 | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | AGS | 5,101C | | 2,000C | |
| 95. | 536 | SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MODIFICATIONS TO EXISTING FACILITIES AND/ OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND CODE REQUIREMENTS. | | | | | |
| | | DESIGN | | 565 | | 92 | |
| | | CONSTRUCTION | | 4,170 | | 1,081 | |
| | | EQUIPMENT | | 65 | | | |
| | | TOTAL FUNDING | AGS | 4,800C | | 1,173C | |
| 96. | 537 | SYS, FIRE SAFETY IMPROVEMENTS, STATEWIDE | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR FIRE SAFETY SYSTEMS. THE PROJECT MAY INCLUDE FIRE ALARM SYSTEMS, FIRE DETECTION SYSTEMS, FIRE SPRINKLER SYSTEMS, CENTRAL FIRE ALARM SYSTEMS, AND ALL OTHER FIRE SAFETY IMPROVEMENTS. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 540 | | | |
| | | CONSTRUCTION | | 3,503 | | 500 | |
| | | TOTAL FUNDING | AGS | 4,044C | | 500C | |
| 97. | 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 OTHER RELATED SPACES TO PROVIDE SAFER, MORE CONDUCIVE TEACHING AND LEARNING ENVIRONMENTS FOR STUDENTS, FACULTY, AND STAFF. | | | | | |
| | | DESIGN | | 979 | | 208 | |
| | | CONSTRUCTION | | 2,475 | | 4,785 | |
| | | EQUIPMENT | | 39 | | 358 | |
| | | TOTAL FUNDING | UOH | 3,493C | | 5,351C | |
| 98. | 541 | SYS, FACILITIES IMPROVEMENTS-REPAIRS AND MAINTENANCE, STATEWIDE | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENEWAL AND RENOVATION OF THE UNIVERSITY'S PHYSICAL PLANT. PROJECT TO INCLUDE REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RENOVATIONS, RESURFACING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES. | | | | | |
| | | PLANS | | | | 500 | |
| | | DESIGN | | 900 | | 1,000 | |
| | | CONSTRUCTION | | 9,400 | | 3,494 | |
| | | EQUIPMENT | | 100 | | 6 | |
| | | TOTAL FUNDING | UOH | 10,400C | | 5,000C | |
| 98A. | 521 | SYS, INFRASTRUCTURE IMPROVEMENTS, STATEWIDE | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR INFRASTRUCTURE IMPROVEMENTS AND RELATED IMPROVEMENTS AT UNIVERSITY CAMPUSES, SYSTEMWIDE. | | | | | |
| | | DESIGN | | | | 524 | |
| | | CONSTRUCTION | | | | 8,599 | |
| | | TOTAL FUNDING | UOH | | C | 9,123 | C |
| | | **H. CULTURE AND RECREATION** | | | | | |
| | | **UOH881 - AQUARIA** | | | | | |
| 0A. | 580 | UHM, WAIKIKI AQUARIUM WASTEWATER AND SANITARY DISPOSAL SYSTEMS, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CORRECTIONS TO THE WAIKIKI AQUARIUM'S WASTEWATER DISPOSAL SYSTEMS. PROJECT TO INCLUDE SANITARY SEWER SYSTEM AND RELATED SALTWATER, MECHANICAL, AND ELECTRICAL SYSTEMS FOR SANITARY DISPOSAL. | | | | | |
| | | DESIGN | | | | 35 | |
| | | CONSTRUCTION | | | | 175 | |
| | | EQUIPMENT | | | | 35 | |
| | | TOTAL FUNDING | AGS | | C | 245 | C |
| | | **AGS881 - PERFORMING & VISUAL ARTS EVENTS** | | | | | |
| 1. | I117 | STATE ART GALLERY, OAHU | | | | | |
| | | PLANS FOR A STATE ART GALLERY FOR THE STATE FOUNDATION ON CULTURE AND THE ARTS (SFCA). | | | | | |
| | | PLANS | | 150 | | | |
| | | TOTAL FUNDING | AGS | 150 | B | | B |
| 2. | I119 | WORKS OF ART MASTER PLANNING, STATEWIDE | | | | | |
| | | PLANS AND DESIGN FOR THE INTEGRATION OF THE STATE FOUNDATION ON CULTURE AND THE ARTS (SFCA) WORKS OF ART PROGRAM INTO THE ARCHITECTURAL DESIGN OF PROPOSED EDUCATIONAL AND GOVERNMENT FACILITIES. | | | | | |
| | | PLANS | | 100 | | 100 | |
| | | DESIGN | | 100 | | 100 | |
| | | TOTAL FUNDING | AGS | 200 | B | 200 | B |
| | | **LNR804 - FOREST RECREATION** | | | | | |
| 4. | D72 | COMPOSTING TOILETS, KAUAI | | | | | |
| | | PLANS AND CONSTRUCTION FOR COMPOSTING TOILETS IN CAMPGROUNDS IN THE NA PALI AND PUU KA PELE FOREST RESERVES, KAUAI. | | | | | |
| | | PLANS | | 10 | | | |
| | | CONSTRUCTION | | 140 | | | |
| | | TOTAL FUNDING | LNR | 150 | C | | C |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| **LNR806 - PARK DEVELOPMENT AND OPERATION** | | | | | | | |
| 5. | F37 | DIAMOND HEAD STATE MONUMENT, OAHU | | | | | |
| | | LAND ACQUISITION FOR THE INCREMENTAL DEVELOPMENT OF DIAMOND HEAD STATE MONUMENT TO INCLUDE ACQUISITION OF IMPROVEMENTS AT CANNON CLUB. (SPECIAL FUNDS FROM THE SPECIAL LAND AND DEVELOPMENT FUND). | | | | | |
| | | LAND | | 1,000 | | | |
| | | TOTAL FUNDING | LNR | 1,000 | B | | B |
| 6. | H09 | LANDSCAPING AND PARK IMPROVEMENTS, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND RENOVATIONS TO PARK GROUNDS AND FACILITIES FOR HEALTH, SAFETY, AND ACCESSIBILITY FOR THE PHYSICALLY CHALLENGED. | | | | | |
| | | DESIGN | | 250 | | 250 | |
| | | CONSTRUCTION | | 1,000 | | 1,000 | |
| | | TOTAL FUNDING | LNR | 1,250 | C | 1,250 | C |
| 7. | P99079 | HAWAII NATURE CENTER, OAHU | | | | | |
| | | CONSTRUCTION FOR A NEW HAWAII NATURE CENTER FACILITY IN MAKIKI. PROJECT TO INCLUDE DEMOLITION OF EXISTING STRUCTURES, CONSTRUCTION, SITE WORK, AND LANDSCAPING. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | CONSTRUCTION | | 750 | | | |
| | | TOTAL FUNDING | LNR | 750 | C | | C |
| 8. | P99080 | MOOKINI HEIAU COMPLEX, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE MOOKINI EDUCATIONAL CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | DESIGN | | 40 | | | |
| | | CONSTRUCTION | | 360 | | | |
| | | TOTAL FUNDING | LNR | 400 | C | | C |
| 9. | P99081 | WAAHILA STATE PARK, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR RECONSTRUCTION OF PARK ROADWAY; PARKING LOT; DRAINAGE SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | DESIGN | | 75 | | | |
| | | CONSTRUCTION | | 300 | | | |
| | | TOTAL FUNDING | LNR | 375 | C | | C |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 9A. | | AHA HUI E KALA, KAUAI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF 32 ACRES IN LAWAI VALLEY FOR CULTURAL PRESERVATION. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | DESIGN | | | | 25 | |
| | | CONSTRUCTION | | | | 225 | |
| | | TOTAL FUNDING | LNR | | C | 250C | |
| **LNR801 - OCEAN-BASED RECREATION** | | | | | | | |
| 10. | 271C | ALA WAI BOAT HARBOR FIRE PROTECTION SYSTEM, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR A FIRE PROTECTION SYSTEM. | | | | | |
| | | PLANS | | 10 | | | |
| | | DESIGN | | 10 | | | |
| | | CONSTRUCTION | | | | 100 | |
| | | TOTAL FUNDING | LNR | 20D | | 100D | |
| 11. | 299A | PLANNING FOR BOAT HARBOR FACILITIES, STATEWIDE | | | | | |
| | | PLANS FOR CONTINUED STUDIES, RESEARCH, AND ADVANCE PLANNING OF BOAT HARBOR FACILITIES ON ALL ISLANDS. | | | | | |
| | | PLANS | | 125 | | 125 | |
| | | TOTAL FUNDING | LNR | 125D | | 125D | |
| 12. | 299B | IMPROVEMENTS TO BOAT HARBOR FACILITIES, STATEWIDE | | | | | |
| | | 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, AND BOAT RAMPS. | | | | | |
| | | PLANS | | 30 | | 30 | |
| | | DESIGN | | 30 | | 30 | |
| | | CONSTRUCTION | | 240 | | 240 | |
| | | TOTAL FUNDING | LNR | 300D | | 300D | |
| 13. | P99082 | KIKIAOLA LIGHT DRAFT HARBOR, KAUAI | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO KIKIAOLA BOAT HARBOR NEEDED TO ACCOMMODATE PASSENGER CRUISE LINE ANCHORAGE TENDERING OPERATIONS, INCREASED COMMERCIAL OPERATIONS, AND TO PROVIDE BERTHING FACILITIES TO BOATERS. | | | | | |
| | | PLANS | | 450 | | 200 | |
| | | DESIGN | | 450 | | 200 | |
| | | CONSTRUCTION | | 5,400 | | 2,300 | |
| | | TOTAL FUNDING | LNR | 1,700C | | 2,700C | |
| | | | LNR | 4,600N | | N | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| 14. | 207A | KAILUA-KONA WHARF REPAIRS/IMPROVEMENTS, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION OF REPAIRS/ IMPROVEMENTS TO THE KAILUA-KONA WHARF. | | | | | |
| | | DESIGN | | 800 | | | |
| | | CONSTRUCTION | | | | 3,000 | |
| | | TOTAL FUNDING | LNR | 800 | C | 3,000 | C |
| 14A. | 245C | MAALAEA BOAT HARBOR LAND ACQUISITION, MAUI | | | | | |
| | | LAND ACQUISITION FOR THE PURCHASE OF 1.137 ACRES OF LAND, TAX MAP KEY II-3-8-14-27/ 28/30/31, LOCATED AT THE CORNER OF HAUOLI AND MAALAEA ROAD (HARBOR FRONT). | | | | | |
| | | LAND | | | | 2,500 | |
| | | TOTAL FUNDING | LNR | | D | 2,500 | D |
| 14B. | | KEAUHOU HARBOR, HAWAII | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF A FISH WINCH AT KEAUHOU HARBOR, HAWAII. | | | | | |
| | | DESIGN | | | | 4 | |
| | | CONSTRUCTION | | | | 20 | |
| | | EQUIPMENT | | | | 1 | |
| | | TOTAL FUNDING | LNR | | C | 25 | C |
| **AGS889 - SPECTATOR EVENTS & SHOWS - ALOHA STADIUM** | | | | | | | |
| 15. | SA9901 | EMERGENCY GENERATOR AND DISTRIBUTION CABLES, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR REPLACEMENT OF EXISTING STANDBY GENERATOR, TRANSFER SWITCH AND ASSOCIATED EQUIPMENT; REPLACEMENT OF EXISTING FUEL TANK; MODIFICATION OF EXISTING GENERATOR ROOM; REPLACEMENT OF EXISTING EMERGENCY SWITCHBOARD; AND REPLACEMENT OF EXISTING UNDERGROUND FEEDERS. | | | | | |
| | | DESIGN | | 85 | | | |
| | | CONSTRUCTION | | | | 815 | |
| | | TOTAL FUNDING | AGS | 85 | B | 815 | B |
| **LNR807 - PARK INTERPRETATION** | | | | | | | |
| 16. | F02B | INTERPRETIVE PROGRAM DEVELOPMENT, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR A SERIES OF INTERPRETIVE SIGNS AND SIGN KIOSKS IN SELECTED STATE PARKS. | | | | | |
| | | DESIGN | | 10 | | 10 | |
| | | CONSTRUCTION | | 50 | | 50 | |
| | | TOTAL FUNDING | LNR | 60 | B | 60 | B |
| 17. | F138 | LAPAKAHI STATE HISTORICAL PARK, HAWAII | | | | | |
| | | CONSTRUCTION FOR AND INTERPRETIVE TRAIL. | | | | | |
| | | CONSTRUCTION | | 250 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | LNR | 250B | | | B |
| 18. | F23B | PUU O MAHUKA HEIAU STATE MONUMENT, OAHU | | | | | |
| | | CONSTRUCTION FOR RESTORATION OF HEIAU AND ENTRYWAY IMPROVEMENTS. | | | | | |
| | | CONSTRUCTION | | | | 100 | |
| | | TOTAL FUNDING | LNR | | B | 100 | B |
| 19. | 854B | WAILUA RIVER STATE PARK, KAUAI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR INTERPRETIVE DEVICES, LANDSCAPING, AND RESTORATION OF MALAE HEIAU. | | | | | |
| | | DESIGN | | 10 | | | |
| | | CONSTRUCTION | | 100 | | | |
| | | TOTAL FUNDING | LNR | 110 | B | | B |
| 20. | F57B | KAHANA VALLEY STATE PARK, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR RESTORATION OF HUILUA FISHPOND, AND RESTORATION OF CHAPEL AND KAM MON STORE AS INTERPRETIVE CENTERS. | | | | | |
| | | DESIGN | | 10 | | | |
| | | CONSTRUCTION | | 100 | | 200 | |
| | | TOTAL FUNDING | LNR | 110 | B | 200 | B |
| 21. | H188 | KEOLONAHIHI STATE HISTORICAL PARK, HAWAII | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR DEVELOPMENT OF INTERPRETIVE FACILITIES AND PHASE I IMPROVEMENTS. | | | | | |
| | | PLANS | | 10 | | | |
| | | DESIGN | | 40 | | | |
| | | CONSTRUCTION | | | | 200 | |
| | | TOTAL FUNDING | LNR | 50 | B | 200 | B |
| 22. | H87B | KEKAHA KAI STATE PARK, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION TO DEVELOP AN EDUCATIONAL CENTER, OTHER INTERPRETIVE FACILITIES AND INTERPRETIVE PROGRAM MATERIALS FOR THE MAHAIULA BAY SECTION OF THE PARK. RESTORATION OF KAELEMAKULE HOUSE FOR HAWAIIAN CULTURAL CENTER. | | | | | |
| | | DESIGN | | 20 | | | |
| | | CONSTRUCTION | | | | 200 | |
| | | TOTAL FUNDING | LNR | 20 | B | 200 | B |
| 24A. | | THE FRIENDS OF IOLANI PALACE, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO IOLANI PALACE INCLUDING, BUT NOT LIMITED TO, REPLACE OF UPPER ROOF AND OTHER ROOF AREAS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | DESIGN | | | | 103 | |
| | | CONSTRUCTION | | | | 366 | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | LNR | | C | | 469C |
| **I. PUBLIC SAFETY** | | | | | | | |
| **PSD402 - HALAWA CORRECTIONAL FACILITY** | | | | | | | |
| 1. | 20001 | HALAWA CORRECTIONAL FACILITY, FIRE AND LIFE SAFETY IMPROVEMENTS, OAHU | | | | | |
| | | PLANS, DESIGN AND CONSTRUCTION FOR FIRE AND LIFE SAFETY IMPROVEMENTS AT THE HALAWA CORRECTIONAL FACILITY. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 52 | | | |
| | | CONSTRUCTION | | 674 | | | |
| | | TOTAL FUNDING | AGS | 727C | | | C |
| 1A. | 20005 | HALAWA CORRECTIONAL FACILITY, REPLACE SEWER LINES, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF DAMAGED SEWER LINES AT THE HALAWA CORRECTIONAL FACILITY. | | | | | |
| | | DESIGN | | | | 31 | |
| | | CONSTRUCTION | | | | 269 | |
| | | TOTAL FUNDING | AGS | | C | 300C | |
| **PSD403 - KULANI CORRECTIONAL FACILITY** | | | | | | | |
| 2. | 20002 | KULANI CORRECTIONAL FACILITY, NEW FIRE SPRINKLER AND HOT WATER SYSTEM, HAWAII | | | | | |
| | | DESIGN AND CONSTRUCTION FOR NEW FIRE SPRINKLER SYSTEM AND HOT WATER HEATERS IN THE HOUSING DORMITORIES. | | | | | |
| | | DESIGN | | 42 | | | |
| | | CONSTRUCTION | | 470 | | | |
| | | TOTAL FUNDING | AGS | 512C | | | C |
| **PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER** | | | | | | | |
| 2A. | 20007 | MAUI COMMUNITY CORRECTIONAL CENTER, NEW BED EXPANSION AND RENOVATIONS, MAUI | | | | | |
| | | PLANS FOR THE RENOVATION AND EXPANSION OF THE MAUI COMMUNITY CORRECTIONAL CENTER, AND/OR ANY SATELLITE ADJUNCTS. FUNDS MAY BE USED TO MATCH FEDERAL FUNDS, AS MAY BE AVAILABLE. | | | | | |
| | | PLANS | | | | 150 | |
| | | TOTAL FUNDING | AGS | | C | 150C | |
| **PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER** | | | | | | | |
| 3. | 20003 | OAHU COMMUNITY CORRECTIONAL CENTER, FUEL SYSTEMS, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO DIESEL/GASOLINE FUEL SYSTEMS TO MEET CURRENT EPA/DOH REQUIREMENTS. | | | | | |
| | | DESIGN | | 25 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION | | 286 | | | |
| | | TOTAL FUNDING | AGS | 311C | | | C |
| **PSD900 - GENERAL ADMINISTRATION** | | | | | | | |
| 4. | 20004 | ARCHITECTURAL BARRIER REMOVAL, STATEWIDE | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MODIFICATIONS FOR THE PHYSICALLY CHALLENGED TO IDENTIFY AND CORRECT EXISTING ARCHITECTURAL BARRIERS AT DEPARTMENT OF PUBLIC SAFETY FACILITIES. | | | | | |
| | | DESIGN | | 25 | | 25 | |
| | | CONSTRUCTION | | 274 | | 274 | |
| | | EQUIPMENT | | 1 | | 1 | |
| | | TOTAL FUNDING | PSD | 300C | | 300C | |
| 4A. | 20008 | REPLACE FIRE SPRINKLERS AT WOMEN'S AND MAUI COMMUNITY CORRECTIONAL CENTERS | | | | | |
| | | DESIGN AND CONSTRUCTION TO REPLACE SPRINKLER HEADS AT WOMEN'S AND MAUI COMMUNITY CORRECTIONAL CENTERS. | | | | | |
| | | DESIGN | | | | 27 | |
| | | CONSTRUCTION | | | | 161 | |
| | | TOTAL FUNDING | AGS | | C | 188C | |
| **LNR810 - PREVENTION OF NATURAL DISASTERS** | | | | | | | |
| 4B. | | WAILUPE STREAM FLOOD CONTROL, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION TO IMPROVE THE DRAINAGE OF WAILUPE STREAM. | | | | | |
| | | PLANS | | | | 500 | |
| | | DESIGN | | | | 500 | |
| | | CONSTRUCTION | | | | 2,000 | |
| | | TOTAL FUNDING | LNR | | C | 3,000C | |
| **DEF110 - AMELIORATION OF PHYSICAL DISASTERS** | | | | | | | |
| 5. | A37 | MAUI ARMY NATIONAL GUARD ARMORY, MAUI | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A MAJOR ARMORY COMPLEX CONSOLIDATING THE EXISTING FACILITIES, UTILITIES, ACCESS ROAD, PARKING, SECURITY FENCING, AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 1,000 | | | |
| | | CONSTRUCTION | | 14,400 | | | |
| | | EQUIPMENT | | | | 500 | |
| | | TOTAL FUNDING | DEF | 2,400C | | 500C | |
| | | | DEF | 13,000N | | | N |
| 6. | A44 | RENOVATION OF BUILDING NO. 117, BARBERS POINT, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ARMY NATIONAL GUARD CONSOLIDATED FACILITY OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION, UTILITIES, ACCESS ROAD, PARKING AREAS, SECURITY FENCING, INTERIM RENOVATIONS, AND OTHER RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 1,300 | | | |
| | | CONSTRUCTION | | 11,700 | | 500 | |
| | | EQUIPMENT | | | | 700 | |
| | | TOTAL FUNDING | DEF | 100C | | 1,200C | |
| | | | DEF | 12,900N | | N | |
| 7. | A66 | ARMY NATIONAL GUARD, RENOVATE BUILDING 282, BARBERS POINT, OAHU | | | | | |
| | | DESIGN FOR THE RENOVATION OF EXISTING BUILDING #282 (BARBERS POINT) TO CONSOLIDATE THE 29TH INF BDE (E), 29TH SPT BN, THE C CO, 193D MED LIFT, AND THE CH47 HANGAR. PROJECT TO INCLUDE UTILITIES, ACCESS ROAD, PARKING, INTERIM RENOVATIONS, AND OTHER RELATED WORK. | | | | | |
| | | DESIGN | | | | 100 | |
| | | TOTAL FUNDING | DEF | | C | 100C | |
| 8. | A9701 | REGIONAL TRAINING CENTER, BELLOWS AFS, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SPECIALLY DESIGNED COMPLEX OF PERMANENT STEEL AND MASONRY TYPE CONSTRUCTION INCLUDING ALL UTILITIES, ACCESS ROAD, PARKING AREAS, FENCING, TRAINING FIELDS, AND OTHER SUPPORTING FEATURES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 1,200 | | | |
| | | CONSTRUCTION | | 15,200 | | | |
| | | EQUIPMENT | | 200 | | | |
| | | TOTAL FUNDING | DEF | 1,500C | | C | |
| | | | DEF | 15,100N | | N | |
| 9. | C13 | DISASTER WARNING AND COMMUNICATIONS DEVICES, STATEWIDE | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT, AND UPGRADE OF STATE CIVIL DEFENSE WARNING AND COMMUNICATIONS EQUIPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | PLANS | | 1 | | 1 | |
| | | LAND | | 1 | | 1 | |
| | | DESIGN | | 50 | | 65 | |
| | | CONSTRUCTION | | 410 | | 780 | |
| | | EQUIPMENT | | 38 | | 133 | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | TOTAL FUNDING | AGS | | 500C | | 880C |
| | | | AGS | | N | | 100N |
| 10. | C32 | DIAMOND HEAD RADIO SITE CONSOLIDATION, DIAMOND HEAD MONUMENT SITE ACCESS, OAHU | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CIVIL DEFENSE RADIO SITE CONFIGURATION ON DIAMOND HEAD CRATER RIM TO ALLOW RADIO EQUIPMENT TO BE CONSOLIDATED INTO AREAS SEPARATE FROM AREAS OF PUBLIC ACCESS. | | | | | |
| | | PLANS | | | 1 | | |
| | | LAND | | | 1 | | |
| | | DESIGN | | | 125 | | 10 |
| | | CONSTRUCTION | | | | | 250 |
| | | EQUIPMENT | | | | | 250 |
| | | TOTAL FUNDING | AGS | | 102C | | 410C |
| | | | AGS | | 25N | | 100N |
| 11. | C33 | INTERAGENCY (RAINBOW) MICROWAVE NETWORK MODERNIZATION IMPROVEMENTS, STATEWIDE | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT TO MODERNIZE AND AUGMENT THE EXISTING FEDERAL/STATE INTERAGENCY (RAINBOW) MICROWAVE NETWORK WITH DIGITAL LINKS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | PLANS | | | 1 | | 1 |
| | | LAND | | | 1 | | 1 |
| | | DESIGN | | | 150 | | 20 |
| | | CONSTRUCTION | | | | | 400 |
| | | EQUIPMENT | | | | | 400 |
| | | TOTAL FUNDING | AGS | | 102C | | 412C |
| | | | AGS | | 50N | | 410N |
| 11A. | C34 | REPLACEMENT MICROWAVE AND RADIO ANTENNA TOWER AT PUU MANAWAHUA, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A 30-FOOT SELF-SUPPORTED TOWER WITH A 12' X 12' PLATFORM AT THE 23-FOOT LEVEL, AND 5' X 5' BASE AT THE TOP. | | | | | |
| | | PLANS | | | | | 2 |
| | | DESIGN | | | | | 33 |
| | | CONSTRUCTION | | | | | 100 |
| | | EQUIPMENT | | | | | 65 |
| | | TOTAL FUNDING | DEF | | C | | 175C |
| | | | DEF | | N | | 25N |
| 11B. | C35 | AMERICANS WITH DISABILITIES ACT AND INFRASTRUCTURE IMPROVEMENTS, STATEWIDE | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | PLANS, DESIGN, AND CONSTRUCTION FOR MODIFICATIONS FOR PERSONS WITH DISABILITIES TO IDENTIFY AND CORRECT EXISTING DEFICIENCIES FOR DEPARTMENT OF DEFENSE (DOD) FACILITIES. THIS PROJECT IS NECESSARY TO MEET REQUIREMENTS IN ACCORDANCE WITH STATE AND FEDERAL LAWS. CURRENT BUILDING ACCESSIBILITY DOES NOT MEET ADA CRITERIA FOR ACCESSIBILITY. | | | | | | |
| | | PLANS | | | | 1 | |
| | | DESIGN | | | | 30 | |
| | | CONSTRUCTION | | | | 324 | |
| | | TOTAL FUNDING | DEF | | C | 355 | C |
| 11C. | | YOUTH CHALLENGE PROGRAM CENTER, KALAELOA, OAHU | | | | | |
| | | DESIGN AND CONSTRUCTION FOR THE RENOVATION OF HIARNG FACILITIES AT KALAELOA FOR THE YOUTH CHALLENGE PROGRAM. THIS PROJECT IS NECESSARY TO REPLACE EXISTING PROGRAM FACILITIES DUE TO THE DEVELOPMENT OF KALAELOA. | | | | | | |
| | | DESIGN | | | | 60 | |
| | | CONSTRUCTION | | | | 600 | |
| | | TOTAL FUNDING | DEF | | C | 660 | C |
| **K. GOVERNMENT-WIDE SUPPORT** | | | | | | | |
| **GOV100 - OFFICE OF THE GOVERNOR** | | | | | | | |
| 1. | G01 | PROJECT ADJUSTMENT FUND, STATEWIDE | | | | | |
| | | DESIGN FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISION OF THE APPROPRIATION ACT. | | | | | |
| | | DESIGN | | | 1 | | 1 |
| | | TOTAL FUNDING | GOV | | 1C | | 1C |
| **BED144 - STATEWIDE PLANNING AND COORDINATION** | | | | | | | |
| 2. | P99087 | OCEANIC INSTITUTE, PROTOTYPE AQUATIC ANIMAL HATCHERY, OAHU | | | | | |
| | | CONSTRUCTION FOR A PROTOTYPE AQUATIC ANIMAL HATCHERY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | CONSTRUCTION | | 375 | | | |
| | | TOTAL FUNDING | BED | 375 | C | | C |
| **BED104 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY** | | | | | | | |
| 3. | KA007 | KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, MAUKA AREA INCREMENT 3, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR QUEEN STREET BETWEEN WARD AVENUE AND WAIMANU STREET. PROJECT MAY INCLUDE IMPROVEMENTS TO THE ROADWAY, DRAINAGE, SEWER, WATER, ELECTRICAL, TELEPHONE, AND CABLE TELEVISION SYSTEMS. | | | | | |
| | | PLANS | | 1 | | | |
| | | LAND | | 4,214 | | | |
| | | DESIGN | | 5,003 | | | |
| | | CONSTRUCTION | | 16,782 | | | |
| | | TOTAL FUNDING | BED | 9,600C | | | C |
| | | | BED | 14,400N | | | N |
| | | | BED | 2,000W | | | W |
| 4. | 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 | | 1,403 | | 1,418 | |
| | | LAND | | 1 | | 1 | |
| | | DESIGN | | 1 | | 1 | |
| | | CONSTRUCTION | | 1 | | 1 | |
| | | TOTAL FUNDING | BED | 1,406C | | 1,421C | |
| **BUF101 - PROGRAM PLANNING, ANALYSIS AND BUDGETING** | | | | | | | |
| 5. | 00-01 | HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE | | | | | |
| | | CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUNDS TO SATISFY THE PROVISIONS OF ACT 14, SPSLH 1995. | | | | | |
| | | CONSTRUCTION | | 13,900 | | | |
| | | TOTAL FUNDING | BUF | 13,900C | | | C |
| 6. | 00-02 | STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND, STATEWIDE | | | | | |
| | | CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND. | | | | | |
| | | CONSTRUCTION | | 90,000 | | 149,825 | |
| | | TOTAL FUNDING | BUF | 90,000C | | 149,825C | |
| **AGS161 - COMMUNICATION** | | | | | | | |
| 7A. | ICSD11 | STATEWIDE NETWORK INFRASTRUCTURE, PHASE II, STATEWIDE | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COMMUNICATION INFRASTRUCTURE THAT WILL ENABLE CONNECTIVITY TO THE STATE'S INFORMATION TECHNOLOGY APPLICATIONS. | | | | | |
| | | DESIGN | | | | 50 | |
| | | CONSTRUCTION | | | | 1,750 | |
| | | EQUIPMENT | | | | 1,200 | |
| | | TOTAL FUNDING | AGS | | C | 3,000C | |
| **LNR101 - PUBLIC LANDS MANAGEMENT** | | | | | | | |
| 8. | E92 | MOANALUA STREAM DREDGING, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR DREDGING OF MOANALUA STREAM NEAR KAMEHAMEHA HIGHWAY AND RELATED WORK. | | | | | |
| | | PLANS | | 100 | | | |
| | | DESIGN | | 100 | | | |
| | | CONSTRUCTION | | | | 500 | |
| | | TOTAL FUNDING | LNR | 200B | | 500B | |
| 9. | E93 | KALIHI STREAM DREDGING, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR DREDGING OF KALIHI STREAM. | | | | | |
| | | PLANS | | 75 | | | |
| | | DESIGN | | 75 | | | |
| | | CONSTRUCTION | | | | 400 | |
| | | TOTAL FUNDING | LNR | 150B | | 400B | |
| 10. | E94 | STREAM OWNERSHIP STUDY, STATEWIDE | | | | | |
| | | PLANS FOR THE PREPARATION OF A STUDY TO DETERMINE STATE-OWNERSHIP OF STREAMS STATEWIDE. | | | | | |
| | | PLANS | | 1,000 | | | |
| | | TOTAL FUNDING | LNR | 1,000B | | | B |
| 11. | P99089 | PROTECTION OF AGRICULTURAL RESOURCES, MAUI | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE PROTECTION, MAINTENANCE, AND IMPROVEMENT OF VARIOUS AGRICULTURAL RESOURCE INFRASTRUCTURE ON MAUI. | | | | | |
| | | PLANS | | 1 | | | |
| | | LAND | | 1 | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 2,996 | | | |
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | LNR | 3,000C | | | C |
| 11A. | | MAUNALAHA HEIGHTS SUBDIVISION WATER SYSTEM IMPROVEMENTS, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE MAUNALAHA HEIGHTS SUBDIVISION INCLUDING, BUT NOT LIMITED TO, A NEW WATERLINE, TO MEET CITY AND COUNTY OF HONOLULU FIRE DEPARTMENT STANDARDS. | | | | | |
| | | DESIGN | | | | ~~1~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~660~~ 0[1] | |
| | | TOTAL FUNDING | LNR | | C | ~~661~~C 0[1] | |
| **AGS221 - CONSTRUCTION** | | | | | | | |
| 12. | B27 | ADVANCE 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, AND INVENTORIES TO CARRY OUT DAGS' FUNCTIONS. | | | | | |
| | | PLANS | | 120 | | 50 | |
| | | TOTAL FUNDING | AGS | 120C | | 50C | |
| 13. | B28 | STATE OFFICE BUILDING, REMODELING, STATEWIDE | | | | | |
| | | DESIGN AND CONSTRUCTION FOR REMODELING AND UPGRADING OF OFFICES OCCUPIED BY STATE AGENCIES IN STATE OWNED SPACE, TO 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, ENERGY CONSERVATION, LIGHTING, VENTILATION, PLUMBING, ELECTRICAL, AND DATA SYSTEMS. | | | | | |
| | | DESIGN | | 120 | | | |
| | | CONSTRUCTION | | 691 | | | |
| | | TOTAL FUNDING | AGS | 811C | | | C |
| 14. | E109 | CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATING 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. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS. | | | | | |
| | | PLANS | | 6,268 | | 6,268 | |
| | | LAND | | 1 | | 1 | |
| | | DESIGN | | 1 | | 1 | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | CONSTRUCTION | | | 1 | | 1 |
| | | EQUIPMENT | | | 1 | | 1 |
| | | TOTAL FUNDING | AGS | 6,272C | | 6,272C | |
| 15. | F109 | AIR CONDITIONING SYSTEMS, STATEWIDE | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPLACEMENT OF AIR CONDITIONING SYSTEMS IN STATE BUILDINGS AND OTHER RELATED IMPROVEMENTS. | | | | | |
| | | DESIGN | | 200 | | | |
| | | CONSTRUCTION | | 1,280 | | | |
| | | EQUIPMENT | | 5 | | | |
| | | TOTAL FUNDING | AGS | 1,485C | | | C |
| 16. | G107 | STATE SPORTS RECREATIONAL COMPLEX, OAHU | | | | | |
| | | EQUIPMENT FOR FURNITURE FOR THE KAPOLEI SPORTS RECREATIONAL COMPLEX. | | | | | |
| | | EQUIPMENT | | 200 | | | |
| | | TOTAL FUNDING | AGS | 200C | | | C |
| 17. | H101 | STATE OFFICE BUILDING, ADA PUBLIC ACCESSIBILITY, STATEWIDE | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION TO PROVIDE MINIMUM PUBLIC ACCESSIBLE PARKING AND PATHWAY TO ALL PROGRAMS AND AN ADA EVACUATION STUDY FOR ALL STATE OFFICE BUILDINGS SERVING THE PUBLIC. | | | | | |
| | | PLANS | | | | | 299 |
| | | DESIGN | | 30 | | | 1 |
| | | CONSTRUCTION | | 2,300 | | | |
| | | TOTAL FUNDING | AGS | 2,330C | | | 300C |
| 18. | 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 | | 127 | | | 48 |
| | | CONSTRUCTION | | 1,688 | | | 622 |
| | | EQUIPMENT | | 5 | | | 5 |
| | | TOTAL FUNDING | AGS | 1,820C | | | 675C |
| 19. | C10409 | STATE CAPITOL DIST. ASBESTOS MITIGATION, AIR COND., AND OTHER IMPROVEMENTS, OAHU | | | | | |
| | | CONSTRUCTION FOR SETTLEMENT OF CONTRACTOR CLAIMS FOR DELAY IN COMPLETION OF PROJECT. | | | | | |
| | | CONSTRUCTION | | 550 | | | |
| | | TOTAL FUNDING | AGS | 550C | | | C |
| 20. | P99090 | KAPOLEI STADIUM, OAHU | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | PLANS, DESIGN, AND CONSTRUCTION FOR THE INSTALLATION OF PRACTICE FIELD LIGHTS ON TWO PRACTICE FIELDS FOR KAPOLEI STADIUM. GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES. | | | | | |
| | | PLANS | | 1 | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 1,402 | | | |
| | | TOTAL FUNDING | AGS | 1,404C | | | C |
| 21. | P99091 | LIHUE MULTI-AGENCY MAINTENANCE AND SERVICE FACILITIES, KAUAI | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE PROVISION OF OFFICES, MAINTENANCE SHOPS, STORAGE, AND VEHICLE SERVICING AREAS FOR DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES KAUAI DISTRICT OFFICE. | | | | | |
| | | DESIGN | | | | 100 | |
| | | CONSTRUCTION | | 464 | | 1,000 | |
| | | EQUIPMENT | | 1 | | 30 | |
| | | TOTAL FUNDING | AGS | 465C | | 1,130C | |
| 22. | P99092 | MOILIILI COMMUNITY CENTER, OAHU | | | | | |
| | | CONSTRUCTION FOR THE RENOVATION AND REPAIR OF THE ONLY ORIGINAL BUILDING REMAINING OF THE MOILIILI COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | CONSTRUCTION | | 75 | | | |
| | | TOTAL FUNDING | AGS | 75C | | | C |
| 22A. | | STATE SPORTS RECREATIONAL COMPLEX, OAHU | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A STATE SPORTS RECREATIONAL COMPLEX ON OAHU FOR BASEBALL TO INCLUDE BASEBALL PLAYING AND PRACTICE FIELDS AND TO ALSO INCLUDE, BUT NOT BE LIMITED TO, MULTI-PURPOSE BUILDING-TRAINING FACILITY/ CLUBHOUSE WITH KITCHEN FACILITIES; ADEQUATE RESTROOM FACILITIES; EQUIPMENT AND APPURTENANCES. FUNDS NOT NEEDED IN A COST ELEMENT MAY BE USED IN ANOTHER. | | | | | |
| | | DESIGN | | | | 250 | |
| | | CONSTRUCTION | | | | ~~13,750~~ 4,750[1] | |
| | | EQUIPMENT | | | | ~~2,500~~ 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~16,500C~~ 5,000C[1] | |
| 22B. | P97097 | WAHIAWA CIVIC CENTER, OAHU | | | | | |
| | | PLANS AND DESIGN FOR A STATE OFFICE BUILDING AND A STATE OFFICE BUILDING PARKING STRUCTURE AT THE WAHIAWA CIVIC CENTER. | | | | | |
| | | PLANS | | | | ~~50~~ | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | DESIGN | | | | 0[1] | |
| | | | | | | ~~200~~ | |
| | | | | | | 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~250C~~ | |
| | | | | | | 0[1] | |
| 22C. | | AIEA PUBLIC LIBRARY RELOCATION, OAHU | | | | | |
| | | LAND ACQUISITION OF A PARCEL/PARCELS OF LAND AT THE FORMER AIEA SUGAR MILL SITE FOR RELOCATION OF THE AIEA PUBLIC LIBRARY. | | | | | |
| | | LAND | | | | ~~2,900~~ | |
| | | | | | | 0[1] | |
| | | TOTAL FUNDING | AGS | | C | ~~2,900C~~ | |
| | | | | | | 0[1] | |
| **AGS233 - BUILDING REPAIRS AND ALTERATIONS** | | | | | | | |
| 22D. | 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 | | | | 600 | |
| | | CONSTRUCTION | | | | 4,400 | |
| | | TOTAL FUNDING | AGS | | C | 5,000C | |
| **SUB201 - CITY AND COUNTY OF HONOLULU** | | | | | | | |
| 23. | P99093 | MANOA COMMUNITY RECREATIONAL FACILITY, OAHU | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR BUILDING DEMOLITION AND RELOCATION, ADDITIONAL PARKING, LANDSCAPING, BASKETBALL AND TENNIS COURTS, DRAINAGE, SITEWORK, AND A GYMNASIUM/MULTIPURPOSE COMMUNITY FACILITY. | | | | | | |
| | | PLANS | | 175 | | | |
| | | DESIGN | | 525 | | | |
| | | CONSTRUCTION | | | | 3,300 | |
| | | TOTAL FUNDING | CCH | 700C | | 3,300C | |
| 24A. | | JAPANESE CULTURAL CENTER OF HAWAII, OAHU | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW GALLERY SPACE FOR THE JAPANESE CULTURAL CENTER OF HAWAII. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | | |
| | | PLANS | | | | 1 | |
| | | DESIGN | | | | 61 | |
| | | CONSTRUCTION | | | | ~~436~~ | |
| | | | | | | 224[1] | |
| | | EQUIPMENT | | | | ~~75~~ | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | MOF | FISCAL YEAR 2000-01 | MOF |
|---|---|---|---|---|---|---|---|
| | | | | | | 0[1] | |
| | | TOTAL FUNDING | CCH | | C | ~~573C~~ 286C[1] | |
| 24B. | | WAIPAHU COMMUNITY FOUNDATION YOUTH AND ELDERLY DAY CARE FACILITY, OAHU | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE CONSTRUCTION OF A DAY CARE FACILITY FOR THE YOUTH AND ELDERLY. FUNDS MAY BE USED AS A STATE MATCH FOR PRIVATE CONTRIBUTIONS. | | | | | |
| | | PLANS | | | | ~~1~~ 0[1] | |
| | | LAND | | | | ~~1~~ 0[1] | |
| | | DESIGN | | | | ~~1~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~1,996~~ 0[1] | |
| | | EQUIPMENT | | | | ~~1~~ 0[1] | |
| | | TOTAL FUNDING | CCH | | C | ~~1,000C~~ 0[1] | |
| | | | CCH | | R | ~~1,000R~~ 0[1] | |
| 24C. | | HAWAII OLA WAIMANALO, OAHU | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO INCLUDE, BUT NOT LIMITED TO, MULTI-PURPOSE BUILDINGS, ADMINISTRATIVE AND ASSEMBLY GROUP BUILDINGS, AND PARKING LOT. FUNDS MAY BE USED AS A STATE MATCH FOR FEDERAL FUNDS AND/OR PRIVATE CONTRIBUTIONS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | PLANS | | | | ~~1~~ 0[1] | |
| | | LAND | | | | ~~1~~ 0[1] | |
| | | DESIGN | | | | ~~1~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~496~~ 0[1] | |
| | | EQUIPMENT | | | | ~~1~~ 0[1] | |
| | | TOTAL FUNDING | CCH | | C | ~~500C~~ 0[1] | |
| **SUB301 - COUNTY OF HAWAII** | | | | | | | |
| 25. | P99095 | PAHOA MAINSTREET ASSOCIATION, HAWAII | | | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | LAND ACQUISITION FOR THE PURCHASE OF A PARCEL IN THE CENTER OF PAHOA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | LAND | | 150 | | | |
| | | TOTAL FUNDING | COH | 150C | | | C |
| 26. | P99096 | PUAINAKO EXTENSION, HAWAII | | | | | |
| | | DESIGN FOR THE PUAINAKO EXTENSION. | | | | | |
| | | DESIGN | | 600 | | | |
| | | TOTAL FUNDING | COH | 600C | | | C |
| 27. | P99097 | MOUNTAIN VIEW SENIOR CENTER BUILDING PURCHASE, HAWAII | | | | | |
| | | CONSTRUCTION AND EQUIPMENT FOR PORTABLE BUILDINGS FOR THE MOUNTAIN VIEW SENIOR CENTER. | | | | | |
| | | CONSTRUCTION | | 30 | | | |
| | | EQUIPMENT | | 170 | | | |
| | | TOTAL FUNDING | COH | 200C | | | C |
| 27A. | | KEAUKAHA GYMNASIUM, HAWAII | | | | | |
| | | PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE KEAUKAHA GYMNASIUM. | | | | | |
| | | PLANS | | | | 2 | |
| | | DESIGN | | | | 2 | |
| | | CONSTRUCTION | | | | 1,327 | |
| | | EQUIPMENT | | | | 2 | |
| | | TOTAL FUNDING | COH | | C | 1,333C | |
| 27B. | | KALOPA SAND GULCH ROAD, HAWAII | | | | | |
| | | PLANS, DESIGN, AND CONSTRUCTION FOR THE IMPROVEMENTS TO KALOPA SAND GULCH ROAD. | | | | | |
| | | PLANS | | | | ~~1~~ 0[1] | |
| | | DESIGN | | | | ~~1~~ 0[1] | |
| | | CONSTRUCTION | | | | ~~598~~ 0[1] | |
| | | TOTAL FUNDING | COH | | C | ~~600C~~ 0[1] | |

**SUB401 - COUNTY OF MAUI**

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 28. | P99098 | UPCOUNTRY MAUI WATERSHED PROJECT, MAUI | | | | | |
| | | DESIGN, CONSTRUCTION, AND EQUIPMENT FOR DEVELOPMENT OF A WATER STORAGE FACILITY FOR THE UPCOUNTRY MAUI WATERSHED PROJECT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. | | | | | |
| | | DESIGN | | 1 | | | |
| | | CONSTRUCTION | | 1,998 | | | |

CAPITAL IMPROVEMENT PROJECTS

| ITEM NO. | CAPITAL NO. | PROJECT TITLE | EXPENDING AGENCY | APPROPRIATIONS (IN 000's) FISCAL YEAR 1999-00 | M O F | FISCAL YEAR 2000-01 | M O F |
|---|---|---|---|---|---|---|---|
| | | EQUIPMENT | | 1 | | | |
| | | TOTAL FUNDING | COM | 2,000C | | | C |
| **SUB501 - COUNTY OF KAUAI** | | | | | | | |
| 29. | P99099 | WAIMEA SHAFT, WATER TREATMENT FACILITY, KAUAI | | | | | |
| | | LAND ACQUISITION AND DESIGN FOR DEVELOPMENT OF A WATER TREATMENT FACILITY AT THE WAIMEA SHAFT. | | | | | |
| | | LAND | | 30 | | | |
| | | DESIGN | | 130 | | | |
| | | TOTAL FUNDING | COK | 160C | | | C |
| 30. | P99100 | OMAO WELL, KAUAI | | | | | |
| | | DESIGN AND CONSTRUCTION FOR AN EXPLORATORY WELL. | | | | | |
| | | DESIGN | | 50 | | | |
| | | CONSTRUCTION | | 400 | | | |
| | | TOTAL FUNDING | COK | 450C | | | C |
| 30A. | | WAILUA/KAPAA WATER SYSTEM, KAUAI | | | | | |
| | | PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION 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 | | C | | 160C |
| 30B. | | STORYBOOK THEATRE OF HAWAII, KAUAI | | | | | |
| | | CONSTRUCTION FOR THE RENOVATION OF THE SPARK M. MATSUNAGA CHILDREN'S MEDIA CENTER FOR THE STORYBOOK THEATRE OF HAWAII. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS. | | | | | |
| | | CONSTRUCTION | | | | | ~~250~~ 0[1] |
| | | TOTAL FUNDING | COK | | C | | ~~250C~~ 0[1] |
| 30C. | | 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 | | C | | 445C" |

SECTION 6. Part V, Act 91, Session Laws of Hawaii 1999, is amended:

(1) By amending section 71 to read as follows:

"SECTION 71. Provided that any amount appropriated for any capital improvement 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 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 of the following projects and purposes:

(1) Roosevelt High School, Oahu
Plans, design, and construction for the renovation of building A, phase I; ground and site improvements; equipment and appurtenances.

(2) Waipahu High School, Oahu
Design, construction, and equipment for an eight classroom building; ground and site improvements; equipment and appurtenances.

(3) Waianae High School, Oahu
Design, construction, and equipment for an eight classroom building; ground and site improvements; equipment and appurtenances.

(4) Leilehua High School, Oahu
Design, construction, and equipment for an eight classroom building; ground and site improvements; equipment and appurtenances.

(5) Kealakehe Intermediate School, Hawaii
Construction and equipment for administration/library and renovation of temporary facilities into classrooms; ground and site improvements; equipment and appurtenances.

(6) Laie Elementary School, Hawaii
Construction and equipment for expansion of cafetorium, dining room; ground and site improvements; equipment and appurtenances."

(2) By adding a new section to read as follows:

"SECTION 72.1. Provided that of the general obligation bond fund appropriation for prevention of natural disasters (LNR 810), the sum of $3,000,000 for fiscal year 2000-2001 shall be used for plans, design, and construction for Wailupe Stream flood control; and provided further that no funds shall be expended unless matched on a 1:1 basis with funds from the city and county of Honolulu and/or other sources, and on a 4:1 (federal/state) basis with funds from federal contributions."

(3) By adding a new section to read as follows:

"SECTION 105.1. Act 328, Session Laws of Hawaii 1997, item C-206B of section 140A, as amended by Act 116, Session Laws of Hawaii 1998, section 5, is amended to read as follows:

206B X113 KAUMUALII HIGHWAY, DRAINAGE IMPROVEMENTS, VICINITY OF MP 22, KAUAI

DESIGN [AND CONSTRUCTION] FOR DRAINAGE IMPROVEMENTS AT MP22. IMPROVEMENTS INCLUDE INSTALLATION, UPGRADING AND/OR EXTENSION OF CULVERTS AND HEADWALLS, GUARDRAIL IMPROVEMENTS, REGRADING AND MINOR REALIGNMENT OF ADJACENT PLANTATION ROAD[,] AND APPROACHES[,] AND SHOULDER IMPROVEMENTS. [THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENTS.]
DESIGN

| | | | |
|---|---|---|---|
| [CONSTRUCTION | | | 740 |
| TOTAL FUNDING | TRN | E | 175 |
| | | N | 590] |
| TOTAL FUNDING | TRN | E | 25" |

(4) By adding a new section to read as follows:

"SECTION 105.2. Any law to the contrary notwithstanding, the appropriations under Act 328, Session Laws of Hawaii 1997, section 140A, as amended and renumbered by Act 116, Session Laws of Hawaii 1998, section 5, in the amounts indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| A-4 | 1,500,000 C |
| A-4B | 500,000 C |
| A-4C | 987,000 C |
| A-9C | 40,000 C |
| A-9D | 40,000 C |
| A-13C | 171,758 C |
| A-24 | 1,300,000 C |
| A-26 | 5,000,000 C |
| C-146 | 1,000,000 E |
| D-4 | 35,000 C |
| D-11 | 470,000 N |
| D-12 | 264,900 C |
| E-2 | 70,725 C |
| E-4 | 4,816,815 C |
| E-8 | 250,000 C |
| E-9 | 3,110,000 C |
| E-13 | 120,000 C |
| E-13D | 838,000 C |
| E-13F | 81,000 C |
| E-13G | 274,000 C |
| E-13K | 24,000 C |
| E-13L | 21,000 C |
| E-13M | 42,000 C |
| E-13O | 48,000 C |
| E-14 | 63,622 C |
| E-15 | 7,648 C |
| E-16 | 13,000 C |
| E-17 | 48,000 C |
| E-18 | 1,800,000 C |
| E-20 | 1,500,000 C |
| E-23 | 88,000 C |
| F-2 | 2,000,000 C |
| F-7 | 35,000 C |
| G-16 | 36,122 B |
| G-17 | 76,016 B |
| G-18A | 300,000 B |
| G-18B | 23,700 B |
| G-19 | 4,000,000 B |
| G-20 | 76,000 B |

| Item No. | Amount (MOF) |
|---|---|
| G-26 | 189,957 B |
| G-27 | 250,000 B |
| G-29 | 212,000 B |
| G-30 | 44,586 B |
| G-31 | 469,600 B |
| G-34 | 107,975 B |
| G-35 | 536,500 B |
| G-36 | 492,083 B |
| G-39 | 155,000 B |
| G-40 | 2,282,000 B |
| G-42 | 72,966 B |
| G-42A | 50,000 B |
| G-43 | 86,824 B |
| G-45 | 433,249 B |
| G-46 | 170,208 B |
| G-51 | 1,090,633 B |
| G-48 | 35,000 B |
| G-53 | 306,825 B |
| G-56 | 235,714 B |
| G-59A | 700,000 C |
| G-60 | 95,000 C |
| G-60A | 766,000 C |
| G-60B | 1,200,000 C |
| G-61 | 500,000 C |
| G-62 | 45,000 C |
| G-64 | 460,000 C |
| G-64A | 200,000 C |
| G-64B | 144,000 C |
| G-64C | 250,000 C |
| G-64D | 1,990,000 C |
| G-64E | 34,000 C |
| G-64F | 76,000 C |
| G-64G | 664,000 C |
| G-66 | 200,000 C |
| G-66A | 15,000 C |
| G-67A | 250,000 C |
| G-67B | 10,000 C |
| G-67D | 430,000 C |
| G-67E | 1,000,000 C |
| G-68 | 200,000 C |
| G-69 | 125,000 C |
| G-70 | 19,000 C |
| G-70A | 750,000 C |
| G-70B | 3,411,000 C |
| G-71A | 30,000 C |
| G-74A | 170,000 C |
| G-77A | 185,000 C |
| G-77B | 200,000 C |
| G-77C | 30,000 C |
| G-77D | 400,000 C |
| G-79A | 600,000 C |
| G-79B | 24,000 C |
| G-79C | 105,000 C |

| Item No. | Amount (MOF) |
|---|---|
| G-79D | 66,000 C |
| G-81 | 105,000 C |
| G-83A | 325,000 C |
| G-84 | 50,000 C |
| G-84A | 450,000 C |
| G-85A | 250,000 C |
| G-85B | 20,000 C |
| G-86A | 45,000 C |
| G-87 | 350,000 C |
| G-87A | 232,000 C |
| G-87B | 150,000 C |
| G-88C | 120,000 C |
| G-90B | 13,000 C |
| G-90C | 29,000 C |
| G-94 | 119,159 C |
| G-97 | 3,952,000 C |
| G-98 | 250,000 C |
| G-99 | 52,007 C |
| G-99A | 10,000 C |
| G-110B | 698,000 C |
| G-114C | 429,000 C |
| H-23 | 240,000 C |
| H-24 | 450,000 C |
| H-25 | 300,000 C |
| H-26 | 400,000 C |
| H-27B | 200,000 C |
| H-27C | 250,000 C |
| I-5 | 552,525 C |
| I-12 | 120,000 C |
| I-15 | 375,000 C |
| I-15A | 75,000 C |
| I-15A | 225,000 N |
| K-7 | 1,083,314 C |
| K-10 | 2,512,947 C |
| K-11 | 71,409,000 C |
| K-14 | 1,085,000 C |
| K-15 | 257,850 C |
| K-16 | 257,850 C |
| K-17 | 525,000 C |
| K-24 | 498,000 C |
| K-26 | 973,627 C |
| K-35 | 230,000 C |
| K-36 | 24,006,115 C |
| K-37 | 250,000 C |
| K-40 | 350,000 C |
| K-41 | 1,500,000 C |
| K-42 | 1,333,000 C |
| K-43 | 600,000 C |
| K-44 | 150,000 C |
| K-45 | 85,000 C |
| K-46 | 665,000 C |
| K-47 | 250,000 C |
| K-48 | 150,000 C |

| Item No. | Amount (MOF) |
|---|---|
| K-49 | 100,000 C |
| K-49A | 100,000 C |
| K-49B | 1,250,000 C |
| K-49C | 480,000 C |
| K-49D | 245,000 C |
| K-61 | 160,000 C'' |

(5) By adding a new section to read as follows:

"SECTION 105.3. Any law to the contrary notwithstanding, the appropriations that are denoted as necessary to qualify for federal aid financing and/or reimbursement 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 indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| F-3 | 300,000 C |
| G-79 | 368,342 C |
| I-11 | 64,002 C'' |

(6) By adding a new section to read as follows:

"SECTION 105.4. 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 indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| A-1 | 25,000 C |
| A-2 | 275,000 C |
| A-18 | 370,000 C |
| E-4 | 850,000 C |
| E-9 | 850,000 C'' |

(7) By adding a new section to read as follows:

"SECTION 105.5. 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 balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| E-5A | 30,102 C |
| E-14 | 9,826 C'' |

(8) By adding a new section to read as follows:

"SECTION 105.6. Any law to the contrary notwithstanding, the appropriations that are denoted as necessary to qualify for federal aid financing and/or reimbursement 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 balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| A-5B | 45,866 C |
| A-6 | 504,431 C |
| C-14 | 12,195 B |
| C-14 | 44,322 E |
| C-14 | 5,000 N |
| F-2 | 1 C |
| H-9 | 445 C |
| I-8 | 54,281 C |
| I-9 | 44 C |
| I-10 | 2,050 C" |

(9) By adding a new section to read as follows:

"SECTION 105.7. Any law to the contrary notwithstanding, the appropriations that are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 5, in the amounts indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| F-3 | 13,058 C |
| H-35 | 26,816 C" |

(10) By adding a new section to read as follows:

"SECTION 105.8. 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 5, in the amounts indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| A-2 | 156,100 C |
| K-17A | 100,000 C |
| K-20 | 35,000 C" |

(11) By adding a new section to read as follows:

"SECTION 105.9. Any law to the contrary notwithstanding, the appropriations that are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| A-21 | 298,918 C |
| C-10 | 11,214,901 E |
| C-10 | 1,000,000 N |
| C-30A | 124 C |

| Item No. | Amount (MOF) |
|---|---|
| C-64 | 54,222 C |
| D-11 | 300 C |
| H-16 | 40,000 C |
| H-22 | 3,000,000 C |
| H-23 | 7,899 C" |

(12) By adding a new section to read as follows:

"SECTION 105.10. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| H-1 | 2,321 C |
| K-23B | 316,107 C" |

(13) By adding a new section to read as follows:

"SECTION 105.11. Any law to the contrary notwithstanding, the appropriation that is denoted as necessary to qualify for federal aid financing and/or reimbursement 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 amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| C-7 | 183,143 E" |

(14) By adding a new section to read as follows:

"SECTION 105.12. Any law to the contrary notwithstanding, the appropriation under Act 347, Session Laws of Hawaii 1986, section 2, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| A-4 | 5,000 C" |

(15) By adding a new section to read as follows:

"SECTION 105.13. Any law to the contrary notwithstanding, the appropriations that are denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 300, Session Laws of Hawaii 1985, section 136, as amended and renumbered by Act 345, Session Laws of Hawaii 1986, section 6, in the amounts indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| C-9 | 108,608 E |
| C-13 | 168,012 B" |

(16) By adding a new section to read as follows:

"SECTION 105.14. Any law to the contrary notwithstanding, the appropriation that is denoted as necessary to qualify for federal aid financing and/or reimbursement under Act 301, Session Laws of Hawaii 1983, section 80, as amended and renumbered by Act 285, Session Laws of Hawaii 1984, section 7, in the amount indicated or balance thereof, unallotted, allotted, encumbered, and unrequired, is hereby lapsed:

| Item No. | Amount (MOF) |
|---|---|
| C-10 | 30,581 E" |

SECTION 7. Part VII, Act 91, Session Laws of Hawaii 1999, is amended:

(1) By amending section 118 to read as follows:

"SECTION 118. 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 1999-2001 which are unencumbered as of June 30, 2002, shall lapse as of that date; provided further that this lapsing date shall not apply to: A) appropriations for projects described in section 64 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[.]; and B) non-general fund appropriations for projects described in section 64 of this Act where such appropriations have been deemed necessary to qualify for federal aid financing and reimbursement."

(2) By amending section 122 to read as follows:

"SECTION 122. 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 special funds, general obligation bond fund with debt service cost to be paid from special funds, revenue bond funds, or revolving funds, the governor may make supplemental allotments from the special or revolving fund responsible for cash or other debt service payments for the projects or transfer unrequired balances from other unlapsed 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, revenue bond funds, or revolving funds; provided further 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 thirty days prior to the convening of the [2000 and] 2001 regular [sessions] session."

(3) By adding a new section to read as follows:

"SECTION 136.1. Provided that reports required to be submitted by the department of commerce and consumer affairs on the use of the compliance resolution fund shall include the following information:

(1) Identification of the program source and amounts of all receipts, revenues, or reimbursements deposited or transferred into the compliance resolution fund; and

(2) Identification of all expenditures or transfers of funds made from the compliance resolution fund, including recipient programs, amounts provided, and the reasons for each expenditure or transfer;

and provided further that these reports shall be submitted to the governor and legislature no later than twenty days prior to the convening of the 2001 regular session."

(4) By adding a new section to read as follows:

"SECTION 147.1. Agencies with appropriations authorized in part II of this Act for risk management costs shall transfer funds authorized for that purpose to risk management (AGS 203), for the administration and implementation of state risk management costs and expenses, except as otherwise provided by law."

(5) By adding a new section to read as follows:

"SECTION 147.2. All rights, powers, functions, and duties of the student transportation program are transferred from the department of accounting and general services to the department of education. All officers and employees of the student transportation program whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to state personnel laws and this Act. No officer or employee of the student transportation program 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."

(6) By adding a new section to read as follows:

"SECTION 148.1. Provided that for all federal funds received subsequent to the convening of the 2000 regular session, 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 2001 regular session."

(7) By adding a new section to read as follows:

"SECTION 148.2. Any other law to the contrary notwithstanding, the general fund appropriations for fiscal year 2000-2001 in the following sections of Act 60, Session Laws of Hawaii 1999, in the amount indicated or balances thereof, unallotted, encumbered and unrequired, are hereby lapsed:

| | |
|---|---|
| Section 1 | $ 8,812 |
| Section 2 | $ 1,608 |
| Section 7 | $ 20,472 |
| Section 9 | $ 888 |
| Section 26 | $ 66,924 |
| Section 28 | $ 8,964" |

(8) By adding a new section to read as follows:

"SECTION 148.3. Provided that the department of transportation and the department of public safety shall submit a report to the legislature providing alternatives, cost estimates, and recommendations for repairing or reconstructing the

Stainback highway leading to the Kulani correctional facility; provided further that the departments may identify and pursue alternative funding sources; and provided further that the report shall be submitted to the legislature no later than thirty days prior to the convening of the regular session of 2001."

(9) By adding a new section to read as follows:

"SECTION 148.4. Provided that the office of elections, department of accounting and general services, office of state planning and the planning directors of each county or their designee, shall develop specifications for the geographic information systems (GIS applications software and hardware) used to support the 2001 reapportionment commission; provided further that the GIS used for the 2001 reapportionment may also be a key component of a state-county GIS; and provided further that the office of elections shall submit a status report on its preparations for the 2001 reapportionment and GIS systems development no later than twenty days after the convening of the regular session of 2001."

(10) By adding a new section to read as follows:

"SECTION 148.5. Provided that the university of Hawaii and the department of education shall develop a ten year plan that ensures the continuous offering of teacher education for the neighbor islands and shall submit a report on its plan to the legislature no later than twenty days prior to the convening of the regular session of 2001."

SECTION 8. If any portion of this Act or its application to any person, entity or circumstance is held to be invalid for any reason, then it is hereby declared that the invalidity shall 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. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objectives of such appropriation to the extent possible.

SECTION 9. 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 10. Statutory material to be repealed is bracketed. New statutory material is underscored.[2] In printing this Act, the revisor of statutes need not include the brackets, the bracketed material or the underscoring. Nothing in this Act shall affect the validity or continuing effectiveness of any provisions of Act 91, Session Laws of Hawaii 1999, not repealed or modified by this Act.

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

(Approved June 23, 2000.)

**Notes**

1. Item vetoed, replaced, and initialed "BJC".
2. Edited accordingly.

## ACT 282 H.B. NO. 2585

A Bill for an Act Relating to the Uniform Electronic Transactions 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 ELECTRONIC TRANSACTIONS ACT

§ -1 **Short title.** This chapter shall be cited as the Uniform Electronic Transactions Act.

§ -2 **Definitions.** In this chapter:

"Agreement" means the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures given the effect of agreements under laws otherwise applicable to a particular transaction.

"Automated transaction" means a transaction conducted or performed, in whole or in part, by electronic means or electronic records, in which the acts or records of one or both parties are not reviewed by an individual in the ordinary course in forming a contract, performing under an existing contract, or fulfilling an obligation required by the transaction.

"Computer program" means a set of statements or instructions to be used directly or indirectly in an information processing system in order to bring about a certain result.

"Contract" means the total legal obligation resulting from the parties' agreement as affected by this chapter and other applicable law.

"Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

"Electronic agent" means a computer program or an electronic or other automated means used independently to initiate an action or respond to electronic records or performances in whole or in part, without review or action by an individual.

"Electronic record" means a record created, generated, sent, communicated, received, or stored by electronic means.

"Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Governmental agency" means an executive, legislative, or judicial agency, department, board, commission, authority, institution, or instrumentality of the federal government or of a state or of a county, municipality, or other political subdivision of a state.

"Information" means data, text, images, sounds, codes, computer programs, software, data bases, or the like.

"Information processing system" means an electronic system for creating, generating, sending, receiving, storing, displaying, or processing information.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation, or any other legal or commercial entity.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Security procedure" means a procedure employed for the purpose of verifying that an electronic signature, record, or performance is that of a specific person or for detecting changes or errors in the information in an electronic record. The term includes a procedure that requires the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgment procedures.

"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 an Indian tribe or band, or

Alaskan native village, which is recognized by federal law or formally acknowledged by a state. "This State" refers to the State of Hawaii.

"Transaction" means an action or set of actions occurring between two or more persons relating to the conduct of business, commercial, or governmental affairs.

§ **-3 Scope.** (a) This chapter shall apply to electronic records and electronic signatures relating to a transaction. A transaction subject to this chapter shall be subject to other applicable substantive law.

(b) This chapter does not apply to a transaction to the extent it is governed by:

(1) A law governing the creation and execution of wills, codicils, or testamentary trusts;

(2) The Uniform Commercial Code other than sections 490:1-107 and 490:1-206, article 2 and article 2A; and

(3) A law or rule governing notice of:

(i) Default, including but not limited to notices relating to acceleration, repossession, eviction, foreclosure, or the right to cure;

(ii) Utility shutoff, including water, telephone, gas and electricity; or

(iii) Cancellation, termination, lapse or material alteration of a contract of insurance, insurance benefits, life settlement or viatical settlement agreement, or service contract.

(c) This chapter applies to an electronic record or electronic signature otherwise excluded from the application of this chapter under subsection (b) when used for a transaction subject to a law other than those specified in subsection (b).

(d) A transaction subject to this chapter is also subject to other applicable substantive law.

§ **-4 Prospective application.** This chapter shall apply to any electronic record or electronic signature created, generated, sent, communicated, or received on or after the effective date of this chapter.

§ **-5 Use of electronic records and electronic signatures; variation by agreement.** (a) This chapter does not require a record or signature to be created, generated, sent, communicated, received, stored, or otherwise processed or used by electronic means or in electronic form.

(b) This chapter shall apply only to transactions between parties each of which has agreed to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct. Except for a separate and optional agreement, the primary purpose of which is to authorize a transaction to be conducted by electronic means, an agreement to conduct a transaction electronically shall not be contained in a standard form contract that is not an electronic record. An agreement in such a standard form contract shall not be conditioned upon an agreement to conduct transactions electronically. An agreement to conduct a transaction electronically cannot be inferred solely from the fact that a party has used electronic means to pay an account or register a purchase or warranty. This subsection shall not be varied by agreement.

(c) A party that agrees to conduct a transaction by electronic means may refuse to conduct other transactions by electronic means. If a seller sells goods or services by both electronic and nonelectronic means and a buyer purchases the goods or services by conducting the transaction electronically, the buyer may refuse to conduct further transactions regarding the goods and services electronically. The right granted by this subsection may not be waived by agreement.

(d) Except as otherwise provided in this chapter, the effect of any of its provisions may be varied by agreement. The presence in certain provisions of this chapter of the words "unless otherwise agreed", or words of similar import, shall not imply that the effect of other provisions may not be varied by agreement.

(e) Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable law.

§ -6 **Construction and application.** This chapter shall be construed and applied:

(1) To facilitate electronic transactions consistent with other applicable law;

(2) To be consistent with reasonable practices concerning electronic transactions and with the continued expansion of those practices; and

(3) To effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ -7 **Legal recognition of electronic records, electronic signatures, and electronic contracts.** (a) A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.

(b) A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(c) If a law requires a record to be in writing, an electronic record satisfies the law.

(d) If a law requires a signature, an electronic signature satisfies the law.

§ -8 **Provision of information in writing; presentation of records.** (a) If parties have agreed to conduct a transaction by electronic means and a law requires a person to provide, send, or deliver information in writing to another person, the requirement is satisfied if the information is provided, sent, or delivered, as the case may be, in an electronic record capable of retention by the recipient at the time of receipt. An electronic record is not capable of retention by the recipient if the sender or the sender's information processing system inhibits the ability of the recipient to print or store the electronic record.

(b) If a law other than this chapter requires a record to: be posted or displayed in a certain manner; be sent, communicated, or transmitted by a specified method; or contain information that is formatted in a certain manner, the following rules shall apply:

(1) The record shall be posted or displayed in the manner specified in the other law;

(2) Except as otherwise provided in subsection (d)(2), the record shall be sent, communicated, or transmitted by the method specified in the other law; and

(3) The record shall contain the information formatted in the manner specified in the other law.

(c) If a sender inhibits the ability of a recipient to store or print an electronic record, the electronic record shall not be enforceable against the recipient.

(d) The requirements of this section shall not be varied by agreement, but:

(1) To the extent a law other than this chapter requires information to be provided, sent, or delivered in writing but permits that requirement to be varied by agreement, the requirement under subsection (a) that the information be in the form of an electronic record capable of retention may also be varied by agreement; and

(2) A requirement under a law other than this chapter to send, communicate, or transmit a record by first-class mail, postage prepaid, may be varied by agreement to the extent permitted by the other law.

§ -9 **Attribution and effect of electronic record and electronic signature.** (a) An electronic record or electronic signature is attributable to a person if it was the act of the person. The act of the person may be shown in any manner, including a showing of the efficacy of any security procedure applied to determine the person to which the electronic record or electronic signature was attributable.

(b) The effect of an electronic record or electronic signature attributed to a person under subsection (a) is determined from the context and surrounding circumstances at the time of its creation, execution, or adoption, including the parties' agreement, if any, and otherwise as provided by law.

§ -10 **Effect of change or error.** If a change or error in an electronic record occurs in a transmission between parties to a transaction, the following rules shall apply:

(1) If the parties have agreed to use a security procedure to detect changes or errors and one party has conformed to the procedure, but the other party has not, and the nonconforming party would have detected the change or error had that party also conformed, the conforming party may elect to avoid the effect of the changed or erroneous electronic record;

(2) In an automated transaction involving an individual, the individual may elect to avoid the effect of an electronic record that resulted from an error made by the individual in dealing with the electronic agent of another person if the electronic agent did not provide an opportunity for the prevention or correction of the error and, at the time the individual learns of the error, the individual:

(A) Promptly notifies the other person of the error and that the individual did not intend to be bound by the electronic record received by the other person;

(B) Takes reasonable steps, including steps that conform to the other person's reasonable instructions, to return to the other person or, if instructed by the other person, to destroy the consideration received, if any, as a result of the erroneous electronic record; and

(C) Has not used or received any benefit or value from the consideration, if any, received from the other person;

(3) If neither paragraph (1) nor paragraph (2) applies, the change or error has the effect provided by other law, including the law of mistake, and the parties' contract, if any; and

(4) Paragraphs (2) and (3) shall not be varied by agreement.

§ -11 **Notarization and acknowledgment.** If a law requires a signature or record to be notarized, acknowledged, verified, or made under oath, the requirement is satisfied if the electronic signature of the person authorized to perform those acts, together with all other information required to be included by other applicable law, is attached to or logically associated with the signature or record.

§ -12 **Retention of electronic records; originals.** (a) If a law requires that a record be retained, the requirement is satisfied by retaining an electronic record of the information in the record that:

(1) Accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise; and

(2) Remains accessible for later reference.

(b) A requirement to retain a record in accordance with subsection (a) shall not apply to any information the sole purpose of which is to enable the record to be sent, communicated, or received.

(c) A person may satisfy subsection (a) by using the services of another person if the requirements of that subsection are satisfied.

(d) If a law requires a record to be presented or retained in its original form, or provides consequences if the record is not presented or retained in its original form, that law is satisfied by an electronic record retained in accordance with subsection (a).

(e) If a law requires retention of a check, that requirement is satisfied by retention of an electronic record of the information on the front and back of the check in accordance with subsection (a).

(f) A record retained as an electronic record in accordance with subsection (a) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this chapter specifically prohibits the use of an electronic record for the specified purpose.

(g) This section does not preclude a governmental agency of this State from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

§ -13 **Admissibility in evidence.** In a proceeding, evidence of a record or signature shall not be excluded solely because it is in electronic form.

§ -14 **Automated transaction.** In an automated transaction, the following rules shall apply:

(1) A contract may be formed by the interaction of electronic agents of the parties, even if no individual was aware of or reviewed the electronic agents' actions or the resulting terms and agreements;

(2) A contract may be formed by the interaction of an electronic agent and an individual, acting on the individual's own behalf or for another person, including by an interaction in which the individual performs actions that the individual is free to refuse to perform and which the individual knows or has reason to know will cause the electronic agent to complete the transaction or performance; and

(3) The terms of the contract are determined by the substantive law applicable to it.

§ -15 **Time and place of sending and receipt.** (a) Unless the sender and recipient agree to a different method of sending that is reasonable under the circumstances, an electronic record is sent when it:

(1) Is addressed properly or otherwise directed properly to an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record;

(2) Is in a form capable of being processed by that system; and

(3) Enters an information processing system outside the control of the sender or of a person who sent the electronic record on behalf of the sender or enters a region of the information processing system designated or used by the recipient which is under the control of the recipient.

(b) Unless the sender and recipient agree to a different method of receiving that is reasonable under the circumstances, an electronic record is received when:

(1) It enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and

(2) It is in a form capable of being processed by that system.

(c) Subsection (b) applies even if the place the information processing system is located is different from the place the electronic record is deemed to be received under subsection (d).

(d) Unless otherwise expressly provided in the electronic record or agreed between the sender and the recipient, an electronic record is deemed to be sent from the sender's place of business and to be received at the recipient's place of business. For purposes of this subsection, the following rules shall apply:

(1) If the sender or recipient has more than one place of business, the place of business of that person is the place having the closest relationship to the underlying transaction;

(2) If the sender or the recipient does not have a place of business, the place of business is the sender's or recipient's residence, as the case may be; and

(3) Notwithstanding any other provision of this chapter, if an individual enters into a transaction for personal, family, or household purposes that is created or documented by an electronic record, the transaction shall be deemed to have been made or to have occurred at the individual's residence.

This subsection is not variable by agreement.

(e) An electronic record is received under subsection (b) even if no individual is aware of its receipt.

(f) Receipt of an electronic acknowledgment from an information processing system described in subsection (b) establishes that a record was received but, by itself, does not establish that the content sent corresponds to the content received.

(g) If a person is aware that an electronic record purportedly sent under subsection (a), or purportedly received under subsection (b), was not actually sent or received, the legal effect of the sending or receipt is determined by other applicable law. Except to the extent permitted by the other law, the requirements of this subsection may not be varied by agreement.

(h) Notwithstanding any other section of this chapter, a record has not been received unless it is received by the intended recipient in a manner in which it can be opened and read by that recipient.

(i) If a law other than this chapter requires that a notice of the right to cancel be provided or sent, an electronic record may not substitute for a writing under the other law unless, in addition to satisfying the requirements of the other law and this chapter, the notice of cancellation may be returned by electronic means. This subsection may not be varied by agreement.

§ **-16 Transferable records.** (a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under article 3 of the Uniform Commercial Code or a document under article 7 of the Uniform Commercial Code if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b), and a person is deemed to have control of a transferable record, if the transferable record is created, stored, and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable, and, except as otherwise provided in paragraphs (4), (5), and (6), unalterable;

(2) The authoritative copy identifies the person asserting control as:
   (A) The person to which the transferable record was issued; or
   (B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section 490:1-201(20) of the Uniform Commercial Code, of the transferable record and has the same rights and defenses as a holder of an equivalent record or writing under the Uniform Commercial Code, including, if the applicable statutory requirements under section 490:3-302(a), 490:7-501, or 490:9-308 of the Uniform Commercial Code are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated, or a purchaser, respectively. Delivery, possession, and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapter 490.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

**§ -17 Creation and retention of electronic records and conversion of written records by governmental agencies.** Each governmental agency of this State shall determine whether, and the extent to which, it will create and retain electronic records and convert written records to electronic records.

**§ -18 Acceptance and distribution of electronic records by governmental agencies.** (a) Except as otherwise provided in section -12(f), each governmental agency of this State shall determine whether, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.

(b) To the extent that a governmental agency uses electronic records and electronic signatures under subsection (a), the governmental agency, giving due consideration to security, may specify:

(1) The manner and format in which the electronic records shall be created, generated, sent, communicated, received, and stored and the systems established for those purposes;
(2) If electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature shall be affixed to the electronic record, and the identity of, or criteria that shall be met by, any third party used by a person filing a document to facilitate the process;
(3) Control processes and procedures as appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and
(4) Any other required attributes for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.

(c) Except as otherwise provided in section -12(f), this chapter does not require a governmental agency of this State to use or permit the use of electronic records or electronic signatures.

§ **-19 Interoperability.** An agency of this State which adopts standards pursuant to section -18 may encourage and promote consistency and interoperability with similar requirements adopted by other agencies of this and other states and the federal government and nongovernmental persons interacting with governmental agencies of this State. If appropriate, those standards may specify differing levels of standards from which governmental agencies of this State may choose in implementing the most appropriate standard for a particular application."

SECTION 2. If S.B. No. 2819 C.D.1[1] is enacted into law, Section 2 of that measure is amended by deleting §431:10D-L and Section 3 of that measure is amended by deleting §431:10D-J.

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

(Approved June 28, 2000.)

**Note**

1. Act 252.

## ACT 283 S.B. NO. 2121

A Bill for an Act Relating to Obsolete Laws.

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

PART I

SECTION 1. The purpose of this part is to reduce the number of administrative rules through the outright repeal of one or more specific sections, chapters, or subchapters of the Hawaii Administrative Rules. This part further specifies that to expedite the streamlining of Hawaii state government and increase government efficiency, agencies whose rules have been repealed by this part need not comply with the requirements for the repeal of rules under the Administrative Procedure Act with respect to these rules.

SECTION 2. Notwithstanding any law to the contrary, the following Hawaii Administrative Rules are hereby repealed, having been found to be unnecessary.

(1) OFFICE OF THE GOVERNOR:
   (A) Title 1, chapter 3, Long-Term Care Service Development Fund; and
   (B) Title 1, chapter 4, Renovation and Conversion of Existing Facilities for Long-Term Care Programs.

(2) OFFICE OF THE LIEUTENANT GOVERNOR - Office of Elections: Title 2, chapter 38, Adoption, Amendment, or Repeal of Rules by Chief Election Officer.

(3) DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:
   (A) Title 3, chapter 11, Rules and Regulations for the Administration and Accountability of Petty Cash Funds; and
   (B) Title 3, chapter 12, Rules Governing the Reporting of Funds Not Deposited in the State Treasury.

(4) DEPARTMENT OF AGRICULTURE:
   (A) Title 4, chapter 3, Rules and Regulations Governing the Kauai Planning and Development Program;
   (B) Title 4, chapter 25, Meat Inspection; and
   (C) Title 4, chapter 26, Poultry Inspection.

(5) DEPARTMENT OF BUDGET AND FINANCE:
   (A) Title 6, chapter 11, Veterans Loan Program;
   (B) Title 6, chapter 100, General Provisions - Hawaii Information Network Corporation;
   (C) Title 6, chapter 101, Marketing and Promotion Activities;
   (D) Title 6, chapter 102, HAWAII INC Service Bureau; and
   (E) Title 6, chapter 103, Hawaii FYI Electronic Services Gateway.

(6) DEPARTMENT OF HAWAIIAN HOME LANDS:
   Title 10, chapter 100, Leases to Hawaiians.

(7) DEPARTMENT OF HEALTH:
   (A) Title 11, chapter 3, Physical Therapists;
   (B) Title 11, chapter 6, State Health Insurance Program;
   (C) Title 11, chapter 14, Housing;
   (D) Title 11, chapter 16, Recreational Trailer Camps;
   (E) Title 11, chapter 30, Frozen Desserts;
   (F) Title 11, chapter 34, Poisons;
   (G) Title 11, chapter 42, Vehicular Noise Control for Oahu; and
   (H) Title 11, chapter 158, Venereal Disease.

(8) DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS:
   (A) Title 12, chapter 1, except section 12-1-5, Petition for declaratory ruling; and
   (B) Title 12, chapter 507, Aloha State Specialized Employment and Training Program.

(9) DEPARTMENT OF LAND AND NATURAL RESOURCES:
   (A) Title 13, chapter 2, Conservation Districts;
   (B) Title 13, chapter 4, Waimanu Estuarine Sanctuary;
   (C) Title 13, chapter 6, Conservation Districts;
   (D) The following sections of Title 13, chapter 233, Motor Vehicle and Parking Rules:
      (i) Section 13-233-11, Vehicles or equipment, size, weight, and load restrictions;
      (ii) Section 13-233-12, Restrictions as to tire equipment;
      (iii) Section 13-233-21, Designation of parking meter stalls;
      (iv) Section 13-233-22, Placement and design of parking meters;

(v) Section 13-233-23, Method of parking;
(vi) Section 13-233-25, Operation of parking meters; and
(vii) Section 13-233-41, Designation of parking stalls.

(10) DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS:
(A) Title 16, chapter 2, Hawaii Temporary Disability Insurance Risk Spreading Plan;
(B) Title 16, chapter 4, Hawaii Insurance Guaranty Association Plan of Operation;
(C) Title 16, chapter 9, Licensing Examination Fees;
(D) Title 16, chapter 10, Unfair Discrimination Solely on the Basis of Blindness or Partial Blindness;
(E) Title 16, chapter 11, Multiple Peril Policy Rate Sheet;
(F) Title 16, chapter 12A, Medicare Supplement Policies;
(G) Title 16, chapter 12B, Transitional Requirements for the Conversion of Medicare Supplement Insurance Benefits and Premiums to Conform to Repeal of Medicare Catastrophic Coverage Act; and
(H) Title 16, chapter 173, Hawaii Property Insurance Association.

(11) DEPARTMENT OF TRANSPORTATION:
(A) Title 19, chapter 5, Service Charge for Dishonored Negotiable Instruments at the Department of Transportation; and
(B) Title 19, chapter 28, Aircraft Noise Control.

SECTION 3. Notwithstanding section 91-3, Hawaii Revised Statutes, or any law to the contrary, no agency affected by any section, chapter, or subchapter of the Hawaii Administrative Rules that has been repealed by this part shall be required to give advanced public notice, provide a public hearing, distribute copies of repealed rules, or take any other action required by chapter 91, Hawaii Revised Statutes, with respect to those administrative rules that have been repealed by this part.

SECTION 4. All contracts entered into pursuant to administrative rules that have been repealed by this part shall continue to be honored until their termination. The provisions of this part shall not be applied so as to impair any contract existing as of the effective date of this Act or to otherwise violate either the Hawaii State Constitution or article I, section 10, of the United States Constitution.

PART II

SECTION 5. The purpose of this part is to reduce the number of administrative rules by specifying that where an agency seeks only to repeal as null and void or unnecessary certain specific sections, chapters, or subchapters of the Hawaii administrative rules, the agency need only publish a public notice of those sections, chapters, or subchapters that are being repealed, without any accompanying description of those provisions, and without the need for a public hearing. Agencies that propose to adopt, amend, or compile administrative rules, whether separately or in combination with the repeal of rules, must continue to comply with the existing requirements of the Administrative Procedure Act. The legislature finds that this part will further help to streamline government and increase government efficiency.

SECTION 6. Section 91-3, Hawaii Revised Statutes, is amended to read as follows:

"**§91-3 Procedure for adoption, amendment, or repeal of rules.** (a) [Prior] Except as provided in subsection (f), prior to the adoption of any rule authorized by law, or the amendment or repeal thereof, the adopting agency shall:

(1) Give at least thirty days' notice for a public hearing. The notice shall include:

(A) A statement of the topic of the proposed rule adoption, amendment, or repeal or a general description of the subjects involved; and

(B) A statement that a copy of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed will be mailed to any interested person who requests a copy, pays the required fees for the copy and the postage, if any, together with a description of where and how the requests may be made;

(C) A statement of when, where, and during what times the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed may be reviewed in person; and

(D) The date, time, and place where the public hearing will be held and where interested persons may be heard on the proposed rule adoption, amendment, or repeal.

The notice shall be mailed to all persons who have made a timely written request of the agency for advance notice of its rulemaking proceedings, given at least once statewide for state agencies and in the county for county agencies. Proposed state agency rules shall also be posted on the [Internet] internet as provided in section 91-2.6; and

(2) Afford all interested persons opportunity to submit data, views, or arguments, orally or in writing. The agency shall fully consider all written and oral submissions respecting the proposed rule. The agency may make its decision at the public hearing or announce then the date when it intends to make its decision. Upon adoption, amendment, or repeal of a rule, the agency, if requested to do so by an interested person, shall issue a concise statement of the principal reasons for and against its determination.

(b) Notwithstanding the foregoing, if an agency finds that an imminent peril to the public health, safety, or morals, or to livestock and poultry health, requires adoption, amendment, or repeal of a rule upon less than thirty days' notice of hearing, and states in writing its reasons for such finding, it may proceed without prior notice or hearing or upon such abbreviated notice and hearing, including posting the abbreviated notice and hearing on the [Internet] internet as provided in section 91-2.6, as it finds practicable to adopt an emergency rule to be effective for a period of not longer than one hundred twenty days without renewal.

(c) The adoption, amendment, or repeal of any rule by any state agency shall be subject to the approval of the governor. The adoption, amendment, or repeal of any rule by any county agency shall be subject to the approval of the mayor of the county. This subsection shall not apply to the adoption, amendment, and repeal of the rules of the county boards of water supply.

(d) The requirements of subsection (a) may be waived by the governor in the case of the State, or by the mayor in the case of a county, whenever a state or county agency is required by federal provisions to adopt rules as a condition to receiving federal funds and the agency is allowed no discretion in interpreting the federal provisions as to the rules required to be adopted; provided that the agency shall make the adoption, amendment, or repeal known to the public by:

(1) Giving public notice of the substance of the proposed rule at least once statewide prior to the waiver of the governor or the mayor; and

(2) Posting the full text of the proposed rulemaking action on the [Internet] internet as provided in section 91-2.6.

(e) No adoption, amendment, or repeal of any rule shall be invalidated solely because of:

(1) The inadvertent failure to mail an advance notice of rulemaking proceedings;

(2) The inadvertent failure to mail or the nonreceipt of requested copies of the proposed rule to be adopted, the proposed rule amendment, or the rule proposed to be repealed; or

(3) The inadvertent failure on the part of a state agency to post on the website of the office of the lieutenant governor all proposed rulemaking actions of the agency and the full text of the agency's proposed rules as provided in section 91-2.6.

Any challenge to the validity of the adoption, amendment, or repeal of an administrative rule on the ground of noncompliance with statutory procedural requirements shall be forever barred unless the challenge is made in a proceeding or action, including an action pursuant to section 91-7, that is begun within three years after the effective date of the adoption, amendment, or repeal of the rule.

(f) Whenever an agency seeks only to repeal one or more sections, chapters, or subchapters of the agency's rules because the rules are either null and void or unnecessary, and not adopt, amend, or compile any other rules:

(1) The agency shall give thirty days' public notice at least once statewide of the proposed date of repeal and of:

(A) A list of the sections, chapters, or subchapters, as applicable, being repealed; and

(B) A statement of when, where, and during what times the sections, chapters, or subchapters proposed to be repealed may be reviewed in person;

(2) The agency shall post the full text of the proposed sections, chapters, or subchapters to be repealed on the internet as provided in section 91-2.6; and

(3) Any interested person may petition the agency regarding the sections, chapters, or subchapters proposed to be repealed, pursuant to section 91-6.

This subsection does not apply to the repeal of one or more subsections, paragraphs, subparagraphs, clauses, words, phrases, or other material within a section that does not constitute the entire section to be repealed."

PART III

SECTION 7. The purpose of this part is to reduce the number of administrative rules through the outright repeal of one or more specific sections, chapters, or subchapters of the Hawaii Administrative Rules. This part further specifies that in order to expedite the streamlining of Hawaii state government and increasing government efficiency, agencies whose rules have been repealed by this part need not comply with the requirements for the repeal of rules under the Administrative Procedure Act with respect to these rules.

SECTION 8. Notwithstanding any law to the contrary, the following administrative rules of the Hawaii Administrative Rules that are null and void are hereby repealed by virtue of the fact that they are already null and void:

(1) OFFICE OF THE LIEUTENANT GOVERNOR Administration:
Title 2, chapter 29, Hawaii Criminal Justice Commission Administrative Practice and Procedure.

(2) DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:
Title 3, chapter 56, Rules Providing Value Engineering Incentives in Public Works Contracts.

(3) DEPARTMENT OF AGRICULTURE:
(A) Title 4, chapter 6, Orchards Development Program;
(B) Title 4, chapter 7, Hawaii Agricultural Products Program;
(C) Title 4, chapter 10, The Independent Sugar Grower Loan Program; and
(D) Title 4, chapter 47, Agricultural Marketing Orders and Agreements.

(4) DEPARTMENT OF BUDGET AND FINANCE:
Title 6, chapter 15, Grants, Subsidies, and Purchases of Service.

(5) DEPARTMENT OF HEALTH:
Title 11, chapter 141, Midwives.

(6) DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS:
(A) Title 12, chapter 9, Work Incentive Program for AFDC Recipients;
(B) Title 12, chapter 23, Relating to Discriminatory Practices;
(C) Title 12, chapter 34, State Program for the Unemployed; and
(D) Title 12, chapter 35, Displaced Homemaker Program.

(7) DEPARTMENT OF LAND AND NATURAL RESOURCES:
Title 13, chapter 59, Kawaaloa-Moomomi Bays Subsistence Fishing Pilot Demonstration Project, Molokai.

(8) DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM:
(A) Title 15, chapter 3, Fishing Vessel Loan Programs;
(B) Title 15, chapter 7, Molokai Loan Program;
(C) Title 15, chapter 13, The Hawaii State Plan Policy Council; and
(D) Title 15, chapter 14, Commission on Population and the Hawaiian Future Rules of Practice and Procedure.

(9) DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS:
(A) Title 16, chapter 8, Patient's Compensation Fund;
(B) Title 16, chapter 29, Branch Bank of University of Hawaii Manoa Campus;
(C) Title 16, chapter 109, Factory-Built Housing;
(D) Title 16, chapter 111, Real Estate Collection Servicing Agents; and
(E) Title 16, chapter 316, Hawaiian Home Lands Trust Individual Claims Review Panel Administrative Practice and Procedure.

(10) DEPARTMENT OF TAXATION:
Title 18, chapter 234, Natural Disaster Claims Commissions.

PART IV

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 upon its approval.

(Approved June 28, 2000.)

## ACT 284 S.B NO. 2924

A Bill for an Act Relating to Open Meetings.

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

SECTION 1. The legislature finds that the "slice waste and tape" or "SWAT" regulatory reform initiative within the lieutenant governor's office is designed to improve state government by eliminating null and void, unnecessary, ineffective, and overly complex administrative rules that deter economic development and hamper government efficiency. The intent of this initiative is to reduce the burden of government regulation and minimize its negative effects on Hawaii's residents, businesses, the economy, and government operations. Strategies to achieve these objectives include such measures as improving public access to rules, eliminating unnecessary rules, and reviewing and overhauling the rulemaking process.

In 1994, the legislature recognized that allowing boards and commissions to hold meetings by videoconference would help increase public access to such meetings, reduce costs, and help government to operate more efficiently and effectively. Act 121, Session Laws of Hawaii 1994, codified as section 92-3.5, Hawaii Revised Statutes, permits boards to meet by videoconference and provides specific requirements for holding such meetings. However, section 92-3.5(d), Hawaii Revised Statutes, mandates that any board planning to hold meetings by videoconference first adopt unspecified additional rules pursuant to chapter 91, Hawaii Revised Statutes, the Hawaii Administrative Procedure Act. To date, no board has gone through the rulemaking process to adopt additional rules for holding meetings by videoconference, and because of this, no board has been able to take advantage of the efficiencies and economies of section 92-3.5, Hawaii Revised Statutes.

The purpose of this Act is to implement one of the lieutenant governor's initiatives to eliminate unnecessary rules and requirements. The legislature finds that this Act will help increase public access to meetings of boards and commissions, reduce costs, and help government to operate more efficiently and effectively.

SECTION 2. Section 92-3.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§92-3.5[]] Meeting by videoconference; notice; quorum.** (a) A board may hold a meeting by videoconference; provided that the videoconference system used by the board shall allow both audio and visual interaction between all members of the board participating in the meeting and the public attending the meeting, at any videoconference location. The notice required by section 92-7 shall specify all locations at which board members will be physically present during a videoconference meeting[, and the public shall be allowed to attend the meeting at any such location]. The notice shall also specify that the public may attend the meeting at any of the specified locations.

(b) Any board member participating in a meeting by videoconference shall be considered present at the meeting for the purpose[1] of determining compliance with the quorum and voting requirements of the board.

(c) A meeting held by videoconference shall be terminated if both audio and video communication cannot be maintained with all locations where the meeting is being held, even if a quorum of the board is physically present in one location.

[(d) Each board shall adopt rules in accordance with chapter 91 regarding the use of and the procedures to be followed in a meeting held by videoconference, before the meetings are held.]''

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 28, 2000.)

**Note**

1. Prior to amendment ''purposes'' appeared here.

## ACT 285

H.B. NO. 37

A Bill for an Act Relating to Film Production Funding.

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

SECTION 1. The legislature finds that film and television productions in Hawaii provide an invaluable source of advertisement and promotion for the State. Over the last four years, Hawaii's film and television industry has experienced double-digit growth with annual production expenses reaching $100,000,000, which translates into tax contributions of approximately $15,000,000. Within the next five to ten years, film and television in Hawaii have the potential to grow to a $300,000,000 per year industry, generating up to $45,000,000 in tax revenues.

The legislature further finds that there is a need to encourage and lend support to Hawaii's local film and television industry. While film and television production from the United States mainland provides a needed and invaluable source of support for Hawaii's economy, the legislature finds that Hawaii's local film and television industry performs a vital role, both in terms of furthering cultural and artistic expression in the State as well as providing a strong foundation for the future of Hawaii's economy. Accordingly, to maximize film and television exposure, and to assist the local film and video industries, it is essential to provide film and television producers with incentives and assistance to encourage them to produce their projects in Hawaii.

The purpose of this Act is to assist Hawaii's television and film industries by providing incentives to both in-state and out-of-state television and film production by:

(1) Creating the Hawaii television and film development special fund and the Hawaii television and film development board to administer the fund; and

(2) Establishing the following programs, under the direction of the board, to provide needed assistance to facilitate the acquisition of production capital for film and television producers in the form of:
   (A) A grant program; and
   (B) A venture capital program.

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

"PART . HAWAII TELEVISION AND FILM DEVELOPMENT

**§201-A Definitions.** As used in this part:

"Applicant" means a person applying for a grant or venture capital investment from the board under this part.

"Board" means the Hawaii television and film development board.

"Eligible Hawaii project" or "project" means an entertainment project in which at least seventy-five per cent of the budget for the production costs, excluding salaries and costs for the producer, director, writer, screenplay, and actors in the project, is dedicated for the purchase or lease of goods or services from a vendor or supplier who is located and doing business in the State.

"Fund" means the Hawaii television and film development special fund.

"Venture capital investment" means any of the following investments in a project:

(1) Common or preferred stock and equity securities without a repurchase requirement for at least five years;
(2) A right to purchase stock or equity securities;
(3) Any debenture, whether or not convertible or having stock purchase rights, which is subordinated, together with security interests against the assets of the borrower, by their terms to all borrowings of the borrower from other institutional lenders, and that is for a term of not less than three years, and that has no part amortized during the first three years; and
(4) General or limited partnership interests.

**§201-B Hawaii television and film development board.** (a) There is established the Hawaii television and film development board. The board shall be attached to the department of business, economic development, and tourism for administrative purposes only. The board shall administer the grant and venture capital investment programs and the Hawaii television and film development special fund established under this part. The board shall also assess and consider the overall viability and development of the television and film industries and make recommendations to appropriate state or county agencies.

(b) The board shall be composed of nine members, four of whom shall be appointed by the governor pursuant to section 26-34, and all of whom shall serve four-year staggered terms. One of the governor's appointments shall be made from a list of nominees submitted by the president of the senate and another appointment shall be made from a list of nominees submitted by the speaker of the house of representatives. The four appointed members shall possess a current working knowledge of the film, television, or entertainment industry. The director of business, economic development, and tourism, and the chairs of the four county film commissions or its equivalent, shall serve as ex officio voting members, who may be represented on the board by designees.

The chairperson and vice chairperson of the board shall be selected by the board by majority vote. Five members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the board. The members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(c) The film industry branch development manager shall serve as the executive secretary of the board.

(d) The board may adopt rules pursuant to chapter 91 to effectuate the purposes of this part.

**§201-C Hawaii television and film development special fund.** (a) There is established in the state treasury the Hawaii television and film development special fund into which shall be deposited:

(1) Appropriations by the legislature;
(2) Donations and contributions made by private individuals or organizations for deposit into the fund;
(3) Grants provided by governmental agencies or any other source; and
(4) Any profits or other amounts received from venture capital investments.

(b) The fund shall be used by the board to assist in, and provide incentives for, the production of eligible Hawaii projects that are in compliance with criteria and standards established by the board in accordance with rules adopted by the board pursuant to chapter 91. In particular, the board shall adopt rules to provide for the implementation of the following programs:

(1) A grant program. The board shall adopt rules pursuant to chapter 91 to provide conditions and qualifications for grants. Applications for grants shall be made to the board and shall contain such information as the board shall require by rules adopted pursuant to chapter 91. At a minimum, the applicant shall agree to the following conditions:
   (A) The grant shall be used exclusively for eligible Hawaii projects;
   (B) The applicant shall have applied for or received all applicable licenses and permits;
   (C) The applicant shall comply with applicable federal and state laws prohibiting discrimination against any person on the basis of race, color, national origin, religion, creed, sex, age, or physical handicap;
   (D) The applicant shall comply with other requirements as the board may prescribe;
   (E) All activities undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances;
   (F) The applicant shall indemnify and save harmless the State of Hawaii and its officers, agents, and employees from and against any and all claims arising out of or resulting from activities carried out or projects undertaken with funds provided hereunder, and procure sufficient insurance to provide this indemnification if requested to do so by the department;
   (G) The applicant shall make available to the board all records the applicant may have relating to the project, to allow the board to monitor the applicant's compliance with the purpose of this chapter; and
   (H) The applicant, to the satisfaction of the board, shall establish that sufficient funds are available for the completion of the project for the purpose for which the grant is awarded;

   and

(2) A venture capital program. The board shall adopt rules pursuant to chapter 91 to provide conditions and qualifications for venture capital investments in eligible Hawaii projects. The program may include a written agreement between the borrower and the board, as the representative of the State, that as consideration for the venture capital investment made under this part, the borrower shall share any royalties, licenses, titles, rights, or any other monetary benefits that may accrue to the borrower pursuant to terms and conditions established by the board by rule pursuant to chapter 91. Venture capital investments may be made on such terms and conditions as the board shall determine to be

reasonable, appropriate, and consistent with the purposes and objectives of this part.

**§201-D Inspection of premises and records.** The board shall have the right to inspect, at reasonable hours, the plant, physical facilities, equipment, premises, books, and records of any applicant in connection with the processing of a grant to the applicant."

SECTION 3. In codifying the new part added by section 2 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 4. This Act shall take effect upon its approval.

(Approved June 30, 2000.)

## ACT 286 H.B. NO. 139

A Bill for an Act Relating to Federal Construction.

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

PART I

SECTION 1. (a) Beginning with section 8078 of the United States Defense Appropriations Act of 1986, all subsequent Defense Appropriations Acts require the contractor on a military construction or services project to employ Hawaii residents when Hawaii's unemployment rate exceeds the national average. The unemployment rate in Hawaii has been above the national average since 1994, but the federal law has not been strictly enforced. Many defense construction and service contracts have been awarded to out-of-state contractors that hire individuals that move to Hawaii just to work on these particular federal contracts. This apparently is within the scope of the law, though clearly not the intent of section 8078. One reason given for the failure to strictly enforce the requirement to employ Hawaii residents is that the term "state resident" is not defined in section 8078, in its related provisions, or in the Federal Acquisition Regulations.

The purpose of this part is to establish a definition of "state resident" that will provide a clear, objective, measurable standard that can be easily followed, copied, and enforced by federal contracting officers in enforcing the preference provisions in federal law. A clear definition of "state resident" will help keep profits and wages from military construction projects in the State.

(b) For purposes of the employment preference provided in federal law in favor of state residents, "state resident" means an individual who:

(1) Resides in the State at least two hundred days of the year;

(2) Has filed a Hawaii resident income tax return in the taxable year immediately preceding a bid for a federal contract by the individual's employer or business that is a state contractor and has paid all amounts owing on that tax return; provided that an individual who was a state resident, left the State to attend school or serve in the armed forces of the United States of America, and returned to the State to work for a state contractor is a state resident, even though the individual has not yet resided in the State for at least two hundred days or filed a Hawaii

resident income tax return or paid all amounts owing on that tax return; and

(3) In the case of a business entity:
   (A) Is licensed as a contractor pursuant to chapter 444;
   (B) Is licensed to conduct business in this State pursuant to section 237-9;
   (C) Submits a bid under the name appearing on the person's current contracting or business license;
   (D) Is a domestic corporation, partnership, or business organized or formed under the laws of the State;
   (E) Has maintained its principal place of business within the State for at least two-hundred consecutive days prior to the submission of a bid;
   (F) Has filed a Hawaii resident income tax and all other applicable tax returns for the preceding tax year and has paid all amounts owing on those tax returns;
   (G) Has complied with all applicable Hawaii employment, insurance, and worker's compensation laws;
   (H) If an employer with one or more employees, eighty-five per cent of its employees are state residents; and
   (I) If a joint venture, is composed of entities that a majority of which qualify under paragraphs (A) to (H) and eighty-five per cent of all the employees of the joint venture are state residents.

PART II

SECTION 2. The purpose of this part is to clarify that the definition of contractors in chapter 444, Hawaii Revised Statutes, includes all contractors working in the State directly or indirectly for the federal government to the extent allowed under federal law. Therefore, those contractors, including out-of-state contractors, are subject to the licensing and other provisions of chapter 444, Hawaii Revised Statutes.

SECTION 3. Section 444-1, Hawaii Revised Statutes, is amended by amending the definition of "contractor" to read as follows:

"'"Contractor" means any person who by oneself or through others offers to undertake, or holds oneself out as being able to undertake, or does undertake to alter, add to, subtract from, improve, enhance, or beautify any realty or construct, alter, repair, add to, subtract from, improve, move, wreck, or demolish any building, highway, road, railroad, excavation, or other structure, project, development, or improvement, or do any part thereof, including the erection of scaffolding or other structures or works in connection therewith.

"Contractor", to the extent allowed under federal law includes a subcontractor, a specialty contractor, and any person, general engineering, general building, or specialty contractor who performs any of the activities listed in the previous paragraph directly or indirectly for the federal government."

PART III

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. 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.[1] New statutory material is underscored.

SECTION 7. This Act shall take effect on July 1, 2000.

(Approved June 30, 2000.)

**Note**

1. No bracketed material.

# ACT 287

H.B. NO. 2151

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 per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under article VII, section 13.

(2) Actual and estimated debt limits. The limits on principal and interest of general obligation bonds issued by the State, actual for fiscal year

1999-2000 and estimated for each fiscal year from 2000-2001 to 2002-2003, are as follows:

| Fiscal Year | Net General Fund Revenues | Debt Limit |
|---|---|---|
| 1996-1997 | $3,115,264,737 | |
| 1997-1998 | 3,195,967,036 | |
| 1998-1999 | 3,254,256,686 | |
| 1999-2000 | 3,141,743,000 | $589,871,788 |
| 2000-2001 | 3,228,232,000 | 591,504,615 |
| 2001-2002 | 3,285,586,000 | 593,494,287 |
| 2002-2003 | (not applicable) | 595,426,262 |

For fiscal years 1999-2000, 2000-2001, 2001-2002, and 2002-2003 respectively, the debt limits are 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 1996-1997, 1997-1998, and 1998-1999 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, 1999, dated November 24, 1999. The net general fund revenues for fiscal years 1999-2000 to 2001-2002 are estimates, based on general fund revenue estimates made as of March 10, 2000, 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 December 1, 1999 is as follows for fiscal year 2000-2001 to fiscal year 2006-2007:

| Fiscal Year | Principal and Interest |
|---|---|
| 2000-2001 | $ 352,508,780 |
| 2001-2002 | 367,994,493 |
| 2002-2003 | 411,701,970 |
| 2003-2004 | 378,223,219 |
| 2004-2005 | 373,053,164 |
| 2005-2006 | 347,383,328 |
| 2006-2007 | 344,154,560 |

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 2007-2008 to fiscal year 2019-2020 when the final installment of $27,612,984 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 $238,500,000 (including $47,500,000 proposed in Senate Bill No. 2873, S.D. 1, H.D. 2, C.D. 1[1] (Relating To Hawaii Health Systems Corporation), 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 29, 2000, adjusted for:

(i) Appropriations to be funded with general obligation bonds and reimbursable general obligation bonds as provided in Act 91, Session Laws of Hawaii 1999 (The General Appropriations Act of 1999) to be expended in fiscal year 2000-2001;

(ii) Appropriations to be funded by reimbursable general obligation bonds as provided in Act 151, Session Laws of Hawaii 1999 (Relating to Hawaii Hurricane Relief Fund Bonds) to be expended in fiscal year 2000-2001;

(iii) Appropriations to be funded by general obligation bonds as provided in Act 156, Session Laws of Hawaii 1999 (The Judiciary Appropriations Act of 1999) to be expended in fiscal year 2000-2001;

(iv) Lapses and appropriations to be funded by general obligation bonds proposed in House Bill No. 2407, H.D.1, S.D.2, C.D.1[2] (Making An Emergency Appropriation For The Department Of Agriculture);

(v) Lapses totaling $191,918,117 and changes in means of financing from general obligation bond fund to other federal fund totaling $750,000 proposed in House Bill No. 1900, H.D. 1, S.D. 1, C.D. 1[3] (The Supplemental Appropriations Act of 2000); and

(vi) Lapses totaling $3,163,000 proposed in House Bill No. 2650, H.D. 1, S.D.2, C.D. 1[4] (The Judiciary Supplemental Appropriations Act of 2000), the total amount of authorized but unissued general obligation bonds is $1,198,003,903. The total amount of general obligation bonds authorized in this Act is $201,541,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized in this Act is $1,399,544,903.

(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 $191,000,000, 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. The total amount of guaranty authorized by Senate Bill No. 2873, S.D. 1, H.D. 2, C.D. 1[1] (Relating To Hawaii Health Systems Corporation) is $47,500,000 and is herein vali-

dated. The total amount of guaranties previously authorized and validated by this Act is $238,500,000.

(5) Proposed general obligation bond issuance. As reported herein for fiscal years 1999-2000, 2000-2001, 2001-2002, and 2002-2003, the State proposes to issue $200,000,000 during the remainder of fiscal year 1999-2000, $350,000,000 during the first half of fiscal year 2000-2001, $150,000,000 during the second half of fiscal year 2000-2001, $150,000,000 during the first half of fiscal year 2001-2002, $150,000,000 during the second half of fiscal year 2001-2002, $100,000,000 during the first half of fiscal year 2002-2003, and $300,000,000 during the second half of fiscal year 2002-2003. 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 that are proposed to be issued, except that principal repayments will begin in the fourth year.

(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 1999-2000 to 2001-2002 is $1,000,000,000. An additional $400,000,000 is proposed to be issued in fiscal year 2002-2003. The total amount of $1,000,000,000, which is proposed to be issued through fiscal year 2001-2002 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 $1,399,544,903, as reported in paragraph (4), except for $399,544,903. It is assumed that the appropriations to which an additional $399,544,903 in bond issuance needs to be applied will have been encumbered as of June 30, 2002. The $400,000,000, which is proposed to be issued in fiscal year 2002-2003 will be sufficient to meet the requirements of the June 30, 2002 encumbrances in the amount of $399,544,903. The amount of assumed encumbrances as of June 30, 2002 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 previously authorized and unissued bonds and bonds proposed in this Act versus the amount of bonds that is proposed to be issued by June 30, 2002, and the amount of June 30, 2002 encumbrances versus the amount of bonds that is proposed to be issued in fiscal year 2002-2003, 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 6.97 per cent for the ten years from fiscal year 2000-2001 to fiscal year 2009-2010. For the purpose of this declaration, the assumption is made that five per cent of each bond issue will be excludable from the debt limit, an assumption that 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 per cent 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 fiscal years 1999-2000, 2000-2001, 2001-2002, and 2002-2003 are as follows:

| Fiscal Year | Total Amount of General Obligation Bonds Not Otherwise Excluded by Article VII, Section 13 of the State Constitution |
|---|---|
| 1999-2000 | $3,309,433,537 |
| 2000-2001 | 3,600,550,972 |
| 2001-2002 | 3,677,655,955 |
| 2002-2003 | 3,843,443,582 |

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 per cent 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 6.0 per cent, it can be determined from the following schedule that the bonds, which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, 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 1999-2000 $190,000,000 | 589,871,788 | 423,101,970 (2002-2003) |
| 1st half FY 2000-2001 $332,500,000 | 591,504,615 | 443,051,970 (2002-2003) |
| 2nd half FY 2000-2001 $142,500,000 | 591,504,615 | 451,601,970 (2002-2003) |
| 1st half FY 2001-2002 $142,500,000 | 593,494,287 | 455,876,970 (2002-2003) |
| 2nd half FY 2001-2002 $142,500,000 | 593,494,287 | 464,426,970 (2002-2003) |
| 1st half FY 2002-2003 $95,000,000 | 595,426,262 | 549,374,614 (2004-2005) |
| 2nd half FY 2002-2003 $285,000,000 | 595,426,262 | 479,324,614 (2004-2005) |

(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 that 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. 1900, H.D. 1, S.D. 1, C.D. 1[3] (The Supplemental Appropriations Act of 2000) and House Bill No. 2650, H.D. 1, S.D.2, C.D. 1[4] (The Judiciary Supplemental Appropriations Act of 2000), passed by this regular session of 2000, 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 general obligation bonds so issued shall not exceed $201,541,000.

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 June 30, 2000.)

**Notes**

1. Act 279.
2. Act 155.
3. Act 281.
4. Act 112.

## ACT 288 S.B. NO. 2186

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding three new sections to article 9 to be appropriately designated and to read as follows:

"**§431:9- Independent bill reviewer.** (a) "Independent bill reviewer" means any individual who:

(1) Acts solely on behalf of either the insurer as an independent contractor or as an employee of an independent contractor; and

(2) Reviews or audits billings for medical services.

(b) For the purposes of this section, an individual is not deemed an independent bill reviewer if the individual is:

(1) A salaried employee of an insurer or salaried employee of an adjusting corporation owned or controlled by an insurer; or

(2) A database provider for the insurer.

**§431:9- Compensation by contingency fee prohibited.** An independent bill reviewer shall not be compensated on a contingency fee basis.

**§431:9- Qualification for independent bill reviewer's license.** To qualify for an independent bill reviewer's license, an applicant shall comply with this article and shall:

(1) Be domiciled in this State, or in a state that will permit residents of this State to act as independent bill reviewers in such other state;

(2) Have experience, special education, or training with reference to the review or audit of billings for medical services under insurance contracts, of sufficient duration and extent to reasonably make the individual competent to fulfill the responsibilities of an independent bill reviewer;

(3) Have successfully passed any examination required under section 431:9-206; and

(4) Pay the license fee;

provided that in the alternative to paragraphs (1) to (3), the applicant shall hold the credential of a certified professional coder granted by the American Academy of Professional Coders."

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by amending the title of article 9 to read as follows:

"**ARTICLE 9**
**LICENSING OF AGENTS, BROKERS, SOLICITORS, [AND] ADJUSTERS, AND BILL REVIEWERS**"

SECTION 3. Section 431:2-303, Hawaii Revised Statutes, is amended to read as follows:

"**§431:2-303 Examination of agents, [managers,] solicitors, adjusters, promoters[.], and independent bill reviewers.** For the purpose of ascertaining its condition, or compliance with this code, the commissioner may as often as the commissioner deems advisable examine the insurance accounts, records, documents, and transactions of:

(1) Any insurance general agent, subagent, solicitor, [or] adjuster, or independent bill reviewer, including insurance agencies and surplus lines agencies; or

(2) Any person engaged in, proposing to be engaged in, or assisting in the promotion or formation of a domestic insurer, a stock corporation to finance a domestic mutual insurer or the production of its business, or a corporation to be attorney-in-fact for a domestic reciprocal insurer."

SECTION 4. Section 431:2-305, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Orders shall be issued and hearings conducted as follows:

(1) All orders entered pursuant to subsection (c)(1) shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers, and any written submissions or rebuttals. Any [such] order shall be considered a final administrative decision and may be appealed pursuant to chapter 91, and shall be served upon the insurer or person by certified mail, together with a copy of the adopted examination

report. Within thirty days of the issuance of the adopted report, the insurer or person shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders, except that for examinations of general agents, subagents, solicitors, adjusters, independent bill reviewers, or surplus lines brokers, serving the copy of the adopted report and related orders by certified-return receipt requested mail will satisfy the service requirement and no affidavits shall be required; and

(2) Any hearing conducted under subsection (c)(3) by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as may be necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or raised by the written submission or rebuttal of the insurer or person. Within twenty days of the conclusion of any [such] hearing, the commissioner shall enter an order pursuant to subsection (c)(1):

(A) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the insurer or person limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation, whether under the control of the division, the insurer, or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record;

(B) The hearing shall proceed in accordance with departmental rules adopted under chapter 91; and

(C) Nothing contained in this section shall require the insurance division to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency."

SECTION 5. 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 ..... $900

(2) Organization of domestic insurers and affiliated corporations:

(A) Application and all other papers required for issuance of solicitation permit, filing ..... $1,500

(B) Issuance of solicitation permit ..... $150

(3) General agent's license:

(A) Issuance, regular license ..... $75

(B) Issuance, temporary license ..... $75

(4) Subagent's license:

(A) Issuance, regular license ..... $75

(B) Issuance, temporary license ..... $75

(5) Nonresident agent's or broker's license: Issuance ..... $60

(6) Solicitor's license: Issuance ..... $60

(7) Independent adjuster's license: Issuance ..... $60

(8) Public adjuster's license: Issuance ..... $60

(9) Workers' compensation claims adjuster's limited license: Issuance $60
(10) Independent bill reviewer's license: Issuance ..... $80
[(10)] (11) Limited license issued pursuant to section 431:9-214(c): Issuance . $60
[(11)] (12) Managing general agent's license: Issuance ..... $75
[(12)] (13) Reinsurance intermediary's license: Issuance ..... $75
[(13)] (14) Surplus line broker's license: Issuance ..... $150
[(14)] (15) Examination for license: For each examination, a fee to be established by the commissioner.

(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) $600 per year for all services (including extension of the certificate of authority) for an authorized insurer;
(2) $75 per year for all services (including extension of the license) for a regularly licensed general agent;
(3) $75 per year for all services (including extension of the license) for a regularly licensed subagent;
(4) $45 per year for all services (including extension of the license) for a regularly licensed nonresident agent[1] broker;
(5) $30 per year for all services (including extension of the license) for a regularly licensed solicitor;
(6) $45 per year for all services (including extension of the license) for a regularly licensed independent adjuster;
(7) $45 per year for all services (including extension of the license) for a regularly licensed public adjuster;
(8) $45 per year for all services (including extension of the license) for a regularly limited licensed workers' compensation claims adjuster;
(9) $60 per year for all services (including extension of the license) for a regularly licensed independent bill reviewer;
[(9)] (10) $45 per year for all services (including extension of the license) for a limited license issued pursuant to section 431:9-214(c);
[(10)] (11) $75 per year for all services (including extension of the license) for a regularly licensed managing general agent;
[(11)] (12) $75 per year for all services (including extension of the license) for a regularly licensed reinsurance intermediary;
[(12)] (13) $45 per year for all services (including extension of the license) for a licensed surplus line broker; and
[(13)] (14) The services referred to in paragraphs (1) to [(12)] (13) 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.[2]"

SECTION 6. Section 431:9-101, Hawaii Revised Statutes, is amended to read as follows:

"**§431:9-101 Scope.** This article shall govern the qualifications and procedures for granting licenses to all insurance agents, brokers, surplus lines brokers, nonresident agents or brokers, subagents, solicitors, adjusters, independent bill reviewers, and limited service representatives."

SECTION 7. Section 431:9-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person engaging in the business of insurance in this State shall act as, be appointed as, or hold oneself out to be a general agent, subagent, solicitor, [or] adjuster, or independent bill reviewer unless so licensed by this State."

SECTION 8. Section 431:9-206, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each applicant for license as general agent, subagent, solicitor, [or] adjuster, or independent bill reviewer shall prior to the issuance of any such license, personally take and pass to the satisfaction of the commissioner an examination given by the commissioner as a test of the applicant's qualifications and competence."

SECTION 9. Section 431:9-228, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every licensed general agent, subagent, [and] adjuster, and independent bill reviewer shall have and maintain in this State, or, if a nonresident agent or broker, in the state of the agent's or broker's domicile, a place of business accessible to the public."

SECTION 10. Section 431:9-229, Hawaii Revised Statutes, is amended by amending the title and subsection (a) to read as follows:

"**§431:9-229 Records of general agent, subagent, adjuster[.], independent bill reviewer.** (a) Every general agent, subagent, [or] adjuster, or independent bill reviewer shall keep a record of all transactions consummated under [such] their license. This record shall be in organized form according to class of insurance and shall include:

(1) If a general agent or subagent:
   (A) A record of each insurance contract procured or issued, together with the names of the insurers and insureds, the amount of premium paid or to be paid, or the basis of the premium or consideration paid or to be paid, and a statement of the subject of the insurance; and
   (B) The names of any other licensees from whom business is accepted, and of persons to whom commissions or allowances of any kind are promised or paid;
(2) If an adjuster, a record of each investigation or adjustment undertaken or consummated, and a statement of any fee, commission, or other compensation received or to be received by the adjuster on account of [such] the investigation or adjustment; [and]
(3) If an independent bill reviewer, a record of each bill reviewed and a statement of any fee, commission, or other compensation received or to be received by the independent bill reviewer on account of the bill reviewed; and
[(3) Such other and] (4) Any additional information as shall be customary, or as may reasonably be required by the commissioner."

SECTION 11. There is created one permanent full time position to carry out the purposes of this Act and to provide additional compliance and enforcement resources for the insurance division.

SECTION 12. There is appropriated out of the insurance regulation fund the sum of $51,379 or so much thereof as may be necessary for fiscal year 2000-2001 to carry out the purposes of this Act.

The sum appropriated shall be expended by the department of commerce and consumer affairs.

SECTION 13. Statutory material to be repealed is bracketed. New statutory material is underscored.[3]

SECTION 14. This Act shall take effect upon its approval; provided that section 12 shall take effect July 1, 2000.

(Approved June 30, 2000.)

**Notes**

1. Prior to amendment "or" appeared here.
2. Prior to amendment ";" appeared here.
3. Edited pursuant to HRS §23G-16.5.

## ACT 289

S.B. NO. 2221

A Bill for an Act Relating to Ethanol.

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

SECTION 1. The legislature finds that ethanol can be produced from agricultural crops or byproducts and municipal solid wastes or other low or no value products.

Ethanol can be mixed with gasoline up to a ten per cent blend without a change in the performance or operating reliability of gasoline powered vehicles. Ethanol may also be blended with diesel or waste cooking oils produced from crops to produce biodiesel as a replacement for diesel fuel.

Further, in addition to traditional methods of producing ethanol from molasses and sugar products, newly developed technology can also convert bagasse, crop residues, newspaper, municipal solid waste, and other underutilized materials to ethanol. As the cost of locating new landfills rises and pollution is of greater concern, the conversion of these wastes to ethanol can help reduce waste disposal problems.

The legislature finds that incentives are needed to stimulate private sector investments required to develop this industry. Therefore, the purpose of this Act is to create an ethanol investment tax credit to encourage private sector investment in ethanol production facilities in the State of Hawaii.

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235- Ethanol investment tax credit.** (a) Each year during the credit period, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an ethanol investment tax credit that shall be applied to 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 maximum annual credit allowable for the investment in a qualified ethanol facility that is in production on or before January 1, 2012, subject to subsection (e), shall be determined in accordance with the following schedule:

(1) If nameplate capacity is at least 500,000 but not over 1,000,000, the investment tax credit is the lesser of thirty per cent of the investment, or $150,000;

(2) If nameplate capacity is over 1,000,000, but not over 2,000,000, the investment tax credit is the lesser of thirty per cent of the investment, or $300,000;
(3) If nameplate capacity is over 2,000,000, but not over 3,000,000, the investment tax credit is the lesser of thirty per cent of the investment or $600,000;
(4) If nameplate capacity is over 3,000,000, but not over 4,000,000, the investment tax credit is the lesser of thirty per cent or $900,000;
(5) If nameplate capacity is over 4,000,000, but not over 5,000,000, the investment tax credit is the lesser of thirty per cent or $1,200,000;
(6) If nameplate capacity is over 5,000,000, but not over 6,000,000, the investment tax credit is the lesser of thirty per cent or $1,500,000;
(7) If nameplate capacity is over 6,000,000, but not over 7,000,000, the investment tax credit is the lesser of thirty per cent or $1,800,000;
(8) If nameplate capacity is over 7,000,000, but not over 8,000,000, the investment tax credit is the lesser of thirty per cent or $2,100,000;
(9) If nameplate capacity is over 8,000,000, but not over 9,000,000, the investment tax credit is the lesser of thirty per cent or $2,400,000;
(10) If nameplate capacity is over 9,000,000, but not over 10,000,000, the investment tax credit is the lesser of thirty per cent or $2,700,000;
(11) If nameplate capacity is over 10,000,000, but not over 11,000,000, the investment tax credit is the lesser of thirty per cent or $3,000,000;
(12) If nameplate capacity is over 11,000,000, but not over 12,000,000, the investment tax credit is the lesser of thirty per cent or $3,300,000;
(13) If nameplate capacity is over 12,000,000, but not over 13,000,000, the investment tax credit is the lesser of thirty per cent or $3,600,000;
(14) If nameplate capacity is over 13,000,000, but not over 14,000,000, the investment tax credit is the lesser of thirty per cent or $3,900,000;
(15) If nameplate capacity is over 14,000,000, but not over 15,000,000, the investment tax credit is the lesser of thirty per cent or $4,200,000; and
(16) If nameplate capacity is over 15,000,000, the investment tax credit is the lesser of thirty per cent or $4,500,000.

(b) As used in this section:

"Credit period" means a maximum period of eight years for facilities with a total investment of less than $50,000,000, and, a maximum period of ten years for facilities with a total investment equal to or greater than $50,000,000, beginning from the first taxable year in which the credit is properly claimed.

"Investment" means a nonrefundable expenditure directly related to the construction of any qualifying ethanol production facility, exclusive of land costs. For purposes of this section, investment includes any investment for which the taxpayer is at risk, as that term is used in section 465 of the Internal Revenue Code (with respect to deductions limited to amount at risk).

"Maximum annual credit allowable" means the total credit allowed under subsection (a) claimed against the taxpayer's net income tax liability for any taxable year; provided that the qualifying ethanol facility operated in such taxable year at a level of production of at least seventy-five per cent of its nameplate capacity on an annualized basis.

"Nameplate capacity" means the qualifying ethanol facility's production design capacity, in gallons of ethanol per year, based on an assumed operating year of three hundred fifty days.

"Net income tax liability" means net income tax liability reduced by all other credits allowed under this chapter.

"Qualifying ethanol production" means ethanol produced from renewable, organic feedstocks, or waste materials, including municipal solid waste. All qualifying production shall be fermented, distilled, and dehydrated at the facility.

"Qualifying ethanol production facility" means a facility located in Hawaii which produces motor fuel grade ethanol meeting the minimum specifications by the American Society of Testing and Materials standard D-4806, as amended.

(c) If the 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 payments on account of the tax credit allowed by this section shall be made for amounts less than $1. All claims for a credit under this section must be properly 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.

(d) If a qualifying ethanol facility or an interest therein is acquired by a taxpayer prior to the expiration of the credit period, the credit allowable under subsection (a) for any period after such acquisition shall be equal to the maximum annual credit allowable and credit period that would have been allowable under subsection (a) to the prior owner had the owner not disposed of the interest. If an interest is disposed of during any year for which the credit is allowable under subsection (a), the credit shall be allowable between the parties on the basis of the number of days during the year the interest was held by each owner. In no case shall the credit allowed under subsection (a) be allowed after the expiration of the credit period.

(e) Once the total nameplate capacities of ethanol production facilities built within the State reaches or exceeds a level of forty million gallons per year, no new ethanol investments or ethanol production facilities shall be allowed to begin claiming credits under this section. If a new facility's production capacity would cause the statewide ethanol production capacity to exceed forty million gallons per year, only the portion of the investment corresponding to ethanol production that does not exceed the statewide forty million gallon per year level shall be eligible for the credit.

(f) Prior to construction of any new ethanol production facility, the producer shall provide written notice of the producer's intention to begin construction of a qualifying ethanol production facility. The information shall be provided to the department of taxation and the department of business, economic development, and tourism on forms provided by the department of business, economic development, and tourism, and shall include information on the facility owner, facility location, facility production capacity, anticipated production start date, and the facility owner's contact information. This information shall be available for public inspection and dissemination.

(g) A qualifying ethanol producer shall provide written notice to the director of taxation and the director of business, economic development, and tourism within thirty days of the initial qualifying production. The notice shall include the production start date and expected qualifying production for the next twenty-four months. This information shall be available for public inspection and dissemination.

(h) If a qualifying facility fails to achieve an average annual production of at least seventy-five per cent of its nameplate capacity for two consecutive years, the stated capacity of that facility may be revised by the director of taxation to reflect actual production for the purposes of determining statewide production capacity under subsection (e) and allowable investment credits for that facility under subsection (a).

(i) Each calendar year during the credit period, each qualifying producer shall provide information to the director of business, economic development, and tourism on the number of gallons of ethanol produced and sold during the previous

calendar year, how much was sold in Hawaii versus overseas, feedstocks used for ethanol production, the number of employees of the facility, and the projected number of gallons of ethanol production for the succeeding year.

(j) Following each year in which a credit under this section has been claimed, the director of business, economic development, and tourism shall submit a written report to the governor and legislature regarding the production and sale of ethanol. The report shall include:

(1) The number, location, and nameplate capacities of qualifying ethanol production facilities in the State;

(2) The total number of gallons of ethanol produced and sold during the previous year; and

(3) The projected number of gallons of ethanol production for the succeeding year.

(k) The director of taxation shall prepare forms that 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 3. Section 237-27.1, Hawaii Revised Statutes, is amended to read as follows:

"**§237-27.1 Exemption of sale of alcohol fuels.** (a) There shall be exempted from and excluded from the measure of the taxes imposed by this chapter all of the gross proceeds arising from the sale of alcohol fuels for consumption or use by the purchaser and not for resale.

(b) As used in this section, "alcohol fuels" means neat biomass-derived alcohol liquid fuel or a petroleum-derived fuel and alcohol liquid fuel mixture consisting of at least ten volume per cent denatured biomass-derived alcohol commercially usable as a fuel to power aircraft, seacraft, spacecraft, automobiles, or other motorized vehicles.

[(c) The director of taxation shall annually submit a written report to the governor and legislature prior to the regular session of the legislature indicating a comparison of the number of gallons and average price per gallon of alcohol fuels and gasoline sold in the State.

(d)] (c) The director of taxation shall adopt rules pursuant to chapter 91 necessary to administer this section.

(d) This section shall be repealed on December 31, 2006."

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

SECTION 5. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2001.

(Approved June 30, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

# ACT 290

S.B. NO. 2419

A Bill for an Act Relating to Capital Access Program.

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

SECTION 1. The legislature finds that as of 1999 about nineteen states operated capital access programs. Hawaii was not one of them. The legislature further finds that these programs, first launched by Michigan in 1986, are operated by states to encourage small business lending in a cost-efficient and simple way. Under these programs the bank and the borrower pay an up-front insurance premium which goes into a reserve fund held at the originating bank. The state matches the combined bank and borrower contribution with a deposit into the same reserve fund. The reserve fund allows a lending bank to make slightly higher risk loans than conventional underwriting, with the protection of the reserve fund for its entire pool of loans. These programs allow banks to use their own underwriting standards for eligible loans, without governmental approval of the loan-making decision. Compared with the staff intensiveness of other credit enhancement programs, capital access programs require little administrative costs for banks, borrowers, or the government.

The legislature further finds that capital access programs reach borrowers that are not well served by other credit enhancement programs such as minority-owned businesses and low- and moderate-income communities in substantial numbers. Capital access programs reach businesses, such as new emerging technology companies, that are not typically reached by other small business lending programs. Furthermore, capital access programs in some states are used significantly for start-up businesses and for working capital, both of which are often cited as needs unsatisfied by the private market without public support. Lastly, lending through capital access programs retains and creates a significant number of jobs.

The purpose of this Act is to establish a capital access program in this State to be operated by the department of business, economic development, and tourism.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 13 to be appropriately designated and to read as follows:

## "CHAPTER
## CAPITAL ACCESS PROGRAM

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

"Capital access loan" means a loan that is entitled to be secured by the fund.

"Department" means the department of business, economic development, and tourism.

"Financial institution" includes a bank, trust company, banking association, savings and loan association, mortgage company, investment bank, credit union, or nontraditional financial institution.

"Fund" means the Hawaii capital loan revolving fund established in section 210-3.

"Loan" includes a line of credit.

"Medium-sized business" means a corporation, partnership, sole proprietorship, or other legal entity that:

(1) Is domiciled in this State;

(2) Is formed to make a profit; and

(3) Employs one hundred or more but fewer than five hundred full-time employees.

"Nonprofit organization" means a private, nonprofit, tax-exempt corporation, association, or organization listed in section 501(c)(3), Internal Revenue Code of 1986, as amended, that is domiciled in this State.

"Participating financial institution" means a financial institution participating in the program.

"Program" means the capital access program.

"Reserve account" means an account established in a participating financial institution on approval of the department in which money is deposited to serve as a source of additional revenue to reimburse the financial institution for losses on loans enrolled in the program.

"Small business" means a corporation, partnership, sole proprietorship, or other legal entity that:

(1) Is domiciled in this State;
(2) Is formed to make a profit;
(3) Is independently owned and operated; and
(4) Employs fewer than one hundred full-time employees.

§ **-2 Powers of department in administering the capital access program.** In administering the program, the department shall have all the powers necessary to carry out the purposes of this chapter, including the power to:

(1) Make, execute, and deliver contracts, conveyances, and other instruments necessary to the exercise of its powers;
(2) Invest money at the department's discretion in obligations determined proper by the department, and select and use depositories for its money;
(3) Employ personnel and counsel and pay the persons from money in the fund legally available for that purpose; and
(4) Impose and collect fees and charges in connection with any transaction and provide for reasonable penalties for delinquent payment of fees or charges.

§ **-3 Capital access program.** (a) The department shall establish a capital access program to assist a participating financial institution in making loans to businesses and nonprofit organizations that face barriers in accessing capital.

(b) The department shall use money in the fund to make a deposit in a participating financial institution's reserve account in an amount specified by this chapter to be a source of money the institution may receive as reimbursement for losses attributable to loans in the program.

(c) The department shall determine the eligibility of a financial institution to participate in the program and may set a limit on the number of eligible financial institutions that may participate in the program.

(d) To participate in the program, an eligible financial institution shall enter into a participation agreement with the department that sets out the terms and conditions under which the department will make contributions to the institution's reserve account and specifies the criteria for a loan to qualify as a capital access loan.

(e) To qualify as a capital access loan, a loan shall:

(1) Be made to a small or medium-sized business or to a nonprofit organization;
(2) Be used by the business or nonprofit organization for any project, activity, or enterprise in Hawaii that fosters economic development; and
(3) Meet any other criteria provided by this chapter.

§ -4 **Rulemaking authority.** (a) The department shall adopt rules relating to the implementation of the program and any other rules necessary to accomplish the purposes of this chapter. The rules may:

(1) Provide for criteria under which a certain line of credit issued by an eligible financial institution to a small or medium-sized business or nonprofit organization qualifies to participate in the program; and

(2) Authorize a consortium of financial institutions to participate in the program subject to common underwriting guidelines.

(b) To qualify for participation in the program, a line of credit shall:

(1) Be an account at a financial institution under which the financial institution agrees to lend money to a person from time to time to finance one or more projects, activities, or enterprises that are authorized by this chapter; and

(2) Contain the same restrictions, to the extent possible, that are placed on a capital access loan that is not a line of credit.

§ -5 **Provisions relating to capital access loan.** (a) Except as otherwise provided by this chapter, the department may not determine the recipient, amount, or interest rate of a capital access loan or the fees or other requirements related to the loan.

(b) A loan is not eligible to be enrolled under this chapter if the loan is for:

(1) Construction or purchase of residential housing;

(2) Simple real estate investments, excluding the development or improvement of commercial real estate occupied by the borrower's business or organization;

(3) Refinancing of existing loans not originally enrolled under this chapter; or

(4) Inside bank transactions, as defined by the department.

(c) The borrower of a capital access loan shall apply the loan to working capital or to the purchase, construction, or lease of capital assets, including buildings and equipment used by the business or nonprofit organization. Working capital uses include the cost of exporting, accounts receivable, payroll, inventory, and other financing needs of the business or organization.

(d) A capital access loan may be sold on the secondary market under conditions as may be determined by the department.

(e) When enrolling a loan in the program, a participating financial institution may specify an amount to be covered under the program that is less than the total amount of the loan.

§ -6 **Reserve account.** (a) On approval by the department and after entering into a participation agreement with the department, a participating financial institution making a capital access loan shall establish a reserve account. The reserve account shall be used by the institution only to cover any losses arising from a default of a capital access loan made by the institution under this chapter or as otherwise provided by this chapter.

(b) When a participating financial institution makes a loan enrolled in the program, the institution shall require the borrower to pay to the institution a fee in an amount that is not less than two per cent but not more than three per cent of the principal amount of the loan, which the financial institution shall deposit in the reserve account. The institution shall also deposit in the reserve account an amount equal to the amount of the fee received by the institution from the borrower under this subsection. The institution may recover from the borrower all or part of the amount the institution is required to pay under this subsection in any manner agreed to by the institution and borrower.

(c) For each capital access loan made by a financial institution, the institution shall certify to the department, within the period prescribed by the department, that the institution has made a capital access loan, the amount the institution has deposited in the reserve account, including the amount of fees received from the borrower, and, if applicable, that the borrower is an eligible enterprise zone business located in an area designated as an enterprise zone under chapter 209E.

(d) On receipt of a certification made under subsection (c), the department shall deposit in the institution's reserve account for each capital access loan made by the institution:

(1) An amount equal to the amount deposited by the institution for each loan if the institution:
   (A) Has assets of more than $1,000,000,000; or
   (B) Has previously enrolled loans in the program that in the aggregate are more than $2,000,000;
(2) An amount equal to one hundred fifty per cent of the total amount deposited under subsection (b) for each loan if the institution is not described by paragraph (1); or
(3) Notwithstanding paragraphs (1) and (2), an amount equal to two hundred per cent of the total amount deposited under subsection (b) for each loan if:
   (A) The borrower is an eligible enterprise zone business located in an area designated as an enterprise zone under chapter 209E; or
   (B) The borrower is a small or medium-size business or a nonprofit organization that operates or proposes to operate a child care facility or adult residential care home.

§ **-7 Limitations on state contribution to reserve account.** (a) The amount deposited by the department into a participating financial institution's reserve account for any single loan recipient may not exceed $100,000 during a three-year period.

(b) The maximum amount the department may deposit into a reserve account for each capital access loan made under this chapter is the lesser of $35,000 or an amount equal to:

(1) Eight per cent of the loan amount if:
   (A) The borrower is an eligible enterprise zone business located in an area designated as an enterprise zone under chapter 209E; or
   (B) The borrower is a small or medium-size business or a nonprofit organization that operates or proposes to operate a child care facility or adult residential care home;

   or
(2) Six per cent of the loan amount for any other borrower.

§ **-8 State's rights with respect to reserve account.** (a) All of the money in a reserve account established under this chapter is property of the State.

(b) The State is entitled to earn interest on the amount of contributions made by the department, borrower, and institution to a reserve account under this chapter. The department shall withdraw monthly or quarterly from a reserve account the amount of the interest earned by the State. The department shall deposit the amount withdrawn under this section into the fund.

(c) If the amount in a reserve account exceeds an amount equal to thirty-three per cent of the balance of the financial institution's outstanding capital access loans, the department may withdraw the excess amount and deposit the amount in the fund. A withdrawal of money authorized under this subsection may not reduce an active reserve account to an amount that is less than $200,000.

(d) The department shall withdraw from the institution's reserve account the total amount in the account and any interest earned on the account and deposit the amount in the fund when:

(1) A financial institution is no longer eligible to participate in the program or a participation agreement entered into under this chapter expires without renewal by the department or institution; and

(2) The financial institution has no outstanding capital access loans.

§ **-9 Annual report.** A participating financial institution shall submit an annual report to the department. The report shall:

(1) Provide information regarding outstanding capital access loans, capital access loan losses, and any other information on capital access loans the department considers appropriate;

(2) State the total amount of loans for which the department has made a contribution from the fund under this chapter;

(3) Include a copy of the institution's most recent financial statement; and

(4) Include information regarding the type and size of businesses and nonprofit organizations with capital access loans.

§ **-10 Reports; audits.** (a) The department shall submit to the legislature an annual status report on the program's activities.

(b) The financial transactions of the fund are subject to audit by the auditor.

§ **-11 State liability prohibited.** The State is not liable to a participating financial institution for payment of the principal, the interest, or any late charges on a capital access loan made under this chapter.

§ **-12 Gifts and grants.** The department may accept gifts, grants, and donations from any source for the purposes of this chapter."

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

(Approved June 30, 2000.)

## ACT 291

S.B. NO. 2467

A Bill for an Act Relating to Unlicensed Contractors.

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

SECTION 1. The prevalence of unlicensed contractors in this State is a public safety hazard. Licensure assures the public that the contractor so licensed has passed a written competency test, has the specified experience, has a history of honesty and fair dealing, has valid workers' compensation coverage for the contractor's employees, has personal injury and property damage insurance, and participates in the contractors recovery fund. These provisions protect the integrity of the profession and provide assurances to the public that their homes and businesses will be built safely and competently. Unlicensed contractors often bilk the public by promising more than they can perform competently, and then failing to complete the job or doing so inadequately.

The purpose of this Act is to:

(1) Provide that property owned or used by a person to engage in unlicensed contracting is subject to forfeiture; and

(2) Clarify that unlicensed contracting is an unfair and deceptive practice under chapter 480, Hawaii Revised Statutes.

SECTION 2. Chapter 444, Hawaii Revised Statutes, is amended by adding a new section, to be appropriately designated and to read as follows:

"**§444-A Forfeiture of property for unlicensed activity.** (a) If an investigator finds that a person has acted in the capacity of, or engaged in the business of a contractor within this State without having a current license as required by this chapter to so act or engage, and the person is or was a defendant or respondent in a separate citation or lawsuit filed with or by the department, the investigator may issue a notice of forfeiture of property used by the person in the unlicensed activity, and the property that is the subject of the notice of forfeiture shall be turned over to the department for disposition in accordance with this chapter.

(b) Each notice of forfeiture shall be in writing and shall describe the tools, implements, documents, materials, or any other property used by any person in unlicensed activity that violates section 444-9.

(c) The department shall make good faith efforts to locate and notify within a reasonable period of time all owners or interest-holders of property subject to a notice of forfeiture.

(d) Service of a notice of forfeiture issued under this section shall be made:

(1) If the name and current address of the unlicensed person, owner, or interest-holder is known:
   (A) By personal service; or
   (B) By mailing a copy of the notice to the unlicensed person, owner, or interest-holder by certified mail to the last address on record with a state agency; or
(2) If the address of the unlicensed person, owner, or interest-holder is not known or is not on record with a state agency, by public notice once as provided in section 1-28.5.

(e) An unlicensed person served with a notice of forfeiture under this section may submit a written request to the director for a hearing:

(1) Within twenty days of receipt of the notice of forfeiture, if the person is served personally or by mail; or
(2) Within twenty days of public notice of forfeiture.

If a request for a hearing is not timely filed with the director, the notice of forfeiture shall be deemed a final order of the director.

(f) An owner or interest-holder served with a notice of forfeiture, other than the unlicensed person, may file a petition for remission of forfeiture with the department within twenty days of service by personal service or mail, or within twenty days of the date of public notice, if service is by public notice. The petition shall be signed by the petitioner and sworn on oath before a notary public and shall contain the following:

(1) A reasonably complete description of the property subject to forfeiture; and
(2) A statement of the interest of the petitioner in the property subject to forfeiture, with supporting documentary evidence.

If a petition for remission of forfeiture is not timely filed with the director, the notice of forfeiture shall be deemed a final order of the director.

(g) The department shall review the petition for remission of forfeiture and, if remission is warranted, return the property subject to forfeiture to the petitioner within thirty days of receipt of the petition. If the department determines that remission is not warranted, the department shall issue a written decision to the petitioner within thirty days of receipt of the petition.

(h) A petitioner whose petition for remission has been denied may file with the director a written request for a hearing as provided under subsections (i) and (j). The written request shall be filed within twenty days of receipt of the written decision denying the petition for remission. If a request for hearing is not timely filed with the director, the notice of forfeiture shall be deemed a final order of the director.

(i) Hearings shall be subject to chapter 91 and shall be conducted by the director or a hearings officer designated by the director. The director or designated hearings officer may issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue a final order of forfeiture. The department shall have the burden to show by clear and convincing evidence that the property is subject to forfeiture. In determining whether the property is subject to forfeiture, the director or hearings officer shall consider evidence of ownership, the description of the property, and any other relevant evidence.

(j) Any person aggrieved by the decision of the director or designated hearings officer may appeal the decision in the manner provided in chapter 91, to the circuit court of the circuit in which:

(1) The person resides;
(2) The person's principal place of business is located; or
(3) The activity in question occurred.

(k) The director may file an action in the circuit court for a judgment to enforce any final order issued by the director or designated hearings officer pursuant to this section. A judgment enforcing the final order shall issue upon a showing by the director either that notice was given and a hearing was held, or, that the time granted for requesting a hearing has run without the timely filing of a request.

(l) The department may dispose of all property forfeited in accordance with this chapter by:

(1) Transferring property to any local or state government entity, municipality, or law enforcement agency within the State;
(2) Selling property to the public by public sale; or
(3) Using any other means of disposition authorized by law.

(m) All proceeds of a forfeiture action conducted pursuant to this section, after payment of expenses of administration and sale, shall be deposited in the compliance resolution special fund established under section 26-9(o). Moneys in the fund shall be appropriated for the payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to this section or any other necessary expenses incident to the seizure, detention, or forfeiture of such property.

(n) Forfeiture under this section shall be separate from and in addition to all other applicable remedies, either civil or criminal. This section shall not apply to the violations set forth in section 444-23(a) and (b).

(o) The director may adopt rules as necessary to fully effectuate this section."

SECTION 3. Section 444-23, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Except as provided in subsections (a), (b), (d), and (e), any person who violates or fails to comply with this chapter shall be fined not less than $100 or more than $5,000 for each violation; provided that any person who violates section 444-9 shall be fined:

(1) $500 or forty per cent of the total contract price, whichever is greater, for the first offense;
(2) $1,000 or forty per cent of the total contract price, whichever is greater, for the second offense; and

(3) $5,000 or forty per cent of the total contract price, whichever is greater, for any subsequent offense[.],

and when the person is or was a defendant or respondent in a separate citation or lawsuit filed with or by the department, all tools, implements, documents, materials, or any other property used by the person in activities violating section 444-9 shall be subject to forfeiture as provided by section 444-A and shall be turned over to the department for disposition under that section."

SECTION 4. This Act does not affect proceedings that were begun before its effective date.

SECTION 5. In codifying the new section added by section 2 and referenced in section 3 of this Act, the revisor of statutes shall substitute an appropriate section number for the letter used in designating the new section in this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.[1]

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

(Approved June 30, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 292 S.B. NO. 2838

A Bill for an Act Relating to the State Internet Portal.

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

SECTION 1. **Findings and purpose.** The legislature finds that the expansion of the Internet has fundamentally transformed society and the conduct of business. In order to better serve citizens and businesses in the new economy, government must expand access to information and provide government services over the Internet, while ensuring Internet access points for everyone in order to reduce the "digital divide".

The State has entered into a contract with a vendor to establish, develop, operate, maintain, and expand an Internet portal for the purpose of increasing electronic access and commerce among Hawaii residents, businesses, and government entities. At no cost to the State, the portal manager will provide all necessary hardware, software, portal infrastructure, administration, operation, systems analysis, programming, delivery of services, training, marketing, collection and distribution of payments, and a help desk. With a portal manager in place, additional electronic government applications should be made available on a regular basis, with the state library system providing primary access for citizens seeking Internet access. In addition, electronic government services should be expanded through partnerships with entities such as the University of Hawaii and the department of education.

All statutory fees collected by the portal manager on behalf of a government agency will be remitted in full to the government agency. All charges for value added electronic services will be retained by the portal manager to pay for the core and ongoing costs of operating the portal as well as applications development costs associated with the deployment of standard and premium services.

The purpose of this Act is (1) to establish a mechanism for oversight of the portal manager and authorize the setting of charges for value added electronic services that will be collected by the portal manager; and (2) assist the public library system in providing access to the Internet portal.

SECTION 2. **Definitions.** As used in this Act, unless the context otherwise requires:

"Committee" means the Access Hawaii Committee.

"Government agency" means any government agency that stores, gathers, or generates public information, including all branches of government, all executive departments, boards, and commissions of the State or counties, and all public corporations created by the legislature.

"Internet" means the global information system that is logically linked together by a globally unique address space based on the Internet Protocol (IP), or its subsequent extensions; and that is able to support communications using the Transmission Control Protocol/Internet Protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols; and that provides, uses, or makes accessible, either publicly or privately, information to users.

"Internet portal" means the centralized electronic information system by which public information is provided via dial-in modem or continuous link to the public through subscription or through public libraries.

"Portal manager" means the entity or person engaged to manage and operate the Internet portal on behalf of the State of Hawaii.

"Value added electronic services" means services including, but not limited to:

(1) Providing periodic, continual, and ongoing access to information maintained by a government agency without requiring separate requests for information as it is created;
(2) Compiling data or performing other research services;
(3) Permitting the electronic filing of reports, renewals, or applications; or
(4) The ability to transact business over the Internet portal.

SECTION 3. Any statute to the contrary notwithstanding, government agencies may charge for value added electronic services provided through the portal manager.

SECTION 4. **Access Hawaii committee; establishment; membership; chairperson.** (a) There is established within the office of the governor, on a special and temporary basis, the Access Hawaii Committee, until June 30, 2003, at which time the committee shall cease to exist.

(b) The committee shall consist of not more than eleven voting ex officio members, or their designated representatives, as follows:

(1) The governor's special advisor for technology development;
(2) The administrator of the information and communication services division in the department of accounting and general services;
(3) The administrator of the state procurement office;
(4) The director of the office of information practices;
(5) The directors of not more than three government agencies using or planning to use the services of the portal manager; and
(6) The chief information officers of the four counties.

(c) The governor's special advisor for technology development shall serve as the chairperson of the committee.

SECTION 5. **Duties of the committee.** (a) The committee shall provide oversight of the portal manager including:

(1) Review of the annual strategic plan and periodic reports on potential new applications and services submitted by the portal manager;
(2) Review and approval of all charges to portal users;
(3) Review and approval of service level agreements negotiated by government agencies with the portal manager;
(4) Review of annual financial reports and audit of the portal manager;
(5) Review of annual customer satisfaction surveys conducted by the portal manager; and
(6) Review of performance measures of the portal submitted as part of the service management plan for portal-wide indicators and application specific indicators.

(b) The committee shall assist the Hawaii state public library system in providing access to the Internet portal and advice on the following:

(1) Being an avenue for distribution of access for the public to the Internet for purposes of education and information;
(2) Installing Internet access computers, routers, and lines; and
(3) Providing Internet training in at least half of the public libraries.

(c) In the event of a conflict with chapter 92F, the provisions of chapter 92F shall control questions of interpretation.

SECTION 6. **Annual report.** The committee shall submit an annual report on the operations of the portal and assistance provided to the Hawaii state public library system to the legislature no later than twenty days prior to the convening of each regular legislative session.

SECTION 7. 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 2000-2001, to provide funding for the Hawaii state public library system for Internet access computers and connections, digitalization equipment, and Internet kiosks to provide the general public greater access to information on the Internet.

SECTION 8. The sum appropriated shall be expended by the Hawaii state public library system for the purposes of this Act.

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

(Approved June 30, 2000.)

## ACT 293 H.B. NO. 286

A Bill for an Act Relating to Speeding.

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

SECTION 1. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§291C- Speeding in a construction area.** (a) No person shall drive a motor vehicle at a speed greater than the maximum speed limit established pursuant to subsection (b) within a construction area. Appropriate law enforcement personnel may enforce the maximum speed limits established for construction areas.

(b) Notwithstanding section 291C-102, the director of transportation and the counties, in their respective jurisdictions, shall establish maximum speed limits for construction areas, and shall require the owner, general contractor, or other person responsible for construction to provide proper signs in that area.

Signs posted pursuant to this subsection shall be plainly visible at all times under ordinary traffic conditions.

(c) For purposes of this section, the term "construction area" includes any area in which there is occurring the installation, construction, or demolition of connections for streets, roads, driveways, concrete curbs and sidewalks, structures, drainage systems, landscaping, or grading within the highway rights-of-way, including above ground and underground utility work, excavation and backfilling of trenches or other openings in state highways, the restoration, replacement, or repair of the base course, pavement surfaces, highway structures, or any other highway improvements.

(d) The director shall adopt rules pursuant to chapter 91 as may be necessary to implement 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. New statutory material is underscored.[1]

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

(Approved July 3, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 294 S.B. NO. 2311

A Bill for an Act Relating to Mandatory Use of Seatbelts.

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

SECTION 1. Section 291-11.6, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Except as otherwise provided by law, no person:

(1) Shall operate a motor vehicle upon any public highway unless the person is restrained by a seat belt assembly and any passengers in the front <u>or back</u> seat of the motor vehicle are restrained by a seat belt assembly if between the ages of four and [fifteen] <u>fourteen,</u> or are restrained pursuant to section 291-11.5 if under the age of four;

(2) If fifteen years of age or more shall be a passenger in the front seat of a motor vehicle being operated upon any public highway unless such person is restrained by a seat belt assembly[.]; <u>and</u>

<u>(3) If between the ages of fifteen and seventeen, shall be a passenger in the back seat of a motor vehicle being operated upon any public highway unless such person is restrained by a seat belt assembly.</u>

As used in this section "seat belt assembly" means the seat belt assembly required to be in the motor vehicle under any federal motor vehicle safety standard issued pursuant to Public Law 89-563, the federal National Traffic and Motor

Vehicle Safety Act of 1966, as amended, unless original replacement seat belt assemblies are not readily available. If replacement assemblies are not readily available, seat belts of federally approved materials with similar protective characteristics may be used. Such replacement seat belt assemblies shall be permanently marked by the belt manufacturer indicating compliance with all applicable federal standards."

2. By amending subsection (e) to read:

"(e) A person who fails to comply with the requirements of this section shall be subject to a fine of [$20] $45 for each 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 July 3, 2000.)

## ACT 295 S.B. NO. 2863

A Bill for an Act Relating to Advance Health-Care Directives.

*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- Designation of advance health-care directive.** On the application form for any driver's license or license renewal, the examiner of drivers shall ask the applicant to designate whether the applicant has an advance health-care directive. The examiner of drivers shall issue or renew a license bearing the designation "advance health-care directive", a symbol, or an abbreviation thereof, for those applicants who have so indicated. "Advance health-care directive" means an individual instruction in writing, a living will, or a durable power of attorney for health care decisions. No specific medical treatment information shall be imprinted on the driver's license."

SECTION 2. Section 846-28, Hawaii Revised Statutes, is amended to read as follows:

"**§846-28 Information to be secured.** (a) The department of the attorney general shall require, collect, secure, make, and maintain a record of the following items of information so far as it is practicable to secure the same, with respect to each applicant for registration:

(1) The name of the person applying to be registered (hereinafter called the "registrant" or "applicant"), the street and number or address of the applicant's place of permanent residence, and the applicant's residence and business telephone numbers, if any;
(2) The applicant's occupation and any pertinent data relating thereto;
(3) The applicant's racial extraction;
(4) The applicant's citizenship;
(5) The date and place of the applicant's birth;
(6) The applicant's personal description including sex, height, weight, hair, eyes, complexion, build, scars, and marks;

(7) The applicant's right and left index fingerprints or, if the applicant has no right index finger or left index finger, other identifying imprint as specified by rules of the department; provided that this requirement shall not apply to minors until they reach the age of three years;
(8) The name, relationship, and address of the nearest relative or other person to be notified in case of sickness, accident, death, emergency, or need of the applicant, if such notification is desired; and
(9) The social security number of the applicant.

(b) The department of the attorney general, at the time of application, shall ask whether the applicant has an advance health-care directive. The department of the attorney general shall issue or renew an identification certificate bearing the designation, "advance health-care directive", a symbol, or abbreviation thereof, for each applicant who has so indicated. "Advance health-care directive" means an individual instruction in writing, a living will, or a durable power of attorney for health care decisions."

SECTION 3. There is appropriated out of the state identification revolving fund the sum of $6,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the purposes of this Act.

The sum appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 4. New statutory material is underscored.[1]

SECTION 5. This Act shall take effect on January 1, 2001; provided that section 3 shall take effect on July 1, 2000.

(Approved July 3, 2000.)

**Note**

1. Edited pursuant to HRS §23G-16.5.

## ACT 296 S.B. NO. 3073

A Bill for an Act Relating to Impaired Driving.

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

SECTION 1. 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 alcohol concentration and drug content.** (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, blood, or urine for the purpose of determining 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, or is under the age of twenty-one and has a measurable amount of alcohol concentration, only after:

(1) A lawful arrest; and

(2) The person has been informed by a police officer of the sanctions under part XIV and sections 286-151.5 and 286-157.3.

(c) If there is probable cause to believe that a person is in violation of section 291-4 [or section], 291-4.3, or 291-4.4, then the person shall have the option to take a breath or blood test, or both, for the purpose of determining the 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 286-157.3 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).

(f) The use of a preliminary alcohol screening device shall not replace a breath, blood, or urine test required under this section. The analysis from the use of a preliminary alcohol screening device shall only be used in determining probable cause for the arrest.

(g) For the purpose of this section:

"Preliminary alcohol screening device" means a device designed to detect and verify the presence of alcohol or provide an estimated value of alcohol concentration."

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, 2000.)

## ACT 297 H.B. NO. 2901

A Bill for an Act Relating to the New Economy.

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

SECTION 1. The "New Economy" is an economy based on knowledge and ideas. It is an economy where the keys to job creation and higher standards of living are innovative ideas and technology embedded in services and manufactured prod-

ucts. It is an economy where risk, uncertainty, and constant change are the rule rather than the exception. It is an economy in a world of innovation where there is rapid convergence of technology, telecommunications, and media. As a result, partnerships, such as MSNBC and AOL-Time Warner, become staples of this rapidly moving industry.

Hawaii is competing in this New Economy. Hawaii offers great advantages not available in other areas of the world: unparalleled quality of life, rich and diverse cultures, and an educated populace. In 1999, the twentieth legislature, the educational system, and administration partnered to demonstrate their commitment of support for an aggressive development of high technology resources. Act 178, Session Laws of Hawaii 1999, called for the integration of technology with some of Hawaii's industries, the increase of technology professionals through work force development programs, and the creation of economic incentives for businesses to increase high technology research activities.

Since geographic location and isolation are no longer detrimental factors when competing in a global market, the legislature believes that it must continue the effort started in 1999. The purpose of this Act is to encourage the continued growth and development of high technology businesses and associate industries.

PART I

SECTION 2. The purpose of this Part is to:

(1) Allow qualified high technology businesses to sell their unused net operating loss carryover to other taxpayers;
(2) Amend the high technology-related definitions in the income tax law;
(3) Amend the income tax exclusion for royalties and other income from high technology businesses established by section 22 of Act 178, Session Laws of Hawaii 1999, by expanding that exclusion to include royalties derived from any patent, copyright, or trade secret;
(4) Amend the section relating to operation of certain Internal Revenue Code provisions to allow partnership investors the flexibility of allocating the high technology business investment tax credit in section 235-110.9, Hawaii Revised Statutes, among partners without regard to their proportionate interests in their partnership investment vehicle;
(5) Amend the tax credit for increasing research activities under section 235-110.91, Hawaii Revised Statutes, by making the credit refundable to the taxpayer in addition to allowing the credit to be used against the taxpayer's income tax liability in subsequent years until exhausted; and
(6) Conform the tax credit for increasing research activities under section 235-110.91, Hawaii Revised Statutes, to that provided under the Internal Revenue Code, thereby increasing the tax credit from 2.5 per cent to twenty per cent to match the federal rate.

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"**§235- High technology; sale of unused net operating loss carryover.** (a) A qualified high technology business may apply to the department of taxation to sell its unused net operating loss carryover to another taxpayer. If approved by the department of taxation, a qualified high technology business may sell its unused net operating loss carryover to another taxpayer in an amount equal to at least seventy-five per cent of the amount of the surrendered tax benefit; provided that the qualified high technology business may sell no more than $500,000 of its unused net operating loss carryover to another taxpayer per year. The tax benefit purchased by the buyer

shall be claimed in the year for which the sale is approved by the department. Any use of the purchased net operating loss carryover for tax carryback or carryforward purposes shall comply with applicable law. The income from the sale of the net operating loss carryover received by the seller shall be reported on its tax return in the taxable year received but shall not be considered taxable income.

(b) No application for the sale of unused net operating losses shall be approved if the seller is a qualified high technology business that:

(1) Has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its financial statements;

(2) Has demonstrated a ratio in excess of one hundred ten per cent or greater of operating revenues divided by operating expenses in any of the two previous full years of operations as determined on its financial statements; or

(3) Is directly or indirectly at least fifty per cent owned or controlled by another corporation that has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its financial statements or is part of a consolidated group of affiliate corporations, as filed for federal income tax purposes, that in the aggregate has demonstrated positive net income in any of the two previous full years of ongoing operations as determined on its combined financial statements;

as certified and documented by a licensed certified public accountant.

(c) As used in this section, "net operating loss" means a net operating loss for income tax purposes occurring in the two taxable years preceding the year in which the sale of net operating loss carryover occurs.

(d) This section shall only apply to sales of net operating loss carryovers after December 31, 2000, and before January 1, 2004."

SECTION 4. Section 235-1, Hawaii Revised Statutes, is amended by adding five new definitions to be appropriately inserted and to read as follows:

"""Biotechnology" means fundamental knowledge regarding the function of biological systems from the macro level to the molecular and subatomic levels that has application to development including the development of novel products, services, technologies, and subtechnologies from insights gained from research advances that add to that body of fundamental knowledge.

"Computer data" means any representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared and is intended to be processed, is being processed, or has been processed in a computer or computer network.

"Computer program" means an ordered set of computer data representing coded instructions or statements, that, when executed by a computer, causes the computer to perform one or more computer operations.

"Computer software" means computer data, a computer program, or a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

"Investment" means a nonrefundable investment, at risk, as that term is used in section 465 (with respect to deductions limited to amount at risk) of the Internal Revenue Code, in a qualified high technology business, of cash that is transferred to the qualified high technology business, the transfer of which is in connection with a transaction in exchange for stock, interests in partnerships, joint ventures, or other entities, licenses (exclusive or nonexclusive), rights to use tech-

nology, marketing rights, warrants, options, or any items similar to those included in this definition, including but not limited to options or rights to acquire any of the items included in this definition. The nonrefundable investment is entirely at risk of loss where repayment depends upon the success of the qualified high technology business. If the money invested is to be repaid to the taxpayer, no repayment except for dividends or interest shall be made for at least one year from the date the investment is made. The annual amount of any dividend and interest payment to the taxpayer shall not exceed twelve per cent of the amount of the investment."

SECTION 5. Section 235-2.4, Hawaii Revised Statutes, is amended to read as follows:

"**§235-2.4 Operation of certain Internal Revenue Code provisions[.]; sections 63 to 530.** (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.

The standard deduction amount for nonresidents shall be calculated pursuant to section 235-5.

(b) Section 72 (with respect to annuities; certain proceeds of endowment and life insurance contracts) of the Internal Revenue Code shall be operative for purposes of this chapter and be interpreted with due regard to section 235-7(a), except that the ten per cent additional tax on early distributions from retirement plans in section 72(t) shall not be operative for purposes of this chapter.

(c) Section 121 (with respect to exclusion of gain from sale of principal residence) of the Internal Revenue Code shall be operative for purposes of this chapter, except that for the election under section 121(f), a reference to section 1034 treatment means a reference to section 235-2.4(n) in effect for taxable year 1997.

(d) 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.

(e) Section 220 (with respect to medical savings accounts) of the Internal Revenue Code shall be operative for the purpose 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.

(f) Section 408A (with respect to Roth Individual Retirement Accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purposes of determining the aggregate amount of contributions to a Roth Individual Retirement Account or qualified rollover contribution to a Roth Individual Retire-

ment Account from an individual retirement plan other than a Roth Individual Retirement Account, adjusted gross income as used in section 408A as operative for this chapter means federal adjusted gross income.

(g) 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.

(h) Section 468B (with respect to special rules for designated settlement funds) 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 a rate equal to the maximum rate in effect for the taxable year imposed on estates and trusts under section 235-51.

(i) Section 469 (with respect to passive activities and credits limited) of the Internal Revenue Code 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.

(j) 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] that 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.

(k) Section 521 (with respect to cooperatives) and subchapter T (sections 1381 to 1388, with respect to cooperatives and their patrons) of the Internal Revenue Code 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.

(l) Sections 527 (with respect to political organizations) and 528 (with respect to certain homeowners associations) of the Internal Revenue Code 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.

(m) Section 530 (with respect to education individual retirement accounts) of the Internal Revenue Code shall be operative for the purposes of this chapter. For the purpose of determining the maximum amount that a contributor could make to an

education individual retirement account for state income tax purposes, modified adjusted gross income as used in section 530 as operative for this chapter means federal modified adjusted gross income as defined in section 530.

[(n)] **§235-2.45 Operation of certain Internal Revenue Code provisions; sections 641 to 7518.** (a) 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[.]; and

(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.

[(o)] (b) 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.

[(p)] (c) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying section 685(c)(3) under this chapter.

(d) Section 704 of the Internal Revenue Code (with respect to a partner's distributive share) shall be operative for purposes of this chapter; except that subsection (b)(2) shall not apply to allocations of the high technology business investment tax credit allowed by section 235-110.9.

[(q)] (e) 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[.]; except for a qualified high technology business as defined in section 235-7.3, which shall be limited to fifteen years.

[(r)] (f) 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.

[(s)] (g) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

[(t)] (h) 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.

[(u)] (i) Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall

be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

[(v)] (j) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

[(w)] (k) 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] that 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 6. Section 235-7.3, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§235-7.3[]] Royalties [and other income from high technology business] derived from patents, copyrights, or trade secrets excluded from gross income.** (a) In addition to the exclusions in section 235-7, there shall be excluded from gross income, adjusted gross income, and taxable income, amounts received by an individual or a qualified high technology business as royalties and other income derived from any[1] patents [and], copyrights[:], and trade secrets:

(1) Owned by the individual or qualified high technology business; and

(2) Developed and arising out of a qualified high technology business.

(b) For the purposes of this section:

["Computer software" means a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.]

"Performing arts products" means:

(1) Audio files, video files, audiovideo files, computer animation, and other entertainment products perceived by or through the operation of a computer; and

(2) Commercial television and film products for sale or license, and reuse or residual fee payments from these products.

"Qualified high technology business" means a business [performing] conducting more than fifty per cent of its activities in qualified research. The term "qualified high technology business" does not include:

(1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, [performing arts,] consulting, athletics, financial services, or brokerage services;

(2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;

(3) Any business operating a hotel, motel, restaurant, or similar business; and

(4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

"Qualified research" means:
(1) The same as in section 41(d) of the Internal Revenue Code; [or]
(2) [Developing, designing, modifying, programming, and licensing computer software.] The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases of sale or license;
(3) Biotechnology; or
(4) Performing arts products."

SECTION 7. Section 235-9.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§235-9.5[]] Stock options from qualified high technology businesses exempt from taxation.** (a) Notwithstanding any law to the contrary, all income received from stock options from a qualified high technology business by an employee, officer, or director, or investor who qualifies for the credit under section 235-110.9, that would otherwise be taxed as ordinary income or as capital gains to those [employees] persons is exempt from taxation under this chapter.

(b) For the purposes of this section:

["Computer software" means a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.]

"Qualified high technology business" means a business [performing] conducting more than fifty per cent of its activities in qualified research. The term "qualified high technology business" does not include:
(1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, [performing arts,] consulting, athletics, financial services, or brokerage services;
(2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;
(3) Any business operating a hotel, motel, restaurant, or similar business; and
(4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

"Qualified research" means:
(1) The same as in section 41(d) of the Internal Revenue Code; or
(2) [Developing, designing, modifying, programming, and licensing computer software.] The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases for sale or license; or
(3) Biotechnology."

SECTION 8. Section 235-110.9, Hawaii Revised Statutes, is amended to read as follows:

"[[]§235-110.9[]] [High-technology] High technology business investment tax credit. (a) There shall be allowed to each taxpayer, subject to the taxes imposed by this chapter, a high technology investment tax credit that 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 tax credit shall be an amount equal to ten per cent of the investment made by the taxpayer in each qualified high technology business, up to a maximum allowed credit of $500,000 for the taxable year for the investment made by the taxpayer in a qualified high technology business.

(b) 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.

(c) If the tax credit under this section exceeds the taxpayer's income tax liability, the excess of the tax credit over liability may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted. 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.

(d) As used in this section:

["Computer software" means a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

"Investment" means a nonrefundable investment, at risk, as that term is used in section 465 (with respect to deductions limited to amount at risk) of the Internal Revenue Code, in a qualified high technology business, of cash that is transferred to the qualified high technology business, the transfer of which is in connection with a transaction in exchange for stock, interests in partnerships, joint ventures, or other entities, licenses (exclusive or nonexclusive), rights to use technology, marketing rights, warrants, options, or any items similar to those included herein, including but not limited to options or rights to acquire any of the items included herein. The nonrefundable investment is entirely at risk of loss where repayment depends upon the success of the qualified high technology business. If the money invested is to be repaid to the taxpayer, no repayment except for dividends or interest shall be made for at least three years from the date the investment is made. The annual amount of any dividend and interest payment to the taxpayer shall not exceed twelve per cent of the amount of the investment.

(e) For the purposes of this section:]

"Qualified high technology business" means[:

(1) A]

a business, employing or owning capital or property, or maintaining an office, in this State[; and which] that:

[(2) (A) Conducts one hundred] (1) More than fifty per cent of [its] whose total business activities [in performing] are qualified research [in this State; or] ; provided that the business conducts more than seventy-five per cent of its qualified research in this State; or

[(B) Received[2] one hundred] (2) More than seventy-five per cent of its gross income is derived from qualified research; provided that the income is received from [products]:

(A) Products sold from, manufactured[,] in, or produced in the State; or [services]

(B) Services performed in this State.

The term "qualified high technology business" does not include:

(1) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, [performing arts,] consulting, athletics, financial services, or brokerage services;

(2) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;

(3) Any business operating a hotel, motel, restaurant, or similar business; and

(4) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

"Qualified research" means:

(1) The same as in section 41(d) of the Internal Revenue Code; [or]

(2) [Developing, designing, modifying, programming, and licensing computer software;] The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases for sale or license; or

(3) Biotechnology;

[except that it shall not include research conducted outside the State.][3]

(f)] (e) This section shall not apply to taxable years beginning after December 31, 2005."

SECTION 9. Section 235-110.91, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§235-110.91[]] Tax credit for increasing research activities.** (a) Section 41 (with respect to the credit for increasing research activities) and section 280C(c) (with respect to certain expenses for which the credit for increasing research activities are allowable) of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in this section. If section 41 of the Internal Revenue Code is repealed or terminated prior to January 1, 2006, its provisions shall remain in effect for purposes of the income tax law of the State as provided for in subsection (h).

(b) All references to Internal Revenue Code sections within sections 41 and 280C(c) of the Internal Revenue Code shall be operative for purposes of this section.

(c) There shall be allowed to each taxpayer, subject to the tax imposed by this chapter, an income tax credit for increased research activities [that] equal to the credit for research activities provided by section 41 of the Internal Revenue Code. The credit 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.

[(d) The tax credit for increased research activities shall be equal to the sum of:

(1) 2.5 per cent of the excess (if any) of:
   (A) The qualified research expenses for the taxable year; over
   (B) The base amount; and

(2) 2.5 per cent of the basic research payments determined under section 41(e)(1)(A) of the Internal Revenue Code.

(e) For purposes of this section:

(1) The alternative incremental credit in section 41(c)(4) of the Internal Revenue Code shall be equal to the sum of 12.5 per cent of:

(A) 1.65 per cent of so much of the qualified research expenses for the taxable year as exceeds one per cent of the average described in section 41(c)(1)(B) but does not exceed 1.5 per cent of such average;

(B) 2.2 per cent of so much of those expenses as exceeds 1.5 per cent of the average but does not exceed two per cent of the average; and

(C) 2.75 per cent of so much of those expenses as exceeds two per cent of the average;

(2) The term "qualified research"]

(d) As used in this section:

"Qualified research" under section 41(d)(1) of the Internal Revenue Code shall not include research conducted outside of the State[; and].

[(3) The term "basic research"]

"Basic research" under section 41(e) of the Internal Revenue Code shall not include research conducted outside of the State.

[(f) The amount of reduced credit in section 280C(c)(3)(B) of the Internal Revenue Code shall be equal to the excess of:

(1) The amount of credit determined under section 41(a) (as provided for in this section) (without regard to this paragraph); over

(2) The product of:

(A) The amount described in subsection (f)(1); and

(B) 12.5 per cent of the maximum rate of tax under section 11(b)(1) of the Internal Revenue Code.

(g)] (e) If the tax credit for increased research activities claimed by a taxpayer exceeds the amount of income tax payment due from the taxpayer, the excess of the tax credit over payments due [may be used as a credit against the taxpayer's income tax liability in subsequent years until exhausted.] shall be refunded to the taxpayer; provided that no refund on account of the tax credit allowed by this section shall be made for amounts less than $1.

[(h)] (f) All claims for a tax credit under this section [must] 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 properly claim the credit shall constitute a waiver of the right to claim the credit.

[(i)] (g) The director of taxation may adopt any rules under chapter 91 and forms necessary to carry out this section.

[(j)] (h) This section shall not apply to taxable years beginning after December 31, 2005."

SECTION 10. It is the intention of the legislature in making amendments in this Part to sections 235-7.3, 235-9.5, 235-110.9, and 235-110.91, Hawaii Revised Statutes, that the amendments be liberally construed, and in this regard, the department of taxation is given latitude to interpret those amendments in light of current industry standards. The amendments made in this Part to sections 235-7.3, 235-9.5, 235-110.9, and 235-110.91, Hawaii Revised Statutes, shall not be construed to disqualify any taxpayer who has received a favorable written determination from the department of taxation under the original provisions of those sections as enacted by Act 178, Session Laws of Hawaii, 1999.

PART II

SECTION 11. The legislature finds that the shortage of venture capital in Hawaii makes it difficult for local high technology businesses to obtain the necessary financing to develop products, enter new markets, and expand on their early success. The purpose of this Part is to allow the board of trustees of the employees' retirement system to invest in Hawaii high technology businesses or venture capital investments.

SECTION 12. Section 88-119, Hawaii Revised Statutes, is amended to read as follows:

"**§88-119 Investments.** Investments may be made in:

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

respective leasehold interest and improvements, and except that the amount of the obligation at the time investment is made therein may exceed eighty per cent but no more than ninety per cent of the value of the leasehold interest and improvements mortgaged to secure it;

provided further that the obligation is insured or guaranteed against default or loss under a mortgage insurance policy issued by a casualty insurance company licensed to do business in the State. The coverage provided by the insurer shall be sufficient to reduce the system's exposure to not more than eighty per cent of the value of the leasehold interest and improvements mortgaged to secure it. The insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the leasehold interest and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board of trustees;

(F) Obligations for the repayment of home loans guaranteed by the department of Hawaiian home lands pursuant to section 214(b) of the Hawaiian Homes Commission Act, 1920; and

(G) Obligations secured by second mortgages on improved real estate for which the mortgagor procures a second mortgage on the improved real estate for the purpose of acquiring the leaseholder's fee simple interest in the improved real estate; provided that any prior mortgage does not contain provisions that might jeopardize the security position of the retirement system or the borrower's ability to repay the mortgage loan.

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

(2) Government obligations, etc. Obligations of any of the following classes:

(A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof or by any municipal or political subdivision or school district of any of the foregoing; provided that principal of and interest on such obligations are payable in currency of the United States; or sovereign debt instruments issued by agencies of, or guaranteed by foreign governments;

(B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any municipal or political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State; and

(C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;

(3) Corporate obligations. Below investment grade or nonrated debt instruments, foreign or domestic, in accordance with investment guidelines adopted by the board of trustees;

(4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof or of any country;

(5) Obligations eligible by law for purchase in the open market by federal reserve banks;

(6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank;

(7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth at the time the investment is made at least fifteen per cent more than the amount of the respective obligations;

(8) Insurance company obligations. Contracts and agreements supplemental thereto providing for participation in one or more accounts of a life insurance company authorized to do business in Hawaii, including its separate accounts, and whether the investments allocated thereto are comprised of stocks or other securities or of real or personal property or interests therein;

(9) Interests in real property. Interests in improved or productive real property in which, in the informed opinion of the board of trustees, it is prudent to invest funds of the system. For purposes of this paragraph, "real property" includes any property treated as real property either by local law or for federal income tax purposes. Investments in improved or productive real property may be made directly or through pooled funds, including common or collective trust funds of banks and trust companies, group or unit trusts, limited partnerships, limited liability companies, investment trusts, title-holding corporations recognized under section 501(c) of the Internal Revenue Code of 1986, as amended, similar entities that would protect the system's interest, and other pooled funds invested on behalf of the system by investment managers retained by the system;

(10) Other securities and futures contracts. Securities and futures contracts in which in the informed opinion of the board of trustees it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on such contracts to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system's securities portfolios; covered put and call options on securities; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitation of any of the foregoing paragraphs (including paragraph (4)); and

(11) Private placements. Investments in institutional blind pool limited partnerships or direct investments that make private debt and equity investments in privately held companies[.], <u>including but not limited to investments in Hawaii high technology businesses or venture capital investments that, in the informed opinion of the board of trustees, are appropriate to invest funds of the system. In evaluating venture capital investments, the board of trustees shall consider, among other things, the impact an investment may have on job creation in Hawaii and on the state economy.</u>"

PART III

SECTION 13. The legislature finds that there is a need to expand educational programs in science and math at Hawaii's "E Academies", which were established by section 17 of Act 178, Session Laws of Hawaii 1999. These programs were created to give students greater opportunities in new educational technologies, and provide relevant, challenging, and meaningful course offerings for students interested in pursuing a career in advanced technology fields. The legislature finds that the use of "E Academies", which are virtual, site-based schools that provide students with industry and academic standards-based instruction and assessments in technology, science, math, and engineering, offer enhanced opportunities to students who are interested in furthering their preparation for technology positions or who are interested in advanced studies in post secondary information technology, science, engineering, and math.

By funding the laptops for learning program, the legislature provides constant access to computer education and reduces the digital divide by providing opportunities for all regardless of economic status.

The legislature also finds that there is a need for Hawaii's public community colleges to develop training programs to improve the skills of students in those colleges for jobs in the new economy, in such industries as biotechnology, health care, information technology, environmental science and technology, and telecommunications. The development of new or enhanced programs in these and related areas at the State's community colleges will help to lessen the need to import workers and increase job opportunities for Hawaii's residents by improving their skills in these areas.

The legislature acknowledges the following appropriations, which have been included under the Supplemental Appropriations Act of 2000:

(1) $1,000,000 for fiscal year 2000-2001 to conduct advanced communications research at the University of Hawaii's college of engineering;

(2) $1,000,000 for fiscal year 2000-2001 for the expansion of research, scholarship, and instruction in electronic commerce at the University of Hawaii's college of business administration;

(3) $1,000,000 for fiscal year 2000-2001 to conduct research in molecular genetics at the University of Hawaii's school of medicine;

(4) $1,000,000 for fiscal year 2000-2001 to be expended by the University of Hawaii's community colleges to establish the Pacific center for advanced technology training where a coordinated statewide approach to designing and delivering customized training to the high technology industry in Hawaii will be implemented; and

(5) $677,808 for fiscal year 2000-2001 to develop new programs and enhance existing programs at the University of Hawaii at Hilo to prepare students for the workforce of the new economy.

The legislature further finds that funding programs related to developing the new economy at the University of Hawaii will lessen the need to import workers and increase job opportunities for Hawaii's residents by improving their skills in these areas.

The purpose of this Part is to appropriate funds:

(1) To expand the department of education's E Academies; and

(2) For the high technology development corporation for marketing and promoting high technology development in Hawaii.

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of $800,000 or so much thereof as may be necessary for fiscal year 2000-2001 for the expansion of the department of education's E Academies to

provide students at virtual onsite locations based at selected high schools with industry and academic standards-based instruction and assessments in technology, science, math, and engineering, and for the laptops for learning program.

The sum appropriated shall be expended by the department of education for the purposes of this Part.

SECTION 15. There is appropriated out of the general revenues of the State of Hawaii the sum of $200,000 or so much thereof as may be necessary for fiscal year 2000-2001 for marketing and promoting high technology development in Hawaii by the high technology development corporation.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Part.

PART IV

SECTION 16. The legislature finds that the governor's special advisory council for technology development, which was established under section 3 of Act 178, Session Laws of Hawaii 1999, has the potential to make significant contributions to the development of the State's high technology industry. The intent of the advisory council was to attract leaders in high technology development from around the world to Hawaii. However, the legislature finds it highly unlikely that these individuals will come to Hawaii for this purpose if they are faced with a possibly lengthy senate confirmation process and must file financial disclosure forms with the state ethics commission.

The legislature finds that there is no reason to subject these individuals to confirmation hearings and the filing of ethics disclosure forms, in view of the fact that the advisory council is strictly advisory in nature and the members of that council have no influence over spending or budgetary matters. The legislature also recognizes the need to bring in persons who have international prestige and expertise in high technology. It would be extremely difficult to find such highly qualified people to serve on the council before its expiration on December 31, 2005. Accordingly, the purpose of this Part is to exempt the members of the governor's special advisory council for technology development from the senate confirmation process and from the need to file a disclosure of financial interests with the state ethics commission.

SECTION 17. Section 27-42, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§27-42[]] Governor's special advisory council for technology development; establishment; appointment, number, and term of members; duties.** (a) There is established within the office of the governor, for administrative purposes, an advisory council to be known as the governor's special advisory council for technology development, that shall review and make recommendations on matters relating to the marketing and promotion of Hawaii as a location for high technology companies. The council shall be composed of at least eleven but no more than twenty-five members appointed [in accordance with] <u>not subject to</u> section 26-34, and shall include representatives of the high technology industry, business leaders, educators, government leaders, and legislators.

(b) The members shall be appointed by the governor for four years, except that the terms of the members first appointed shall be for two and four years, respectively, as designated by the governor at the time of appointment. The council shall elect a chairperson from among its members.

(c) In appointing members, the governor shall select persons who have knowledge of the high technology industry, the educational needs of the industry, or in the marketing and promotion of high technology industries. The members of the council shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(d) The council shall assist the special advisor for technology development in developing and coordinating the marketing and promotion of the high technology industry in Hawaii.

(e) In carrying out the duties of this section, the council shall seek and [utilize] use any available funding sources, including grant moneys.

(f) The council shall develop, establish, and implement ethics and conflict of interest guidelines for its members.

[(f)] (g) This section is repealed on December 31, 2005."

SECTION 18. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:

(1) The governor, the lieutenant governor, the members of the legislature, and delegates to the constitutional convention; provided that delegates to the constitutional convention shall only be required to file initial disclosures;
(2) The directors and their deputies, the division chiefs, the executive directors and the executive secretaries and their deputies, the purchasing agents and the fiscal officers, regardless of the titles by which the foregoing persons are designated, of every state agency and department;
(3) The permanent employees of the legislature and its service agencies, other than persons employed in clerical, secretarial, or similar positions;
(4) The administrative director of the State, and the assistants in the office of the governor and the lieutenant governor, other than persons employed in clerical, secretarial, or similar positions;
(5) The hearings officers of every state agency and department;
(6) The president, the vice presidents, assistant vice presidents, the chancellors, and the provosts of the University of Hawaii and its community colleges;
(7) The superintendent, the deputy superintendent, the assistant superintendents, the district superintendents, the state librarian, and the deputy state librarian of the department of education;
(8) The administrative director and the deputy director of the courts;
(9) The members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory; provided that the governor's special advisory council for technology development established pursuant to section 27-42 not otherwise subject to this subsection shall be exempt from this subsection;
(10) Candidates for state elective offices, including candidates for election to the constitutional convention, provided that candidates shall only be required to file initial disclosures; and
(11) The administrator and assistant administrator of the office of Hawaiian affairs."

PART V

SECTION 19. The legislature finds that the internet is a critical component of the new economy because of its enormous potential to increase efficiency and raise productivity. Internet commerce, which is probably the most significant component of electronic commerce, or "e-commerce", includes such areas as online financial services, consumer retail and business-to-business transactions, media, infrastructure, and consumer and business internet access services.

The legislature further finds that the total United States internet economy more than doubled between 1996 and 1997, from $15,500,000,000 to $38,800,000,000. By 2001, it has been projected that the total United States internet economy will be over $350,000,000,000. Of this amount, business-to-business e-commerce is expected to account for the largest share, while consumer retail activity is expected to emerge more slowly, totaling over $18,000,000,000 in the year 2001.

The purpose of this Part is to increase the State's share of this significant economic activity and the facilitation of e-commerce in Hawaii through the development of partnerships between the Hawaii tourism authority and Hawaii's business community to promote the State, through a coordinated statewide effort, as an internet and server-friendly place to conduct electronic commerce.

SECTION 20. Section 201B-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The authority may enter into contracts and agreements that include the following:

(1) Tourism promotion, marketing, and development;
(2) Market development-related research;
(3) Product development and diversification issues;
(4) Promotion, development, and coordination of sports-related activities and events;
(5) Promotion of Hawaii, through a coordinated statewide effort, as a place to do high technology business;
[(5)] (6) Reduction of barriers to travel;
[(6)] (7) Tourism public information and educational programs;
[(7)] (8) Programs to monitor and investigate complaints about the problems resulting from the tourism industry in the State; and
[(8)] (9) Any and all other activities necessary to carry out the intent of this chapter;

provided that for the purposes of continuity, the Hawaii Visitors and Convention Bureau shall be the designated agency to conduct the marketing and promotion of the State until the end of fiscal year 1998-1999 or until a date specified by the board."

PART VI

SECTION 21. The purpose of this Part is to improve the effectiveness of the high technology development corporation by providing increased autonomy and authority over its personnel and fiscal matters.

SECTION 22. Chapter 206M, Hawaii Revised Statutes, is amended as follows:

1. By adding four new sections to be appropriately designated and to read:

"**§206M- Hawaii technology loan revolving fund.** There is established the Hawaii technology loan revolving fund for the purpose of investing in technol-

ogy development in Hawaii. The following shall be deposited into the Hawaii technology loan revolving fund:

(1) Appropriations from the legislature;
(2) Moneys received as repayments of loans;
(3) Investment earnings;
(4) Royalties;
(5) Premiums, or fees or equity charged by the corporation, or otherwise received by the corporation; and
(6) Loans that are convertible to equity;

provided that the total amount of moneys in the fund shall not exceed $2,000,000 at the end of any fiscal year.

**§206M- Contracts for services necessary for management and operation of corporation.** The corporation may contract with others, public or private persons, for the provision of all or a portion of the services necessary for the management and operation of the corporation. The corporation shall have the power to use all appropriations, grants, contractual reimbursements, and all other funds not appropriated for a designated purpose to pay for the proper general expenses and to carry out the purposes of the corporation.

**§206M- Confidentiality of trade secrets or the like; disclosure of financial information.** (a) Notwithstanding chapters 92, 92F, or any other law to the contrary, any documents or data made or received by any member or employee of the corporation shall not be a public record to the extent that the material or data:

(1) Consists of trade secrets;
(2) Consists of commercial or financial information regarding the operation of any business conducted by an applicant for, or recipient of, any form of assistance that the corporation is empowered to render; or
(3) Relates to the competitive position of that applicant in a particular field of endeavor;

provided that if the corporation purchases a qualified security from an applicant, the commercial and financial information, excluding confidential business information, shall be deemed to become a public record of the corporation. If the information is made or received by any member or employee of the corporation after the purchase of the qualified security, it shall become a public record three years from the date the information was made or received.

(b) Any discussion or consideration of trade secrets or commercial or financial information shall be held by the board, or the subcommittee of the board, in executive sessions closed to the public; provided that the purpose of any such executive session shall be set forth in the official minutes of the corporation, and business that is not related to that purpose shall not be transacted nor shall any vote be taken during the executive sessions.

**§206M- Limitation on liability.** Chapters 661 and 662 or any other law to the contrary notwithstanding, nothing in this chapter shall create an obligation, debt, claim, cause of action, claim for relief, charge, or any other liability of any kind whatsoever in favor of any person or entity, against the State or its officers and employees, without regard to whether that person or entity receives any benefits under this chapter. The State and its officers and employees shall not be liable for the results of any investment, purchase of securities, loan, or other assistance provided pursuant to this chapter. Nothing in this chapter shall be construed as authorizing any claim against the corporation in excess of any note, loan, or other specific indebtedness incurred by the corporation or in excess of any insurance policy acquired for the corporation or its employees."

2. By amending section 206M-1 by adding two new definitions to be appropriately inserted and to read:

"'"Direct investment" means an investment by the corporation in qualified securities of an enterprise to provide capital to an enterprise.

"Qualified security" means any note, stock, treasury stock bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, preorganization certificate of subscription, transferable share, investment contract, certificate of deposit for a security, certificate of interest or participation in a patent or patent application, or in royalty or other payments under such a patent or application, or, in general, any interest or instrument commonly known as a "security" or any certificate for, receipt for, or option, warrant, or right to subscribe to or purchase any of the foregoing."

SECTION 23. 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,[4] 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 department of education;
(3) Special funds of the University of Hawaii;
(4) State educational facilities improvement special fund;
(5) Convention center capital and operations special fund under section 206X-10.5;
(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 321-1.3;
(11) Spouse and child abuse special account under section 346-7.5;
(12) Spouse and child abuse special account under section 601-3.6;
(13) Funds of the employees' retirement system created by section 88-109;
(14) Unemployment compensation fund established under section 383-121;
(15) Hawaii hurricane relief fund established under chapter 431P;
(16) Hawaii health systems corporation special funds;
(17) Boiler and elevator safety revolving fund established under section 397-5.5;
(18) Tourism special fund established under section 201B-11;
(19) Department of commerce and consumer affairs' special funds;
(20) Compliance resolution fund established under section 26-9;
(21) Universal service fund established under chapter 269;
(22) Integrated tax information management systems special fund under section 231-3.2;
(23) Insurance regulation fund under section 431:2-215;
(24) Hawaii tobacco settlement special fund under section 328L-2; [and]
(25) Emergency budget and reserve fund under section 328L-3; and
(26) High technology special fund under section 206M-15.5;

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 24. 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 department of education;
(4) Special funds 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 321-1.3;
(9) Spouse and child abuse special account under section 346-7.5;
(10) Spouse and child abuse special account under section 601-3.6;
(11) Funds of the employees' retirement system created by section 88-109;
(12) Unemployment compensation fund established under section 383-121;
(13) Hawaii hurricane relief fund established under chapter 431P;
(14) Convention center capital and operations special fund established under section 206X-10.5;
(15) Hawaii health systems corporation special funds;
(16) Tourism special fund established under section 201B-11;
(17) Compliance resolution fund established under section 26-9;
(18) Universal service fund established under chapter 269;
(19) Integrated tax information management systems special fund;
(20) Insurance regulation fund under section 431:2-215;
(21) Hawaii tobacco settlement special fund under section 328L-2; [and]
(22) Emergency and budget reserve fund under section 328L-3; and
(23) High technology special fund under section 206M-15.5;

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 25. Section 206M-2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) There is established the high technology development corporation, which shall be a public body corporate and politic and an instrumentality and agency of the State. The development corporation shall be placed within the department of business, economic development, and tourism for administrative purposes, pursuant to section 26-35. The purpose of the development corporation shall be to facilitate the growth and development of the commercial high technology industry in Hawaii. Its duties shall include, but not be limited to: [developing]

(1) Developing and encouraging industrial parks as high technology innovation centers and the developing of projects within or outside of industrial parks[; providing], including participating with the private sector in such development;
(2) Providing support and services to Hawaii-based high technology companies; [collecting]

(3) Collecting and analyzing information on the state of commercial high technology activity in Hawaii; [promoting]
(4) Promoting and marketing Hawaii as a site for commercial high technology activity; [and providing]
(5) Providing advice on policy and planning for technology-based economic development.

(b) The governing body of the development corporation shall consist of a board of directors having [nine] eleven voting members. Seven of the members shall be appointed by the governor for staggered terms pursuant to section 26-34. Six of the appointed members shall be from the general public and selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, and telecommunications, and other high technology fields. The other appointed member shall be selected from the faculty of the University of Hawaii. All appointed members of the board shall continue in office until their respective successors have been appointed. The director of business, economic development, and tourism [and], the director of finance, an appointed member from the board of the Hawaii strategic development corporation, and an appointed member from the board of the natural energy laboratory of Hawaii authority, or their designated representatives, shall serve as ex officio voting members of the board. The director of business, economic development, and tourism shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect such other officers as it deems necessary."

SECTION 26. Section 206M-2.5, Hawaii Revised Statutes, is amended to read as follows:

"[]§206M-2.5[] **Meetings of the board.** (a) The meetings of the board shall be open to the public as provided in section 92-3, except that when it is necessary for the board to receive information that is proprietary to a particular enterprise that seeks entry into or use of one of its facilities or the disclosure of which might be harmful to the business interests of the enterprise, the board may enter into an executive meeting that is closed to the public.

(b) The board shall be subject to the procedural requirements of section 92-4, and this authorization shall be an addition to the exceptions listed in section 92-5, to enable the development corporation to respect the proprietary requirements of enterprises with which it has business dealings.

(c) The board shall be exempt from section 26-35(4) and (5)."

SECTION 27. Section 206M-3, Hawaii Revised Statutes, is amended to read as follows:

"**§206M-3 Powers, generally.** (a) The development corporation shall have all the powers necessary to carry out its purposes, including the [following powers:] powers to:

(1) [To sue] Sue and be sued;
(2) [To have] Have a seal and alter the same at its pleasure;
(3) [To make] Make and execute, enter into, amend, supplement, and carry out contracts and all other instruments necessary or convenient for the exercise of its powers and functions under this chapter including, subject to approval of the governor, a project agreement with a qualified person, and any other agreement whereby the obligations of a qualified person under a project agreement shall be unconditionally

guaranteed or insured by, or the performance thereof assigned to, or guaranteed or insured by, a person or persons other than the qualified person; and [to] grant options or renew any project agreement entered into by it in connection with any project or industrial park, on terms and conditions as it deems advisable;

(4) [To make] Make and alter bylaws for its organization and internal management;

(5) [To adopt] Adopt rules under chapter 91 necessary to effectuate this chapter in connection with industrial parks, projects, and the operations, properties, and facilities of the development corporation;

(6) Through its chief executive officer, [to] appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, without regard to chapters 76 and 77;

(7) [To prepare] Prepare or cause to be prepared development plans for industrial parks;

(8) [To acquire,] Acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and [to] assign, exchange, transfer, convey, lease, sublease, or encumber any project including by way of easements;

(9) [To construct,] Construct, reconstruct, rehabilitate, improve, alter, or repair, or provide for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project and [to] designate a qualified person as its agent for such purpose[, and to own,];

(10)[5] Own hold, assign, transfer, convey, exchange, lease, sublease, or encumber any project;

[(10)] (11) [To arrange] Arrange or initiate appropriate action for the planning, replanning, opening, grading, or closing of streets, roads, roadways, alleys, easements, or other places, the furnishing of improvements, the acquisition of property or property rights, or the furnishing of property or services in connection with an industrial park;

[(11)] (12) [To prepare] Prepare, or cause to be prepared, plans, specifications, designs, and estimates of cost for the construction, reconstruction, rehabilitation, improvement, alteration, or repair of any project or industrial park, and from time to time [to] modify such plans, specifications, designs, or estimates;

[(12)] (13) [To engage] Engage the services of consultants on a contractual basis for rendering professional and technical assistance and advice;

[(13)] (14) [To procure] Procure insurance against any loss in connection with its property and other assets and operations in such amounts and from such insurers as it deems desirable;

[(14)] (15) [To accept] Accept and expend gifts or grants in any form from any public agency or from any other source;

[(15)] (16) [To issue] Issue bonds pursuant to this chapter in such principal amounts as may be authorized from time to time by law to finance the cost of a project or an industrial park as authorized by law and [to] provide for the security thereof as permitted by this chapter;

[(16)] (17) [To lend] Lend or otherwise apply the proceeds of the bonds issued for a project or an industrial park either directly or through a trustee or a qualified person for use and application in the acquisition, construction, installation, or modification of a project or industrial park, or agree with the qualified person whereby any of these activities shall be undertaken or supervised by that qualified person or by a person designated by the qualified person;

[(17)] (18) With or without terminating a project agreement, [to] exercise any and all rights provided by law for entry and [re-entry] reentry upon or [to] take possession of a project at any time or from time to time upon breach or default by a qualified person under a project agreement, including any action at law or in equity for the purpose of effecting its rights of entry or [re-entry] reentry or obtaining possession of the project or for the payments of rentals, user taxes, or charges, or any other sum due and payable by the qualified person to the development corporation pursuant to the project agreement;

[(18)] (19) [To enter] Enter into arrangements with qualified county development entities whereby the board would provide financial support to qualified projects proposed;

[(19)] (20) [To create] Create an environment in which to support high technology economic development, including but not limited to: supporting all aspects of technology-based economic development; developing instructive programs, identifying issues and impediments to the growth of high technology industry in Hawaii; and providing policy analysis and information important to the development of high technology industries in Hawaii;

[(20)] (21) [To develop] Develop programs that support start-up and existing high technology companies in Hawaii and [to] attract new companies to relocate to or establish operations in Hawaii by assessing the needs of these companies and providing the physical and technical infrastructure to support their operations;

[(21)] (22) [To coordinate] Coordinate its efforts with other public and private agencies involved in stimulating technology-based economic development in Hawaii, including but not limited to: the department of business, economic development, and tourism; the Pacific international center for high technology research; and the office of technology transfer and economic development of the University of Hawaii;

[(22)] (23) [To promote] Promote and market Hawaii as a site for commercial high technology activity[;], including the expenditure of funds for protocol purposes at the discretion of the board;

[(23)] (24) [To provide] Provide advice on policy and planning for technology-based economic development; [and]

(25) Finance, conduct, or cooperate in financing or conducting technological, business, financial, or other investigations that are related to or likely to lead to business, technology, and economic development by making and entering into contracts and other appropriate arrangements, including the provision of loans, start-up and expansion capital, loan guaranty, loans convertible to equity, equity charged and received by the corporation, and other forms of assistance;

(26) Solicit, study, and assist in the preparation of business plans and proposals of new or established businesses;

(27) Provide advice, technical and marketing assistance, support, and promotion to enterprises in which investments have been made;

(28) Acquire, hold, and sell qualified securities;

(29) Consent, subject to the provisions of any contract with noteholders or bondholders, whenever the corporation deems it necessary or desirable in the fulfillment of the purposes of this chapter, to the modification, with respect to rate of interest, time of payment of any installment of principal or interest, or any other terms, of any contract or agreement of any kind to which the corporation is a party;

(30) Invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in such investments as may be lawful for fiduciaries in the State; and

[(24) To do] (31) Do all things necessary or proper to carry out the purposes of this chapter.

(b) The corporation shall be exempt from chapters 102 and 103D."

SECTION 28. Section 206M-15.5, Hawaii Revised Statutes, is amended to read as follows:

"**[[]§206M-15.5[]] High technology special fund.** There is established in the state treasury a fund to be known as the high technology special fund, into which shall be deposited all moneys [and], fees, and equity from tenants or other users of the development corporation's industrial parks, projects, other leased facilities, and other services and publications[.]; provided that the total amount of moneys in the fund shall not exceed $3,000,000 at the end of any fiscal year. All moneys in the fund are hereby appropriated for the purposes of and shall be expended by the development corporation for the operation, maintenance, and management of its industrial parks, projects, facilities, services, and publications."

SECTION 29. Section 210-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) There is established the Hawaii capital loan revolving fund into which shall be deposited all moneys received as repayment of loans and interest payments as provided in this chapter. The department may utilize a portion of the moneys contained in the Hawaii capital loan revolving fund for programs associated with administering the fund and its mandated purpose. The department may transfer moneys from the Hawaii capital loan revolving fund established by this section to the Hawaii technology loan revolving fund established by section 206M- , the state disaster revolving loan fund established by section 209-34, the Hawaii innovation development fund established by section 211E-2, or the Hawaii strategic development corporation fund established by chapter 211F, and moneys from these funds shall be disbursed by the department or the director pursuant to chapters 206M, 209, 210, 211E, and 211F, respectively. The department or the director may transfer moneys from the state disaster revolving loan fund and the Hawaii innovation development fund to the Hawaii capital loan revolving fund for disbursement pursuant to this chapter.

(b) The total amount of moneys transferred to the state disaster revolving loan fund, the Hawaii capital loan revolving fund, or the Hawaii innovation development fund shall not exceed $1,000,000 for each respective fund within the calendar year. Any transfers to or from the [Hawaii strategic development corporation fund] Hawaii technology loan revolving fund shall be approved by the corporation's board of directors."

SECTION 30. Section 211F-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The governing body of the corporation shall be a board of directors consisting of [nine] eleven members. Eight of the members shall be from the general public and appointed by the governor for staggered terms pursuant to section 26-34, and shall be selected on the basis of their knowledge, skill, and experience in the scientific, business, or financial fields. The director of business, economic development, and tourism, an appointed member from the board of the high technology development corporation, and an appointed member from the board of the natural energy laboratory of Hawaii authority, or [a] their designated [subordinate,]

representatives, shall serve as [an] ex officio voting [member.] members. Not more than two of the eight appointed members of the board, during their term of office on the board, shall be employees of the State. Of the members appointed by the governor, one member shall be appointed from a list of nominees provided by the speaker of the house of representatives and one member shall be appointed from a list of nominees provided by the president of the senate. All appointed members of the board shall continue in office until their respective successors have been appointed."

SECTION 31. Section 227D-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The governing body of the authority shall consist of a board of directors having [nine] eleven voting members. Three members from the general public shall be appointed by the governor for staggered terms pursuant to section 26-34, except that one of these members shall be a resident of the county of Hawaii. [For the first term, one of these members shall be appointed from the board of the high technology development corporation.] The members shall be selected on the basis of their knowledge, interest, and proven expertise in, but not limited to, one or more of the following fields: finance, commerce and trade, corporate management, marketing, economics, engineering, energy management, real estate development, property management, aquaculture, and ocean science. The chairperson and secretary of the research advisory committee shall serve on the board. The director of business, economic development, and tourism, the chairperson of the board of land and natural resources, the president of the University of Hawaii, [and] the mayor of the county of Hawaii, an appointed member from the board of the high technology development corporation, and an appointed member from the board of the Hawaii strategic development corporation, or their designated representatives, shall serve as ex officio, voting members of the board. The director of business, economic development, and tourism shall serve as the chairperson until such time as a chairperson is elected by the board from the membership. The board shall elect other officers as it deems necessary."

PART VII

SECTION 32. The legislature finds that there are many investors in Hawaii who would like to invest in local start-up companies or in commercialization of research efforts, such as those carried out by the University of Hawaii. However, these investors are often unable to meet the standards of an accredited investor—which require $2,000,000 in net assets and an annual income of $250,000—and thus cannot invest in the majority of private placements being offered.

The legislature further finds that there is a need for an investment vehicle to allow participation by smaller investors, as a means of proving additional options for Hawaii investors, and aid in the growth of Hawaii technology companies.

The purpose of this Part is to create such a program, the Hawaii technology investment program, for small individual investors.

SECTION 33. Chapter 211F, Hawaii Revised Statutes, is amended by adding a new Part to be appropriately designated and to read as follows:

**"PART . THE HAWAII TECHNOLOGY INVESTMENT PROGRAM**

**§211F- Definitions.** As used in this part:

"Biotechnology" means fundamental knowledge regarding the function of biological systems from the macro level to the molecular subatomic levels that has

application to development including the development of novel products, services, technologies, and subtechnologies from insights gained from research advances that add to that body of fundamental knowledge.

"Computer data" means any representation of information, knowledge, facts, concepts, or instructions that is being prepared or has been prepared and is intended to be processed, is being processed, or has been processed in a computer or computer network.

"Computer program" means an ordered set of computer data representing coded instructions or statements, that, when executed by a computer, causes the computer to perform one or more computer operations.

"Computer software" means computer data, a computer program, or a set of computer programs, procedures, or associated documentation concerned with the operation and function of a computer system, and includes both systems and application programs and subdivisions, such as assemblers, compilers, routines, generators, and utility programs.

"Financial organization" means an organization authorized to do business in Hawaii that is:

(1) Certified as an insurer by the insurance commissioner;
(2) Licensed or chartered as a financial institution by the commissioner of financial institutions;
(3) Chartered by an agency of the federal government;
(4) Subject to the jurisdiction and regulation of the federal Securities and Exchange Commission; or
(5) Any other entity otherwise authorized to do business in the State that meets the requirements of this part.

"Program" means the Hawaii technology investment program.

"Program manager" means a financial organization selected by the corporation to manage the program.

"Qualified high technology business":

(1) Means a business, employing or owning capital or property, or maintaining an office, in this State that:
    (A) Conducts more than fifty per cent of its activities in performing qualified research in this State; or
    (B) Receives more than fifty per cent of its gross income derived from qualified research; provided that the income is received from:
        (i) Products sold from, manufactured in, or produced in the State; or
        (ii) Services performed in this State.
(2) Does not include:
    (A) Any trade or business involving the performance of services in the field of law, architecture, accounting, actuarial science, consulting, athletics, financial services, or brokerage services;
    (B) Any banking, insurance, financing, leasing, rental, investing, or similar business; any farming business, including the business of raising or harvesting trees; any business involving the production or extraction of products of a character with respect to which a deduction is allowable under section 611 (with respect to allowance of deduction for depletion), 613 (with respect to basis for percentage depletion), or 613A (with respect to limitation on percentage depleting in cases of oil and gas wells) of the Internal Revenue Code;
    (C) Any business operating a hotel, motel, restaurant, or similar business; and

(D) Any trade or business involving a hospital, a private office of a licensed health care professional, a group practice of licensed health care professionals, or a nursing home.

"Qualified research" means:

(1) The same as in section 41(d) of the Internal Revenue Code; or

(2) The development and design of computer software using fourth generation or higher software development tools or native programming languages to design and construct unique and specific code to create applications and design databases for sale or license; or

(3) Biotechnology;

provided that more than fifty per cent of the business' activities are qualified research.

"Venture capital investment" means any of the following investments in a qualified high technology business:

(1) Common or preferred stock and equity securities without a repurchase requirement for at least five years;

(2) A right to purchase stock or equity securities;

(3) Any debenture or loan, whether or not convertible or having stock purchase rights, which:

(A) Is subordinated, together with security interests against the assets of the borrower, by their terms to all borrowings of the borrower from other institutional lenders;

(B) Is for a term of not less than three years; and

(C) Has no part amortized during the first three years;

(4) General or limited partnership interests; and

(5) Membership interests in limited liability companies.

**§211F- Formation of Hawaii technology investment program.** (a) The corporation shall establish the Hawaii technology investment program for the purpose of allowing individual investors to contribute to the program to invest venture capital in businesses in Hawaii.

(b) The corporation may implement the Hawaii technology investment program through a regulated investment company under the terms and conditions established by this section. The corporation may make changes to the program as required for participants to obtain the federal and state income tax benefits or treatment provided by sections 851 to 855 of the federal Internal Revenue Code of 1986, as amended.

The corporation may establish a program in which the dividends distributed by the regulated investment company are exempt from income taxation under chapter 235. If the corporation establishes a program that is proposed to be exempt from income taxation under chapter 235, it shall furnish sufficient information and notify the department of taxation and investors of the tax exempt status of that program.

(c) The corporation may implement the program through the use of financial organizations as program managers. Under the program, individuals may establish accounts directly with a program manager.

(d) The corporation may solicit proposals from one or more financial organizations to act as a program manager. Financial organizations submitting proposals shall describe the investment instrument. The corporation shall select as program managers the financial organizations from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this State, based on the following factors:

(1) The financial stability and integrity of the financial organization;

(2) The ability of the financial organization to establish or act as a regulated investment company for the purposes of this part;
(3) The ability of the financial organization to satisfy recordkeeping and reporting requirements for the purposes of a program that allows a program that is exempt from taxation under chapter 235;
(4) The financial organization's plan for promoting the program and the resources it is willing to allocate to promote the program;
(5) The fees, if any, proposed to be charged to persons for opening accounts;
(6) The minimum initial deposit and minimum contributions, subject to this section that the financial organization will require;
(7) Other benefits to the State or its residents included in the proposal, including fees payable to the State to cover expenses to operate the program.

(e) The corporation may enter into a management contract of up to ten years with a financial organization. The financial organization shall provide investment instruments meeting the requirements of this section. The management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of this section and to manage the program to meet the requirements of sections 851 to 855 of the federal Internal Revenue Code of 1986, as amended;
(2) Keep adequate records of each account, keep each account segregated from each other's account, and provide the corporation with the information necessary to prepare any necessary statements;
(3)[6] Provide the corporation with the information necessary to determine compliance with this section;
(4) Provide the corporation access to the books and records of the financial organization to the extent needed to determine compliance with the contract;
(5) Hold all accounts for the benefit of the account owner;
(6) Be audited at least annually by a firm of independent certified public accountants selected by the financial organization, and provide the results of the audit to the corporation; and
(7) Provide the corporation with copies of all regulatory filings and reports related to the program made by the financial organization during the term of the management contract or while it is holding any accounts, other than confidential filings or reports that will not become part of the program. The financial organization shall make available for review by the corporation, the results of any periodic examination of the financial organization by any state or federal banking, insurance, or securities commission, except to the extent that the report or reports may not be disclosed under applicable law or the rules of the examining agency.

(f) The corporation may require an audit to be conducted of the operations and financial position of the program manager at any time if the corporation has any reason to be concerned about the financial position, the recordkeeping practices, or the status of accounts of the program manager.

(g) During the term of any contract with a program manager, the corporation shall conduct an examination of the program manager and its handling of accounts. The examination shall be conducted at least biennially if the program manager is not otherwise subject to periodic examination by the commissioner of financial institutions, the Federal Deposit Insurance Corporation, or other similar entity.

(h) If selection of a financial organization as a program manager is not renewed, after the end of the term:

(1) Accounts previously established and held in investment instruments at the financial organization may be terminated;
(2) Additional contributions may be made to the accounts;
(3) No new accounts may be placed with the financial organization; and
(4) Existing accounts held by the financial organization shall remain subject to all oversight and reporting requirements established by the corporation.

If the corporation terminates a financial organization as a program manager, the corporation shall take custody of accounts held by the financial organization and shall seek to promptly transfer the accounts to another financial organization that is selected as a program manager and into investment instruments as similar to the original instruments as possible.

(i) The corporation may enter into contracts for the services of consultants for rendering professional and technical assistance and advice and any other contracts that are necessary and proper for the implementation of the program.

(j) The program shall only allow contributions from individual investors in amounts ranging from a minimum of $1,000 to a maximum of $100,000 per investor.

(k) The program manager shall invest all contributions received from investors in securities not limited to legal investments under state laws relating to the investment of trust fund assets by trust companies, including those authorized by article 8 of chapter 412. Contributions shall be used for venture capital investment. Investment may be made in any manner the program deems correct. If no venture capital investment is available at the time a contribution is made to the program, the program manager may invest the contribution in any manner allowed a regulated investment company until a venture capital investment opportunity occurs. While the program manager should make a best effort to make venture capital investments as defined in section 211F- , if no such venture capital investment is available in Hawaii, then the program manager may make venture capital investments outside Hawaii.

(l) The corporation may adopt any necessary rules under chapter 91.

**§211F- Limitation of liability.** In no case shall the corporation, officers or employees of the corporation, or the State be liable for the monetary losses of individuals contributing to the program. In all cases, the program manager shall inform individual contributors of the risk involved in contributing to the program."

SECTION 34. Statutory material to be repealed is bracketed. New statutory material is underscored.[7]

SECTION 35. This Act shall take effect upon its approval; provided that:
(1) Part I, upon its approval, shall apply to taxable years beginning after December 31, 1999; and
(2) Part III shall take effect on July 1, 2000.

(Approved July 5, 2000.)

**Notes**

1. "Any" should be underscored.
2. Prior to amendment "receives" appeared here.
3. So in original.
4. Comma should be underscored.
5. "(10)" should be underscored.
6. Paragraphs (3) to (7) renumbered from (4) to (8).
7. Edited pursuant to HRS §23G-16.5.

# PROPOSED CONSTITUTIONAL AMENDMENTS

## S.B. NO. 539

A Bill for an Act Proposing an Amendment to Article X, Section 6, of the Hawaii Constitution, to Provide the University of Hawaii with Autonomy in All Matters Related to the University.

*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 X, section 6, of the Constitution of the State of Hawaii to give the University of Hawaii autonomy in matters involving only the internal structure, management, and operation of the University.

SECTION 2. Article X, section 6, of the Constitution of the State of Hawaii is amended to read as follows:

"BOARD OF REGENTS; POWERS

**Section 6.** There shall be a board of regents of the University of Hawaii, the members of which shall be nominated and, by and with the advice and consent of the senate, appointed by the governor. At least part of the membership of the board shall represent geographic subdivisions of the State. The board shall have the power[, as provided by law,] to formulate policy, and to exercise control over the university through its executive officer, the president of the university, who shall be appointed by the board[; except that the]. The board shall also have exclusive jurisdiction over the internal [organization and management] structure, management, and operation of the university. This section shall not limit the power of the legislature to enact laws of statewide concern. The legislature shall have the exclusive jurisdiction to identify laws of statewide concern."

SECTION 3. The question to be printed on the ballot shall be as follows: "Shall the University of Hawaii have the authority and power of self-governance in matters involving only the internal structure, management, and operation of the university?"

SECTION 4. Constitutional material to be repealed is bracketed. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

# S.B. NO. 2941

A Bill for an Act Proposing an Amendment to Article VII, Section 3, of the State 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 and public sufficient time to consider the commission's 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 read 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 amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

COMMITTEE REPORTS

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**2000 Regular Session**

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**ARBITRATION**



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**UNITED STATES**

## UNIVERSITY OF HAWAII



## USE TAX



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