

SESSION LAWS

OF

HAWAII

PASSED BY THE

TWENTY-SECOND STATE LEGISLATURE

STATE OF HAWAII

REGULAR SESSION

2003

Convened on Wednesday, January 15, 2003 and
Adjourned sine die on Thursday, May 1, 2003

SPECIAL SESSION

2003

Convened on Tuesday, July 8, 2003 and
Adjourned sine die on Tuesday, July 8, 2003

Published under Authority of
Section 23G-13, Hawaii Revised Statutes
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 and Special Sessions of 2003.

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.

Statutory material that is being repealed is either bracketed or bracketed and stricken.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by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.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

Ken H. Takayama
Revisor of Statutes

Honolulu, Hawaii
July 10, 2003

STATE OF HAWAII
ELECTED OFFICIALS AND LEGISLATIVE OFFICERS

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Senate:
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Daniel K. Akaka

House of Representatives:
Neil Abercrombie
Ed Case

STATE EXECUTIVE OFFICERS

Governor of Hawaii Linda Lingle
Lieutenant Governor James R. Aiona, Jr.

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TWENTY-SECOND STATE LEGISLATURE
REGULAR AND SPECIAL SESSIONS
2003**

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Vice President Donna Mercado Kim
Clerk Paul T. Kawaguchi

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Robert Bunda (D)

Twenty-Fifth District—(Oahu)
Fred Hemmings (R)

Twenty-Third District—(Oahu)
Melodie Williams Aduja (D)

D - Democrats	20
R - Republicans	5

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 Vice Speaker Sylvia J. Luke
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D - Democrats	36
R - Republicans	15

TABLE OF CONTENTS

	PAGE
List of Acts, 2003 Regular and Special Sessions	x
Text of Acts, 2003 Regular Session	1
Text of Acts, 2003 Special Session	747
Committee Reports on Bills Enacted	764
Tables Showing Effect of Acts	769
A. Sections of Hawaii Revised Statutes (HRS) Affected	769
B. Acts of Session Laws of Hawaii Affected	774
General Index	775

LIST OF ACTS
2003 REGULAR SESSION

ACT NO.	BILL NO.	SUBJECT	PAGE
1	H.B. 1	Appropriations—legislative branch	1
2	H.B. 1077	Appropriation—governor and lieutenant governor	3
3	H.B. 652	Statutory revision	3
4	H.B. 814	Notice of traffic infraction	13
5	H.B. 815	Court costs and fees	14
6	H.B. 1022	Expungement of juvenile arrest records	14
7	H.B. 1220	Parole violators	15
8	H.B. 1276	Publication of constitutional amendments	16
9	H.B. 1302	Office of Hawaiian affairs grants	17
10	S.B. 554	Brown tree snakes	20
11	S.B. 1256	Agricultural water use and development plan	21
12	S.B. 1260	Microorganism import and research	22
13	S.B. 1270	Antitrust class actions	22
14	S.B. 1396	Income tax returns and payments	23
15	S.B. 1406	Commercial drivers—license numbers	24
16	S.B. 1415	Conservation district violations	25
17	H.B. 1172	Securities sales by financial institutions	25
18	S.B. 51	Commercial drivers—physical disqualification	27
19	S.B. 368	Criminal property damage	27
20	S.B. 550	Agricultural products ownership certificates	28
21	S.B. 562	Terminable rental adjustment clauses	29
22	S.B. 1353	Appropriation—medicaid program	30
23	S.B. 685	Poll books	31
24	S.B. 787	Disaster relief services leave	31
25	S.B. 1469	Peer support counseling	32
26	H.B. 58	Interisland shipping of vehicles	34
27	H.B. 83	Land exchange—Boy Scouts of America	35
28	H.B. 659	Legislative journals	36
29	H.B. 1453	Residential leaseholds conversion lots	37
30	H.B. 1572	Parking for disabled persons	37
31	H.B. 818	Driver's license revocation hearings	42
32	S.B. 1407	Commercial drivers—testing waivers	43
33	S.B. 616	Hate crimes	44
34	H.B. 1307	Appropriation—public land trust proceeds trust fund	46
35	S.B. 843	Safe harbor agreements and habitat conservation plans	48
36	H.B. 78	Housing special funds	54
37	H.B. 754	Elections by mail	55
38	H.B. 772	County bonds—general obligation bonds	55
39	H.B. 773	County bonds—revenue bonds	56
40	S.B. 363	Workforce modernization projects	57
41	S.B. 1139	Parent education surcharge	57
42	S.B. 1154	Hui Imi advisory council	58
43	S.B. 1413	Kikala-Keokea infrastructure improvements	60
44	H.B. 389	Family leave	61
45	S.B. 88	Shipping vehicles by military personnel	63
46	S.B. 1405	Commercial drivers—domicile	63
47	S.B. 538	Agribusiness development corporation lands	64
48	S.B. 1107	Privacy violations; disorderly conduct	65
49	S.B. 1255	Agricultural inspection and certification services	68
50	S.B. 1306	Telecommunications relay services for disabled persons	72
51	S.B. 1261	Procurement cards	74
52	S.B. 1262	Public contracts award procedures	75
53	S.B. 373	Foreclosure on condominium—subsequent purchaser	81
54	S.B. 42	Watercraft safety equipment	82

ACT NO.	BILL NO.	SUBJECT	PAGE
55	S.B. 1077	Continuing education for insurance licensees	83
56	S.B. 1361	Prescription drugs	88
57	S.B. 585	Appropriation—children’s health insurance program	94
58	H.B. 1111	Appropriation—claims against the State	95
59	H.B. 1509	South Kona wilderness area	101
60	S.B. 931	Victim leave benefits	104
61	H.B. 1198	Child labor restrictions	107
62	H.B. 562	Sexual offenders	109
63	H.B. 297	Drug nuisance abatement unit	114
64	S.B. 1274	Manslaughter	115
65	H.B. 1116	Domestic violence protection orders	116
66	S.B. 1275	Assault on law enforcement officers	116
67	S.B. 345	Motor vehicle dealers	117
68	S.B. 933	Harassment by stalking	118
69	S.B. 1234	Underage drinking	120
70	H.B. 564	Promoting drugs near parks	122
71	H.B. 807	Driving under the influence—habitual offenders	123
72	H.B. 1010	Driving under the influence—testing drivers in accidents	127
73	H.B. 192	Accreted lands	128
74	H.B. 1155	Unclaimed property notices	130
75	H.B. 1212	Land exchange—legislative disapproval	131
76	S.B. 1075	Mediation in contested cases	132
77	S.B. 1267	Cigarette tax enforcement	133
78	S.B. 69	Teacher education coordinating committee	139
79	H.B. 1161	Psychologists	140
80	S.B. 394	Foreclosure on condominium—unpaid common expenses	142
81	H.B. 1594	Nonprofit corporations	143
82	H.B. 1214	Dangerous natural conditions on public lands	144
83	S.B. 1393	Departments of corrections and law enforcement	147
84	S.B. 295	Motor vehicle towing regulations	148
85	S.B. 1505	Invasive species council	156
86	S.B. 552	Landowner’s liability	161
87	S.B. 1630	Planned communities	162
88	H.B. 548	Organ and tissue education fee and fund	163
89	H.B. 1076	Foreclosure appeals	164
90	S.B. 1034	Transfer of agricultural lands	165
91	S.B. 1258	Agribusiness development corporation	167
92	S.B. 1286	Housing and community development corporation	168
93	S.B. 1281	High technology development corporation lands	170
94	H.B. 475	Public utilities commission audit	171
95	S.B. 830	Criminal history record checks	172
96	S.B. 1496	Hawaii Gold Cacao Tree, Inc.	193
97	H.B. 730	Occupational therapists	193
98	S.B. 1352	Home and community care licensing	194
99	S.B. 946	Caregiver consent	195
100	S.B. 377	Ko Olina resort development tax credit	197
101	S.B. 1050	World War II Filipino veterans	201
102	H.B. 662	Sports hall of fame	202
103	S.B. 1373	Federally-funded job training programs	203
104	H.B. 1285	Historic preservation violations	204
105	H.B. 127	General assistance to disabled persons	209
106	S.B. 1163	Substance abuse policy for ambulance personnel	210
107	S.B. 1241	Cancer examinations	210
108	S.B. 205	Parent-teacher conference leave	211
109	S.B. 687	Leaves of absence	212
110	S.B. 1334	Access Hawaii committee	216
111	S.B. 789	Health benefits plans for retirees	216
112	H.B. 1607	Emergency vehicles	219

ACT NO.	BILL NO.	SUBJECT	PAGE
113	S.B. 1040	Trails and access program funding	219
114	H.B. 651	Informed consent to medical treatment	221
115	H.B. 1154	Unclaimed property trust fund	223
116	S.B. 582	General obligation bonds authorization	224
117	H.B. 401	Administration of elections	229
118	S.B. 1309	Retirement system benefit payments	232
119	H.B. 317	University part-time faculty pensions	237
120	H.B. 808	Judiciary appropriations act of 2003	239
121	H.B. 1157	Retirement system classifications	244
122	S.B. 1332	Executive salary commission	245
123	S.B. 1333	Judicial salary commission	248
124	H.B. 1165	Business registration	251
125	S.B. 614	Health insurance fraud	290
126	S.B. 1201	Motor vehicle franchises	295
127	S.B. 1403	Harbor facility leases	304
128	H.B. 1163	Dental service plans	305
129	H.B. 1160	Public accountants	306
130	S.B. 1410	Appropriation—claims against the University of Hawaii	307
131	H.B. 75	Condominium laws review	308
132	H.B. 1328	Consumer advocate	309
133	H.B. 736	Student loan defaults	310
134	S.B. 1312	Finalizing retiree's pension amount	317
135	S.B. 1395	Taxation—amendments	318
136	S.B. 1400	Delinquent taxes	330
137	S.B. 1438	Appropriation—collective bargaining unit 1	333
138	S.B. 1439	Appropriation—collective bargaining units 2, 3, 4, 6, 8, 13	334
139	S.B. 1440	Appropriation—collective bargaining unit 5	335
140	S.B. 1441	Appropriation—collective bargaining unit 7	336
141	S.B. 1442	Appropriation—collective bargaining unit 10	337
142	S.B. 1443	Appropriation—collective bargaining unit 11	338
143	S.B. 1444	Appropriation—collective bargaining unit 9	339
144	S.B. 975	Skateboarding parks	341
145	H.B. 324	Driver's licensing of non-citizens	342
146	H.B. 980	Release of joint tortfeasors	343
147	H.B. 10	Electricity fuel mix disclosures	344
148	S.B. 837	Workforce development programs	346
149	H.B. 135	International matchmaking organizations	349
150	H.B. 287	Criminal conviction of public employee	351
151	H.B. 1217	Controlled substances—amendments	353
152	H.B. 1303	Office of Hawaiian affairs employee health benefits	363
153	H.B. 1465	Reciprocal shipping of wine	364
154	S.B. 528	School property transfers to State	365
155	H.B. 139	Rental vehicle collision damage waivers	367
156	S.B. 1423	Commission on fatherhood	368
157	H.B. 377	Pacific Cardiac Institute, Inc.	371
158	H.B. 378	Pacific Community Health and Wellness, Inc.	372
159	H.B. 379	Pacific Saging Center, Inc.	373
160	H.B. 380	Pacific Sports Medicine and Research Center, Inc.	374
161	H.B. 381	Pacific Wellness Center, Inc.	375
162	H.B. 382	Pacific Women's Center, Inc.	376
163	H.B. 383	Wahiawa-Central Oahu Health Center, Inc.	377
164	H.B. 384	Wahiawa General Hospital, Inc.	378
165	S.B. 1068	Honolulu Neighborhood Housing Services, Inc.	379
166	H.B. 485	Hanahaoli School	379
167	H.B. 488	Mid-Pacific Institute	380
168	H.B. 939	Hoala School	381
169	H.B. 1362	St. Patrick School	383

ACT NO.	BILL NO.	SUBJECT	PAGE
170	H.B. 1564	Chaminade University of Honolulu	384
171	H.B. 731	Workers' compensation—occupational therapists	385
172	S.B. 1394	Income tax—amendments	385
173	S.B. 1397	Multi-state sales and use tax agreements	391
174	S.B. 1446	Cancer detection research revolving fund	395
175	S.B. 3	North Hawaii Community Hospital, Inc.	396
176	H.B. 645	Queen's Health Systems	397
177	S.B. 1279	Tobacco enforcement; Master Settlement Agreement	398
178	H.B. 1152	State funds	404
179	S.B. 1311	Special funds administrative expenses	412
180	S.B. 1051	Segway regulations	415
181	S.B. 402	Medical education council	416
182	H.B. 130	Selection of retirement benefit option	419
183	H.B. 1300	Office of Hawaiian affairs appropriation act	423
184	S.B. 1594	Water resource management commission	425
185	S.B. 1492	Assisted living facilities	425
186	H.B. 320	University risk management special fund	426
187	H.B. 1175	School administration	428
188	H.B. 281	School maintenance and repair	434
189	S.B. 337	School business assistant positions	438
190	S.B. 617	Criminal charging procedures task force	438
191	H.B. 1361	Medicaid prescription drugs program	439
192	S.B. 637	Missing children's clearinghouse trust fund	441
193	H.B. 638	Donations to library system	441
194	H.B. 373	Political signs and advertisements	443
195	H.B. 1255	Appropriation—elections office	447
196	S.B. 78	Dependent elder abuse	447
197	S.B. 1321	Mental health insurance coverage	450
198	H.B. 422	Center for nursing	451
199	H.B. 507	Emergency medical technicians	455
200	H.B. 200	General appropriations act of 2003	457
201	H.B. 123	Emergency contraceptives	561
202	H.B. 914	Adult residential care homes	564
203	S.B. 1700	Charter schools	565
204	H.B. 512	Executive office on aging; mental health records	576
205	S.B. 574	Captive insurers—branch administrator	578
206	S.B. 665	Prepaid health care advisory council	578
207	S.B. 855	Renewable energy tax credit	579
208	S.B. 1058	Captive insurers—investments	581
209	S.B. 1200	Captive insurers—amendments	582
210	S.B. 1319	Uniform limited partnerships act	586
211	S.B. 1324	Medical claim conciliation panels	638
212	H.B. 1164	Insurance—amendments	640
213	H.B. 1230	Airport and harbor security; airport fees	720
214	S.B. 58	School maintenance and repair—Hawaii 3R's	726
215	S.B. 1305	Appropriation—health and human services	733
216	S.B. 1134	Judiciary computer system surcharge	738
217	S.B. 1156	Hawaiian registry	740
218	S.B. 254	Appropriation—Puukapu homesteads bridge	741
219	S.B. 773	Unemployment compensation eligibility	742
220	S.B. 1326	Foreign language curriculum	744
221	H.B. 857	Correctional facilities	745
222	H.B. 595	Check cashing businesses	746

2003 SPECIAL SESSION

ACT NO.	BILL NO.	SUBJECT	PAGE
1	S.B. 317	Appropriation—Korean War commemoration commission	747
2	S.B. 745	Air medical services	748
3	S.B. 1305	Appropriation—health and human services	751
4	H.B. 282	Audit revolving fund	757
5	S.B. 255	Restrictive covenants on agricultural lands	757
6	S.B. 768	Public employees' collective bargaining	760

**Session Laws of Hawaii
Passed By The
Twenty-Second State Legislature
Regular Session
2003**

ACT 1

H.B. NO. 1

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

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

SECTION 1. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,256,084 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, 2004, including the 2003 regular session, Twenty-second Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2003 and 2004 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$7,545,077 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, 2004, including the 2003 regular session, Twenty-second Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2003 and 2004 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 2003 and 2004 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 2003 and 2004 sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 21, 2004, the Senate and the House of Representatives shall each have their accounts audited and a full report of the respective audits shall be presented to the Senate and to the House of Representatives convening on January 21, 2004.

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

ACT 1

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 \$3,186,672 or so much thereof as may be necessary to the office of the legislative auditor for the following expenses:

- (1) The sum of \$2,318,772 for defraying the expenses of the office of the legislative auditor during fiscal year 2003-2004;
- (2) The sum of \$717,900 for defraying the expenses of the office of the state ethics commission during fiscal year 2003-2004; and
- (3) The sum of \$150,000 during fiscal year 2003-2004 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 \$2,573,589 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 2003-2004, 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 \$813,948 or so much thereof as may be necessary to the office of the ombudsman for defraying the expenses of the office during fiscal year 2003-2004.

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, 2004.

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, 2004.

SECTION 11. As of the close of business on June 30, 2004, 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 4, 2003.)

ACT 2

H.B. NO. 1077

A Bill for an Act Making Emergency Appropriations for the Offices of the Governor and Lieutenant Governor.

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 appropriate funds to enable staffing of the offices of the governor and lieutenant governor from January 2003 through June 2003.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$838,136, or so much thereof as may be necessary for fiscal year 2002-2003, for the operations of the office of the governor.

The sum appropriated shall be expended by the office of the governor for the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$141,000, or so much thereof as may be necessary for fiscal year 2002-2003, for the operations of the office of the lieutenant governor.

The sum appropriated shall be expended by the office of the lieutenant governor for the purposes of this Act.

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

(Approved March 28, 2003.)

ACT 3

H.B. NO. 652

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 46-11, Hawaii Revised Statutes, is amended to read as follows:

“§46-11 Federal flood insurance. The [~~convention center authority~~] Hawaii tourism authority in regard to the convention center district and the mayor or

ACT 3

executive officer and the council of the various counties, in regard to the respective counties, may participate and apply on behalf of their respective district and counties for flood insurance coverage pursuant to any applicable provisions of Public Law 1016, Eighty-fourth Congress, Second Session, (70 Stat. 1078). The [~~convention center authority,~~] Hawaii tourism authority, in regard to the convention center district, and the mayor or executive officer and the council of the various counties, in regard to the respective counties, shall be vested with the functions, powers, and duties which are necessary to enable their respective district and counties to qualify, participate, and apply for the flood insurance coverage.”

SECTION 2. Section 89-13, Hawaii Revised Statutes, is amended to read as follows:

“§89-13 Prohibited practices; evidence of bad faith. (a) It shall be a prohibited practice for a public employer or its designated representative wilfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Dominate, interfere, or assist in the formation, existence, or administration of any employee organization;
- (3) Discriminate in regard to hiring, tenure, or any term or condition of employment to encourage or discourage membership in any employee organization;
- (4) Discharge or otherwise discriminate against an employee because the employee has signed or filed an affidavit, petition, or complaint or given any information or testimony under this chapter, or because the employee has informed, joined, or chosen to be represented by any employee organization;
- (5) Refuse to bargain collectively in good faith with the exclusive representative as required in section 89-9;
- (6) Refuse to participate in good faith in the mediation[~~, fact-finding,~~] and arbitration procedures set forth in section 89-11;
- (7) Refuse or fail to comply with any provision of this chapter;
- (8) Violate the terms of a collective bargaining agreement;
- (9) [~~To replace~~] Replace any nonessential employee for participating in a labor dispute; or
- (10) [~~To give~~] Give employment preference to an individual employed during a labor dispute and whose employment termination date occurs after the end of the dispute, over an employee who exercised the right to join, assist, or engage in lawful collective bargaining or mutual aid or protection through the labor organization involved in the dispute.

(b) It shall be a prohibited practice for a public employee or for an employee organization or its designated agent wilfully to:

- (1) Interfere, restrain, or coerce any employee in the exercise of any right guaranteed under this chapter;
- (2) Refuse to bargain collectively in good faith with the public employer, if it is an exclusive representative, as required in section 89-9;
- (3) Refuse to participate in good faith in the mediation[~~, fact-finding~~] and arbitration procedures set forth in section 89-11;
- (4) Refuse or fail to comply with any provision of this chapter; or
- (5) Violate the terms of a collective bargaining agreement.”

SECTION 3. Section 201B-2, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) The board shall appoint an executive director, exempt from chapters 76 and [88,] 78, who shall oversee the authority staff; provided that the compensation package, including salary, shall not exceed fifteen per cent of the 3.5 per cent authorized for administrative expenses under section 201B-11(c); and provided further that the compensation package shall not include private sector moneys or other contributions. The board shall set the executive director’s duties, responsibilities, holidays, vacations, leaves, hours of work, and working conditions. It may grant such other benefits as it deems necessary.”

SECTION 4. Section 201B-3, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) The [{}authority{}] shall be responsible for:

- (1) Promoting, marketing, and developing the tourism industry in the State;
- (2) Arranging for the conduct of research through contractual services with the University of Hawaii or any agency or other qualified persons concerning social, economic, and environmental aspects of tourism development in the State;
- (3) Providing technical or other assistance to agencies and private industry upon request;
- (4) Developing and implementing the state tourism marketing plan; and
- (5) Reviewing annually the expenditure of public funds by any visitor industry organization with which the [{}authority{}] contracts to perform tourism promotion, marketing, and development and making recommendations necessary to ensure the effective use of the funds for the development of tourism. The [{}authority{}] shall also prepare annually a report of expenditures, including descriptions and evaluations of programs funded, together with any recommendations the [{}authority{}] may make and shall submit the report to the governor and the legislature as part of the annual report required under section 201B-16.

(c) The [{}authority{}] shall do any and all things necessary to carry out its purposes, to exercise the powers and responsibilities given in this chapter, and to perform other functions required or authorized by law.”

SECTION 5. Section 201G-152, Hawaii Revised Statutes, is amended to read as follows:

“**§201G-152 Resident selection: dwelling accommodations; rentals.** In the administration of elder or elderly housing, the corporation shall observe the following with regard to resident selection, dwelling accommodations, and rentals:

- (1) Except as hereinafter provided, it shall accept elder or elderly households as residents in the housing projects;
- (2) It may accept [{}as{}] residents in any housing unit one or more persons, related or unrelated by marriage. It may also accept as a resident in any dwelling accommodation or in any project, in the case of illness or other disability of an elder who is a resident in the dwelling accommodation or in the project, a person designated by the elder as the elder’s live-in aide whose qualifications as a live-in aide are verified by the corporation, although the person is not an elder; provided that the person shall cease to be a resident therein upon the recovery of, or removal from the project of, the elder;
- (3) It may rent or lease to an elder a dwelling accommodation consisting of any number of rooms as the corporation deems necessary or advisable

to provide safe and sanitary accommodations to the proposed resident or residents without overcrowding; and

- (4) Notwithstanding that the elder has no written rental agreement or that it has expired, so long as the elder continues to tender the usual rent to the corporation or proceeds to tender receipts for rent lawfully withheld, no action or proceeding to recover possession of the dwelling unit may be maintained against the elder, nor shall the corporation otherwise cause the elder to quit the dwelling unit involuntarily, demand an increase in rent from the elder, or decrease the services to which the elder has been entitled during hospitalization of the elder due to illness or other disability.”

SECTION 6. Section 226-2, Hawaii Revised Statutes, is amended by deleting the definition of “policy council”.

[~~““Policy council” means the council established in section 226-53.”~~]

SECTION 7. Section 245-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The taxes, however, are subject to the following limitations:

- (1) The measure of the taxes shall not include any cigarettes or tobacco products exempted, and so long as the same are exempted, from the imposition of taxes by the Constitution or laws of the United States;
- (2) The measure of taxes shall exempt and exclude all sales of cigarettes and tobacco products to the United States (including any agency or instrumentality thereof that is wholly owned or otherwise so constituted as to be immune from the levy of a tax under this chapter), sold by any person licensed under this chapter; and
- (3) The taxes shall be paid only once with respect to the same cigarettes or tobacco product. This limitation shall not prohibit the imposition of the excise tax on receipts from sales of tobacco products under subsection [(a)(5)](5); provided that the amount subject to the tax on each sale shall not include amounts previously taxed under this chapter.”

SECTION 8. Section 281-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures or sells any liquor without being authorized pursuant to this chapter; provided that in counties which have established by charter a liquor control adjudication board, the board shall have the jurisdiction, power, authority, and discretion to hear and determine administrative complaints of the director regarding violations of the liquor laws of the State or of the rules of the liquor commission, and impose penalties for violations thereof as may be provided by law;
- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education; provided that any educational program shall be limited to licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees;
- (4) From time to time to make, amend, and repeal such rules, not inconsistent with this chapter, as in the judgment of the commission seem

- appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;
- (5) Subject to chapter 76, to appoint and remove an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer;
 - (6) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
 - (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;
 - (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;
 - (9) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
 - (10) To investigate violations of this chapter, chapter 244D and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution and, where appropriate, the director of taxation to hear and determine complaints against any licensee;
 - (11) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of licenses;
 - (12) To prescribe, by rule, the term of any license [{}or{}] solicitor's and representative's permit authorized by this chapter, the annual or prorated amount, the manner of payment of fees for the licenses and permits, and the amount of filing fees; and
 - (13) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor."

SECTION 9. Section 286-41, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The owner of every motor vehicle of the current, previous, and subsequent year model bought out-of-state, subsequently brought into the State, and subject to the use tax under chapter 238 shall provide with the application for registration proof of payment of the use tax pursuant to requirements established by

the department of taxation. No registration certificate shall be issued without proof of payment of the use tax.”

SECTION 10. Section 291E-44, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) (1) 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 291E-41(b)(1), may issue a conditional license 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)] (A) 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)] (B) 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 291E-41.
- (2) Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to:
- [(1)] (A) A respondent whose license, during the conditional license permit period, is expired or is suspended or revoked as a result of action other than the instant revocation for which the respondent is requesting a conditional license permit under this section; or
 - [(2)] (B) A respondent who has refused breath, blood, or urine tests for purposes of determining alcohol concentration or drug content of the person’s breath, blood, or urine, as applicable.”

SECTION 11. 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 and renewal of licenses and any other powers and duties authorized by law, 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, and state and federal funds;
- (4) Submitting an annual report to the governor and the legislature on the board’s operations and from the 2007-2008 school year, submitting a summary report every five years of the board’s accomplishment of objectives, efforts to improve or maintain teacher quality, and efforts to keep its operations responsive and efficient;
- (5) Conducting a cyclical review of standards and suggesting revisions for their improvement;
- (6) Establishing licensing 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] special fund;
- (7) Establishing penalties in accordance with chapter 91;
- (8) Issuing, renewing, revoking, suspending, and reinstating licenses;

- (9) Reviewing reports from the department on individuals hired on an emergency basis;
- (10) Applying licensing standards on a case-by-case basis and conducting licensing evaluations;
- (11) Preparing and disseminating teacher licensing information to schools and operational personnel;
- (12) Approving teacher preparation programs;
- (13) Administering reciprocity agreements with other states relative to licensing;
- (14) Conducting research and development on teacher licensure systems, beginning teacher programs, the assessment of teaching skills, and other related topics;
- (15) Participating in efforts relating to teacher quality issues, conducting professional development related to the board's standards, and promotion of high teacher standards and accomplished teaching; and
- (16) Adopting applicable rules and procedures."

SECTION 12. Section 302A-807, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The board shall not renew or reinstate, or shall deny, suspend, or revoke, any license[~~-, credential,~~] or application, if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, the board shall renew, reinstate, or grant the license [~~or credential~~] only upon receipt of an authorization from the administering entity."

SECTION 13. Section 302A-808, Hawaii Revised Statutes, is amended to read as follows:

"§302A-808 Penalty. Any person who engages in the profession of teaching in a public school without first being issued a license or hired on an emergency basis as defined in this chapter shall be fined not more than \$500. Any person who knowingly or intentionally violates this subpart by employing an individual as a public school teacher who does not possess a valid license or is not a department of education emergency hire as defined in this chapter may be fined not more than \$500. All fines shall be deposited into the Hawaii teacher standards board [revolving] special fund."

SECTION 14. Section 431:13-104, Hawaii Revised Statutes, is amended to read as follows:

"§431:13-104 Favored producer or insurer; coercion of debtors. (a) No person may require as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance, negotiate any contract of insurance, or renewal thereof, through a particular insurer or group of insurers or producer or group of producers.

(b) No person who lends money or extends credit may:

- (1) Solicit insurance, after a person indicates interest in securing a loan or credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension. The requirement for a commitment shall not apply in cases where the premium for

the required insurance is to be financed as part of the loan or extension of credit involving personal property transactions;

- (2) Unreasonably reject a contract of insurance furnished by the borrower where insurance is required by the loan or credit transaction. A rejection shall not be deemed unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for rejection of an insurance contract because the contract contains coverage in addition to that required in the loan or credit transaction;
- (3) Require that any borrower, mortgagor, purchaser, insurer, or producer pay a separate charge, in connection with the handling of any contract of insurance required by the loan or credit transaction, or pay a separate charge to substitute the insurance policy of one insurer for that of another. This paragraph does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document;
- (4) Use or disclose information relative to a contract of insurance which is required by, or supplied in response to, the loan or credit transaction, for the purpose of replacing the insurance or soliciting insurance;
- (5) Require any procedures or conditions of duly licensed producers or insurers not customarily required of those producers or insurers affiliated or in any way connected with the person who lends money or extends credit.

(c) Every person who lends money or extends credit and who solicits insurance subject to subsection (b) must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or producer of the borrower's choice, subject only to the lender's right to reject a given insurer or producer as provided in subsection (b)(2). Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be in compliance with this paragraph.

(d) The commissioner shall have the power to examine and investigate those insurance related activities of any person whom the commissioner believes may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(e) Nothing in this section shall prevent a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(f) Nothing contained in this section shall apply to credit life or credit disability insurance.

(g) Nothing in this section shall prevent a person who lends money or extends credit from assisting a mortgagor, borrower, or purchaser in obtaining homeowners insurance where the borrower requests such assistance in writing. Nothing in this section shall prevent a person who lends money or extends credit from referring a mortgagor, borrower, or purchaser to the Hawaii hurricane relief fund.

(h) The commissioner shall adopt rules to prevent any bank, or subsidiary or affiliate thereof, which is engaged in insurance activities, from draining assets to the detriment of the insurance operations; and shall also adopt rules to obtain diverted assets from the bank, subsidiary, or affiliate in the case of insolvency of the insurance operation."

SECTION 15. Section 444-23.5, Hawaii Revised Statutes, is amended by amending subsection (m) to read as follows:

“(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.”

SECTION 16. Section 706-606.4, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) As used in this section:

“Family or household member” has the same meaning as defined in section 709-906.

“In the presence of a minor” means in the actual physical presence of a child or knowing that a child is present and may hear or see the offense.

“Offense” means a violation of section 707-710 (assault in the first degree), 707-711 (assault in the second degree), 707-730 (sexual assault in the first degree), 707-731 (sexual assault in the second degree), 707-732 (sexual assault in the third degree), or 709-906 (abuse of family [or] household members).”

SECTION 17. Section 708-890, Hawaii Revised Statutes, is amended by amending the definition of “access” to read as follows:

““Access” means to gain entry to, instruct, communicate with, store data in, [re]trieve data from, or otherwise make use of any resources of a computer, computer system, or computer network.”

SECTION 18. Section 201-62.5, Hawaii Revised Statutes, is repealed.

SECTION 19. Act 163, Session Laws of Hawaii 2001, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect on July 1, 2001, provided that the amendments made to [sections] section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July [1,] 31, 2003, by section 9 of Act 142, Sessions Laws of Hawaii 1998.”

SECTION 20. Act 39, Session Laws of Hawaii 2002, is amended by amending section 22 to read as follows:

“SECTION 22. This Act shall take effect on July 1, 2002[-]; provided that the amendments made to section 431:2-216(a), Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on June 30, 2003, pursuant to section 11 of Act 243, Session Laws of Hawaii 2000.”

SECTION 21. Act 72, Session Laws of Hawaii 2002, is amended by amending the prefatory language in section 8 to read as follows:

“SECTION 8. Section 576E-1, Hawaii Revised Statutes, is amended by repealing the definition of [~~“public assistance debt”.~~] [~~“debt”.~~”

SECTION 22. Act 74, Session Laws of Hawaii 2002, is amended by amending section 6 to read as follows:

ACT 3

“SECTION 6. This Act shall take effect on January 1, 2003; provided that this Act shall be repealed on June 30, 2006[-]; and provided further that sections 432:1-102(b) and 432D-19(d), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.”

SECTION 23. Act 77, Session Laws of Hawaii 2002, is amended by amending the prefatory language in section 2(1) to read as follows:

“SECTION 2. Chapter 486H, Hawaii Revised Statutes, is amended as follows:

1. By adding [~~three~~] four new sections to be appropriately designated and to read as follows:”

SECTION 24. Act 130, Session Laws of Hawaii 2002, is amended by amending section 19(1) to read as follows:

“SECTION 19. Section 414-126, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

“~~[[H]§414-124[HH]]~~ [[H]§414-126[H]] **Waiver of notice.**”

SECTION 25. Act 160, Session Laws of Hawaii 2002, is amended by amending section 15 to read as follows:

“SECTION 15. This Act shall take effect on July 1, 2002; provided that sections 5 through 11 shall take effect on January 1, 2003[-]; and provided further that the amendments made to section 36-27, Hawaii Revised Statutes, 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.”

SECTION 26. Act 176, Session Laws of Hawaii 2002, is amended by amending the prefatory language in section 13 to read as follows:

“SECTION 13. Section 342G-86, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:”

SECTION 27. Act 192, Session Laws of Hawaii 2002, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect on July 1, 2002, and shall be repealed on June 30, 2004, except that title 16, chapter 89C, Hawaii administrative rules, shall remain in effect until the board of nursing adopts rules pursuant to section 2 of this Act[-]; and provided that section 457-8.6, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.”

SECTION 28. Act 224, Session Laws of Hawaii 2002, is amended by amending the prefatory language in section 2 to read as follows:

“SECTION 2. Chapter 710, Hawaii Revised Statutes, is amended by adding to part V [~~three~~] two new sections to be appropriately designated and to read as follows:”

SECTION 29. Act 226, Session Laws of Hawaii 2002, is amended by amending the prefatory language in section 4 to read as follows:

“SECTION 4. [~~Chapter 302A,~~] Section 302A-807, Hawaii Revised Statutes, is amended to read as follows:”

SECTION 30. Act 226, Session Laws of Hawaii 2002, is amended by amending the prefatory language in section 5 to read as follows:

“SECTION 5. [~~Chapter~~] Section 321-15, Hawaii Revised Statutes, is amended to read as follows:”

SECTION 31. Act 226, Session Laws of Hawaii 2002, is amended by amending the prefatory language in section 8 to read as follows:

“SECTION 8. [~~Chapter~~] Section 466J-8, Hawaii Revised Statutes, is amended to read as follows:”

SECTION 32. Act 226, Session Laws of Hawaii 2002, is amended by amending the prefatory language in section 9 to read as follows:

“SECTION 9. [~~Chapter~~] Section 605-1, Hawaii Revised Statutes, is amended to read as follows:”

SECTION 33. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 34. This Act shall take effect upon its approval; provided that:

- (1) Section 14 shall take effect retroactive to July 1, 2002;
- (2) Section 19 shall take effect retroactive to July 1, 2001;
- (3) Section 20 shall take effect retroactive to July 1, 2002;
- (4) Section 21 shall take effect retroactive to May 23, 2002;
- (5) Section 22 shall take effect retroactive to January 1, 2003;
- (6) Sections 24, 25, 26, and 27 shall take effect retroactive to July 1, 2002;
and
- (7) Sections 28, 29, 30, 31, and 32 shall take effect retroactive to June 28, 2002.

(Approved April 1, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 4

H.B. NO. 814

A Bill for an Act Relating to Traffic Infractions.

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

SECTION 1. Section 291D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person who receives a notice of traffic infraction shall answer the notice within fifteen days of the date of the notice. There shall be included with the

ACT 5

notice of traffic infraction a preaddressed[~~-, postage paid~~] envelope directed to the traffic violations bureau of the applicable district court.”

SECTION 2. Statutory material to be repealed is bracketed and stricken.

SECTION 3. This Act shall take effect on July 1, 2004.

(Approved April 3, 2003.)

ACT 5

H.B. NO. 815

A Bill for an Act Relating to the Courts.

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

SECTION 1. Section 601-17, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§601-17[H]~~ **Use of credit and debit cards to pay for court costs, fees, expenses, and other charges.** ~~[All costs;]~~ Costs, fees, [bail] bond forfeitures, fines, expenses, and other charges [which]¹ that are due and owing to the courts may be paid by use of credit cards or debit cards acceptable to the administrative director of the courts[-]; provided that bail postings and driver’s license and vehicle registration clearances shall be paid by cash only. A service fee may be paid by the courts for the use of a credit or debit card service.”

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

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

(Approved April 3, 2003.)

Note

1. Should be stricken.

ACT 6

H.B. NO. 1022

A Bill for an Act Relating to Expungement.

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

SECTION 1. Section 571-88, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The court may issue an order expunging a juvenile arrest record of a person upon written application by the person or, if the person is a minor, the minor’s parent or guardian; provided the arrest was made pursuant to section 571-11(1) or (2) and the arrest record meets the following criteria:

- (1) The matter was not referred to the prosecuting attorney or the family court and ~~[the]~~:
 - (A) The person was not counseled and released by the police; or
 - (B) The person was counseled and released by the police and the person has become an adult;

- (2) ^{or} The matter was referred to the prosecuting attorney or family court and:
 (A) The person was not adjudicated responsible by the court; or
 (B) The matter was dismissed with prejudice.”

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

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

(Approved April 3, 2003.)

ACT 7

H.B. NO. 1220

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

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

SECTION 1. Section 353-65, Hawaii Revised Statutes, is amended to read as follows:

“**§353-65 Paroles; rules [~~and regulations~~]**. The Hawaii paroling authority may establish rules [~~and regulations~~], with the approval of the governor and the director of public safety not inconsistent with this part, under which any prisoner may be paroled but shall remain, while on parole, in the legal custody and under the control of the paroling authority, and be subject, at any time until the expiration of the term for which the prisoner was sentenced, to be taken back within the enclosure of the prison. The rules [~~and regulations~~] shall have the force and effect of law. Full power, subject to this part, to enforce the rules [~~and regulations~~], to grant, and to revoke paroles is conferred upon the paroling authority. The power to retake and reimprison a paroled prisoner is conferred upon the administrative secretary[~~,~~] or the administrative secretary’s designee, who may issue a warrant authorizing all of the officers named therein to arrest and return to actual custody any paroled prisoner. The superintendent of Hawaii state prison, the chief of police of each county and all police officers of the State or of any county, and all prison officers shall execute any such order in like manner as ordinary criminal process.

If any prisoner so paroled leaves the State without permission from the paroling authority, the prisoner shall be deemed to be an escaped prisoner, and may be arrested as such.”

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

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

(Approved April 3, 2003.)

A Bill for an Act Relating to Elections.

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

SECTION 1. Chapter 22, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§22- **Notice of proposed constitutional amendments.** Upon the adoption of any bill that proposes a constitutional amendment, the clerks of each house of the legislature shall publish the text of the proposed constitutional amendment in accordance with article XVII, section 3 of the Constitution of the State of Hawaii.”

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

“§11-2 **Chief election officer; duties.** (a) The chief election officer shall supervise all state elections. The chief election officer may delegate responsibilities in state elections within a county to the clerk of that county or to other specified persons.

(b) The chief election officer shall be responsible for the maximization of registration of eligible electors throughout the State. In maximizing registration, the chief election officer shall make an effort to equalize registration between districts, with particular effort in those districts in which the chief election officer determines registration is lower than desirable. The chief election officer, in carrying out this function, may make surveys, carry on house-to-house canvassing, and assist or direct the clerk in any other area of registration.

(c) The chief election officer shall maintain data concerning registered voters, elections, apportionment, and districting. The chief election officer shall use this data to assist the reapportionment commission provided for under Article IV of the Constitution.

(d) The chief election officer shall be responsible for public education with respect to voter ~~[materials, including the publication and dissemination of voting materials in the language of a language minority group as required by the Voting Rights Language Assistance Act of 1992, P.L. 102-344.~~

~~(e) Upon the certification of any bill that sets forth a question for vote by the electorate, the chief election officer shall coordinate the preparation of appropriate voter education materials with the legislative reference bureau. The legislative reference bureau shall be responsible for the interpretation of the bill and shall submit to the chief election officer, not later than ninety days prior to the general election, the following items in final form:~~

- ~~(1) A summary, factsheet, and digest of the proposed constitutional amendment, which includes the purpose and intent of the proposed constitutional amendment, and ramifications of the proposed constitutional amendment if ratified by the electorate; and~~
- ~~(2) Arguments for and against ratification of the proposed constitutional amendment.] registration and information.~~

~~[(f)] (e) The chief election officer shall adopt rules governing elections in accordance with chapter 91.”~~

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

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

(Approved April 3, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 9

H.B. NO. 1302

A Bill for an Act Relating to the Office of Hawaiian Affairs.

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

SECTION 1. The purpose of this Act is to make technical, housekeeping amendments relating to the authority of the office of Hawaiian affairs to award monetary grants.

SECTION 2. Section 10-17, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§10-17~~ **Grants; conditions and qualifications.** (a) Applications for grants shall be made to the office and contain such information as the office shall require. At a minimum, the applicant shall show:

- (1) The name of the requesting organization or individual;
 - (2) The purpose for the grant;
 - (3) The service to be supported by the grant;
 - (4) The target group to be benefited;
 - (5) The cost of the grant; and
 - (6) That the grant shall be used for activities that are consistent with the purposes of this chapter.
- (b) Grants shall only be awarded if:
- (1) The applicant has applied for or received all applicable licenses and permits, when such is required to conduct the activities or provide the services for which a grant is awarded;
 - (2) The applicant agrees to comply with applicable federal, state, and county laws;
 - (3) The grant shall not be used for purposes of entertainment or perquisites;
 - (4) All activities and improvements undertaken with funds received shall comply with all applicable federal, state, and county statutes and ordinances, including applicable building codes and agency rules; and
 - (5) The applicant will indemnify and hold harmless the office, the State of Hawaii, 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 office.
- (c) To receive a grant, an applicant shall:
- (1) Be:
 - (A) A for-profit subsidiary of a nonprofit organization incorporated under the law of the State;
 - (B) A nonprofit community-based organization determined to be exempt from federal income taxation by the Internal Revenue Service;
 - (C) A cooperative association; or

- (D) An individual, who in the board's determination, is able to provide the services or activities proposed in the application for a grant;
- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation, have bylaws or policies that describe the manner in which business is conducted and policies relating to nepotism and management of potential conflict of interest situations, and employ or contract with no two or more members of a family or kin of the first or second degree of consanguinity unless specifically permitted by the office;
- (3) Agree to make available to the office all records the applicant may have relating to the operation of the applicant's activity, business, or enterprise, to allow the office to monitor the applicant's compliance with the purpose of this chapter; and
- (4) Establish, to the satisfaction of the office, that sufficient funds are available for the effective operation of the activity, business, or enterprise for the purpose for which the grant is awarded.
- (d) Every grant shall be:
 - (1) Monitored by the office to ensure compliance with this chapter and the purposes and intent of the grant; and
 - (2) Evaluated annually to determine whether the grant attained the intended results in the manner contemplated.
- (e) Grants made by the office under this chapter may be made without regard to chapters 103D and 103F.

SECTION 3. Section 103D-102, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notwithstanding subsection (a), this chapter shall not apply to contracts by governmental bodies:

- (1) Solicited or entered into before July 1, 1994, unless the parties agree to its application to a contract solicited or entered into prior to July 1, 1994;
- (2) To disburse funds, irrespective of their source:
 - (A) For grants or subsidies as those terms are defined in section 42F-101, made by the State in accordance with standards provided by law as required by article VII, section 4, of the State Constitution; or by the counties pursuant to their respective charters or ordinances;
 - (B) To make payments to or on behalf of public officers and employees for salaries, fringe benefits, professional fees, or reimbursements;
 - (C) To satisfy obligations that the State is required to pay by law, including paying fees, permanent settlements, subsidies, or other claims, making refunds, and returning funds held by the State as trustee, custodian, or bailee;
 - (D) For entitlement programs, including public assistance, unemployment, and workers' compensation programs, established by state or federal law;
 - (E) For dues and fees of organizations of which the State or its officers and employees are members, including the National Association of Governors, the National Association of State and County Governments, and the Multi-State Tax Commission;
 - (F) For deposit, investment, or safekeeping, including expenses related to their deposit, investment, or safekeeping;

- (G) To governmental bodies of the State;
- (H) As loans, under loan programs administered by a governmental body; and
- (I) For contracts awarded in accordance with ~~[the provisions of] chapter 103F[-and~~
- (J) ~~For grants awarded by the office of Hawaiian affairs in accordance with the provisions of chapter 10].~~
- (3) To procure goods, services, or construction from a governmental body other than the University of Hawaii bookstores, from the federal government, or from another state or its political subdivision;
- (4) To procure the following goods or services which are available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State:
 - (A) Services of expert witnesses for potential and actual litigation of legal matters involving the State, its agencies, and its officers and employees, including administrative quasi-judicial proceedings;
 - (B) Works of art for museum or public display;
 - (C) Research and reference materials including books, maps, periodicals, and pamphlets, which are published in print, video, audio, magnetic, or electronic form;
 - (D) Meats and foodstuffs for the Kalaupapa settlement;
 - (E) Opponents for athletic contests;
 - (F) Utility services whose rates or prices are fixed by regulatory processes or agencies;
 - (G) Performances, including entertainment, speeches, and cultural and artistic presentations;
 - (H) Goods and services for commercial resale by the State;
 - (I) Services of printers, rating agencies, support facilities, fiscal and paying agents, and registrars for the issuance and sale of the State's or counties' bonds;
 - (J) Services of attorneys employed or retained to advise, represent, or provide any other legal service to the State or any of its agencies, on matters arising under laws of another state or foreign country, or in an action brought in another state, federal, or foreign jurisdiction, when substantially all legal services are expected to be performed outside this State;
 - (K) Financing agreements under chapter 37D; and
 - (L) Any other goods or services which the policy board determines by rules or the chief procurement officer determines in writing is available from multiple sources but for which procurement by competitive means is either not practicable or not advantageous to the State; and
- (5) Which are specific procurements expressly exempt from any or all of the requirements of this chapter by:
 - (A) References in state or federal law to provisions of this chapter or a section of this chapter, or references to a particular requirement of this chapter; and
 - (B) Trade agreements, including the Uruguay Round General Agreement on Tariffs and Trade (GATT) which require certain non-construction and non-software development procurements by the comptroller to be conducted in accordance with its terms."

SECTION 4. Section 103F-101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

ACT 10

“(a) This chapter shall apply to all contracts made by state agencies to provide health or human services to Hawaii’s residents, provided that this chapter shall not apply to:

- (1) Contracts to award grants or subsidies of state funds appropriated by the legislature to a specific organization or individual;
- (2) Transactions between or among government agencies, including but not limited to agreements, contracts, and grants;
- (3) Transactions expressly exempt from the requirements of this chapter; and
- (4) Transactions that the chief procurement officer determines are exempt under rules adopted by the policy board[; ~~and~~
- (5) ~~Contracts to award grants of office of Hawaiian affairs funds pursuant to section 10-17].”~~

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

SECTION 6. This Act shall take effect on July 1, 2003.

(Approved April 3, 2003.)

ACT 10

S.B. NO. 554

A Bill for an Act Relating to Brown Tree Snakes.

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

SECTION 1. Section 150A-6, Hawaii Revised Statutes, is amended to read as follows:

“§150A-6 Soil, plants, animals, etc., importation or possession prohibited. 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] four live, sterile brown tree [snake] snakes 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 department 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.”

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

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

(Approved April 7, 2003.)

ACT 11

S.B. NO. 1256

A Bill for an Act Relating to the Agricultural Water Use and Development Plan.

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, as amended by Act 192, Session Laws of Hawaii 2000, to submit the state agricultural water use and development plan.

SECTION 2. Act 101, Session Laws of Hawaii 1998, as amended by Act 192, Session Laws of Hawaii 2000, 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 [2002] 2004.¹”

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

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

(Approved April 16, 2003.)

Note

1. Period should not be underscored.

A Bill for an Act Relating to Microorganism Import.

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

SECTION 1. Section 150A-6.3, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

~~“(f) [Permits issued under rules adopted prior to Act 211, Session Laws of Hawaii 2000, are valid until the expiration date shown on the permit with no entitlement to renewal on the original import terms and conditions. Upon expiration of those permits, continued import is subject to reapplication and satisfaction of requirements under rules adopted to implement this section.] The requirements of this section other than the notification, labeling, and inspection requirements of section 150A-5 shall not apply to import of microorganisms by the following:~~

- (1) The state department of health or Tripler Army Medical Center for their laboratories; provided that the department of health shall develop and implement within its laboratories a mechanism for coordinated oversight and inventory control of microorganisms imported for its laboratories and implement internal procedures to assure proper biosafety containment and laboratory practices commensurate with microorganism risk levels; and
- (2) A laboratory certified under the Clinical Laboratories Improvement Amendments of 1988 (42 U.S.C. 263 et seq.); provided that the certified laboratory is registered with the department pursuant to rules and imports microorganisms that are applicable to the category of examinations or procedures for which the foregoing certification was approved.

The department of health and Tripler Army Medical Center may transfer any such imported microorganisms between their respective laboratories without approval from the department of agriculture, but with notification to the department of agriculture prior to the transfer; provided that transfer of such imported microorganisms from the department of health, Tripler Army Medical Center, or a laboratory certified and registered as described in paragraph (2) to other entities in the State shall require prior approval from the department of agriculture in the form of a letter of authorization or a permit for possession.”

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

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

(Approved April 16, 2003.)

A Bill for an Act Relating to Antitrust.

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

SECTION 1. Section 480-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The attorney general of the State shall be authorized to bring a class action for indirect purchasers asserting claims under this chapter. The attorney general or the director of the office of consumer protection may bring a class action on behalf of consumers based on unfair or deceptive acts or practices declared unlawful by section 480-2. Actions brought under this subsection shall be brought as *parens patriae* on behalf of natural persons residing in the State, to secure [eompensatory] threefold damages for injuries sustained by such natural persons to their property by reason of any violation of this chapter.”

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

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

(Approved April 16, 2003.)

ACT 14

S.B. NO. 1396

A Bill for an Act Relating to the Administration of Taxes.

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

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

“(f) In the case of any underpayment of estimated tax, except as provided by this subsection, there shall be added to the tax for the taxable year an amount determined at the rate of two-thirds of one per cent a month or fraction of a month upon the amount of the underpayment for the period of the underpayment.

- (1) The amount of the underpayment shall be the excess of:
 - (A) The required installment, over
 - (B) The amount, if any, of the installment paid on or before the due date for the installment.
- (2) The period of the underpayment shall run from the due date for the installment to whichever of the following dates is the earlier:
 - (A) The twentieth day of the fourth month following the close of the taxable year, or
 - (B) With respect to any portion of the underpayment, the date on which the portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be credited against unpaid required installments in the order in which the installments are required to be paid.
- (3) For the purposes of this section, the term “tax” means the tax imposed under this chapter reduced by any credits available to the taxpayer other than the credit for amounts withheld from the taxpayer’s wages or taxes withheld at the source, if any, or estimated tax payments or payments remitted with extension requests for the taxable year.
- (4) Sections 6654(d), (e)(2), (e)(3), (h), (i), (j), (k), and (l), (with respect to failure by an individual to pay estimated income tax), and 6655(d), (e), (g)(2), (g)(3), (g)(4), and (i) (with respect to failure by a corporation to pay estimated income tax) of the Internal Revenue Code, as of the date set forth in section 235-2.3(a), shall be operative for the purposes of this section; provided that the due dates contained in any of the preceding Internal Revenue Code sections shall be deemed to be the

twentieth day of the applicable month; and provided further that, for purposes of this chapter in applying section 6654(d), [~~if the adjusted gross income shown on the return of the individual for the preceding taxable year exceeds \$50,000,~~] the required annual payment shall be the lesser of sixty per cent of the tax shown on the return for the taxable year (or, if no return is filed, sixty per cent of the tax for the taxable year) or [~~one hundred ten~~] one hundred per cent of the tax shown on the return of the individual for the preceding taxable year.”

SECTION 2. Section 235-98, Hawaii Revised Statutes, is amended to read as follows:

“§235-98 Returns; form, verification and authentication, time of filing. Returns shall be in such form as the department of taxation may prescribe from time to time and shall be verified by written declarations that the statements therein made are subject to the penalties prescribed in section 231-36. Corporate returns shall be authenticated by the signature of the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other officer duly authorized so to act, under the penalties prescribed by section 231-36. The fact that an individual’s name is signed on the corporation return shall be prima facie evidence that the individual is authorized to sign the return on behalf of the corporation.

The department may grant a reasonable extension of time for filing returns under such rules [~~and regulations~~] as it shall prescribe. Except [~~in the case~~] as otherwise provided by statute for cases in which exceptional circumstances require additional time, including cases of persons who are outside the United States, no extension of time for filing returns shall be for more than six months[-] in order to expedite the timely determination of tax liability and the timely remission of taxes.”

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

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2002.

(Approved April 16, 2003.)

ACT 15

S.B. NO. 1406

A Bill for an Act Relating to Commercial Driver Licensing.

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

SECTION 1. Section 286-239, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commercial driver’s license shall be marked “CDL” and, to the maximum extent practicable, shall be tamperproof and include, but not be limited to, the following with respect to the licensee:

- (1) The name and residence address;
- (2) A color photograph;
- (3) A physical description including sex and height;
- (4) Date of birth;
- (5) [Social] A commercial driver’s license number that shall not be the licensee’s social security number;

- (6) Signature;
- (7) The class or type of commercial motor vehicle or vehicles which may be driven together with any endorsements or restrictions;
- (8) The name of this State; and
- (9) The issuance and expiration dates of the license.”

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

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

(Approved April 16, 2003.)

ACT 16

S.B. NO. 1415

A Bill for an Act Relating to Penalties for Violations Within the Conservation District.

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

SECTION 1. Section 183C-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person violating this chapter or any rule adopted in accordance with this chapter shall be fined not more than \$2,000 per violation in addition to administrative costs and costs associated with land or habitat restoration, or both, if required, and damages to state land. After written or verbal notification from the department, wilful violation of this section may incur an additional fine of up to \$2,000 per day per violation for each day in which the violation persists.”

SECTION 2. New statutory material is underscored.

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

(Approved April 16, 2003.)

ACT 17

H.B. NO. 1172

A Bill for an Act Relating to the Uniform Securities Act.

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

SECTION 1. Section 485-1, Hawaii Revised Statutes, is amended by amending the definition of “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 salesperson;
- (B) An issuer;
- (C) A person who has no place of business in this State if:
 - (i) 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 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;
- (D) 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[.]; or
 - (F) A bank, savings institution, or trust company."

SECTION 2. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2003.

(Approved April 16, 2003.)

Note

1. Bracketed material not stricken.

ACT 18

S.B. NO. 51

A Bill for an Act Relating to Commercial Driver's Licenses.

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

SECTION 1. Section 286-236, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall be issued a commercial driver's license unless that person meets the qualification standards of 49 Code of Federal Regulations, Part 391, Subparts B and E, has passed a knowledge and driving skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 Code of Federal Regulations, Part 383, Subparts G and H, and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act (CMVSA) of 1986 (Title XII, Public Law 99-570) in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed by the director and administered by the respective county examiner of drivers. A person who is not physically qualified to drive under 49 Code of Federal Regulations §391.41(b)(1), [øf] (2), or (3) and who is otherwise qualified to drive a motor vehicle may be granted an intrastate waiver by the director. The process for granting intrastate waivers shall be the same as that for interstate waivers in 49 Code of Federal Regulations, Part 391.49, except that the intrastate waiver requests shall be submitted to the director[-]; provided that the director shall adopt rules under chapter 91 to establish a screening process, including approval by a licensed physician, for granting an intrastate waiver to persons who are not physically qualified under 49 Code of Federal Regulations §391.41(b)(3).”

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

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

(Approved April 16, 2003.)

ACT 19

S.B. NO. 368

A Bill for an Act Relating to Criminal Property Damage.

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

SECTION 1. Section 708-820, Hawaii Revised Statutes, is amended to read as follows:

“**§708-820 Criminal property damage in the first degree.** (1) A person commits the offense of criminal property damage in the first degree if:

- (a) The person intentionally or knowingly damages property and thereby recklessly places another person in danger of death or bodily injury; or
 - (b) The person intentionally or knowingly damages the property of another, without the other's consent, in an amount exceeding \$20,000.
- (2) Criminal property damage in the first degree is a class B felony.”

SECTION 2. Section 708-821, Hawaii Revised Statutes, is amended to read as follows:

“§708-821 Criminal property damage in the second degree. (1) A person commits the offense of criminal property damage in the second degree if:

- (a) The person intentionally or knowingly damages the property of another, without the other’s consent, by the use of widely dangerous means; or
 - (b) The person intentionally or knowingly damages the property of another, without the other’s consent, in an amount exceeding \$1,500.
- (2) Criminal property damage in the second degree is a class C felony.”

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

SECTION 4. New statutory material is underscored.

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

(Approved April 16, 2003.)

ACT 20

S.B. NO. 550

A Bill for an Act Relating to Agricultural Commodities.

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

SECTION 1. Section 145-21, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§145-21]]~~ **Definition.** **Definitions.** For purposes of this part, “~~agricultural commodity~~”:

“Agricultural commodity” means any fruit, nut, or vegetable that is the food product of any tree, vine, or plant, or any aquacultural, horticultural, silvicultural, or floricultural product.

“Person” means any individual, firm, corporation, partnership, or association.”

SECTION 2. Section 145-22, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§145-22]]~~ **Agricultural commodities; ownership and movement certification.** (a) Every ~~[owner,] person,~~ upon sale ~~[or transportation of lots of over two hundred pounds or with a value of at least \$100,]~~ of any agricultural commodity or upon transportation of lots of any agricultural commodity of more than two hundred pounds or with a value of at least \$100 that is marketed for commercial purposes, shall complete a certificate describing the commodity and indicating:

- (1) The seller, owner, buyer, or consignee;
- (2) The origin; and
- (3) The destination.

Two copies of the certificate shall accompany the shipment, and a copy shall be retained by the ~~[owner.]~~ person completing the certificate. One of the copies of the certificate shall be presented upon request to a state or county law enforcement officer or other officer ~~[or],~~ employee, or any other person as described in section 145-25.

(b) This section shall not apply to the retail sale of an agricultural commodity to the final consumer.”

SECTION 3. Section 145-23, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§145-23]]~~ **Lack of proof of ownership as a violation.** The failure of any person who sells, transports, or possesses after sale or transport, agricultural commodities ~~[in lots of over two hundred pounds or with a value of at least \$100,]~~ to maintain a certificate of ownership or other written proof of ownership ~~[that describes]~~ of the agricultural commodity, as described in section 145-22, is a violation of this part.”

SECTION 4. Section 145-25, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§145-25]]~~ **Enforcement; citation and summons.** Violations of this part or any rule adopted pursuant thereto may be enforced by citation and summons issued by:

- (1) Any state or county law enforcement officer; or
- (2) Any officer or employee of the department of agriculture, or any other person, authorized and designated by the board of agriculture to investigate and enforce this chapter and all rules adopted by the department pursuant thereto.”

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

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

(Approved April 16, 2003.)

ACT 21

S.B. NO. 562

A Bill for an Act Relating to Terminable Rental Adjustment Clause Vehicle Leases.

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

SECTION 1. The purpose of this Act is to make it clear that motor vehicle fleet leasing contracts that contain Terminable Rental Adjustment Clause provisions are true leases and should be accorded the same treatment in the area of bankruptcy that currently exists in the area of taxation. See, e.g., In re Owen, 221 B.R. 56, 63 (Bk.N.D.N.Y. 1998). This makes the law of Hawaii consistent with the law of the great majority of other states.

SECTION 2. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

“**§286- Terminable rental adjustment clause vehicle leases.** In the case of motor vehicles or trailers, notwithstanding any other provision of law, a transaction does not create a sale or security interest merely because it provides that the rental price is permitted or required to be adjusted under the agreement, either

ACT 22

upward or downward, by reference to the amount realized upon sale or other disposition of the motor vehicle or trailer.”

SECTION 3. New statutory material is underscored.¹

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

(Approved April 16, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 22

S.B. NO. 1353

A Bill for an Act Making an Emergency Appropriation for Medicaid.

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 259, Session Laws of Hawaii 2001, appropriated a certain designated sum to the department of human services to provide funds for the medical assistance program under the Med-QUEST division for the fiscal period beginning July 1, 2002, and ending June 30, 2003.

A critical funding emergency exists. The medical assistance program, also known as the medicaid program, will expend all appropriated funds before the end of the current fiscal year and the department will be unable to meet its fiscal obligation to provide health and health-related services to medicaid recipients who are aged, blind, or disabled (ABD). Significant growth in recipients under the Hawaii QUEST program and the increased use and cost of prescription drugs in the fee-for-service program are the primary contributing factors to this financial situation. The recipient growth is largely due to the State’s economic situation caused by the events of September 11, 2001, and was not anticipated during the previous budget periods.

To prevent the reduction or discontinuance of direct medical services, 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 fiscal year 2002-2003, and to be used for health care payments to health plans and medical providers:

General funds:	\$22,726,806
Other federal funds:	\$61,138,392

The sums appropriated or authorized shall be expended by the department of human services for the purposes of this Act.

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

(Approved April 16, 2003.)

ACT 23

S.B. NO. 685

A Bill for an Act Relating to Social Security Numbers Placed in Poll Books.

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

SECTION 1. Section 11-136, Hawaii Revised Statutes, is amended to read as follows:

“§11-136 Poll book, identification, voting. Every person upon applying to vote shall sign the person’s name in the poll book prepared for that purpose. This requirement may be waived by the chairperson of the precinct officials if for reasons of illiteracy or blindness or other physical disability the voter is unable to write. Every person shall provide identification if so requested by a precinct official. A poll book shall not contain the social security number of any person.

After signing the poll book and receiving the voter’s ballot, the voter shall proceed to the voting booth to vote according to the voting system in use in the voter’s precinct. The precinct official may, and upon request shall, explain to the voter the mode of voting.”

SECTION 2. New statutory material is underscored.

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

(Approved April 16, 2003.)

ACT 24

S.B. NO. 787

A Bill for an Act Relating to Disaster Leave.

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

SECTION 1. The legislature finds that natural disasters and other catastrophes often arise suddenly, and that cooperation among government agencies and volunteer service agencies is vital in coping with such emergencies. The legislature further finds that dedicated service by trained and experienced volunteers can help prevent loss and destruction of life and property, and that it is in the interest of the State and its citizens to allow certain state and county employees who are trained and experienced in disaster relief to provide such service for brief periods without loss of pay and benefits.

SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§78- Paid leave for state and county employees providing disaster relief services for the American Red Cross. (a) The governor or mayor or their respective designees may grant a state or county employee who is a certified American Red Cross disaster volunteer up to thirty days paid leave of absence to perform disaster relief services for the American Red Cross, a federally chartered non-governmental disaster relief organization, when a disaster has been:

- (1) Designated as level III or higher by American Red Cross regulations;
- (2) Officially declared by the president of the United States; or
- (3) Declared a state of emergency by the governor;

provided that the employee has prior authorization from the governor or mayor, or their respective designee, as applicable, and the leave of absence imposes no undue hardship on state or county operations.

(b) Employees granted leaves of absence pursuant to this section shall be paid at their regular rates of pay for those regular hours during which the employees are absent from work, without loss of seniority, pay, vacation, sick leave, or earned overtime accumulations.”

SECTION 3. New statutory material is underscored.¹

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

(Approved April 16, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 25

S.B. NO. 1469

A Bill for an Act Relating to Peer Support Counseling Sessions.

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

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

“§ - **Peer support counseling; sessions.** (a) Unless the context otherwise requires, for the purposes of this section:

“Emergency services personnel” means any employee of an emergency services provider who is engaged in providing firefighting, water safety, and emergency medical services.

“Emergency services provider” means any public employer that employs persons to provide firefighting, water safety, and emergency medical services.

“Employee assistance program” means a program established by a law enforcement agency or emergency services provider to provide counseling or support services to employees of the law enforcement agency or emergency services provider.

“Law enforcement agency” means any county police department, the department of public safety, and any state or county public body that employs law enforcement officers.

“Law enforcement officer” means a sheriff, deputy sheriff, police officer, parole officer, or probation officer.

“Peer support counseling sessions” includes critical incident stress management sessions.

(b) Any communication made by a participant or counselor in a peer support counseling session conducted by a law enforcement agency or by an emergency services provider for law enforcement officers or emergency services personnel, and any oral or written information conveyed in the peer support counseling session, is privileged and may not be disclosed by any person participating in the peer support counseling session.

(c) Any communication relating to a peer support counseling session made privileged under subsection (b), that is made between counselors, between counselors and the supervisors or staff of an employee assistance program, or between the

supervisors or staff of an employee assistance program, is privileged and may not be disclosed.

(d) The provisions of this section apply only to peer support counseling sessions conducted by an employee or other person who:

- (1) Has been designated by a law enforcement agency or emergency services provider, or by an employee assistance program, to act as a counselor; and
- (2) Has received training in counseling and in providing emotional and moral support to law enforcement officers or emergency services personnel who have been involved in emotionally traumatic incidents by reason of their employment.

(e) This section applies to all oral communications, notes, records, and reports arising out of a peer support counseling session. Any notes, records, or reports arising out of a peer support counseling session are not public records for the purposes of chapter 92F.

(f) Any communication made by a participant or counselor in a peer support counseling session subject to this section, and any oral or written information conveyed in a peer support counseling session subject to this section, is not admissible in any judicial proceeding, administrative proceeding, arbitration proceeding, or other adjudicatory proceeding. Communications and information made privileged under this section may not be disclosed by the participants in any judicial proceeding, administrative proceeding, arbitration proceeding, or other adjudicatory proceeding. The limitations on disclosure imposed by this subsection include disclosure during any discovery conducted as part of an adjudicatory proceeding.

(g) Nothing in this section limits the discovery or introduction in evidence of: knowledge acquired by any law enforcement officer or emergency services personnel from observation made during the course of employment; or material or information acquired during the course of employment that is otherwise subject to discovery or introduction into evidence.

(h) This section does not apply to:

- (1) Any threat of suicide or homicide made by a participant in a peer support counseling session or any information conveyed in a peer support counseling session relating to a threat of suicide or homicide;
- (2) Any information relating to abuse of spouses, children, or the elderly, or other information that is required to be reported by law; or
- (3) Any admission of criminal conduct.

(i) This section does not prohibit any communication between counselors who conduct peer support counseling sessions or any communications between counselors and the supervisors or staff of an employee assistance program.”

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 April 16, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. The legislature finds that motor vehicle rental companies doing business in Hawaii typically remove or ship ten or more vehicles between the islands and from the State on a regular basis. The purpose of this Act is to ease the current restrictions and requirements for shipping and removing vehicles that are imposed on those motor vehicle rental companies.

SECTION 2. Section 286-57, Hawaii Revised Statutes, is amended to read as follows:

“§286-57 Unlawful removal of motor vehicles from State. (a) It shall be unlawful for any person to remove, attempt to remove, cause to be removed, or assist in so doing, any motor vehicle registered pursuant to this part from the State to any other place away from the State, unless the person is the legal owner ~~[thereof]~~ of the vehicle or ~~[unless the]~~ has first obtained written authorization ~~[of]~~ from the legal owner ~~[thereof to the removal has first been obtained.]~~ of the vehicle.

(b) No person owning or having control of any vessel, airplane, or other means of transportation, and no agent or employee of ~~[such]~~ the person, shall transport any ~~[such]~~ vehicle from the State to any other place away from the State, or accept ~~[the same]~~ any vehicle for the transportation, or deliver any bill of lading, order, or other written instrument authorizing the transportation, unless the person requesting the transportation:

- (1) ~~[produces]~~ Produces a certificate of ownership and a current certificate of registration showing that the person is the legal owner of the vehicle; or
- (2) ~~[produces,]~~ Produces, if the person is not the legal owner ~~[thereof,]~~ of the vehicle, a current certificate of registration showing that the person is the registered owner of the vehicle and, in addition ~~[thereto],~~ obtains the written consent of the legal owner ~~[thereof]~~ of the vehicle to the transportation.

(c) No person owning or having control of any vessel, airplane, or other means of transportation, and no agent or employee of ~~[such]~~ the person, shall transport any used vehicle between the counties or from the State to any other place away from the State, unless, in addition to any other requirements, ~~[such]~~ the person records by physical inspection the vehicle identification number (VIN) of ~~[such]~~ the vehicle and maintains a record of the transporting of the vehicle along with the description and vehicle identification number (VIN) for a period of not less than three years.

(d) This section shall not apply to any motor vehicle rental company as defined in section 431:9A-141 that periodically ships in quantities of ten vehicles or more.

(e) Records maintained as required above, and all other records and receipts relating to the exportation of vehicles shall be available for inspection by the federal, state, or county police agencies during normal business hours.”

SECTION 3. Section 286-271, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) This section shall not apply to ~~[licensed];~~

- (1) Any motor vehicle rental company as defined in section 431:9A-141 that periodically ships in quantities of ten vehicles or more; or
- (2) Licensed dealers who periodically ship in quantities of ten vehicles or more, or whose primary business is the auction of insurance salvage vehicles.”

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

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

(Approved April 22, 2003.)

ACT 27

H.B. NO. 83

A Bill for an Act Relating to a Land Exchange Between the State of Hawaii and the Aloha Council Boy Scouts of America.

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

SECTION 1. The legislature finds that it is in the public interest for the State of Hawaii to enter into a land exchange with the Aloha Council Boy Scouts of America involving private lands located at Waikele, Oahu, and identified as tax map key: (1) 9-4-166:24, 25, and 26.

The Aloha Council Boy Scouts of America have proposed to exchange these private lands for: the 64.8 acre property at Pupukea, Oahu, known as Camp Pupukea and identified as tax map key: (1) 5-9-05:02 and 77; the 29 acre property at Waimea, Kauai, known as Camp Alan Faye and identified as tax map key: (4) 1-4-01:15; and the 238 acre property at Honokaia, Hawaii, known as Camp Honokaia and identified as tax map key: (3) 4-6-011:40. All three of these state-owned properties are currently under long-term leases to the Aloha Council Boy Scouts of America at nominal rent.

This land exchange, which has not yet been consummated, is consistent with the State's desire to generate revenues for public land trust purposes.

The purpose of this Act is to authorize the exchange of private lands in Waikele, Oahu, for public lands located on the islands of Oahu, Kauai, and Hawaii, notwithstanding the provisions of section 171-50(c), Hawaii Revised Statutes.

SECTION 2. By appraisal report dated December 23, 2002, John Child & Company determined that the value of the public land to be exchanged is \$1,150,000. By appraisal report dated October 11, 2002, The Hallstrom Appraisal Group determined that the value of the private land to be exchanged is \$1,209,000. In accordance with section 171-50(b), Hawaii Revised Statutes:

- (1) The public lands to be exchanged are of substantially equal value to that of the private lands;
- (2) The fair market value of the private lands and the public lands were separately determined by disinterested qualified appraisers;
- (3) No payment by the State will be made for the excess value of the private lands over the value of the public lands; and
- (4) The value of the public lands does not exceed one hundred twenty per cent of the value of the private lands.

SECTION 3. Notwithstanding section 171-50(c), Hawaii Revised Statutes, which provides for legislative disapproval of the land exchanges that have already been consummated, the legislature approves the land exchange between the State of Hawaii and the Aloha Council Boy Scouts of America involving private lands at Waikele, Oahu, identified as tax map key: (1) 9-4-166:24, 25, and 26; and public lands identified by tax map keys: (1) 5-9-05:02 and 77, (4) 1-4-01:15, and (3) 4-6-011:40; provided the following conditions are met:

- (1) An exchange deed shall be executed between the parties and contain the following information:
 - (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 the Aloha Council Boy Scouts of America;
 - (C) The name or names of the appraiser or 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 property located at Waikele, Oahu, obtained from the Aloha Council Boy Scouts of America shall be conveyed in fee simple by deed to the State of Hawaii; and
- (3) The lands transferred to the State by the Aloha Council Boy Scouts of America under this Act shall assume the same public land trust status as designated under section 5 of the Admission Act as the lands transferred to the Aloha Council Boy Scouts of America 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, 2006.

(Approved April 22, 2003.)

ACT 28

H.B. NO. 659

A Bill for an Act Relating to the Legislative Journals.

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

SECTION 1. Section 93-15, Hawaii Revised Statutes, is amended to read as follows:

~~“[E]§93-15 Legislative journals; sale and distribution.[E] [The journals of the senate and house of representatives, published in accordance with the rules of each house of the legislature, shall be sold and distributed to the public by the lieutenant governor at a price fixed by the lieutenant governor. The money received therefor shall be paid into the state treasury to the credit of the general fund. The lieutenant governor may furnish the journals of the senate and house of representatives to public officials for official use free of charge. As used in this section, public officials include officials of the state and county governments, of the congressional delegation of the State, of the United States District Court, District of Hawaii, and of the United States Attorney’s Office in Hawaii.] Each house of the legislature shall be responsible for the publication, sale, and distribution of their respective legislative journals. The speaker of the house of representatives and the senate president shall:~~

- ~~(1) Fix the price of their respective legislative journals; and~~

- (2) Determine who shall receive their respective legislative journals free of charge.

The money received from the sale of the legislative journals may be used by the respective houses of the legislature to defray any and all expenses of the respective houses.”

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

SECTION 3. This Act shall take effect on July 1, 2003.

(Approved April 22, 2003.)

ACT 29

H.B. NO. 1453

A Bill for an Act Relating to Residential Leaseholds.

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

SECTION 1. Section 516-1, Hawaii Revised Statutes, is amended by amending the definition of “lot”, “houselot”, “residential lot”, and “residential houselot” to read as follows:

““Lot”, “houselot”, “residential lot”, and “residential houselot” mean a parcel of land, two acres or less in size, zoned for residential use, which is used or occupied or is developed, devoted, intended, or permitted to be used or occupied as a principal place of residence for one or two families.”

SECTION 2. New statutory material is underscored.

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

(Approved April 22, 2003.)

ACT 30

H.B. NO. 1572

A Bill for an Act Relating to Parking for Disabled Persons.

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

SECTION 1. Chapter 291, Hawaii Revised Statutes, is amended by adding one new section to part III to be appropriately designated and to read as follows:

“§291- Enforcement. Notwithstanding any law to the contrary, and in addition to any other authority provided by law that is not inconsistent with the purposes of this part:

- (1) A law enforcement officer may access the property of a private entity to enforce the provisions of this part; and
- (2) A commissioned volunteer enforcement officer may access the property of a private entity during normal business hours of the entity to enforce the provisions of this part;

provided that the private entity’s parking lot contains a parking space reserved for persons with disabilities.”

SECTION 2. Section 291-51, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

““Access aisle” means the area that is adjacent to a parking space reserved for a person with a disability and that is to be used exclusively by that person for the purpose of entering and exiting a vehicle.”

2. By amending the definitions of “parking space reserved for persons with disabilities”, “person with a disability”, “removable windshield placard”, and “temporary removable windshield placard” to read:

““Parking space reserved for persons with disabilities” means a public or private parking space, including the access aisle, designated for the use of a person with a disability that is designed and constructed in compliance with the requirements of the federal Americans with Disabilities Act of 1990, as amended, and related rules and guidelines, and is marked with a sign designating the parking space as reserved for persons with disabilities.

“Person with a disability” means a person with a disability which limits or impairs the ability to walk, and who, as determined by a licensed practicing physician:

- (1) Cannot walk two hundred feet without stopping to rest, due to a diagnosed arthritic, neurological, orthopedic, renal, vascular, or oncological condition;
- (2) Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;
- (3) Is restricted by lung disease to such an extent that the person’s forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than sixty mm/hg on room air at rest;
- (4) Uses portable oxygen; or
- (5) Has a cardiac condition to the extent that the person’s functional limitations are classified in severity as Class III or Class IV according to the standards set by the American Heart Association.

“Removable windshield placard” means a two-sided, hanger-style placard

[which includes on each side:

- (1) ~~The international symbol of access which is white on a blue shield;~~
- (2) ~~An identification number;~~
- (3) ~~A date of expiration; and~~
- (4) ~~The words “State of Hawaii”;~~] issued under this part to a person with a disability who presents a certificate of disability that verifies that the applicant’s disability is expected to last for at least four years.

“Temporary removable windshield placard” means a two-sided, hanger-style placard[, which includes on each side:

- (1) ~~The international symbol of access which is white on a red shield;~~
- (2) ~~An identification number;~~
- (3) ~~A date of expiration;~~
- (4) ~~The words “State of Hawaii”;~~ and
- (5) ~~The word “temporary”;~~] issued under this part to a person with a disability who presents a certificate of disability that verifies the person’s disability in monthly increments, which shall not exceed six months.”

SECTION 3. Section 291-51.6, Hawaii Revised Statutes, is amended to read as follows:

“§291-51.6 [Temporary] Issuance of temporary removable windshield parking placards. Each county may issue one temporary removable windshield placard and a second temporary removable windshield placard to each applicant who requests [it] and presents a certificate of disability that verifies the duration of the applicant’s disability in monthly increments, which shall not exceed six months, and upon payment of a fee to the issuing agency. [The temporary removable fee amount shall be established by the disability and communication access board. The temporary removable windshield placard shall expire at the end of the last month of the applicant’s disability.

A second temporary removable windshield placard may be issued to each applicant with a disability who so requests and upon payment of a fee to the issuing agency. The second temporary removable windshield placard fee amount shall be established by the disability and communication access board. The second temporary removable windshield placard shall have the same date of expiration as the first temporary removable windshield placard issued to the applicant.

Upon expiration of a temporary removable windshield placard, a person with a disability may apply for a new temporary removable windshield placard upon return of the expired placard and presentation of a new certificate of disability. No applicant shall have more than two valid temporary removable windshield placards issued under this part at any time.] The temporary removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.”

SECTION 4. Section 291-52, Hawaii Revised Statutes, is amended to read as follows:

“§291-52 Issuance of removable windshield placard. Each county may issue one removable windshield placard and a second removable windshield placard to each applicant who so requests and presents a certificate of disability that verifies that the applicant’s disability is expected to last for at least four years. The removable windshield placard shall expire four years after the date of its issuance. [A second removable windshield placard may be issued to each applicant who requests one. The second removable windshield placard shall have the same date of expiration as the first removable windshield placard issued to the applicant. A person with a disability may apply for a new removable windshield placard upon return of the expired placard and presentation of a new certificate of disability. No person with a disability shall have more than two removable windshield placards issued under this part at any time.] The removable windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.”

SECTION 5. Section 291-52.5, Hawaii Revised Statutes, is amended to read as follows:

“[H]§291-52.5[H] Issuance of identification card. Each issuing agency shall issue one identification card [when it] at the same time it issues a removable windshield placard, temporary removable windshield placard, or special license plates to [each] a person with a disability. [The identification card shall have the same date of expiration as the removable windshield placard, temporary removable windshield placard, or special license plates issued to the person. The identification card shall not be issued with a second removable windshield placard or second temporary removable windshield placard. The identification card shall indicate the applicable serial number of the removable windshield placard or temporary removable windshield placard or the special license plates number. The identification card

shall also indicate the applicable serial number of the second removable windshield placard or second temporary removable windshield placard if issued.]”

SECTION 6. Section 291-52.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291-52.6]]~~ **Replacement of a lost, stolen, or mutilated placard or identification card.** A removable windshield placard, temporary removable windshield placard, or identification card that is reported lost, stolen, or mutilated may be replaced upon the submittal of a written statement by a person with a disability that the placard or identification card was either lost, stolen, or mutilated and a completed application for a removable windshield placard, temporary removable windshield placard, or identification card to the issuing agency. ~~[If a placard is lost, the county may charge a replacement fee to be paid to the issuing agency. A removable windshield placard, temporary removable windshield placard, or identification card that is reported stolen may be replaced upon police verification that the placard was stolen and submittal of a completed application for a removable windshield placard, temporary removable windshield placard, or identification card to the issuing agency. If a police verification is not obtained in the case of a stolen placard or identification card, the county may charge a replacement fee to be paid to the issuing agency. The replacement fee amount shall be established by the disability and communication access board.]”~~

SECTION 7. Section 291-52.7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291-52.7]]~~ **Fraudulent manufacture or alteration of placards and identification cards.** Any person who fraudulently manufactures or alters a removable windshield placard, temporary removable windshield placard, or identification card for personal use, sale, or issuance to another person to circumvent the issuance requirements of this part, ~~[and] or~~ any person who uses a fraudulently manufactured or altered placard or identification card to circumvent the issuance requirements of this part, shall be guilty of a ~~[petty]~~ misdemeanor. The fraudulent manufacture or alteration of each placard and of each identification card for personal use, sale, or issuance or is otherwise used in violation of this section shall constitute a separate offense.”

SECTION 8. Section 291-55, Hawaii Revised Statutes, is amended to read as follows:

“~~§291-55~~ **[Parking] Metered parking privileges.** Any vehicle displaying special license plates, a removable windshield placard, or a temporary removable windshield placard ~~[displaying the international symbol of access]~~ issued under this part shall be permitted to park, without payment of metered parking fees, in any metered parking space ~~[designated for the use of a person with a disability in accordance with law. Any vehicle displaying special license plates, a removable windshield placard, or temporary removable windshield placard displaying the international symbol of access issued under this part shall be permitted to park, without payment of metered parking fees in any metered or unmetered parking space]~~ for a maximum of two-and-a-half hours or the maximum amount of time the meter allows, whichever is longer. All parking fees not specifically exempted under this part shall remain in effect.”

SECTION 9. Section 291-56, Hawaii Revised Statutes, is amended to read as follows:

“**§291-56 Rules.** The disability and communication access board may adopt rules under chapter 91 to carry out the purposes of this part, including rules for ~~[the]~~:

- (1) The issuance, renewal, confiscation, ~~revocation~~, and suspension of removable windshield placards, temporary removable windshield placards, and special license plates~~[-]~~;
- (2) Decertification, reciprocity, and the replacement of ~~[lost, stolen, or mutilated]~~ placards and identification cards~~[-, the]~~;
- (3) The design of the placard, ~~identification card~~, and special license plates~~[-]~~;
- (4) The establishment of fees for placards; ~~[signage]~~
- (5) Signage and marking of parking spaces~~[-, and penalties.]; and~~
- (6) Penalties.”

SECTION 10. Section 291-57, Hawaii Revised Statutes, is amended to read as follows:

“**§291-57 Parking spaces reserved for persons with disabilities; penalties.** (a) ~~[A person using]~~ Any person who uses a parking space reserved for persons with disabilities ~~[without]~~ who:

- (1) Fails to properly ~~[displaying]~~ display a removable windshield placard, a temporary removable windshield placard, or special license plates~~[-, in accordance with this part or any rule adopted thereunder,];~~
- (2) Displays an invalid removable windshield placard, an invalid temporary removable windshield placard, or invalid special license plates;
- (3) Uses a removable windshield placard, a temporary removable windshield placard, or special license plate that was not issued to that person or to any passengers occupying the vehicle in the parking space; or
- (4) With or without a removable windshield placard, a temporary removable windshield placard, or special license plates:
 - (A) Parks in an access aisle; or
 - (B) Obstructs the ingress or egress to a parking space reserved for a person with a disability;

shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$250 nor more than \$500~~[-]~~ and pay any costs incurred by the court related to assessing the fine; provided that a person with a disability who has been issued a valid placard or special license plate that is currently in effect, and who has failed to display the placard or license plate while parking in a space reserved for persons with disabilities, shall pay a fine of not less than \$25 nor more than \$100 and any costs incurred by the court related to assessing the fine.

(b) Any person who uses a parking space reserved for persons with disabilities and refuses or fails to present an identification card issued under this chapter or the rules adopted thereunder to an enforcement officer upon request shall be guilty of a traffic infraction under chapter 291D and shall be fined not less than \$250 nor more than \$500.

(c) Any citation issued under this chapter may be mailed to the violator pursuant to section 291C-165(b).”

SECTION 11. 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~~[-, or in];~~ provided that:

ACT 31

- (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] In the case of:
 - (A) [a] A vehicle utilizing the high occupancy vehicle lane illegally[;]; or
 - (B) A vehicle illegally utilizing a parking space reserved for persons with disabilities, where the violator refuses the citation;

the original of the citation shall be sent by certified or registered mail, with a return receipt that is postmarked within forty-eight hours of the time of the incident, as provided in section 291C-223 for vehicles illegally utilizing the high occupancy vehicle lane, or within seventy-two hours of the time of the incident for vehicles illegally utilizing a parking space reserved for persons with disabilities, to the registered owner of the vehicle at the address on record at the vehicle licensing division [as provided in section 291C-223.¹] If the end of the applicable forty-eight or seventy-two 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 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 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

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

(Approved April 22, 2003.)

Notes

- 1. Period should not be bracketed.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 31

H.B. NO. 818

A Bill for an Act Relating to Administrative Driver’s License Revocation.

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

SECTION 1. Section 291E-39, Hawaii Revised Statutes, is amended to read as follows:

“**§291E-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]~~ **shall** not be limited to: the cost of photocopying documents; conditional license permits, temporary permits, temporary motor vehicle registrations, temporary number plates, and relicensing forms; interpreter services; ~~[law enforcement mileage fees;]~~ and other similar costs; provided that the costs of issuing subpoenas for witnesses, including mileage fees, shall be borne by the party requesting the subpoena. 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.”

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

SECTION 3. This Act shall take effect on September 1, 2003.

(Approved April 22, 2003.)

ACT 32

S.B. NO. 1407

A Bill for an Act Relating to Commercial Driver Licensing.

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

SECTION 1. Section 286-236, Hawaii Revised Statutes, is amended to read as follows:

“§286-236 Commercial driver’s license qualification standards. (a) No person shall be issued a commercial driver’s license unless that person meets the qualification standards of 49 Code of Federal Regulations, Part 391, Subparts B and E, has passed a knowledge and driving skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 Code of Federal Regulations, Part 383, Subparts G and H, and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act (CMVSA) of 1986 (Title XII, Public Law 99-570) in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed by the director and administered by the respective county examiner of drivers. A person who is not physically qualified to drive under 49 Code of Federal Regulations §391.41(b)(1) or (2) and who is otherwise qualified to drive a motor vehicle may be granted an intrastate waiver by the director. The process for granting intrastate waivers shall be the same as that for interstate waivers in 49 Code of Federal Regulations, Part 391.49, except that the intrastate waiver requests shall be submitted to the director.

(b) Pursuant to chapter 91, the director may authorize a third party examiner to administer the driving skills test specified in this section, provided:

- (1) The test is the same as that administered by the respective county examiners of drivers; and
- (2) The third party examiner has entered into an agreement with the State which complies with requirements of 49 Code of Federal Regulations, §383.75.

(c) The examiner of drivers may waive the driving skills test specified in this section for a commercial driver’s license applicant who meets the requirements of 49 Code of Federal Regulations, §383.77.

(d) A commercial driver’s license or commercial driver’s instruction permit shall not be issued to a person while the person is subject to a disqualification from driving a commercial motor vehicle, or while the person’s driver’s license is suspended, revoked, or canceled in any state; or while the person holds a driver’s license issued by any other state unless the person first surrenders that license.

(e) A commercial driver’s instruction permit may be issued to an individual who holds a valid driver’s license, meets the qualification standards of 49 Code of Federal Regulations, Part 391, Subparts B and E, and has passed the written tests required for the desired class of a commercial driver’s license.

(f) The commercial driver’s instruction permit shall not be valid for a period in excess of six months. When driving a commercial motor vehicle, the holder of a

commercial driver’s instruction permit shall be accompanied by a person licensed to operate that category of commercial motor vehicle. The licensed person shall occupy the seat beside the individual for the purpose of giving instruction in driving the commercial motor vehicle.

(g) The examiner of drivers may waive the knowledge and skills tests specified in this section for any person who is at least twenty-one years of age and who possesses a valid commercial driver’s license issued by any state of the United States or a province of Canada that issues licenses in accordance with the minimum federal standards for the issuance of commercial driver’s licenses. To retain a hazardous materials endorsement, the applicant shall pass the knowledge test for a hazardous materials endorsement.”

SECTION 3.¹ New statutory material is underscored.

SECTION 4.¹ This Act shall take effect upon its approval.

(Approved April 22, 2003.)

Note

1. So in original.

ACT 33

S.B. NO. 616

A Bill for an Act Relating to Hate Crimes.

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

SECTION 1. Section 846-51, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Gender identity or expression” includes a person’s actual or perceived gender, as well as a person’s gender identity, gender-related self image, gender-related appearance, or gender-related expression; regardless of whether that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person’s sex at birth.”

SECTION 2. Section 706-662, Hawaii Revised Statutes, is amended to read as follows:

“§706-662 Criteria for extended terms of imprisonment. A convicted defendant may be subject to an extended term of imprisonment under section 706-661, if the convicted defendant satisfies one or more of the following criteria:

- (1) The defendant is a persistent offender whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless the defendant has previously been convicted of two felonies committed at different times when the defendant was eighteen years of age or older.
- (2) The defendant is a professional criminal whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:
 - (a) The circumstances of the crime show that the defendant has knowingly engaged in criminal activity as a major source of livelihood; or

- (b) The defendant has substantial income or resources not explained to be derived from a source other than criminal activity.
- (3) The defendant is a dangerous person whose imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless the defendant has been subjected to a psychiatric or psychological evaluation that documents a significant history of dangerousness to others resulting in criminally violent conduct, and this history makes the defendant a serious danger to others. Nothing in this section precludes the introduction of victim-related data in order to establish dangerousness in accord with the Hawaii rules of evidence.
- (4) The defendant is a multiple offender whose criminal actions were so extensive that a sentence of imprisonment for an extended term is necessary for protection of the public. The court shall not make this finding unless:
- (a) The defendant is being sentenced for two or more felonies or is already under sentence of imprisonment for felony; or
- (b) The maximum terms of imprisonment authorized for each of the defendant's crimes, if made to run consecutively, would equal or exceed in length the maximum of the extended term imposed[,] or would equal or exceed forty years if the extended term imposed is for a class A felony.
- (5) The defendant is an offender against the elderly, handicapped, or a minor under the age of eight, whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:
- (a) The defendant attempts or commits any of the following crimes: murder, manslaughter, a sexual offense that constitutes a felony under chapter 707, robbery, felonious assault, burglary, or kidnapping; and
- (b) The defendant, in the course of committing or attempting to commit the crime, inflicts serious or substantial bodily injury upon a person who is:
- (i) Sixty years of age or older;
- (ii) Blind, a paraplegic, or a quadriplegic; or
- (iii) Eight years of age or younger; and
- (c) Such disability is known or reasonably should be known to the defendant.
- (6) The defendant is a hate crime offender whose imprisonment for an extended term is necessary for the protection of the public. The court shall not make this finding unless:
- (a) The defendant is convicted of a crime under chapter 707, 708, or 711; and
- (b) The defendant intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person. For purposes of this subsection, "gender identity or expression" includes a person's actual or perceived gender, as well as a person's gender identity, gender-related self image, gender-related appearance, or gender-related expression; regardless of whether that gender identity, gender-related self image, gender-related appearance, or gender-related expression is different from that traditionally associated with the person's sex at birth."

ACT 34

SECTION 3. Section 846-51, Hawaii Revised Statutes, is amended by amending the definition of "hate crime" to read as follows:

"'Hate crime' means any criminal act in which the perpetrator intentionally selected a victim, or in the case of a property crime, the property that was the object of a crime, because of hostility toward the actual or perceived race, religion, disability, ethnicity, national origin, gender identity or expression, or sexual orientation of any person."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

Note

(Became law on April 23, 2003, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 34

H.B. NO. 1307

A Bill for an Act Relating to the Office of Hawaiian Affairs.

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

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

SECTION 2. The purpose of this Act is to appropriate moneys from the general, and certain special and revolving funds, for transfer and deposit into the office of Hawaiian affairs' trust fund for native Hawaiians. The appropriations represent twenty per cent of the receipts for the use of lands in the public land trust that were not transferred to the office but deposited instead into the various funds after the Hawaii Supreme Court decided *OHA v. State*, 96 Haw. 388 (2001), and state agencies were directed to discontinue transferring twenty per cent of receipts from the public land trust lands to the office pursuant to section 10-13.5, Hawaii Revised Statutes, as enacted by Act 273, Session Laws of Hawaii 1980.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,041,852 or so much thereof as may be necessary for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of budget and finance for the purposes of this Act.

SECTION 4. There is appropriated out of the state parking revolving fund the sum of \$21,313 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 5. There is appropriated out of the agricultural park special fund the sum of \$46,211 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of agriculture for the purposes of this Act.

SECTION 6. There is appropriated out of the state educational facilities improvement special fund the sum of \$38,201 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of education for the purposes of this Act.

SECTION 7. There is appropriated out of the foreign-trade zones special fund the sum of \$108,322 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 8. There is appropriated out of the natural energy laboratory of Hawaii authority special fund the sum of \$132,568 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 9. There is appropriated out of the Hawaii community development revolving fund the sum of \$945 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 10. There is appropriated out of the boating special fund the sum of \$975,801 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 11. There is appropriated out of the special land and development fund the sum of \$157,322 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 12. There is appropriated out of the state parks special fund the sum of \$455,422 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 13. There is appropriated out of the harbor special fund the sum of \$5,509,560 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 14. There is appropriated out of the beach restoration special fund the sum of \$28,068 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 15. There is appropriated out of the water resource management fund the sum of \$37,388 for fiscal year 2002-2003 to be deposited into the public land trust proceeds trust fund and used to better the conditions of native Hawaiians.

The sum appropriated shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 16. This Act shall take effect upon its approval.

(Approved April 23, 2003.)

ACT 35

S.B. NO. 843

A Bill for an Act Relating to Conservation of Aquatic Life, Wildlife, and Land Plants.

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

SECTION 1. The legislature finds that amendments to Hawaii’s endangered species law are needed to bring state law closer into conformity with current federal regulations regarding habitat conservation plans and safe harbor agreements, and to provide checks and balances to ensure the protection of Hawaii’s endangered and threatened species. Hawaii, home to over three hundred endangered and threatened species, has the distinction of being the “endangered species capital of the world”. The State and its citizens have a shared responsibility to ensure the survival and protection of our endangered and threatened plants and animals. Once an endangered species is pushed to extinction, it represents an irreparable loss to both Hawaii’s natural heritage and the earth’s biodiversity.

In 1997, the legislature amended chapter 195D, Hawaii Revised Statutes (conservation of aquatic life, wildlife, and land plants), to provide private landowners with incentives to promote the conservation and recovery of threatened and endangered species and their habitats. The amendments allowed for the incidental “taking” (i.e., killing, harming, wounding, and harassing) of Hawaii’s endangered and threatened species through habitat conservation plans and safe harbor agreements. At the time the amendments were enacted, individuals and organizations involved in protecting our native flora and fauna expressed concerns that habitat conservation plans or safe harbor agreements might lock the State into plans or agreements allowing activities that, in the future, would push endangered and threatened species to extinction, if not expressly conditioned to allow the modification or revocation of the plans or agreements. It was feared that the 1997 amendments placed the responsibility on the State rather than on the landowners who benefit from incidental takings to carry out any mitigation measures based on new circumstances or information to avoid species extinction.

The legislature further finds that, since 1997, the United States Fish and Wildlife Service substantially revised its policy on habitat conservation plans and

safe harbor agreements and that the federal regulations now provide for incidental take permits to be revoked if continuing the authorized activity would appreciably reduce the likelihood that any listed species will survive and recover. Now, in the rare instance in which a habitat conservation plan or safe harbor agreement threatens to push an imperiled species to extinction, the federal government retains the authority to revoke the incidental take permit allowing that activity to continue.

The legislature further finds that it is appropriate to allow state and county agencies to enter into habitat conservation plans and safe harbor agreements only if certain checks and balances are in place, since those agencies have public trust responsibilities and affirmative mandates to promote species conservation.

The purpose of this Act is to:

- (1) Bring Hawaii's endangered species law closer into conformity with current federal regulations regarding habitat conservation plans and safe harbor agreements; and
- (2) Provide appropriate checks and balances to the habitat conservation plan and safe harbor agreement process to ensure that these incentives actually promote the conservation of threatened and endangered species and prevent the intentional or unintentional actions of landowners, public or private, from either pushing species to extinction or preventing their recovery.

SECTION 2. Chapter 195D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§195D- Citizen suits. (a) Except as provided in subsection (b), any person, acting as a private attorney general, may commence civil suit on the person's behalf:

- (1) Against any state or county agency or instrumentality that is alleged to be in violation of the terms of, or fail to fulfill the obligations imposed and agreed to under any habitat conservation plan or safe harbor agreement and accompanying license for public lands as authorized under sections 195D-21 and 195D-22; or
- (2) Against the department or board, where there is alleged a failure of the department or board to perform any act or duty required under a habitat conservation plan or safe harbor agreement and accompanying license issued for public lands.

(b) The circuit courts shall have jurisdiction to enforce this section or to order the department or board to perform any act or duty required under this section, provided that:

- (1) No action may be commenced under subsection (a)(1) less than sixty days after written notice of the alleged violation has been given to the department, and to the state or county agency or instrumentality alleged to be in violation of this section, except that the action may be brought immediately after the notification in the case of an emergency posing a significant risk to the well-being of any species of fish, wildlife, or plant; and
- (2) No action may be commenced under subsection (a)(2) less than sixty days after written notice of the alleged violation has been given to the department, except that the action may be brought immediately after the notification in the case of an emergency posing a significant risk to the well-being of any species of fish or wildlife, or plant.

(c) Any suit brought pursuant to this section may be brought in the judicial circuit where the alleged violation occurred or is occurring. In any suit brought

pursuant to this section, where the State is not a party, the attorney general, at the request of the department, may intervene on behalf of the State as a matter of right.

(d) The injunctive relief provided by this section shall not restrict any right that any person or class of persons may have under any other law, including common law, to seek enforcement of any standard or limitation or to seek any other relief, including relief against any instrumentality or agency of the State.”

SECTION 3. Section 195D-2, Hawaii Revised Statutes, is amended as follows:

1. By adding two new definitions to be appropriately inserted and to read as follows:

““Private lands” mean lands that are not “public lands,” as defined in this section.

““Public lands” means lands owned by the federal government, the State, or a county, or lands owned by any political subdivision of the federal government, the State, or a county.”

2. By amending the definition of “landowner” to read as follows:

““Landowner” means [the owner of the fee simple interest in private land and may include public lands limited to the following projects:

- (1) North-South Road, Ewa, Oahu, project no. HWY 0-01-92 as described in the draft environmental assessment, September 1998; and the project described as Kapolei Parkway, Ewa, Oahu, project no. E-13 of the Oahu Regional Transportation Plan adopted by the Oahu metropolitan planning organization on April 6, 2001;
- (2) Cyanotech Corporation, incidental take permit and habitat conservation plan as described in the Federal Register, January 2, 2002 (volume 67, number 1); and
- (3) Kealahou planned community proposed by the housing and community development corporation of Hawaii and the department of Hawaiian home lands on lands within tax map key numbers 7-4-8: parcel 17, 7-4-8: portion 12, 7-4-8: parcel 43, and 7-4-19: portion 43.] an owner of land or any estate or interest in that land when acting with the consent of the fee owner. In the case of government-owned lands, the consent shall be required of any government department or agency to which management or control of that land has been assigned.”

SECTION 4. Section 195D-21, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) Except as otherwise provided by law, the board, upon recommendation from the department, in cooperation with other state, federal, county, or private organizations and landowners, after a public hearing on the island affected, and upon an affirmative vote of not less than two-thirds of its authorized membership, may enter into a habitat conservation plan, if it determines that [the]:

- (1) The plan will further the purposes of this chapter by protecting, maintaining, restoring, or enhancing identified ecosystems, natural communities, or habitat types upon which endangered, threatened, proposed, or candidate species depend within the area covered by the plan; [that the]
- (2) The plan will increase the likelihood of recovery of the endangered or threatened species that are the focus of the plan; and [that the]
- (3) The plan satisfies all the requirements of this chapter.

In the event the board votes to enter into a habitat conservation plan for which the majority of the endangered species recovery committee recommended disapproval,

the board may not enter into the habitat conservation plan unless the plan is approved by a two-thirds majority vote of both houses of the legislature. Habitat conservation plans may allow conservation rental agreements, habitat banking, and direct payments. Any habitat conservation plan approved pursuant to this section shall be based on the best available scientific and other reliable data available at the time the plan is approved.

Each habitat conservation plan shall:

- (1) Identify the geographic area encompassed by the plan; the ecosystems, natural communities, or habitat types within the plan area that are the focus of the plan; and the endangered, threatened, proposed, and candidate species known or reasonably expected to be present in those ecosystems, natural communities, or habitat types in the plan area;
- (2) Describe the activities contemplated to be undertaken within the plan area with sufficient detail to allow the department to evaluate the impact of the activities on the particular ecosystems, natural communities, or habitat types within the plan area that are the focus of the plan;
- (3) Identify the steps that will be taken to minimize and mitigate all negative impacts, including without limitation the impact of any authorized incidental take, with consideration of the full range of the species on the island so that cumulative impacts associated with the take can be adequately assessed; and the funding that will be available to implement those steps;
- (4) Identify those measures or actions to be undertaken to protect, maintain, restore, or enhance the ecosystems, natural communities, or habitat types within the plan area; a schedule for implementation of the measures or actions; and an adequate funding source to ensure that the actions or measures, including monitoring, are undertaken in accordance with the schedule;
- (5) Be consistent with the goals and objectives of any approved recovery plan for any endangered species or threatened species known or reasonably expected to occur in the ecosystems, natural communities, or habitat types in the plan area;
- (6) Provide reasonable certainty that the ecosystems, natural communities, or habitat types will be maintained in the plan area, throughout the life of the plan, in sufficient quality, distribution, and extent to support within the plan area those species typically associated with the ecosystems, natural communities, or habitat types, including any endangered, threatened, proposed, and candidate species known or reasonably expected to be present in the ecosystems, natural communities, or habitat types within the plan area;
- (7) Contain objective, measurable goals, the achievement of which will contribute significantly to the protection, maintenance, restoration, or enhancement of the ecosystems, natural communities, or habitat types; time frames within which the goals are to be achieved; provisions for monitoring (such as field sampling techniques), including periodic monitoring by representatives of the department or the endangered species recovery committee, or both; and provisions for evaluating progress in achieving the goals quantitatively and qualitatively; and
- (8) Provide for an adaptive management strategy that specifies the actions to be taken periodically if the plan is not achieving its goals.”

2. By amending subsection (d) to read:

“(d) Notwithstanding any other law to the contrary, the board shall suspend or revoke the approval of any habitat conservation plan approved under this section if the board determines that:

- (1) Any parties to the plan, or their successors, have breached their obligations under the plan or under any agreement implementing the plan and have failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the plan will achieve its goals within the time frames or in the manner set forth in the plan; [or]
- (2) The plan no longer has the funding source specified in subsection (a) or another sufficient funding source to ensure the measures or actions specified in subsection (b) are undertaken in accordance with this section[-]; or
- (3) Continuation of the permitted activity would appreciably reduce the likelihood of survival or recovery of any threatened or endangered species in the wild.

SECTION 5. Section 195D-22, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) To encourage landowners to voluntarily engage in efforts that benefit endangered, threatened, proposed, and candidate species, except as otherwise provided by law, the board, upon approval by not less than two-thirds of the board’s authorized membership, after a public hearing on the island affected, may enter into a safe harbor agreement with one or more landowners to create, restore, or improve habitats or to maintain currently unoccupied habitats that threatened or endangered species can be reasonably expected to use, if the board determines that the cumulative activities, if any, contemplated to be undertaken within the areas covered by the agreement are environmentally beneficial. In the event the board votes to enter into a safe harbor agreement for which the majority of the endangered species recovery committee recommended disapproval, the board may not enter into the safe harbor agreement unless the agreement is approved by a two-thirds majority vote of both houses of the legislature. The board shall notify the public of the proposed safe harbor agreement through the periodic bulletin of the office of environmental quality control and make the proposed agreement available for public review and comment not less than sixty days prior to approval.

(b) A safe harbor agreement may authorize the take of an endangered, threatened, proposed, or candidate species incidental to an otherwise lawful activity in or affecting the created, restored, maintained, or improved habitat; provided that based on the best scientific and other reliable data available at the time the safe harbor agreement is approved, if these data are applicable:

- (1) The take would not jeopardize the continued existence of any endangered, threatened, proposed, or candidate species;
- (2) The take would not reduce the population of endangered, threatened, proposed, or candidate species below the number found on the property prior to entering into the agreement;
- (3) The agreement proposes to create, restore, maintain, or improve significant amounts of habitat for a minimum of five years[;] for private lands and for a minimum of fifteen years for public lands;
- (4) There is adequate funding for the agreement and the source of that funding is identified;
- (5) The safe harbor agreement increases the likelihood that the endangered or threatened species for which a take is authorized will recover;
- (6) Any take authorized pursuant to this subsection shall occur only in the habitat created, restored, maintained, or improved; and
- (7) The cumulative impact of the activity, which is permitted and facilitated by the take, provides net environmental benefits.

(c) Notwithstanding any other law to the contrary, the board shall suspend or rescind any safe harbor agreement approved under this section if the board determines that:

- (1) Any parties to the safe harbor agreement, or their successors, have breached their obligations under the safe harbor agreement or under any other agreement implementing the safe harbor agreement and have failed to cure the breach in a timely manner, and the effect of the breach is to diminish the likelihood that the agreement will achieve its goals within the time frames or in the manner set forth in the agreement; ~~or~~
- (2) To the extent that funding is or will be required, the funding source specified in subsection (b) no longer exists and is not replaced by another sufficient funding source to ensure that the measures or actions specified in subsection (b) are undertaken in accordance with this section~~[-]; or~~
- (3) Continuation of the permitted activity would appreciably reduce the likelihood of survival or recovery of any threatened or endangered species in the wild.”

SECTION 6. Section 195D-24, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§195D-24**~~]] Confidentiality.~~ All information submitted to the board by a landowner pursuant to section 195D-21 or 195D-22, in the course of preparing a habitat conservation plan or safe harbor agreement~~[-]~~ for private lands, respectively, shall be kept confidential until notice of the proposed plan or agreement is published in the periodic bulletins of the office of environmental quality control. ~~[The] For habitat conservation plans or safe harbor agreements for private lands, the precise location of any threatened or endangered species may remain confidential.~~”

SECTION 7. Section 195D-25, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The endangered species recovery committee shall:

- (1) Review all applications and proposals for habitat conservation plans, safe harbor agreements, and incidental take licenses and make recommendations, based on a full review of the best available scientific and other reliable data and at least one site visit to each property that is the subject of the proposed action, and in consideration of the cumulative impacts of the proposed action on the recovery potential of the endangered, threatened, proposed, or candidate species, to the department and the board as to whether or not they should be approved, amended, or rejected;
- (2) Review all habitat conservation plans, safe harbor agreements, and incidental take licenses on an annual basis to ensure compliance with agreed to activities and, on the basis of any available monitoring reports, and scientific and other reliable data, make recommendations for any necessary changes;
- (3) Consider and recommend appropriate incentives to encourage landowners to voluntarily engage in efforts that restore and conserve endangered, threatened, proposed, and candidate species;
- (4) Perform such other duties as provided in this chapter;
- (5) Consult with persons possessing expertise in such areas as the committee may deem appropriate and necessary in the course of exercising its duties; and

ACT 36

- (6) Not conduct more than one site visit per year to each property[.] that is the subject of a habitat conservation plan or safe harbor agreement.”

SECTION 8. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 10. This Act shall take effect upon its approval.

(Approved April 28, 2003.)

Note

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

ACT 36

H.B. NO. 78

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 authorize the housing and community development corporation of Hawaii to establish and maintain special fund accounts outside of the state treasury. The establishment and management of fund accounts that are separate from the state treasury is necessary for the efficient administration of federal housing programs, including federal low-rent public housing, section 8 housing choice vouchers, emergency shelter grants, and housing for persons with AIDS.

The Hawaii housing authority was created in 1935. At the time, the agency was authorized to establish special funds that were outside of the state treasury. This authority continued until the Hawaii housing authority was consolidated with the housing finance and development corporation in 1997.

SECTION 2. Chapter 201G, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

“§201G- Federal funds outside of state treasury. Notwithstanding chapter 38, the corporation may establish and manage federal funds outside of the state treasury to be used for federal housing programs. The corporation shall invest such funds in permitted investments in accordance with chapter 36.”

SECTION 3. New statutory material is underscored.¹

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

(Approved April 30, 2003.)

Note

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

ACT 37

H.B. NO. 754

A Bill for an Act Relating to Elections by Mail.

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

SECTION 1. Chapter 11, Hawaii Revised Statutes, is amended by adding a new section to part IX to be appropriately designated and to read as follows:

“§11- Federal, state, and county elections by mail. (a) Any federal, state, or county election held other than on the date of a regularly scheduled primary or general election may be conducted by mail.

(b) The chief election officer shall determine whether a federal or state election, other than a regularly scheduled primary or general election, may be conducted by mail or at polling places.

(c) The county clerk shall determine whether a county election, held other than on the date of a regularly scheduled primary or general election, may be conducted by mail or at polling places. An election by mail in the county shall be under the supervision of the county clerk.

(d) The chief election officer shall adopt rules pursuant to chapter 91 to provide for uniformity in the conduct of federal, state, and county elections by mail.”

SECTION 2. New statutory material is underscored.¹

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

(Approved April 30, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 38

H.B. NO. 772

A Bill for an Act Relating to Bonds.

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

SECTION 1. Section 47-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Unless the governing body shall itself perform the actions, the director of finance shall~~[-]~~ determine:

- (1) [~~Determine the~~] The date, denomination or denominations, interest payment dates, maturity date or dates, place or places of payment, registration privileges and place or places of registration, redemption price or prices and time or times and terms and conditions and method of redemption;
- (2) The rights of the holder to tender for purchase and the price or prices and time or times and terms and conditions upon which those rights may be exercised;
- (3) The rights to purchase and price or prices and the time or times and terms and conditions upon which those rights may be exercised and the purchase may be made; [~~and~~]

ACT 39

- (4) Whether to acquire such policies of insurance and enter into such banking arrangements on such terms as the director of finance may deem necessary or desirable in order to carry out the purposes of this chapter, including, without limitation, credit or liquidity support facilities and interest rate swaps, swaptions, interest rate floors or caps and other similar contracts to hedge or reduce the amount or duration of payment, rate, spread or similar risk or to reduce the cost of borrowing when used in conjunction with the bonds; and

[{(4)}] (5) All other details of bonds issued under this chapter.

The principal of and interest and premium, if any, on all bonds issued under this chapter shall be payable in any coin or currency of the United States of America which at the time of payment is legal tender for public and private debts.”

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

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

(Approved April 30, 2003.)

ACT 39

H.B. NO. 773

A Bill for an Act Relating to Bonds.

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

SECTION 1. Section 49-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The governing body shall determine the date, denomination or denominations, interest payment dates, maturity date or dates, place or places of payment, registration privileges and place or places of registration, redemption price or prices and time or times and terms and conditions and method of redemption, the rights of the holder to tender for purchase and the price or prices and time or times and terms and conditions upon which the rights might be exercised, the rights to purchase and the price or prices and the time or times and terms and conditions upon which the rights might be exercised and the purchase may be made, and all other details of revenue bonds issued under this part. The governing body may also determine to acquire such policies of insurance and enter into such banking arrangements on such terms as the county may deem necessary or desirable in order to carry out the purposes of this chapter, including, without limitation, credit and liquidity support facilities and interest rate swaps, swaptions, interest rate floors or caps, and other similar contracts to hedge or reduce the amount or duration of payment, rate, spread or similar risk or to reduce the cost of borrowing when used in conjunction with the bonds. A governing body may delegate the responsibility for any or all of the aforesaid determinations, within limits prescribed by the governing body, to the director of finance.”

SECTION 2. New statutory material is underscored.

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

(Approved April 30, 2003.)

ACT 40

S.B. NO. 363

A Bill for an Act Relating to Experimental Modernization Projects for County Boards of Water Supply.

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

SECTION 1. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§78- County boards of water supply; experimental modernization projects. It is the intent of this section to encourage and facilitate improvements in the human resource programs of qualifying boards of water supply. With or without the approval from the chief executive, the director of any qualifying board of water supply 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.

Prior to the implementation of any experimental modernization project, the director of any qualifying board of water supply shall:

- (1) Develop a plan identifying:
 - (A) The purpose of the project;
 - (B) The methodology to be used;
 - (C) The duration of the project;
 - (D) The criteria for evaluation of the project; and
 - (E) The cost of the project, if any; and
- (2) Consult and negotiate with the exclusive representative if a modification or waiver of any provision in a collective bargaining agreement, including any new provision, is necessary to conduct the project.

The representative of the qualifying board of water supply and the exclusive representative shall mutually agree in writing to any modification, waiver, or new provision before the project is implemented.

While the board of water supply 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, laws prohibiting discrimination, and chapter 89.

For purposes of this section, “qualifying board of water supply” means any county board of water supply serving a population of 500,000 or more persons.”

SECTION 2. New statutory material is underscored.¹

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

(Approved April 30, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 41

S.B. NO. 1139

A Bill for an Act Relating to Family Court.

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

SECTION 1. Section 607-5.6, Hawaii Revised Statutes, is amended to read as follows:

~~“[§607-5.6] Surcharge for parent education for separating parties [with children] in matrimonial actions, where either party has a minor child, and for parties in parentage actions; special fund. (a) In addition to the fees prescribed under section 607-5 for a matrimonial action [under section 607-5,] where either party has a minor child, or a family court proceeding under chapter 584, the court shall collect a surcharge of [§35] \$50 at the time of filing the initial complaint or petition. In cases where the surcharge has been initially waived, the court may collect the surcharge subsequent to the filing with such surcharge to be assessed from either party or apportioned between both parties.~~

(b) No surcharge shall be assessed:

- (1) Against any party who has received [a] an initial waiver of filing fees [;], except that the court may subsequently determine that a party has the financial ability to pay the surcharge; or
- (2) Against any party proceeding on behalf of the State or any of the various counties[; or
- (3) If neither party has a minor child.

~~(e) Any respondent in a matrimonial action with a minor child may be requested to make a \$15 donation which shall be deposited into the special fund].~~

~~[(d)] (c) Surcharges subject to this section shall be limited to one [payment] surcharge per case.~~

~~[(e)] (d) There is established within the state treasury the parent education special fund into which shall be deposited revenues assessed under subsection (a), interest and investment earnings, grants, donations, and contributions from private or public sources. The fund shall be administered by the judiciary, subject to the conditions specified in subsection [(f).] (e).~~

~~[(f)] (e) The special fund shall be used solely for expenditures related to providing education on all islands for separating parents in matrimonial actions and parties in parentage actions and their minor children. Revenues deposited into the special fund may be used for existing or enhanced parent education programs administered by the judiciary, or for grants or purchases of service pursuant to chapter [42D:] 42F. All appropriations or authorizations from the special fund shall be expended by the judiciary.~~

~~[(g)] (f) The judiciary shall submit an annual financial report to the legislature, prior to the convening of each regular session, which shall include an accounting of all deposits and expenditures from the fund.”~~

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

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

(Approved April 30, 2003.)

ACT 42

S.B. NO. 1154

A Bill for an Act Relating to the Office of Hawaiian Affairs.

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

SECTION 1. In 1989, the legislature adopted Senate Concurrent Resolution No. 106, S.D. 1, which called for the creation of a task force to examine the provision of services to Hawaiians. This task force, composed of eighteen public and private sector groups, was established and named the Hui ‘Imi task force for

Hawaiian services. Its defined purpose was to make findings and recommendations concerning the coordination of public and private services available to Hawaiians in the areas of education, economic development, housing, employment, medicine, law, cultural issues, and social service issues.

The task force produced a two-volume report entitled, *The Hui 'Imi Task Force for Hawaiian Services*, volume I and volume II, in accordance with the directive of the concurrent resolution. The report contained findings and thirty-nine recommendations and was distributed to all legislators in 1991, at which time the formal legislative authorization of the task force ended.

The members of the task force have continued to work together informally to address a variety of issues relating to the delivery of social services to native Hawaiians. In 1997, the legislature passed Act 376, which formally temporarily reauthorized the task force as the "Hui 'Imi advisory council".

The legislature finds that the work of the Hui 'Imi advisory council remains a valuable resource to the State and the native Hawaiian community, by serving as a forum in which ideas and concerns relating to human services issues important to Hawaiians may be expressed and shared among the public and private agencies involved in the delivery of those services to the native Hawaiian community. Accordingly, the purpose of this Act is to make the Hui 'Imi advisory council permanent and place it within the office of Hawaiian affairs for administrative purposes only.

SECTION 2. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§10- Hui 'Imi advisory council. (a) There is established a Hui 'Imi advisory council, to be placed within the office of Hawaiian affairs for administrative purposes only. The advisory council shall consist of representatives from the following:

- (1) Office of Hawaiian affairs;
- (2) Department of education;
- (3) Department of Hawaiian home lands;
- (4) Department of health;
- (5) Department of human services;
- (6) Department of business, economic development, and tourism;
- (7) Department of land and natural resources;
- (8) University of Hawaii;
- (9) House of representatives standing committee with primary jurisdiction over Hawaiian affairs;
- (10) Senate standing committee with primary jurisdiction over Hawaiian affairs;
- (11) Alu Like, Inc.;
- (12) The Association of Hawaiian Civic Clubs;
- (13) E Ola Mau;
- (14) The Kamehameha Schools;
- (15) The Lunalilo Home;
- (16) The Native Hawaiian Culture and Arts Program of the Bernice Pauahi Bishop Museum;
- (17) The Native Hawaiian Legal Corporation;
- (18) Papa Ola Lokahi;
- (19) The Queen Lili'uokalani Children's Center;
- (20) Council for Native Hawaiian Advancement; and
- (21) Any other agency, organization, or entity that expresses interest to participate in fulfilling the advisory council's mandate.

The advisory council shall make a good faith effort to include as members other public and private agencies, organizations, or entities that express interest in fulfilling the advisory council’s mandate.

(b) Each member shall be appointed by the director or other chief executive of the member’s organization within forty-five days following the effective date of this Act. The advisory council members shall select a chairperson and establish procedural rules for its internal administration. The rules shall be exempt from the public notice and hearing provisions of chapter 91. Administrative expenses of the advisory council, such as photocopying, postage, stationery, and office supplies incidental to the performance of members’ duties may be reimbursed out of appropriations made to the advisory council, but members of the advisory council shall otherwise serve without compensation and without reimbursement for travel expenses.

(c) The Hui ‘Imi advisory council shall:

- (1) Serve as a liaison between public and private entities serving the Hawaiian community in the planning and development of collaborative public and private endeavors;
- (2) Investigate the issues described in the Hui ‘Imi task force report volumes I and II and such other issues affecting Hawaiians as the advisory council shall designate; and
- (3) Submit a report of its findings and recommendations, which report shall include an action plan for the implementation of the Hui ‘Imi task force report volumes I and II, with a view toward incorporating the action plan into the state general plan. The report shall be submitted to the governor and the legislature no later than twenty days prior to the convening of the regular session of 2005.”

SECTION 3. Act 376, Session Laws of Hawaii 1997, is repealed.

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2003.

(Approved April 30, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 43

S.B. NO. 1413

A Bill for an Act Relating to Kikala-Keokea.

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

SECTION 1. Section 171-19.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Upon fulfillment of the purposes of this section, any unexpended or unencumbered funds appropriated by the legislature or remaining in the infrastructure development fund as of the close of business on ~~June 30,~~ December 31, 2004, shall not lapse into that fund or to the credit of the general fund, but shall be transferred to the credit of the Kikala-Keokea housing revolving fund established in section 201G-170.5 as of that date; provided that any unexpended or unencumbered moneys that were provided by the office of Hawaiian affairs and deposited into the infrastructure development fund for the purpose of infrastructure development shall

be refunded to the office of Hawaiian affairs upon the completion of the fund's intended purpose. No funds shall be transferred until all funding commitments entered into by the department of land and natural resources to complete the design and construction of infrastructure improvements have been executed."

SECTION 2. Act 144, Session Laws of Hawaii 2001, as amended by Act 112, Session Laws of Hawaii 2002, is amended by amending section 5A to read as follows:

"SECTION 5A. Any unexpended or unencumbered balances of the appropriation made by section 5 of this Act to be expended in fiscal year 2001-2002, shall not lapse at the end of fiscal year 2001-2002; and the authorization to expend the appropriation shall be extended to [~~June 30, 2003;~~] December 31, 2004; provided that any unexpended or unencumbered balances of the appropriation under section 5 of this Act remaining at the close of business on [~~June 30,~~] December 31, 2004, shall be transferred to the credit of the Kikala-Keokea housing revolving fund pursuant to section 171-19.5, Hawaii Revised Statutes."

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

SECTION 4. This Act shall take effect on June 29, 2003.

(Approved April 30, 2003.)

ACT 44

H.B. NO. 389

A Bill for an Act Relating to Family Leave.

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

SECTION 1. The legislature finds that existing law does not require an employer to permit an employee to use sick leave to attend to the illness of a child, parent, spouse, or reciprocal beneficiary.

The purpose of this Act is to require an employer who provides sick leave for employees, including the State and its political subdivisions, to permit employees to use any accrued and available sick leave above the amount required under the temporary disability insurance law for family leave purposes.

The legislature intends that this Act not be construed to:

- (1) Allow an employer to deny an employee the right to use sick leave, discharge, or threaten to discharge, demote, suspend, or in any manner discriminate against an employee for exercising the employee's right to use sick leave to attend to a child, parent, spouse, or reciprocal beneficiary with a serious health condition; nor
- (2) Require an employer, including the State, any of its political subdivisions, and any instrumentality of the State or its political subdivisions, to diminish an employee's accrued and available sick leave below the amount required under the temporary disability insurance law.

SECTION 2. Section 398-1, Hawaii Revised Statutes, is amended as follows:

1. By adding the definition of "sick leave" to read:

““Sick leave” means accrued increments of compensated leave provided by an employer to an employee for use by the employee for any of the following reasons:

- (1) The employee is physically or mentally unable to perform the employee’s duties due to illness, injury, or a medical condition of the employee;
- (2) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee; or
- (3) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination.

“Sick leave” shall not include any benefit provided under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 and shall not include any insurance benefit, workers’ compensation benefit, unemployment compensation disability benefit, temporary disability insurance benefit, or benefit not payable from the employer.”

2. By amending the definition of “employer” to read:

““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.”

SECTION 3. Section 398-4, Hawaii Revised Statutes, is amended to read as follows:

“§398-4 Unpaid leave permitted; relationship to paid leave[-]; sick leave. (a) Pursuant to section 398-3, an employee shall be entitled to four weeks of family leave. The family leave shall consist of unpaid leave, paid leave, or a combination of paid and unpaid leave. If an employer provides paid family leave for fewer than four weeks, the additional period of leave added to attain the four-week total may be unpaid.

(b) ~~[An] Except as otherwise provided in subsection (c), an employee or employer may elect to substitute any of the employee’s accrued paid leaves [such as sick], including but not limited to vacation, personal, or family leave for any part of the four-week period in subsection (a); provided that an employer or employee may not substitute an employee’s accrued sick leave in any situation under this chapter unless:~~

- ~~(1) Sick leave is normally granted for such purposes by an employer’s policy or practice; or~~
- ~~(2) Upon mutual agreement by the employer and the employee].~~

(c) An employer who provides sick leave for employees shall permit an employee to use the employee’s accrued and available sick leave for purposes of this chapter; provided that an employee shall not use more than ten days per year for this purpose unless an express provision of a valid collective bargaining agreement authorizes the use of more than ten days of sick leave for family leave purposes. Nothing in this section shall require an employer to diminish an employee’s accrued and available sick leave below the amount required pursuant to section 392-41.”

SECTION 4. 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 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2003.

Note

(Became law on April 30, 2003, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 45

S.B. NO. 88

A Bill for an Act Relating to Motor Vehicles Owned by Military Personnel.

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

SECTION 1. Section 476-26, Hawaii Revised Statutes, is amended to read as follows:

“§476-26 Removal; member of armed forces. Notwithstanding the provisions of section 476-25, a member of the armed forces of the United States on active duty who is a buyer of a motor vehicle under a contract, without the consent of the seller, may remove the motor vehicle from the island in which the motor vehicle was first kept for use by the buyer after sale if the buyer was a member of the armed forces of the United States on active duty at the time of execution of the contract and if such buyer has been reassigned to a different county, state, or country by competent government orders, unless the seller and buyer execute an agreement, separate and apart from the contract in respect of which it applies, stating that the motor vehicle may not be removed or stating the terms and conditions under which it may be removed. Notwithstanding the provisions of section 286-57, a member of the armed forces of the United States under contract with an out-of-state dealer or financial institution identified as the lien holder of record on a vehicle registration or vehicle title may remove said vehicle from the State without the consent of the seller.”

SECTION 2. New statutory material is underscored.

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

(Approved May 5, 2003.)

ACT 46

S.B. NO. 1405

A Bill for an Act Relating to Commercial Driver Licensing.

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

SECTION 1. Section 286-236, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall be issued a commercial driver's license unless that person meets the qualification standards of 49 Code of Federal Regulations, Part 391, Subparts B and E, has passed a knowledge and driving skills test for driving a commercial motor vehicle which complies with minimum federal standards established by federal regulation enumerated in 49 Code of Federal Regulations, Part 383,

Subparts G and H, is domiciled in this State as defined in 49 Code of Federal Regulations Part 383.5, and has satisfied all other requirements of the Commercial Motor Vehicle Safety Act (CMVSA) of 1986 (Title XII, Public Law 99-570) in addition to other requirements imposed by state law or federal regulation. The tests shall be prescribed by the director and administered by the respective county examiner of drivers. A person who is not physically qualified to drive under 49 Code of Federal Regulations §391.41(b)(1) or (2) and who is otherwise qualified to drive a motor vehicle may be granted an intrastate waiver by the director. The process for granting intrastate waivers shall be the same as that for interstate waivers in 49 Code of Federal Regulations, Part 391.49, except that the intrastate waiver requests shall be submitted to the director.”

SECTION 2. Section 286-238, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The application for a commercial driver’s license or commercial driver’s instruction permit shall include the following with respect to the applicant:

- (1) The full name and current mailing, residential, and business addresses;
- (2) A physical description including sex and height;
- (3) Date of birth;
- (4) Social security number;
- (5) Signature;
- (6) Color photograph;
- (7) Certifications including those required by 49 Code of Federal Regulations, §383.71(a), except that this certification applies to both intrastate and interstate drivers; and
- (8) Any other information required by section 286-111.

The applicant shall produce proof of residency to show the applicant’s state of domicile as defined in 49 Code of Federal Regulations Part 383.5.”

SECTION 3. New statutory material is underscored.

SECTION 4. This Act shall take effect on August 1, 2003.

(Approved May 5, 2003.)

ACT 47

S.B. NO. 538

A Bill for an Act Relating to the Agribusiness Development Corporation.

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

SECTION 1. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

“**§171-2 Definition of public lands.** “Public lands” means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;

- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the housing and community development corporation of Hawaii in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands which are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity; and
- (10) Lands which are set aside by the governor to the agribusiness development corporation; lands leased to the agribusiness development corporation by any department or agency of the State; or lands to which the agribusiness development corporation in its corporate capacity holds title.

SECTION 2. New statutory material is underscored.

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

(Approved May 7, 2003.)

ACT 48

S.B. NO. 1107

A Bill for an Act Relating to Chapter 711, Hawaii Revised Statutes.

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

SECTION 1. Section 711-1100, Hawaii Revised Statutes, is amended to read as follows:

“§711-1100 Definitions [~~of terms in this chapter~~]. In this chapter, unless a different meaning is plainly [is] required[;], or the definition is otherwise limited by this section:

“Animal” includes every living creature, except a human being.

“Cruelty”, “torture” or “torment” includes every act, omission, or neglect whereby unjustifiable physical pain, suffering, or death is caused or permitted.

“Facsimile” means a document produced by a receiver of signals transmitted over telecommunication lines, after translating the signals, to produce a duplicate of an original document.

“Necessary sustenance” means care sufficient to preserve the health and well-being of a pet animal, except for emergencies or circumstances beyond the

reasonable control of the owner or caretaker of the pet animal, and includes but is not limited to the following requirements:

- (1) Food of sufficient quantity and quality to allow for normal growth or maintenance of body weight;
- (2) Open or adequate access to water in sufficient quantity and quality to satisfy the animal's needs;
- (3) Access to protection from wind, rain, or sun; and
- (4) An area of confinement that has adequate space necessary for the health of the animal and is kept reasonably clean and free from excess waste or other contaminants that could affect the animal's health.

“Obstructs” means renders impassable without unreasonable inconvenience or hazard.

“Pet animal” means a dog, cat, rabbit, guinea pig, domestic rat or mouse, or caged birds (passeriformes, piciformes, and psittaciformes only).

“Private place” means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

“Public” means affecting or likely to affect a substantial number of persons.

“Public place” means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement or business, parks, playgrounds, prisons, and hallways, lobbies, and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

“Record,” for the purposes of sections 711-1110.9 and 711.1111, means to videotape, film, photograph, or archive electronically.”

SECTION 2. Section 711-1101, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of disorderly conduct if, with intent to cause physical inconvenience or alarm by a member or members of the public, or recklessly creating a risk thereof, the person:

- (a) Engages in fighting or threatening, or in violent or tumultuous behavior; or
- (b) Makes unreasonable noise; or
- (c) [~~Makes any offensively coarse utterance, gesture, or display,~~ Subjects another person to offensively coarse behavior or [addresses] abusive language [to any person present,] which is likely to provoke a violent response; or
- (d) Creates a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit; or
- (e) Impedes or obstructs, for the purpose of begging or soliciting alms, any person in any public place or in any place open to the public.”

SECTION 3. Section 711-1110.9, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§711-1110.9[H] Violation of privacy in the first degree.** (1) A person commits the offense of violation of privacy in the first degree if, except in the execution of a public duty or as authorized by law, the person intentionally or knowingly installs in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, [~~photographing, videotaping, filming,~~ recording, amplifying, or broadcasting another person in a stage of undress or sexual activity in that place, or uses any such unauthorized installation.

(2) Violation of privacy in the first degree is a class C felony. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section.”

SECTION 4. Section 711-1111, Hawaii Revised Statutes, is amended to read as follows:

“§711-1111 Violation of privacy in the second degree. (1) A person commits the offense of violation of privacy in the second degree if, except in the execution of a public duty or as authorized by law, the person intentionally:

- (a) Trespasses on property for the purpose of subjecting anyone to eavesdropping or other surveillance in a private place; or
- (b) Installs in any private place, without consent of the person or persons entitled to privacy therein, any device for observing, [~~photographing, videotaping, filming,~~] recording, amplifying, or broadcasting sounds or events in that place other than another person in a stage of undress or sexual activity, or uses any such unauthorized installation; or
- (c) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy therein; or
- (d) Covertly records or broadcasts an image of another person’s intimate area underneath clothing, by use of any device, and such image is taken while that person is in a public place and without that person’s consent;
or
- [(d)] (e) Intercepts, without the consent of the sender or receiver, a message by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this subsection does not apply to:
 - (i) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension; or
 - (ii) Interception by the telephone company, electronic mail account provider, or telephone or electronic mail subscriber incident to enforcement of regulations limiting use of the facilities or incident to other operation and use; or
- [(e)] (f) Divulges without the consent of the sender or the receiver the existence or contents of any message by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message was unlawfully intercepted, or if the accused learned of the message in the course of employment with an agency engaged in transmitting it; or
- [(f)] (g) Knowingly possesses materials created under circumstances prohibited in section 711-1110.9.

(2) For the purposes of this section:

“Intimate areas” means any portion of a person’s underwear, pubic area, anus, buttocks, vulva, genitals, or female breast.

“Intimate areas underneath clothing” does not include intimate areas visible through a person’s clothing or intimate areas exposed in public.

“Public place” means an area generally open to the public, regardless of whether it is privately owned, and includes but is not limited to streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots, buses, tunnels, buildings, stores, and restaurants.

[(2)] (3) Violation of privacy in the second degree is a misdemeanor. In addition to any penalties the court may impose, the court may order the destruction of any recording made in violation of this section.”

ACT 49

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

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

(Approved May 7, 2003.)

ACT 49

S.B. NO. 1255

A Bill for an Act Relating to Agricultural Inspections.

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

SECTION 1. Chapter 147, Hawaii Revised Statutes, is amended by adding two new parts to be appropriately designated and to read as follows:

“PART . AGRICULTURAL SAFETY AND SECURITY

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

“Department” means the department of agriculture.

§147-B Cooperative agreements and contracts to provide auditing and certification services. The department may enter into cooperative agreements with the United States Department of Agriculture or other agreements and contracts with private parties or other governmental agencies for the purposes of:

- (1) Auditing and certifying that applicants are following good agricultural, handling, processing, and manufacturing practices; and
- (2) Maintaining food security and product traceability.

§147-C Audits and certification; requests necessary. The department may designate any employee or agent of the department to conduct the audits and certification authorized under this part at the request of persons having a financial interest in the business or product. These audits and certification may be requested, but in no case shall be required by the department.

§147-D Fees and deposit of moneys. (a) The department shall fix, assess, and collect fees for the audit and certification services provided under this part. The fees shall be as established under cooperative agreement with the United States Department of Agriculture or other governmental agencies or, if not applicable, as established by rule under section 147-7. The department may also charge an amount necessary to cover all costs of traveling expenses and extraordinary services when the performance of the services involves unusual cost in their performance.

(b) Except for fees collected by the department pursuant to part VII, all fees and expenses collected by the department pursuant to this part shall be deposited with the director of finance to the credit of the general fund.

§147-E Certificate as evidence. A certificate issued under this part and all certificates issued under the authority of the Congress of the United States relating to matters covered by this part shall be acceptable in any court of this State as prima facie evidence of the status of a business or product at the time of its audit.

PART . SEED CERTIFICATION

§147-F Official certifying agency. The department is designated as the official certifying agency for certifying seed concerning genetic purity, identity, quality, and condition for the State. The department may appoint an appropriate agent to do the work necessary for the certifications in compliance with established standards.

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

“Certifying agency” means:

- (1) An agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity, identity, quality, and condition of the seed certified; or
- (2) An agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under paragraph (1).

“Department” means the department of agriculture.

“Seed” means:

- (1) The seed of grass, forage, cereal, and fiber crops;
- (2) Other kinds of seed commonly recognized as agricultural or vegetable seed; and
- (3) Other kinds of propagating materials.

§147-H Cooperative agreements and contracts to provide agricultural crop certification services. The department may enter into cooperative agreements with the United States Department of Agriculture or other agreements and contracts with private parties or other governmental agencies for the purposes of certifying seed.

§147-I Certification; requests necessary. The department may designate any employee or agent of the department to conduct the inspections and certification authorized under this part at the request of persons having a financial interest in the seed. These inspections and certification may be requested, but in no case shall be required by the department.

§147-J Rules. The department shall have the necessary powers to carry out and effectuate the purposes of this part, and, subject to chapter 91, may adopt rules with respect to:

- (1) Standards for grades, genetic purity, identity, quality, and condition of seed;
- (2) Procedures for certifying seed; and
- (3) Other matters necessary to carry out the purposes of this part.

§147-K Fees and deposit of moneys. (a) The department shall fix, assess, and collect fees for the inspection and certification services provided under this part. The fees shall be as established under cooperative agreement with the United States Department of Agriculture or other government agencies or, if not applicable, as established by rule under section 147-7. The department may also charge an amount necessary to cover all costs of traveling expenses and extraordinary services when the performance of the services involves unusual cost in their performance.

(b) Except for fees collected by the department pursuant to part VII, all fees and expenses collected by the department pursuant to this part shall be deposited with the director of finance to the credit of the general fund.

§147-L Certificate as evidence. A certificate issued under this part and all certificates issued under the authority of the Congress of the United States relating to matters covered by this part shall be acceptable in any court of this State as prima facie evidence of the genetic purity, identity, quality, and condition of seed at the time of its inspection.”

SECTION 2. Chapter 147, part VII, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§147- Certification and audit services. The department of agriculture shall fix, assess, and collect fees for certification or audit services provided by temporary inspectors employed under this part. The fees shall be in amounts necessary to cover all costs of the administration and provision of the certification or audit services provided under this part; provided that the department of agriculture shall establish charges for traveling expenses and extraordinary services when the performance of the services involves unusual cost. The fees and charges established by the department of agriculture shall not be subject to chapter 91. The department of agriculture may employ temporary inspectors to assist in providing certification or audit services under parts I, III, IV, , and , and those temporary inspectors shall be exempt from chapter 76.”

SECTION 3. Section 147-10, Hawaii Revised Statutes, is amended to read as follows:

“§147-10 Income from [~~marketing inspection~~] certification and agriculture control activities. Except for fees collected by the department pursuant to [~~section 147-7.5.~~] part VII, all fees, expenses, and penalties collected by the department pursuant to this part shall be deposited with the director of finance to the credit of the general fund.”

SECTION 4. Section 147-34, Hawaii Revised Statutes, is amended to read as follows:

“§147-34 Inspection [~~classification~~]; certification fees. The board of agriculture may designate any employee or agent of the department [~~of agriculture~~] as an inspector to classify and inspect fresh and processed flowers and foliage for quality and condition and to determine if containers, packing materials, and methods of packing meet the minimum requirements established. In addition the inspector may classify and inspect flowers and foliage for quality and condition at the request of persons having a financial interest in the commodities in order to ascertain and to certify to [~~such~~] those persons the grade, classification, quality, or condition thereof and other pertinent facts. The department may fix, assess, and collect or cause to be collected fees for [~~such~~] those certification services when they are performed by the employees of the department. The fees shall be on a uniform basis and in an amount reasonably necessary to cover the cost of [~~inspections made~~] certification services provided at the request of persons having a financial interest. [~~AH~~] Except for fees collected by the department pursuant to part VII, all fees collected by the department pursuant to this part shall be deposited with the state director of finance to the credit of the general fund.”

SECTION 5. Section 147-64, Hawaii Revised Statutes, is amended to read as follows:

“§147-64 Deposit of moneys. ~~[All]~~ Except for fees collected by the department pursuant to part VII, all fees, charges, expenses, civil penalties, and other moneys collected by the department under this part or any rules prescribed by the department ~~[of agriculture]~~ pursuant to this part shall be deposited with the state director of finance to the credit of the general fund.”

SECTION 6. Section 147-93, Hawaii Revised Statutes, is amended to read as follows:

“§147-93 Cooperating with federal authority. The department of agriculture may enter into [a] cooperative [agreement] agreements with the ~~[meat grading service of the]~~ United States Department of Agriculture ~~[and may, to the extent funds are available in the division of animal industry special fund, pay the salaries, or portions thereof, of federal employees providing services under such agreement.]~~ for the purpose of grading beef, pork, mutton, and lamb carcasses.”

SECTION 7. Section 147-97, Hawaii Revised Statutes, is amended to read as follows:

“§147-97 Disposition of fees. All fees collected under this part shall be paid into a special fund ~~[in the division of animal industry]~~ established by the department of agriculture and shall be expended for the purposes of this part.”

SECTION 8. Chapter 147, part VII, Hawaii Revised Statutes, is amended to read as follows:

“[H]PART VII.[H] ~~[MARKETING ORDER] CERTIFICATION SERVICES REVOLVING FUND~~

[H]§147-101[H] ~~[Marketing order] Certification services revolving fund.~~ There is established a certification services revolving fund for use by the department of agriculture ~~[in providing inspection services for federal marketing order programs.]~~ to support certification or audit services established under parts I, III, IV, and . Moneys in the fund may be expended for materials, salaries, equipment, training, travel, and other costs related to providing ~~[inspection]~~ certification or audit services. ~~[Moneys]~~ Notwithstanding sections 147-10, 147-34, 147-64, 147-D and 147-K, moneys derived from the [inspection] certification or audit services provided by temporary inspectors employed under this part or from charges for traveling expenses or extraordinary services shall be deposited [in] into the fund. ~~[Marketing order inspectors hired under this chapter shall be exempt from chapter 76.]”~~

SECTION 9. Section 150-22, Hawaii Revised Statutes, is amended to read as follows:

“§150-22 Rules. Subject to chapter 91, the department may adopt rules with respect to:

- (1) Designation of noxious weed seed for the purpose of this chapter;
- (2) Maximum amount of noxious weed seed and other weed seed which may be found in agricultural or vegetable seed sold in the State;
- (3) Germination standards for agricultural and vegetable seed;

- (4) Inspection, sampling, and testing of seed at the request of interested persons, and charges to be made for these services;
- ~~[(5) Minimum standards pertaining to the process of certifying seed;] and~~
- ~~[(6)]~~ (5) Other requirements regarding the sale and labeling of seed and seed licenses, including the license fee, as it deems necessary to effectuate this chapter.

In adopting rules with respect to standards for agricultural and vegetable seed and tolerances of noxious weed seed, the department shall follow as closely as practicable the standards and tolerances of the Federal Seed Act, or as adopted by the Association of Official Seed Analysts.”

SECTION 10. Section 150-21, Hawaii Revised Statutes, is amended by repealing the definition of “certifying agency”.

~~[““Certifying agency” means (1) an agency authorized under the laws of a state, territory, or possession of the United States to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or (2) an agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under (1).””]~~

SECTION 11. Section 147-7.5, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 150-2, Hawaii Revised Statutes, is repealed.

SECTION 13. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the coffee inspection revolving fund as of close of business on June 30, 2003, to the credit of the certification services revolving fund. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

SECTION 14. 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 designating the new sections in this Act.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 16. This Act shall take effect on June 30, 2003; provided that section 11 shall take effect on July 1, 2003.

(Approved May 7, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 50

S.B. NO. 1306

A Bill for an Act Relating to Telecommunications Relay Services.

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

SECTION 1. The legislature finds that telecommunications relay services (TRS) provide individuals with hearing and speech disabilities telephone transmis-

sion services that enable these individuals to communicate by wire or radio with other individuals in a manner that is functionally equivalent to individuals without such disabilities.

The legislature further finds that the means to collect moneys that are assessed to pay for TRS is important to the provision and quality of TRS.

The purpose of this Act is to provide the state public utilities commission with greater flexibility in administering and providing intrastate telecommunications relay services in the State.

SECTION 2. Section 269-16.6, Hawaii Revised Statutes, is amended to read as follows:

“§269-16.6 [Relay] Telecommunications relay services for the deaf, [hearing-impaired, and speech-impaired,] persons with hearing disabilities, and persons with speech disabilities. (a) The public utilities commission shall implement ~~[a program to achieve]~~ intrastate telecommunications relay services for the deaf [and hearing-impaired not later than July 1, 1989, and the speech-impaired not later than July 1, 1992], persons with hearing disabilities, and persons with speech disabilities.

~~[(b) “Relay services for the deaf, hearing-impaired, and speech-impaired” means a twenty-four hour operator-assisted telephone relay service staffed by persons who are able to receive and transmit phone calls between deaf, hearing-impaired, and speech-impaired and hearing persons using a telecommunication device for the deaf in conjunction with a telephone.~~

~~(e) (b) The commission shall investigate the availability of experienced providers of quality telecommunications relay services for the deaf, [hearing-impaired, and speech-impaired. Contracts for the] persons with hearing disabilities, and persons with speech disabilities. The provision of these telecommunications relay services to be rendered on or after July 1, 1992, shall be awarded by the commission to the provider or providers [which] the commission determines to be best qualified to provide these services. In reviewing the qualifications of the provider or providers, the commission shall consider the factors of cost, quality of services, and experience, and such other factors as the commission deems appropriate.~~

~~[(4)] (c) If the commission determines that the telecommunications relay service can be provided in a cost-effective manner by a service provider[, or service providers], the commission may require every [telephone public utility, including] intrastate telecommunications [carriers,] carrier to contract with [that] such provider or providers for the provision of the telecommunications relay service under the terms established by the commission.~~

~~[(e) Notwithstanding subsections (c) and (d), relay services for the period beginning July 1, 1989, and ending June 30, 1992, shall be provided by every telephone public utility providing local service; provided that the commission and the provider or providers can agree on the terms and conditions for the provision of those relay services.]~~

~~(d) The commission may establish a surcharge to collect customer contributions for telecommunications relay services required under this section.~~

~~(e) The commission may adopt rules to establish a mechanism to recover the costs of administering and providing telecommunications relay services required under this section.~~

~~(f) The commission shall require every [telephone public utility, including] intrastate telecommunications [carriers, providing local telephone service] carrier to file a schedule of rates and charges and every provider of telecommunications relay service to maintain a separate accounting for the costs of providing [for] telecom-~~

munications relay services for the deaf, [hearing-impaired, and speech-impaired.] persons with hearing disabilities, and persons with speech disabilities.

(g) Nothing in this section shall preclude the commission from changing any rate established pursuant to this section either specifically or pursuant to any general restructuring of all telephone rates, charges, and classifications.

(h) As used in this section:

“Telecommunications relay services” means telephone transmission services that provide an individual who has a hearing or speech disability the ability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using wire or radio voice communication services. “Telecommunications relay services” includes services that enable two-way communication using text telephones or other nonvoice terminal devices, speech-to-speech services, video relay services, and non-English relay services.”

SECTION 3. Section 269-16.7, Hawaii Revised Statutes, is repealed.

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

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

(Approved May 7, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 51

S.B. NO. 1261

A Bill for an Act Relating to Procurement Card Payments.

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

SECTION 1. Section 103D-104, Hawaii Revised Statutes, is amended by adding the definition of “procurement card” to be appropriately inserted and to read as follows:

““Procurement card” means a charge card, with predetermined limitations, used by government agencies in place of cash or purchase orders for the purchase of goods, services, or construction.”

SECTION 2. Section 103-10, Hawaii Revised Statutes, is amended to read as follows:

“§103-10 Payment for goods and services. (a) Any person who renders a proper statement for goods delivered or services performed, pursuant to contract, to any agency of the State or any county, shall be paid no later than thirty calendar days following receipt of the statement or satisfactory delivery of the goods or performance of the services. In the event circumstances prevent the paying agency from complying with this section, the person shall be entitled to interest from the paying agency on the principal amount remaining unpaid at a rate equal to the prime rate for each calendar quarter plus two per cent, but in no event shall exceed twelve per cent a year, commencing on the thirtieth day following receipt of the statement or satisfactory delivery of the goods or performance of the services, whichever is later, and ending on the date of the [warrant-] check. As used in this subsection, “prime

rate” means the prime rate as posted in the Wall Street Journal on the first business day of the month preceding the calendar quarter.

(b) This section shall not apply in those cases where delay in payment is due to:

- (1) A bona fide dispute between the State or any county and the contractor concerning the services or goods contracted for;
- (2) A labor dispute;
- (3) A power or mechanical failure;
- (4) Fire;
- (5) Acts of God; or
- (6) Any similar circumstances beyond the control of the State or any county.

Where the time of payment is contingent upon the receipt of federal funds, or federal approval, the solicitation of bids for contracts shall clearly state that payment is contingent upon those conditions. If the solicitation for bids contains the warning and a contract is awarded in response to the solicitation then interest shall not begin to accrue upon any unpaid voucher until the thirtieth day following receipt by the State or county of the contractor’s statement or the thirtieth day following receipt of the federal funds or approval, whichever occurs later, and shall end as of the date of the [warrant.] check.

(c) All ~~[payments for]~~ goods ~~[delivered]~~ or services ~~[performed to]~~ purchased by a state agency which are less than \$25, except those purchased through the use of a state procurement card, shall be [made] paid from the petty cash funds of the agency; provided that the comptroller may establish a higher threshold for petty cash payments and may grant exceptions to this requirement.

(d) Any other law to the contrary notwithstanding, the payments for goods and services obtained through use of any state or county procurement card shall be made under the terms and conditions specified in the contract under which the procurement card was established.”

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

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

(Approved May 12, 2003.)

ACT 52

S.B. NO. 1262

A Bill for an Act Relating to Procurement.

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

SECTION 1. The purpose of this Act is to establish procurement policies and procedures that:

- (1) Ensure in-state contractors’ ability to win awards of public funds for state contracts;
- (2) Promote public confidence in the integrity of the procurement process;
- (3) Increase openness in the award of competitive sealed proposals and professional services contracts;
- (4) Enhance procurement education in the Pacific by creating a Hawaii procurement institute;

- (5) Require a pre-bid conference to be attended by all potential bidders, offerors, subcontractors, and union representatives, that will allow all interested parties to raise their protests prior to bidding, so that any subsequent protests can be resolved quickly and efficiently pursuant to the timeframe established in section 103D-701, Hawaii Revised Statutes; and
- (6) Technically correct chapter 103D, Hawaii Revised Statutes.

SECTION 2. Part X of chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§103D- Pre-bid conference. (a) At least fifteen days prior to submission of bids pursuant to section 103D-302 for a construction or design-build project with a total estimated contract value of \$500,000 or more, and at least fifteen days prior to submission of proposals pursuant to section 103D-303 for a construction or design-build project with a total estimated contract value of \$100,000 or more, the head of the purchasing agency shall hold a pre-bid conference and shall invite all potential interested bidders, offerors, subcontractors, and union representatives to attend.

(b) The procurement policy board shall adopt rules under chapter 91 to effectuate this section.”

SECTION 3. Section 103D-206, Hawaii Revised Statutes, is amended to read as follows:

“[§103D-206] Additional duties of the administrator of the procurement office. In addition to the duties referred to in section 103D-205, the administrator shall:

- (1) Perform periodic review of the procurement practices of all governmental bodies;
- (2) Assist, advise, and guide governmental bodies in matters relating to procurement;
- (3) Develop and administer a statewide procurement orientation and training program;
- (4) Develop, distribute, and maintain a procurement manual for all state procurement officials; ~~and~~
- (5) Develop, distribute, and maintain a procurement guide for vendors wishing to do business with the State and its counties[-]; and
- (6) Establish and maintain a Hawaii procurement institute, in cooperation with the University of Hawaii William S. Richardson school of law and other public and private entities and/or persons, to promote and develop a professional acquisition workforce and to improve and enhance the State of Hawaii’s contractor industrial base through education and training. The Hawaii procurement institute may:
 - (A) Conduct and participate in procurement education and training for entry level and higher qualified State of Hawaii employees and others, including persons not employed by the State of Hawaii;
 - (B) Conduct and promote research, conferences, and studies to improve the procurement process, laws, policies, methods, regulations, procedures, and forms relating to state and local government procurement;

- (C) Report on and make recommendations regarding goals, guidelines, innovations, and evaluation of state and local government procurement initiatives; and
- (D) Establish and maintain a procurement library within the State of Hawaii.”

SECTION 4. Section 103D-303, Hawaii Revised Statutes, is amended to read as follows:

“§103D-303 Competitive sealed proposals. (a) Competitive sealed proposals may be utilized to procure goods, services, or construction designated in rules adopted by the procurement policy board as goods, services, or construction which are either not practicable or not advantageous to the State to procure by competitive sealed bidding. Competitive sealed proposals may also be utilized when the head of a purchasing agency determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the State.

(b) Proposals shall be solicited through a request for proposals.

(c) Notice of the request for proposals shall be given in the same manner as provided in section 103D-302(c).

(d) Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shall be prepared in accordance with rules adopted by the policy board and shall be open for public inspection after contract award.

(e) The request for proposals shall state the relative importance of price and other evaluation factors.

(f) Discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and responsiveness to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals, and revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.

(g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(h) In cases of awards made under this section, nonselected offerors may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed.”

SECTION 5. 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[-]; provided that design professional services furnished by licensees under chapter 464 shall be procured pursuant to this

section or section 103D-307. 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]~~ shall 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]~~ New needs for professional services arise[-];
or
- (4) Rules adopted by the policy board so specify.

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,]~~ persons with sufficient education, training, and licenses or credentials for each type of professional service which may be required. In designating the members of the review committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of the review committee established under this section shall be placed in the contract file.

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]~~ selection 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]~~ selection committee shall be comprised of a minimum of three ~~[employees of the purchasing agency]~~ persons 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.]~~ In designating the members of the selection committee, the head of the purchasing agency shall ensure the impartiality and independence of committee members. The names of the members of a selection committee established under this section shall be placed in the contract file.

(e) The ~~[primary]~~ selection criteria employed ~~[by the screening committee]~~ in descending order of importance shall ~~[include but not]~~ be ~~[limited to]~~:

- (1) Experience and professional qualifications ~~[of the staff to be assigned]~~ relevant to the project[;] type;

- (2) Past performance on projects of similar scope for public agencies or private industry[; and], including corrective actions and other responses to notices of deficiencies;
- (3) Capacity to accomplish the work in the required time[-]; and
- (4) Any additional criteria determined in writing by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full, open, and fair competition for professional services contracts.

(f) The [screening] selection 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 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 competing professional service offerors.

(g) The selection committee shall rank a minimum of three persons based on the selection criteria and send the ranking to the head of the purchasing agency. The contract file shall contain a copy of [the criteria established for the selection and] the [committee's] summary of qualifications for the ranking of each of the persons provided to the head of the purchasing agency [by the committee.] for contract negotiations. If more than one person holds the same qualifications under this section, the selection committee shall rank the persons in a manner that ensures equal distribution of contracts among the persons holding the same qualifications.

~~[(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 based on the selection criteria.]~~

(h) The head of the purchasing agency or designee 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. The contract file shall include documentation from the head of the purchasing agency, or designee, to support selection of other than the first ranked or next ranked person. 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] selection 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)] (i) Contracts awarded under this section for \$5,000 or more shall be posted electronically within seven days of the contract award by the chief procurement officer or designee and shall remain posted for at least one year. Information to be posted shall include[-], but not be limited to:~~

- (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] (g);
- (2) The name of the person or organization receiving the award;
- (3) The dollar amount of the contract;

(4) The name of the head of the purchasing agency or designee [head] making the selection; and

(5) Any relationship of the principals to the official making the award.

~~[(g)]~~ (j) Contracts for professional services of less than [\$25,000] the limits in section 103D-305, may be negotiated by the head of the purchasing agency, or designee, with at least 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.] (h), with ranking based on the selection criteria of subsection (e) as determined by the head of the agency.

(k) In cases of awards made under this section, nonselected professional service providers may submit a written request for debriefing to the chief procurement officer or designee within three working days after the posting of the award of the contract. Thereafter, the head of the purchasing agency shall provide the requester a prompt debriefing in accordance with rules adopted by the policy board. Any protest by the requester pursuant to section 103D-701 following debriefing shall be filed in writing with the chief procurement officer or designee within five working days after the date that the debriefing is completed.”

SECTION 6. Section 103D-310, Hawaii Revised Statutes, is amended to read as follows:

“§103D-310 Responsibility of offerors. (a) Unless the policy board, by rules, specifies otherwise, before submitting an offer, a prospective offeror, not less than ten calendar days prior to the day designated for opening offers, shall give written notice of the intention to submit an offer to the procurement officer responsible for that particular procurement.

(b) Whether or not an intention to bid is required, the procurement officer shall determine whether the prospective offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For this purpose, the officer, in the officer’s discretion, may require any prospective offeror to submit answers, under oath, to questions contained in a standard form of questionnaire to be prepared by the policy board. Whenever it appears from answers to the questionnaire or otherwise, that the prospective offeror is not fully qualified and able to perform the intended work, a written determination of nonresponsibility of an offeror shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy board. The unreasonable failure of an offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for a determination of nonresponsibility with respect to such offeror. The decision of the head of the purchasing agency shall be final unless the offeror applies for administrative review pursuant to section 103D-709.

(c) All offerors, upon award of contract, shall comply with all laws governing entities doing business in the State, including chapters 237, 383, 386, 392, and 393, and shall:

- (1) Be incorporated or organized under the laws of the State; or
- (2) Be registered to do business in the State as a separate branch or division that is capable of fully performing under the contract.

Offerors shall produce documents to the procuring officer to demonstrate compliance with this subsection. Any offeror making a false affirmation or certification under this subsection shall be suspended from further offerings or awards pursuant to section 103D-702.

~~[(e)]~~ (d) Information furnished by an offeror pursuant to this section shall not be disclosed to any person except to law enforcement agencies as provided by chapter 92F.”

SECTION 7. Section 103D-701, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer or a designee as specified in the solicitation. [A] Except as provided in sections 103D-303 and 103D-304, a protest shall be submitted in writing within five working days after the aggrieved person knows or should have known of the facts giving rise thereto; provided that a protest of an award or proposed award shall in any event be submitted in writing within five working days after the posting of award of the contract [either] under section 103D-302 or 103D-303, if no request for debriefing has been made, as applicable; provided further that no protest based upon the content of the solicitation shall be considered unless it is submitted in writing prior to the date set for the receipt of offers.”

SECTION 8. Section 103D-1007, Hawaii Revised Statutes, is repealed.

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 this Act which can be given effect without the invalid provision or application, and to that extent the provisions of this Act are severable.

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

SECTION 11. This Act shall take effect on July 1, 2003.

(Approved May 12, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 53

S.B. NO. 373

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. Section 514A-90, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) 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; [ø]

(3) Thirty days after the public sale in a nonjudicial power of sale foreclosure pursuant to section 667-5; or

[(3)] (4) Upon the recording of the [deed,] instrument of conveyance, whichever occurs first[-]; provided that the mortgagee of record or other purchaser of the apartment shall not be deemed to acquire title under paragraph (1), (2), or (3), if transfer of title is delayed past the thirty-six days specified in paragraph (1), the sixty days specified in paragraph (2), or the thirty days specified in paragraph (3), when a person who appears at the hearing on the motion or a party to the foreclosure action requests reconsideration of the motion or order to confirm sale, objects to the form of the proposed order to confirm sale, appeals the decision of the court to grant the motion to confirm sale, or the debtor or mortgagor declares bankruptcy or is involuntarily placed into bankruptcy. In any such case, the mortgagee of record or other purchaser of the apartment shall be deemed to acquire title upon recordation of the instrument of conveyance.”

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

SECTION 3. This Act shall take effect upon its approval; provided that the amendments made to section 514A-90(b), Hawaii Revised Statutes, by this Act shall not be repealed when section 514A-90 is reenacted on December 31, 2003, pursuant to section 4 of Act 39, Session Laws of Hawaii 2000.

(Approved May 13, 2003.)

ACT 54

S.B. NO. 42

A Bill for an Act Relating to Watercraft.

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

SECTION 1. The legislature finds that the requirements for minimum safety equipment for vessels traversing Hawaii’s waters need to be updated to take into account the natural hazards of Hawaii’s unique geographical isolation, the dominant trade winds that average fifteen to twenty knots, and four- to eight-foot seas that exist during most of the year. These unique natural hazards are compounded by:

- (1) The tremendous technological advances in boat building;
- (2) The availability of more reliable and efficient diesel as well as gasoline engines; and
- (3) The affordability of high-tech navigation, fishing, and safety equipment.

These technological advances now allow recreational as well as commercial vessels to operate at greater distances from shore, thereby increasing the risk for at-sea rescues.

Modern technology can also mitigate risks by providing a quick means for boaters in distress to contact other boaters or persons on shore and to alert the United States Coast Guard search and rescue forces.

The purpose of this Act is to require state-registered vessels and manual or sail propelled vessels to carry on-board, a properly functioning:

- (1) VHF-FM radio capable of communicating with the United States Coast Guard communication station, rescue aircraft, and vessels; or
- (2) Emergency position indicating radio beacon.

The beneficiaries of this Act include boaters, the general public in terms of less costly ocean search and rescue operations, as well as rescue personnel by making their jobs easier and safer.

SECTION 2. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§200- **Emergency communication devices.** (a) It shall be unlawful to operate in the waters of the State beyond one mile of shore, any:

- (1) Vessel required to be registered by the State or documented by the United States Coast Guard; or
- (2) Manual or sail-propelled vessel not required to be registered by the State or documented by the United States Coast Guard,

unless the vessel is equipped with a properly functioning fixed mount or handheld marine VHF-FM radio (156-162 MHz band) or emergency position indicating radio beacon.

Canoes, thrill craft, surfboards, and paddleboards shall be exempt from this section. Kayaks and training sailboats shall be exempt from this section when accompanied by at least one vessel that complies with this section.

(b) Notwithstanding the provisions of section 200-25, any person who violates this section shall be fined not more than \$100 for each separate offense. Each day of each violation constitutes a separate offense. Any action taken to impose or collect the fine provided by this section shall be considered a civil action.

(c) As used in this section, an “emergency position indicating radio beacon” is an electronic device that, when activated, transmits a distress call on a designated emergency frequency to a radio or satellite receiver and is used by rescue personnel to locate the position of the signal. Emergency position indicating radio beacons shall be approved by the Federal Communications Commission and COSPAS-SARSAT, an international search and rescue organization. The 406 MHz class of emergency position indicating radio beacons shall be registered with the National Oceanic and Atmospheric Administration. The applicable United States Coast Guard regulations relating to emergency position indicating radio beacons shall prevail for commercial vessels.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on January 1, 2004.

(Approved May 13, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 55

S.B. NO. 1077

A Bill for an Act Relating to Continuing Education for Insurance Licensees.

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

SECTION 1. Chapter 431, article 9A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . CONTINUING EDUCATION COURSE PROVIDERS

§431:9A- Continuing education course provider certificate. (a) Any person seeking a continuing education course provider certificate shall submit to the commissioner at least sixty days prior to the date the course will be offered:

- (1) An application in duplicate on a form prescribed by the commissioner; and
- (2) The appropriate application fee.

(b) A continuing education provider, who is seeking renewal of the certificate, shall submit to the commissioner at least sixty days prior to the expiration of the certificate:

- (1) A renewal application in duplicate in a form prescribed by the commissioner; and
- (2) The appropriate renewal application fee.

(c) The continuing education course provider certificate:

- (1) Shall expire:
 - (A) On July 1 of the calendar year immediately following the calendar year the application for the initial certificate was received, if the application was received in the months of January through June; or
 - (B) On July 1 of the second calendar year following the calendar year the application for the initial certificate was received, if the application was received in the months of July through December; and
- (2) May thereafter be renewed by application for a period of one year beginning on July 1 and ending on July 1 of the following calendar year,

unless the certificate is earlier suspended or revoked by the commissioner.

(d) An application may be denied if the commissioner determines that the applicant or an officer, director, partner, or owner of an applicant entity:

- (1) Is not qualified to perform the duties and responsibilities listed in this chapter;
- (2) Engaged in false, fraudulent, or deceptive advertising or in making false or untruthful statements to the public or the commissioner;
- (3) Procured any past license or regulatory approval through fraud, misrepresentation, or deceit;
- (4) Aided and abetted an unlicensed person in performing, directly or indirectly, any activities requiring a license;
- (5) Failed to maintain a record or history of competency, trustworthiness, fair dealing, and financial integrity;
- (6) Engaged in business under a past or present license issued pursuant to licensing laws, in a matter causing injury to one or more members of the public;
- (7) Failed to comply, observe, or adhere to any law in a manner such that the commissioner deems the applicant to be unfit for approval;
- (8) Has been refused a professional, occupational, or vocational license, has had such a license suspended, revoked, or restricted, or has been fined or placed on probation by any licensing authority; or
- (9) Has been convicted of a felony or a misdemeanor involving a fraudulent act or an act of dishonesty in the acceptance, custody, or payment of money or property.

§431:9A- Continuing education course provider additional duties. In addition to other duties and obligations imposed by law, a continuing education course provider shall be responsible for:

- (1) Ensuring that each course is taught by a qualified instructor;
- (2) Providing course schedules at least thirty days prior to the start date of each class;
- (3) Monitoring attendance by having licensees who are taking the continuing education course, sign-in at the time of entrance to the course, and sign-out upon completion of the course, for courses other than self-study courses;
- (4) Supervising and evaluating courses and instructors;
- (5) Administering examinations when applicable;
- (6) Verifying and submitting in the appropriate format, on a timely basis, course attendance and completion rosters and other information required by law;
- (7) Signing and issuing to a licensee, in a form approved by the commissioner, a certificate of completion within forty-five days of completion of a continuing education course;
- (8) Providing continuing education course application materials, including a detailed course content outline and a copy of the provider's tuition and fee refund policy, upon a licensee's request; and
- (9) Publishing and abiding by a refund policy that complies with rules adopted by the commissioner.

§431:9A- Courses. (a) A continuing education course provider shall obtain prior approval for the course from the commissioner before advertising or soliciting for a course.

(b) In determining whether to approve a course, the commissioner may consider whether the course:

- (1) Is a formal program of learning that contributes directly to the professional competence of licensees;
- (2) Will enhance and improve the knowledge of licensees with regard to the conduct of the business of insurance in the State;
- (3) Includes methods to evaluate and assess the effectiveness of the course;
- (4) Is appropriately classified as "basic", "intermediate", or "advanced"; and
- (5) Includes a bibliography of reference materials and supplemental teaching aids.

(c) The commissioner may refuse to grant continuing education credit for any course work that focuses on:

- (1) Personal development;
- (2) Motivational or public speaking;
- (3) Salesmanship;
- (4) Product presentation;
- (5) Mechanical office skills, including but not limited to typing, speed reading, use of calculators, computers, or other office machinery; or
- (6) Other subject matter not related to the business of insurance as determined by the commissioner.

(d) A continuing education course provider shall apply to the commissioner for course approval whenever changes are proposed in the course material, course hours, method of presentation, or method of examination.

(e) Continuing education credit hours shall be approved in increments of not less than one credit hour.

(f) No course shall be approved for more than twenty credit hours.

(g) The continuing education course provider certificate:

- (1) Shall expire:
 - (A) On July 1 of the calendar year immediately following the calendar year the application for the initial certificate was received, if the application was received in the months of January through June; or
 - (B) On July 1 of the second calendar year following the calendar year the application for the initial certificate was received, if the application was received in the months of July through December; and
- (2) May thereafter be renewed by application for a period of one year beginning on July 1 and ending on July 1 of the following calendar year,

unless the certificate is earlier suspended or revoked by the commissioner.

§431:9A- Self-study courses. (a) In addition to the requirements of courses generally, an approved continuing education course provider shall also require for self-study courses, including computer-based courses, a written or computer-based examination at the conclusion of the self-study course. The examination shall:

- (1) Be composed of multiple choice questions, essay questions, or both;
- (2) Have at least three different versions of itself, used on a random or rotating basis;
- (3) If composed of multiple choice questions for a course approved for up to four credit hours, include at least twenty-five multiple choice questions;
- (4) If composed of multiple choice questions for a course approved for more than four credit hours, include at least fifty multiple choice questions;
- (5) Be graded by the continuing education course provider or the continuing education course provider's agent;
- (6) If the examination is computer-based, not include prompts designed to aid the person taking the examination; and
- (7) If the course is a computer-based course with a computer-based examination, be designed to prevent the licensee from taking the examination without reviewing the course materials.

(b) To pass a multiple-choice self-study course, the licensee shall answer at least seventy per cent of the examination questions correctly.

(c) A self-study course examination shall not be administered by a person who:

- (1) Is related to, or is a business associate of, the licensee taking the examination; or
- (2) Has a financial interest in the success or failure of a licensee taking the examination.

(d) Upon receipt of the completed examination, the continuing education course provider or the continuing education course provider's agent shall grade the examination and mail the results to the licensee within thirty days for a multiple choice examination, and within forty-five days for an essay examination.

§431:9A- Carryover credits. No credit hours earned during a single renewal cycle may be carried over and counted towards satisfaction of the credit hour requirements for a following renewal cycle for the same license.

§431:9A- Course instructors. (a) The commissioner may deem a continuing education course instructor unqualified if the instructor has been subject to suspension, revocation, or other disciplinary proceeding in relation to an insurance license or other financial services license by the State or other jurisdiction.

(b) A continuing education course provider shall give the commissioner access to the employment records of any instructor employed by the provider.

(c) A provider shall require the instructor to display a photo identification to any insurance division representative who conducts an official audit during an instruction period.

§431:9A- Tuition. (a) The following are requirements that providers shall follow:

- (1) Tuition fees for courses shall be reasonable and clearly identified;
- (2) If the course is canceled for any reason, all fees shall be refunded in full unless the enrollment application contains a refund policy clause that expressly states otherwise. If the fees are refundable, the continuing education course provider shall refund the fees within forty-five days after the cancellation;
- (3) In the event a course is postponed for any reason, a licensee shall be given the choice of attending the course at a later date or having the fee refunded in full. If a licensee chooses not to attend a postponed course, the continuing education course provider shall refund the fees within forty-five days after the postponement; and
- (4) A provider may have a refund policy that addresses a licensee's cancellation or failure to complete a course, so long as that policy is clear to the licensee and in compliance with this section.

(b) A continuing education course provider may offer a continuing education course free of tuition.

§431:9A- Reporting credit hours and recordkeeping. Continuing education course providers shall:

- (1) Submit course completion information as prescribed by the commissioner to the insurance division within forty-five days after the course is completed or the competency examination is scored, whichever is later. The information shall be transmitted in an electronic form in the format prescribed by the commissioner; and
- (2) Maintain adequate records to verify the attendance and successful course completion pursuant to section 431:9A-125(b).

§431:9A- Advertising. (a) A course shall not be advertised as an approved course for continuing education credit unless the commissioner has approved the course in writing.

(b) Advertisements for an approved course shall include:

- (1) The provider's name, course title, and course number;
- (2) The statement "Approved by the Hawaii State Insurance Commissioner for continuing education credit";
- (3) The number of approved credit hours; and
- (4) The amount of tuition, fees, and all other associated expenses.

§431:9A- Advisory committee. (a) The commissioner may establish an advisory committee, which shall be composed of nine members appointed by the commissioner of which:

- (1) Eight members shall be practicing licensees with active licenses; and
- (2) One member shall be from the insurance division.

ACT 56

Members shall serve staggered terms of two years each so that the terms of no more than five members expire each year.

(b) The advisory committee shall assist the commissioner by:

- (1) Recommending to the commissioner policies, procedures, and administrative rules to implement this part, including:
 - (A) Additional criteria to be used in the consideration and review of course providers, courses, and course materials;
 - (B) Additional criteria to be considered in the approval or rejection of continuing education courses; and
 - (C) Courses, credit hours, and fees for applications of renewals for each approved course;
- (2) Reviewing the continuing education course requirements for this State and other states to determine whether the courses are substantially equivalent and recommending to the commissioner whether to enter into or maintain reciprocal agreements with other states;
- (3) Reviewing and critiquing proposed continuing education course materials to determine whether the course materials are appropriate for the purposes of continuing education and whether courses using these materials would comply with this part; and
- (4) Providing such other and further assistance to the commissioner as the commissioner deems appropriate.

(c) The committee members shall receive no monetary compensation for services.

(d) The commissioner may grant continuing education equivalent credit to members of the advisory committee for work completed pursuant to this section.”

SECTION 2. Section 431:9A-102, Hawaii Revised Statutes, is amended by amending the definition of “credit hour” to read as follows:

““Credit hour” means the value assigned to ~~[an hour of]~~:

- (1) Fifty minutes of classroom instruction; or
- (2) In the case of self-study courses, fifteen to twenty full pages of reading materials excluding graphics, quizzes, and illustrations, depending on content and type-face, as determined by the commissioner;

in an approved continuing education course.”

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

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

(Approved May 13, 2003.)

ACT 56

S.B. NO. 1361

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 by adding two new definitions to be appropriately inserted and to read as follows:

““Brand” or “brand name” means any registered trade name commonly used to identify a drug.

“Established name” or “generic name” when applied to a drug has the meaning given in section 502(e)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §352(e)(3)).”

SECTION 2. Section 328-16, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(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 the prescription was prepared;
- (5) The name of the practitioner if the seller is not the practitioner;
- (6) The name, strength, and quantity of the drug;
- (7) The “use by” date [the potency of the drug expires if the date is available from the manufacturer or principal labeler;] for the drug, which shall be:
 - (A) The expiration date on the manufacturer’s container; or
 - (B) One year from the date the drug is dispensed, whichever is earlier;
- (8) The number of refills available, if any; [~~and~~]
- (9) In the case of the dispensing of an equivalent generic drug product, the statement “same as (brand name of the drug product prescribed or the referenced listed drug name)”, or words of similar meaning; and
- (10) 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 a drug does not indicate the number of times it may be refilled, if any, the pharmacist shall not refill that prescription unless subsequently authorized to do so by the practitioner. The act of dispensing a prescription 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.”

2. By amending subsection (c) to read:

“(c) A prescription may be communicated in writing, orally, or by electronic transmission, and shall include the following information:

- (1) 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 recorded by the pharmacist or medical oxygen distributor and shall include the practitioner’s oral code designation; and
 - (C) Electronic prescriptions shall be irrefutably traceable to the prescribing practitioner by a recognizable and unique practitioner identifier such as:
 - (i) A bitmap or graphic image of the prescriber’s handwritten signature and the prescriber’s oral code designation (or li-

- cense number or other identifier if the prescriber is an out-of-state practitioner);
- (ii) An electronic signature; [ø]
 - (iii) A digital signature; or [by]
 - (iv) By other means as approved by the director;
- (2) The date of issuance;
 - (3) The practitioner's name, business telephone number, and business address, unless the practitioner is otherwise uniquely identified and the pharmacy or medical oxygen distributor dispensing the prescription has the prescriber's contact information on file accessible within the dispensing area;
 - (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 dispensing the prescription has the address on file accessible within the dispensing area;
 - (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 certificate of medical necessity shall supersede any limitations or restrictions on refilling; and
 - (E) Subparagraphs (A) to (D) shall apply only to pharmacies and medical oxygen distributors practicing in the State."

SECTION 3. Section 328-17.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) An out-of-state practitioner may issue a written, oral, or electronic prescription within the confines of the practitioner's license and in accordance with Hawaii laws and rules. An oral or electronic prescription shall be [~~personally communicated~~] issued by the out-of-state practitioner or the prescriber's authorized agent and received only by a pharmacist; provided that a medical oxygen order may be received by a medical oxygen distributor."

SECTION 4. Section 328-17.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Every practitioner, pharmacist, or medical oxygen distributor[;] who compounds, sells, or delivers any prescribed drug to a patient or a patient's agent shall maintain records that identify:

- (1) The specific drug product[;] dispensed, including:
 - (A) The product's national drug code (NDC) number; or

- (B) The brand name or the established name and the name or commonly accepted abbreviation of the principal labeler of the drug product dispensed, the product strength, and the dosage form;
- (2) The quantity of the drug;
 - (3) Directions for use;
 - (4) The number of allowable refills;
 - (5) The date of initial dispensing and the dates of all refilling;
 - (6) The date of any transfer of the prescription;
 - (7) The name, business address, and telephone number of the recipient pharmacist or medical oxygen distributor for any transfer of prescription;
 - (8) The prescribing practitioner, including name, business address, and telephone number;
 - (9) The format (oral, written, or electronic) in which the prescription was received;
 - (10) The patient, including name, address, and telephone number;
 - (11) The date of prescribing; and
 - (12) The name of the practitioner, pharmacist, or medical oxygen distributor dispensing the drug.

Every prescription dispensed shall have the name of the pharmacist, dispensing practitioner, or medical oxygen distributor responsible for the dispensing appended to the prescription record, and every prescription record shall be preserved and legible for a period of not less than five years. The prescription records shall be subject at all times to the inspection of the director of health or the director's agent."

SECTION 5. Section 328-91, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read: "~~“Compendia of therapeutically equivalent generic drugs”~~ means the Orange Book and any United States Food and Drug Administration documentation of any United States Food and Drug Administration-approved therapeutic equivalency, including but not limited to:

- (1) Letters of approval of Abbreviated New Drug Applications with therapeutic equivalency evaluations;
- (2) Published listings of approved New Drug Applications or approved Abbreviated New Drug Applications with therapeutic equivalency evaluations; and
- (3) Listings of first time generics with therapeutic equivalency evaluations,

adopted by the board.

"Multiple source drug" means a drug marketed or sold by two or more manufacturers or labelers or a drug marketed or sold by the same manufacturer or labeler under two or more different brand names, or both, under a brand name and without such a name.

"Savings" means the financial benefit derived from utilizing the substituted equivalent generic drug product from the perspective of the consumer or the ultimate payer, including third party payers."

2. By amending the definition of "Hawaii additions and deletions list" to read:

"Hawaii additions and deletions list" means:

- (1) A list of drug products that the board has determined to be safe, effective, and therapeutically equivalent generic drug products but are not in the [~~Orange Book;~~] compendia of therapeutically equivalent generic drugs; and

- (2) A list of drug products that are included in the [~~Orange Book,~~] compendia of therapeutically equivalent generic drugs, but that the board has determined not to be safe, effective, therapeutically equivalent, or bioequivalent generic drug products."
- 3. By repealing the definition of "established name".
~~["Established name" has the meaning given in section 502(e)(3) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 352(e)(3))."]~~

SECTION 6. Section 328-92, Hawaii Revised Statutes, is amended to read as follows:

"§328-92 Drug product selection. (a) [A] When filling a prescription order for a drug prescribed by its brand name, a pharmacist or the pharmacist's authorized agent shall:

- (1) Offer to the consumer [~~substitutable and lower cost~~] an equivalent generic drug [products] product from the formulary adopted pursuant to section 328-96; and
- (2) [~~Inform~~] Upon the request of the consumer [of the retail price difference between the brand name drug product and the substitutable drug product; and], inform the consumer of the savings; and
- (3) Inform the consumer of the consumer's right to refuse substitution.

The pharmacist shall substitute an equivalent generic drug product if [~~the consumer consents,~~] the practitioner does not prohibit substitution under subsection (b), and the [~~price of the~~] substitute equivalent generic drug product [is less than the price of the prescribed drug product.] results in a savings. The pharmacist shall not substitute if the consumer refuses.

(b) [~~In filling initial or original prescriptions, the~~] The pharmacist shall not substitute an equivalent generic drug product if the practitioner [, and only the practitioner, handwrites "do not substitute"] indicates "brand medically necessary" or words of similar meaning on the [written] prescription. The designation "brand medically necessary" or other similar words or phrases must be handwritten by the practitioner and shall not be preprinted or stamped on the written prescription. The pharmacist shall not substitute an equivalent generic drug product if a prescription is [~~ordered~~] orally or electronically ordered and the practitioner or authorized employee of the practitioner [~~orally orders "do not substitute".~~] indicates "brand medically necessary" or other similar words or phrases.

The pharmacist shall note the practitioner's instructions on the prescription record required to be maintained under section 328-17.7.

[~~In refilling prior written prescriptions, the pharmacist shall not substitute an equivalent drug product if the oral prescription is a refill of a prior written prescription for which selection of an equivalent drug product was not permitted; provided that if the prior written prescription permitted the selection of an equivalent drug product, substitution shall be permitted. The pharmacist, however, shall not substitute an equivalent drug product if a refill of a prescription is ordered orally and the practitioner or authorized employee of the practitioner orally orders "do not substitute".~~

The designation of "do not substitute" and the practitioner's signature shall not be preprinted or stamped on the prescription.

(e) ~~The pharmacist shall not substitute an equivalent drug product unless its price to the purchaser is less than the price of the prescribed drug product.]~~

This subsection shall not apply when it does not comply with any federal requirement for services reimbursable by medicaid or medicare.

[~~(d)~~] (c) The pharmacist shall not substitute an equivalent generic drug product for any prescription for an anti-epileptic drug, except upon the consent of the

practitioner and the patient or the patient's parent or guardian. This narrow exception for epileptic patients shall not be construed as a policy decision to make exceptions for any other conditions.

(e) (d) The county prosecutors and the attorney general may bring action upon complaint by an aggrieved person or upon their own motion in the name of the State against any person to enjoin any violation of this part."

SECTION 7. Section 328-94, Hawaii Revised Statutes, is amended to read as follows:

"§328-94 Prescription record. Each pharmacist or practitioner shall maintain a record of any substitution of ~~[a generically]~~ an equivalent generic drug product for a prescribed brand name drug product as provided in this part."

SECTION 8. Section 328-96, Hawaii Revised Statutes, is amended to read as follows:

"§328-96 Drug formulary. (a) The board may adopt rules, pursuant to chapter 91, to effectuate the purpose of this part. Without regard to chapter 91, the board may adopt as rules the ~~[Orange Book and its cumulative supplements once they are issued by the Commissioner of Food and Drugs, United States Food and Drug Administration,]~~ compendia of therapeutically equivalent generic drugs as the state drug formulary of equivalent multiple source drug products. The board may adopt rules~~[-]~~ pursuant to chapter 91~~[-]~~ to establish a Hawaii additions and deletions list; provided that section ~~[328-92(d)]~~ 328-92(c) shall apply, and no pharmacist shall substitute an equivalent generic drug product for any prescription for an anti-epileptic drug to treat epilepsy, except upon the consent of the practitioner and the patient or the patient's parent or guardian. Upon the adoption of the ~~[Orange Book or its cumulative supplements,]~~ compendia of therapeutically equivalent generic drugs by the board, the board shall notify all pharmacies in the State and other interested individuals, within thirty working days, that the formulary has been updated. The Hawaii additions and deletions list may list additional substitutable drug products that are determined by the board to be safe, effective, and therapeutically equivalent. The Hawaii additions and deletions list may delete drug products listed in the ~~[Orange Book]~~ compendia of therapeutically equivalent generic drugs upon the board's finding that product quality or therapeutic equivalency or bioequivalency, as appropriate, is not adequately assured.

(b) Pursuant to chapter 91, the Hawaii additions and deletions list may be changed, added to, or deleted from as the board deems appropriate. Any person who requests that any change be made or that a ~~[generic name or brand name]~~ drug product be included or added to or deleted from the Hawaii additions and deletions list shall have the burden of proof to show cause why the change, inclusion, addition, or deletion should be made.

(c) The board shall revise or supplement the Hawaii additions and deletions list as necessary.

(d) The department shall provide for distribution ~~of the Hawaii additions and deletions list and its revisions and supplements,~~ and the dissemination of notices of changes to the compendia of therapeutically equivalent generic drugs, to all pharmacies in the State and to any other interested individuals. The department may establish fees to be charged to persons who receive the Hawaii additions and deletions list and its revisions and supplements~~[-]~~, and notices of changes to the compendia of therapeutically equivalent generic drugs. The amounts of the fees charged ~~[for the Hawaii additions and deletions list and its revisions and supplements]~~ shall be approximately the same as the costs of producing and distributing the

Hawaii additions and deletions list and its revisions and supplements[-], and the notices of changes to the compendia of therapeutically equivalent generic drugs.

(e) Each pharmacy in the State shall:

- (1) ~~[Obtain, maintain,]~~ Maintain and update the ~~[Orange Book and its cumulative supplements;]~~ compendia of therapeutically equivalent generic drugs as it is approved by the board; and
- (2) Obtain the Hawaii additions and deletions list.

(f) The department shall provide for public education regarding the provisions of this part and shall monitor the effects of this part.”

SECTION 9. Section 328-93, Hawaii Revised Statutes, is repealed.

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 and stricken.¹ New statutory material is underscored.

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

(Approved May 14, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 57

S.B. NO. 585

A Bill for an Act Relating to State Funds.

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

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

SECTION 2. The legislature intends that a percentage of the moneys received by the department of health from the tobacco settlement moneys be transferred to the department of human services to provide health care coverage to children under nineteen who are eligible under its children’s health insurance program. However, tobacco settlement moneys which were to be used in fiscal years 2000-2001, and 2001-2002, to provide health care coverage to children under nineteen, who were eligible under medical assistance programs administered by the department of human services, were not fully expended. The funds remain in the Hawaii tobacco settlement special fund and may be used for payments to health care providers programs administered by the department of human services.

Accordingly, the purpose of this Act is to appropriate the unexpended, accumulated funds from the Hawaii tobacco settlement special fund for the department of human services to use for children’s health programs for fiscal year 2002-2003.

SECTION 3. There is appropriated out of the Hawaii tobacco settlement special fund the sum of \$6,259,886, or so much thereof as may be necessary for fiscal year 2002-2003, to be transferred from the department of health to the

department of human services. Notwithstanding section 328L-4, Hawaii Revised Statutes, the sum appropriated shall be expended by the department of human services for children's health programs.

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

(Approved May 15, 2003.)

ACT 58

H.B. NO. 1111

A Bill for an Act Making Appropriations for Claims Against the State, its Officers, or its Employees.

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

PART I

SECTION 1. The following sums or so much thereof as may be necessary for fiscal year 2002-2003 are appropriated out of the general revenues of the State of Hawaii to the department of the attorney general 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 the overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities, in the amounts set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	AMOUNT
1. DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:	
Event Partners in Concession Services, et al. v. State of Hawaii, et al., Civil No. 00-1-2077-07, First Circuit	\$ 185,000.00 Settlement
Hi-Tec Roofing Services, Inc. v. State of Hawaii, et al., PCH-2002-1, DCCA	\$ 119,298.41 Judgment
L.T.M. Corp. dba Civil Mechanical v. State of Hawaii, Civil No. 01-1-2159-07, First Circuit	\$ 27,500.00 Settlement
SUBTOTAL:	<hr/> \$ 331,798.41
2. DEPARTMENT OF AGRICULTURE:	
Thomas v. Nakatani Civil No. 00-00125 ACK/KSC, USDC	\$ 150,000.00 Settlement
SUBTOTAL:	<hr/> \$ 150,000.00
3. DEPARTMENT OF EDUCATION:	
Doe Parents v. Norton, et al. Civil No. 96-4906-11, First Circuit	\$1,790,242.47 Judgment
Amount of judgment: \$1,757,500.00	
4% interest from 2/12/03: \$ 32,742.47	
Halpenny v. State of Hawaii, et al. Civil No. 97-1941, First Circuit	\$ 150,000.00 Settlement

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

AMOUNT

Ibarra, et al. v. State of Hawaii, et al. Civil No. 01-1-0055K, Third Circuit	\$ 40,000.00 Settlement
Kane v. State of Hawaii, et al. Civil No. 98-2226-05, First Circuit	\$ 37,500.00 Settlement
Mother Doe I, et al. v. State of Hawaii, et al. Civil No. 01-1-1101-04, First Circuit	\$ 40,000.00 Settlement
Rahsaan v. State of Hawaii, et al. Civil No. 00-00795 HG/LEK, USDC	\$ 425,000.00 Settlement
Washino v. Ventura, et al. Civil No. 01-1-2570-08, First Circuit	\$ 12,500.00 Settlement
SUBTOTAL:	<u>\$2,495,242.47</u>
4. OFFICE OF THE GOVERNOR:	
Arakaki v. State of Hawaii Civil No. 00-00514, USDC Amount of judgment: \$53,733.64 2.53% interest from 4/18/02: \$ 1,760.44	\$ 55,494.08 Judgment
Arakaki v. State of Hawaii Civil No. 00-00514, USDC	\$ 104,000.00 Settlement
UPW v. Yogi Hawaii S.C. No. 23705 Amount of judgment: \$ 498.16 10% interest from 1/30/03: \$ 24.98	\$ 523.14 Judgment
SUBTOTAL:	<u>\$ 160,017.22</u>
5. DEPARTMENT OF HUMAN SERVICES:	
Burns-Vidlak and Sterling Cases (Class Actions)	\$7,000,000.00 Settlement
SUBTOTAL:	<u>\$7,000,000.00</u>
6. DEPARTMENT OF LAND AND NATURAL RESOURCES:	
Atahan v. County of Maui, et al. Civil No. 95-0160(1), Second Circuit	\$ 75,000.00 Settlement
Captain Andy's Sailing, Inc. v. Johns, et al. Civil No. 00-00051, USDC	\$ 242,854.60 Judgment
SUBTOTAL:	<u>\$ 317,854.60</u>
7. OFFICE OF THE LIEUTENANT GOVERNOR:	
Smith v. State of Hawaii, Campaign Spending Commission, et al. Civil No. 02-00068HG/BMK, USDC	\$ 63,042.58 Settlement
Smith v. State of Hawaii, Campaign Spending Commission, et al. Civil No. 02-00068HG/BMK, USDC	\$ 31,786.31 Judgment

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:****AMOUNT**

Smith v. State of Hawaii, Campaign Spending Commission, et al. Civil No. 02-00068HG/BMK, USDC	\$ 14,079.56 Judgment
SUBTOTAL:	<u>\$ 108,908.45</u>
8. DEPARTMENT OF PUBLIC SAFETY:	
Aguinaldo v. Hoge, et al. Civil No. 01-1-0681-02, First Circuit	\$ 75,000.00 Settlement
Allen v. Iranon Civil No. 97-00175ACK, USDC	\$ 78,182.68 Judgment
Clark, et al. v. State of Hawaii, et al. Civil No. 99-00885DAE/BMK, USDC (Class Action)	\$1,053,195.62 Settlement
desMarets v. State of Hawaii, et al. Civil No. 97-3978-09, First Circuit	\$ 175,000.00 Settlement
Evans, et al. v. State of Hawaii, et al. Civil No. 97-1908-05, First Circuit	\$ 1,990,000.00 Settlement
Morrison v. State of Hawaii, et al. Civil No. 01-1-2248-07, First Circuit	\$ 70,000.00 Settlement
Serrao v. State of Hawaii Civil No. 01-1-0471, Third Circuit	\$ 50,000.00 Settlement
SUBTOTAL:	<u>\$ 3,491,378.30</u>
9. MISCELLANEOUS CLAIMS:	
Arylla Chong	\$ 575.00
Ronnie Goda-George	\$ 430.00
Charles Ramos	\$ 457.00
Masaaki Soneda	\$ 1,849.00
SUBTOTAL:	<u>\$ 3,311.00</u>
TOTAL (SECTION 1):	\$14,058,510.45

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

PART II

SECTION 2. The following sums, or so much thereof as may be necessary for fiscal year 2002-2003, 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:**

**DEPARTMENT OF TRANSPORTATION,
HIGHWAYS DIVISION:**

Allstate v. State of Hawaii, et al. Civil No. 99-0648(3), Second Circuit	\$ 250,000.00 Settlement
Delos Reyes, et al. v. State of Hawaii Civil No. 02-1-0819-04, First Circuit	\$1,500,000.00 Settlement
Eveleth v. State of Hawaii, et al. Civil No. 01-1-0157, Third Circuit	\$ 15,000.00 Settlement
Hashimoto, et al. v. State of Hawaii, Civil No. 01-1-0110-01, F irst Circuit	\$ 250,000.00 Settlement
Island Insurance Co. v. Department of Transportation, et al., Civil No. 02-1-0156-01, First Circuit	\$ 19,000.00 Settlement
Querubin v. State of Hawaii Civil No. 99-498, Third Circuit	\$ 30,000.00 Settlement
San Nicholas, et al. v. State of Hawaii, Civil No. 01-1-0111-01, First Circuit	\$ 350,000.00 Settlement
SUBTOTAL:	<u>\$2,414,000.00</u>
TOTAL (SECTION 2):	\$2,414,000.00

The sums appropriated shall be expended by the department of transportation for the purposes of this Act.

SECTION 3. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of health or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

DEPARTMENT OF HEALTH:

Aguinaldo v. State of Hawaii, et al. Civil No. 00-1-0278(2), Second Circuit	\$ 20,000.00 Settlement
SUBTOTAL:	<u>\$ 20,000.00</u>
TOTAL (SECTION 3):	\$ 20,000.00

Provided that of the legislative appropriation for the department of health for fiscal year 2002-2003 in section 3 of Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, as further amended by Act 177, Session Laws of Hawaii 2002, the general fund sum of \$20,000.00 from the Developmental Disabilities program (HTH 501) shall be expended by the department of health for the purposes of this Act.

SECTION 4. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of land and natural resources or its officers

or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF LAND AND NATURAL
RESOURCES:**

Maalaea Slip 69, Inc. dba	\$ 4,133.25
Rascal Charters v. Department of Land and Natural Resources, Civil No. 01-1-0421(1), Second Circuit	Judgment
SUBTOTAL:	<u>\$ 4,133.25</u>
TOTAL (SECTION 4):	\$ 4,133.25

Provided that of the legislative appropriation for the department of land and natural resources for fiscal year 2002-2003 in section 3 of Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, as further amended by Act 177, Session Laws of Hawaii 2002, the special fund sum of \$4,133.25 from the Ocean-Based Recreation program (LNR 801) shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 5. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of land and natural resources or its officers or employees for the payment of judgments and settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF LAND AND NATURAL
RESOURCES:**

Oberle v. State of Hawaii	\$ 31,200.00
Civil No. 00-1-0214, Third Circuit	Settlement
SUBTOTAL:	<u>\$ 31,200.00</u>
TOTAL (SECTION 5):	\$ 31,200.00

Provided that of the legislative appropriation for the department of land and natural resources for fiscal year 2002-2003 in section 3 of Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, as further amended by Act 177, Session Laws of Hawaii 2002, the general fund sum of \$31,200 from the Park Development and Operation program (LNR 806) shall be expended by the department of land and natural resources for the purposes of this Act.

SECTION 6. The legislature finds and declares that the following claim for legislative relief recommended for approval as to the following named person for claims against the State or the department of business, economic development, and tourism or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

ACT 58

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT, AND TOURISM:**

Hewlen v. Laboy, et al. Civil No. 01-1-0366-02, First Circuit	\$ 15,000.00 Settlement
SUBTOTAL:	\$ 15,000.00
TOTAL (SECTION 6):	\$ 15,000.00

Provided that of the legislative appropriation for the department of business, economic development, and tourism for fiscal year 2003-2004 in section 3 of H.B. 200 (the General Appropriations Act of 2003), the other federal funds sum of \$14,400.00 and the revolving funds sum of \$600.00 shall be expended from the Rental Housing Services program (BED 220) by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 7. The legislature finds and declares that the following claims for legislative relief recommended for approval as to the following named persons for claims against the State or the department of business, economic development, and tourism or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

**DEPARTMENT OF BUSINESS, ECONOMIC
DEVELOPMENT, AND TOURISM:**

Tuioti, et al. v. City & County of Honolulu, Civil No. 00-1-1609-05, First Circuit	\$ 18,333.34 Settlement
SUBTOTAL:	\$ 18,333.34
TOTAL (SECTION 7):	\$ 18,333.34

Provided that of the legislative appropriation for the department of business, economic development, and tourism for fiscal year 2003-2004 in section 3 of H.B. No. 200 (the General Appropriations Act of 2003), the other federal funds sum of \$18,333.34 shall be expended from the Rental Housing Services program (BED 220) by the department of business, economic development, and tourism for the purposes of this Act.

SECTION 8. The legislature finds and declares that the following claims for legislative relief recommended for approval as to the following named persons for claims against the State or the department of education or its officers or employees for the payment of judgments or settlements, or other liabilities, in the amount set forth opposite their name, is approved for payment:

**JUDGMENTS AGAINST THE STATE
AND SETTLEMENTS OF CLAIMS:**

DEPARTMENT OF EDUCATION:

Braithwaite, et al. v. State of Hawaii, et al. Civil No. 02-1-1280-05, First Circuit	\$ 30,000.00 Settlement
SUBTOTAL:	<u>\$ 30,000.00</u>
TOTAL (SECTION 8):	\$ 30,000.00

Provided that of the legislative appropriation for the department of education for fiscal year 2002-2003 in section 3 of Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, as further amended by Act 177, Session Laws of Hawaii 2002, the other federal funds sum of \$30,000.00 shall be expended from the School-Based Budgeting program (EDN 100) by the department of education for the purposes of this Act.

SECTION 9. The sums hereinabove may be paid to the respective persons, or for the satisfaction or settlement of the respectively identified cases, and in several amounts hereinabove set forth or in lesser amounts deemed appropriate, upon checks issued by the comptroller; provided departments must obtain the approval of the attorney general before payment of any claim can be made.

SECTION 10. Notwithstanding the sums hereinabove stated 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 part, as provided in section 662-8, Hawaii Revised Statutes, for those cases to which that statute applies.

PART III

SECTION 11. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2004, shall lapse.

SECTION 12. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not effect 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 13. This Act shall take effect upon its approval; provided that sections 6 and 7 of this Act shall take effect on July 1, 2003.

(Approved May 15, 2003.)

ACT 59

H.B. NO. 1509

A Bill for an Act Relating to Historic Preservation.

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

SECTION 1. Senate Concurrent Resolution No. 140, S.D. 1, adopted by the Twenty-first Legislature, regular session of 2001, directed the department of land and natural resources to work with Hawaiian cultural organizations and other

interested parties to renew the plan to create a state park and nature reserve with minimum improvements, but preserving the significant archaeological sites in the area designated in the resolution within the ahupua'a of Honomalino, Okoe, Kapu'a, Kaulanamauna, and Manuka in the districts of South Kona and Ka'u, county of Hawaii.

The department of land and natural resources submitted a report to the Twenty-first Legislature, regular session of 2002, in December of 2001. The report identified the areas proposed to be included within the park, summarized the status and existing conditions, discussed access and infrastructure, and summarized the issues and recommendations.

The purpose of this Act is to establish a South Kona wilderness area on the island of Hawaii, provide a mechanism for the creation of a plan for management of the wilderness area, and provide a framework for management of the wilderness area.

SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . SOUTH KONA WILDERNESS AREA

§6E-A Establishment. There is established the South Kona wilderness area on the island of Hawaii in the area described in section 6E-B to be administered by the department of land and natural resources for the preservation of the visual, cultural, and historical aspects of the lands covered in this part and for the following other purposes:

- (1) To preserve the extensive archaeological sites in the area, including ancient homesites, a holua slide, a heiau, and burial caves;
- (2) To preserve and protect native Hawaiian plants and animals currently in the area;
- (3) To provide for a wilderness area with minimal man-made structures;
- (4) To permit limited access for recreational purposes, such as fishing, swimming, camping, and exploration; and
- (5) To prevent additional development in the area.

§6E-B Lands included. (a) Except as provided in subsection (b), the following lands shall be included in the South Kona wilderness area:

- (1) Honomalino: All lands from the shoreline to six thousand feet inland;
- (2) Okoe: All lands from the shoreline to six thousand feet inland. The Honomalino and Okoe sections include about one thousand four hundred fifty-eight acres;
- (3) Kapu'a: All lands from the shoreline and going mauka, designated as lots D-2-1 to D-2-4 in the county of Hawaii, planning department, final subdivision approval number 7625, a portion of which is currently included within the conservation district, which lands include about seven thousand seven hundred eighty acres;
- (4) Kaulanamauna: All lands from the shoreline to the forest reserve boundary, which includes about eight hundred seventy acres; and
- (5) Manuka: All lands from the shoreline to the forest reserve boundary, which includes about eleven thousand eight hundred ten acres.

(b) Any parcel of land included in subsection (a) upon which there is a dwelling house as of July 1, 2003, together with any outbuildings forming a part of the residential complex, shall be excluded from the South Kona wilderness area.

§6E-C Management plan. The department, in cooperation with appropriate county, state, and federal agencies, shall develop a comprehensive management plan for:

- (1) The preservation and protection of the historic sites;
- (2) The protection of native species; and
- (3) The recreational uses of the South Kona wilderness area.

The department shall be authorized and encouraged to contract out the development of the plan and the management of the South Kona wilderness area to nonprofit organizations interested in attaining the purposes of this part.

§6E-D Construction prohibited. No new homes or other structures shall be constructed within one thousand feet of the shoreline within the South Kona wilderness area, except as follows:

- (1) Structures built by the department for the purpose of managing the area;
- (2) Repairs to existing structures pursuant to rules adopted by the department; and
- (3) Construction of one dwelling by a private landowner if the existing rules permit the construction;

provided that no land may be subdivided within the area, and provided further that no owner shall be permitted to consolidate and resubdivide lots within the area if this would increase the number of buildable lots.

§6E-E Land acquisition. The department is authorized to acquire any private lands included in the lands described in section 6E-B(a) by a value-for-value exchange of other state lands; provided that, notwithstanding section 171-50, the costs associated with any appraisal, including that of the public land, shall be borne by the owner of the private land in the exchange transaction or by private funds, grants, or contributions.

§6E-F Designation of lands within the conservation district. All lands described in section 6E-B(a) shall be classified as lands within the conservation district as described in section 205-2 without the necessity of any proceedings before the land use commission.”

SECTION 3. In codifying the new sections 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 on July 1, 2003; provided that:

- (1) This Act shall be repealed on December 31, 2006, if the exchange transactions to acquire the lands described in section 6E-B are not consummated prior to December 31, 2006; and
- (2) In the event that this Act is repealed, any revisions to land classifications that were made pursuant to this Act shall revert to their original classifications.

(Approved May 16, 2003.)

A Bill for an Act Relating to Hawaii Victims Leave Act.

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

SECTION 1. The purpose of this Act is to:

- (1) Promote the State's interest in reducing domestic violence, sexual assault, and stalking by enabling victims of domestic or sexual violence to maintain the financial independence necessary to leave abusive situations, achieve safety, minimize the physical and emotional injuries from domestic or sexual violence, and reduce the devastating economic consequences of domestic or sexual violence to employers and employees;
- (2) Promote the State's interest in ensuring that victims of domestic or sexual violence can recover from and cope with the effects of such violence and participate in criminal and civil justice processes, without fear of adverse economic consequences from their employers; and
- (3) Ensure that victims of domestic or sexual violence can recover from the effects of such violence and participate in criminal and civil justice processes without fear of adverse economic consequences.

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

“PART . VICTIMS LEAVE

§378-A Definitions. As used in this part:

“Child” means an individual who is a biological, adopted, or foster son or daughter; a stepchild; or a legal ward of an employee.

“Course of conduct” means acts over any period of time of repeatedly maintaining a visual or physical proximity to a person or conveying verbal or written threats, including threats conveyed through electronic communications or threats implied by conduct.

“Domestic abuse” means conduct defined in section 586-1.

“Domestic or sexual violence” means domestic abuse, sexual assault, or stalking.

“Electronic communications” includes communications via telephone, mobile phone, computer, e-mail, video recorder, fax machine, telex, or pager.

“Employee” means a person who performs services for hire for not fewer than six consecutive months for the employer from whom benefits are sought under this chapter.

“Health care provider” means a physician as defined under section 386-1.

“Sexual assault” means any conduct proscribed by chapter 707, part V.

“Stalking” means engaging in a course of conduct directed at a specifically targeted person that would cause a reasonable person to suffer substantial emotional distress or to fear bodily injury, sexual assault, or death to the person or to the person's spouse, parent, child, or any other person who regularly resides in the person's household, and where the conduct does cause the targeted person to have such distress or fear.

“Victim services organization” includes:

- (1) A nonprofit, nongovernmental organization that provides assistance to victims of domestic or sexual violence or to advocates for such victims, including a rape crisis center;

- (2) An organization operating a shelter or providing professional counseling services; or
- (3) An organization providing assistance through the legal process.

§378-B Leave of absence for domestic or sexual violence. (a) An employer employing fifty or more employees shall allow an employee to take up to thirty days of unpaid victim leave from work per calendar year, or an employer employing not more than forty-nine employees shall allow an employee to take up to five days of unpaid leave from work per calendar year, if the employee or the employee's minor child is a victim of domestic or sexual violence; provided the leave is to either:

- (1) Seek medical attention for the employee or employee's minor child to recover from physical or psychological injury or disability caused by domestic or sexual violence;
- (2) Obtain services from a victim services organization;
- (3) Obtain psychological or other counseling;
- (4) Temporarily or permanently relocate; or
- (5) Take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from the domestic or sexual violence, or other actions to enhance the physical, psychological, or economic health or safety of the employee or the employee's minor child or to enhance the safety of those who associate with or work with the employee.

(b) An employee's absence from work that is due to or resulting from domestic abuse or sexual violence against the employee or the employee's minor child as provided in this section shall be considered by an employer to be a justification for leave for a reasonable period of time, not to exceed the total number of days allocable for each category of employer under subsection (a).

"Reasonable period of time" as used in this section means:

- (1) Where due to physical or psychological injury to or disability to the employee or employee's minor child, the period of time determined to be necessary by the attending health care provider, considering the condition of the employee or employee's minor child, and the job requirements; and
- (2) Where due to an employee's need to take legal or other actions, including preparing for or participating in any civil or criminal legal proceeding, obtaining services from a victim services organization, or permanently or temporarily relocating, the period of time necessary to complete the activity as determined by the employee's or employee's minor child's attorney or advocate, court, or personnel of the relevant victim services organization.

(c) Where an employee is a victim of domestic or sexual violence and seeks leave for medical attention to recover from physical or psychological injury or disability caused by domestic or sexual violence, the employer may request that the employee provide:

- (1) A certificate from a health care provider estimating the number of leave days necessary and the estimated commencement and termination dates of leave required by the employee; and
- (2) Prior to the employee's return, a medical certificate from the employee's attending health care provider attesting to the employee's condition and approving the employee's return to work.

(d) Where an employee has taken not more than five calendar days of leave for non-medical reasons, the employee shall provide certification to the employer in the form of a signed statement within a reasonable period after the employer's request, that the employee or the employee's minor child is a victim of domestic or

sexual violence and the leave is for one of the purposes enumerated in subsection (a). If the leave exceeds five days per calendar year, then the certification shall be provided by one of the following methods:

- (1) A signed written statement from an employee, agent, or volunteer of a victim services organization, from the employee's attorney or advocate, from a minor child's attorney or advocate, or a medical or other professional from whom the employee or the employee's minor child has sought assistance related to the domestic or sexual violence; or
- (2) A police or court record related to the domestic or sexual violence.

(e) If certification is required, no leave shall be protected until a certification, as provided in this section, is provided to the employer.

(f) The employee shall provide the employer with reasonable notice of the employee's intention to take the leave, unless providing that notice is not practicable due to imminent danger to the employee or the employee's minor child.

(g) Nothing in this section shall be construed to prohibit an employer from requiring an employee on victim leave to report not less than once a week to the employer on the status of the employee and intention of the employee to return to work.

(h) Upon return from leave under this section, the employee shall return to the employee's original job or to a position of comparable status and pay, without loss of accumulated service credits and privileges, except that nothing in this subsection shall be construed to entitle any restored employee to the accrual of:

- (1) Any seniority or employment benefits during any period of leave, unless the seniority or benefits would be provided to a similarly situated employee who was on leave due to a reason other than domestic or sexual violence; or
- (2) Any right, benefit, or position of employment to which the employee would not have otherwise been entitled.

(i) All information provided to the employer under this section, including statements of the employee, or any other documentation, record, or corroborating evidence, and the fact that the employee or employee's minor child has been a victim of domestic or sexual violence or the employee has requested leave pursuant to this section, shall be maintained in the strictest confidence by the employer, and shall not be disclosed, except to the extent that disclosure is:

- (1) Requested or consented to by the employee;
- (2) Ordered by a court or administrative agency; or
- (3) Otherwise required by applicable federal or state law.

(j) Any employee denied leave by an employer in wilful violation of this section may file a civil action against the employer to enforce this section and recover costs, including reasonable attorney's fees, incurred in the civil action.

§378-C Relationship to other leaves. If an employee is entitled to take paid or unpaid leave pursuant to other federal, state, or county law, or pursuant to an employment agreement, a collective bargaining agreement, or an employment benefits program or plan, which may be used for the purposes listed under section 378-B(a), the employee shall exhaust such other paid and unpaid leave benefits before victim leave benefits under this chapter may be applied. The combination of such other paid or unpaid leave benefits that may be applied and victim leave benefits shall not exceed the maximum number of days specified under section 378-B(a).

§378-D Effect on employment and collective bargaining agreements; benefits. Nothing in this part shall be construed to supersede any provision of any employment agreement, collective bargaining agreement, or employment benefits

program or plan that provides greater benefits or rights than those benefits or rights established under section 378-B.”

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

SECTION 4. In codifying this Act, the revisor of statutes shall substitute appropriate section numbers for the section references used in this Act.

SECTION 5. This Act shall take effect on January 1, 2004.

(Approved May 19, 2003.)

ACT 61

H.B. NO. 1198

A Bill for an Act Relating to Child Labor.

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

SECTION 1. It is the purpose of the child labor law, chapter 390, Hawaii Revised Statutes, to establish standards in the employment of minors relating to their safety, health, education, and welfare. To this end, this Act seeks to provide protections against and sanctions for the exploitation and injury of Hawaii’s youth while employed during their formative years.

SECTION 2. Section 390-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Adult entertainment” means an activity to which a minor would not be able to legally gain admittance and shall include but not be limited to:

- (1) Performing of exotic entertainment;
- (2) Nude, exotic, or lap dancing;
- (3) Showing of film, video, still picture, electronic reproduction, or other visual reproduction depicting:
 - (A) Acts or simulated acts of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any sexual acts that are prohibited by law;
 - (B) Any person being touched, caressed, or fondled on the breast, buttocks, anus, or genitalia;
 - (C) Scenes wherein a person displays the anus or genitalia; or
 - (D) Scenes wherein artificial devices or inanimate objects are employed to depict, or drawings are employed to portray, any of the prohibited activities described above.”

SECTION 3. Section 390-2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) No minor under eighteen years of age shall be employed or permitted to work in, about, or in connection with any gainful occupation at any time except as otherwise provided in this section. In no event, however, shall the minor be permitted to be employed or permitted to work in, about, or in connection with adult entertainment or any gainful occupation prohibited by law or which has been declared by rule [or regulation] of the director to be hazardous for the minor.”

2. By amending subsections (c) and (d) to read:

“(c) A minor who has attained the age of fourteen years but not sixteen years may be employed or permitted to work:

- (1) During periods when the minor is not legally required to attend school or when the minor is excused by school authorities from attending school; ~~and~~
- (2) If the employer of the minor procures and keeps on file a valid certificate of employment; ~~and~~
- (3) No more than five hours continuously without an interval of at least thirty consecutive minutes for a rest or lunch period; ~~and~~
- (4) ~~No more than six consecutive days nor more than forty hours in any one week, nor more than eight hours in any one day, nor before 7:00 a.m. nor after 7:00 p.m. of any day; provided that from June 1 through the day before Labor Day of each year the minor may be employed between 6:00 a.m. and 9:00 p.m. The combined hours of work and hours in school of the minor employed outside school hours shall not exceed ten in a day.] Between 7:00 a.m. and 7:00 p.m. of any day; provided that during any authorized school break, the minor may be employed between 6:00 a.m. and 9:00 p.m.;~~
- (5) No more than six consecutive days;
- (6) No more than eighteen hours in a calendar week during which the minor is legally required to attend school, and no more than forty hours in a calendar week during which the minor is not legally required to attend school or when the minor is excused by school authorities from attending school;
- (7) No more than three hours on any school day; and
- (8) No more than eight hours on any nonschool day.

(d) A minor under fourteen years of age may be employed or permitted to work in theatrical employment or in harvesting of coffee under circumstances and conditions prescribed by the director by ~~regulation;~~ rule; provided that:

- (1) The work is performed during periods when the minor is not legally required to attend school or when the minor is excused by school authorities from attending school;
- (2) With respect to employment in harvesting of coffee, the director has determined after a public hearing that sufficient adult labor to perform the work is unavailable; and
- (3) The employer of the minor procures and keeps on file a valid certificate of employment.”

SECTION 4. Section 390-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§390-5[H]~~ **Exceptions.** This chapter shall not apply to any minor employed:

- (1) By the minor’s parent or legal guardian ~~[during periods when the minor is not legally required to attend school or when the minor is excused by school authorities from attending school in an occupation which has not been declared by rule or regulation of the director to be hazardous; or];~~
- (2) In performance of work in connection with the sale or distribution of newspapers; ~~or]~~
- (3) In domestic service in or about the private home of the employer; ~~or]~~
- (4) As a golf caddy; or
- (5) By any religious, charitable, or nonprofit organization in exempt employment as prescribed by the director by rule ~~[or regulation.];~~

provided that such employment is during periods when the minor is not legally required to attend school or when the minor has been excused by school authorities from attending school; in an occupation which has not been declared by rule of the director to be hazardous; and not in connection with adult entertainment.”

SECTION 5. Section 390-6, Hawaii Revised Statutes, is amended to read as follows:

~~“[§390-6] **Rules [and regulations].** The director [may] shall adopt rules [and regulations] pursuant to chapter 91, necessary for the purpose of [carrying out] this chapter. [and may, by rules or regulations, make variation in the number of hours or days or the hours of commencement or termination of the work day specified in section 390-2(c)(4) where the variation will not be detrimental to the health or well-being of a minor.]”~~

SECTION 6. Section 390-7, Hawaii Revised Statutes, is amended to read as follows:

~~“[§390-7] **[Penalty.] Child labor crime.** Any person, other than the minor employee, who [wilfully] knowingly violates any provision of this chapter shall be [fined not more than \$1,000 or imprisoned not more than one year, or both.] guilty of a misdemeanor.”~~

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

(Approved May 19, 2003.)

ACT 62

H.B. NO. 562

A Bill for an Act Relating to Sexual Assault.

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

PART I

SECTION 1. Act 1, Second Special Session Laws of Hawaii 2001, is amended by amending section 7 to read as follows:

~~“SECTION 7. This Act shall take effect upon its approval [and shall be repealed on June 30, 2003; provided that sections 707-730(1) and 707-732(1), Hawaii Revised Statutes, are reenacted in the form in which they read on the day before the approval of this Act].”~~¹

SECTION 2. Act 1, Second Special Session Laws of Hawaii 2001, is amended by amending section 5 to read as follows:

“SECTION 5. The attorney general shall convene a task force to engage in a comprehensive review of the effectiveness and impact of this Act, based partly on data provided by the department of the prosecuting attorney of the city and county of Honolulu. The attorney general shall request the Coalition for the Prevention of Sex Assault to assist in the development and work of the task force. In addition to its review of this Act, the task force [shall] also shall review differing viewpoints concerning the age of consent for consensual sex conduct, particularly as it relates to minors in sexual relationships with adult partners.

Findings should provide the legislature with factual information, the national experience, and “best practices” for the purpose of assisting the legislature in developing social policy on the issue of “age of consent”, which shall specifically include but is not limited to:

- (1) A compilation of relevant state statutes;
- (2) A compilation of sentencing practices in other jurisdictions;
- (3) An evaluation of statutes and sentencing practices and their impacts on adolescents; and
- (4) Hawaii data on incidents of adolescent sexual activity.

The composition of the task force shall be as follows, but not limited to:

- (1) Each county chief of police, or designate;
- (2) Each county prosecutor, or designate;
- (3) A representative from the judiciary;
- (4) A department of public safety representative;
- (5) A department of health representative;
- (6) A Sex Abuse Treatment Center representative;
- (7) A Sex Assault Coalition representative;
- (8) A Catholic Charities-Child Sex Abuse Treatment Program representative;
- (9) A Children’s Advocacy Center representative;
- (10) An office of youth services representative;
- (11) An immigrant service provider representative;
- (12) The chair of the house committee on judiciary and Hawaiian affairs, or designate;
- (13) The chair of the senate committee on judiciary, or designate;
- (14) A Hawaii Family Forum representative;
- (15) A Sisters Offering Support representative;
- (16) A League of Women Voters representative;
- (17) A Hawaii state commission on the status of women representative; and
- (18) A military community representative.

The task force shall report its findings and recommendations to the legislature no later than twenty days before the convening of the regular session of 2003. The attorney general shall collect and coordinate data generated as a result of the task force’s recommendations, from the department of education, the department of health, the University of Hawaii, and service providers, and report its findings to the legislature no later than twenty days before the convening of the regular session of 2004.”

PART II

SECTION 3. Section 846E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Registration information” means the information specified in section 846E-2(b).”

SECTION 4. Section 846E-2, Hawaii Revised Statutes, is amended to read as follows:

“**§846E-2 Registration requirements.** (a) A sex offender shall register with the attorney general and comply with the provisions of this chapter for life.

(b) Registration information for each sex offender shall consist of a recent photograph, verified fingerprints, and ~~[a signed statement by the sex offender containing:]~~ the following information:

- (1) Name and all aliases used by the sex offender or under which the sex offender has been known and other identifying information, including date of birth, social security number, sex, race, height, weight, and hair and eye color;
- (2) The legal address and telephone number of the sex offender’s residence or mailing address, or any current, temporary address where the sex offender resides, and for each address how long the sex offender has resided there;
- (3) The legal address and telephone number where the sex offender is staying for a period of more than ten days, if other than the stated residence;
- (4) The future address and telephone number where the sex offender is planning to reside, if other than the stated residence;
- (5) Names and legal addresses of current and known future employers and the starting and ending dates of any such employment;
- (6) Names and legal addresses of current and known future educational institutions with which the sex offender is affiliated in any way, whether or not compensated, including but not limited to affiliation as a faculty member, an employee, or a student, and the starting and ending dates of any such affiliation;
- (7) The year, make, model, color, and license number of all vehicles currently owned or operated by the sex offender;
- (8) A summary of the criminal offenses against victims who were minors and sexually violent offenses for which the sex offender has been convicted or found unfit to proceed or acquitted pursuant to chapter 704;
- (9) A statement indicating whether the sex offender has received or is currently receiving treatment for mental abnormality or personality disorder;
- (10) A statement indicating whether the sex offender is a United States citizen; and
- (11) Any additional identifying information about the sex offender.

(c) Whenever a sex offender provides registration information, during initial registration as a sex offender or when providing notice of a change in registration information, the sex offender also shall sign a statement verifying that all of the registration information is accurate and current.

(d) Each sex offender, whether or not a resident of this state, who remains in the state for more than ten days or for an aggregate period exceeding thirty days in one calendar year, shall register within three working days upon:

- (1) Arrival in this state;
- (2) Release from incarceration;
- (3) Release from commitment;
- (4) Release on furlough;
- (5) Placement on parole; or
- (6) Arrival in a county in which the sex offender resides or expects to be present for a period exceeding ten days.

Each sex offender shall register in person with the county chief of police having jurisdiction of the area where the sex offender resides or is present.”

SECTION 5. Section 846E-3, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Prior to public release of a sex offender’s relevant information under subsection (f), the State shall petition the court, in a civil proceeding, for an order permitting its release. The petition shall be filed with the court in which the offense was prosecuted, or, in the case where the offense did not occur in the State, in the circuit of the sex offender’s residence with the court for which jurisdiction would be proper had the offense occurred in this State. The State shall be represented by the prosecuting attorney for the county where the hearing is held. The State shall have the burden of proving, by a preponderance of the evidence, that the sex offender is required to register under this chapter. Proof by the State shall give rise to a presumption that public release of relevant information is necessary to protect the public. The sex offender shall be given the opportunity to present evidence to rebut the presumption and to show that the offender does not represent a threat to the community and that public release of relevant information is not necessary.

If the court determines that public release of relevant information is necessary to protect the public, the court shall issue an order for the release. The order shall set the time duration of public release of relevant information, which shall be for a minimum period of ten years, unless any [~~one or more of the factors~~] factor listed in paragraph (2), (4), (5), or (6) applies. If any [~~one or more~~] of these factors apply, then the time duration of the public release shall be for the life of the sex offender[~~]. Upon petition by the sex offender, the court may reconsider its determination of lifetime public release; provided that the sex offender may petition the court once every ten years. The court may relieve the sex offender from the determination of lifetime public release upon written findings that the offender does not present a threat to the community and that public release is no longer necessary.~~]; provided that upon petition by the sex offender, the court may modify its order for lifetime public release upon a showing, by clear and convincing evidence, that the sex offender suffers an extraordinary physical disability that prevents the offender from committing future sexual offenses.

The court in making its determination shall consider the following factors:

- (1) The offense involved the death or serious bodily injury of another person;
- (2) The offense resulted in sentencing under the terms of section 706-606.5, 706-660.2, or 706-661;
- (3) The offender has inexcusably failed to comply with terms and conditions of probation or parole;
- (4) The victim was twelve years of age or younger at the time of the offense;
- (5) The offender either prior to or subsequent to the offense requiring registration under this chapter, has been convicted, found unfit to proceed, or acquitted due to a physical or mental disease, disorder, or defect, of a sexual offense or an offense against children, including all offenses occurring in other jurisdictions;
- (6) The offender has been convicted, found unfit to proceed, or acquitted due to a physical or mental disease, disorder, or defect, of a sexual assault as defined in section 707-730(1)(a) or an offense that is comparable in another jurisdiction;
- (7) The offender [~~who~~] has inexcusably failed to register as a sex offender or [~~who~~] is otherwise not in compliance with this chapter; and

- (8) The offender has been convicted of any crime since the conviction requiring the offender's registration."

SECTION 6. Section 846E-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each person, or that person's designee, in charge of a jail, prison, hospital, school, or other institution to which a sex offender has been committed pursuant to a conviction, or an acquittal or finding of unfitness to proceed pursuant to chapter 704, for a sexually violent offense or a criminal offense against a victim who is a minor, and each judge, or that judge's designee, who continues bail for or releases a sex offender following a guilty verdict or a plea of guilty or nolo contendere, who releases a sex offender on probation or who discharges a sex offender upon payment of a fine, and each agency having jurisdiction, shall, prior to the discharge, parole, or release of the sex offender:

- (1) Explain to the sex offender the duty to register and the consequences of failing to register under this chapter;
- (2) Obtain from the sex offender all of the registration information required by this chapter;
- (3) Inform the sex offender that if at any time the sex offender changes [~~name, employment, vehicle, or residence address;~~] any of the sex offender's registration information, the sex offender shall notify the attorney general of the new registration information in writing within three working days;
- (4) Inform the sex offender that, if at any time the sex offender changes residence to another state, the sex offender shall register the new address with the attorney general and also with a designated law enforcement agency in the new state, if the new state has a registration requirement, [not later than ten days after establishing residence in the new state;] within the period of time mandated by the new state's sex offender registration laws;
- (5) Obtain and verify fingerprints and a photograph of the sex offender, if these have not already been obtained or verified in connection with the offense that triggers the registration;
- (6) Require the sex offender to sign a statement indicating that the duty to register has been explained to the sex offender; and
- (7) Give one copy of the signed statement and one copy of the registration information to the sex offender."

SECTION 7. Section 846E-4, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) [~~Each sex offender, within three working days after release from incarceration, release from commitment, release on furlough, placement on parole, or placement on probation, or within three working days after arrival in a county in which the sex offender resides or expects to be present for a period exceeding ten days, shall register in person with the county chief of police having jurisdiction of the area in which the sex offender resides or is present.]~~ The chief of police shall transmit any sex offender registration information required by this chapter to the attorney general, by entering the information into a statewide record system, if the information has not previously been entered into the system, and also shall provide the attorney general with a photograph and fingerprints of the sex offender, taken at the time the sex offender registers with the chief of police. The sex offender shall report in person every five years to the county chief of police of the county where the sex offender's residence is located for purposes of having a new photograph taken."

ACT 63

SECTION 8. Section 846E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A sex offender required to register under this chapter, who changes ~~[name, employment, vehicle, or residence address]~~ any of the sex offender's registration information after an initial registration with the attorney general, shall notify the attorney general of the new registration information in writing within three working days of the change. For purposes of this section, a person shall be deemed to have established a new residence during any period in which the person resides at a different address for not less than ten days. If the new residence is in another state that has a registration requirement, the person shall register with [a] the designated law enforcement agency in the state to which the person moves, [not later than ten days after the person establishes residence in that state.] within the period of time mandated by the new state's sex offender registration laws.”

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 and stricken. New statutory material is underscored.

SECTION 11. This Act shall take effect on June 29, 2003.

(Approved May 19, 2003.)

Note

1. Does not include amendment made by L 2002, c 36.

ACT 63

H.B. NO. 297

A Bill for an Act Relating to Drugs.

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

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . DRUG NUISANCE ABATEMENT UNIT

§28- Drug nuisance abatement unit. (a) There is established in the department of the attorney general a drug nuisance abatement unit.

(b) The unit shall employ such attorneys, auditors, investigators, and other personnel as necessary to promote the effective and efficient conduct of the unit's activities. Except for the attorneys, all other employees of the drug nuisance abatement unit shall be subject to chapter 76.

(c) The purpose of the drug nuisance abatement unit shall be to provide for the effective enforcement and prosecution of those violations of the drug nuisance abatement laws under chapter 712, part V but only for offenses related to drugs and intoxicating compounds as provided under chapter 712, part IV. The drug nuisance abate unit may also review and take appropriate action on drug nuisance complaints of any citizen of the State, or drug nuisances that are discovered by the unit in carrying out its activities.”

SECTION 2. Section 712A-16, Hawaii Revised Statutes, is amended by amending subsection (4) to read as follows:

“(4) There is established in the department of the attorney general a revolving fund to be known as the criminal forfeiture fund, hereinafter referred to as the “fund” in which shall be deposited one-half of the proceeds of a forfeiture and any penalties paid pursuant to section 712A-10(6). All moneys in the fund shall be expended by the attorney general and are hereby appropriated for the following purposes:

- (a) The payment of any expenses necessary to seize, detain, appraise, inventory, safeguard, maintain, advertise, or sell property seized, detained, or forfeited pursuant to this chapter or of any other necessary expenses incident to the seizure, detention, or forfeiture of such property and such contract services and payments to reimburse any federal, state, or county agency for any expenditures made to perform the foregoing functions;
- (b) The payment of awards for information or assistance leading to a civil or criminal proceeding;
- (c) The payment of supplemental sums to state and county agencies for law enforcement purposes; [and]
- (d) The payment of expenses arising in connection with programs for training and education of law enforcement officers[-]; and
- (e) The payment of expenses arising in connection with enforcement pursuant to the drug nuisance abatement unit in the department of the attorney general.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2003-2004 and the same sum or so much thereof as may be necessary for fiscal year 2004-2005 for the establishment and implementation of a drug nuisance abatement unit within the department of the attorney general.

SECTION 4. The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 5.¹ This Act shall take effect on July 1, 2003.

(Approved May 19, 2003.)

Note

1. No Ramseyer clause.

ACT 64

S.B. NO. 1274

A Bill for an Act Relating to Manslaughter.

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

SECTION 1. Section 707-702, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) In a prosecution for murder or attempted murder in the first and second degrees it is [a] an affirmative defense, which reduces the offense to manslaughter[-] or attempted manslaughter, that the defendant was, at the time [he] the defendant caused the death of the other person, under the influence of extreme mental or emotional disturbance for which there is a reasonable explanation. The reasonable-

ACT 65

ness of the explanation shall be determined from the viewpoint of a reasonable person in the [~~defendant's situation under the~~] circumstances as [~~he~~] the defendant believed them to be.”

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

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

(Approved May 19, 2003.)

ACT 65

H.B. NO. 1116

A Bill for an Act Relating to Courts.

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

SECTION 1. Chapter 607, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§607- Exemption of costs and fees.** Persons subject to domestic abuse, abuse of family or household members, stalking, or sexual assault shall be exempt from paying the costs and fees prescribed in this chapter in connection with filing, issuance, registration, or service of a protection order, or a petition for a protection order, warrant, or witness subpoena issued for the purpose of preventing violent or threatening acts or harassment against, or contact or communication with or physical proximity to, another person. For purposes of this section, the term “protection order” means any temporary or final order of protection, a restraining order, or an injunction involving domestic abuse, abuse of family or household members, stalking, or sexual assault issued by a civil or criminal court, other than a support or custody order.”

SECTION 2. New statutory material is underscored.¹

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

(Approved May 19, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 66

S.B. NO. 1275

A Bill for an Act Relating to Assault Against Law Enforcement Officers.

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

SECTION 1. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section, to be appropriately designated, and to read as follows:

“**§707- Assault against a law enforcement officer in the second degree.** (1) A person commits the offense of assault against a law enforcement

officer in the second degree if the person recklessly causes bodily injury to a law enforcement officer who is engaged in the performance of duty.

(2) Assault of a law enforcement officer in the second degree is a misdemeanor. The court shall sentence the person who has been convicted of this offense to a definite term of imprisonment, pursuant to section 706-663, of not less than thirty days without possibility of probation or suspension of sentence.”

SECTION 2. Section 707-712.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§707-712.5]]~~ **Assault against a [police] law enforcement officer**~~[.]~~ **in the first degree.** (1) A person commits the offense of assault against a [police] law enforcement officer in the first degree¹ if the person:

- (a) Intentionally~~[.]~~ or knowingly~~[.]~~ ~~or recklessly~~ causes bodily injury to a [police] law enforcement officer who is engaged in the performance of duty; or
- (b) ~~Negligently~~ Recklessly or negligently causes, with a dangerous instrument, bodily injury to a [police] law enforcement officer who is engaged in the performance of duty.

(2) Assault of a [police] law enforcement officer in the first degree² is a ~~[misdemeanor.]~~ **class C felony.** The court shall, at a minimum, sentence the person who has been convicted of this offense to ~~[imprisonment for no less than thirty days.]~~

- (a) An indeterminate term of imprisonment of five years, pursuant to section 706-660; or
- (b) Five years probation, with conditions to include a term of imprisonment of not less than thirty days without possibility of suspension of sentence.”

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

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

(Approved May 19, 2003.)

Notes

1. “Degree” should be underscored.
2. “In the first degree” should be underscored.
3. Edited pursuant to HRS §23G-16.5.

ACT 67

S.B. NO. 345

A Bill for an Act Relating to Motor Vehicles.

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

SECTION 1. Section 437-1.1, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

““New motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles.

““Used motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles.”

SECTION 2. Section 437-1.1, Hawaii Revised Statutes, is amended by amending the definition of "dealer" to read as follows:

~~““Dealer” includes “auction” as defined in this section or any person not expressly excluded by this chapter who sells three or more vehicles within a calendar year, or who is engaged in the business of selling, soliciting, offering, or attempting to negotiate sales, purchases, or exchanges of motor vehicles or any interest therein, including options to purchase motor vehicles. [“New motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, new motor vehicles or new and used motor vehicles. “Used motor vehicle dealer” means a dealer who engages in the business of selling at wholesale or retail, or both, only used motor vehicles.]~~ The term “dealer” excludes a person who sells or purchases motor vehicles in the capacity of:

- (1) A receiver, trustee, personal representative, guardian, or any other person appointed by or acting under a judgment or order of any court;
- (2) A public officer while performing official duties;
- (3) A holder of an auction license issued under this chapter when acting within the scope of the license;
- (4) An insurance company, finance company, bank, or other financial institution selling or offering for sale motor vehicles repossessed or foreclosed by it under the terms of a credit sale contract or security agreement;
- (5) A person not engaged in the business of selling or purchasing motor vehicles when acquiring or disposing of motor vehicles for the person’s own personal, family, or business use; provided that the vehicles are acquired or disposed of for the person’s use in good faith and not for the purpose of evading any provision of this chapter;
- (6) A consumer consultant who is not engaged in the business of selling, soliciting, offering, or attempting to negotiate sales or exchanges of motor vehicles or any interest therein for any dealer, and who for a fee provides specialized information and expertise in motor vehicle sales transactions to consumers wishing to purchase or lease motor vehicles. The consumer consultant shall register and pay a fee to the board prior to offering consultant services; or
- (7) A Hawaii bank or its affiliate selling or offering for sale motor vehicles surrendered or redelivered to it under the terms of a lease, or sold by it pursuant to a purchase option contained in a lease.”

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

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

(Approved May 19, 2003.)

A Bill for an Act Relating to Stalking.

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

SECTION 1. Section 711-1106.4, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of aggravated harassment by stalking if that person commits the offense of harassment by stalking as provided in section 711-1106.5 and has been convicted previously of harassment by stalking [~~involving the same person~~] under section 711-1106.5 [~~and:~~

- (a) ~~The actions constituting the present offense are in violation of an existing court order, other than one issued ex parte, restraining the same person from contacting, threatening, or physically abusing the same complainant; or~~
- (b) ~~The actions constituting the present offense are in violation of a condition of probation or pretrial release involving the same person.]~~ within five years of the instant offense.”

SECTION 2. Section 711-1106.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§711-1106.5**~~]]~~ **Harassment by stalking.** (1) A person commits the offense of harassment by stalking if, with intent to harass, annoy, or alarm another person, or in reckless disregard of the risk thereof, that person [~~pursues or conducts surveillance~~] engages in a course of conduct involving pursuit, surveillance, or non-consensual contact upon the other person[:

- (a) ~~Without legitimate purpose; and~~
- (b) ~~Under circumstances which would cause the other person to reasonably believe that the actor intends to cause bodily injury to the other person or another, or damage to the property of the other person or another.]~~ on more than one occasion without legitimate purpose.

~~[(2) Harassment by stalking is a misdemeanor if the person harasses another person by stalking on more than one occasion for the same or a similar purpose. Otherwise, harassment by stalking is a petty misdemeanor.]~~

~~[(3)]~~ (2) A person convicted under this section may be required to undergo a counseling program as ordered by the court.

(3) For purposes of this section, “non-consensual contact” means any contact that occurs without that individual’s consent or in disregard of that person’s express desire that the contact be avoided or discontinued. Non-consensual contact includes direct personal visual or oral contact and contact via telephone, facsimile, or electronic mail transmission.

(4) Harassment by stalking is a misdemeanor.”

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

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

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

(Approved May 19, 2003.)

A Bill for an Act Relating to Alcoholic Beverages.

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

PART I

SECTION 1. Chapter 663, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . CIVIL ACTION; INTOXICATION OF PERSONS UNDER AGE TWENTY-ONE

§663-A Right of action. (a) Any person twenty-one years or older who:

- (1) Sells, furnishes, or provides alcoholic beverages to a person under the age of twenty-one years; or
- (2) Owns, occupies, or controls premises on which alcoholic beverages are consumed by any person under twenty-one years of age, and who knows of alcohol consumption by persons under twenty-one years of age on such premises, and who reasonably could have prohibited or prevented such alcohol consumption;

shall be liable for all injuries or damages caused by the intoxicated person under twenty-one years of age.

(b) This section shall not apply to sales licensed under chapter 281.

(c) An intoxicated person under the age of twenty-one years who causes an injury or damage shall have no right of action under this part.

§663-B Subrogation claims denied. There shall be no recovery for any subrogation claim pursuant to any subrogation clause of an uninsured, underinsured, collision, or other first-party coverage as a result of payments made to persons who have claims that arise in whole or in part under this part.”

SECTION 2. Section 281-101.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No adult shall provide or purchase liquor for consumption or use by a [minor-] person under twenty-one years of age.”

SECTION 3. Part I of this Act shall apply only to causes of action based upon acts or omissions occurring on or after its effective date.

PART II

SECTION 4. Section 281-17, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The liquor commission, within its own county, shall have the sole jurisdiction, power, authority, and discretion, subject only to this chapter:

- (1) To grant, refuse, suspend, and revoke any licenses for the manufacture, importation, and sale of liquors;
- (2) To take appropriate action against a person who, directly or indirectly, manufactures [er], sells, or purchases any liquor without being authorized pursuant to this chapter; provided that in counties which have established by charter a liquor control adjudication board, the board shall have the jurisdiction, power, authority, and discretion to hear and

- determine administrative complaints of the director regarding violations of the liquor laws of the State or of the rules of the liquor commission, and impose penalties for violations thereof as may be provided by law;
- (3) To control, supervise, and regulate the manufacture, importation, and sale of liquors by investigation, enforcement, and education; provided that any educational program shall be limited to licensees and their employees and shall be financed through the money collected from the assessment of fines against licensees;
 - (4) From time to time to make, amend, and repeal such rules, not inconsistent with this chapter, as in the judgment of the commission seem appropriate for carrying out this chapter and for the efficient administration thereof, and the proper conduct of the business of all licensees, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission; which rules, when adopted as provided in chapter 91 shall have the force and effect of law;
 - (5) Subject to chapter 76, to appoint and remove an administrator, who may also be appointed an investigator and who shall be responsible for the operations and activities of the staff. The administrator may hire and remove hearing officers, investigators, and clerical or other assistants as its business may from time to time require, to prescribe their duties, and fix their compensation; to engage the services of experts and persons engaged in the practice of a profession, if deemed expedient. Every investigator, within the scope of the investigator's duties, shall have the powers of a police officer;
 - (6) To limit the number of licenses of any class or kind within the county, or the number of licenses of any class or kind to do business in any given locality, when in the judgment of the commission such limitations are in the public interest;
 - (7) To prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed in case of the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement of any indemnity deemed appropriate to the case;
 - (8) To fix the hours between which licensed premises of any class or classes may regularly be open for the transaction of business, which shall be uniform throughout the county as to each class respectively;
 - (9) To prescribe all forms to be used for the purposes of this chapter not otherwise provided for in this chapter, and the character and manner of keeping of books, records, and accounts to be kept by licensees in any matter pertaining to their business;
 - (10) To investigate violations of this chapter, chapter 244D and, notwithstanding any law to the contrary, violations of the applicable department of health's allowable noise levels, through its investigators or otherwise, to include covert operations, and to report violations to the prosecuting officer for prosecution and, where appropriate, the director of taxation to hear and determine complaints against any licensee;
 - (11) To prescribe, by rule, the terms, conditions, and circumstances under which persons or any class of persons may be employed by holders of licenses;
 - (12) To prescribe, by rule, the term of any license [for] solicitor's and representative's permit authorized by this chapter, the annual or pro-

ACT 70

- rated amount, the manner of payment of fees for the licenses and permits, and the amount of filing fees; and
- (13) To prescribe, by rule, the circumstances and penalty for the unauthorized manufacturing or selling of any liquor.”

SECTION 5. Section 286-136, Hawaii Revised Statutes, is amended to read as follows:

“**§286-136 Penalty.** (a) Except as provided in subsection (b), any person who violates section 286-102, 286-122, 286-130, 286-131, 286-132, 286-133, or 286-134 shall be fined not more than \$1,000 or imprisoned not more than thirty days, or both. Any person who violates any other section in this part shall be fined not more than \$1,000.

(b) Any person who is convicted of violating section 286-102, 286-122, 286-130, 286-131, 286-132, 286-133, or 286-134 shall be subject to a minimum fine of \$500 and a maximum fine of \$1,000, or imprisoned not more than one year, or both, if the person has two or more prior convictions for the same offense in the preceding five-year period.

(c) Notwithstanding subsections (a) and (b), a minor under the age of eighteen under the jurisdiction of the family court who is subject to this section shall either lose the right to drive a motor vehicle until the age of eighteen or be subject to a fine of \$500.”

SECTION 6. 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 designating the new sections in this Act.

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

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

(Approved May 20, 2003.)

ACT 70

H.B. NO. 564

A Bill for an Act Relating to Promotion of Controlled Substances.

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

SECTION 1. Section 712-1249.6, Hawaii Revised Statutes, is amended by amending its title and subsections (1) and (2) to read as follows:

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

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

comprising a public or private elementary or secondary school[;] or public park; or

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

(2) Promoting a controlled substance in, on, or near schools [øf], school vehicles, or public parks is a class C felony.”

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 and stricken. New statutory material is underscored.

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

(Approved May 20, 2003.)

ACT 71

H.B. NO. 807

A Bill for an Act Relating to Chapter 291E.

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

SECTION 1. Chapter 291E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§291E- Habitually operating a vehicle under the influence of an intoxicant. (a) A person commits the offense of habitually operating a vehicle under the influence of an intoxicant if:

- (1) The person is a habitual operator of a vehicle while under the influence of an intoxicant; and
- (2) The person operates or assumes actual physical control of a vehicle:
 - (A) 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;
 - (B) While under the influence of any drug that impairs the person’s ability to operate the vehicle in a careful and prudent manner;
 - (C) With .08 or more grams of alcohol per two hundred ten liters of breath; or
 - (D) With .08 or more grams of alcohol per one hundred milliliters or cubic centimeters of blood.

(b) For the purposes of this section:

“Convicted three or more times for offenses of operating a vehicle under the influence” means that, at the time of the behavior for which the person is charged under this section, the person had three or more times within ten years of the instant offense:

- (1) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001;

- (2) A judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere, for an offense that is comparable to this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5; or
- (3) An adjudication of a minor for a law or probation violation that, if committed by an adult, would constitute a violation of this section or section 291-4, 291-4.4, or 291-7 as those sections were in effect on December 31, 2001, or section 291E-61 or 707-702.5;

that, at the time of the instant offense, had not been expunged by pardon, reversed, or set aside. All convictions that have been expunged by pardon, reversed, or set aside prior to the instant offense shall not be deemed prior convictions for the purposes of proving the person's status as a habitual operator of a vehicle while under the influence of an intoxicant.

A person has the status of a "habitual operator of a vehicle while under the influence of an intoxicant" if the person has been convicted three or more times within ten years of the instant offense, for offenses of operating a vehicle under the influence of an intoxicant.

(c) Habitually operating a vehicle while under the influence of an intoxicant is a class C felony.

(d) For a conviction under this section, the sentence shall be either:

- (1) An indeterminate term of imprisonment of five years; or
- (2) A term of probation of five years, with conditions to include:
 - (A) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;
 - (B) Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively;
 - (C) Referral to a certified substance abuse counselor as provided in section 291E-61(d); and
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund."

SECTION 2. Section 291E-4, Hawaii Revised Statutes, is amended to read as follows:

"[H]§291E-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; [øf]
- (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; or
- (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of section 200-81, 291-4, 291-4.4, 291-4.5, or 291-7 as those sections were in effect on December 31, 2001;

shall be counted as a prior offense for purposes of section 291E-41 or 291E-61.

(b) Any conviction of an offense under section 291-4, 291-4.4, 291-4.5, 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 291E-62."

SECTION 3. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(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 291E-4(a):
 - (A) A fourteen-hour minimum substance abuse rehabilitation program, including education and counseling, or other comparable program deemed appropriate by the court;
 - (B) Ninety-day prompt suspension of license and privilege to operate 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;
 - (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; and
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section or section 291E-4(a) by:
 - (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 two hundred forty hours of community service work; or
 - (ii) Not less than five days but not more than fourteen days of imprisonment of which at least forty-eight hours shall be served consecutively;
 - (C) A fine of not less than \$500 but not more than \$1,500; and
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section or section 291E-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;
 - (C) Not less than ten days but not more than thirty days imprisonment of which at least forty-eight hours shall be served consecutively; and
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
- ~~[(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 291E-4(a):~~
 - ~~(A) Mandatory revocation of license and privilege to operate a vehicle for a period not less than one year but not more than five years;~~

- (B) ~~Not less than ten days imprisonment, of which at least forty-eight hours shall be served consecutively;~~
- (C) ~~Referral to a substance abuse counselor as provided in subsection (d); and~~
- (D) ~~A surcharge of \$25 to be deposited into the neurotrauma special fund.~~

~~An offense under this paragraph is a class C felony.]~~

~~and~~

~~(5)~~ (4) 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 that the total term of imprisonment for a person convicted under this paragraph and ~~[paragraphs]~~ paragraph (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 291E-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; or
- (3) Adjudication of a minor for a law violation that, if committed by an adult, would constitute a violation of this section or an offense under section 291E-4(a);

shall be considered a prior conviction for the purposes of imposing sentence under this section. Any judgment on a verdict or a finding of guilty, a plea of guilty or nolo contendere, or an adjudication in the case of a minor, that at the time of the offense has not been expunged by pardon, reversed, or set aside shall be deemed a prior conviction under this section. No license and privilege suspension or revocation shall be imposed pursuant to this section 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 suspended or revoked as provided in this section."

SECTION 4. Section 291E-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person whose license and privilege to operate a vehicle have been revoked, suspended, or otherwise restricted pursuant to part III or section 291E-61, or to part VII or part XIV of chapter 286 or section 200-81, 291-4, 291-4.4, 291-4.5, 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; or
- (2) While the person's license or privilege to operate a vehicle remains suspended or revoked."

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 and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on January 1, 2004.

(Approved May 20, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 72

H.B. NO. 1010

A Bill for an Act Relating to the Use of Intoxicants.

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

SECTION 1. Section 291E-21, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(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, ~~[ø]~~ 291E-61, or 291E-64, 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, ~~[ø]~~ 291E-61~~[-]~~, or 291E-64. If the person involved in the collision is not injured or refuses to be treated for any injury, the law enforcement officer may offer the person a breath test in lieu of a blood or urine test. If the person declines to perform a breath test, the law enforcement officer shall request a blood or urine sample pursuant to subsection (d). The act of declining to perform a breath test under this section shall not be treated as a refusal under chapter 291E and shall not relieve the declining person from the requirement of providing a blood or urine sample under this section.

(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. If the person is not injured or refuses to be treated for any injury, the law enforcement officer shall make the request of a blood or urine sample under subsection (c) to a person authorized under section 291E-12; provided that a law enforcement officer may transport that person to another police facility or a hospital or medical facility that is capable of conducting a breath, blood, or urine test. Upon the request of the law enforcement officer that blood or urine be recovered pursuant to this section, and except where the person to perform the withdrawal of a blood sample or to obtain a urine sample or 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 presents an imminent threat to the health of the medical personnel or others, the ~~[hospital or medical facility]~~ person authorized under section 291E-12 shall:

- (1) ~~[Assign a person authorized under section 291E-12 to withdraw the blood sample or to obtain the urine;~~
- (2) Recover the sample in compliance with section 321-161; and
- (3) (2) Provide the law enforcement officer with the blood or urine sample requested.”

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 and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on January 1, 2004.

(Approved May 20, 2003.)

ACT 73

H.B. NO. 192

A Bill for an Act Relating to Accreted Lands.

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

SECTION 1. Section 171-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Accreted lands” means lands formed by the gradual accumulation of land on a beach or shore along the ocean by the action of natural forces.”

SECTION 2. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

“§171-2 Definition of public lands. “Public lands” means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including accreted lands not otherwise awarded, submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the housing and community development corporation of Hawaii in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands which are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the

- Aloha Tower development corporation holds title in its corporate capacity; and
- (10) Lands to which the agribusiness development corporation in its corporate capacity holds title.”

SECTION 3. Section 343-3, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The office shall inform the public of:

- (1) A public comment process or public hearing if a federal agency provides for the public comment process or public hearing to process a habitat conservation plan, safe harbor agreement, or incidental take license pursuant to the federal Endangered Species Act;
- (2) A proposed habitat conservation plan or proposed safe harbor agreement, and availability for inspection of the proposed agreement, plan, and application to enter into a planning process for the preparation and implementation of the habitat conservation plan for public review and comment; ~~and~~
- (3) A proposed incidental take license as part of a habitat conservation plan or safe harbor agreement~~[-]; and~~
- (4) An application for the registration of land by accretion pursuant to section 501-33 or 669-1(e) for any land accreted along the ocean.”

SECTION 4. Section 501-33, Hawaii Revised Statutes, is amended to read as follows:

“§501-33 Accretion to land. An applicant for registration of land by accretion shall prove by a preponderance of the evidence that the accretion is natural and permanent~~[-]; provided that no applicant other than the State shall register land accreted along the ocean, except that a private property owner whose eroded land has been restored by accretion may file an accretion claim to regain title to the restored portion.~~ The applicant shall supply the office of environmental quality control with notice of the application, for publication in the office’s periodic bulletin in compliance with section 343-3(c)(4). The application shall not be approved unless the office of environmental quality control has published notice in the office’s periodic bulletin.

~~[“Permanent”]~~ As used in this section, “permanent” means that the accretion has been in existence for at least twenty years. The accreted portion of the land shall be state land except as otherwise provided in this section and shall be considered within the conservation district [unless designated otherwise by the land use commission under chapter 205]. Prohibited uses are governed by section 183-45.”

SECTION 5. Section 669-1, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Action may be brought by any person to quiet title to land by accretion~~[-]; provided that no action shall be brought by any person other than the State to quiet title to land accreted along the ocean, except that a private property owner whose eroded land has been restored by accretion may also bring such an action for the restored portion.~~ The person bringing the action shall prove by a preponderance of the evidence that the accretion is natural and permanent. The person bringing the action shall supply the office of environmental quality control with notice of the action for publication in the office’s periodic bulletin in compliance with section 343-3(c)(4). The quiet title action shall not be decided by the court unless the office

of environmental quality control has properly published notice of the action in the office's periodic bulletin.

[~~“Permanent”~~] As used in this section, “permanent” means that the accretion has been in existence for at least twenty years. The accreted portion of land shall be state land except as otherwise provided in this section and shall be considered within the conservation district [unless designated otherwise by the land use commission under chapter 205]. Prohibited uses are governed by section 183-45.”

SECTION 6. Applications for the registration of land by accretion and actions to quiet title to land by accretion pending at the time of the effective date of this Act shall be processed under the law existing at the time the applications and actions were filed with the court. Applications for the registration of land by accretion and actions to quiet title to land by accretion filed subsequent to the effective date of this Act shall be processed in accordance with this Act.

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

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

(Approved May 20, 2003.)

ACT 74

H.B. NO. 1155

A Bill for an Act Relating to Unclaimed Property.

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

SECTION 1. Section 1-28.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) This section shall not apply to notices required by chapters 103D [and], 103F[-], and 523A.”

SECTION 2. Section 523A-18, Hawaii Revised Statutes, is amended to read as follows:

“§523A-18 Notice and publication of abandoned property. (a) The director shall cause a public notice to be given for all properties reported abandoned not later than March 1 of the year immediately following the report required by section 523A-17 at least once statewide.

(b) The notice shall be entitled “Notice to Persons Appearing to be Owners of Abandoned Property” and contain:

- (1) The names in alphabetical order and last known address, if any, of persons listed in the report with property valued greater than \$100;
- (2) A statement identifying the location of a list of names and last known addresses, if any, of persons appearing to be owners of abandoned property and stating that this list shall be made available as a government record;
- (3) A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the director; and

- (4) A statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before April 20, the property will be placed not later than May 1, in the custody of the director and all further claims shall thereafter be directed to the director.

(c) The notice shall be given by using one or more of the following methods:

- (1) Posting on the state of Hawaii, department of budget and finance internet website;
 (2) Publication in a daily or weekly publication of statewide circulation; or
 (3) Any other method the director deems effective for publicizing the notice.

~~(e)~~ (d) The director shall not be required to list in the notice any items of less than \$50 unless the director considers the notice to be in the public interest.

~~(d)~~ (e) This section shall not apply to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under section 523A-4."

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

SECTION 4. This Act shall take effect on July 1, 2003.

(Approved May 20, 2003.)

ACT 75

H.B. NO. 1212

A Bill for an Act Relating to Land Exchanges.

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

SECTION 1. Section 171-50, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Legislative disapproval. Any exchange of public land for private land shall be subject to disapproval by the legislature by two-thirds vote of either the senate or the house of representatives or by majority vote of both in any regular or special session [~~next~~] following the date of the board of land and natural resources' approval in principle of the exchange. The department shall submit for introduction to the legislature a resolution for review of action on any exchange [~~twenty days prior to the start of any regular or special session. The resolution shall contain a list of all exchanges~~] to be consummated by the board [~~of land and natural resources~~] wherein exchange deeds [~~have been~~] will be executed by the parties together with the following information: (1) the location and area of the parcels of land to be exchanged; (2) the value of the lands to be conveyed by the State and the private party; (3) the name or names of the appraiser or appraisers; and (4) the date of the appraisal [~~, which shall not be more than six months prior to the date of final approval of the exchange by the board of land and natural resources.~~] valuation."

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

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

(Approved May 20, 2003.)

A Bill for an Act Relating to Contested Cases.

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

SECTION 1. Chapter 91, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§91- Mediation in contested cases. (a) An agency may encourage parties to a contested case hearing under this chapter to participate in mediation prior to the hearing subject to conditions imposed by the agency in rules adopted in accordance with this chapter. The agency may suspend all further proceedings in the contested case pending the outcome of the mediation.

(b) No mediation period under this section shall exceed thirty days from the date the case is referred to mediation, unless otherwise extended by the agency.

(c) The parties may jointly select a mediator within ten days of the referral to mediation, the agency shall select the mediator. All costs of the mediation shall be borne equally by the parties unless otherwise agreed, ordered by the agency, or provided by law.

(d) No mediation statements or settlement offers tendered shall be admitted into any subsequent proceedings involving the case, including the contested case hearing or a court proceeding.

(e) No preparatory meetings, briefings, or mediation sessions under this section shall constitute a meeting under section 92-2. Any mediator notes under this section shall be exempt from section 92-21 and chapter 92F. Section 91-10 shall not apply to mediation proceedings.”

SECTION 2. Section 91-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [H] Subject to section 91-____, in any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.”

SECTION 3. Section 91-10, Hawaii Revised Statutes, is amended to read as follows:

“§91-10 Rules of evidence; official notice. In contested cases:

- (1) [Any] Except as provided in section 91-____, any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record or such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence. The agencies shall give effect to the rules of privilege recognized by law[-];
- (2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available; provided that upon request parties shall be given an opportunity to compare the copy with the original[-];
- (3) Every party shall have the right to conduct such cross-examination as may be required for a full and true disclosure of the facts, and shall have the right to submit rebuttal evidence[-];

- (4) Agencies may take notice of judicially recognizable facts. In addition, they may take notice of generally recognized technical or scientific facts within their specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material so noticed, and they shall be afforded an opportunity to contest the facts so noticed[-]; and
- (5) Except as otherwise provided by law, the party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion. The degree or quantum of proof shall be a preponderance of the evidence.”

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved May 20, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 77

S.B. NO. 1267

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 section to be appropriately designated and to read as follows:

“§245- Prohibition against stamping or sale of cigarettes not listed in the directory pursuant to chapter 486P. (a) Beginning December 1, 2003, it shall be unlawful for an entity to:

- (1) Affix a stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory; or
- (2) Import, sell, offer, keep, store, acquire, transport, distribute, receive, or possess for sale or distribution cigarettes of a tobacco product manufacturer or brand family not included in the directory.

(b) Any entity that knowingly violates subsection (a) shall be guilty of a class C felony.

(c) Any cigarettes that are unlawfully imported, possessed, offered, kept, stored, acquired, transported, stamped, distributed, received, or sold in violation of this section may be seized and forfeited as contraband pursuant to chapter 712A and all such cigarettes seized and forfeited shall be destroyed.

(d) This section shall not apply to cigarettes that are exempt from taxes as provided by section 245-3(b).

(e) For purposes of this section:

“Brand family”, “cigarette”, and “tobacco product manufacturer” shall have the same meaning as in section 486P-1.

“Directory” means the “directory” established pursuant to section 486P-C.

“Entity” means one or more individuals, a company, corporation, a partnership, an association, licensee, or any other type of legal entity.”

SECTION 2. Chapter 486P, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§486P-A Unregistered nonresident or foreign nonparticipating manufacturers; agent; notice. (a) A nonresident or foreign nonparticipating manufacturer that has not registered to do business in this State as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory established under 486P-C, appoint and continually engage without interruption the services of an agent in the United States to act as an agent for the service of process on whom all process, and any action or proceeding against the manufacturer concerning or arising out of the enforcement of this chapter or chapter 675, may be served in any manner authorized by law. Service pursuant to this section shall constitute legal and valid service of process on the nonparticipating manufacturer.

(b) The nonparticipating manufacturer shall provide to the satisfaction of the attorney general, notice of:

- (1) The name, address, phone number, and proof of the appointment and availability of the manufacturer’s agent;
- (2) Termination of the authority of an agent by the manufacturer, thirty calendar days prior to termination, and proof of the appointment of a new agent to the satisfaction of the attorney general no less than five calendar days prior to the termination of an existing agent appointment; and
- (3) The termination of the authority of an agent by the agent, within five calendar days of the termination, and at the same time, proof of the appointment of a new agent to the satisfaction of the attorney general.

§486P-B Certification; participating manufacturers; nonparticipating manufacturers. (a) Every tobacco product manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver in the manner prescribed by the attorney general, a certification to the attorney general no later than September 30, 2003, and no later than the thirtieth day of April each year thereafter, certifying that as of the date of the certification the tobacco product manufacturer is either a participating manufacturer or is in full compliance with section 675-3(b).

(b) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(c) A nonparticipating manufacturer shall include in its certification:

- (1) A complete list of all of its brand families that identifies by name and address any other manufacturer of the brand families, and that includes:
 - (A) A list of all of its brand families of cigarettes and of the number of units sold for each brand family that was sold in the State during the preceding calendar year, indicating by an asterisk any brand family that is no longer being sold in the State as of the date of the certification; and
 - (B) A list of its brand families that have been sold in the State at any time during the current calendar year.

The nonparticipating manufacturer shall update the list thirty days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general;

- (2) A statement that such nonparticipating manufacturer is registered to do business in the State, or that such nonparticipating manufacturer is a nonresident or foreign nonparticipating manufacturer that has not registered to do business in this State as a foreign corporation or business entity and has appointed an agent for service of process and provided notice thereof pursuant to section 486P-A;
 - (3) A statement that the nonparticipating manufacturer has established and continues to maintain a qualified escrow fund required pursuant to section 675-3(b)(1), including:
 - (A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established such qualified escrow fund;
 - (B) The account number of the qualified escrow fund or any sub-account number for the State;
 - (C) The amount the nonparticipating manufacturer placed in such fund for cigarettes sold in the State during the preceding calendar year, the date and amount of each such deposit, and such evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and
 - (D) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which the nonparticipating manufacturer made escrow payments pursuant to section 675-3(b)(1);
 - (4) A statement that the nonparticipating manufacturer has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund; and
 - (5) A statement that the nonparticipating manufacturer is in full compliance with this chapter, chapter 675, and any rules adopted to implement this chapter or chapter 675.
- (d) A tobacco product manufacturer may not include a brand family in its certification unless:
- (1) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and
 - (2) In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of chapter 675.

Nothing in this section shall be construed as limiting or otherwise affecting the State's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of chapter 675.

(e) The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which a tobacco product manufacturer has established a qualified escrow fund for the purpose of compliance with section 675-3(b)(1), of the amount of money in such fund, exclusive of interest, the amount and date of each deposit to such fund, and the amount and date of each withdrawal from such fund.

(f) A tobacco product manufacturer shall maintain and make available to the attorney general, pursuant to this chapter, all invoices and documentation of sale and other such information relied upon for certification for a period of five years unless otherwise required by law.

§486P-C Directory; updates; information to be maintained and provided. (a) Not later than November 1, 2003, the attorney general shall develop and make available for public inspection, a directory that includes a list of all tobacco product manufacturers that have provided a current and accurate certification conforming to the requirements of section 486P-B, and a list of all brand families that are listed in the certification; provided that:

- (1) The attorney general shall not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the attorney general determines is not in compliance with section 486P-B unless the attorney general has determined that such violation has been cured to the satisfaction of the attorney general;
- (2) Neither a tobacco product manufacturer nor a brand family shall be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that:
 - (A) Any escrow payment required pursuant to section 675-3(b)(1) for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or
 - (B) Any outstanding final judgment, including interest thereon, for a violation of section 675-3(b) has not been fully satisfied by the manufacturer or brand family.

(b) The attorney general shall update the directory as necessary to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter.

(c) Every entity licensed under chapter 245 shall:

- (1) Provide to the attorney general and update as necessary an electronic mail address for the purpose of receiving any notifications hereunder; and
- (2) Not later than thirty days after the end of each month, and more frequently if so directed by the attorney general, submit to the attorney general such information as the attorney general requires to facilitate compliance with this chapter, including but not limited to:
 - (A) A list by brand family of the total number of cigarettes, or in the case of roll-your-own, the equivalent stick count for which the licensee affixed stamps during the previous calendar month or otherwise paid the tax due for such cigarettes; and
 - (B) Samples of each brand family, as may be necessary to enable the attorney general to determine whether a tobacco product manufacturer or licensed entity is in compliance with this chapter.
- (3) Maintain, and make available to the attorney general, all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of five years.

§486P-D Use and disclosure of information. The information received by the attorney general under this chapter shall be used only for purposes of enforcement of this chapter, chapter 245, and chapter 675; provided that the attorney general

may share any information with authorities of other states or the federal government for the purpose of enforcement of similar state statutes upon receipt of adequate assurance from those authorities that the information will be used only for that purpose.

Information received by the attorney general under this chapter that tends to identify customers of tobacco product manufacturers, terms of sale, including price, and nonaggregated sales volume data, shall be exempt from disclosure under section 92F-11.”

SECTION 3. Section 486P-1, Hawaii Revised Statutes, is amended by adding six new definitions to be appropriately inserted and to read as follows:

““Brand family” means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including but not limited to “menthol”, “lights”, “kings”, and “100s”, and includes any brand name (alone or in conjunction with any other word), trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

“Master Settlement Agreement” shall have the same meaning as in section 675-2.

“Nonparticipating manufacturer” means any tobacco product manufacturer that is not a participating manufacturer.

“Participating manufacturer” has the meaning given that term in section II(j) of the Master Settlement Agreement and all amendments thereto.

“Qualified escrow fund” shall have the same meaning as in section 675-2.

“Units sold” shall have the same meaning as in section 675-2.”

SECTION 4. Section 245-51, Hawaii Revised Statutes, is amended to read as follows:

“**§245-51 [Sale of export] Export and foreign cigarettes prohibited.** It shall be unlawful for ~~a person to sell or distribute in the State; to~~ an entity to possess, keep, store, retain, transport, sell, or offer to sell, distribute, 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;

- (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; or
- (7) The package of which bears a cigarette brand name that is a registered United States trademark of a participating manufacturer and the package was imported by anyone other than the participating manufacturer of that cigarette brand. "Participating manufacturer" means any signatory to the "Master Settlement Agreement", as the latter term is defined in section 675-2."

SECTION 5. Section 245-52, Hawaii Revised Statutes, is amended to read as follows:

"~~[(H)§245-52(H)]~~ **Alteration of packaging prohibited.** It shall be unlawful for ~~[any person]~~ an entity 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."

SECTION 6. Section 245-54, Hawaii Revised Statutes, is amended to read as follows:

"~~[(H)§245-54(H)]~~ **Confiscation and seizure of illegal ~~[sale or export of] export or 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], held, owned, received, transported, imported, or caused to be imported, acquired, distributed, sold, or offered for sale in violation of this part."

SECTION 7. Section 245-55, Hawaii Revised Statutes, is amended to read as follows:

"~~[(H)§245-55(H)]~~ **Forfeiture.** ~~[The forfeiture of any]~~ Any cigarette, package of cigarettes, or carton of cigarettes unlawfully possessed, ~~[or] kept, stored, [or retained for the purpose of sale, or]~~ received, held, owned, acquired, retained, transported, imported, or caused to be imported, distributed, sold, or offered for sale, in violation of this part, [may be enforced] shall be forfeited as contraband 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."

SECTION 8. Section 486P-3, Hawaii Revised Statutes, is amended to read as follows:

"**§486P-3 Penalties.** (a) The attorney general may bring a civil action against any entity that fails to file the reports required under this chapter.

(b) The attorney general may bring a civil action against any entity engaged in the business of manufacturing, wholesaling, distributing, ~~or dealing~~ importing, or dealing in cigarettes or tobacco products who fails to provide the information that the department of the attorney general may deem necessary, for the proper administration of this chapter or chapter 675.

(c) Notwithstanding the existence of other remedies at law, the attorney general may apply for a temporary or permanent injunction restraining any entity from the sale, use, possession, acquisition, receipt, transportation, or distribution of cigarettes manufactured by a tobacco product manufacturer who knowingly fails to report, provide information, or meet the certification requirements of this chapter. The injunction shall be issued without bond.

~~[(e)]~~ (d) The State shall be awarded its attorney's fees and expenses incurred in prosecuting violations of this chapter."

SECTION 9. In codifying the new sections 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 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved May 20, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 78

S.B. NO. 69

A Bill for an Act Relating to the Teacher Education Coordinating Committee.

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

SECTION 1. Section 304-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) There is created an advisory committee to be known as the teacher education coordinating committee to identify, study, take action, or make recommendations on matters of education of common interest to the department of education and institutions of higher learning in Hawaii. The membership of the committee shall include the superintendent of education and the dean of the college of education of the University of Hawaii, who shall serve in alternate years as chairperson of the committee with the superintendent acting as the first chairperson~~[-]. The membership of the committee shall include~~, a¹ representative ~~[of] from~~ each accredited teacher training institution in Hawaii~~[-]~~, and a representative from the Hawaii teacher standards board. In addition, the superintendent of education and the dean of the college of education of the University of Hawaii may each appoint other members to the committee; provided that the dean of the college of education of the University of Hawaii shall appoint at least two members of the committee from the University of Hawaii who are not within the college of education. The committee shall meet at least six times within ~~[any]~~ each calendar year to:

- (1) Work out problems related to the development of strong teacher training programs at accredited institutions of higher learning in Hawaii; and

- (2) Identify, study, and discuss educational problems or other educational matters of interest to the committee and to develop findings and make recommendations for the improvement of education in Hawaii.

The committee shall submit an annual report on its activities to the legislature and may include recommendations for legislative consideration.”

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

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

(Approved May 21, 2003.)

Note

- 1. “A” should not be underscored.

ACT 79

H.B. NO. 1161

A Bill for an Act Relating to Psychologist Licensing Requirements.

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

SECTION 1. Section 465-7, Hawaii Revised Statutes, is amended to read as follows:

“§465-7 Requirements for licensing. (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) 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 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, in an internship or residency program in an organized health service training program; and
- (3) The applicant for licensure has passed ~~[a written]~~ an examination as may be prescribed by the board.

(b) Notwithstanding subsection (a), a license may be issued to an applicant who holds [a]:

- (1) A diplomate certificate in good standing granted by the American Board of Professional Psychology[-];
- (2) A current Certificate of Professional Qualification in Psychology issued by the Association of State and Provincial Psychology Boards; or
- (3) A current National Register of Health Service Providers in Psychology credential.

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

- (1) Holds a valid and current license in another jurisdiction in which the Examination for Professional Practice in Psychology was not required for licensure at the time of licensure or in a jurisdiction in which the Examination for Professional Practice in Psychology was required and the applicant obtained a score that was equal to or higher than the board's passing score at the time the applicant sat for the Examination for Professional Practice in Psychology;
- (2) Before application in this jurisdiction, has been licensed as a psychologist for at least twenty years in United States or Canadian jurisdictions where that license was based on a doctoral degree. The total of twenty years shall be obtained by counting sequential, not concurrent, years of licensure;
- (3) Has had no disciplinary sanction against the person's license in any jurisdiction during the entire period of being licensed as a psychologist;
- ~~[(4) Has passed an open book examination in jurisprudence;]~~ and
- ~~[(5)]~~ (4) Has submitted the application and fees as required."

SECTION 2. Section 465-7.6, Hawaii Revised Statutes, is amended to read as follows:

"§465-7.6 Licensure of state employed clinical psychologists. (a) ~~[A psychologist providing diagnostic or treatment services in a clinical psychologist civil service position shall be licensed under this chapter; provided that a psychologist employed in a clinical psychologist position with a government agency in this State prior to January 1, 1988, shall be eligible for licensure subject to:~~

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

~~(b) A psychologist employed in a civil service clinical psychologist position in this State after January 1, 1988, shall be licensed subject to:~~

- ~~(1) Meeting the requirements of section 465-7; and~~
- ~~(2) Obtaining licensure within two years from the date of employment.~~

~~[(e)]~~ (b) After the time period ~~[of subsections (a)(3) or (b)(2)]~~ in subsection (a)(2) has expired, a psychologist, employed in a civil service clinical psychologist position rendering diagnostic or treatment services, who has not obtained a license, shall immediately cease and desist the practice of psychology until a license is obtained pursuant to this chapter."

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

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

(Approved May 21, 2003.)

A Bill for an Act Relating to Condominium Property Regimes.

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

SECTION 1. Section 514A-90, Hawaii Revised Statutes, is amended by amending subsections (g) and (h) to read as follows:

“(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 nonjudicial 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 nonjudicial 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 mortgagee or subsequent purchaser may require the association of apartment owners [has filed] to provide at no charge a notice of the association’s intent to claim a lien against the delinquent apartment for the [unpaid assessments for common area expenses which form the basis of] amount of the special assessment, prior to the subsequent purchaser’s acquisition of title to the delinquent apartment. The notice shall state the amount of the special assessment, how that amount was calculated, and the legal description of the 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 nonjudicial 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.”

SECTION 2. Act 39, Session Laws of Hawaii 2000, 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 December 31, [~~2003~~] 2007; 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.”

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

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

(Approved May 21, 2003.)

ACT 81

H.B. NO. 1594

A Bill for an Act Relating to Nonprofit Corporations.

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

SECTION 1. Chapter 414D, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

“§414D- Amendment terminating or canceling members; redemption of membership. (a) Any amendment to the articles or bylaws which would terminate all members or any class of members or redeem or cancel all memberships or any class of memberships shall meet the requirements of this chapter and this section.

(b) Prior to adopting a resolution proposing such an amendment, the board of the corporation shall give notice of the general nature of the amendment to the members.

(c) After adopting a resolution proposing such an amendment, the notice to members proposing such amendment shall include one or more statements of up to five hundred words opposing the proposed amendment if such statement is submitted by any five members, or by members having three per cent or more of the voting power, whichever is less, not later than twenty days after the board has voted to submit such amendment to the members for approval. The production and mailing costs shall be paid by the corporation.

(d) Any such amendment shall be approved by the members, whether through attendance or proxy, by two-thirds of the votes cast by each class present at the meeting at which the amendment is voted upon.

(e) Section 414D-89 shall not apply to any amendment meeting the requirements of this chapter and this section.”

SECTION 2. Section 414D-167, Hawaii Revised Statutes, is amended to read as follows:

“[H]§414D-167[H] Application of this part. (a) A provision treating a corporation’s indemnification of or advance for expenses to directors that is contained in its articles of incorporation, bylaws, a resolution of its members or board of directors, or in a contract or otherwise, is valid only if and to the extent the provision is consistent with this part. If articles of incorporation limit indemnification or advances for expenses, indemnification and advances for expenses are valid only to the extent consistent with the articles.

(b) This part shall not limit a corporation’s power to pay or reimburse expenses incurred by a director in connection with appearing as a witness in a proceeding at a time when the director has not been made a named defendant or respondent to the proceeding.

(c) A corporation, by a provision in its articles of incorporation or bylaws, in a resolution adopted, or in a contract approved by its board of directors or members, may obligate itself, in advance of the act or omission giving rise to a proceeding, to provide indemnification in accordance with section 414D-160 or advance funds to pay for or reimburse expenses in accordance with section 414D-162. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in subsections 414D-164 and 414D-162(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 414D-162 to the fullest extent permitted by law, unless the provision specifically provides otherwise.”

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

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

(Approved May 21, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 82

H.B. NO. 1214

A Bill for an Act Relating to Public Land Liability.

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

SECTION 1. There is increasing public demand for outdoor recreation on public lands. Many of these lands are inherently dangerous and contain many potential risks, especially for those who are unprepared, participate in hazardous recreational activities, or choose to ignore warning signs. Unfortunately, in some instances, serious injuries have resulted. Uncertainty regarding the standard of care that must be exercised by the State or counties to prevent costly lawsuits may result in public recreational assets being closed.

To provide a remedy for this problem, a state risk assessment working group could be established to identify methods to mitigate potential risks. However, even the most carefully crafted risk assessment and management program will not eliminate all potential injuries associated with outdoor recreation. Risk management can mitigate risk through programs that include signage that warns the public of risks, but at best, risk management can only reduce exposure to a hazardous condition.

The legislature finds that it is in the best interests of the public to provide the State and counties with a conditional protection from liability arising from the inherent risks on public lands under their jurisdiction, that strikes an equitable balance between the personal responsibility of individuals engaged in recreational pursuits on public lands, and the government’s duty to protect its citizens from harm. The legislature further finds that allowing the State and counties to manage their risks on public lands will encourage the State and counties to take reasonable steps to protect their citizens from harm, and will also help to avoid the closure of recreational public lands.

The purpose of this Act is to establish a process in which the State and counties are provided protection from liability on improved public lands when the requirements of this Act are met.

SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . LIMITATIONS ON PUBLIC ENTITY LIABILITY IN ACTIONS BASED UPON DUTY TO WARN OF NATURAL CONDITIONS

§663- Definitions. As used in this part:

“Board” means the board of land and natural resources.

“Improved public lands” means lands designated as part of the state park system, parks, and parkways under chapter 184, or as part of a county’s park system, and lands which are part of the Hawaii statewide trail and access system under chapter 198D, excluding buildings and structures constructed upon such lands. For purposes of this part, “improved public lands” excludes ocean and submerged lands, and further excludes any public beach park falling within Act 190, Session Laws of Hawaii 1996, as amended by Act 101, Session Laws of Hawaii 1999.

“Public entity” means “government entity” as defined in section 663-10.5.

§663- Conclusive presumptions relating to duty of public entities to warn of dangers on improved public lands. (a) A sign or signs warning of dangerous natural conditions on improved public lands shall be conclusively presumed to be legally adequate warning of the dangerous natural conditions of which the sign or signs warn, if the State or a county posts a sign or signs warning of the dangerous natural conditions and the design and placement of the warning sign or signs are approved by the board. The board shall consult the risk assessment working group established by chapter 171, prior to approving the design and placement of a warning sign pursuant to this section.

(b) The State or a county may submit to the board a comprehensive plan for warning of dangerous natural conditions at a particular area of improved public lands. The board shall review the plan for adequacy of the warning as well as the design and placement of the warning signs, devices, or systems. The board shall consult with the risk assessment working group before approving the plan. The risk assessment working group shall seek public comment on the plan. In the event that the board after consulting with the risk assessment working group approves the plan for a particular area of improved public lands, and the State or a county posts the warnings provided for in the approved plan, then the warning signs, devices, or systems shall be conclusively presumed to be legally adequate warning of all dangerous natural conditions on the improved public lands.

(c) The State or a county shall have no duty to warn of dangerous natural conditions on unimproved public lands.

(d) If a warning sign, device, or system is posted or established in accordance with this section on unimproved lands, the posting or establishment of the warning sign, device, or system shall not create a duty on the part of the State or county to warn of other dangerous natural conditions on unimproved lands or to place or establish an additional warning sign, device, or system in other locations on the unimproved lands.

(e) The State and the counties shall implement and maintain a sign inspection program in which a park caretaker or other authorized person conducts documented inspections of all signs in the park or trail area on a quarterly or more frequent basis.

Records shall be kept under the sign inspection program which document the date of each sign inspection and whether the particular sign inspected was in place, free of vandalism, and legible. The State and the counties shall annually provide the board with a copy of the documentation of all sign inspections under the sign inspection program.

The conclusive presumption provided by this section shall continue for any sign posted pursuant to this section for a period of one hundred twenty days after the last inspection that documented that the sign was in place and legible, after which the presumption shall lapse until the time at which the sign is subsequently inspected and documented to be in place and in legible condition.

In any circumstance in which the conclusive presumption lapses because of the lack of a documented inspection, the presumption shall be reestablished if the

State or county, as the case may be, proves by a preponderance of the evidence that at the time of the incident at issue, the sign was in place and in legible condition.

(f) The board shall adopt rules pursuant to chapter 91 establishing standards to guide the department of land and natural resources and the risk assessment working group in the general design and placement of warning signs; provided that chapter 91 shall not apply to any other process or action undertaken pursuant to this part.

(g) The State and the counties shall implement an accident reporting and record keeping program whereby all known accidents in park and trail areas are documented on an accident report form, and all such accident reports are kept on a permanent basis. The risk assessment working group shall review and use accident reports kept as part of this program as part of its consultation to the board under this section.”

SECTION 3. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- Risk assessment working group. (a) There is established a risk assessment working group that shall be administratively attached to the department. The risk assessment working group shall provide consultation to the board regarding the design and placement of warning signs, devices, or systems on improved public lands as defined in section 663- , including any comprehensive plan submitted by the State, a county, or managing entity, to the board for approval. The risk assessment working group shall consist of the following members, who shall serve without compensation:

- (1) The chairperson of the board, or designee;
- (2) The mayor of each county, or designee;
- (3) The administrators of the department’s division of forestry and wildlife and the division of state parks, or their designees;
- (4) The attorney general, or designee; and
- (5) A person appointed by the chairperson of the board knowledgeable in warning sign design.”

SECTION 4. The risk assessment working group shall submit a report of its recommendations and of the consultation provided to the board of land and natural resources under this Act, including a listing of warning signs, devices, and systems on improved and unimproved public lands subsequently approved or disapproved by the board, to the legislature no later than twenty days prior to the convening of each regular session.

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. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 2003, and shall be repealed on June 30, 2008.

(Approved May 22, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 83

S.B. NO. 1393

A Bill for an Act Relating to the Executive Departments of State Government.

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

SECTION 1. (a) The director of public safety shall conduct a study to determine the feasibility of dividing the department of public safety (department) into the department of corrections and the department of law enforcement. The study shall include a report on the following:

- (1) A review of all functions currently assigned to the department and a review of other states' organizational structures for correctional and law enforcement functions;
- (2) An analysis of budget allocations to the department, including the financial breakdown by program;
- (3) A justification for the existence of each program;
- (4) Personnel position descriptions, classifications, benefits including requirement benefits, and employment status (e.g. civil service, exempt, and excluded);
- (5) A review of facilities and property under the department's control;
- (6) Identification of operational, procedural, and other issues that may be resolved by dividing the department into the two separate entities;
- (7) An analysis and comparison of the training and qualifications of those persons in the department holding law enforcement positions with police powers with those of local police officers;
- (8) An estimate of future impacts on the department's resources (e.g. prison population, drug rehabilitation programs, and other post incarceration programs, and law enforcement responsibilities).

(b) If the director determines from the study that dividing the department is feasible, the director also shall submit the following:

- (1) Justification for dividing the department;
- (2) A cost/benefit analysis for dividing the department;
- (3) The effect of the division of the department on personnel, particularly management positions;
- (4) A summation of jurisdictional issues relating to law enforcement and duplication of services between the new law enforcement department and local law enforcement;
- (5) An organizational structure;
- (6) A proposed budget for each new entity;
- (7) A report on how each issue raised in subsection (a)(6) will be resolved;
- (8) Legislation to effectuate the recommendations of the director's report if necessary; and
- (9) A report to the legislature no later than twenty days before the convening of the Regular Session of 2004.

SECTION 2. This Act shall take effect upon approval.

(Approved May 22, 2003.)

ACT 84

S.B. NO. 295

A Bill for an Act Relating to Motor Vehicle Towing.

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

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

“§46- Regulation of towing operations. Any law to the contrary notwithstanding, the council of any county may adopt and provide for the enforcement of ordinances regulating towing operations, including but not limited to ordinances relating to rates, equipment standards, hours of operation, storage and safeguarding of towed vehicles, records retention and inspection, insurance requirements, vehicle operator requirements, and tax clearances; provided that an ordinance shall not be effective to the extent that it is inconsistent with any law or department of health rule governing solid waste salvage facilities.”

SECTION 2. Section 46-1.5, Hawaii Revised Statutes, is amended to read as follows:

“§46-1.5 General powers and limitation of the counties. Subject to general law, each county shall have the following powers and shall be subject to the following liabilities and limitations:

- (1) Each county shall have the power to frame and adopt a charter for its own self-government, which shall establish the county executive, administrative, and legislative structure and organization, including, but not limited to, the method of appointment or election of officials, their duties, responsibilities, and compensation, and the terms of their office.
- (2) Each county shall have the power to provide for and regulate the marking and lighting of all buildings and other structures that may be obstructions or hazards to aerial navigation, so far as may be necessary or proper for the protection and safeguarding of life, health, and property.
- (3) Each county shall have the power to enforce all claims on behalf of the county and approve all lawful claims against the county, but shall be prohibited from entering into, granting, or making in any manner any contract, authorization, allowance payment, or liability contrary to the provisions of any county charter or general law.
- (4) Each county shall have the power to make contracts and to do all things necessary and proper to carry into execution all powers vested in the county or any county officer.
- (5) Each county shall have the power to maintain channels, whether natural or artificial, including their exits to the ocean, in suitable condition to carry off storm waters; and to remove from the channels, and from the shores and beaches, any debris that is likely to create an unsanitary condition or become a public nuisance; provided that, to the extent any of the foregoing work is a private responsibility, the responsibility may be enforced by the county in lieu of the work being done at public

expense. Counties also shall have the power to construct, acquire by gift, purchase, or by the exercise of eminent domain, reconstruct, improve, better, extend, and maintain projects or undertakings for the control of and protection against floods and flood waters, including the power to drain and rehabilitate lands already flooded, and to enact zoning ordinances providing that lands deemed subject to seasonable, periodic, or occasional flooding shall not be used for residence or other purposes in a manner as to endanger the health or safety of the occupants thereof, as required by the Federal Flood Insurance Act of 1956 (chapter 1025, Public Law 1016).

- (6) Each county shall have the power to exercise the power of condemnation by eminent domain when it is in the public interest to do so.
- (7) Each county shall have the power to exercise regulatory powers over business activity as are assigned to them by chapter 445 or other general law.
- (8) Each county shall have the power to fix the fees and charges for all official services not otherwise provided for.
- (9) Each county shall have the power to provide by ordinance for the improvement or maintenance assessments of districts within the county.
- (10) Except as otherwise provided, no county shall have the power to give or loan credit to, or in aid of, any person or corporation, directly or indirectly, except for a public purpose.
- (11) Where not within the jurisdiction of the public utilities commission, each county shall have the power to regulate by ordinance the operation of motor vehicle common carriers transporting passengers within the county and adopt and amend rules the county deems necessary for the public convenience and necessity.
- (12) Each county shall have the power to enact and enforce ordinances necessary to prevent or summarily remove public nuisances and to compel the clearing or removal of any public nuisance, refuse, and uncultivated undergrowth from streets, sidewalks, public places, and unoccupied lots, and in these connections, to impose and enforce liens upon the property for the cost to the county of removing and completing the necessary work where the owners fail, after reasonable notice, to comply with the ordinances. The authority provided by this paragraph shall not be self-executing, but shall become fully effective within a county only upon the enactment or adoption by the county of appropriate and particular laws, ordinances, or rules defining "public nuisances" with respect to each county's respective circumstances. The counties shall provide the property owner with the opportunity to contest the summary action and to recover the owner's property.
- (13) Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute, provided also that the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State.
- (14) Each county shall have the power to make and enforce within the limits of the county all necessary ordinances covering: all local police matters; all matters of sanitation; all matters of inspection of buildings; all matters of condemnation of unsafe structures, plumbing, sewers, dairies, milk, fish, and morgues; all matters of the collection and disposi-

tion of rubbish and garbage; and to provide exemptions for homeless facilities and any other program for the homeless authorized by chapter 201G, for all matters under this paragraph; and to appoint county physicians and sanitary and other inspectors as necessary to carry into effect ordinances made under this paragraph, who shall have the same power as given by law to agents of the department of health, subject only to limitations placed on them by the terms and conditions of their appointments; and to fix a penalty for the violation of any ordinance, which penalty may be a misdemeanor, petty misdemeanor, or violation as defined by general law.

- (15) Each county shall have the power to provide public pounds, to regulate the impounding of stray animals and fowl, and their disposition, and to provide for the appointment, powers, duties, and fees of animal control officers.
- (16) Each county shall have the power to purchase and otherwise acquire, lease, and hold real and personal property within the defined boundaries of the county and to dispose of the real and personal property as the interests of the inhabitants of the county may require, except that: any property held for school purposes may not be disposed of without the consent of the superintendent of education; no property bordering the ocean shall be sold or otherwise disposed of; and all proceeds from the sale of park lands shall be expended only for the acquisition of property for park or recreational purposes.
- (17) Each county shall have the power to provide by charter for the prosecution of all offenses and to prosecute for offenses against the laws of the State under the authority of the attorney general of the State.
- (18) Each county shall have the power to make appropriations in amounts deemed appropriate from any moneys in the treasury, for the purpose of community promotion and public celebrations, the entertainment of distinguished persons as may from time to time visit the county, for the entertainment of other distinguished persons as well as public officials when deemed to be in the best interest of the community, and the rendering of civic tribute to individuals who, by virtue of their accomplishments and community service, merit civic commendations, recognition, or remembrance.
- (19) Each county shall have the power to:
 - (A) Construct, purchase, take on lease, lease, sublease, or in any other manner acquire, manage, maintain, or dispose of buildings for county purposes, sewers, sewer systems, pumping stations, waterworks, including reservoirs, wells, pipelines, and other conduits for distributing water to the public, lighting plants, and apparatus and appliances for lighting streets and public buildings and manage, regulate, and control the same;
 - (B) Regulate and control the location and quality of all appliances necessary to the furnishing of water, heat, light, power, telephonic, and telegraphic service to the county;
 - (C) Acquire, regulate, and control any and all appliances for the sprinkling and cleaning of the streets and the public ways and for flushing the sewers; and
 - (D) Open, close, construct, or maintain county highways or charge toll on county highways; provided that all revenues received from a toll charge shall be used for the construction or maintenance of county highways.

- (20) Each county shall have the power to regulate the renting, subletting, and rental conditions of property for places of abode by ordinance.
- (21) Unless otherwise provided by law, each county shall have the power to establish by ordinance the order of succession of county officials in the event of a military or civil disaster.
- (22) Each county shall have the power to sue and be sued in its corporate name.
- (23) Each county shall have the power to establish and maintain waterworks and sewer works; to collect rates for water supplied to consumers and for the use of sewers; to install water meters whenever deemed expedient; provided that owners of premises having vested water rights under existing laws appurtenant to the premises shall not be charged for the installation or use of the water meters on the premises; to take over from the State existing waterworks systems, including water rights, pipelines, and other appurtenances belonging thereto, and sewer systems, and to enlarge, develop, and improve the same.
- (24)
 - (A) Each county may impose civil fines, in addition to criminal penalties, for any violation of county ordinances or rules after reasonable notice and requests to correct or cease the violation have been made upon the violator. Any administratively imposed civil fine shall not be collected until after an opportunity for a hearing under chapter 91. Any appeal shall be filed within thirty days from the date of the final written decision. These proceedings shall not be a prerequisite for any civil fine or injunctive relief ordered by the circuit court.
 - (B) Each county by ordinance may provide for the addition of any unpaid civil fines, ordered by any court of competent jurisdiction, to any taxes, fees, or charges, with the exception of fees or charges for water for residential use and sewer charges collected by the county. Each county by ordinance may also provide for the addition of any unpaid administratively imposed civil fines, which remain due after all judicial review rights under section 91-14 are exhausted, to any taxes, fees, or charges, with the exception of water for residential use and sewer charges, collected by the county. The ordinance shall specify the administrative procedures for the addition of the unpaid civil fines to the eligible taxes, fees, or charges and may require hearings or other proceedings. After the unpaid civil fines are added to the taxes, fees, or charges as specified by county ordinance, the unpaid civil fines shall be deemed immediately due, owing and delinquent and may be collected in the same manner as the taxes, fees, or charges. The procedure for collection of unpaid civil fines authorized in this paragraph shall be in addition to any other procedures for collection available to the State and county by law or rules of the courts.
 - (C) Each county may impose civil fines upon any person who places graffiti on any real or personal property owned, managed, or maintained by the county. The fine may be up to \$1,000 or may be equal to the actual cost of having the damaged property repaired or replaced. The parent or guardian having custody of a minor who places graffiti on any real or personal property owned, managed, or maintained by the county shall be jointly and severally liable with the minor for any civil fines imposed hereunder. Any such fine may be administratively imposed after an opportu-

nity for a hearing under chapter 91, but such a proceeding shall not be a prerequisite for any civil fine ordered by any court. As used in this subparagraph, "graffiti" means any unauthorized drawing, inscription, figure, or mark of any type intentionally created by paint, ink, chalk, dye, or similar substances.

- (D) At the completion of an appeal in which the county's enforcement action is affirmed and upon correction of the violation if requested by the violator, the case will be reviewed by the county agency that imposed the civil fines to determine the appropriateness of the amount of the civil fines that accrued while the appeal proceedings were pending. In its review of the amount of the accrued fines, the county agency may consider the following: nature and egregiousness of the violation, duration of the violation, number of recurring and other similar violations, effort taken by the violator to correct the violation, degree of involvement in causing or continuing the violation, reasons for any delay in the completion of the appeal, and other extenuating circumstances. The civil fine which is imposed by administrative order after this review is completed and the violation is corrected is subject to only judicial review, notwithstanding any provisions for administrative review in county charters.
 - (E) After completion of a review of the amount of accrued civil fine by the county agency which imposed the fine, the amount of the civil fine determined appropriate, including both the initial civil fine and any accrued daily civil fine, shall immediately become due and collectible following reasonable notice to the violator. If no review of the accrued civil fine is requested, the amount of the civil fine, not to exceed the total accrual of civil fine prior to correcting the violation, shall immediately become due and collectible following reasonable notice to the violator, at the completion of all appeal proceedings.
 - (F) If no county agency exists to conduct appeal proceedings for a particular civil fine action taken by the county, then one shall be established by ordinance before the county shall impose that civil fine.
- (25) Any law to the contrary notwithstanding, any county mayor may exempt by executive order donors, provider agencies, homeless facilities, and any other program for the homeless under chapter 201G from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate and grant the exemptions granted by this paragraph.

~~[(26)]~~ Any county may establish a captive insurance company pursuant to article 19, chapter 431.

(27) Each county shall have the power to enact and enforce ordinances regulating towing operations.

SECTION 3. Section 290-11, Hawaii Revised Statutes, is amended to read as follows:

“§290-11 Vehicles left unattended on private and public property; sale or disposition of abandoned vehicles. (a) Notwithstanding any other provision of this chapter, any vehicle left unattended on private or public property without

authorization of the owner or occupant of the property, may be towed away at the expense of the owner of the vehicle, by order of the owner, occupant, or person in charge of the property; provided that there is posted a notice prohibiting vehicles to park on the property without authorization. The notice shall state that the vehicle will be towed and held at the expense of the vehicle owner, as well as the name, address, and a telephone number of the facility where the vehicle will be towed and held. The notice shall be of such size and be placed in a location that is clearly visible to the driver of a vehicle approaching any individual marked or unmarked parking space; provided that where an entire parking lot consists of restricted parking spaces, placement of the notice at each entrance of the parking lot shall suffice.

(b) Towing companies engaged by the owner, occupant, or person in charge of the property shall:

- (1) Charge not more than \$55 for a tow, or \$65 for a tow using a dolly, plus a mileage charge of \$6.50 per mile towed and [~~\$15~~] \$20 per day or fraction thereof for storage for the first seven days and [~~\$10~~] \$15 per day thereafter. When the tow occurs between the hours of six o'clock p.m. and six o'clock a.m., from Monday through Thursday and from Friday six o'clock p.m. to Monday 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 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 \$30 shall be applicable;
- (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;

- (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
- (4) Accommodate payment by the owner for charges under paragraph (1) by cash and by either credit card or automated teller machine located on the premises.

(c) When a vehicle is not recovered within thirty days after the mailing of the notice, it shall be deemed abandoned and the owner of the towing company, or the owner of the towing company's authorized representative, after one public advertisement in a newspaper of general circulation in the State, may negotiate a sale of the vehicle or dispose of it as junk.

(d) The authorized seller of the vehicle shall be entitled to the proceeds of the sale to the extent that compensation is due the authorized seller for services rendered in respect to the vehicle, including reasonable and customary charges for towing, handling, storage, and the cost of the notices and advertising required by this part. Any remaining balance shall be forwarded to the legal or registered owner of the vehicle if the legal or registered owner can be found. If the legal or registered owner cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the legal or registered owner of the vehicle if a proper claim is filed therefor within one year from the execution of the sales agreement. If no claim is made within the year allowed, the money shall become a state realization.

(e) The transfer of title and interest by sale under this part is a transfer by operation of law; provided that if the certificate of ownership or registration is unavailable, a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.

(f) ~~[Each county by ordinance may enact additional restrictions to this section or may enact criminal sanctions in this area as required.] This section shall not apply to a county that has adopted ordinances regulating towing operations.~~

SECTION 4. Section 291C-135, Hawaii Revised Statutes, is amended to read as follows:

“[§291C-135 Tow trucks; signage and insurance requirements.]

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.

This section shall not apply to a county that has adopted ordinances regulating towing operations.”

SECTION 5. Section 291C-165.5, Hawaii Revised Statutes, is amended to read as follows:

“§291C-165.5 Motor vehicle towing and storage; settlement. (a) Notwithstanding any other provision of this chapter, any vehicle identified for removal pursuant to any county ordinance ordering removal of motor vehicles by any county police department for traffic violations, including a vehicle which constitutes an obstruction or hazard to traffic, may be towed away at the expense of the registered owner of the vehicle, as provided by this section.

(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 291C-135. 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.

(c) When a vehicle is recovered by the owner or lien holder before written notice is sent by registered or certified mail, the towing company shall provide the owner or lien holder with a receipt stating the maximum towing charges and fees allowed by law and the telephone number of the county finance department that arranged for or authorized the tow.

(d) When a vehicle is not recovered within thirty days after the mailing of the notice, it shall be deemed abandoned and the owner of the towing company, or the owner of the towing company's authorized representative, after one statewide public notice as required in section 1-28.5, may negotiate a sale of the vehicle or dispose of it as junk.

(e) The authorized seller of the vehicle shall be entitled to the proceeds of the sale to the extent that compensation is due the authorized seller for services rendered in respect to the vehicle, including reasonable and customary charges for towing, handling, storage, and the cost of the notices and advertising required by this part. Any remaining balance shall be forwarded to the registered owner or lien holder of

the vehicle if the registered owner or lien holder is found. If the registered owner or lien holder cannot be found, the balance shall be deposited with the director of finance of the State and shall be paid out to the registered owner or lien holder of the vehicle if a proper claim is filed therefor within one year from the execution of the sales agreement. The lien holder shall have first priority to the funds to the extent of the lien holder's claim. If no claim is made within the year allowed, the money shall escheat to the State.

(f) The transfer of title and interest by sale under this section is a transfer by operation of law; provided that if the certificate of ownership or registration is unavailable, a bill of sale executed by an authorized seller is satisfactory evidence authorizing the transfer of the title or interest.

(g) This section shall not apply to a county that has adopted ordinances regulating towing operations."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved May 22, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 85

S.B. NO. 1505

A Bill for an Act Relating to Invasive Species.

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

SECTION 1. The legislature finds that the silent invasion of Hawaii by insects, disease-bearing organisms, snakes, weeds, and other pests is the single greatest threat to Hawaii's economy and natural environment and to the health and lifestyle of Hawaii's people. Invasive species already cause millions of dollars in crop losses, the extinction of native species, the destruction of native forests, and the spread of disease. Every day the media reports another serious case of an invasive species attacking Hawaii, whether it is the Coqui frog, *Salvinia molesta*, *Miconia calvescens*, or dengue fever. Yet there are many more harmful species that threaten to invade Hawaii and wreak further damage. Even one new pest, such as the brown tree snake or the red imported fire ant, could forever change the character of the islands. Stopping the influx of new invasive species and containing their spread is essential to Hawaii's future well-being.

Unwanted invasive species are entering Hawaii at an alarming rate—about two million times more rapidly than the natural rate. In 1993, the federal Office of Technology Assessment declared Hawaii's alien pest species problem as the worst in the nation. Hawaii's evolutionary isolation from the continents and its modern role as the commercial hub of the Pacific make these islands particularly vulnerable to destruction by invasive species. Gaps in invasive species prevention systems and a lack of public awareness further add to this serious problem.

The present problem is severe. The future, though, may be even more dire. Slow, piecemeal action will not be sufficient. Drastic improvements must be made now to stem the tide of invasive species.

Last year, then-Governor Benjamin Cayetano issued Executive Order No. 2002-03, establishing the Hawaii invasive species council in recognition of the

urgent need to protect Hawaii's natural resources and economy as well as the health and quality of life of Hawaii's residents and visitors from invasive species. The Hawaii invasive species council's special purpose is to foster coordinated approaches that support local initiatives for the prevention and control of invasive species, such as the coordinating group on alien pest species and the island invasive species committees. The Hawaii invasive species council has since initiated development of coordinated invasive species policy.

The legislature finds that the silent invasion of Hawaii by alien invasive species is the single greatest threat to Hawaii's economy, natural environment, and the health and lifestyle of Hawaii's people and visitors. Invasive species cause millions of dollars in crop damage, the extinction of native species, the destruction of native ecosystems, and the spread of many diseases.

The purpose of this Act is to:

- (1) Provide statutory authority to the Hawaii invasive species council to continue its special purpose to foster and organize coordinated approaches among various executive departments, federal agencies, and international and local initiatives for the prevention and control of invasive species; and
- (2) Affirm the objective of the State to rid Hawaii of invasive species.

This Act does not create any new function of government or require additional funding.

SECTION 2. As used in this Act, unless the context requires otherwise:

“Council” means the Hawaii invasive species council.

“Department” means any entity that is a member of the Hawaii invasive species council established under section 3(a).

SECTION 3. (a) There is established a temporary invasive species council for the special purpose of providing policy level direction, coordination, and planning among state departments, federal agencies, and international and local initiatives for the control and eradication of harmful invasive species infestations throughout the State and for preventing the introduction of other invasive species that may be potentially harmful. The council shall:

- (1) Maintain a broad overview of the invasive species problem in the State;
- (2) Advise, consult, and coordinate invasive species-related efforts with and between the departments of agriculture, land and natural resources, health, and transportation, as well as state, federal, international, and privately organized programs and policies;
- (3) Identify and prioritize each lead agency's organizational and resource shortfalls with respect to invasive species;
- (4) After consulting with appropriate state agencies, create and implement a plan that includes the prevention, early detection, rapid response, control, enforcement, and education of the public with respect to invasive species, as well as fashion a mission statement articulating the State's position against invasive species;
- (5) Coordinate and promote the State's position with respect to federal issues, including:
 - (A) Quarantine preemption;
 - (B) International trade agreements that ignore the problem of invasive species in Hawaii;
 - (C) First class mail inspection prohibition;
 - (D) Whether quarantine of domestic pests arriving from the mainland should be provided by the federal government;

- (E) Coordinating efforts with federal agencies to maximize resources and reduce or eliminate system gaps and leaks, including deputizing the United States Department of Agriculture's plant protection and quarantine inspectors to enforce Hawaii's laws;
 - (F) Promoting the amendment of federal laws as necessary, including the Lacey Act Amendments of 1981, Title 16 United States Code sections 3371-3378; Public Law 97-79, and laws related to inspection of domestic airline passengers, baggage, and cargo; and
 - (G) Coordinating efforts and issues with the federal Invasive Species Council and its National Invasive Species Management Plan;
- (6) Identify and record all invasive species present in the State;
 - (7) Designate the department of agriculture, health, or land and natural resources as the lead agency for each function of invasive species control, including prevention, rapid response, eradication, enforcement, and education;
 - (8) Identify all state, federal, and other moneys expended for the purposes of the invasive species problem in the State;
 - (9) Identify all federal and private funds available to the State to fight invasive species and advise and assist state departments to acquire these funds;
 - (10) Advise the governor and legislature on budgetary and other issues regarding invasive species;
 - (11) Provide annual reports on budgetary and other related issues to the legislature twenty days prior to each regular session;
 - (12) Include and coordinate with the counties in the fight against invasive species to increase resources and funding and to address county-sponsored activities that involve invasive species;
 - (13) Review state agency mandates and commercial interests that sometimes call for the maintenance of potentially destructive alien species as resources for sport hunting, aesthetic resources, or other values;
 - (14) Review the structure of fines and penalties to ensure maximum deterrence for invasive species-related crimes;
 - (15) Suggest appropriate legislation to improve the State's administration of invasive species programs and policies;
 - (16) Incorporate and expand upon the department of agriculture's weed risk assessment protocol to the extent appropriate for the council's invasive species control and eradication efforts; and
 - (17) Perform any other function necessary to effectuate the purposes of this Act.

(b) The council members shall be appointed by the governor not later than January 1, 2004. The council shall be administratively attached to the office of the governor and shall be composed of:

- (1) The president of the University of Hawaii, or the president's designated representative;
- (2) The director, or the director's designated representative, of each of the following departments:
 - (A) Business, economic development, and tourism;
 - (B) Health; and
 - (C) Transportation; and
- (3) The chairperson, or the chairperson's designated representative, of each of the following departments:
 - (A) Agriculture; and
 - (B) Land and natural resources.

(c) Representatives of federal agencies and members of the private sector shall be asked to participate or consulted for advice and assistance.

(d) The council shall meet no less than twice annually to discuss and assess progress and recommend changes to the invasive species programs based on results of current risk assessments, performance standards, and other relevant data.

(e) The council shall submit a report of its activities to the governor and legislature annually.

SECTION 4. A state department that is designated as a lead agency under section 3(a)(7), with respect to a particular function of invasive species control, shall have sole administrative responsibility and accountability for that designated function of invasive species control. The lead agency shall:

- (1) Coordinate all efforts between other departments and federal and private agencies to control or eradicate the designated invasive species;
- (2) Prepare a biennial multidepartmental budget proposal for the legislature forty days before the convening of the regular session of the legislature in each odd-numbered year, showing the budget requirements of each of the lead agency's assigned invasive species function that includes the budget requirements of all departments that it leads for that species, as well as other federal and private funding for that invasive species;
- (3) Prepare and distribute an annual progress report forty days prior to the convening of each regular session of the legislature to the governor and the legislature that includes the status of each assigned function; and
- (4) Any other function of a lead agency necessary to effectuate the purposes of this Act.

SECTION 5. Notwithstanding any other law to the contrary, and in addition to any other authority provided by law that is not inconsistent with the purposes of this Act, a department is authorized to examine, control, and eradicate all instances of invasive species identified by the council for control or eradication and found on any public or private premises or in any aircraft or vessel landed or docked in waters of the State.

SECTION 6. (a) Whenever any invasive species identified by the council for control or eradication is found on private property, a department may enter such premises to control or eradicate the invasive species after reasonable notice is given to the owner of the property and, if entry is refused, pursuant to the court order in subsection (d).

(b) If applicable, a duplicate of the notice so given shall be left with one or more of the tenants or occupants of the premises. If the premises are unoccupied, notice shall be mailed to the last known place of residence of the owner, if residing in the State. If the owner resides out of the State or cannot be expeditiously provided with notice, notice left at the house or posted on the premises shall be sufficient.

(c) The department may instead cause notice to be given, and order the owner to control or eradicate the invasive species, if such species was intentionally and knowingly established by the owner on the owner's property and not naturally dispersed from neighboring properties, at the owner's expense within such reasonable time as the department may deem proper, pursuant to the notice requirements of this section.

(d) If the owner thus notified fails to comply with the order of the department, or its agent, within the time specified by the department, or if entry is refused after notice is given pursuant to subsection (a) and, if applicable subsection (b), the department or its agent may apply to the district court of the circuit in which the

property is situated for a warrant, directed to any police officer of the circuit, commanding the police officer to take sufficient aid and to assist the department member or its agent in gaining entry onto the premises, and executing measures to control or eradicate the invasive species.

(e) The department may recover by appropriate proceedings the expenses incurred by its order from any owner who, after proper notice, has failed to comply with the department's order.

(f) In no case shall the department or any officer or agent thereof be liable for costs in any action or proceeding that may be commenced pursuant to this Act.

SECTION 7. (a) Whenever any invasive species is found on state or county property or on a public highway, street, lane, alley, or other public place controlled by the State or county, notice shall be given by the department or its agent, as the case may be, to the person officially in charge thereof, and the person shall be reasonably notified and ordered by the department to control or eradicate the invasive species.

(b) In case of a failure to comply with the order, the mode of procedure shall be the same as provided in case of private persons in section 6.

SECTION 8. The invasive species council may adopt rules pursuant to chapter 91, Hawaii Revised Statutes, to effectuate this Act.

SECTION 9. Section 150A-6.1, Hawaii Revised Statutes, is amended 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.

(c) No person shall import, offer for sale, or sell any *Salvinia molesta* or *Salvinia minima* and *pistia stratiotes* plants or portion thereof within the State.”

SECTION 10. 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:

- (1) Any interim rule shall be published at least once statewide within twelve days of issuance; and
- (2) No interim rule shall be effective for more than one ~~hundred eighty days~~ year.”

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

SECTION 12. This Act shall take effect upon its approval and shall be repealed on July 1, 2008.

(Approved May 23, 2003.)

A Bill for an Act Relating to Landowners' Liability.

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 read as follows:

**“CHAPTER 520A
LANDOWNER’S LIABILITY FOR
ACCESS TO CONTROL INVASIVE SPECIES**

§520A-1 Purpose. The purpose of this chapter is to encourage owners of land to make their land and water areas available to other persons for the purpose of controlling or eradicating invasive species by limiting landowners’ liability toward persons entering thereon for such purposes.

§520A-2 Definitions. As used in this chapter, unless the context requires otherwise:

“Charge” means an admission price or fee asked in return for invitation or permission to enter or go upon the land.

“Invasive species” means any plant, plant pest, noxious weed, microorganism, biological control organism, or animal that can directly or indirectly injure or cause damage to the environment or to the interests of agriculture, horticulture, aquaculture, animal or public health, native species, natural resources, irrigation, or navigation.

“Land” means land, roads, water, water courses, private ways and buildings, structures, and machinery or equipment when attached to realty, other than lands owned by the government.

“Owner” means the possessor of a fee interest, a tenant, lessee, occupant, or person in control of the premises.

§520A-3 Duty of care of owner limited. Except as specifically recognized by or provided in section 520A-6, an owner of land owes no duty of care to keep the premises safe for entry or use by others for control or eradication of invasive species, or to give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes, or to persons entering in response to such persons who require assistance, either directly or indirectly, including but not limited to rescue, medical care, or other form of assistance.

§520A-4 Liability of owner limited. (a) Except as specifically recognized by or provided in section 520A-6, an owner of land who either directly or indirectly invites or permits without charge any person to use the property for control or eradication of invasive species does not:

- (1) Extend any assurance that the premises are safe for any purpose;
- (2) Confer upon the person the legal status of an invitee or licensee to whom a duty of care is owed;
- (3) Assume responsibility for, or incur liability for, any injury to any person or property caused by an act of omission or commission of such persons; and
- (4) Assume responsibility for, or incur liability for, any injury to any person or persons who enter the premises in response to an injured

person who entered the premises to control or eradicate invasive species.

(b) An owner of land who is required or compelled to provide access or parking for such access through or across the owner's property because of state or county land use, zoning, or planning law, ordinance, rule, ruling, or order, to reach property subject to control or eradication of invasive species, shall be afforded the same protection as to such access, including parking for such access, as an owner of land who invites or permits any person to use that owner's property for control or eradication of invasive species under subsection (a).

§520A-5 Exceptions to limitations. Nothing in this chapter limits in any way any liability which otherwise exists:

- (1) For wilful or malicious failure to guard or warn against a dangerous condition, use, or structure which the owner knowingly creates or perpetuates and for wilful or malicious failure to guard or warn against a dangerous activity which the owner knowingly pursues or perpetuates; or
- (2) For injury suffered in any case where the owner of land charges the person or persons who enter or go on the land for the control or eradication of invasive species, except that in the case of land leased to the State or a political subdivision thereof, any consideration received by the owner for such lease shall not be deemed a charge within the meaning of this section.

§520A-6 Persons using land. Nothing in this chapter shall be construed to:

- (1) Create a duty of care or ground for liability for injury to persons or property; or
- (2) Relieve any person using the land of another for control or eradication of invasive species from any obligation which the person may have in the absence of this chapter to exercise care in the person's use of such land and in the person's activities thereon, or from the legal consequences of failure to employ such care."

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

(Approved May 23, 2003.)

ACT 87

S.B. NO. 1630

A Bill for an Act Relating to Nonprofit Corporations.

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

SECTION 1. Section 414D-115, Hawaii Revised Statutes, is amended to read as follows:

"§414D-115 Other methods of electing directors. (a) A corporation may provide in its articles or bylaws for the election of directors by members or delegates:

- (1) On the basis of chapter or other organizational unit;
- (2) By region or other geographic unit;
- (3) By preferential voting; or
- (4) By any other reasonable method[; ~~or~~

(5) ~~By mail~~].

(b) Where directors or officers are to be elected by members, the bylaws or board of directors may allow the election to be conducted by mail if no less than two thousand five hundred members are eligible to vote on the record date determined pursuant to section 414D-107, and the primary purpose of the corporation is the management of a planned community as defined in section 421J-2. Except for the corporations described in this subsection, the election of directors may be conducted by mail only if so provided in a corporation's bylaws or articles of incorporation."

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

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

(Approved May 23, 2003.)

ACT 88

H.B. NO. 548

A Bill for an Act Relating to Anatomical Gifts.

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

SECTION 1. Act 88, Session Laws of Hawaii 1999, enacted statutory provisions relating to anatomical gifts to facilitate the donation of organs, including telephone access by an organ procurement organization to driver's license database information; a voluntary one dollar organ and tissue education fee attached to motor vehicle registrations; requiring an acute care hospital to report to the local organ procurement organization to determine the suitability of a potential donation; and establishment of the Hawaii organ and tissue education special fund. The provisions for the organ and tissue education fee and the Hawaii organ and tissue education special fund are scheduled to be repealed on June 30, 2003. The purpose of this Act is to make these provisions permanent by repealing the sunset provision of Act 88.

SECTION 2. Act 88, Session Laws of Hawaii 1999, is amended by amending section 9 to read as follows:

“SECTION 9. This Act shall take effect upon its approval; provided that the new sections designated as 286-A and 327-B, Hawaii Revised Statutes, in this Act shall take effect on July 1, 2000~~[- and shall be repealed on June 30, 2003].~~”

SECTION 3. Statutory material to be repealed is bracketed and stricken.

SECTION 4. This Act shall take effect on June 29, 2003.

(Approved May 27, 2003.)

A Bill for an Act Relating To Appellate Jurisdiction.

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

SECTION 1. The legislature finds that the different orders from which appeals may and, indeed, must be taken in a foreclosure case have been characterized in the past as “traps for the unwary.” Sturkie v. Han, 2 Haw. App. 140, 147, 627 P.2d 296 (1981). For more than the thirty years, the appellate courts have been analyzing their jurisdiction over the various stages of the foreclosure process. One example of this is MDG Supply v. Diversified Inv., 51 Haw. 375, 463 P.2d 525 (1969).

As recently as April, 2002, the Hawaii Supreme Court reconsidered its previous position and held that certain appeals from orders denying a Rule 60(b), Hawaii rules of civil procedure, motion were final and appealable orders. Beneficial Hawai'i, Inc. v. Casey, Jr. et al. (Supreme Court No. 22829, April 18, 2002). The court also impliedly held in that case that a Rule 54(b), Hawaii rules of civil procedure, certification of the order confirming sale did not make that order or the judgment entered pursuant to it a final and appealable judgment.

The legislature accordingly believes that it is in the best interest of borrowers, lenders, and their attorneys to codify the practice of appealing from orders in foreclosure actions in this jurisdiction.

The purpose of this Act is to codify appellate jurisdiction in foreclosure actions.

SECTION 2. Chapter 667, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§667- Appeals. (a) Without limiting the class of orders not specified in section 641-1 from which appeals may also be taken, the following orders entered in a foreclosure case shall be final and appealable:

- (1) A judgment entered on a decree of foreclosure, and if the judgment incorporates an order of sale or an adjudication of a movant's right to a deficiency judgment, or both, then the order of sale or the adjudication of liability for the deficiency judgment also shall be deemed final and appealable;
- (2) A judgment entered on an order confirming the sale of the foreclosed property, if the circuit court expressly finds that no just reason for delay exists, and certifies the judgment as final pursuant to rule 54(b) of the Hawaii rules of civil procedure; and
- (3) A deficiency judgment; provided that no appeal from a deficiency judgment shall raise issues relating to the judgment debtor's liability for the deficiency judgment (as opposed to the amount of the deficiency judgment), nor shall the appeal affect the finality of the transfer of title to the foreclosed property pursuant to the order confirming sale.

(b) An appeal shall be taken in the manner and within the time provided by the rules of court.”

SECTION 3. Nothing in this Act is intended to or shall be construed to limit appellate jurisdiction over matters properly brought before the appellate courts such as the supreme court's recognition of appellate jurisdiction over an order denying a motion brought under rule 60(b) of the Hawaii rules of civil procedure, as explained in the Casey decision cited in section 1, or the doctrine that an appeal from a final

judgment incorporates within its ambit all interlocutory orders and rulings leading to that final judgment.

SECTION 4. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.²

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. This Act shall take effect upon its approval.

(Approved May 27, 2003.)

Notes

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

ACT 90

S.B. NO. 1034

A Bill for an Act Relating to Agricultural Lands.

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 title 11, to be appropriately designated and to read as follows:

“CHAPTER NON-AGRICULTURAL PARK LANDS

§ -1 **Legislative findings.** The legislature finds that article XI, section 10, of the State Constitution establishes that “the public lands shall be used for the development of farm and homeownership on as widespread a basis as possible, in accordance with procedures and limitations prescribed by law.”

Therefore, the legislature finds that certain public lands classified for agricultural use by the department of land and natural resources should be transferred to the department of agriculture, with the approval of the board of land and natural resources and the board of agriculture, for purposes and in a manner consistent with article XI, section 10, of the State Constitution.

The purpose of this chapter is to ensure the long-term productive use of public lands leased or available to be leased by the department of land and natural resources for agricultural purposes by allowing these lands to be transferred to and managed by the department of agriculture.

§ -2 **Definitions.** For the purposes of this chapter:

“Agricultural activities” means the care and production of livestock, live-stock products, poultry, or poultry products, or apiary, horticultural, or floricultural products, or the planting, cultivating, and harvesting of crops or trees.

“Board” means the board of agriculture.

“Department” means the department of agriculture.

“Non-agricultural park lands” means lands that are not designated as agricultural parks pursuant to chapter 166.

§ -3 Transfer and management of non-agricultural park lands and related facilities to the department of agriculture. (a) Upon mutual agreement and approval of the board and the board of land and natural resources:

- (1) The department may accept the transfer of and manage certain qualify- ing non-agricultural park lands; and
- (2) Certain assets, including position counts, related to the management of existing encumbered and unencumbered non-agricultural park lands and related facilities shall be transferred to the department.

(b) The department shall administer a program to manage the transferred non-agricultural park lands under rules adopted by the board pursuant to chapter 91. The program and its rules shall be separate and distinct from the agricultural park program and its rules. Non-agricultural park lands are not the same as, and shall not be selected or managed as are lands under agricultural park leases. Notwithstanding any other law to the contrary, the program shall include the following conditions pertaining to encumbered non-agricultural park lands:

- (1) The lessee or permittee shall perform in full compliance with the existing lease or permit;
- (2) The lessee or permittee shall not be in arrears in the payment of taxes, rents, or other obligations owed to the State or any county; and
- (3) The lessee's or permittee's agricultural operation shall be economically viable as specified by the board.
- (4) No encumbered or unencumbered non-agricultural park lands with soils classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be transferred for the use or development of golf courses, golf driving ranges, and country clubs.

The transfer of non-agricultural park lands shall be done in a manner to be determined by the board of agriculture may include more than one parcel; provided that these parcels are geographically adjacent to one another.

(c) For any encumbered or unencumbered non-agricultural park lands transferred to the department that are not being utilized or required for the public purpose stated, the order setting aside the lands shall be withdrawn and the lands shall be returned to the department of land and natural resources.

§ -4 Conversion of qualified and encumbered other agricultural lands. The department shall establish criteria and rules pursuant to chapter 91 and subject to approval by the board to convert qualified and encumbered non-agricultural park lands to department leases or other forms of encumbrance.

§ -5 Extension of other agricultural lands encumbered by permit and transferred to and managed by the department. Notwithstanding chapter 171, the board shall establish criteria and rules to allow the cancellation, renegotiation, and extension of transferred encumbrances by the department. Notwithstanding any law to the contrary, leases of encumbered non-agricultural park lands transferred to the department shall not have their respective length of term or rents reduced over the remaining fixed term of the leases.

§ -6 Rules. The board shall adopt rules pursuant to chapter 91 to effectuate the purposes of this chapter."

SECTION 2. The board of agriculture and the board of land and natural resources shall jointly report to the legislature, not later than twenty days prior to the convening of the 2004 regular session, on their efforts to effectuate the transfers authorized under this Act.

SECTION 3. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Constitution of the State of Hawaii or Article I, Section 10, of the United States Constitution.

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

(Approved May 28, 2003.)

ACT 91

S.B. NO. 1258

A Bill for an Act Relating to the Agribusiness Development Corporation.

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

SECTION 1. Act 176, Session Laws of Hawaii 1998, is amended by repealing section 5.

~~["SECTION 5. Section 163D-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:~~

~~(b) The board of directors of the corporation shall consist of the members of the board of agriculture."']~~

SECTION 2. Act 176, Session Laws of Hawaii 1998, as amended by section 3 of Act 117, Session Laws of Hawaii 1999, and as amended by section 2 of Act 213, Session Laws of Hawaii 2001, is amended by amending section 19 to read as follows:

~~"SECTION 19. This Act shall take effect on July 1, 1998[; provided that section 5 shall take effect on July 1, 2005]."~~

SECTION 3. Act 117, Session Laws of Hawaii 1999, as amended by section 3 of Act 213, Session Laws of Hawaii 2001, is amended by amending section 6 to read as follows:

~~"SECTION 6. This Act shall take effect on June 30, 1999; provided that[:~~
~~(1) Section 1 shall be repealed on June 30, 2005; and~~
~~(2) Section] section 4 shall take effect on July 1, 1999."~~

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

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

(Approved May 28, 2003.)

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 legislature finds that there remains a continuing need to provide financing for the infrastructure and other elements that lead to development of low-income housing for Hawaii's citizens. The legislature also finds that there remains a strong need to continue the construction, maintenance, and operation of rental housing for our neediest low-income families and individuals in order to provide them with an affordable quality of life. This effort can be accomplished by placing responsibility for these functions in the agency with the mission of providing support and support services to those of our people most in need of assistance. Accordingly, the purpose of the Act is to transfer the housing and community development corporation of Hawaii from within the department of business, economic development, and tourism for administrative purposes to within the department of human services for administrative purposes.

SECTION 2. Section 26-14, Hawaii Revised Statutes, is amended to read as follows:

“§26-14 Department of human services. (a) The department of human services shall be headed by a single executive to be known as the director of human services.

(b) The department shall administer programs designed to improve the social well-being and productivity of the people of the State. Without limit to the generality of the foregoing, the department shall concern itself with problems of human behavior, adjustment, and daily living through the administration of programs of family, child and adult welfare, economic assistance, health care assistance, rehabilitation toward self-care and support, public housing, and other related programs provided by law.

(c) The functions and authority heretofore exercised by the department of public welfare, the bureau of sight conservation and work with the blind (except for the transcription services program transferred to the department of education), the council on veterans' affairs, and any other agency of the state or county governments with respect to the assistance and care of the indigent and medically indigent as heretofore constituted are transferred to the department of human services established by this chapter.

(d) The housing and community development corporation of Hawaii is placed within the department of human services for administrative purposes only.”

SECTION 3. Section 26-18, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

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

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

of cities, towns, and villages after changes to statistical boundaries have been made.”

SECTION 4. Section 201G-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the housing and community development corporation of Hawaii to be placed within the department of [~~business, economic development, and tourism~~] human services for administrative purposes only. The corporation shall be a public body and a body corporate and politic.”

SECTION 5. Section 201G-143, Hawaii Revised Statutes, is amended to read as follows:

“**§201G-143 Annual statements.** The corporation shall annually forward to the director of [~~business, economic development, and tourism~~] human services and the director of finance a full, detailed description and financial statement of the planning, construction, repair, maintenance, and operation of teacher housing.”

SECTION 6. All officers and employees whose positions are transferred by this Act shall be transferred to the department of human services. The functions, duties, classification, pay, benefits, tenure, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege of any officer or employee shall not be changed in the execution of the transfer. Subsequent changes in status shall be made in accordance with applicable state personnel laws, rules, policies, procedures, and collective bargaining agreements.

If an office or position held by an officer or employee is abolished as a result of this Act, the employment action affecting the officer or employee shall be in accordance with applicable state personnel laws, rules, policies, procedures, and collective bargaining agreements.

SECTION 7. All rules, policies, procedures, guidelines, and other material adopted or developed by the department of business, economic development, and tourism to implement provisions of the Hawaii Revised Statutes that are reenacted or made applicable to the department of human services by this Act, shall remain in full force and effect until amended or repealed by the department of human services pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the department of business, economic development, and tourism or director of business, economic development, and tourism in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of human services or director of human services as appropriate.

SECTION 8. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the department of business, economic development, and tourism pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the department of human services by this Act, shall remain in full force and effect. Effective July 1, 2003, every reference to the department of business, economic development, and tourism or the director of business, economic development, and tourism therein shall be construed as a reference to the department of human services or the director of human services as appropriate.

SECTION 9. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of business, economic

development, and tourism relating to the functions transferred to the department of human services shall be transferred with the functions to which they relate.

SECTION 10. All funds appropriated for fiscal biennium 2003-2005, directly or indirectly, relating to the functions, programs, or organizational segments transferred under this Act shall be appropriately transferred to the department of human services with the functions, programs, or segments to which they relate.

SECTION 11. 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 persons with which it has existing contracts or to the holders of any bond issued by the State or by any such agency, and to the extent, and only to the extent necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect on July 1, 2003.

(Approved May 28, 2003.)

ACT 93

S.B. NO. 1281

A Bill for an Act Relating to the High Technology Development Corporation.

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

SECTION 1. Section 206M-3(a), Hawaii Revised Statutes, gives the high technology development corporation powers to acquire, own, lease, hold, clear, improve, and rehabilitate real, personal, or mixed property and assign, exchange, transfer, convey, lease, sublease, or encumber any project, including by way of easements. Chapter 171, Hawaii Revised Statutes, provides, among other things, that public lands shall be managed, administered, and controlled by the department of land and natural resources, unless the lands are specifically exempted by section 171-2, Hawaii Revised Statutes. Section 171-2 does not exempt the lands held by the high technology development corporation from chapter 171. This Act amends section 171-2, Hawaii Revised Statutes, by specifically exempting the lands held by the high technology development corporation from chapter 171, Hawaii Revised Statutes, pursuant to the legislature’s intent when it created section 206M-3(a).

SECTION 2. Section 171-2, Hawaii Revised Statutes, is amended to read as follows:

“§171-2 Definition of public lands. “Public lands” means all lands or interest therein in the State classed as government or crown lands previous to August 15, 1895, or acquired or reserved by the government upon or subsequent to that date by purchase, exchange, escheat, or the exercise of the right of eminent domain, or in any other manner; including submerged lands, and lands beneath tidal waters which are suitable for reclamation, together with reclaimed lands which have been given the status of public lands under this chapter, except:

- (1) Lands designated in section 203 of the Hawaiian Homes Commission Act, 1920, as amended;
- (2) Lands set aside pursuant to law for the use of the United States;
- (3) Lands being used for roads and streets;
- (4) Lands to which the United States relinquished the absolute fee and ownership under section 91 of the Hawaiian Organic Act prior to the admission of Hawaii as a state of the United States unless subsequently placed under the control of the board of land and natural resources and given the status of public lands in accordance with the State Constitution, the Hawaiian Homes Commission Act, 1920, as amended, or other laws;
- (5) Lands to which the University of Hawaii holds title;
- (6) Lands to which the housing and community development corporation of Hawaii in its corporate capacity holds title;
- (7) Lands to which the Hawaii community development authority in its corporate capacity holds title;
- (8) Lands to which the department of agriculture holds title by way of foreclosure, voluntary surrender, or otherwise, to recover moneys loaned or to recover debts otherwise owed the department under chapter 167;
- (9) Lands which are set aside by the governor to the Aloha Tower development corporation; lands leased to the Aloha Tower development corporation by any department or agency of the State; or lands to which the Aloha Tower development corporation holds title in its corporate capacity; ~~and~~
- (10) Lands to which the agribusiness development corporation in its corporate capacity holds title~~[-]; and~~
- (11) Lands to which the high technology development corporation in its corporate capacity holds title.

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

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

(Approved May 28, 2003.)

ACT 94

H.B. NO. 475

A Bill for an Act Relating to the Public Utilities Commission.

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

SECTION 1. The legislature finds that there is a need to conduct a management audit of the public utilities commission to ensure that the commission is equipped to handle the challenges of the twenty-first century.

The legislature finds that previous management audits of the public utilities commission were conducted in 1975 and 1989 at the request of the legislature. The 1975 audit, consisting of three volumes, found serious organizational, procedural, and staffing deficiencies at the commission, and spurred the legislature to examine and reorganize the State's public utilities regulatory program that resulted in legislative changes. The 1989 audit also found serious concerns with the commission. The audit found that heavy workloads and inadequate resources, among other things,

were often cited as reasons for not doing such things as bringing rules up to date or developing more adequate complaint handling and consumer education programs.

The legislature further finds that the public utilities commission is currently faced with many challenges in meeting the needs of Hawaii's residents in a changing global economy. Since the 1989 audit of the commission, there have been significant technological advances in such areas as telecommunications and electrical restructuring that require a reexamination of the role of the commission's regulatory activities. The legislature also recognizes the need for a regulatory structure that fosters innovation and efficiency in dealing with the competitiveness of a new economy. Therefore, an audit would be helpful in assisting the public utilities commission in making such a transition.

Accordingly, the purpose of this Act is to require the auditor to conduct a management audit of the public utilities commission to assess the adequacy of the present utility regulatory process in dealing with issues, problems, and developments in complex and changing areas, such as telecommunications, energy deregulation, and intergovernmental relations and submit a report of findings and recommendations to the legislature and governor before the convening of the regular session of 2004.

SECTION 2. The auditor shall conduct a management audit of the public utilities commission that shall include, but not be limited to, the following topics:

- (1) Appropriateness and applicability of current utility legislation;
- (2) Adequacy of coverage of current public utilities commission policies, rules, and procedures;
- (3) Management of the public utilities commission and the division of consumer advocacy in terms of providing technical and analytical staff support in case management and enforcement of the public utilities commission's rules; and
- (4) The effectiveness of the public utilities commission and the division of consumer advocacy in dealing with telecommunications, energy, and other utility issues.

SECTION 3. The auditor shall submit the findings and recommendations, including any proposed legislation, to the legislature and the governor no later than twenty days prior to the convening of the regular session of 2004.

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

(Approved May 28, 2003.)

ACT 95

S.B. NO. 830

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

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

SECTION 1. Each year the legislature is faced with an ever-growing number of new requests for statutory authorization to use criminal history record information as part of employment background checks, certifications, and licensing of individuals.

The large amount of legislation, spread across an equally large number of statutes, has made it a difficult task to ensure that all affected statutes are covered when making statutory changes. The variety of legislation that covers these pro-

grams has resulted in a piecemeal approach that is reflected in conflicting language and inconsistencies across the programs, which the affected programs and the legislature want addressed.

Senate Concurrent Resolution No. 122 (2000) requested that the legislative reference bureau conduct a comprehensive study of this area that would provide a review of a number of issues including current legislation, both federal and state, with recommendations for determining who should be subject to these background checks, whether Hawaii should be an open records state, and if legislation was necessary. The bureau's study was submitted to the 2001 legislature, along with legislation that was enacted as Act 263, Session Laws of Hawaii 2001.

The bureau's study found that Hawaii's laws relating to criminal history record checks were entangled in a significant state of confusion, not quickly or easily clarified. When considered together, the various laws that govern access and use of criminal history records and laws that authorize criminal history record checks are often redundant, unnecessary, duplicative, or inconsistent, overlapping in some areas and conflicting in others. Moreover, the study found that there was little common understanding of what is meant by the term "criminal history record check", what criminal history records are available to employers or the general public, and how those records can be used in employment and licensing decisions.

Criminal history record checks cannot be examined in isolation; related laws governing access and use must also be considered. All stakeholders must be involved and informed. Accordingly, the study recommended the creation of a criminal history record check working group of all stakeholders to resolve policy issues raised by the study relating to the access and use of criminal history record information for the noncriminal justice purposes of employment and licensing, and to submit recommendations to the legislature. The criminal history record check working group was subsequently formed pursuant to Act 263, and in 2003, submitted a report to the legislature, detailing its proceedings and recommendations.

The purpose of this Act is to implement the recommendations of the criminal history record check working group to address disparate practices, inconsistencies, and duplicative language in the statutes authorizing criminal history record checks for employment background checks, certifications, and licensing of individuals.

This Act:

- (1) Clarifies and eliminates conflicting language in sections 378-2.5, 831-3, and 831-3.1, Hawaii Revised Statutes;
- (2) Eliminates inconsistencies in individual program statutes by adopting standard language in the criminal justice data center law under chapter 846; and
- (3) Amends the authorizing program statutes by referencing these standard requirements for criminal history record checks.

SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§78- Criminal history record checks. (a) The State or any of its branches, political subdivisions, or agencies shall develop standards and procedures to ensure the reputable and responsible character of applicants and employees, which shall include criminal history record checks in accordance with section 846-

(b) The State or any of its branches, political subdivisions, or agencies shall obtain criminal history information through the Hawaii criminal justice data center on an applicant for a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public

employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment; provided that:

- (1) The information obtained shall be used exclusively for the purpose of determining whether a person is suitable for working in close proximity with children, dependent adults, or persons committed to a correctional facility;
- (2) The use of the information shall be subject to those federal laws and regulations as may be now or hereafter adopted; and
- (3) The Hawaii criminal justice data center may assess applicants a reasonable fee for each criminal history record check conducted.

(c) The State or any of its branches, political subdivisions, or agencies may deny employment on the basis of criminal conviction in accordance with applicable laws and regulations as follows:

- (1) For positions with contact with children or dependent adults, if it finds that the applicant has been convicted of a crime and that by reason of the nature and circumstances of the crime, the applicant poses a risk to the health, safety, or well-being of children or dependent adults; and
- (2) For positions with contact with persons committed to a correctional facility, if it finds that the applicant has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and because of the nature of the conviction, the applicant poses a risk to the health, safety, security, or well-being of persons committed to a correctional facility, the correctional facility's staff, or the public at large.

Nothing in this subsection prohibits the State or any of its branches, political subdivisions, or agencies from denying employment for other reasons as permitted by applicable laws and regulations.

(d) For purposes of implementing this section:

- (1) For employees holding positions with contact with children or dependent adults on the effective date of this Act, no employee who has been continuously employed on a salaried basis prior to July 1, 1990, shall be subject to a criminal history record check for the position held on the effective date of this Act;
- (2) For employees holding positions with contact with persons committed to a correctional facility on the effective date of this Act, no employee shall be terminated based on convictions in the criminal history record check except those convictions occurring after July 1, 1990, or under circumstances in which the employee is a fugitive from justice; and
- (3) Nothing in this section shall abrogate an employee's rights under collective bargaining to appeal a termination of employment.

(e) As used in this section:

"Applicant" means a person who is applying for a position whose duties, location, work site, or assignments place that person in the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require a criminal history record check as a condition of employment.

"Employee" means a person holding a position whose duties, location, work site, or assignments place that person in the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require a criminal history record check as a condition of employment.

"Public employees who hold positions that are authorized by law" means a public employee whose position requires a criminal history record check as a condition of employment and the authorization for the criminal history record check is not provided by this section."

SECTION 3. Chapter 281, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§281- County liquor commissions; criminal history record check.

(a) The respective county liquor commissions may request a criminal history record check of an applicant for a liquor license in accordance with section 846-. The criminal history record check, at a minimum, shall require the applicant to disclose whether:

- (1) The applicant has been convicted in any jurisdiction of a crime that would tend to indicate the applicant may be unsuited for obtaining a liquor license; and
- (2) The judgment of conviction has not been vacated.

For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the liquor commission by means of information obtained through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information which shall include but not be limited to the applicant’s name, social security number, date of birth, and gender. This information shall be secured only for the purpose of conducting the criminal history record check authorized by this section.

(b) The applicant shall submit to the liquor commission:

- (1) A statement signed under penalty of law as to whether the applicant has ever been convicted of a crime other than a minor traffic violation;
- (2) Written consent to request and obtain criminal history record information for verification; and
- (3) Permission to be fingerprinted.

(c) The liquor commission shall obtain criminal history record information through the Hawaii criminal justice data center on the applicant. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to applicable federal laws and regulations currently or hereafter in effect.”

SECTION 4. Chapter 302A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§302A-A Employees of the department of education and teacher trainees in any public school; criminal history record checks. (a) The department of education, including the Hawaii state public library system, shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or seeking employment in any position, including teacher trainees, that places them in close proximity to children. These procedures shall include criminal history record checks in accordance with section 846-

Information obtained pursuant to this subsection shall be used exclusively by the employer or prospective employer for the purpose of determining whether a person is suitable for working in close proximity to children. All such decisions shall be subject to applicable federal laws and regulations currently or hereafter in effect.

- (b) The employer or prospective employer may refuse to employ, and may:
- (1) Refuse to issue a teaching or other educational certificate;
 - (2) Revoke the teaching or other educational certificate;
 - (3) Refuse to allow or continue to allow teacher training; or
 - (4) Terminate the employment of any employee or deny employment to an applicant,

if the person has been convicted of a crime, and if the employer or prospective employer 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. Refusal, revoca-

tion, or termination may occur only after appropriate investigation and notification to the employee or applicant for employment of results and planned action, and after the employee or applicant for employment is given an opportunity to meet and rebut the finding. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 or 89, or administrative regulation of the department of education.

(c) This section shall not be used by the department to secure criminal history record checks on persons who have been employed continuously by the department, including the state public library system, on a salaried basis prior to July 1, 1990.

(d) Notwithstanding any other law to the contrary, for purposes of this section, the department of education, including the Hawaii state public library system, shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.

§302A-B Employees of private schools; criminal history record checks.

(a) Private schools shall develop procedures for obtaining verifiable information regarding the criminal history of persons who are employed or are seeking employment in positions that place them in close proximity to children. These procedures shall include criminal history record checks in accordance with section 846-. 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 fee charged by the Hawaii criminal justice data center to perform criminal history record checks may be passed on to the applicant for employment by the private school or designated organization.

(b) Information obtained pursuant to this section shall be used exclusively by the private school or designated organization for the purpose of determining whether 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 for employment 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. Refusal or termination may occur only after appropriate investigation, notification to the employee or applicant for employment of results and planned action, and after the employee or applicant for employment is given an 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 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) As used in this section:

“Designated organization” means a private organization that receives criminal history record check information from the Hawaii criminal justice data center on behalf of private schools.”

SECTION 5. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- 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 in accordance with section 846-

(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:

- (1) Be subject to criminal history record checks in accordance with section 846- ; and
- (2) Provide to the department of health written consent for the department to obtain criminal history record information for verification.

Information obtained pursuant to subsection (a) and this subsection shall be used exclusively by the department of health for 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 for employment 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. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 or 89.

(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 purposes of this section:

“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 investigations, notifications, or hearings under this section in accordance with chapter 91.”

SECTION 6. Chapter 421I, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§421I- Employees of cooperative housing corporations; background checks. The board of directors of a cooperative housing corporation, or the manager of a cooperative housing project, upon the written authorization of an applicant for employment as a security guard or manager or for a position that would allow the employee access to the keys of or entry into the units in the project or access to corporation funds, may conduct a background check on the applicant, or direct another responsible party to conduct the check. Before initiating or requesting a check, the board of directors or the manager shall first certify that the signature on the authorization is authentic and that the person is an applicant for employment. The background check, at a minimum, shall require the applicant to disclose whether:

- (1) The applicant has been convicted in any jurisdiction of a crime that would tend to indicate the applicant is unsuited for employment as an employee with access to corporation funds or the keys of or entry to the units in the project; and
- (2) The judgment of conviction has not been vacated.

For purposes of this section, the criminal history disclosure made by the applicant may be verified by the board of directors, manager, or other responsible party, if so directed by the board or the manager, by means of information obtained through the Hawaii criminal justice data center. The board or manager may conduct a criminal history record check directly through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information which shall include but not be limited to the applicant’s name, social security number, date of birth, and gender. This information shall be secured only for the purpose of conducting the criminal history record check authorized by this section. Failure of a cooperative housing corporation or the manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against the corporation or manager for acts and omissions of the employee hired.”

SECTION 7. Chapter 846, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§846- Criminal history record checks. (a) The agencies and other entities named in subsection (b) may conduct state and national criminal history record checks on the personnel identified in subsection (b), for the purpose of determining suitability or fitness for a permit, license, or employment; provided that the Hawaii criminal justice data center may charge a reasonable fee for the criminal history record checks performed. The criminal history record check shall include the submission of fingerprints to:

- (1) The Federal Bureau of Investigation for a national criminal history record check; and
- (2) The Hawaii criminal justice data center for a state criminal history record check that shall include non-conviction data.

Criminal history record information shall be used exclusively for the stated purpose for which it was obtained.

(b) Criminal history record checks may be conducted by:

- (1) The department of health on operators of adult foster homes or developmental disabilities domiciliary homes and their employees, as provided by section 333F-22;
- (2) The department of health on prospective employees, persons 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, as provided by section 321- ;
- (3) The department of education on employees, prospective employees, and teacher trainees in any public school in positions that necessitate close proximity to children as provided by 302A-A;
 - (4) The counties on employees and prospective employees who may be in positions that place them in close proximity to children in recreation or child care programs and services;
 - (5) The county liquor commissions on applicants for liquor licenses as provided by section 281- ;
 - (6) The department of human services on operators and employees of child caring institutions, child placing organizations, and foster boarding homes as provided by section 346-17;
 - (7) The department of human services on prospective adoptive parents as established under chapter 346;
 - (8) The department of human services on applicants to operate child care facilities, prospective employees of the applicant, and new employees of the provider after registration or licensure as provided by section 346-19.7;
 - (9) The department of human services on persons exempt pursuant to section 346-152 to be eligible to provide child care and receive child care subsidies as provided by section 346-154;
 - (10) The department of human services on operators and employees of home- and community-based case management agencies and operators and other adults, except for adults in care, residing in foster family homes as provided by section 346-E;
 - (11) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
 - (12) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
 - (13) The department of public safety on employees and prospective employees who are directly involved with the treatment and care of persons committed to a correctional facility or who possess police powers including the power of arrest as provided by section 353C-5;
 - (14) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
 - (15) Private schools and designated organizations on employees and prospective employees who may be in positions that necessitate close proximity to children; provided that private schools and designated organizations receive only indications of the states from which the national criminal history record information was provided as provided by section 302A-B;
 - (16) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-A;
 - (17) The State or any of its branches, political subdivisions, or agencies on applicants and employees holding a position that has the same type of contact with children, dependent adults, or persons committed to a correctional facility as other public employees who hold positions that are authorized by law to require criminal history record checks as a condition of employment as provided by section 78- ; and
 - (18) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.

(c) The applicant or employee subject to a criminal record check shall provide to the requesting agency:

- (1) Consent to obtain the applicant's or employee's fingerprints and conduct the criminal history record check;
- (2) Identifying information required by the Federal Bureau of Investigation which shall include but not be limited to name, date of birth, height, weight, eye color, hair color, gender, race, and place of birth; and
- (3) A statement indicating whether the applicant or employee has ever been convicted of a crime."

SECTION 8. Chapter 333F, Hawaii Revised Statutes, is amended as follows:

1. By deleting the definitions of "criminal history record check" and "criminal history record information" in section 333F-1.

~~["Criminal history record check" means an examination of an individual's criminal history records by means including, but not limited to, fingerprint analysis and name inquiry into state and national criminal history record files.~~

~~"Criminal history record information" means criminal history information received from state and national criminal history record checks."]~~

2. By amending section 333F-22(a) to read:

~~"(a) The department shall adopt rules pursuant to chapter 91 to [assure] ensure the reputable and responsible character of an applicant to operate an adult foster home or developmental disabilities domiciliary home, of existing providers and their employees, of current and prospective employees of the applicant, and of new employees of the provider after certification or licensure, which shall provide for, but not be limited to, criminal history record checks[.] in accordance with section 846-____."~~

3. By amending section 333F-22(c), (d), and (e) to read:

~~"(c) An applicant to operate an adult foster home or developmental disabilities domiciliary home [shall submit to the department, with the applicant's application for certification or licensure, statements signed under penalty of perjury by the applicant] and all current and prospective employees of the applicant [indicating whether the applicant or any of the current or prospective employees of the applicant have ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing] shall be subject to criminal history record checks in accordance with section 846-____, and shall provide consent to the department to [conduct a criminal history record check and to] obtain [other] criminal history record information for verification. [The applicant and current or prospective employees of the applicant shall also be fingerprinted for the purpose of a national criminal history record check.]~~

~~(d) Each existing provider or provider [shall submit to the department statements signed under penalty of perjury by] and all employees hired after the initial licensure or certification of the existing provider or provider [indicating whether any of the employees has ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing] shall be subject to criminal history record checks in accordance with section 846-____, and shall provide consent to the department to [conduct a criminal history record check and] obtain [other] criminal history record information for verification. [The employees shall also be fingerprinted for the purpose of the national criminal history record check.]~~

~~(e) The department is authorized to obtain criminal history record information through the Hawaii criminal justice data center on existing providers and their employees upon their next licensure or certification renewal date, and on any applicant and all current and prospective employees of the applicant, including all new employees after the applicant is issued a certification or license under this chapter. [The Hawaii criminal justice data center may assess the existing providers~~

and their employees, applicants, current or prospective employees, or new employees of the applicant a reasonable fee for each criminal history record check performed.]”

SECTION 9. Chapter 346, Hawaii Revised Statutes, is amended as follows:

1. By deleting the definition of “criminal history record check” in section 346-16.

[““Criminal history record check” means an examination of an individual’s criminal history record through:

- (1) An initial fingerprint analysis and name inquiry into state and national criminal history record files;
 - (2) Subsequent fingerprint analyses for new hires and rehires; and
 - (3) A name inquiry into the state criminal history record files.”]
2. By amending section 346-17 to read:

“§346-17 Child placing organizations, child caring institutions, and foster boarding homes; authority over, investigation of, and standards for. (a) No child placing organization shall engage in the investigation, placement, and supervision of minor children in foster care unless it meets the standards of conditions, management, and competence set by the department of human services.

(b) No child caring institution shall receive minor children for care and maintenance unless it meets the standards of conditions, management, and competence to care for and train children set by the department.

(c) No foster boarding home shall receive for care and maintenance any child unless:

- (1) It meets with the standards of conditions, management, and competence set by the department; and
- (2) The foster boarding home applicant successfully completes foster parent training; provided that after July 1, 1999, new special licensed or relative foster home care providers shall successfully complete foster parent training within the first year following placement of the first child into the new special licensed or relative foster home.
- (d) The department shall adopt rules pursuant to chapter 91 relating to:
 - (1) Standards for the organization and administration of child placing organizations;
 - (2) Standards of conditions, management, and competence for the care and training of minor children in child caring institutions and foster boarding homes; and
 - (3) Standards of conditions and competence of operation of foster boarding homes as may be necessary to protect the welfare of children.

(e) All rules of the department shall have the force and effect of law, and any violation thereof or of this section shall be punishable by a fine of not more than \$200.

(f) As a condition for a certificate of approval, any organization, institution, or home shall [meet]:

- (1) Meet the standards [to assure] ensuring the reputable and responsible character of its operators and employees [by complying with the requirements of a];
- (2) Be subject to criminal history record [check under section 346-19.6.] checks in accordance with section 846- ; and
- (3) Provide consent to the department to obtain criminal history record information.

New employees of the organization, institution, or home shall be fingerprinted within five working days of employment.

(g) Upon approval of the organization, institution, or home, the department or its authorized agents shall issue a certificate of approval that shall continue in force for one year or for two years if the organization, institution, or home meets the criteria established by the department, unless sooner revoked for cause. The certificate shall be renewed by the department or its authorized agents, after annual or biennial investigation, if the investigation discloses that the organization, institution, or home continues to meet with the standards set by the department. The certificate of approval shall be a permit to operate the child placing organization, child caring institution, or foster boarding home, and no person or organization shall operate or maintain the organization, institution, or home without the certificate.

(h) Any child placing organization, child caring institution, or foster boarding home shall be subject to investigation at any time and in a manner, place, and form as may be prescribed by the department or its authorized agents.

(i) As used in this section, "foster parent training" means training or instruction in special skills and knowledge to care for foster children.

(j) The department shall request a criminal history record check through the Hawaii criminal justice data center on all operators, employees, and new employees of child care institutions, child placing organizations, and foster boarding homes subject to licensure pursuant to section 846-_____.

(k) The department may deny a certificate of approval if an operator, employee, or new employee of the facility was convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and if the department finds that the criminal history record of an operator, employee, or new employee poses a risk to the health, safety, or well-being of the children in care.

(l) The department shall make a name inquiry into the criminal history records for the first two years of certification of a foster boarding home and annually or biennially thereafter depending on the certification status of the home.'

3. By repealing section 346-19.6.

4. By amending section 346-19.7 to read:

~~"[H]§346-19.7 [Criminal history record checks: prospective] Prospective adoptive parents; standards and home studies.[H]~~ (a) The department shall develop standards to [assure] ensure 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.~~] in accordance with section 846-_____.

(c) Except as otherwise specified, any person who seeks to become an adoptive parent shall [meet]:

- (1) ~~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]~~ Be subject to criminal history record [check as provided in subsection (b)] checks in accordance with section 846-_____ ; and
- (3) Provide consent to the department to obtain [other] criminal history record 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.]'~~

5. By deleting the definition of "criminal history record check" in section 346-151.

~~[""Criminal history record check" means an examination of an individual's criminal history record through:~~

- ~~(1) An initial fingerprint analysis and name inquiry into state and national criminal history record files;~~
- ~~(2) Subsequent fingerprint analyses for new hires and rehires; and~~
- ~~(3) An annual name inquiry into the state criminal history record files.]"~~

6. By amending section 346-154(a), (b), (c), and (d) to read:

~~“(a) The department shall develop standards to ensure the reputable and responsible character of an applicant to operate a child care facility, prospective employees of the applicant, and new employees of the provider after registration or licensure, which shall include [but not be limited to] criminal history record checks in accordance with section 846-_____ and child abuse record checks.~~

~~(b) An applicant to operate a child care facility shall [submit]:~~

- ~~(1) Be subject to criminal history record checks in accordance with section 846-_____;~~
- ~~(2) Submit to the department under penalty of [false swearing,] law, statements signed by the applicant and prospective employees of the applicant];~~
- ~~(4) Indicating] indicating whether the applicant or any of the prospective employees has ever been [convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been] confirmed to have abused or neglected a child, including threatened harm; and~~
- ~~[(2) Providing] (3) Provide consent to the department to conduct a criminal history record check in accordance with section 846-_____ and a child abuse record check, and to obtain criminal history and child abuse record information for verification. [The applicant and prospective employee of the applicant shall be fingerprinted for the purpose of complying with the criminal history record check.]~~

~~(c) A provider shall [submit]:~~

- (1) Be subject to criminal history record checks in accordance with section 846-_____;
- (2) Submit to the department [~~under penalty of false swearing,~~] a statement signed by any employee hired after the initial licensure or registration[~~:~~ ~~indicating~~] that requires the employee to indicate under penalty of law, whether the employee has ever been [~~convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, or ever been~~] confirmed to have abused or neglected a child, including threatened harm; and
- (3) Provide consent to the department to conduct a criminal history record check in accordance with section 846-_____ and a child abuse record check, and to obtain criminal history and child abuse record information for verification. [~~The employee shall be fingerprinted for the purpose of complying with the criminal history record check.~~]

(d) The department shall obtain criminal history record information through the Hawaii criminal justice data center and child abuse record information from the department on the applicant and any prospective employee of the applicant, including any new employee retained after the applicant is issued a registration or license under this part. [~~The Hawaii criminal justice data center may assess the applicant, prospective employee, or new employee a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to applicable federal laws and regulations.~~], which shall include an annual name inquiry into the state criminal history record files.”

SECTION 10. Chapter 352, Hawaii Revised Statutes, is amended as follows:

1. By deleting the definition of “criminal history record check” in section 352-1.

[““Criminal history record check” means an examination of an individual’s criminal history record through:

- (1) An initial fingerprint analysis and name inquiry into state and national criminal history record files;
- (2) Subsequent fingerprint analyses for new hires and rehires; and
- (3) An annual name inquiry into the state criminal history record files.”]

2. By amending section 352-5.5 to read:

“[E]§352-5.5[H] **Criminal history record checks.** (a) The department shall develop standards to [assure] ensure the reputable and responsible characters of staff members of the Hawaii youth correctional facility which shall include [~~but not be limited to~~] criminal history record checks[~~:~~] in accordance with section 846-_____.

(b) Staff members, as defined in section 352-5, including any new staff members, shall [~~submit a statement under penalty of perjury indicating whether the staff member was ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less and providing~~]:

- (1) Be subject to criminal history record checks in accordance with section 846-_____ ; and
- (2) Provide consent to the department to [~~conduct a criminal history record check and to~~] obtain other criminal history record information for verification.

[~~The staff members shall be fingerprinted for the purpose of complying with the criminal history record check.~~] New staff members shall be fingerprinted within five working days of beginning employment for the purpose of complying with the criminal history record check.

(c) The department shall obtain criminal history record information through the Hawaii criminal justice data center on all staff members and new staff members of the Hawaii youth correctional facility. ~~[The Hawaii criminal justice data center may assess the staff members and new staff members a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.]~~ The department shall conduct an annual name inquiry into the state criminal history record files.

(d) The department may deny employment to a staff member or new staff member who was convicted of a crime other than a minor traffic violation involving ~~[fifty dollars]~~ \$50 or less and if the department finds that because of the criminal history record of the staff member or new staff member, the staff member poses a risk to the health, safety, security, or well-being of youths under supervision and confinement.”

SECTION 11. Section 353C-5, Hawaii Revised Statutes, is amended to read as follows:

“§353C-5 Criminal history record checks. (a) The department shall develop standards to ~~[assure]~~ ensure the reputable and responsible characters of staff members of its correctional facilities which shall include ~~[but not be limited to]~~ criminal history record checks.

(b) For ~~[the]~~ purposes of this section~~[-“staff”]~~:

“Staff member” means any employee of the department of public safety who is directly involved with the treatment and care of persons committed to a facility or who possesses police powers, including the power of arrest~~[-and “pro-~~
~~spective”]~~.

“Prospective staff member” means any applicant for a job in the department of public safety that is directly involved with the treatment and care of persons committed to a facility or that requires the exercise of police powers, including the power to arrest in the performance of its duties.

~~[Every staff member and prospective staff member shall submit a statement under penalty of unsworn falsification to authorities indicating whether the staff member or prospective staff member was ever convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The staff member shall be fingerprinted for the purpose of complying with the criminal history record check. The prospective staff member shall be fingerprinted and the criminal history record check shall be completed prior to beginning employment.]~~

(c) The department shall obtain criminal history record information through the Hawaii criminal justice data center in accordance with section 846-____, on all staff and prospective staff members of the department of public safety. ~~[The Hawaii criminal justice data center may assess prospective staff members a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter adopted.]~~ Prospective staff members shall be fingerprinted and the criminal history record check shall be completed prior to beginning employment.

(d) The department may deny employment to a prospective staff member who was convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and if the department finds from the prospective staff member’s criminal history record that the prospective staff member poses a risk to the health, safety,

security, or well-being of inmates under supervision and confinement, other staff, or the public at large.

(e) Staff members shall not be subject to termination based on findings in their criminal records except for those whose conviction of a crime occurred after May 8, 1989, or under circumstances in which a staff member is ~~[[a]]~~ fugitive from justice. ~~[The convictions of staff]~~ Staff members shall be subject to termination ~~[must be]~~ for crimes other than a minor traffic violation involving a fine of \$50 or less, ~~[and] where because of the staff member's conviction record, the staff member [must pose]~~ poses a risk to the health, safety, security, or well-being of inmates under supervision and confinement, other staff, or the public at large.”

SECTION 12. Section 378-2.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§378-2.5]]~~ **Employer inquiries into conviction record.** (a) Subject to subsection (b), an employer may inquire about and consider an individual’s criminal conviction record concerning hiring, termination, or the terms, conditions, or privileges of employment; provided that the conviction record bears a rational relationship to the duties and responsibilities of the position.

(b) Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

(c) For purposes of this section, “conviction” means an adjudication by a court of competent jurisdiction that the defendant committed a crime, not including final judgments required to be confidential pursuant to section 571-84; provided that the ~~[period for which the]~~ employer may ~~[examine]~~ consider the employee’s conviction record falling within a period that shall not exceed the most recent ten years~~[-]~~, excluding periods of incarceration. If the employee or prospective employee claims that the period of incarceration was less than what is shown on the employee’s or prospective employee’s conviction record, an employer shall provide the employee or prospective employee with an opportunity to present documentary evidence of a date of release to establish a period of incarceration that is shorter than the sentence imposed for the employee’s or prospective employee’s conviction.

(d) Notwithstanding subsections (b) and (c), the requirement that inquiry into and consideration of a prospective employee’s conviction record may take place only after the individual has received a conditional job offer, and the limitation to the most recent ten-year period, excluding the period of incarceration, shall not apply to employers who are expressly permitted to inquire into an individual’s criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

- (1) The State or any of its branches, political subdivisions, or agencies pursuant to section 831-3.1 and section 78-_____;
- (2) The department of education pursuant to section 302A-A;
- (3) The department of health with respect to employees, 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 pursuant to section 321-_____;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-_____;
- (6) Armed security services pursuant to section 261-17(b);

- (7) Providers of a developmental disabilities domiciliary home pursuant to section 333F-22;
- (8) Private schools pursuant to section 378-3(8) and section 302A-B;
- (9) Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
- (10) Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
- (11) Employers in the business of insurance pursuant to section 431:2-201.3;
- (12) Employers of individuals or supervisors of individuals responsible for screening passengers or property under 49 U.S.C. §44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to 49 U.S.C. §44936(a);
- (13) The department of human services pursuant to section 352-5.5;
- (14) The public library system pursuant to section 302A-A;
- (15) The department of public safety pursuant to section 353C-5;
- (16) The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-____; and
- (17) The board of directors of an association of apartment owners, or the manager of a condominium project pursuant to section 514A-82.1.”

SECTION 13. Section 463-9, Hawaii Revised Statutes, is amended to read as follows:

“**§463-9 Form of application for license.** Application for a license shall be made on a form prescribed by the board which may require a statement of the applicant’s full name, age, date and place of birth, residence and business address, the business or occupation the applicant has engaged in for ten years immediately preceding the date of the filing of the application with names and addresses of employers, the date and place of any arrest or conviction of a crime where there has not been any order annulling or expunging the sentence or of any offense involving moral turpitude, whether the applicant has received treatment for any psychiatric or psychological disorder, or whether the treatment has ever been recommended, and such information, including fingerprints of the applicant and such other information as the board may require to investigate the character, competency, and integrity of the applicant. The board shall conduct such investigation of the applicant’s background, character, competency, and integrity as it deems appropriate, and shall request, in accordance with section 846-____, criminal history records of the applicant from each jurisdiction in which the application form indicates the applicant lived for any substantial period of time. The Hawaii criminal justice data center shall provide such information on request to the director of commerce and consumer affairs.”

SECTION 14. Section 514A-82.1, Hawaii Revised Statutes, is amended to read as follows:

“**[§514A-82.1] Employees of condominiums; background check.** The board of directors of an association of apartment owners or the manager of a condominium project, upon the written authorization of an applicant for employment as security guard or manager or for a position which would allow the employee access to the keys of or entry into the units in the condominium project or access to

association funds, may conduct a background check on the applicant or direct another responsible party to conduct the check. Before initiating or requesting a check, the board of directors or the manager shall first certify that the signature on the authorization is authentic and that the person is an applicant for such employment. The background check, at a minimum, shall require the applicant to disclose whether the applicant has been convicted in any jurisdiction of a crime which would tend to indicate that the applicant may be unsuited for employment as a condominium employee with access to association funds or the keys of or entry into the units in the condominium project, and the judgment of conviction has not been vacated. For the purpose of this section, the criminal history disclosure made by the applicant may be verified by the board of directors, manager, or other responsible party, if so directed by the board or the manager, by means of information obtained through the Hawaii criminal justice data center. The applicant shall provide the Hawaii criminal justice data center with personal identifying information which shall include but not be limited to the applicant's name, social security number, date of birth, and gender. This information shall be used only for the purpose of conducting the criminal history record check authorized by this section. Failure of an association of apartment owners or the manager to conduct or verify or cause to have conducted or verified a background check shall not alone give rise to any private cause of action against an association or manager for acts and omissions of the employee hired."

SECTION 15. Chapter 571, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "criminal history record check" in section 571-2 to read:

~~"~~"Criminal history record check" means [an examination of an individual's criminal history record through:

- ~~(1) An initial fingerprint analysis and name inquiry into state and national criminal history record files;~~
- ~~(2) Subsequent fingerprint analyses for new hires and rehires; and~~
- ~~(3) An annual name inquiry into the state criminal history record files.]~~

submission of an individual's fingerprints and other identifying information to the Federal Bureau of Investigation and to the Hawaii criminal justice data center in accordance with chapter 846."

2. By amending section 571-34 to read:

~~"[§571-34] Criminal history record checks. The judiciary shall develop standards to [assure] ensure the reputable and responsible character of employees of detention facilities defined in this chapter which shall include but not be limited to criminal history record checks. [Employees of] All employees and applicants for employment at facilities established under section 571-33[, including new employees shall submit a statement under penalty of perjury indicating whether the employee or new employee was ever convicted of a crime other than a minor traffic violation involving a fine of fifty dollars or less. The statement] shall be subject to criminal history record checks and shall provide consent to the judiciary to [conduct a criminal history record check and to] obtain other criminal history record information for verification. [Employees shall be fingerprinted for the purpose of complying with the criminal history record check. New employees shall be fingerprinted for the purpose of complying with the criminal history record check.] The judiciary shall obtain criminal history record information through the Hawaii criminal justice data center on all employees and [new employees. The Hawaii criminal justice data center may assess employees and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained, and shall be subject to such federal laws and federal regulations as may be now or hereafter~~

adopted.] applicants. The judiciary may [~~deny employment to~~] terminate an employee or [~~new employee~~] deny employment to an applicant who was convicted of a crime [other than a minor traffic violation involving a fine of fifty dollars or less] and if the judiciary finds that the [person's] criminal history record indicates that the employee or [new employee] applicant poses a risk to the health, safety, security, or well-being of youths under detention.'

SECTION 16. Chapter 831, Hawaii Revised Statutes, is amended to read as follows:

1. By amending section 831-3 to read:

“§831-3 Rights retained by convicted person. Except as otherwise provided by [~~this chapter and chapter 351, part VI,~~] law, a person convicted of a crime does not suffer civil death or corruption of blood or sustain loss of civil rights or forfeiture of estate or property, but retains all of the person's rights, political, personal, civil, and otherwise, including the right to hold public office or employment, to vote, to hold, receive, and transfer property, to enter into contracts, to sue and be sued, and to hold offices of private trust in accordance with law.”

2. By amending section 831-3.1 to read:

“§831-3.1 Prior convictions; criminal records; noncriminal standards.

(a) A person shall not be disqualified from public office or employment by the State or any of its branches, political subdivisions, or agencies except under section 831-2(c), or be disqualified to practice, pursue, or engage in any occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is required by the State or any of its branches, political subdivisions, or agencies, solely by reason of a prior conviction of a crime; provided that [with]:

- (1) With respect to liquor licenses, a person who has been convicted of a felony may be denied a liquor license by the liquor commission[-]; and
- (2) A person who within the past ten years, excluding any period of incarceration, has been convicted of a crime that bears a rational relationship to the duties and responsibilities of a job, occupation, trade, vocation, profession, or business may be denied employment, a permit, license, registration, or certificate. Nothing in this subsection shall abrogate any applicable appeal rights under chapters 76 or 89.

(b) [~~The following criminal records shall not be used, distributed, or disseminated by the State or any of its political subdivisions or agencies in connection with an application for any said employment, permit, license, registration, or certificate:~~

- (1) ~~Records of arrest not followed by a valid conviction;~~
- (2) ~~Convictions which have been annulled or expunged;~~
- (3) ~~Convictions of a penal offense for which no jail sentence may be imposed;~~
- (4) ~~Conviction of a misdemeanor in which the period of twenty years has elapsed since date of conviction and during which elapsed time there has not been any subsequent arrest or conviction.~~

Except as provided in paragraphs (1) to (4), the] The State or any of its branches, political subdivisions, or agencies may consider as a [possible] justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of [a penal offense] any crime, except those which have been expunged, occurring within the past ten years, excluding any period of incarceration, when that crime bears a rational relationship to the duties and responsibilities of the job, occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

(c) The State or any of its branches, political subdivisions, or agencies may consider as a possible justification for the refusal, suspension, or revocation of any employment or of any permit, license, registration, or certificate, any conviction of a crime, not occurring within the past ten years, excluding any period of incarceration, except those which have been expunged, when [such] the offense directly relates [(i) to the] to:

- (1) The applicant's possible performance in the job applied for[; or (ii) to the];
- (2) The employee's possible performance in the job [which] that the employee holds[;]; or [(iii) to the]
- (3) The applicant's or holder's possible performance in the occupation, trade, vocation, profession, or business for which a permit, license, registration, or certificate is applied for or held.

For the purpose of this subsection, such refusal, suspension, or revocation may occur only when the agency determines, after investigation in accordance with chapter 91, or in the case of employment in the civil service, 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, that the person so convicted has not been sufficiently rehabilitated to warrant the public trust[; ~~provided that discharge from probation or parole supervision, or a period of two years after final discharge or release from any term of imprisonment, without subsequent criminal conviction, may be considered as one of many factors to determine sufficiency of rehabilitation. A person deemed ineligible for employment in the civil service shall be entitled to appeal any and all adverse decisions to the civil service commission within twenty days after the notice of action has been sent to the person.~~]

~~[(e)] (d) When considering noncriminal standards [such as good moral character, temperate habits, habitual intemperate use of intoxicants, trustworthiness, and the like,] in the granting, renewal, suspension, or revocation of any employment or any such permit, license, registration, or certificate, the [agency] State or any of its branches, political subdivisions, or agencies shall not take into consideration the conviction of any crime except as provided by [subsection] subsections (b)[-] and (c). [Nothing in this section shall be construed to otherwise affect a proceeding before any agency which does not involve the conviction of a crime.]~~

(e) A person who applies for a position in the civil service and is denied employment in that position on the basis of a criminal conviction pursuant to this section, may appeal the adverse decision to the civil service commission or merit appeals board, as appropriate, within twenty days after the notice of action has been sent to the person.

~~[(d) This] (f) Notwithstanding any law to the contrary, this section shall not apply to:~~

- (1) Denials by the department of human services, the department of health, or any other branch, political subdivision, or agency of any certificate of approval, license, or permit to any organization, institution, home, or facility subject to licensure under [chapter] chapters 321, 333F, and 346;
- (2) Denials of employment as a staff member of a youth correctional facility operated under chapter 352;
- (3) Denials of employment as an employee of a detention or shelter facility established or designated pursuant to section 571-33; [and]
- (4) Denials of employment as a staff member of a correctional facility [operated under] pursuant to chapter 353[-], or as a staff member that requires the exercise of police powers, including the power to arrest, in

- the performance of the staff member's duties pursuant to chapter 353C; and
- (5) Denials of employment of applicants or employees pursuant to section 78-_____.

SECTION 17. Act 273, Session Laws of Hawaii 2001, is amended as follows:

1. By deleting the definition of "criminal history record check" in section 346-A in the new part added to the Hawaii Revised Statutes in section 1.

["~~"Criminal history record check" means an examination of an individual's criminal history record through:~~

- (1) ~~A search of the individual's fingerprints in the Federal Bureau of Investigation criminal history record files;~~
- (2) ~~Further analysis and search for other information available for individuals found in the Federal Bureau of Investigation criminal history record files;~~
- (3) ~~Subsequent fingerprint analyses for required individuals; and~~
- (4) ~~A name inquiry into the state criminal history record files.'~~"]

2. By amending section 346-E in the new part added to the Hawaii Revised Statutes in section 1 to read:

"§346-E Criminal history record checks. (a) The department shall develop standards to ensure the reputable and responsible character of operators and employees of the home and community-based case management agencies and operators and other adults, except for adults in care, residing in community care foster family homes as defined in this chapter, which shall include but not be limited to criminal history record checks[.] in accordance with section 846-_____.

(b) An applicant for a home and community-based case management agency license [~~shall submit statements signed under penalty of perjury by the]~~ and operators, employees, and new employees of [the] a home and community-based case management agency[., indicating whether the operators, employees, or new employees have ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less, and the details thereof.

~~The operators, employees, and new employees shall also provide consent to the department to conduct a criminal history record check and to obtain other criminal history record information for verification. The operators and employees of the home and community-based case management agency shall be fingerprinted for the purpose of complying with the]~~ shall be subject to criminal history record [check.] checks in accordance with section 846-_____, and shall provide consent to obtain other criminal history record information for verification. New employees of the home and community-based case management agency shall be fingerprinted within five working days of employment, for the purpose of complying with the criminal history record check requirement.

~~[The department shall obtain criminal history record information through the Hawaii criminal justice data center on all operators, employees, and new employees of home and community-based case management agencies subject to licensure pursuant to this section. The Hawaii criminal justice data center may assess the operators, employees, and new employees a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.]~~

The department shall make a name inquiry into the criminal history records for the first two years a home and community-based case management agency is

licensed and annually or biennially thereafter depending on the licensure status of the home and community-based case management agency.

(c) An applicant for a certificate of approval as a community care foster family home ~~[shall submit to the home and community based case management agency, statements signed under penalty of perjury by the operators]~~ and operators and other adults residing in ~~[the]~~ a community care foster family home~~], except for adults receiving care, indicating whether they have been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less. The operators and other adults residing in the home, except for adults receiving care, shall also provide consent to the certifying agency to conduct a]~~ shall be subject to criminal history record ~~[check]~~ checks in accordance with section 846-~~____~~, and ~~[to]~~ shall obtain other criminal history record information for verification. ~~[The operators and other adults residing in the home, except for adults receiving care, shall be fingerprinted for the purpose of complying with the criminal history record check.]~~

The certifying agency shall obtain criminal history record information through the Hawaii criminal justice data center on all operators and other adults residing in the community care foster family home, except for adults receiving care, subject to certification pursuant to this section. The Hawaii criminal justice data center may assess the operators and other adults a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to federal laws and regulations as may be now or hereafter adopted.

The certifying agency shall make a name inquiry into the criminal history records for the first two years a community care foster family home is certified and annually or biennially thereafter depending on the certification status of the community care foster family home.”

SECTION 18. Part III of chapter 846, Hawaii Revised Statutes, is repealed.

SECTION 19. The criminal history record checks working group established by Act 263, Session Laws of Hawaii 2001, is hereby extended to June 30, 2005, to continue its work on tasks as shall be assigned by the legislature relating to a comprehensive review and analysis of all issues related to the use of criminal history record information for employment, licensing, and other matters. The office of the public defender shall be included in the working group to represent the interests of persons with conviction and arrest or nonconviction data in their criminal history records. The working group shall submit a report to the legislature of its responses, findings, and recommendations not less than twenty days before the convening of the regular session of 2005, including proposed legislation and identification of resources necessary to support or enforce recommendations for new or amended law and policy. The department of the attorney general and department of human resources development shall jointly provide administrative support upon request from the working group. The legislative reference bureau shall provide technical assistance to the working group in drafting legislation.

SECTION 20. In codifying the new sections added by section 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 21. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 22. This Act shall take effect upon its approval; provided that section 17 of this Act shall take effect on June 29, 2003, if a bill that repeals or

extends the sunset provision in section 6 of Act 273, Session Laws of Hawaii 2001, is passed by the legislature in the regular session of 2003, and becomes an Act.

(Approved May 28, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 96

S.B. NO. 1496

A Bill for an Act Relating to Agriculture.

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

SECTION 1. Act 188, Session Laws of Hawaii 2000, is amended by amending section 6 to read as follows:

“SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [~~2003.~~] 2005.”

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

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

(Approved May 28, 2003.)

ACT 97

H.B. NO. 730

A Bill for an Act Relating to Occupational Therapists.

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

SECTION 1. The purpose of this Act is to make the regulation of occupational therapists permanent, clarify that the Occupational Therapy Practice Act does not preclude the use of occupational therapy assistants, clarify the applicability of the law relating to occupational therapist qualifications, and repeal the authority for the issuance of temporary permits for occupational therapy practice.

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).~~] December 31, 2003. The auditor shall perform an evaluation of the program, pursuant to section 26H-5, prior to its repeal date.

[(b) Chapter 457G (occupational therapy practice) shall be repealed on December 31, 2003.]”

SECTION 3. Section 457G-1.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~“(c) Nothing in this chapter shall be construed to [apply to occupational therapy assistants.] prohibit a registered occupational therapist from utilizing occupational therapy support personnel to assist in the practice of occupational therapy; provided that the occupational therapy support personnel shall work under the supervision of or in consultation with the registered occupational therapist.~~

“Occupational therapy support personnel” includes a person certified by the National Board for Certification in Occupational Therapy, and who uses the title “occupational therapy assistant” or “certified occupational therapy assistant, the letters “COTA” or “OTA”, or any other titles, letters, abbreviations, or insignia indicating or implying that the person is an occupational therapy assistant.”

SECTION 4. Section 457G-2, Hawaii Revised Statutes, is amended to read as follows:

“§457G-2 Qualifications of occupational therapists [and occupational therapy assistants]. Occupational therapists [and occupational therapy assistants] shall have completed the educational requirements and supervised field work experience required for certification by the National Board for Certification in Occupational Therapy, and shall have passed a national certification examination administered by that association.”

SECTION 5. Section 457G-1, Hawaii Revised Statutes, is amended by deleting the definition “direct supervision”.

[~~““Direct supervision” means daily, direct contact at the site of work by a registered occupational therapist.”~~]

SECTION 6. Section 457G-2.5, Hawaii Revised Statutes, is repealed.

SECTION 7. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

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

(Approved May 28, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 98

S.B. NO. 1352

A Bill for an Act Relating to Home and Community-Based Services.

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

SECTION 1. The legislature finds that Act 273, Session Laws of Hawaii 2001, established two-year demonstration projects within the department of human services (department) relating to licensing and certification of home and community-based services. Under Act 273, the department established standards for licensing home and community-based case management agencies, including, but not limited to, standards related to the conditions, management, and competence of such agencies, and authorized such agencies to certify community care foster family homes. The licensing and certification demonstration projects assist the department in fulfilling its regulatory oversight function, ensure the service quality and competence of home and community-based case management agencies, and protect the

health and welfare of individuals placed in certified community care foster family homes.

The purpose of this Act is to continue the demonstration projects relating to licensing and certification of community care foster family homes and home and community-based case management agencies established by Act 273, Session Laws of Hawaii 2001, for one additional year. This Act also appropriates funds from the criminal history record improvement revolving fund for required criminal history record checks for operators of community care foster family homes regulated under such projects.

SECTION 2. Act 273, Session Laws of Hawaii 2001, section 1, is amended by amending subsection (a) of section 346-B, Hawaii Revised Statutes, to read as follows:

“(a) Prior to [~~June 30, 2003,~~] June 30, 2004, this part shall apply equally to two distinct demonstration projects, except as provided in subsection (b), as follows:
 (1) In any county having a population of 500,000 persons or more; and
 (2) In any county having a population of less than 500,000 persons.”

SECTION 3. Act 273, Session Laws of Hawaii 2001, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect on July 1, 2001, and shall be repealed on [~~June 30, 2003,~~] June 30, 2004.”

SECTION 4. The department of human services shall submit a report to the legislature no later than twenty days prior to the regular session of 2004 detailing the cost-effectiveness and administration of the certification process of community care foster family homes, as well as the possibility of integrating or consolidating the classification of community care foster family homes with adult residential care homes as defined in section 321-15.1, Hawaii Revised Statutes.

SECTION 5. There is appropriated out of the criminal history record improvement revolving fund the sum of \$65,000, or so much thereof as may be necessary, for fiscal year 2003-2004 for the purposes of Act 273, Session Laws of Hawaii 2001. The sum appropriated shall be expended by the department of the attorney general.

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

SECTION 7. This Act shall take effect on June 29, 2003; provided that section 5 shall take effect on July 1, 2003.

(Approved May 28, 2003.)

ACT 99

S.B. NO. 946

A Bill for an Act Relating to Caregiver Consent.

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

SECTION 1. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . FULL PARTICIPATION IN SCHOOL ACT

§302A- Definitions. As used in this part, unless the context otherwise requires:

- “Caregiver” means any person who is at least eighteen years of age and:
- (1) Related by blood, marriage, or adoption to the minor, including a person who is entitled to an award of custody pursuant to section 571-46(2) but is not the legal custodian or guardian of the minor; or
 - (2) Has resided with the minor for a continuous immediate preceding period of six months or more.

§302A- Affidavit for caregiver consent. (a) Notwithstanding any other law to the contrary, a caregiver may consent on behalf of a minor to enrollment in school and to full participation in curricular and co-curricular school activities, if the caregiver possesses and presents to the department of education for inclusion in the minor’s file a valid affidavit for caregiver consent provided by the department of education and executed by the caregiver that shall include but not be limited to the following:

- (1) The caregiver’s name and current home address;
- (2) The birthdate of the caregiver;
- (3) The number of the caregiver’s Hawaii driver’s license or state identification card;
- (4) The relationship of the caregiver to the minor;
- (5) The name of the minor;
- (6) The birthdate of the minor;
- (7) The length of time the minor has resided with the caregiver;
- (8) The signature of the caregiver;
- (9) The signature of consent by the minor’s parent, guardian, or legal custodian; provided that the signature of the minor’s parent, guardian, or legal custodian shall not be necessary if the affidavit states that the caregiver has been unable to obtain the signature of the minor’s parent, guardian, or legal custodian; and included a statement by the caregiver documenting the attempts to obtain the signature of the minor’s parents, guardian, or legal custodian.
- (10) The minor’s residency with the caregiver is not for the purpose of:
 - (A) Attending a particular school;
 - (B) Circumventing the department of education’s district exemption process;
 - (C) Participating in athletics at a particular school; or
 - (D) Taking advantage of special services or programs offered at a particular school.
- (11) Notice has been provided by the caregiver to the child protective services unit of the department of social services and housing if the minor covered by this affidavit is residing with the caregiver due to abuse or neglect perpetuated by the minor’s parent.
- (12) The following statement:

“General Notices:

This declaration does not affect the rights of the minor’s parent, guardian, or legal custodian regarding the care, custody, and control of the minor, and does not give the caregiver legal custody of the minor.

The minor’s parent or legal custodian may at any time rescind this affidavit by informing the minor’s school principal in writing that the minor is attending school under the authority of this affidavit and that this affidavit has been rescinded.

A person who relies on this affidavit has no obligation to conduct any further inquiry or investigation.

No person who relies in good faith on this affidavit shall be subject to civil or criminal liability or to professional disciplinary action because of that reliance.”

(b) The caregiver shall immediately notify the school if the minor no longer resides with the caregiver, and the affidavit for caregiver consent shall be revoked immediately.

(c) The affidavit for caregiver consent shall be superseded upon written notification by the minor’s parent, guardian, or legal custodian to the minor’s school principal that this affidavit has been rescinded.

(d) Any person who relies in good faith on the affidavit has no obligation to conduct any further inquiry or investigation.

(e) No person who relies in good faith on the affidavit for caregiver consent shall be subject to civil or criminal liability, or to professional disciplinary action because of the reliance.

(f) The affidavit for caregiver consent shall constitute sufficient basis for determination of residency of a minor unless the school determines from actual facts that the minor is not living with the caregiver. The school may also require additional evidence that the caregiver lives at the address provided in the affidavit.

(g) This section shall not apply to the programs and services of minors subject to the Individuals with Disabilities Education Act (20 U.S.C. section 1400 et seq.) or section 504 of the Rehabilitation Act of 1973 (29 U.S.C. section 791).

§302A- Penalties. Any caregiver who makes a false statement in the affidavit for caregiver consent required under section 302A- , shall be subject to the penalties under part V of chapter 710.

§302A- Transfer by the department of education. The department of education may transfer a minor to the minor’s home school if the minor has been enrolled in a school based on an invalid caregiver affidavit.”

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

(Approved May 28, 2003.)

ACT 100

S.B. NO. 377

A Bill for an Act Relating to Taxation.

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

SECTION 1. The legislature finds that further development planned by the State and the city and county of Honolulu to enhance the west side of Oahu and develop the second city of Kapolei and Ko Olina Resort and Marina would bring extensive economic benefits and result in the creation of thousands of construction and permanent jobs. The legislature believes that Ko Olina can play a pivotal role in regenerating Oahu’s tourism economy. The creation of “must see” attractions and educational facilities at Ko Olina, including a world-class ocean front aquarium, marine science and mammal research facilities, an international sports training complex, a travel industry management intern campus, and other facilities developed in cooperation with the University of Hawaii, will attract visitors from local,

national, and international markets, reposition Oahu as a multi-resort island, and complement Waikiki by creating a broad-based visitor destination.

The Ko Olina developers propose to benefit the west Honolulu region and specifically the Waianae Coast by providing training facilities and programs in hotel and resort training. Ko Olina plans to acquire the Makaha Resort to operate a training hotel and other resort training facilities, including training for operations, sales, marketing, management, and other aspects of the visitor industry.

The legislature further finds that the proposed training facilities at Makaha Resort are critically important to the well-being of leeward coast residents, given the economic depression and unemployment of that area. The training facilities would prepare students to work at the Ko Olina Resort and Marina or other developments on the leeward coast.

The purpose of this Act is to establish a tax credit for qualified costs in the development of facilities for attractions and educational purposes at Ko Olina Resort and Marina and at Makaha Resort.

SECTION 2. The legislature further finds and declares that the tax credit established under this Act is in the public interest and for the public health, safety, and general welfare of the people of Hawaii.

SECTION 3. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§235- Attractions and educational facilities tax credit; Ko Olina Resort and Marina; Makaha Resort. (a) There shall be allowed to each qualified taxpayer subject to the taxes imposed by this chapter or chapter 237, 237D, 238, 239, 241, or 431, a tax credit may be claimed for taxable years beginning after December 31, 2004, for qualified costs in the development of facilities for attractions and educational purposes at Ko Olina Resort and Marina and at Makaha Resort. The tax credit shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter and, at the election of the taxpayer, from the tax liability imposed by chapters 237, 237D, 238, 239, 241, and 431.

(b) The tax credit earned shall be equal to the qualified costs incurred from June 1, 2003, through May 31, 2009, up to a maximum of \$75,000,000 of credits in the aggregate for all qualified taxpayers for all years; provided that notwithstanding the amount of tax credits earned in any year, a maximum of \$7,500,000 of tax credits in the aggregate for all qualified taxpayers may be used in any one taxable year. The credits over \$7,500,000 shall be used as provided in subsection (d). In the case of a partnership, limited liability company, S corporation, estate, trust, or association of apartment owners, the tax credit allowable is for qualified costs incurred by the entity. The costs upon which the tax credit is computed shall be determined at the entity level.

(c) To qualify for the tax credit, a taxpayer shall:

- (1) Have expended qualified costs on and be developing a world-class aquarium and marine science and mammal research facility at Ko Olina Resort and Marina; and
- (2) Dedicate one-half of the net operating income of the world-class aquarium to the State, beginning on the first day of the seventeenth year following the year in which the attractions and educational facilities credit was first taken; or
- (3) Acquire or own the Makaha Resort, and lease or sell a portion of the Makaha Resort for use as training and educational facilities for a period of not less than six years to a taxpayer meeting the requirements of subsection (c)(1).

(d) If the tax credit under this section exceeds \$7,500,000 in the aggregate for all qualified taxpayers for any taxable year or exceeds the taxpayer's tax liability under this chapter or chapters 237, 237D, 238, 239, 241, and 431 for any year for which the credit is taken, the excess of the tax credit may be used as a credit against the taxpayer's tax liability for the taxes set forth in this section in subsequent years until exhausted; provided that the taxpayer may continue to claim the credit provided in this section if the qualified costs are incurred before June 1, 2009, subject to the monetary ceilings in subsection (b).

(e) Every claim, including amended 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.

(f) If, at any time during the six-year period in which tax credits are earned under this section, the costs incurred no longer meet the definition of qualified costs, the credits claimed under this section shall be recaptured. The recapture shall be equal to one hundred per cent of the total tax credits claimed under this section for the preceding taxable year; provided that the amount of the credits recaptured shall apply only to those costs that no longer meet the definition of qualified costs. The amount of the recaptured tax credits determined under this subsection shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs under this subsection.

(g) If any credit is claimed under this section, then no taxpayer shall claim a credit under any chapter identified in this section for the same qualified costs for which a credit is claimed under this section.

(h) 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 claims for credits made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

Every qualified taxpayer, no later than March 31 of each year in which qualified costs were expended in the previous taxable year, shall submit a written, certified statement to the director of business, economic development, and tourism, in the form specified by the director of business, economic development, and tourism, identifying:

- (1) Qualified costs, if any, expended in the previous taxable year;
- (2) The amount of tax credits claimed pursuant to this section, if any, in the previous taxable year; and
- (3) The tax liability under this chapter and chapters 237, 237D, 238, 239, 241, and 431 against which the tax credits are claimed.

Any other law to the contrary notwithstanding, a statement submitted under this subsection shall be a public document.

(i) The department of business, economic development, and tourism shall maintain records of the names of taxpayers eligible for the credits and the total amount of qualified costs incurred from June 1, 2003, through May 31, 2009. The department of business, economic development, and tourism shall verify all qualified costs and, upon each determination, shall issue a certificate to the taxpayer certifying:

- (1) The amount of the qualified costs; and
- (2) The amount of tax credit that the taxpayer is allowed to use for the taxable year.

The department of business, economic development, and tourism shall certify no more than \$7,500,000 in credits in the aggregate for all taxpayers for each taxable year; provided that the department may verify qualified costs of no more

than \$75,000,000 from June 1, 2003, through May 31, 2009. The taxpayer shall file the certificate with the taxpayer's return with the department of taxation.

(j) As used in this section:

“Ko Olina Resort and Marina” means the six hundred forty-two acres reclassified to urban district by Decision and Order entered on September 12, 1985, in Docket A83-562, by the land use commission.

“Makaha Resort” means the three hundred thirty-two acre property identified as tax map keys (1) 8-04-002 parcels 51, 52, 53, 54, 55, and 67 and (1) 8-04-029-142.

“Qualified costs” means any costs for plans, design, and construction, costs for equipment that is permanently affixed to a building or structure, and acquisition of facilities for educational purposes, up to a total of \$75,000,000 in the aggregate, incurred after May 31, 2003, and before June 1, 2009, at either or both of:

(1) Ko Olina Resort and Marina for the development of facilities for attractions and educational purposes, and for infrastructure within the Ko Olina Resort and Marina that is directly related to those facilities, including a world-class aquarium, marine science and mammal research facilities, international sports training complex, a travel industry management intern campus, infrastructure for the transfer of ocean waters to the aquarium or marine mammal facilities, or both, seawater air conditioning, and other educational facilities developed or operated in cooperation with the University of Hawaii or other educational institutions; or

(2) Makaha Resort for the development of a training and educational facility within a working resort and hotel;

provided that “qualified costs” shall not include land acquisition costs.

“Qualified taxpayer” means a person who fulfills the requirements of subsection (c).”

SECTION 4. Section 235-2.45, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) 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:

(1) Allocations of the high technology business investment tax credit allowed by section 235-110.9; [ø]

(2) Allocations of net operating loss pursuant to section 235-111.5[-]; or

(3) Allocations of the attractions and educational facilities tax credit allowed by section 235- .”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act, upon its approval, shall apply to qualified costs, as defined in section 3 of this Act, incurred after May 31, 2003.

(Approved May 29, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 101

S.B. NO. 1050

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 legislature finds that a World War II Filipino-American veteran who dies after June 30, 1994, and who is, at the time of the veteran's death, a United States citizen and a resident of the State of Hawaii, is entitled to receive a burial grant from the office of veterans' services to pay for the cost of:

- (1) Providing funeral and burial services for the deceased veteran; and
- (2) Transporting the remains of the deceased veteran to the Philippines.

In order to qualify for this burial grant, however, the Filipino-American veteran's survivor or an interested party must produce an itemized paid invoice showing the specific services rendered on behalf of the deceased veteran. Because of the tremendous up-front costs associated with funeral and burial services, and transportation to the Philippines, some World War II Filipino-American veterans, including the families and friends of these veterans, cannot afford to pay for these activities in advance. Consequently, some World War II Filipino-American veterans will not qualify for these burial grants from the office of veterans' services on account of their being too "poor". Because of these financial constraints, the bodies of some deceased veterans have had to "sit on ice" for weeks until the deceased veteran's survivor or interested parties could raise the necessary funds to pay the mortuary for funeral and other related services.

The purpose of this Act is to right this injustice to World War II Filipino-American veterans by requiring the office of veterans' services, at the request of a deceased Filipino-American veteran's survivor or an interested party, to make payment directly of up to \$2,500 to a mortuary or crematory for:

- (1) Providing funeral and burial services; and
- (2) Transporting the veteran's remains to the Philippines,

upon the submission of a contract for services on behalf of the deceased veteran and an itemized unpaid invoice.

This Act provides an alternative to the procedures currently specified in the rules of the office of veterans' services which apply in situations where a deceased World War II Filipino-American veteran's survivor or an interested party has already made payment for services rendered on behalf of the deceased veteran, or in situations where the deceased veteran may have purchased a pre-paid funeral and burial plan.

SECTION 2. Chapter 363, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§363- Disbursement of World War II Filipino-American veterans burial grant funds. (a) The office of veterans' services, at the request of a deceased World War II Filipino-American veteran's survivor or an interested party, shall make payment, under the veterans burial grant program, directly to a licensed provider of mortuary or crematory services in the State for the cost of:

- (1) Providing funeral and burial services for a deceased World War II Filipino-American veteran; and
- (2) Transporting the remains of a deceased World War II Filipino-American veteran to the Philippines.

(b) The maximum amount that may be disbursed on behalf of a deceased World War II Filipino-American veteran under this section is \$2,500.

(c) The office of veterans' services shall not expend more than the amount appropriated for the fiscal year to provide burial grants for deceased World War II Filipino-American veterans.

(d) The office of veterans' services shall establish specific eligibility criteria, application and appeal procedures, service choices, and invoicing arrangements. Eligibility shall include the requirement that a World War II Filipino-American veteran was, at the time of death, a resident of the State, as evidenced by valid documentation of state residence, a State of Hawaii driver's license, or a State of Hawaii identification card.

(e) Payment shall be made by the office of veterans' services upon the submission of a contract for services on behalf of the deceased World War II Filipino-American veteran and an itemized unpaid invoice to the office.

(f) For the purposes of this section, "World War II Filipino-American veteran" means any Filipino-American 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 \$30,000, or so much thereof as may be necessary for fiscal year 2003-2004, for the purposes of section 2 of this Act.

The sum appropriated shall be expended by the office of veterans' services 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. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon its approval; provided that section 3 shall take effect on July 1, 2003.

(Approved May 30, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 102

H.B. NO. 662

A Bill for an Act Relating to the Hawaii Sports Hall of Fame.

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

SECTION 1. The legislature finds that sports have long been an integral part of the lives of the citizens of the State of Hawaii. The history of sports in Hawaii is replete with the outstanding achievements of people from all walks of life. Sports reflect the human drama, emphasize fair play and the goal of excellence, and provide a worthy source of inspiration and reflection for all. The establishment of a repository of the history of Hawaii's outstanding local sports figures will preserve their contributions and serve as a focal point for Hawaii's sports industry. A sports hall of fame will commemorate the past and provide inspiration for the future.

The legislature further finds that Governor Benjamin Cayetano issued Executive Order No. 97-03 on June 9, 1997, which authorized the establishment of a commission of local business and community leaders serving without compensation to plan the establishment of a permanent Hawaii sports hall of fame. Under the

order, the Hawaii sports hall of fame is to be housed in Aloha stadium, funded through private contributions, and designed to commemorate sports legends of Hawaii who have made significant contributions in the field of sports. The order also created a trust account as a separate account of the stadium special fund into which contributions to the Hawaii sports hall of fame are to be deposited.

However, the commission was originally scheduled to remain in existence for only two years and end in June of 1999, and the continued existence of the commission is dependent on the passage of a concurrent resolution by the legislature, as provided by section 26-41, Hawaii Revised Statutes.

The purpose of this Act is to designate the Hawaii Sports Hall of Fame as the State of Hawaii museum of sports history in the islands.

SECTION 2. Chapter 109, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§109- **Hawaii Sports Hall of Fame.** (a) The official designation of the Hawaii Sports Hall of Fame, a duly registered nonprofit corporation, shall be the State of Hawaii museum of sports history in the islands. The qualifying standards and conditions related to the receipt of funds contained in chapter 42F shall not apply to the funds received by the State of Hawaii museum of sports history in the islands; provided that if the museum in turn contracts with a recipient or provider, then the qualifying standards, conditions, and other provisions of chapter 42F shall apply to the recipient or provider and the contract; and provided further that a donation of money, services, goods, or food to the Hawaii Sports Hall of Fame shall not be construed to be prohibited or restricted under this section.

(b) The Hawaii Sports Hall of Fame shall serve as a repository of sport memorabilia of notable Hawaii athletes, provided by or acquired from any source.

(c) The Hawaii Sports Hall of Fame may select one or more sites for a museum, with preference given to a recreational facility having convenient access to tourists.

(d) Ownership to a piece of memorabilia displayed in the museum shall remain with the athlete, the athlete’s devise or estate, or the donor; provided that the State shall not be liable for damage or theft of the memorabilia; provided further that the museum shall take appropriate measures to preserve and maintain the memorabilia.”

SECTION 3. New statutory material is underscored.¹

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

(Approved May 30, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 103

S.B. NO. 1373

A Bill for an Act Relating to Staffing for Federally Funded Programs.

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

SECTION 1. Chapter 371, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

ACT 104

“§371- Staffing for federally funded programs. Positions established by the department to implement federally funded employment or training programs, or both, including but not limited to those established under the Comprehensive Employment and Training Act, Job Training Partnership Act, Workforce Investment Act, and the welfare to work program, may be exempt from chapter 76.”

SECTION 2. New statutory material is underscored.¹

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

(Approved May 30, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 104

H.B. NO. 1285

A Bill for an Act Relating to Historic Sites.

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

SECTION 1. According to section 6E-42, Hawaii Revised Statutes, when a private landowner seeks a land development permit, such as a grading permit which may affect historic property, aviation artifacts, or a burial site, the department of land and natural resources, division of historic preservation, must be given an opportunity to review and comment on the application. The legislature finds that the intent of this review is to provide appropriate protection of historic property. However, the law does not apply penalties if someone does not seek prior approval and damages an historic property or burial site.

Thus, the purpose of this Act is to extend the same protections and penalties for the damage of an historic property or burial site discovered on private lands when the necessary approvals have not been sought as required by the historic preservation law.

SECTION 2. Chapter 6E, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§6E-A Enforcement. (a) If the board of land and natural resources determines that any person has violated or is violating this chapter, or any rule adopted pursuant to this chapter, the board shall serve written notice by certified mail or personal service upon the alleged violator or violators specifying the alleged violation and may include with the notice:

- (1) An order specifying a reasonable time during which that person shall be required to take such measures as may be necessary to correct the violation and to give periodic progress reports;
- (2) An order imposing penalties provided in section 6E-C; and
- (3) An order that the alleged violator or violators appear before the board for a hearing at a time and place specified in the notice or to be set later and answer the charges complained of.

(b) If the board determines that any person is continuing to violate this chapter or any rule adopted pursuant to this chapter after having been served notice of violation, the board shall serve written notice by certified mail or personal service upon the alleged violator or violators specifying the alleged violation. With the notice, the board:

- (1) Shall order the alleged violator or violators to submit a written schedule within thirty days specifying the measures to be taken and the time within which the measures shall be taken to bring that person into compliance with this chapter or any rule adopted thereunder. The board shall accept or modify the submitted schedule within sixty days of receipt of the schedule. Any schedule not acted upon after sixty days of receipt by the board shall be deemed accepted by the board;
- (2) Shall order the alleged violator or violators to cease and desist from the activities that violate this chapter or any rule adopted thereunder, if that person does not submit a written schedule to the board within thirty days. This order shall remain in effect until the board accepts the written schedule;
- (3) May impose penalties as provided in section 6E-C; and
- (4) May order the alleged violator or violators to appear before the board for a hearing to answer the charges issued, at a time and place specified in the notice or otherwise set by the board.

(c) If the board determines that any person has violated an accepted schedule or an order issued pursuant to this section, the board shall impose penalties by sending a notice in writing, either by certified mail or by personal service to that person, describing such non-adherence or violation with reasonable particularity.

(d) Any order issued pursuant to this chapter shall become final, unless the person or persons named therein requests in writing, not later than twenty days after notice of violation and order is served, a hearing before the board. Upon request for a hearing, the board shall require that the alleged violator or violators appear before the board for a hearing to answer the charges issued, at a time and place specified in the notice or otherwise set by the board.

Any penalty imposed pursuant to this chapter shall become due and payable twenty days after the notice of penalty is served, unless the person or persons named therein requests in writing a hearing before the board. Whenever a hearing is requested on any penalty imposed pursuant to this chapter, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(e) Any hearing conducted pursuant to this section shall be conducted as a contested case under chapter 91. If, after a hearing held pursuant to this section, the board finds that a violation or violations has occurred, the board shall:

- (1) Affirm or modify any penalties imposed;
- (2) Modify or affirm the order previously issued; or
- (3) Issue an appropriate order or orders for the prevention, abatement, or control of the violation or for the taking of such other corrective action as may be appropriate.

Any order issued after a hearing may prescribe timetables for necessary action in preventing, abating, or controlling the violation. If, after a hearing on an order or penalty contained in a notice, the board finds that no violation has occurred or is occurring, the board shall rescind the order or penalty.

(f) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the board may institute a civil action in the name of the State to collect the administrative penalty, which shall be a government realization. In any proceeding to collect the administrative penalty imposed, the board need only show that:

- (1) Notice was given;
- (2) A hearing was held, or the time granted for requesting a hearing has run without such a request;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid.

(g) In connection with any hearing held pursuant to this section, the board may subpoena the attendance of witnesses and the production of evidence on behalf of all parties.

§6E-B Civil penalties. Any person who violates this chapter, or any rule adopted pursuant to this chapter shall be fined not less than \$500 nor more than \$10,000 for each separate offense. Each day of each violation constitutes a separate offense.

§6E-C Administrative penalties. (a) In addition to any other administrative or judicial remedy provided by this chapter, or by rules adopted pursuant to this chapter, the board may impose by order the penalties specified in section 6E-B.

(b) Factors to be considered in imposing an administrative penalty include:

- (1) The nature and history of the violation and of any prior violations;
- (2) The economic benefit to the violator, or anticipated by the violator, resulting from the violation;
- (3) The opportunity, difficulty, and history of corrective action;
- (4) Good faith efforts to comply; and
- (5) Such other matters as justice may require.

(c) It is presumed that the violator's economic and financial conditions allow payment of the penalty, and the burden of proof to the contrary is on the violator.

(d) In any judicial proceeding to recover the administrative penalty imposed, the board need only show that:

- (1) Notice was given;
- (2) A hearing was held, or the time granted for requesting a hearing has run without such a request;
- (3) The administrative penalty was imposed; and
- (4) The penalty remains unpaid."

SECTION 3. Section 6E-11, Hawaii Revised Statutes, is amended to read as follows:

“§6E-11 Penalties. (a) It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon the private lands of any owner thereof without the owner's written permission being first obtained. It shall be unlawful for any person, natural or corporate, to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department.

(b) It shall be unlawful for any person, natural or corporate, to knowingly take, appropriate, excavate, injure, destroy, or alter any burial site or the contents thereof, located on private lands or lands owned or controlled by the State or any of its political subdivisions, except as permitted by the department. Violators of this subsection are also subject to prosecution pursuant to section 711-1107, the penalties for which shall be imposed in addition to, and not in lieu of, any penalties imposed under this section.

(c) It shall be unlawful for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or burial site during the course of land development or land alteration activities to which section 6E-42 applies, without obtaining the required approval. The penalties imposed pursuant to subsections (e) and (f) shall be in addition to any other penalties that may be imposed pursuant to law.

(d) It shall be unlawful for any person who inadvertently discovers a burial site to fail to stop work in the immediate area and report the discovery, as required by section 6E-43.6.

[(e)] (e) Any person who violates this section shall be fined not more than \$10,000 for each separate offense. If the violator directly or indirectly has caused the loss of, or damage to, historic property or burial site, the violator shall be fined an additional amount determined by the court to be equivalent to the value of the lost or damaged historic property or burial site. Each day of continued violation of this provision shall constitute a distinct and separate offense for which the offender may be punished. Equipment used by a violator for the taking, appropriation, excavation, injury, destruction, or alteration of historic property or a burial site, or for the transportation of the violator to or from the historic property or a burial site, shall be subject to seizure and disposition by the State without compensation to its owner or owners.

[(d)] (f) Any person, natural or corporate, who knowingly violates this section with respect to burial sites shall also be prohibited from participating in the construction of any state or county funded project for ten years.

(g) Nothing in this section shall apply to land altering activities relating to family burial plots under section 441-5.5.

SECTION 4. Section 6E-13, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“**§6E-13 [Enforcement.] Injunctive relief.** (a) In addition to, and without limiting the other powers of the attorney general and without altering or waiving any criminal penalty, civil, or administrative provisions of this chapter, the attorney general shall have the power to bring an action in the name of the State in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter.”

SECTION 5. Section 6E-43.6, Hawaii Revised Statutes, is amended to read as follows:

“**[§6E-43.6] Inadvertent discovery of burial sites.** (a) In the event human skeletal remains are inadvertently discovered, any activity in the immediate area that could damage the remains or the potential historic site shall cease until the requirements of subsections (b) to (d) have been met.

(b) The discovery shall be reported as soon as possible to the department, the appropriate medical examiner or coroner, and the appropriate police department. As soon as practicable, the department shall notify the appropriate council and the office of Hawaiian affairs.

(c) After notification of the discovery of multiple skeletons, the following shall be done within two working days, if on Oahu, and three working days, if in other council jurisdictions:

- (1) A representative of the medical examiner or coroner’s office and a qualified archaeologist shall examine the remains to determine jurisdiction. If the remains are the responsibility of the medical examiner or coroner, the department’s involvement shall end. If the remains are historic or prehistoric burials, then the remainder of this section shall apply;
- (2) The department shall gather sufficient information, including oral tradition, to document the nature of the burial context and determine appropriate treatment of the remains. Members of the appropriate council shall be allowed to oversee the on-site examination and, if warranted, removal; and
- (3) If removal of the remains is warranted, based on criteria developed by the department, in consultation with the councils, office of Hawaiian

affairs, representatives of development and large property owner interests, and appropriate Hawaiian organizations, such as Hui Malama I Na Kupuna O Hawai'i Nei, through rules adopted pursuant to chapter 91, the removal of the remains shall be overseen by a qualified archaeologist and a mitigation plan shall be prepared by the department or with the concurrence of the department.

(d) In cases involving the discovery of a single skeleton, the requirements of subsection (c) shall be fulfilled in one working day if on Oahu, and two working days if in other council jurisdictions.

(e) The mitigation plan developed by or with the concurrence of the department pursuant to subsection (c)(3) shall be carried out in accordance with the following:

- (1) In discoveries related to development where land alteration project activities exist, the landowner, permittee, or developer shall be responsible for the execution of the mitigation plan including relocation of remains. Justifiable delays resulting from the discovery of burials shall not count against any contractor's completion date agreement;
- (2) Project activities shall resume once necessary archaeological excavations provided in the mitigation plan have been completed;
- (3) In nonproject contexts, the department shall be responsible for the execution of the mitigation plan and the relocation of remains; and
- (4) The department shall verify the successful execution of the mitigation plan.

(f) In cases where remains are archaeologically removed, the department shall determine the place of relocation, after consultation with the appropriate council, affected property owners, representatives of the relevant ethnic group, and any identified lineal descendants, as appropriate. Relocation shall conform with requirements imposed by the department of health, and may be accompanied by traditional ceremonies, as determined by the lineal descendants, or, if no lineal descendants are identified, the appropriate council or representatives of the relevant ethnic group that the department deems appropriate. Specific or special reinterment requests from lineal or cultural descendants may be accommodated provided that the additional expenses incurred are paid by the affected descendants.

(g) If human skeletal remains are discovered in the course of land development or land alteration activities to which section 6E-42 applies, and for which the required approval was not obtained, all activity in the immediate area that could damage the remains or the potential historic site shall cease, and treatment of the remains shall be allowed only in compliance with section 6E-43."

SECTION 6. In codifying the new sections 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 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved May 30, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 105

H.B. NO. 127

A Bill for an Act Relating to General Assistance.

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

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

“(b) A person between eighteen and sixty-five years of age with a disability shall be eligible for general assistance to households without minor dependents if the person:

- (1) Is determined to be needy in accordance with standards established by this chapter and the rules adopted under subsection (e);
- (2) Is unable to meet the disability requirements established by the federal Supplemental Security Income Program or its successor agency; and
- (3) Is unable to engage in any substantial gainful employment because of a determined and certified physical or mental disability. Determination and certification of physical and mental disability shall be as follows:
 - (A) A determination and certification of physical disability shall only be made by a board of licensed physicians designated and paid by the department. Meetings of this board shall not be subject to part I of chapter 92;
 - (B) A determination and certification of mental disability shall be made by a board of licensed psychologists or licensed physicians whose specialty is in psychiatry. This board shall also be designated and paid by the department. Meetings of this board shall not be subject to part I of chapter 92;
 - (C) If a determination of mental disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person’s choice;
 - (D) If a determination of physical disability is made, the person shall accept and pursue appropriate medical treatment from a provider of the person’s choice; [and]
 - (E) Any person, to continue to be certified as mentally or physically disabled, shall be reevaluated annually as provided by this section and more frequently as required by the department[-]; and
 - (F) Failure to pursue appropriate medical treatment shall result in a loss of eligibility unless the failure is due to good cause. Good cause shall include but not be limited to:
 - (i) Treatment is unavailable;
 - (ii) Personal emergencies; and
 - (iii) Circumstances which threaten the safety of the patient.The department shall adopt rules in accordance with chapter 91 to define “good cause” as used in this subparagraph, in order to determine when treatment is unavailable, what constitutes a personal emergency, what circumstances may threaten the safety of a patient, and other factors that may constitute good cause.

As used in this subsection:

“Substantial gainful employment” means at least thirty hours of work per week.

“With a disability” or “having a disability” means a disability that extends for a period of over sixty days.

Any person determined to be eligible under this subsection may be referred to any appropriate state agency for vocational rehabilitation services and shall be

ACT 106

required to accept the services as a further condition of eligibility for the receipt of general assistance to households without minor dependents under this section. An assistance unit shall be determined ineligible for general assistance to households without minor dependents if any adult member of the assistance unit fails to cooperate with any appropriate state agency for vocational rehabilitation services after being referred for services. Any person found eligible under this subsection may also be required to seek employment, and participate in public work projects as described in section 346-31, and in public employment projects as described in section 346-102.”

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

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

(Approved May 30, 2003.)

ACT 106

S.B. NO. 1163

A Bill for an Act Relating to Emergency Medical Services.

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

SECTION 1. Section 321-226, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§321-226]]~~ **Emergency medical services and systems, standards.** The department of health shall establish standards for emergency medical services and for emergency medical service systems consistent with the state system and applicable federal guidelines for such services~~[-], including a requirement that ambulance service providers licensed by the State establish and maintain an alcohol and substance abuse policy for employees that the department of health deems is equivalent to, or exceeds the provisions of, the safety and health standards established by the federal department of transportation for holders of commercial driver’s licenses.~~ In the event the standards are determined or regulated by any other law, or by applicable federal guidelines, standards required to be set by this section shall be at least equivalent to or exceed the other state and federal standards.”

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

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

(Approved May 30, 2003.)

ACT 107

S.B. NO. 1241

A Bill for an Act Relating to Cancer Examinations.

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

SECTION 1. The purpose of this Act is to:

- (1) Repeal section 321-45, Hawaii Revised Statutes, which requires hospitals to offer a uterine cytologic examination to all female in-patients twenty years of age or older, unless the exam is contraindicated by the attending physician or was performed within the previous year;
- (2) Establish that cancer examinations shall be part of a statewide comprehensive cancer control plan to be developed by the department of health; and
- (3) Require the department of health to work with other government agencies, health care providers, health insurers, and others to improve the overall rates of screening, early diagnosis, and treatment of cancer.

SECTION 2. Section 321-45, Hawaii Revised Statutes, is amended to read as follows:

~~“[I]§321-45 Cancer examination.[I] Every hospital licensed by the State shall offer a uterine cytologic examination for cancer to every female in-patient twenty years of age or over unless considered contraindicated by the attending physician or unless it has been performed within the previous year. Every woman for whom the test is applicable will have the right to refuse such test on the counsel of the attending physician or on her own judgment. The hospital will in all cases maintain records to show either the results of the test or that the test was not applicable or that it was refused.”~~ Cancer examinations shall be part of a statewide comprehensive cancer control plan to be developed by the department. The plan shall include provisions for cancer examination, including cervical cancer screening. The department shall work with other government agencies, health care providers, health insurers, and others to improve the overall rates of screening, early diagnosis, and treatment of cancer.”

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

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

(Approved May 30, 2003.)

ACT 108

S.B. NO. 205

A Bill for an Act Relating to Employment.

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

SECTION 1. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§78- Paid leave; education of children. Employees shall be eligible for at least two hours of paid leave during normal business hours to attend either:

- (1) A mutually-scheduled parent-teacher conference for the employee’s minor child attending a public or private school in grades kindergarten through twelve; or
- (2) A mutually-scheduled parent-caregiver conference for a preschool-aged child attending a licensed group child care center, as defined under section 346-151;

provided that the time-off shall not be credited against vacation or sick leave benefits, if any; and provided further that the provision of paid leave shall not adversely interfere with the operations of the work unit nor require the applicable agency to incur additional human resources or overtime costs.

The employee shall take no more than two mutually-scheduled conferences, per child, in a single calendar year. Travel time shall be included as part of the two hours permitted for each conference.”

SECTION 2. New statutory material is underscored.¹

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

(Approved May 30, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 109

S.B. NO. 687

A Bill for an Act Relating to Leaves of Absence.

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

PART I

SECTION 1. The purpose of this Act is to amend section 78-23, Hawaii Revised Statutes (HRS), and to add a new chapter to Title 7, HRS, authorizing jurisdictions to establish and implement a special pay plan for eligible employees of the respective jurisdictions that will not enhance or diminish existing benefits. Participation in the plan shall be mandatory for all employees covered by a collective bargaining agreement; provided that participation shall be in accordance with chapter 89, HRS. Participation in the plan for employees not subject to a collective bargaining agreement who are employed in a jurisdiction that elects to establish a special pay plan shall be mandatory. A special pay plan is a governmental retirement plan that meets the requirements of sections 401(a) and 414(d) of the Internal Revenue Code, and may be a qualified pick-up plan under section 414(h)(2) of the Internal Revenue Code.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to Title 7 to be appropriately designated and to read as follows:

“CHAPTER
TAX DEFERRED COMPENSATION PLANS
FOR PUBLIC EMPLOYEES

§ -1 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

“Employee” shall have the same meaning as defined in section 76-11.

“Jurisdiction” shall have the same meaning as defined in section 76-11.

“Special pay plan” means a governmental retirement plan that meets the requirements of sections 401(a) and 414(d) of the Internal Revenue Code, and which may be a qualified pick-up plan under section 414(h)(2) of the Internal Revenue Code.

§ -2 Special pay plan; authority established; participation. (a) Each jurisdiction may establish a special pay plan for its employees.

(b) Eligibility and participation in a special pay plan shall be determined by each jurisdiction; provided that the plan shall be:

- (1) In accordance with chapter 89, for employees subject to a collective bargaining agreement; and
- (2) Mandatory for employees not subject to a collective bargaining agreement employed in a jurisdiction that has elected to establish a special pay plan.

§ **-3 Special pay plans; implementation.** (a) All accumulated vacation allowance of an employee who separates from service in a jurisdiction that has established a special pay plan shall be paid to the special pay plan.

(b) The employer shall pick-up any mandatory employee contribution of accumulated vacation allowance to the special pay plan within the meaning of section 414(h)(2) of the Internal Revenue Code.

(c) No employee shall have the option of receiving their accumulated vacation allowance in cash in lieu of having a contribution made to the special pay plan by their employer.

(d) The employer shall reimburse employees under the age of fifty-five who elect a withdrawal their entire account balance from the special pay plan within sixty days from the date that the employee separated from service, an amount equal to the difference between the FICA and medicare tax savings to the employee, and any early withdrawal penalty imposed by the Internal Revenue Service.

§ **-4 Administration of a special pay plan.** (a) Each jurisdiction that establishes a special pay plan shall be responsible for the administration of the plan.

(b) Each jurisdiction, individually or jointly with other jurisdictions, may contract the services of a special pay plan provider to administer the respective jurisdiction or jurisdictions' special pay plan. Each jurisdiction may adopt rules in accordance with chapter 91, and federal and state law, to effectuate the administration of the special pay plan.

§ **-5 Costs of a special pay plan.** Costs associated with the implementation and administration of a special pay plan established pursuant to this chapter shall be borne by the selected plan provider.”

SECTION 3. Section 78-23, Hawaii Revised Statutes, is amended to read as follows:

“[H]§78-23[H] **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.

(e) Payments of vacation allowance paid pursuant to subsections (c) or (d) shall be subject to the provisions of chapter _____.'

PART II

SECTION 4. The legislature finds that the tragic events of September 11, 2001, have increased security concerns both nationally and locally. Homeland security on both the national and state levels has meant an increase in the activation and visibility of the national guard, particularly at vital state facilities.

In Hawaii, the need has never been stronger for the protection of important state facilities, including the State's airports and the Hawaii convention center. Despite the enormous risks involved, the legislature finds that the Hawaii national guard has met this challenge with resolve and determination.

The legislature finds, however, that a law that was passed in the regular session of 2000, prior to the events of September 11, 2001, threatens to reduce both the recruitment and retention of national guard members in Hawaii, as well as other military reserve components, at the very time when their services are needed more than ever to assist in state security efforts.

In particular, Act 253, Session Laws of Hawaii 2000, which reformed the civil service system, repealed chapter 79, Hawaii Revised Statutes, relating to leaves of absence. Chapter 79, Hawaii Revised Statutes, among other things, provided for military leave with pay for members of the Hawaii national guard and the military reserves.

This repeal will require people to go on military duty only by using their vacation time or by taking a leave of absence without pay. The legislature finds that the repeal of the sections of chapter 79, Hawaii Revised Statutes, relating to military leave with pay will have a serious negative impact on the recruitment and retention of public employees, and the legislature is especially concerned about the impact of this repeal on the Hawaii national guard.

Accordingly, the purpose of this part is to reenact those portions of chapter 79, Hawaii Revised Statutes, that provided military leave with pay for state and county employees who are members of the Hawaii national guard and the military reserves.

SECTION 5. Chapter 78, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§78- Pay of officers and employees on active military service. (a) All officers and employees of the State and the several counties who are appointed for at least six months of service shall be entitled, while on active duty or during periods of camps of instruction or field maneuvers as members of the Hawaii national guard or organized reserves, including the officers’ reserve corps and the enlisted reserve corps, under call of the President of the United States or the governor of the State, to receive pay as provided by law. During the absence of the officer or employee, while in the performance of ordered military or naval duty as a member of the national guard, air national guard, naval militia, or organized reserves, including the officers’ reserve corps and the enlisted reserve corps, the officer or employee shall receive the officer’s or employee’s salary or compensation as such officer or employee, but only for a period not exceeding fifteen working days in any calendar year.

(b) Notwithstanding subsection (a), if the officer or employee is called to active duty or otherwise required to report for camp training or field maneuvers by official military orders a second time within a calendar year, the officer or employee may elect to use the fifteen working days of the succeeding calendar year to which the officer or employee is entitled for such purposes within the current calendar year; provided that the officer’s or employee’s entitlement to fifteen working days under this section for the succeeding calendar year shall be canceled and the officer or employee shall so agree in writing.

§78- Nonforfeiture for absence. Every officer and employee of the State and the several counties who is a member of the Hawaii national guard or organized reserves, including the officers’ reserve corps and the enlisted reserve corps, shall be entitled to be absent from the officer’s or employee’s duties or service while engaged in the performance of ordered military or naval duty and while going to and returning from such duty.

No officer or employee shall be subjected, directly or indirectly, by reason of the absence to any loss or diminution of vacation or holiday privileges or be prejudiced by reason of the absence with reference to promotion or continuance in office, employment, reappointment to office, or reemployment.”

PART III

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon approval; provided that part I shall not take effect until December 31, 2004, and provided further that part II shall take effect retroactively to June 30, 2000.

(Approved May 30, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the State Internet Portal.

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

SECTION 1. Act 292, Session Laws of Hawaii 2000, is amended by amending subsection (a) of section 4 to read as follows:

“(a) There is established within the office of the governor, on a special and temporary basis, the Access Hawaii Committee, until June 30, [2003,] 2005, at which time the committee shall cease to exist.”

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

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

(Approved May 30, 2003.)

A Bill for an Act Relating to Public Employee Health Benefits.

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

SECTION 1. Section 87A-23, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§87A-23[H]~~ **Health benefits plan supplemental to medicare.** The board shall establish a health benefits plan, which takes into account benefits available to an employee-beneficiary and spouse under medicare, subject to the following conditions:

- (1) There shall be no duplication of benefits payable under medicare. The plan under this section, which shall be secondary to medicare, when combined with medicare and any other plan to which the health benefits plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules, shall provide benefits that approximate those provided to a similarly situated beneficiary not eligible for medicare;
- (2) The State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund a contribution equal to ~~[\$50.00 per month, or such other amount to be determined by the board,]~~ an amount not less than the medicare part B premium, for voluntary medical insurance coverage under medicare for retired members of the employees' retirement system; county pension system; or a police, firefighters, or bandsmen pension system of the State or a county as set forth in chapter 88[-]; provided that if the amount reimbursed by the fund to the retiree is less than the actual cost of the medicare part B medical insurance plan due to an increase in the medicare part B medical insurance plan rate, the fund shall reimburse the retiree for the cost increase within thirty days of the rate change. The contribution shall be made for each:
 - (A) Employee-beneficiary who is a retired employee;

- (B) Employee-beneficiary's spouse while the employee-beneficiary is living; and
 - (C) The employee-beneficiary's spouse, after the death of the employee-beneficiary, if the spouse qualifies as an employee-beneficiary;
- (3) The benefits available under this plan, when combined with benefits available under medicare or any other coverage or plan to which this plan is subordinate under the National Association of Insurance Commissioners' coordination of benefit rules, shall approximate the benefits that would be provided to a similarly situated employee-beneficiary not eligible for medicare;
 - (4) All employee-beneficiaries or dependent-beneficiaries who are eligible to enroll in the medicare part B medical insurance plan shall enroll in that plan as a condition of receiving contributions and participating in benefits plans under this chapter. This paragraph shall apply to retired employees, their spouses, and the surviving spouses of deceased retirees and employees killed in the performance of duty; and
 - (5) The board shall determine which of the employee-beneficiaries and dependent-beneficiaries, who are not enrolled in the medicare part B medical insurance plan, may participate in the plans offered by the fund."

SECTION 2. Section 87A-33, Hawaii Revised Statutes, is amended to read as follows:

“~~[§87A-33]~~ **State and county contributions; retired employees.** (a) Notwithstanding any law to the contrary, this section shall apply to state and county contributions to the fund for:

- (1) The dependent-beneficiary of an employee who is killed in the performance of duty;
- (2) A dependent-beneficiary, upon the death of the employee-beneficiary, except as provided in section 87A-36;
- (3) An employee-beneficiary who retired after June 30, 1984, due to a disability falling within sections 88-79 and 88-285;
- (4) An employee-beneficiary who retired before July 1, 1984;
- (5) An employee-beneficiary who:
 - (A) Was hired before July 1, 1996;
 - (B) Retired after June 30, 1984; and
 - (C) Who has ten years or more of credited service, excluding sick leave;
- (6) An employee-beneficiary who:
 - (A) Was hired after June 30, 1996; and
 - (B) Retired with twenty-five or more years of credited service, excluding sick leave, except as provided in section 87A-36; and
- (7) Employees who retired prior to 1961 and their dependent-beneficiaries.

(b) Effective July 1, 2003, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

- (1) \$218 for each employee-beneficiary enrolled in supplemental medicare self plans;
- (2) \$671 for each employee-beneficiary enrolled in supplemental medicare family plans;

- (3) \$342 for each employee-beneficiary enrolled in non-medicare self plans; and
- (4) \$928 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefits plan or plans. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

(c) Effective July 1, 2004, there is established a base monthly contribution for health benefit plans that the State, through the department of budget and finance, and the counties, through their respective departments of finance, shall pay to the fund, up to the following:

- (1) \$254 for each employee-beneficiary enrolled in supplemental medicare self plans;
- (2) \$787 for each employee-beneficiary enrolled in supplemental medicare family plans;
- (3) \$412 for each employee-beneficiary enrolled in non-medicare self plans; and
- (4) \$1,089 for each employee-beneficiary enrolled in non-medicare family plans.

The monthly contribution by the State or county shall not exceed the actual cost of the health benefit plan or plans and shall not be required to cover increased benefits above those initially contracted for by the fund for plan year 2004-2005. If both husband and wife are employee-beneficiaries, the total contribution by the State or county shall not exceed the monthly contribution for a supplemental medicare family or non-medicare family plan, as appropriate.

[(e)] (d) The base composite monthly contribution shall be adjusted annually, beginning July 1, [2004.] 2005. The adjusted base composite monthly contribution for each new plan year (July 1 until June 30) shall be calculated by increasing or decreasing the base composite monthly contribution in effect through the end of the previous plan year by the percentage increase or decrease in the medicare part B premium rate for those years, which percentage shall be calculated by dividing the medicare part B premium rate in effect at the beginning of the new plan year by the rate in effect [through the end] at the beginning of the previous plan year.

For the plan year beginning July 1, 2005, the adjusted base monthly contribution shall be computed using the actual contracted premium rate as of July 1, 2004, for medicare and non-medicare, self and family health benefit plans with the highest actual contracted premium rate as of July 1, 2004.

As used in this subsection, "medicare part B premium rate" means the rate published in the Federal Register each year on November 1 or on the business day closest to November 1 of each year after the medicare part B premium rate has been established by the Secretary of Health and Human Services and approved by the United States Congress."

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

SECTION 4. This Act shall take effect on July 1, 2003.

(Approved May 30, 2003.)

ACT 112

H.B. NO. 1607

A Bill for an Act Relating to Authorized Emergency Vehicles.

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

SECTION 1. Section 291C-1, Hawaii Revised Statutes, is amended by amending the definition of "authorized emergency vehicle" to read as follows:

““Authorized emergency vehicle” includes such fire department vehicles, police vehicles, ~~and~~ ambulances, and ocean safety vehicles as are publicly owned and such other publicly or privately owned vehicles as are designated by the city or county council.”

SECTION 2. Section 291C-26, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The exemptions granted in ~~[this]~~ subsection (b)~~[(5) and (6)]~~ to an authorized emergency vehicle shall apply only when the vehicle is making use of authorized audible and visual signals, except as otherwise provided by county ordinance. This subsection shall not apply to police ~~[motoreycles.]~~ vehicles.”

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

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

(Approved May 30, 2003.)

ACT 113

S.B. NO. 1040

A Bill for an Act Relating to Transient Accommodations Tax.

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, 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 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]~~ all moneys collected by the department for the commercial use of public trails and trail accesses under the jurisdiction of the department; transient accommodations tax revenues collected pursuant to section 237D-6.5(b)(2); 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 chapter 76;
- (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;
- (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;
- (10) For the protection, planning, management, and regulation of water resources under chapter 174C; and
- (11) For other purposes of this chapter.”

SECTION 2. Section 237D-6.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Revenues collected under this chapter shall be distributed as follows:
- (1) 17.3 per cent of the revenues collected under this chapter shall be deposited into the convention center enterprise special fund established under section 201B-8; provided that beginning January 1, 2002, if the amount of the revenue collected under this paragraph exceeds \$31,000,000 in any calendar year, revenues collected in excess of \$31,000,000 shall be deposited into the general fund;
 - (2) 32.6 per cent of the revenues collected under this chapter shall be deposited into the tourism special fund established under section 201B-11 for tourism promotion and visitor industry research; provided that beginning on July 1, 2002:
 - (A) If the amount of revenues deposited into the tourism special fund exceeds \$62,292,000 in any fiscal year, of the first \$1,000,000 in revenues deposited in excess of \$62,292,000:
 - (i) Ninety per cent shall be deposited into the state parks special fund established in section 184-3.4; and
 - (ii) Ten per cent shall be [~~transferred to the Hawaii statewide trail and access program pursuant to section 198D-2(b)(5);~~] deposited into the special land and development fund established in section 171-19 for the Hawaii statewide trail and access program;

provided that the total amount deposited into the state parks special fund and to the special land and development fund for the

Hawaii statewide trail and access program shall not exceed \$1,000,000 in any fiscal year;

- (3) 44.8 per cent of the revenues collected under this chapter shall be transferred as follows: Kauai county shall receive 14.5 per cent, Hawaii county shall receive 18.6 per cent, city and county of Honolulu shall receive 44.1 per cent, and Maui county shall receive 22.8 per cent; and
- (4) 5.3 per cent of the revenues collected under this chapter shall be deposited into the transient accommodations tax trust fund established under section 237D-5.5.

All transient accommodations taxes shall be paid into the state treasury each month within ten days after collection, and shall be kept by the state director of finance in special accounts for distribution as provided in this subsection.”

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

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

(Approved May 30, 2003.)

ACT 114

H.B. NO. 651

A Bill for an Act Relating to Informed Consent.

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

SECTION 1. Section 432E-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In order to inform enrollees fully, the provider shall:

- (1) Discuss all treatment options with an enrollee [~~and include~~], as provided by section 671-3, including the option of no treatment at all;
- (2) Ensure that persons with disabilities have an effective means of communication with the provider and other members of the managed care plan; and
- (3) Discuss all risks, benefits, and consequences to treatment and nontreatment[-], as provided by section 671-3(b).”

SECTION 2. Section 671-3, Hawaii Revised Statutes, is amended to read as follows:

“~~§671-3 Informed consent[; board of medical examiners standards].~~ (a) The board of medical examiners[~~; insofar as practicable, shall~~] may establish standards for health care providers to follow in giving information to a patient, or to a patient’s guardian or legal surrogate if the patient [~~is not competent~~] lacks the capacity to give an informed consent, to ensure that the patient’s consent to treatment is an informed consent. The standards shall be consistent with subsection (b) and may include [the].¹

- (1) The substantive content of the information to be given[~~, the~~];
- (2) The manner in which the information is to be given by the health care provider; and [~~the~~]
- (3) The manner in which consent is to be given by the patient or the patient’s guardian[~~;~~] or legal surrogate.

(b) ~~[If the standards established by the board of medical examiners include provisions which are designed to reasonably inform a patient, or a patient's guardian, of:]~~ The following information shall be supplied to the patient or the patient's guardian or legal surrogate prior to obtaining consent to a proposed medical or surgical treatment or a diagnostic or therapeutic procedure:

- (1) ~~The condition [being] to be treated;~~
 - (2) ~~[The nature and character]~~ A description of the proposed treatment or [surgical] procedure;
 - (3) ~~The intended and anticipated results[;] of the proposed treatment or procedure;~~
 - (4) ~~The recognized [possible alternative forms of treatment;] alternative treatments or procedures, including the option of not providing these treatments or procedures; [and~~
 - (5) ~~The recognized serious possible risks, complications, and anticipated benefits involved in the treatment or surgical procedure, and in the recognized possible alternative forms of treatment, including nontreatment,~~
- ~~then the standards shall be admissible as evidence of the standard of care required of the health care providers.]~~

- (5) The recognized material risks of serious complications or mortality associated with:
 - (A) The proposed treatment or procedure;
 - (B) The recognized alternative treatments or procedures; and
 - (C) Not undergoing any treatment or procedure; and
- (6) The recognized benefits of the recognized alternative treatments or procedures.

(c) On or before January 1, 1984, the board of medical examiners shall establish standards for health care providers to follow in giving information to a patient or a patient's guardian, to ensure that the patient's consent to the performance of a mastectomy is an informed consent. The standards shall include the substantive content of the information to be given, the manner in which the information is to be given by the health care provider and the manner in which consent is to be given by the patient or the patient's guardian. The substantive content of the information to be given shall include information on the recognized alternative forms of treatment.

(d) Nothing in this section shall require informed consent from a patient or a patient's guardian or legal surrogate when emergency treatment or an emergency [surgical] procedure is rendered by a health care provider and the obtaining of consent is not reasonably feasible under the circumstances without adversely affecting the condition of the patient's health.

(e) For purposes of this section, "legal surrogate" means an agent designated in a power of attorney for health care or surrogate designated or selected in accordance with chapter 327E."

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 and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on January 1, 2004.

(Approved June 2, 2003.)

Note

- 1. Colon should be underscored.

ACT 115

H.B. NO. 1154

A Bill for an Act Relating to Unclaimed Property.

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

SECTION 1. Section 523A-23.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§523A-23.5[H]~~ **Unclaimed property trust fund.** (a) There is established in the state treasury the unclaimed property trust fund, which shall be administered by the director. All moneys collected by the unclaimed property program from holders of property presumed abandoned and all 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.

(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.]~~ Moneys in the unclaimed property trust fund shall be used for the payment of the following:

- (1) Claims for the return of abandoned property to their rightful owners;
- (2) Payment to other states' unclaimed property programs for owners whose last known address was in that other state;
- (3) Any costs incurred in connection with the sale of abandoned property;
- (4) Costs of mailing and publication in connection with any abandoned property;
- (5) Reasonable service charges;
- (6) Costs incurred in examining the records of holders of property and in collecting such property from those holders; and
- (7) Any other charges, costs, or expenses incurred in the operation, administration, and enforcement of this chapter.

(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.]~~ Moneys in the unclaimed property trust fund shall be invested by the director, and all investment earnings shall be deposited to the credit of the general fund.

(d) All ~~[funds in the unclaimed property trust fund]~~ unencumbered and unexpended moneys in excess of ~~[\$1,000,000]~~ \$1,300,000 remaining on balance in the unclaimed property trust fund 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 repealed.

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

SECTION 4. This Act shall take effect on July 1, 2003.

(Approved June 2, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to State Bonds.

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

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, Section 13 of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance," the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the state is set forth in Article VII, Section 13 of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, Section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven percent of the principal amount of outstanding general obligation bonds not otherwise excluded under said Article VII, Section 13.
- (2) Actual and estimated debt limits. The limit on principal and interest of general obligation bonds issued by the State, actual for fiscal year 2002-2003 and estimated for each fiscal year from 2003-2004 to 2006-2007, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
1999-2000	\$3,256,883,851	
2000-2001	3,412,365,536	
2001-2002	3,412,344,368	
2002-2003	3,692,663,000	\$621,698,282
2003-2004	3,727,686,000	648,571,329
2004-2005	3,951,869,000	668,016,091
2005-2006	4,144,674,000	701,286,777
2006-2007	(not applicable)	729,160,788

For fiscal years 2002-2003, 2003-2004, 2004-2005, 2005-2006 and 2006-2007, 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 percent. The net general fund revenues for fiscal years 1999-2000, 2000-2001, and 2001-2002 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, 2002, dated November 27, 2002. The net general fund revenues for fiscal years 2002-2003 to 2005-2006 are estimates, based on general fund revenue estimates made as of March 14, 2003, by the council on revenues, the body assigned by Article VII, Section 7 of the State Constitution to make such estimates, and based on estimates made by the department of budget and finance of those receipts which cannot be included as general fund revenues for the purpose of calculating the debt limit, all of which estimates the legislature finds to be reasonable.

- (3) Principal and interest on outstanding bonds applicable to the debt limit. (A) According to the department of budget and finance, the total amount of principal and interest on outstanding general obligation bonds, after the exclusions permitted by Article VII, Section 13 of the State Constitution, for determining the power of the State to issue general obligation bonds within the debt limit as of April 1, 2003 is as follows for fiscal year 2003-2004 to fiscal year 2009-2010:

<u>Fiscal Year</u>	<u>Principal and Interest</u>
2003-2004	\$351,355,688
2004-2005	352,002,652
2005-2006	435,901,288
2006-2007	471,404,698
2007-2008	475,673,601
2008-2009	465,630,441
2009-2010	368,380,331

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 2010-2011 to fiscal year 2022-2023 when the final installment of \$27,456,505 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 28, 2003 adjusted for lapses totaling \$22,379,820 proposed in House Bill No. 200, H.D. 1, S.D. 1, C.D. 1,¹ (the General Appropriations Act of 2003), the total amount of authorized but unissued general obligation bonds is \$840,411,973. The total amount of general obligation bonds authorized in this Act is \$406,980,000. The total amount of general obligation bonds previously authorized and unissued, as adjusted and the general obligation bonds authorized in this Act is \$1,247,391,973. (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.

- (5) Proposed general obligation bond issuance. As reported therein for the fiscal years 2003-2004, 2004-2005, 2005-2006 and 2006-2007, the State proposed to issue \$225,000,000 in general obligation bonds semi-annually during the fiscal year 2003-2004, \$200,000,000 semi-annually during the fiscal year 2004-2005, and \$100,000,000 semi-annually during the fiscal years 2005-2006 and 2006-2007. It has been the practice of the State to issue twenty-year serial bonds with principal repayments beginning the fifth 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 that are proposed to be issued.
- (6) Sufficiency of proposed general obligation bond issuance to meet the requirements of authorized and unissued bonds, as adjusted, and bonds authorized by this Act. From the schedule reported in paragraph (5), the total amount of general obligation bonds that the State proposes to issue during the fiscal years 2003-2004 to 2005-2006 is \$1,050,000,000. An additional \$200,000,000 is proposed to be issued in fiscal year 2006-2007. The total amount of \$1,050,000,000 which is proposed to be issued through fiscal year 2005-2006 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$1,247,391,973 reported in paragraph (4), except for \$197,391,973. It is assumed that the appropriations to which an additional \$197,391,973 in bond issuance needs to be applied will have been encumbered as of June 30, 2006. The \$200,000,000 which is proposed to be issued in fiscal year 2006-2007 will be sufficient to meet the requirements of the June 30, 2006 encumbrances in the amount of \$197,391,973. The amount of assumed encumbrances as of June 30, 2006 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, 2006, and the amount of June 30, 2006 encumbrances versus the amount of bonds which is proposed to be issued in fiscal year 2006-2007, 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 4.89 percent for the ten years from fiscal year 2003-2004 to fiscal year 2012-2013. For the purpose of this declaration, the assumption is made that one 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 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 2002-2003, 2003-2004, 2004-2005, 2005-2006, and 2006-2007 are as follows:

<u>Fiscal Year</u>	<u>Total amount of General Obligation Bonds not otherwise excluded by Article VII, Section 13 of the State Constitution</u>
2002-2003	\$3,524,065,690
2003-2004	3,803,897,809
2004-2005	4,023,525,425
2005-2006	3,970,107,220
2006-2007	3,870,159,568

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven percent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, Section 13 of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such

assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate not to exceed 6.0 percent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

<u>Time of Issuance and Amount to be Counted Against Debt Limit</u>	<u>Debt Limit at Time of Issuance</u>	<u>Greatest Amount and Year of Highest Principal and Interest on Bonds and Guaranties</u>
1st half FY 2003-2004 \$222,750,000	648,571,329	489,038,601 (2007-2008)
2nd half FY 2003-2004 \$222,750,000	648,571,329	509,450,191 (2008-2009)
1st half FY 2004-2005 \$198,000,000	668,016,091	521,330,191 (2008-2009)
2nd half FY 2004-2005 \$198,000,000	668,016,091	533,210,191 (2008-2009)
1st half FY 2005-2006 \$ 99,000,000	701,286,777	539,150,191 (2008-2009)
2nd half FY 2005-2006 \$ 99,000,000	701,286,777	545,090,191 (2008-2009)
1st half FY 2006-2007 \$ 99,000,000	729,160,788	551,030,191 (2008-2009)
2nd half FY 2006-2007 \$ 99,000,000	729,160,788	556,970,191 (2008-2009)

- (9) Overall and concluding finding. From the facts, estimates, and assumptions stated in this declaration of findings, the conclusion is reached that the total amount of principal and interest estimated for the general obligation bonds authorized in this Act, and for all bonds authorized and unissued, and calculated for all bonds issued and outstanding, and all guaranties, will not cause the debt limit to be exceeded at the time of issuance.

SECTION 2. The legislature finds the bases for the declaration of findings set forth in this Act reasonable. The assumptions set forth in this Act with respect to the principal amount of general obligation bonds which will be issued, the amount of principal and interest on reimbursable general obligation bonds which are assumed to be excludable, and the assumed maturity structure shall not be deemed to be binding, it being the understanding of the legislature that such matters must remain subject to substantial flexibility.

SECTION 3. Authorization for issuance of general obligation bonds. General obligation bonds may be issued as provided by law in an amount that may be necessary to finance projects authorized in House Bill No. 200, H.D. 1, S.D. 1, C.D. 1¹ (the General Appropriations Act of 2003) and House Bill No. 808, H.D. 1, S.D. 2, C.D. 1,² (the Judiciary Appropriations Act of 2003) passed by this regular session of

2003 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 \$406,980,000.

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 2, 2003.)

Notes

1. Act 200.
2. Act 120.

ACT 117

H.B. NO. 401

A Bill for an Act Relating to Elections.

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

PART I

SECTION 1. Section 11-1.6, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The chief election officer may be removed by the panel at any time ~~and~~ for ~~any~~ good cause.”

PART II

SECTION 2. Section 11-1.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established an office of elections to provide support to the chief election officer. The office shall be ~~attached to the office of the lieutenant governor~~ placed within the department of accounting and general services for ~~purposes of administration.~~ administrative purposes. The chief election officer shall be the administrator of the office of elections. Except for exercising the right to vote, the full-time employees of the office of elections shall not support, advocate, or aid in the election or defeat of any candidate for public office.”

SECTION 3. Section 11-2.5, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) The elections appointment and review panel shall be ~~attached to the office of the lieutenant governor for purposes of administration.~~ placed within the department of accounting and general services for administrative purposes.”

SECTION 4. All rights, powers, functions, and duties of the office of elections and the elections appointment and review panel are transferred to the department of accounting and general services.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 5. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the office of elections or the elections appointment and review panel relating to the functions transferred to the department of accounting and general services shall be transferred with the functions to which they relate.

PART III

SECTION 6. Section 11-192, Hawaii Revised Statutes, is amended to read as follows:

“§11-192 Campaign spending commission. There is established a campaign spending commission. The commission shall consist of five members of the general public, appointed by the governor from a list of ten nominees submitted by the judicial council. The judicial council may solicit applications for the list of nominees through community organizations and advertisements in any newspaper of general circulation. Any vacancies in the commission shall be filled by the governor with a member from the list of nominees or by reappointment of a commissioner whose term has expired, subject to the limit on length of service imposed by section 26-34.

The judicial council shall meet and expeditiously select additional persons for the list of nominees whenever the number of the eligible nominees falls below five.

Notwithstanding section 26-34, these appointments shall not be subject to senatorial confirmation. The term of the commissioners shall be four years, except that the terms of the initial commissioners shall be two years for two commissioners,

three years for two other commissioners and four years for the chairperson, as determined by the governor.

The commissioners shall serve without compensation but they shall be reimbursed for reasonable expenses, including travel expenses, incurred in the discharge of their duties. ~~[For special purposes, the]~~ The commission shall [temporarily] be [administratively attached to the office of the lieutenant governor until June 30, 2003.] placed within the department of accounting and general services for administrative purposes.

SECTION 7. All rights, powers, functions, and duties of the campaign spending commission are transferred to the department of accounting and general services.

All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

No officer or employee of the State having tenure shall suffer any loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege as a consequence of this Act, and such officer or employee may be transferred or appointed to a civil service position without the necessity of examination; provided that the officer or employee possesses the minimum qualifications for the position to which transferred or appointed; and provided that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

An officer or employee of the State who does not have tenure and who may be transferred or appointed to a civil service position as a consequence of this Act shall become a civil service employee without the loss of salary, seniority, prior service credit, vacation, sick leave, or other employee benefits or privileges and without the necessity of examination; provided that such officer or employee possesses the minimum qualifications for the position to which transferred or appointed.

If an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.

SECTION 8. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the campaign spending commission relating to the functions transferred to the department of accounting and general services shall be transferred with the functions to which they relate.

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved June 2, 2003.)

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

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

SECTION 1. Section 88-3, Hawaii Revised Statutes, is amended to read as follows:

“§88-3 Payment on death of pensioner. Whenever any person receiving a pension from the State or from any county thereof dies, the amount next payable shall be prorated from the last payment date up to and including the date of death, and [effective] the prorated amount shall be paid to the person who may have been designated by the pensioner during the pensioner's lifetime in a statement filed with the officer charged with payment of the pension, or if no such designation has been made and filed, the prorated amount shall be paid to the personal representative of the estate of the pensioner; provided that:

- (1) Effective January 1, 2003, whenever a person receiving a pension from the [state retirement] system dies, the full monthly pension [shall be payable] for the month in which the pensioner [is deceased. The sum shall be paid to such person as may have been designated by the pensioner during the pensioner's lifetime in a statement filed with the officer charged with payment of the pension, or, if no such designation has been made and filed, then the amount so due shall be paid to the personal representative of the estate of the pensioner.] died, less any portion of the pension paid to the pensioner, shall be payable to the person who may have been designated by the pensioner during the pensioner's lifetime in a statement filed with the officer charged with the payment of the pension, or if no such designation has been made and filed, the prorated amount shall be paid to the personal representative of the estate of the pensioner; and
- (2) Effective July 1, 2003, whenever a person receiving a pension from the system dies, the full monthly pension for the month in which the pensioner died shall be payable to the pensioner.”

SECTION 2. Section 88-29, Hawaii Revised Statutes, is amended to read as follows:

“§88-29 Officers, employees, legal adviser. The board of trustees shall elect from its membership a chairperson, and by a majority vote of all its members, shall appoint an administrator and a chief investment officer who shall be exempt from chapter 76 and serve under and at the pleasure of the board. Effective July 1, 1992, the salary of the administrator shall be set by the board [~~within the range established for deputy directors.]; provided that the salary shall be set at not more than the salary of the governor as established under section 26-51.~~ The board shall engage actuarial and other services as shall be required to transact the business of the system. The compensation for all services engaged by the board, and all other expenses of the board necessary for the operation of the system, shall be paid at rates and in amounts the board shall approve.

The attorney general or an appointed representative may serve as legal adviser to the board of trustees or the board of trustees may select its own legal counsel.”

SECTION 3. Section 88-73, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) For the purpose of computing or determining benefits for an elective officer or judge, or any beneficiary of either, the date upon which the elective officer or judge makes an election to retire, as provided by section 88-61(c), after attaining an allowance of seventy-five per cent of the member’s average final compensation, shall be used as the date the member is eligible to receive a service retirement benefit. The elective officer or judge may continue in active service, but shall not receive a retirement allowance until termination of active service~~[-; provided further that upon].~~ Upon leaving active service, the elective officer or judge shall receive the retirement allowance [effective on the first day of a month following the member’s termination,] provided for in section 88-74, together with the post retirement allowances provided for in section 88-90[-,], effective on the first day of a month except the month of December when retirement benefits shall be effective on the first or last day of the month. Post retirement allowances shall be computed from the date of the election as though the elective officer or judge had left active service on that day.”

SECTION 4. Section 88-74, Hawaii Revised Statutes, is amended to read as follows:

“**§88-74 Allowance on service retirement.** Upon retirement from service, a member shall receive a retirement allowance as follows:

- (1) If the member has attained age fifty-five, a retirement allowance of two per cent of the member’s average final compensation multiplied by the total number of years of the member’s credited service as a class A and B member, excluding any credited service as a judge, elective officer, or legislative officer, plus a retirement allowance of one and one-fourth per cent of the member’s average final compensation multiplied by the total number of years of prior credited service as a class C member; provided that:
 - (A) After June 30, 1968, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a firefighter, police officer, or an investigator of the department of the prosecuting attorney;
 - (B) After June 30, 1977, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a corrections officer;
 - (C) After June 16, 1981, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as an investigator of the department of the attorney general;
 - (D) After June 30, 1989, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a narcotics enforcement investigator;
 - (E) After December 31, 1993, if the member has at least ten years of credited service of which the last five or more years prior to retirement is credited service as a water safety officer;
 - (F) After June 30, 1994, if the member has at least ten years of credited service, of which the last five or more years prior to retirement are credited service as a public safety investigations staff investigator; and

- (G) After June 30, 2002, if the member has at least ten years of credited service as a firefighter, and is deemed permanently medically disqualified due to a service related disability to be a firefighter by the employer's physician, and continues employment in a class A or B position other than a firefighter; then for each year of service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, water safety officer, or public safety investigations staff investigator, the retirement allowance shall be two and one-half per cent of the member's average final compensation. The maximum retirement allowance for those members shall not exceed eighty per cent of the member's average final compensation. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; provided that no reduction shall be made if the member has at least twenty-five years of credited service as a firefighter, police officer, corrections officer, investigator of the department of the prosecuting attorney, investigator of the department of the attorney general, narcotics enforcement investigator, public safety investigations staff investigator, sewer worker, or water safety officer, of which the last five or more years prior to retirement is credited service in such capacities;
- (2) If the member has made voluntary additional contributions for the purchase of an additional annuity and has not applied for a refund as permitted by section 88-72, the member may accept the refund at the time of retirement or, in lieu thereof, receive in addition to the retirement allowance provided in paragraph (1), an annuity that is the actuarial equivalent of the additional contributions with regular interest;
- (3) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
- (A) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
- (B) For a member who first earned credited service as a judge after June 30, 1999, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or
- (C) For a judge with other credited service, as provided in paragraphs (1) and (2). If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; or

- (D) For a judge with credited service as an elective officer or as a legislative officer, as provided in paragraph (4). No allowance shall exceed seventy-five per cent of the member's average final compensation. If the allowance exceeds this limit, it shall be adjusted by reducing the annuity included in subparagraphs (A) and (B) and the portion of the accumulated contributions specified in the subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. The allowance for judges under this paragraph, together with the retirement allowance provided by the federal government for similar service, shall in no case exceed seventy-five per cent of the member's average final compensation; or
- (4) If the member has credited service as an elective officer or as a legislative officer, the member's retirement allowance shall be derived by adding the allowances computed separately under subparagraphs (A), (B), (C), and (D) as follows:
- (A) Irrespective of age, for each year of credited service as an elective officer, three and one-half per cent of the member's average final compensation as computed under section ~~[88-81(d)(1),]~~ 88-81(e)(1), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service; and
- (B) Irrespective of age, for each year of credited service as a legislative officer, three and one-half per cent of the member's average final compensation as computed under section ~~[88-81(d)(2),]~~ 88-81(e)(2), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of service;
- (C) If the member has credited service as a judge, the member's retirement allowance shall be computed on the following basis:
- (i) For a member who has credited service as a judge before July 1, 1999, irrespective of age, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section ~~[88-81(d)(3),]~~ 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service; and
- (ii) For a member who first earned credited service as a judge after June 30, 1999, and has attained the age of fifty-five, for each year of credited service as a judge, three and one-half per cent of the member's average final compensation as computed under section ~~[88-81(d)(3),]~~ 88-81(e)(3), in addition to an annuity that is the actuarial equivalent of the member's accumulated contributions allocable to the period of such service. If the member has not attained age fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary; and
- (D) For each year of credited service not included in subparagraph (A), (B), or (C), the average final compensation as computed under section ~~[88-81(d)(4)]~~ 88-81(e)(4) shall be multiplied by two per cent, two and one-half per cent, or one and one-quarter per cent, as applicable to the credited service earned as a class A, B, or C member, respectively. If the member has not attained age

fifty-five, the member's retirement allowance shall be computed as though the member had attained age fifty-five, reduced in accordance with factors of actuarial equivalence adopted by the board upon the advice of the actuary.

The total retirement allowance shall not exceed seventy-five per cent of the member's highest average final compensation calculated under section [88-81(d)(1), (2), (3), or (4);] 88-81(e) (1), (2), (3), or (4). If the allowance exceeds this limit, it shall be adjusted by reducing any annuity accrued under subparagraphs (A), (B), and (C) and the portion of the accumulated contributions specified in these subparagraphs in excess of the requirements of the reduced annuity shall be returned to the member. If a member has service credit as an elective officer or as a legislative officer in addition to service credit as a judge, then the retirement benefit calculation contained in this paragraph shall supersede the formula contained in paragraph (3)."

SECTION 5. Section 88-81, Hawaii Revised Statutes, is amended to read as follows:

“§88-81 Average final compensation. (a) Average final compensation is the average annual compensation pay or salary upon which a member has made contributions as required by sections 88-45 and 88-46.

(b) The average final compensation of members [~~retiring prior to January 1, 2003,~~] shall be calculated as follows:

- (1) For employees who become members prior to January 1, 1971:
 - (A) During the member's five highest paid years of credited service, including vacation pay, or the three highest paid years of credited service excluding vacation pay, whichever is greater; or
 - (B) If the member has less than three years of credited service, during the member's actual years of credited service.
- (2) For employees who become members on or after January 1, 1971:
 - (A) During the member's three highest paid years of credited service, excluding vacation pay; or
 - (B) If the member has less than three years of credited service, during the member's actual years of credited service.

~~[(e) The average final compensation of members retiring after December 31, 2002, shall be calculated as follows:~~

- ~~(1) For employees who become members prior to January 1, 1971:

 - (A) During the member's five highest paid calendar years of service including vacation pay, or the last sixty months of credited service including vacation pay, whichever is greater; or
 - (B) During the member's three highest paid calendar years of service excluding vacation pay, or the last thirty-six months of credited service excluding vacation pay, whichever is greater; or
 - (C) During the member's actual years of credited service, if the member has less than three years of credited service;~~
- ~~(2) For employees who become members on or after January 1, 1971:

 - (A) During the member's three highest paid calendar years of service excluding vacation pay or the last thirty-six months of credited service excluding vacation pay, whichever is greater; or
 - (B) During the member's actual years of credited service, if the member has less than three years of credited service; and~~
- ~~(3) If a member has credited service as a nine, ten, or eleven-month employee and is paid over twelve months,~~

- (A) ~~During the member's three highest paid school contract years of service; or~~
 (B) ~~During the member's actual years of credited service, if the member has less than three years of credited service.~~

~~(d)~~ (c) In computing the compensation of a judge, the compensation paid to the judge by the United States as well as by the Territory shall be included.

~~(e)~~ (d) For service rendered as a member of the legislature from and after November 5, 1968, the actual annual salary of a member shall be the only amount used for determining the member's average final compensation. For service rendered as a member of the legislature prior to November 5, 1968, and after admission of this State into the Union, the annual compensation of a member shall be computed, for the purpose of determining the member's average final compensation, as follows: during a year in which a general session was held, it shall be deemed to have been an amount equal to four times the salary of a member of the legislature for a general session; and during a year in which a budget session was held, it shall be deemed to have been an amount equal to six times the salary of a member of the legislature for a budget session. For service rendered as a member of the legislature prior to the admission of this State into the Union, the annual compensation of a member shall be deemed to have been four times the salary of a member of the legislature for a regular session for each year during the member's term of office.

~~(f)~~ (e) If a member has credited service rendered as an elective officer or as a legislative officer, the member's average final compensation shall be computed separately for each category of service as follows:

- (1) For the three highest paid years of credited service as an elective officer, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service;
- (2) For the three highest paid years of credited service as a legislative officer, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service;
- (3) For the three highest paid years of credited service as a judge, or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service; and
- (4) For the three highest paid years of credited service not included in paragraph (1), (2), or (3), or if the member has less than three years of credited service in that capacity, then the member's actual years of credited service."

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

SECTION 7. This Act shall take effect on July 1, 2003; provided that sections 1, 4, and 5 shall take effect retroactive to January 1, 2003.

(Approved June 2, 2003.)

ACT 119

H.B. NO. 317

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

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

SECTION 1. It has been the University of Hawaii's (University) long-standing practice to report certain faculty members and lecturers holding multiple

part-time appointments as eligible for membership in the employees' retirement system.

The purpose of this Act is to allow:

- (1) Present and future University faculty members and lecturers to qualify for membership in the employees' retirement system on the basis of aggregated multiple part-time appointments; and
- (2) Past and present University faculty members, lecturers, and administrative, professional, and technical employees to retain the membership benefits for which the University reported them to be eligible prior to the effective date of this Act.

SECTION 2. Section 88-42.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§88-42.5]~~ Membership of employees holding more than one position, appointment, or office. (a) The membership of any employee holding more than one full-time position, appointment, office, or any combination thereof shall be limited to the position, appointment, or office of the employee's option; provided that the employment in the position, appointment, or office shall meet the minimum membership eligibility requirements as provided in this part. Any contributions made based on the compensation, pay, or salary of the employee's position, appointment, or office other than that on which the employee's membership is based shall be returned to the employee.

The foregoing shall not apply to any employee holding two part-time positions of the same class if each position meets the minimum eligibility requirements for membership, and the sum total of the compensation, pay, or salary received for both positions does not exceed the higher of the full-time compensation, pay, or salary for either position.

(b) The membership of any faculty member or lecturer of the University of Hawaii with multiple part-time appointments or positions shall be based on an aggregate of all such part-time faculty or lecturer appointments or positions not to exceed one full-time position. For the purposes of this chapter, the sum total of the compensation, pay, or salary received from the positions shall not exceed an amount equal to the highest of the full-time compensation, pay, or salary for any one of the part-time appointments or positions.

Notwithstanding any other law to the contrary, with respect to any existing or former faculty member, lecturer, or administrative, professional, or technical employee of the University of Hawaii who holds or held multiple part-time appointments or positions prior to July 1, 2003, and who was reported by the University of Hawaii to the system as eligible for membership in the system, the system shall not adjust its records for, or reduce the benefits of, such faculty member, lecturer, or administrative, professional, or technical employee by reason of the failure of such faculty member, lecturer, or administrative, professional, or technical employee to meet the system membership eligibility requirements without the aggregation of multiple part-time appointments or positions.”

SECTION 3. Section 88-43, Hawaii Revised Statutes, is amended to read as follows:

“§88-43 Persons ineligible for membership; optional membership. [The] Except with respect to faculty members or lecturers employed on one or more campuses of the University of Hawaii who hold multiple part-time appointments or positions, in such capacities, any of which may be less than one-half of a full-time equivalent but all of which, when added together, aggregate to at least one-half of a

full-time equivalent position, the board of trustees may deny membership to any class of part-time employees or persons engaged in temporary employment of three months or less, or it may, in its discretion, make optional with persons in such classes their individual entrance into membership; provided that no officer or employee entering service after January 1, 1928, who is entitled to become a member of any pension system under [Part] part III shall be entitled to become a member of the system.

Elective officers shall be eligible for membership, and their individual entrance into membership shall be at their option.”

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

SECTION 5. This Act shall take effect on July 1, 2003.

(Approved June 2, 2003.)

ACT 120

H.B. NO. 808

A Bill for an Act Relating to the Judiciary.

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

PART I. GENERAL PROVISIONS

SECTION 1. This Act shall be known and may be cited as the Judiciary Appropriations Act of 2003.

SECTION 2. Unless otherwise clear from the context, as used in this Act: (a) “Means of Financing,” or “MOF,” means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are followed by letter symbols. Such letter symbols, where used, shall have the following meanings:

- A General funds
- B Special funds
- C General obligation bond funds
- W Revolving funds

(b) “Position ceiling” means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

(c) “Program ID” means the unique identifier for the specific program, and consists of the abbreviation for the judiciary (JUD) followed by a designated number for the program.

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, 2003, and ending June 30, 2005. 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 2003-04	M O F	FISCAL YEAR 2004-05	M O F
The Judicial System							
1.	JUD101	COURTS OF APPEAL					
	OPERATING		JUD	76.00*		76.00*	
			JUD	5,874,885A		5,816,875A	
				243,261W		243,261W	
2.	JUD310	FIRST JUDICIAL CIRCUIT					
	OPERATING		JUD	990.50*		990.50*	
			JUD	56,413,035A		56,402,835A	
			JUD	35.00*		35.00*	
			JUD	3,112,683B		3,112,683B	
3.	JUD320	SECOND JUDICIAL CIRCUIT					
	OPERATING		JUD	194.00*		194.00*	
			JUD	11,428,602A		11,428,602A	
4.	JUD330	THIRD JUDICIAL CIRCUIT					
	OPERATING		JUD	198.00*		198.00*	
			JUD	13,730,441A		13,730,441A	
5.	JUD350	FIFTH JUDICIAL CIRCUIT					
	OPERATING		JUD	81.00*		90.00*	
			JUD	4,794,217A		5,138,583A	
6.	JUD601	ADMINISTRATION					
	OPERATING		JUD	260.00*		260.00*	
			JUD	18,681,566A		18,693,058A	
			JUD	1.00*		1.00*	
	INVESTMENT CAPITAL		JUD	3,430,261B		3,430,261B	
			JUD	2,710,000C		445,000C	

PART III. PROGRAM PROVISIONS

SECTION 4. Provided that of the general fund appropriation for courts of appeal (JUD 101), the sum of \$143,533 for fiscal year 2003-2004 and \$143,533 for fiscal year 2004-2005 shall be expended on dues and subscriptions for the law library; provided further that any funds not utilized by the law library for dues and subscriptions shall be lapsed back into the general fund; provided further that the judiciary shall submit a report to the legislature detailing all expenditures by the law library on dues and subscriptions; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 5. Provided that of the general fund appropriation for first judicial circuit (JUD 310), the sum of \$574,420 for fiscal year 2003-2004 and \$564,220 for fiscal year 2004-2005 shall be expended only for the continuation of the juvenile drug court program; provided further that the judiciary shall submit a report on all expenditures; provided further that this report shall include but not be limited to the progress of the juvenile drug court program, number of individuals in these programs, the success and failure rate of the program, and cost per individual; provided further that all unexpended funds shall lapse into the general fund; and provided

further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 6. Provided that the judiciary shall submit a report on all revenues and expenditures from the judiciary computer system special fund; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 7. Provided that the judiciary is authorized to transfer savings from its general fund appropriation to the driver education special fund to accommodate any temporary cash flow deficits.

SECTION 8. Provided that the judiciary shall submit a report on all positions re-described and the justification for each re-description to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 9. Provided that whenever the need arises, the chief justice, in administering an equitable and expeditious judicial process, is authorized to transfer sufficient funds and positions between programs for operating purposes; provided that no transfer shall be made to implement any collective bargaining contract signed after this legislature adjourns sine die.

SECTION 10. Provided that if the chief justice, or any agency, or any government unit secures federal funds or other property under any act of Congress, or any funds or other property from private organizations or individuals which are to be expended in connection with any program or works authorized by this Act, or otherwise, the chief justice, or the agency with the chief justice's approval, shall have the power to enter into the undertaking with the federal government, private organization, or individual; and provided further that while most federal aid allocations are known and state matching funds are provided in this Act, in instances where programs for which federal-state cost sharing is not yet determined, the availability of federal funds shall be construed as a proportionate reduction of state costs whenever possible.

PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 11. The sum of \$3,155,000 appropriated or authorized in part II of this Act for capital improvement projects shall be expended by the judiciary for the projects listed below; provided that several related or similar projects may be combined into a single project, if a combination is advantageous or convenient for implementation; and provided further that the total cost of the projects thus combined shall not exceed the total of the sums specified for the projects separately. (The amount after each cost element and the total funding for each project listed in this part are in thousands of dollars.)

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
			FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
JUDICIAL SYSTEM						
JUD601 - ADMINISTRATION						
1.	KAPUAIWA BUILDING RENOVATION, OAHU					
	DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INTERIOR ALTERATIONS AND OTHER IMPROVEMENTS AT THE KAPUAIWA BUILDING, OAHU.					
	DESIGN			30		
	CONSTRUCTION			600		
	EQUIPMENT			20		
	TOTAL FUNDING	JUD		650C		C
2.	KAUIKEAOULI HALE ROOF, PARAPET, AND FIRE ALARM SYSTEM IMPROVEMENTS, OAHU					
	PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ROOF, PARAPET, AND FIRE ALARM SYSTEM IMPROVEMENTS AT KAUIKEAOULI HALE, OAHU.					
	PLANS			1		1
	DESIGN			133		30
	CONSTRUCTION			800		413
	EQUIPMENT			1		1
	TOTAL FUNDING	JUD		935C		445C
3.	KEAKEALANI BUILDING COURT FACILITIES IMPROVEMENTS, HAWAII					
	PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GENERAL IMPROVEMENTS TO JUDICIARY FACILITIES AT THE KEAKEALANI BUILDING IN KEALAKEKUA, HAWAII.					
	PLANS			5		
	DESIGN			20		
	CONSTRUCTION			100		
	EQUIPMENT			25		
	TOTAL FUNDING	JUD		150C		C
4.	REMODELING AND UPGRADING OF JUDICIARY FACILITIES, 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
5.	ARCHITECTURAL BARRIER REMOVAL FOR JUDICIARY BUILDINGS, STATEWIDE					
	PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REMOVAL OF ARCHITECTURAL BARRIERS IN JUDICIARY BUILDINGS, STATEWIDE.					
	PLANS			1		
	DESIGN			34		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
			FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
	CONSTRUCTION			150		
	EQUIPMENT			40		
	TOTAL FUNDING	JUD		225C		C
6.	WAHIAWA COURT FACILITY, OAHU					
	PLANS FOR A NEW PERMANENT COURT FACILITY FOR WAHIAWA, OAHU.					
	PLANS			100		
	TOTAL FUNDING	JUD		100C		C
7.	LEGAL AID SOCIETY OF HAWAII, OAHU					
	DESIGN AND CONSTRUCTION FOR THE RENOVATION OF THE LEGAL AID SOCIETY OF HAWAII'S BETHEL STREET OFFICE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
	DESIGN			1		
	CONSTRUCTION			149		
	TOTAL FUNDING	JUD		150C		C

PART V. ISSUANCE OF BONDS

SECTION 12. 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 \$3,155,000.

PART VI. SPECIAL PROVISIONS

SECTION 13. Any law or any provision of this Act to the contrary notwithstanding, the appropriations made for capital improvement projects authorized in part II and listed in part IV of this Act shall not lapse at the end of the fiscal year for which the appropriations are made; provided that all appropriations made for fiscal year 2003-2004 and fiscal year 2004-2005 which are unencumbered as of June 30, 2006, shall lapse as of that date.

SECTION 14. The judiciary is authorized to delegate to other state or county agencies the planning, acquisition of land, design, construction, and equipment of any capital improvement project when it is determined by the judiciary to be advantageous to do so.

SECTION 15. All unrequired balances in the general obligation bond fund, after the objectives of part II appropriations for capital improvements program purposes listed as projects in part IV have been met, shall be transferred to the judiciary project adjustment fund.

SECTION 16. If the amount allocated from the general obligation bond fund for a capital improvement project listed in part IV of this Act is insufficient, the chief justice may make supplemental allotments from the project adjustment fund; pro-

ACT 121

vided that supplemental allotments shall not be used to increase the scope of the project.

SECTION 17. Where it has been determined that changed conditions, such as reduction in the particular population being served, permit the reduction in the scope of a project listed in part IV, the chief justice may authorize such reduction of project scope.

SECTION 18. The chief justice shall determine when and the manner in which the authorized capital improvement projects shall be initiated. The chief justice shall notify the governor from time to time of the specific amounts required for the projects, and the governor shall provide for those amounts through the issuance of bonds authorized in part V of this Act.

SECTION 19. Any law or any provision to the contrary notwithstanding, the chief justice may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project by this Act or by any other prior or future act which have not lapsed, provided that the total expenditure of funds for all cost elements for the project shall not exceed the total appropriation for that project.

PART VII. MISCELLANEOUS PROVISIONS AND EFFECTIVE DATE

SECTION 20. 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 21. 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 22. This Act shall take effect on July 1, 2003.

(Approved June 2, 2003.)

ACT 121

H.B. NO. 1157

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

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

SECTION 1. Section 88-47, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be three classes of members in the system to be known as class A, class B, and class C, defined as follows:

- (1) Class A shall consist of members covered by section 88-74(3) and (4), those members whose salaries are set forth in sections 26-52 and 26-53, and their county counterparts, managing directors or administrative

assistant to the mayor, and other department heads, including agency heads appointed by the mayor, first deputies appointed by the county attorney and prosecuting attorney, the county clerk and deputy county clerk of each county, the administrative director of the courts, the deputy administrative director of the courts, the executive director of the labor and industrial relations appeals board, the executive director of the Hawaii labor relations board, investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, public safety investigations staff investigators, and those members in service prior to July 1, 1984, including those who are on approved leave of absence, who are covered by Title II of the Social Security Act on account of service creditable under this part. This class shall consist of:

- (A) All employees who enter membership after June 30, 1957, except employees in positions to which coverage under Title II of the Social Security Act is not extended;
 - (B) All employees who were members on July 1, 1957, who elected to be covered by the Social Security Act; and
 - (C) All former class A retirants who return to employment after June 30, 1984, requiring the retirant's active membership;
- (2) Class B shall consist of ~~all~~ the following members ~~[who are not class A or class C members; and]~~:
- (A) Police officers and firefighters; and
 - (B) Employees who were members on June 30, 1957, who elected not to be covered by the Social Security Act; and
- (3) Except for members described in ~~[paragraph]~~ paragraphs (1)[;] and (2), class C shall consist of all employees ~~[in positions covered by Title II of the Social Security Act]~~ who:
- (A) First enter service after June 30, 1984;
 - (B) Reenter service after June 30, 1984, without vested benefit status as provided in section 88-96(b);
 - (C) Make the election to become a class C member as provided in part VII; or
 - (D) Are former class C retirants who return to service requiring the retirant's active membership.''

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

SECTION 3. This Act shall take effect January 1, 2004.

(Approved June 2, 2003.)

ACT 122

S.B. NO. 1332

A Bill for an Act Relating to the Compensation of Officials in the Executive Branch of State Government.

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

SECTION 1. Chapter 26, Hawaii Revised Statutes, is amended by adding to part III a new section to be appropriately designated and to read as follows:

“§26- **Executive salary commission.** (a) There is established within the department of human resources development, for administrative purposes only, the executive salary commission. The commission shall consist of five members. Two members shall be appointed by the president of the senate, two members shall be appointed by the speaker of the house of representatives, and one member shall be appointed by the chief justice of the supreme court. Vacancies in these positions shall be filled in the same manner. The members of the commission shall serve without compensation but shall be reimbursed for expenses necessary for the performance of their duties.

(b) The commission shall review the salaries of the governor, the lieutenant governor, the administrative director of the State, and the 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. The commission shall also review the salary of the deputy to the superintendent of education. The commission shall recommend an appropriate salary for the governor, the lieutenant governor, and each department head or executive officer, and appropriate salary ranges for the deputy department heads. The commission may recommend different salaries for department heads and executive officers and different salary ranges for deputies or assistants to department heads; provided that the commission shall recommend the same salary range for deputies or assistants to department heads within the same department; provided further that the appointing official shall specify the salary for a particular position within the applicable range.

(c) The commission may seek assistance from the department of human resources development and any other agency in conducting its review, and all agencies shall fully cooperate with the commission and provide any necessary information to the commission upon request.

(d) The commission shall convene in the month of November 2003, and every eight years thereafter. Not later than the fortieth legislative day of the regular session of 2004, and every eight years thereafter, the commission shall submit a report of its findings and its salary recommendations to the legislature, through the governor. The commission may include incremental increases that take effect over the span of years occurring prior to the convening of the next salary commission. The recommended salaries submitted by the commission shall become effective July 1 of the next fiscal year unless the legislature disapproves the recommended salaries submitted by the commission through the adoption of a concurrent resolution, which shall be approved by a simple majority of each house of the legislature, prior to adjournment sine die of the legislative session in which the recommended salaries are submitted; provided that, pursuant to section 3 of article V of the State Constitution, the salaries of the governor and the lieutenant governor shall not be decreased for their respective terms and the new salaries shall not take effect until the beginning of the next term for those offices. The governor shall include the salary amounts, recommended by the commission and approved by the legislature, in the executive budget. If the salary amounts recommended by the commission are disapproved by the legislature, the commission shall reconvene in the month of November following the legislative disapproval to review the legislature’s reasons for disapproving its salary recommendation. The commission may submit a report of its findings and submit a new salary recommendation to the legislature of the next regular session. The commission’s reconvening following a legislative disapproval shall not toll the eight year cycle.”

SECTION 2. Section 26-51, Hawaii Revised Statutes, is amended to read as follows:

“§26-51 Governor; lieutenant governor. Effective January 1, 1989, and January 1, 1990, the salary of the governor of the State shall be \$90,699 and \$94,780 a year, respectively. Effective January 1, 1989, and January 1, 1990, the salary of the lieutenant governor shall be \$86,164 and \$90,041 a year, respectively[-], and, effective at noon on December 4, 2006, and every eight years thereafter, the salaries of the governor and the lieutenant governor shall be as last recommended by the executive salary commission pursuant to section 26- , unless rejected by the legislature.”

SECTION 3. 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 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, effective July 1, 2004, and every eight years thereafter, shall be as last recommended by the executive salary commission pursuant to section 26- , unless rejected by the legislature; and
- (4) The salary of the adjutant general shall be \$85,302 a year[; ~~provided~~] and, effective July 1, 2004, and every eight years thereafter, shall be as last recommended by the executive salary commission pursuant to section 26- unless rejected by the legislature, except that if ~~[this]~~ the state 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 4. Section 26-53, Hawaii Revised Statutes, is amended to read as follows:

“§26-53 Deputies or assistants to department heads. (a) [~~Effective January 1, 1989, and January 1, 1990, the~~] The salaries of deputies or assistants to the head of any department of the State, other than the department of education, shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, effective January 1, 1989, and January 1, 1990, respectively[-], and, effective July 1, 2004, and every eight years thereafter, within the range or ranges for the specific positions as last recommended by the executive salary commission pursuant to section 26- , unless rejected by the legislature.

(b) [~~Effective January 1, 1989, and January 1, 1990, the~~] The salary of the deputy to the superintendent of education shall be \$81,629 and \$85,302 a year, effective January 1, 1989, and January 1, 1990, respectively[-], and, effective July 1, 2004, and every eight years thereafter, shall be as last recommended by the

executive salary commission pursuant to section 26- , unless rejected by the legislature.”

SECTION 5. Section 26-54, Hawaii Revised Statutes, is amended to read as follows:

“§26-54 Administrative director of the State. Effective January 1, 1989, and January 1, 1990, the salary of the administrative director of the State shall be \$86,164 and \$90,041 a year, respectively[-], and, effective July 1, 2004, and every eight years thereafter, shall be as last recommended by the executive salary commission pursuant to section 26- , unless rejected by the legislature.”

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved June 2, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 123

S.B. NO. 1333

A Bill for an Act Relating to the Compensation of Officials in the Judicial Branch of State Government.

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

SECTION 1. Section 601-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(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 chapter 76 and shall serve at the pleasure of the chief justice. The administrative director shall hold no other office or employment. 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. Effective July 1, 2004, and every eight years thereafter, the salary of the administrative director shall be as last determined by the judicial salary commission pursuant to section 608-1.5, unless disapproved by the legislature.”

2. By amending subsection (c) to read:

“(c) The administrative director shall, with the approval of the chief justice, appoint a deputy administrative director of the courts without regard to chapter 76 and such assistants as may be necessary. Such assistants shall be appointed without regard to chapter 76. 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. Effective July 1, 2004, and every eight years thereafter, the salary of the deputy administrative director shall be as last determined by the judicial salary commission pursuant to section 608-1.5, unless disapproved by the legislature. The administrative director shall be provided with necessary office facilities.”

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 \$105,206 a year and the salary of each associate justice of the supreme court shall be \$104,096 a year. Effective July 1, 2000, the salary of the chief justice of the supreme court shall be \$116,779 a year and the salary of each associate justice of the supreme court shall be \$115,547 a year. Effective July 1, 2004, and every eight years thereafter, the salary of the chief justice of the supreme court and the salary of each associate justice of the supreme court shall be as last determined by the judicial salary commission pursuant to section 608-1.5, unless disapproved by the legislature.”

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 \$101,321 a year and the salary of each associate judge shall be \$99,656 a year. Effective July 1, 2000, the salary of the chief judge of the intermediate appellate court shall be \$112,466 a year and the salary of each associate judge shall be \$110,618 a year. Effective July 1, 2004, and every eight years thereafter, the salary of the chief judge of the intermediate appellate court and the salary of each associate judge shall be as last determined by the judicial salary commission pursuant to section 608-1.5, unless disapproved by the legislature.”

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 \$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 \$106,922 a year. Effective on July 1, 2004, and every eight years thereafter, the salary of a circuit court judge shall be as last determined by the judicial salary commission pursuant to section 608-1.5, unless disapproved by the legislature.”

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 \$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 \$100,761 a year. Effective on July 1, 2004, and every eight years thereafter, the salary of a district court judge shall be as last determined by the judicial salary commission pursuant to section 608-1.5, unless disapproved by the legislature.

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. Section 608-1.5, Hawaii Revised Statutes, is amended to read as follows:

“§608-1.5 Judicial salary commission. (a) There shall be a judicial salary commission to review and [recommen] determine the salaries of justices and judges of all state courts and appointed judiciary administrative officers. The judicial salary commission shall be attached to the judicial council for administrative purposes. The commission shall be composed of five members[, two to be]. One member shall be appointed by the governor, [one by the president of the senate, one by the speaker of the house, and one by the chief justice. Members shall be appointed for terms of four years each.] two members shall be appointed by the president of the senate, and two members shall be appointed by the speaker of the house of representatives; and provided further that vacancies in these positions shall be filled in the same manner. Members shall not receive compensation for their services, but shall be reimbursed for traveling and other expenses incidental to the performance of commission duties. [For administrative purposes only, the commission shall be attached to the judicial council.

By October 15 of each year preceding a fiscal biennium, the commission shall submit its recommendations in a report to the legislature, with copies to be submitted to the governor and chief justice.] (b) The commission may seek assistance from any other agency in conducting its review and all agencies shall cooperate fully with the commission and provide any necessary information to the commission upon request. In determining the salaries of the justices and judges and appointed judiciary administrative officers, the commission may set different salaries for the chief justice of the supreme court, the associate justices of the supreme court, the chief judge of the intermediate appellate court, the associate judges of the intermediate appellate court, the judges of the circuit courts, and the judges of the district courts and different salaries or salary ranges for appointed administrative judiciary officers, with the salary for a particular position to be specified within the applicable range by the appointing official.

(c) The commission shall convene in the month of November 2003, and every eight years thereafter. Not later than the fortieth legislative day of the regular session of 2004, and every eight years thereafter, the commission shall submit a report of its findings and its salary recommendations to the legislature, through the chief justice. The commission’s salary recommendations may include incremental increases that take effect over the span of years occurring prior to the convening of the next salary commission. The recommended salaries submitted by the commission shall become effective July 1 of the next fiscal year unless the legislature disapproves the salary recommendations submitted by the commission through the adoption of a concurrent resolution, which shall be approved by a simple majority of each house of the legislature prior to adjournment sine die of the legislative session in which the recommended salaries are submitted; provided that pursuant to article VI, section 3 of the State Constitution, the salaries of justices and judges shall not be decreased during their respective terms of office. At the next regular legislative session, the salary amounts recommended by the commission, and not disapproved by the legislature, shall be submitted by the chief justice as part of the judiciary’s proposed budget pursuant to the budgetary procedures specified in chapter 37 and section 601-2(c). [Salary amounts in the budget as enacted shall take precedence over any inconsistent statutes.] If the salary amounts recommended by the commission are disapproved by the legislature, the commission shall reconvene in the month of November following the legislative disapproval to review the legislature’s reasons for disapproving its salary recommendation. The commission may submit a report of its findings and submit a new salary recommendation to the legislature of

the next regular session. The commission's reconvening following a legislative disapproval shall not toll the eight year cycle."

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

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

(Approved June 2, 2003.)

ACT 124

H.B. NO. 1165

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 414D, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§414D- Shares of stock and dividends prohibited; compensation; distribution. A corporation under this chapter shall not authorize or issue shares of stock except for limited-equity housing cooperatives. No dividend shall be paid and no part of the income or profit of a corporation shall be distributed to its members, directors, or officers. A corporation may pay compensation in a reasonable amount to its members, directors, or officers for services rendered, may confer benefits upon its members in conformity with its purposes, and upon dissolution or final liquidation may make distributions to its members as permitted by this chapter; provided that no such payment, benefit, or distribution shall be deemed to be a dividend or a distribution of income or profit.”

SECTION 2. Section 414D-14, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Department” means the department of commerce and consumer affairs, unless the context otherwise requires.”

SECTION 3. Chapter 428, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§428- Change of name by foreign limited liability company. (a) Whenever the name of a foreign limited liability company that is authorized to transact business in this State is changed by an amendment to its articles of organization, the foreign limited liability company, within sixty days after the amendment becomes effective, shall deliver to the department director a certificate evidencing the name change that is duly authenticated by the proper officer of the state or country under the laws of which it is organized. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign limited liability company that is authorized to transact business in this State changes its name to one that is substantially identical to the name of any business entity or trade name registered in this State, the foreign limited liability company 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 limited liability company 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 director a copy of a certificate of registration of a different name as a trade name and thereafter shall become authorized to transact business in this State under that name.”

SECTION 4. Chapter 482, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§482- **Revocation of a mark.** (a) Any person claiming to be the owner of a trademark or service mark for which a certificate of registration has been issued to another person pursuant to this part may file a verified petition in the office of the director for the revocation of the registration of the mark on the basis that:

- (1) The registered mark has been abandoned;
- (2) The registered mark has not been used by the registrant in accordance with the declaration either in this State or elsewhere in the United States for a period of three hundred sixty-five consecutive days and has not been registered in the name of the registrant in the United States Patent and Trademark Office;
- (3) The registration was granted improperly;
- (4) The registration was obtained fraudulently;
- (5) The registered mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered; or
- (6) The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States Patent and Trademark Office prior to the date of filing the application for registration under this part; provided that if a registrant proves that the registrant is the owner of a concurrent registration of a mark registered in the United States Patent and Trademark Office that covers an area including this State, the registration shall not be revoked for such an area.

The petition shall set forth facts in support of the petitioner’s ownership of the mark and the claim for revocation.

(b) The petitioner, at the petitioner’s expense, shall notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5, and the registrant shall be given the opportunity of a full hearing in accordance with chapter 91.

(c) After granting an opportunity for hearing to the petitioner and the registrant, the director shall grant or deny the petition for revocation, as the facts shall warrant.”

SECTION 5. Section 414-310, Hawaii Revised Statutes, is amended by amending the definition of “organizing articles” to read as follows:

- ““Organizing articles” means:
- (1) For a corporation or nonprofit corporation, the articles of incorporation;
 - (2) For a general partnership[;] or limited liability partnership, [~~or limited partnership;~~] the registration statement; [~~and~~]
 - (3) For a limited partnership, the certificate of limited partnership; and
 - (~~3~~) (4) For a limited liability company, the articles of organization.”

SECTION 6. Section 414-311.6, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~414-311.6] **Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 414-315(d). [~~Section~~

414-315(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.]”

SECTION 7. Section 414-315, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a ~~[nonsurviving entity is registered in this State and the surviving entity is not registered in this State, the nonsurviving]~~ foreign entity registered in this State does not survive the merger, the surviving entity shall file with the department director a certificate evidencing the merger as provided in paragraph (1), together with an application for [a certificate of] withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.”

SECTION 8. Section 414-401, Hawaii Revised Statutes, is amended to read as follows:

“**§414-401 Grounds for administrative dissolution.** [(a)] The department director may commence a proceeding under section 414-402 to administratively dissolve a corporation if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two ~~[consecutive]~~ years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

~~[(b) Upon the expiration of the period of duration stated in the articles of incorporation, the corporation shall be deemed to have been administratively dissolved.]”~~

SECTION 9. Section 414-402, Hawaii Revised Statutes, is amended to read as follows:

“**§414-402 Procedure for and effect of administrative dissolution.** (a) If the department director determines that one or more grounds exist under section ~~[414-401(a)] 414-401~~ 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 414-385 and notify claimants under sections 414-386 and 414-387.

(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 414-473. If a trustee is not appointed, 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.

(g) If a corporation was dissolved due to the expiration of its period of duration, the corporation, at any time within two years of such dissolution, may amend its articles of incorporation to extend its period of duration; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if such name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of corporate existence shall be allowed only upon the registration of a new name by the corporation pursuant to part XI of this chapter."

SECTION 10. Section 414-404, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(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 or its designated representative 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.]~~ mailed. The corporation ~~[appeals]~~ may appeal 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.”

SECTION 11. Section 414-422, Hawaii Revised Statutes, is amended to read as follows:

“~~[§414-422]~~ **Trustees or receivers for dissolved corporations; appointment; powers; duties.** (a) When any corporation organized and authorized to issue shares under the laws of this State ~~[shall be or shall have been]~~ is dissolved[,] or ~~[shall cease or shall have ceased]~~ ceases to exist, the circuit court, upon application of any creditor, stockholder, or director of the corporation, or any other person who shows good cause therefor, and upon a finding that the ~~[application complies with the requirements of subsection (b), and that the]~~ persons responsible for settling the unfinished business and winding up the affairs of the corporation either are not diligently pursuing such obligations, or cannot be found or otherwise are not available, may either appoint one or more of the directors of the corporation to be trustees or appoint one or more persons to be receivers of and for the corporation, to do all acts that are necessary for the final settlement of the unfinished business of the corporation. The powers of the trustees or receivers shall be effective for the time period determined by the circuit court.

(b) ~~[An application authorized by subsection (a) shall be made only if:~~

- (1) ~~At least five years have passed from the effective date of the dissolution in the case of a voluntary dissolution under section 414-381 or 414-382, or a voluntary dissolution under any statute previously effective in this State;~~
 - (2) ~~At least two years have passed from the effective date of the dissolution in the case of an administrative or judicial dissolution under section 414-402 or 414-414, or an administrative, involuntary, or judicial dissolution under any statute previously effective in this State; or~~
 - (3) ~~At least two years have passed from the date the corporation ceased to exist under this chapter, or any statute previously effective in this State.~~
- (c) ~~In the event of an appointment of any trustee or receiver of and for a corporation administratively dissolved under section 414-402, the trustee or receiver shall pay to the State out of any funds that may come into the trustee's or receiver's hands as trustee or receiver, a sum equal to any penalty imposed under section 414-473.~~

(d) The relief provided in this section shall be in addition to, and shall not limit or diminish, any remedies otherwise available under the common law or other state or federal statutes or rules. In the event of a conflict between ~~[the terms and provisions of]~~ this section and any ~~[such]~~ common law, statute, or rule on the subject, the more beneficial provisions favoring the applicant shall prevail.”

SECTION 12. Section 414-433, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The foreign corporation shall deliver with the completed application a certificate of good standing or other similar record 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; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 13. Section 414-437, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414-437]]~~ **Registered office and registered agent of foreign corporation.** Each foreign corporation authorized to ~~[[transact]]~~ 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]~~ entity authorized to transact business in this State whose business office is identical with the registered office; or
 - (C) A foreign ~~[corporation or foreign not for profit corporation]~~ entity authorized to transact business [or conduct affairs] in this State whose business office is identical with the registered office.”

SECTION 14. Section 414-440, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§414-440]]~~ **Service on foreign corporation.** (a) ~~[The registered agent of a foreign corporation authorized to transact business in this State is the corpora-~~

tion's agent for service of process, notice, or demand required or permitted by law to be served on the foreign corporation.

(b) A] Service of any notice or process authorized by law that is issued against any foreign corporation 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 foreign 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 foreign corporation or any person who is found in charge of the property, business, or office of the foreign corporation within the jurisdiction.

(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the foreign corporation can be found within the State, and if the foreign 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 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 [section 414-451]; or
- (3) Has had its certificate of authority revoked under section 414-462].

(c) Service [is perfected under subsection (b)] using registered or certified mail is perfected 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.] 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 foreign corporation in any other manner permitted by law."

SECTION 15. Section 414-451, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 shall 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 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] transact business in this State may thereafter be made on such corporation by service thereof on the department director; and
- (4) A mailing address to which the department director may mail a copy of any process served on the department director under paragraph (3)."

SECTION 16. Section 414-461, Hawaii Revised Statutes, is amended to read as follows:

“**§414-461 Grounds for revocation.** The department director may commence a proceeding under section 414-462 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- (1) The corporation fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual report for a period of two [eonseseutive] years;
 - (C) Appoint and maintain an agent for service of process as required; or
 - (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the corporation.”

SECTION 17. Section 414-462, Hawaii Revised Statutes, is amended by amending subsections (b) through (e) to read as follows:

“(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 414-440.]

(c) [The] Upon revoking any certificate of authority, the department director shall issue a certificate of revocation that shall be filed in the department director’s office, and 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.] shall immediately cease thereafter.

~~[(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 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) ~~(d)~~ Revocation of a foreign corporation’s certificate of authority does not terminate the authority of the registered agent of the corporation.”

SECTION 18. Section 414-472, Hawaii Revised Statutes is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any ~~[other provision]~~ of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.”

SECTION 19. Section 414D-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (f) to read:

“(f) The document must be certified and executed:

- (1) By the presiding officer 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.”

2. By amending subsection (i) to read:

“(i) The document ~~[must]~~ shall be delivered to the office of the department director for filing and ~~[must]~~ shall be accompanied by ~~[one exact or conformed copy (except as provided in sections 414D-73 and 414D-279),]~~ the correct filing fee~~[,]~~ and any ~~[license fee or]~~ penalty payment required ~~[by]~~ under this chapter ~~[or other law].~~”

SECTION 20. Section 414D-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§414D-5**~~[H]~~ **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, \$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 or foreign 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, \$25;
- (14) Special handling fee for review of corporation documents, excluding articles of merger or ~~[consolidation]~~ conversion, \$50;
- (15) Special handling fee for review of articles of conversion~~[,]~~ or merger, ~~[or consolidation]~~, \$150;
- (16) Special handling fee for certificates issued by the department, \$25 per certificate;
- (17) Special handling fee for certification of documents, \$25; 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.

(b) All special handling fees shall be credited to the compliance resolution fund established under section 26-9(o).

(c) The department director shall adjust the fees assessed under this section, as necessary from time to time, through rules adopted pursuant to chapter 91.”

SECTION 21. Section 414D-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[§414D-6]~~ **Effective time and date of document.** (a) Except as otherwise provided in subsection (b)~~[,]~~ and section 414D-7(c), a document is effective:

- (1) At the time of filing on the date it is filed, as evidenced by the department director’s endorsement on the original document; or
- (2) At the time specified in the document as its effective time on the date it is filed.

(b) ~~[A document]~~ Articles of dissolution, articles of conversion, and articles of merger 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 ~~[ninetieth]~~ thirtieth day after the date filed.”

SECTION 22. Section 414D-8, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the department director refuses to file a document, the department director shall return it to the domestic or foreign corporation~~[,]~~ or its designated representative, together with a brief, written explanation of the reason or reasons for the refusal.”

SECTION 23. Section 414D-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[§414D-11]~~ **Certificate of good standing.** (a) ~~Any person may apply to the department director to obtain a certificate of good standing for a domestic or foreign corporation.~~

(b) ~~The certificate of good standing shall set forth:~~

- (1) ~~The domestic corporation’s corporate name, or the foreign corporation’s corporate name used in this State;~~
- (2) ~~That the domestic corporation is duly incorporated under the laws of this State, the date of its incorporation, and the period of its duration if less than perpetual, or that the foreign corporation is authorized to transact business in this State;~~
- (3) ~~That all fees, taxes, and penalties owed to the State have been paid, if payment is reflected in the records of the department director and nonpayment affects the good standing of the domestic or foreign corporation;~~
- (4) ~~That its most recent annual report required by section 414D-308 has been delivered to the department director;~~
- (5) ~~That articles of dissolution have not been filed; and~~
- (6) ~~Other facts of record in the office of the department director that may be requested by the applicant.~~

(c) ~~Subject to any qualification stated in the certificate, a certificate of good standing issued by the department director may be relied upon as conclusive evidence that the domestic or foreign corporation is in good standing in this State.]~~

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 stated therein. A certificate issued

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 stated therein.”

SECTION 24. Section 414D-32, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-32 Articles of incorporation.** (a) The articles of incorporation shall set forth:

- (1) A corporate name for the corporation that satisfies the requirements of section 414D-61;
 - (2) The mailing address of the corporation’s initial principal office, the street address of the corporation’s initial registered office, and the name of its initial registered agent at its initial registered office;
 - (3) The name and address of each incorporator;
 - (4) Whether or not the corporation will have members; and
 - (5) Provisions not inconsistent with law regarding the distribution of assets on dissolution.
- (b) The articles of incorporation may set forth:
- (1) The purpose or purposes for which the corporation is organized, which may be, either alone or in combination with other purposes, the transaction of any lawful activity;
 - (2) The names and addresses of the individuals who are to serve as the initial directors;
 - (3) Provisions not inconsistent with law regarding:
 - (A) Managing and regulating the affairs of the corporation;
 - (B) Defining, limiting, and regulating the powers of the corporation, its board of directors, and members (or any class of members), including but not limited to the power to merge with another corporation, convert to another type of entity, sell all or substantially all of the corporation’s assets, or dissolve the corporation; and
 - (C) The characteristics, qualifications, rights, limitations, and obligations attaching to each or any class of members;
 - (4) Any provision that under this chapter is required or permitted to be set forth in the bylaws;
 - (5) Provisions eliminating or limiting the personal liability of a director to the corporation or members of the corporation for monetary damages for breach of the director’s duties to the corporation and its members; provided that such a provision may not eliminate or limit the liability of a director:
 - (A) For any breach of the director’s duty of loyalty to the corporation or its members;
 - (B) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
 - (C) For any transaction from which a director derived an improper personal economic benefit; or
 - (D) Under sections 414D-150 to 414D-152.

(c) None of the provisions specified in this section shall eliminate or limit the liability of a director for any act or omission occurring prior to the date when the provision becomes effective.

~~(d) Each incorporator named in the articles must sign the articles.~~

(e)] (d) The articles of incorporation need not set forth any of the corporate powers enumerated in this chapter.”

SECTION 25. Section 414D-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [~~Unless a delayed effective date is specified, the corporate~~] A corporation’s existence begins when the articles of incorporation are filed with the department director.”

SECTION 26. Section 414D-61, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) to (c) to read:

“(a) A corporate name [may] shall not contain language stating or implying that the corporation is organized for a purpose other than that permitted by section 414D-51 and its articles of incorporation.

(b) Except as authorized by subsections (c) and (d), a corporate name [~~must~~] shall not be [distinguishable upon the records of the department director from:] the same as or substantially identical to:

- (1) The name of any entity registered or authorized to transact business [~~or conduct affairs~~] under the laws of this State;
- (2) A corporate name reserved or registered under section 414D-62[; 414D-63;] or 414-51, the exclusive right to which is reserved at the time in this State;
- (3) The fictitious name of a foreign business or nonprofit corporation authorized to transact business in this State because its real name is unavailable; or
- (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 not distinguishable~~] based upon the department director’s records [~~from~~] is substantially identical to one or more of the names described in subsection

(b). The department director shall authorize the 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 upon the records of the department director from the name of the applying corporation; 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.”

2. By amending subsection (e) to read:

“(e) This chapter [~~does~~] shall not control the use of fictitious names.”

SECTION 27. Section 414D-71, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-71 Registered office and registered agent.** Each corporation shall 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 entity authorized to transact business in this State whose business office is identical with the registered office; or

- (C) A foreign entity authorized to transact business in this State whose business office is identical with the registered office.”

SECTION 28. Section 414D-74, Hawaii Revised Statutes, is amended to read as follows:

“~~[F]§414D-74[F]~~¹ **Service on corporation.** (a) ~~[A corporation’s registered agent shall be the corporation’s agent for service of process, notice, or demand required or permitted by law to be served on the corporation.]~~ Service of any notice or process authorized by law that is issued against any domestic or foreign corporation 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 a corporation has no registered agent, or the registered agent cannot with reasonable diligence be served, the corporation may be served by registered or certified mail, return receipt requested, addressed to the corporation at its principal office shown in the most recent annual report filed pursuant to section 414D-308.]~~ 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 if 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 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 corporation at its principal office shown in its application for a certificate of authority or its most recent annual report.

~~(c) Service [shall be] by using registered or certified mail is perfected [under this subsection on] at the earliest of:~~

- (1) The date the corporation receives the ~~[notice via]~~ mail ~~[service]~~;
- (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 [with postage affixed].

~~[(c) This section does not prescribe the only means, or necessarily the required means, of serving a corporation.]~~

(d) 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 29. Section 414D-184, Hawaii Revised Statutes, is amended by amending subsection (k) to read as follows:

“(k) The amended and restated articles of incorporation shall be delivered to the director for filing together with a statement setting forth:

- (1) Whether the restatement contains an amendment to the articles requiring ~~[shareholder]~~ member 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]~~ member approval, the information required by section 414D-183. The department director may certify the amended and restated articles of incorporation as the articles of incorporation cur-

rently in effect, without including the information required to be filed by subsection (j)(2) and (3).”

SECTION 30. Section 414D-201.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§414D-201.5**~~]]~~ **Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 414D-203(d). ~~[Section 414D-203(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.]~~”

SECTION 31. Section 414D-203, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) After a plan of merger is approved by the board of directors and, if required by section 414D-202, by the members and any other persons, the surviving or acquiring corporation shall deliver to the department director articles of merger setting forth:

- (1) The [plan of merger;] name and jurisdiction of incorporation of each of the corporations that are parties to the merger, and the name and jurisdiction of incorporation of the surviving corporation;
- (2) [[~~]~~ A statement that the plan of merger has been approved by the board of directors of each corporation involved in the merger and if required by section 414D-202, by the members; provided that if approval of members was not required, a statement to that effect and a statement that the plan was approved by a sufficient vote of the board of directors;
- (3) If approval by members was required:
 - (A) The designation, number of memberships outstanding, number of votes entitled to be cast by each class entitled to vote separately on the plan, and number of votes of each class indisputably voting on the plan; and
 - (B) The total number of votes cast for and against the plan by each class entitled to vote separately on the plan or the total number of undisputed votes cast for the plan by each class and a statement that the number cast for the plan by each class was sufficient for approval by that class;
- (4) If approval of the plan by some person or persons other than the members or the board is required pursuant to section 414D-202, a statement that the approval was obtained;
- (5) If a merger, a statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger; and
- (6) A statement that includes:
 - (A) An agreement that the surviving entity 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 as its agent to accept service of process in any such proceeding, that includes 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.”

2. By amending subsection (d) to read:

“(d) Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign corporation that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the department director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or
- (2) If ~~[the nonsurviving entity or entities is or are registered in this State and the surviving entity is not registered in this State, the nonsurviving]~~ a foreign entity registered in this State does not survive the merger, the surviving entity [or entities] shall file with the department director a certificate [of] evidencing the merger as provided in subparagraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.”

SECTION 32. Section 414D-248, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-248 Grounds for administrative dissolution.** The department director may commence a proceeding under section 414D-249 to administratively dissolve a corporation if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report for a period of two ~~[consecutive]~~ years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.”

SECTION 33. Section 414D-249, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§414D-249[H] Procedure for and effect of administrative dissolution.** (a) Upon determining that one or more grounds exist under section 414D-248 for dissolving a corporation, the department director shall give the corporation 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 may administratively dissolve the corporation by signing a decree of dissolution that recites the ground or grounds 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 activities except those necessary to wind up and liquidate its affairs under section 414D-245 and notify its claimants under sections 414D-246 and 414D-247.

(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 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.

~~[(e)]~~ (f) A corporation whose articles of incorporation have expired shall cease to exist by operation of law.

(g) If a corporation was dissolved due to the expiration of its period of duration, the corporation, at any time within two years of such dissolution, may amend its articles of incorporation to extend its period of duration; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if such name or a name substantially identical is registered as a trade name, trademark, or service mark, the extension of corporate existence shall be allowed only upon the registration of a new name by the corporation pursuant to part XI of this chapter.”

SECTION 34. Section 414D-251, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The department director, upon denying a corporation’s application for reinstatement following administrative dissolution, shall mail ~~[the corporation under section 414D-74]~~ a written notice to the corporation or its designated representative 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.]~~ mailed. The corporation shall appeal 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.”

SECTION 35. Section 414D-273, Hawaii Revised Statutes, is amended to read as follows:

“**§414D-273 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 shall 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 414D-276;
- (2) The name of the state or country under whose law it is incorporated;
- (3) The date of incorporation and period of duration;
- (4) The mailing address of the corporation’s ~~[initial]~~ principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (5) The names and usual business or home addresses of its current directors and officers; and
- (6) Whether the foreign corporation has members.

(b) The foreign corporation shall deliver with the completed application a certificate of good standing ~~[(or [a document of similar import])]~~ other similar record 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; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 36. Section 414D-274, Hawaii Revised Statutes, is amended to read as follows:

~~“[E]§414D-274[] Amended certificate of authority. (a) A foreign corporation authorized to transact business in this State shall obtain an amended certificate of authority from the department director if it changes:~~

- ~~(1) Its corporate name;~~
- ~~(2) The period of its duration; or~~
- ~~(3) The state or country of its incorporation.~~

~~(b) The requirements of section 414D-273 for obtaining an original certificate of authority apply to obtaining an amended certificate under this section.]~~

Change of name by foreign corporation. (a) Whenever the name of a foreign corporation that is authorized to transact business in this State is changed by an amendment to its articles of incorporation, the foreign corporation, within sixty days after the amendment becomes effective, shall deliver to the department director a certificate evidencing the name change that is 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 attested to under oath by the translator shall accompany the certificate.

(b) Whenever a foreign corporation that is authorized to transact business in this State changes its name to one that is substantially identical to the name of any business entity or trade name registered in this State, 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 different name as a trade name and thereafter shall become authorized to transact business in the State under that name.”

SECTION 37. Section 414D-277, Hawaii Revised Statutes, is amended to read as follows:

“§414D-277 Registered office and registered agent of foreign corporation. Each foreign corporation authorized to transact business in this State shall continuously maintain in this State:

- (1) A registered office [with] that may be the same [address] as [that of its registered agent;] 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 [business or nonprofit corporation] entity authorized to transact business in this State whose office is identical with the registered office; or
 - (C) A foreign entity authorized to transact business in this State whose business office is identical with the registered office.”

SECTION 38. Section 414D-280, Hawaii Revised Statutes, is amended to read as follows:

~~“[E]§414D-280[] Service on foreign corporation. (a) [The registered agent of a foreign corporation authorized to transact business in this State shall be 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] Service of any notice or process authorized by law that is issued against any foreign corporation 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 foreign 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 foreign corporation or any person who is found in charge of the property, business, or office of the foreign corporation within the jurisdiction.

(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the foreign corporation can be found within the State, and if the foreign 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 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 filed under section 414D-308 [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 section 414D-282; or
- (3) Has had its certificate of authority revoked under section 414D-283].

(c) Service [is perfected under subsection (b)] using registered or certified mail is perfected 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.] 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 foreign corporation in any other manner permitted by law.”

SECTION 39. Section 414D-283, Hawaii Revised Statutes, is amended to read as follows:

“§414D-283 Grounds for revocation of certificate of authority. [(a)] The department director may commence a proceeding under section 414D-284 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if:

- (1) The corporation fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual report for a period of two [consecutive] years;
 - (C) Appoint and maintain an agent for service of process as required; or
 - (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the corporation.

~~[(b) The attorney general may commence a proceeding under section 414D-284 to revoke the certificate of authority of a foreign corporation authorized to transact business in this State if the corporation has continued to exceed or abuse the authority conferred upon it by law.]”~~

SECTION 40. Section 414D-284, Hawaii Revised Statutes, is amended to read as follows:

~~“[H]§414D-284[.] Procedure and effect of revocation. (a) The department director upon determining that one or more grounds exist under section 414D-283 for revocation of a certificate of authority 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) The attorney general upon determining that one or more grounds exist under section 414D-283(b) for revocation of a certificate of authority shall request the department director to give, and the department director shall give, the foreign corporation written notice of that determination by mailing the notice to the foreign corporation at its last known address appearing in the records of the department director.~~

~~(e) (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 for revocation 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 414D-280.~~

~~(d) The] (c) Upon revoking any certificate of authority, the department director shall issue a certificate of revocation that shall be filed in the department director’s office, and the authority of [a] the foreign corporation to transact business in this State shall immediately cease [on the date shown on the certificate revoking its certificate of authority.~~

~~(e) The department director’s revocation of a foreign corporation’s certificate of authority appoints the department director as 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 shall be service on the foreign corporation. Upon receipt of process, the department director shall mail a copy of the process to the foreign corporation at its principal office shown in its most recent annual report or in any subsequent communications 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].~~

~~[(f)] (d) Revocation of a foreign corporation’s certificate of authority does not terminate the authority of the registered agent of the corporation.”~~

SECTION 41. Section 414D-308, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~“(c) Notwithstanding any [other provision] of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.”~~

SECTION 42. Section 415A-22, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any [~~other provision~~] of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required[;] may be voluntarily filed with the department director if the annual report complies with the requirements of this section.”

SECTION 43. Section 421-4, Hawaii Revised Statutes, is amended to read as follows:

“**§421-4 Articles of incorporation.** (a) Articles of incorporation shall be certified and executed by each of the incorporators, if natural persons, and by the president and secretary of [~~associations~~] the association and shall contain the following [~~particulars~~]:

- (1) The name of the association;
- (2) The [~~place of its principal office, which shall be in the State;~~] mailing address of the association’s principal office, the street address of the association’s initial registered office, and the name of its initial registered agent at its initial registered office;
- (3) The purposes and powers of the association;
- (4) The proposed duration of the association;
- (5) The names and addresses of persons who are to act as the initial directors and officers of the association;
- (6) The names and addresses of the incorporators, and if organized with capital stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;
- (7) Whether organized with or without capital stock, and if organized with capital stock the total authorized number of shares and the par value of each share, if any; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the dividends to which each class shall be entitled; and
- (8) If organized without capital stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the rule by which the rights and interests shall be determined.

(b) The articles may also contain any other provisions[;] consistent with law for regulating the association’s business or the conduct of its affairs, the establishment of voting districts, the election of delegates to represent the districts[;] and the members residing therein, for voting by proxy, and the issuance, retirement, and transfer of membership and stock.”

SECTION 44. Section 421-22, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any [~~other provision~~] of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.”

SECTION 45. Section 421C-11, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§421C-11]]~~ **Forms.** The department of commerce and consumer affairs ~~[shall prepare] may prescribe and furnish on request forms for [association articles which may be used by association incorporators and associations, and which shall be supplied to them on request.] documents required or permitted to be filed by this chapter. The director of commerce and consumer affairs may require that the use of these forms be mandatory.~~”

SECTION 46. Section 421C-11.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Articles shall be certified and executed by each of the incorporators, if natural persons, and by the president and secretary of ~~[associations,] the association,~~ before any officer authorized to take acknowledgments, and shall contain the following ~~[particulars]:~~

- (1) The name of the association which shall contain the term “cooperative” or some abbreviation thereof notwithstanding section 421-5;
- (2) The ~~[street] mailing~~ address and zip code of its principal office, which shall be in the State~~;~~, the street address of the association’s initial registered office, and the name of its initial registered agent at its initial registered office;
- (3) The purposes and powers of the association;
- (4) The duration of the association;
- (5) The number, names, and titles~~[-, and residence addresses]~~ of the initial officers and directors, or similar officers;
- (6) The names and addresses of the incorporators, and if organized with stock, a statement of the number of shares subscribed by each, which shall not be less than one, and the class of shares for which each subscribed;
- (7) If organized with stock, the total authorized number of shares and the par value of each share, if any; and if more than one class of stock is authorized, a description of the classes of shares, the number of shares in each class, the relative rights, preferences, and restrictions granted to or imposed upon the shares of each class, and the interest-dividends to which each class shall be entitled; and
- (8) If organized without stock, whether the property rights and interest of each member are equal or unequal, and if unequal, the rule by which the rights and interest shall be determined.”

SECTION 47. Section 425-1, Hawaii Revised Statutes is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any ~~[other provision] of the provisions~~ of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.”

SECTION 48. Section 425-1.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§425-1.5]]~~ **Filing in office of the director[-]; effective time and date.**
 (a) A certified and executed partnership registration statement, any other statement or certification, or any judicial decree of dissolution or cancellation, a registration statement for a foreign general partnership, or any other statement or certification relating thereto, shall be delivered to the director for filing. Unless the director finds

that any statement or certificate does not conform to law, upon receipt of all filing fees required by law, the director shall:

- (1) Stamp the word "Filed" and the date of delivery thereof; and
- (2) File the document in the director's office.

(b) Upon the filing of a partnership dissolution statement or judicial decree of dissolution in the office of the director, the domestic general partnership shall be dissolved as set forth therein, and upon the effective date of a certificate of withdrawal or a judicial decree thereof, the foreign general partnership shall be withdrawn.

(c) Articles of conversion and articles of merger may specify a delayed effective time and date, and if 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 the document is filed."

SECTION 49. Section 425-9, Hawaii Revised Statutes, is amended to read as follows:

"§425-9 Statement of dissolution. Whenever a domestic general partnership is dissolved, and the business is not continued, a statement thereof showing the cause of dissolution shall be filed in the office of the director of commerce and consumer affairs within thirty days after the dissolution. The statement shall be certified by ~~[all partners except in such cases as the circumstances make it obviously impossible to secure the signature of one or more partners, which circumstances shall be set forth in the statement.]~~ at least one partner who shall certify that the dissolution was approved by all of the partners."

SECTION 50. Section 425-14, Hawaii Revised Statutes, is amended to read as follows:

"§425-14 Cancellation of registration. (a) The director may commence a proceeding to cancel the registration of a general partnership if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two ~~[consecutive]~~ years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required under this chapter.

The cancellation of such registration or certificate shall not relieve the partners of liability for the penalties for the failure to file any statement or certificates required by this part.

(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].~~ The application shall:

- (1) Recite the name of the general partnership and the effective date of its involuntary cancellation;
- (2) Contain all statements 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 general partnership have been paid.

(c) 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 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.

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the involuntary cancellation and the general partnership may resume its business as if the involuntary cancellation had never occurred.”

SECTION 51. Section 425-21, Hawaii Revised Statutes, is amended to read as follows:

“~~[(e)]~~**§425-21**~~(f)~~ **Service on partnership.** (a) Service of any notice or process authorized by law ~~[on]~~ that is issued against any domestic or foreign partnership~~;~~ ~~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 or partner of the partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or partner cannot be found, upon any person who is found in charge of the property, business, or office of the partnership within the jurisdiction of the court, officer, or board.

(b) If no partner or other person in charge of the property, business, or office of the partnership can be found within the State, and ~~[in case]~~ if the partnership has not filed with the director of commerce and consumer affairs 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 the person named is not found within the State, service may be made upon the partnership by registered or certified mail, return receipt requested, addressed to the partnership at its principal office~~[-]~~ shown in its application for a certificate of authority or in its most recent annual report.

(c) Service by registered or certified mail [shall be] is perfected at the earliest of:

- (1) The date the partnership receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the partnership; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

~~[(e)]~~ (d) 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 partnership in any other manner permitted by law.”

SECTION 52. Section 425-154, Hawaii Revised Statutes, is amended to read as follows:

“§425-154 [Correcting, amending] Amending and restating, amending, and restating the statement of qualification; voluntary cancellation. ~~[(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 articles of correction certified and signed by a partner, correcting the statement of qualification. The articles of correction shall:~~

- (1) Describe the document including its file date or attach a copy of the document to the articles;
- (2) Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
- (3) Correct the incorrect statement or defective execution.

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. No person shall have any liability resulting from a failure to file articles of correction to a statement of qualification pursuant to this subsection.

(b)] (a) A statement of qualification may be amended and restated at any time for any proper purpose determined by the partners. The amended and restated statement of qualification shall set forth:

- (1) All of the operative provisions of the statement of qualification as previously amended; and
- (2) A statement that the amended and restated statement of qualification supersedes the original statement of qualification and all amendments thereto.

The amended and restated statement of qualification shall be delivered to the director for filing. The director may certify the amended and restated statement of qualification as the statement of qualification currently in effect, without including the information required to be filed by paragraph (2).

(e)] (b) 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.

(f)] (c) A restated statement of qualification may be executed and filed in the same manner as a statement of amendment. The restated statement of qualification shall set forth all of the operative provisions of the statement of qualification as previously amended, together with a statement that the restated statement of qualification correctly sets forth without change the corresponding provisions of the statement of qualification as previously amended, and that the restated statement of qualification supersedes the original statement of qualification and all amendments thereto. The director may certify the restated statement of qualification currently in effect, without including the information required to be set forth in the restatement by this subsection.

(g)] (d) An amended, restated, or amended and restated statement of qualification shall be effective when filed.

(h)] (e) A limited liability partnership validly created under this chapter may voluntarily cancel its limited liability status [in] with an amendment to a statement of qualification.”

SECTION 53. Section 425-156, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before transacting business in this State, a foreign limited liability partnership shall register pursuant to part I of this chapter, file a statement of foreign qualification with the director, and submit a certificate of good standing [from] or other similar record duly authenticated by the secretary of state or other official having custody of limited liability partnership records in the state [in which the partnership was] or country under whose law it was formed; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the

application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 54. Section 425-159, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“§425-159 [~~Correcting, amending,~~] Amending, restating, and amending and restating the statement of foreign qualification; voluntary cancellation. (a) A foreign limited liability partnership shall [~~correct,~~] amend, restate, and amend and restate the statement of qualification in the same manner prescribed for domestic limited liability partnerships in section 425-154.”

SECTION 55. Section 425-163, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any [~~other provision~~] of the provisions of this chapter to the contrary, annual reports reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual report complies with the requirements of this section.”

SECTION 56. Section 425-164, Hawaii Revised Statutes, is amended by amending subsections (a) through (c) to read as follows:

“(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 if:

- (1) The partnership fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual report for a period of two [~~consecutive~~] years;
 - (C) Appoint and maintain an agent for service of process as required; or
 - (D) File a statement of a change in the name or business address of the agent as required; or.
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

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~~] Recite 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.~~] 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 partnership have been paid.”

SECTION 57. Section 425-201, Hawaii Revised Statutes, is amended by amending the definition of “organizing articles” to read as follows:

““Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership[, or limited liability partnership, [or limited partnership,] the registration statement; [and]
- (3) For a limited partnership, the certificate of limited partnership; and
~~[(3)]~~ (4) For a limited liability company, the articles of organization.”

SECTION 58. Section 425-202, Hawaii Revised Statutes, is amended to read as follows:

“~~[[H]§425-202[H] Foreign mergers. Filings for mergers between foreign entities registered in this State shall be subject to section 425-204(d). [Section 425-204(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.]”~~

SECTION 59. Section 425-204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign general partnership or domestic or foreign limited liability partnership that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the entity was organized no later than sixty days after the merger is effective; or
- (2) ~~If a [nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving]~~ foreign entity registered in this State does not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in subparagraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.”

SECTION 60. Section 425D-111, Hawaii Revised Statutes, is amended to read as follows:

“~~[[H]§425D-111[H] Service on partnership. (a) Service of any notice or process authorized by law [on] that is issued against any domestic or foreign limited partnership[, 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 or general partner of the limited partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or general partner cannot be found, upon any person who is found in charge of the property, business, or office of the limited partnership within the jurisdiction of the court, officer, or board.~~

~~(b) If no general partner or other person in charge of the property, business, or office of the limited partnership can be found within the State, and [in ease] if the limited partnership has not filed with the 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 the person named is not found within the State, service may be made upon the limited partnership by registered or certified mail, return receipt requested, addressed to the limited partnership at its principal office[-] shown in its application for a certificate of authority or its most recent report.

(c) Service by registered or certified mail ~~[shall be]~~ is perfected at the earliest of:

- (1) The date the limited partnership receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the limited partnership; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

[(e)] (d) 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 limited partnership in any other manner permitted by law.”

SECTION 61. Section 425D-203.6, Hawaii Revised Statutes, is amended to read as follows:

“**§425D-203.6 Cancellation of registration.** (a) The director may commence a proceeding to cancel the certificate of a limited partnership ~~[administratively]~~ if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two ~~[consecutive]~~ years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required.

The cancellation of the certificate shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.

(b) Within two years after the involuntary cancellation of a certificate of limited partnership under this section, the certificate of limited partnership may be reinstated by the director upon written application executed by any general partner of the limited 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].~~ The application shall:

- (1) Recite the name of the limited partnership and the effective date of its involuntary cancellation;
- (2) State that all delinquent annual statements have been filed and that all delinquent fees, penalties, assessments, and costs have been paid; and
- (3) Contain a certificate from the department of taxation reciting that all taxes owed by the limited partnership have been paid.

(c) Within the applicable reinstatement period, should the name of the limited 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 limited partnership pursuant to the amendment provisions of this chapter.

(d) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the involuntary cancellation and the limited partnership may resume its business as if the involuntary cancellation had never occurred.”

SECTION 62. Section 425D-204, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each certificate required by this chapter to be filed in the office of the director shall be executed in the following manner:

- (1) An original certificate of limited partnership ~~[must]~~ shall be signed by at least one general partner;
- (2) A certificate of amendment ~~[must]~~ shall be signed by at least one general partner and by each other general partner designated in the certificate as a new general partner;
- (3) A certificate of cancellation ~~[must]~~ shall be signed by ~~[all]~~ at least one general [partners;] partner who shall certify that all partners have agreed to the cancellation;
- (4) Any other certificate or document ~~[must]~~ shall be signed by ~~[all]~~ at least one general [partners;] partner; and
- (5) A designation or change of a registered office or agent ~~[must]~~ shall be signed by at least one general partner.”

SECTION 63. Section 425D-206, Hawaii Revised Statutes, is amended to read as follows:

“[H]§425D-206[.] Filing in the office of the director[-]; effective time and date. (a) A certified and executed certificate of limited partnership, any certificate of amendment or cancellation, or of any judicial decree of amendment or cancellation, an application for registration as a foreign limited partnership, or any certificate relating thereto, shall be delivered to the director for filing. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person’s authority as a prerequisite to filing. Unless the director finds that any certificate does not conform to law, upon receipt of all filing fees required by law, the director shall:

- (1) Stamp the word “Filed” and the date of delivery thereof; and
- (2) File the document in the director’s office.

(b) Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the director, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership is canceled.

(c) Except as otherwise provided in subsection (d) and section 425D-206.6, 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.

(d) Articles of conversion and articles of merger may specify a delayed effective time and date, and if 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.”

SECTION 64. Section 425D-902, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The foreign limited partnership shall deliver with the completed application a certificate of good standing or other similar record duly authenticated by the secretary of state or other official having custody of limited partnership records in the state or country under whose law it is formed; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation attested to under oath by the translator shall accompany the certificate.”

SECTION 65. Section 425D-906.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any ~~[other provision]~~ of the provisions of this chapter to the contrary, annual statements reflecting the period from January 1, 2002, through December 31, 2002, that would otherwise be required, may be voluntarily filed with the department director if the annual statement complies with the requirements of this section.”

SECTION 66. Section 425D-906.6, Hawaii Revised Statutes, is amended to read as follows:

“**§425D-906.6 Cancellation of registration.** A certificate of registration of a foreign limited partnership to transact business in this State may be canceled by the director if:

- (1) The partnership fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual ~~[report]~~ statement for a period of two ~~[con-~~
~~secutive]~~ years;
 - (C) Appoint and maintain an agent for service of process as required;
or
 - (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

The cancellation of such registration shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.”

SECTION 67. Section 425D-1201, Hawaii Revised Statutes, is amending by amending the definition of “organizing articles” to read as follows:

““Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership~~[,] or limited liability partnership, [or limited partnership,]~~ the registration statement; ~~[and]~~
- (3) For a limited partnership, the certificate of limited partnership; and
[(3)] (4) For a limited liability company, the articles of organization.”

SECTION 68. Section 425D-1202, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§425D-1202[H] Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 425D-1204(d). ~~[Section 425D-1204(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.]”~~

SECTION 69. Section 425D-1204, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited partnership that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of

- which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a ~~[nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving]~~ foreign entity registered in this State does not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.

SECTION 70. Section 428-107, Hawaii Revised Statutes, is amended to read as follows:

~~“[§428-107]-Designated~~ **Registered office and agent [for service of process].** [(a)] A limited liability company and a foreign limited liability company authorized to ~~[do]~~ transact business in this State shall ~~[designate and]~~ continuously maintain in this State:

- (1) ~~An office, which need not be a place of its business in this State; and~~
 (2) ~~An agent and street address of the agent for service of process on the company.~~

~~(b) An agent shall be an individual resident of this State, a domestic corporation, or another limited liability company.]~~

- (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 entity authorized to transact business in this State whose business office is identical with the registered office; or
 (C) A foreign entity authorized to transact business in this State whose business office is identical with the registered office.”

SECTION 71. Section 428-109, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the ~~[partnership]~~ company at its principal office.”

SECTION 72. Section 428-110, Hawaii Revised Statutes, is amended to read as follows:

~~“§428-110 Service of process. (a) [An agent for service of process appointed by a limited liability company or a foreign limited liability company is an agent of the company for service of any process, notice, or demand required or permitted by law to be served upon the company. A registered agent shall be:~~

- (1) ~~An individual who resides in this State and whose business office is identical with the registered office;~~
 (2) ~~A domestic entity whose business office is identical with the registered office; or~~
 (3) ~~A foreign entity authorized to transact business or conduct affairs in this State whose business office is identical with the registered office.]~~

Service of any notice or process authorized by law that is issued against a domestic or foreign limited liability company by any court, judicial or administrative officer, or board, may be made in the manner provided by law upon any registered agent,

manager, if the company is manager-managed, or upon any member if the company is member-managed, who is found within the jurisdiction of the court, officer, or board; or if any registered agent, manager, or member cannot be found, upon any person who is found in charge of the property, business, or office of the company within the jurisdiction of the court, officer, or board.

(b) If [a limited liability company or foreign limited liability company fails to appoint or maintain an agent for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the agent's address,] no manager, member, or other person in charge of the property, business, or office of the company can be found within the State, and if the company 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 the person named is not found within the State, service [of process] may be made upon the limited liability company or foreign limited liability company by registered or certified mail, return receipt requested, addressed to the limited liability company or foreign limited liability company at its [last designated office or] principal office [as disclosed by the records in the office of the director.] shown in its application for a certificate of authority or its most recent annual report.

(c) Service by registered or certified mail is [effected under subsection (b)] perfected at the earliest of:

- (1) The date the company receives the [process, notice, or demand;] mail;
- (2) The date shown on the return receipt, if signed on behalf of the company; 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 shall not affect the right to serve process, notice, or demand in any other manner provided by law.] 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 limited liability company or foreign limited liability company in any other manner permitted by law.”

SECTION 73. Section 428-206, Hawaii Revised Statutes, is amended as follows:

- 1. By amending its title to read:

“[H]§428-206[F] Filing in office of director[-]; effective time and date.”

- 2. By amending subsections (c) through (e) to read:

“(c) [Articles of organization or amendment] Except as otherwise provided in subsection (d) and section 428-207, a record accepted for filing [by the director are] is effective [as of] at the [date and] time [they are] of filing on the date it is filed [with the director-], as evidenced by the director's date and time endorsement on the original record.

(d) Articles of termination, articles of conversion, and articles of merger may [become] specify a delayed effective [at a later] time and date, [as] and if so, the record becomes effective at the time and date specified [in the record, but not more]. If a delayed effective date but no time is specified, the record is effective at the close of business on that date. A delayed effective date for a record may not be later than [thirty days] the thirtieth day after the date [of filing with the director-] it is filed.

(e) [If a delayed effective date for a record is specified but no time is specified, the record is effective at 12:01 a.m. on that date.] A specified delayed effective date that is later than the thirtieth day after the record is filed makes the record effective as of the thirtieth day.”

SECTION 74. Section 428-901, Hawaii Revised Statutes, is amended by amending the definition of “organizing articles” to read as follows:

““Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership~~[,]~~ or limited liability partnership, ~~[or limited partnership,]~~ the registration statement; ~~[and]~~
- (3) ~~For a limited partnership, the certificate of limited partnership; and~~
- ~~[(3)]~~ (4) For a limited liability company, the articles of organization.”

SECTION 75. Section 428-901.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[F]§428-901.5[F]~~ **Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section 428-905(d). ~~[Section 428-905(d) shall not apply to mergers between foreign entities that occurred during the period July 1, 2001, to June 30, 2003.]”~~

SECTION 76. Section 428-903, Hawaii Revised Statutes, is amended to read as follows:

“**§428-903 Effect of conversion.** ~~[(a)]~~ 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 the 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, or other securities in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic limited liability company, the members of the domestic limited liability company shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section ~~[415-80;]~~ 414-342;
- (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 such shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for such debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for such 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 limited liability company or other entity, such converted entity shall 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 members of the converting domestic limited liability company; and
- (9) If the converting entity is a domestic limited liability company, section 428-907 shall apply as if the converted entity were the survivor of a merger with the converting entity.

~~[(b) The conversion shall be effective upon the filing of the certificate of conversion.]”~~

SECTION 77. Section 428-905, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) After approval of the plan of merger under section 428-904(e), unless the merger is terminated under section 428-904(h), 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:

- (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]~~ surviving entity into which they propose to merge, which is hereinafter designated as the surviving entity;
- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
- (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
- (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
- (5) A statement that includes:
 - (A) An agreement that the surviving entity 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 as its agent to accept service of process in any such proceeding, that includes 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.”

2. By amending subsection (d) to read:

“(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited liability company that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or

- (2) If a ~~[nonsurviving entity is registered in this State and the surviving entity is not registered in this State, a nonsurviving]~~ foreign entity registered in this State does not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving foreign entity, no later than sixty days after the merger is effective.”

SECTION 78. 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) 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 mailing address of its ~~[initial]~~ principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its initial registered office in this State;
- (5) Whether the duration of the company is for a specified term and, if so, the period specified;
- (6) Whether the company is manager-managed, and:
 - (A) If so, the name and address of each manager; or
 - (B) If not, the name and address of each member;
- (7) 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
- (8) 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 79. Section 428-1006, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director may not revoke a certificate of authority of a foreign limited liability company unless the director sends the company notice of the revocation, at least sixty days before its effective date, by ~~[a record addressed to its agent for service of process in this State, or if the company fails to appoint and maintain a proper agent in this State, addressed to]~~ mailing the notice to the foreign limited liability company at its last known address appearing in the director’s records. The notice shall identify the cause for the revocation of the certificate of authority. If the foreign limited liability company does not cure its failure by the date specified in the notice of revocation, the director may issue a certificate of revocation that shall be filed in the office of the director. The authority of the company to transact business in this State shall cease upon the issuance of the certificate of revocation.”

SECTION 80. Chapter 482, Hawaii Revised Statutes, is amended by amending its title to read as follows:

**“CHAPTER 482
TRADEMARKS, [PRINTS, LABELS,] SERVICE MARKS, AND
TRADE NAMES, REGISTRATION AND PROTECTION OF”**

SECTION 81. Chapter 482, Hawaii Revises Statutes, is amended by amending the title of part I to read as follows:

“PART I. TRADE NAMES[, PRINTS, AND LABELS]”

SECTION 82. Section 482-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

“‘Individual’ means a natural person, and includes the estate of an incompetent or deceased individual.”

2. By amending the definitions of “applicant,” “person,” and “registered” to read:

“‘Applicant’ includes the person filing an application for registration of a trade name or mark under this chapter, and the legal representatives, successors, or assigns of such person.

“Person” and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under this chapter, includes an individual, firm, partnership, corporation, limited liability company, union, association, estate, business trust, trust, government, governmental agency or instrumentality, two or more of any of the foregoing having a joint or common interest, or other organization capable of suing and being sued in a court of law.

“Registrant” includes the person to whom the registration of a trade name or mark under this chapter is issued, and the legal representatives, successors, or assigns of the person.”

SECTION 83. Section 482-2, Hawaii Revised Statutes, is amended to read as follows:

“**§482-2 Certificate.** (a) Any person desiring to register any [~~print or label intended to be attached or applied to goods or manufactured articles or to bottles, boxes, or packages containing the goods or manufactured articles to indicate the name of the manufacturer, and any person desiring to register a~~] trade name may obtain a certificate of [~~the~~] registration of the [~~print, label, or~~] trade name in the manner hereinafter provided.

(b) Before any person may receive a certificate of registration of a [~~print or label,]~~ trade name, the person shall file in the office of the director an application for the registration [~~of the print or label,]~~ thereof, with a certified declaration[, certified by the applicant,] stating that the [~~applicant]~~ person is the sole and original proprietor of the trade name or the assign of the proprietor [~~of this print or label, and describing the goods or manufactured articles for which the print or label, is used,]~~ and [~~stating~~] setting forth the [~~manner~~] nature of business in which the [~~print or label]~~ trade name is used. [~~The application shall be accompanied by one exact copy of the print, label, or trade name.]~~

(c) Upon filing the application, the applicant shall pay to the director a fee of \$50. A special handling fee of \$20 for expediting registration of a trade name[, print, or label] shall be assessed by the director. All special handling fees shall be credited to the compliance resolution fund established under section 26-9(o).”

SECTION 84. Section 482-3, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director shall cause the [~~print, label, or~~] trade name to be recorded and shall issue to the applicant a certificate of registration [~~under the seal of the director, and the~~]. The certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the [~~print, label, or~~] trade name throughout the State, for the term of [~~one year~~] five years from the date thereof; provided that the director shall not register any [~~print, label, or~~] trade name which is substantially identical with any registered [~~print, label, or~~] trade name or with the name of any corporation, partnership, limited partnership, limited liability partnership, or limited liability company registered in accordance with chapters 414, 414D, 415A, 425, 425D, and 428; provided further that the [~~print, label, or~~] trade name is continued in actual use by the applicant in the State or elsewhere in the United States[~~, or is registered in the name of the applicant in the patent and trademark office of the United States~~]. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, limited partnership, limited liability partnership, or limited liability company name, or trade name.

(b) The registration of a [~~print, label, or~~] trade name may be renewed at any time during [~~a~~] the period of its registration for additional five year periods [~~of ten years from the date of renewal~~] by [~~the~~] filing [~~of an application for~~] a renewal [~~of registration in a form as the director may provide.~~] application within six months prior to the expiration of the current term and complying with the renewal requirements prescribed by the director. Upon filing the application for renewal, the applicant shall pay the director a fee of \$50.”

SECTION 85. Section 482-4, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

“**§482-4 Certain [~~prints, labels, union labels, and~~] trade names not to be adopted or used.** (a) It shall be unlawful for any person to adopt or use a [~~print, label, or~~] trade name [~~which~~] that is substantially identical [~~to~~] or confusingly similar [~~with~~] to any registered [~~print, label, or~~] trade name, or the name of any corporation, partnership, or limited liability company existing or registered, or authorized to transact business[~~;~~] in accordance with the laws of this State, [~~on corporations, partnerships, or limited liability companies,~~] or a name the exclusive right to which is, at the time, reserved in this State.”

SECTION 86. Section 482-5, Hawaii Revised Statutes, is amended to read as follows:

“**§482-5 Penalty.** Any person using such substantially identical or confusingly similar [~~print, label, or~~] trade name as set forth in section 482-4, shall be fined not more than \$1,000.”

SECTION 87. Section 482-6, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If any [~~print, label, or~~] trade name is not used by the registrant in accordance with the declaration [~~either~~] in this State [~~or elsewhere in the United States~~] for a period of three hundred sixty-five consecutive days, [~~and the print, label, or trade name has not been registered in the name of the registrant in the patent and trademark office of the United States,~~] the certificate of registration shall be subject to revocation.

(b) Any person desiring such revocation shall file a verified petition in the office of the director, setting forth facts indicating such nonuse for a period of three

hundred sixty-five consecutive days immediately preceding the date of the filing of the petition~~[, and alleging the nonregistration in the patent and trademark office of the United States]~~. The petitioner [shall], at the petitioner's expense, shall notify the registrant of the hearing in the manner prescribed by the director and section 91-9.5, and the registrant shall be given the opportunity of a full hearing in accordance with chapter 91."

SECTION 88. Section 482-7, Hawaii Revised Statutes, is amended to read as follows:

"§482-7 Application of law; reissue on nonuser. (a) Sections 482-1 to 482-9 are applicable to all registrations filed in the office of the director; the intent being that all [~~prints, labels, or~~] trade names not used by the applicant in this State or elsewhere in the United States [~~and not registered in the name of the applicant in the patent and trademark office of the United States]~~ may be immediately reissued to such applicant who is actually using the same.

(b) The fact that a [~~print, label, or~~] trade name has not been used in this State for a period of one year shall be prima facie proof of the fact that the same has not been used elsewhere for such period."

SECTION 89. Section 482-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any person claiming to be the owner of a [~~print, label, or~~] trade name for which a certificate of registration pursuant to this chapter has been issued to any other person shall file a verified petition in the office of the director for the revocation of the registration of such [~~print, label, or~~] trade name. The petition shall set forth facts in support of the ownership by such petitioner of such [~~print, label, or~~] trade name and in support of the claim of the petitioner that the certificate of registration should be revoked."

SECTION 90. Section 482-8.5, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(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 require the entity to:
 - (A) Register a new trade name with the director; and
 - (B) [~~Conduct~~] Transact business in this State under the new trade name; or
- (2) Require the entity to change its registered name, and to:
 - (A) Register a new trade name with the director; and
 - (B) [~~Conduct~~] Transact business in this State under the new trade name.

If the entity fails to comply with the order of abatement within sixty days, the 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 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 414, 414D, 415A, 425, 425D, or 428, as applicable.

(c) Any person aggrieved by the 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 director's order. [~~The trial by the circuit court of any such proceeding shall be de novo.~~] Review of any final decision of the circuit court shall be governed by chapter 602."

SECTION 91. Section 482-9, Hawaii Revised Statutes, is amended to read as follows:

“**§482-9 Appeal.** Any person aggrieved by any action of the director under this chapter in issuing or revoking a certificate of registration of a ~~[print, label, or]~~ trade name or in denying an application ~~[may]~~, within thirty days after the action by the director, or ~~[in the event]~~ if no order has been entered either granting or denying the application within four months after the filing of the application, may commence proceedings to obtain judicial review thereof by the circuit court of the first circuit by filing in the court a notice of appeal. ~~[The trial by the circuit court of any such proceeding shall be de novo.]~~ Proceedings for review by the supreme court may be had and taken in the same manner as is provided for a review of a judgment of a circuit court.”

SECTION 92. Section 482-21, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§482-21**~~]]~~ **Registrability.** A mark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

- (1) Consists of ~~[;]~~ or comprises immoral, deceptive, or scandalous matter;
- (2) Consists of or comprises matter which may disparage or falsely suggest a connection with persons, living or dead, institutions, beliefs, or national symbols, or bring them into contempt, or disrepute;
- (3) Consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of any foreign nation, or any simulation thereof;
- (4) Consists of or comprises the name, signature, or portrait identifying a particular living individual, except by the individual’s written consent;
- (5) Consists of a mark ~~[which]~~ that:
 - (A) When used on or in connection with the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;
 - (B) When used on or in connection with the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or
 - (C) Is primarily a surname;
 provided that nothing in this paragraph shall prevent the registration of a mark used by the applicant which has become distinctive of the applicant’s goods or services. The director may accept as evidence that the mark has become distinctive as used on or in connection with the applicant’s goods or services, proof of continuous use thereof as a mark by the applicant in this State for the five years before the date on which the claim of distinctiveness is made; or
- (6) Consists of ~~[or comprises]~~ a mark which so resembles a mark registered in this State or a mark or trade name previously used by another and not abandoned, as to be likely, when used on or in connection with the goods or services of the applicant, to cause confusion or mistake or to deceive.”

SECTION 93. Section 482-22, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Subject to the limitations set forth in this part, any person who uses a mark may file in the office of the director, in a manner complying with the requirements of the director, an application for registration of that mark setting forth at least the following information:

- (1) The name and business address of the person or entity applying for such registration[;] and[~~-, if a corporation,~~] the state of organization or incorporation, or if a partnership, the state in which the partnership is [~~organized and the names of the general partners, as specified by the director, or if a limited liability company, the names of the members or managers, as specified by the director;~~] formed;
- (2) The goods or services on or in connection with which the mark is used, the mode or manner in which the mark is used on or in connection with such goods or services, and the class in which such goods or services fall;
- (3) The date when the mark was first used anywhere, and the date when it was first used in this State by the applicant or a predecessor in interest; and
- (4) A statement that the applicant is the owner of the mark, the mark is in use, and to the knowledge of the person verifying the application, no other person has registered, either federally or in this State, or has the right to use, the mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of the other person, to cause confusion, to cause mistake, or to deceive.”

2. By amending subsection (d) to read:

“(d) The application shall be signed and verified by the applicant, a member of the firm, or an officer of the corporation or association applying. The application shall be accompanied by [~~two specimens~~] one specimen per class of goods or services showing the mark as actually used on or in connection with such goods or services and the application fee payable to the director.”

SECTION 94. Section 482-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The applicant shall provide any additional pertinent information requested by the director including a description of a design mark and may make, or authorize the director to make, such amendments to the application as may be reasonably requested by the director or deemed by [~~the~~] applicant to be advisable to respond to any rejection or objection.”

SECTION 95. Section 482-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon compliance by the applicant with the requirements of this part, the director shall issue a certificate of registration to the applicant. [~~The certificate of registration shall be issued with the signature of the director and the seal of the State, and shall show:~~

- (1) ~~The name and business address of the person claiming ownership of the mark;~~
- (2) ~~If a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, or if a limited liability company, the names of the members or managers, as specified by the director;~~
- (3) ~~The date the mark was first used anywhere;~~
- (4) ~~The date the mark was first used in this State;~~

- (5) ~~The class of goods or services and a description of the goods or services, on or in which the mark is used;~~
- (6) ~~A reproduction of the mark; and~~
- (7) ~~The registration date and the term of the registration.]”~~

SECTION 96. Section 482-25, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) A registration may be renewed for successive periods of five years by filing a renewal application within six months prior to the expiration of the current term, complying with the renewal requirements prescribed by ~~[the director,]~~ this chapter, and paying the appropriate renewal fee.”

2. By amending subsection (d) to read:

“(d) All applications for renewal under this part shall include a verified statement that the mark has been and is still in use, and include a specimen showing actual use of the mark on or in connection with the goods or services~~[-]~~ for each class of goods and services.”

SECTION 97. Section 482-28, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§482-28**~~]]~~ **Cancellation.** ~~[(a)]~~ The director shall cancel the registration of a mark if the director receives a request for cancellation from the registrant or assignee of record~~], a registration is not timely renewed in accordance with the provisions of this part, or a court of competent jurisdiction finds that:~~

- ~~(1) The registered mark has been abandoned;~~
- ~~(2) The registrant is not the owner of the mark;~~
- ~~(3) The registration was granted improperly;~~
- ~~(4) The registration was obtained fraudulently;~~
- ~~(5) The mark is or has become the generic name for the goods or services, or a portion thereof, for which it has been registered; or~~
- ~~(6) The registered mark is so similar, as to be likely to cause confusion or mistake or to deceive, to a mark registered by another person in the United States patent and trademark office prior to the date of filing the application for registration under this part; provided that if a registrant proves that the registrant is the owner of a concurrent registration of a mark in the United States patent and trademark office which covers an area including this State, the registration shall not be canceled for such an area.~~

~~(b) The director shall cancel a registration]~~ or when a court of competent jurisdiction orders cancellation of a registration.”

SECTION 98. Section 482-29, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§482-29**~~]]~~ **Classification.** The director ~~[may by rule]~~ to the extent practical shall establish a classification of goods and services corresponding to the classification adopted by the United States Patent and Trademark Office for convenience of administration of this part, but not to limit or extend the applicant’s or registrant’s rights, and a single application for registration of a mark ~~[may include any or all goods upon which, or services with which, the mark is actually being used indicating the appropriate class or classes of goods or services. When a single application includes goods or services which fall within multiple classes, the director may require payment of a fee for each class. To the extent practical, the classification~~

of goods and services should conform to the classification adopted by the United States patent and trademark office.] shall be submitted for each appropriate class and such goods upon which or each service with which the mark is actually being used, together with the application fee.”

SECTION 99. Section 482-36, Hawaii Revised Statutes, is amended to read as follows:

“[F]§482-36[.] Fees. The application fee to register a mark shall be \$50[.] for each class of goods or services. A special handling fee of \$20 for expediting the registration of a mark shall be assessed by the director[.] for each class of goods or services. All special handling fees shall be credited to the compliance resolution fund established under section 26-9(o). Unless otherwise specified by the director, these fees shall not be refundable.”

SECTION 100. Section 414-273, Hawaii Revised Statutes, is repealed.

SECTION 101. Section 414D-63, Hawaii Revised Statutes, is repealed.

SECTION 102. Section 414D-209, Hawaii Revised Statutes, is repealed.

SECTION 103. Section 415A-16.7, Hawaii Revised Statutes, is repealed.

SECTION 104. Section 425-194, Hawaii Revised Statutes, is repealed.

SECTION 105. Section 425D-1112, Hawaii Revised Statutes, is repealed.

SECTION 106. Section 428-1010, Hawaii Revised Statutes, is repealed.

SECTION 107. Section 482-10, Hawaii Revised Statutes, is repealed.

SECTION 108. Section 482-11, Hawaii Revised Statutes, is repealed.

SECTION 109. Section 482-12, Hawaii Revised Statutes, is repealed.

SECTION 110. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 111. This Act shall take effect on July 1, 2003.

(Approved June 2, 2003.)

Notes

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

ACT 125

S.B. NO. 614

A Bill for an Act Relating to Health Insurance.

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

SECTION 1. Insurance fraud is on the rise both locally and nationally. Everyone is adversely affected by insurance fraud, whether impacted directly as

victims of insurance fraud or indirectly through the payment of increased insurance premiums. Insurance fraud costs every household throughout the United States an average of more than \$500 annually. In New Jersey, the cost for no-fault insurance fraud alone was estimated to be over \$246 annually per household.

Insurance fraud has also increasingly affected costs within the health insurance industry. Industry health care fraud losses are estimated at three to fourteen per cent of the \$1,200,000,000,000 in annual national health care costs. This is equivalent to approximately \$36,000,000,000 to \$144,000,000,000 annually. In Hawaii, based on the conservative estimate that insurance fraud amounts to three per cent of annual Hawaii health care costs, insurance fraud causes losses that exceed \$60,000,000 annually.

In 1998, the legislature passed Act 155, Session Laws of Hawaii 1998, to address motor vehicle insurance fraud. Act 155 established an insurance fraud investigations unit in the motor vehicle provisions of the insurance code. Act 155 also established penalties for the offense of insurance fraud and provided immunity from civil liability for persons reporting insurance fraud.

However, insurance fraud is not exclusively a motor vehicle insurance problem and occurs across all lines of insurance. Encouraging fraud reporting across a larger portion of the health insurance industry would cut fraud losses and further reduce costs to the consumer.

The purpose of this Act is to provide immunity from civil liability for persons reporting health insurance fraud.

SECTION 2. Chapter 431, part I, Hawaii Revised Statutes, is amended by adding a new section to article 10A, to be appropriately designated and to read as follows:

“§431:10A- Insurance fraud; penalties. (a) A person commits the offense of insurance fraud if the person acts or omits to act with intent to obtain benefits or recovery or compensation for services provided, or provides legal assistance or counsel with intent to obtain benefits or recovery, through the following means:

- (1) Knowingly presenting, or causing or permitting to be presented, with the intent to defraud, any false information on a claim;
- (2) Knowingly presenting, or causing or permitting to be presented, any false claim for the payment of a loss;
- (3) Knowingly presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer, except when these multiple claims are appropriate;
- (4) Knowingly making, or causing or permitting to be made, any false claim for payment of a health care benefit;
- (5) Knowingly submitting, or causing or permitting to be submitted, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;
- (6) Knowingly presenting, or causing or permitting to be presented, multiple claims for payment of the same health care benefit except when these multiple claims are appropriate;
- (7) Knowingly presenting, or causing or permitting to be presented, for payment any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at the same time;
- (8) Aiding, or agreeing or attempting to aid, soliciting, or conspiring with any person who engages in an unlawful act as defined under this section; or

(9) Knowingly making, or causing or permitting to be made, any false statements or claims by, or on behalf of, any person or persons during an official proceeding as defined by section 710-1000.

(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 \$300 or less.

(c) Where the ability to make restitution can be demonstrated, any person convicted under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the act or acts for which the person was convicted.

(d) A person, if acting without malice, shall not be subject to civil liability for providing information, including filing a report, furnishing oral or written evidence, providing documents, or giving testimony concerning suspected, anticipated, or completed public or private insurance fraud to a court, the commissioner, the insurance fraud investigations unit, the National Association of Insurance Commissioners, any federal, state, or county law enforcement or regulatory agency, or another insurer if the information is provided only for the purpose of preventing, investigating, or prosecuting insurance fraud, except if the person commits perjury.

(e) This section shall not supersede any other law relating to theft, fraud, or deception. Insurance fraud may be prosecuted under this section, or any other applicable section, and may be enjoined by a court of competent jurisdiction.

(f) An insurer shall have a civil cause of action to recover payments or benefits from any person who has intentionally obtained payments or benefits in violation of this section; provided that no recovery shall be allowed if the person has made restitution under subsection (c).”

SECTION 3. Chapter 432, part I, Hawaii Revised Statutes, is amended by adding a new section to article 1, to be appropriately designated and to read as follows:

“**§432:1- Insurance fraud; penalties.** (a) A person commits the offense of insurance fraud if the person acts or omits to act with intent to obtain benefits or recovery or compensation for services provided, or provides legal assistance or counsel with intent to obtain benefits or recovery, through the following means:

(1) Knowingly presenting, or causing or permitting to be presented, with the intent to defraud, any false information on a claim;

(2) Knowingly presenting, or causing or permitting to be presented, any false claim for the payment of a loss;

(3) Knowingly presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer, except when these multiple claims are appropriate;

(4) Knowingly making, or causing or permitting to be made, any false claim for payment of a health care benefit;

(5) Knowingly submitting, or causing or permitting to be submitted, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;

(6) Knowingly presenting, or causing or permitting to be presented, multiple claims for payment of the same health care benefit except when these multiple claims are appropriate;

- (7) Knowingly presenting, or causing or permitting to be presented, for payment any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at the same time;
 - (8) Aiding, or agreeing or attempting to aid, soliciting, or conspiring with any person who engages in an unlawful act as defined under this section; or
 - (9) Knowingly making, or causing or permitting to be made, any false statements or claims by, or on behalf of, any person or persons during an official proceeding as defined by section 710-1000.
- (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 \$300 or less.
- (c) Where the ability to make restitution can be demonstrated, any person convicted under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the act or acts for which the person was convicted.
- (d) A person, if acting without malice, shall not be subject to civil liability for providing information, including filing a report, furnishing oral or written evidence, providing documents, or giving testimony concerning suspected, anticipated, or completed public or private insurance fraud to a court, the commissioner, the insurance fraud investigations unit, the National Association of Insurance Commissioners, any federal, state, or county law enforcement or regulatory agency, or another insurer if the information is provided only for the purpose of preventing, investigating, or prosecuting insurance fraud, except if the person commits perjury.
- (e) This section shall not supersede any other law relating to theft, fraud, or deception. Insurance fraud may be prosecuted under this section, or any other applicable section, and may be enjoined by a court of competent jurisdiction.
- (f) An insurer shall have a civil cause of action to recover payments or benefits from any person who has intentionally obtained payments or benefits in violation of this section; provided that no recovery shall be allowed if the person has made restitution under subsection (c).''

SECTION 4. Chapter 432D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§432D- Insurance fraud; penalties.** (a) A person commits the offense of insurance fraud if the person acts or omits to act with intent to obtain benefits or recovery or compensation for services provided, or provides legal assistance or counsel with intent to obtain benefits or recovery, through the following means:

- (1) Knowingly presenting, or causing or permitting to be presented, with the intent to defraud, any false information on a claim;
- (2) Knowingly presenting, or causing or permitting to be presented, any false claim for the payment of a loss;
- (3) Knowingly presenting, or causing or permitting to be presented, multiple claims for the same loss or injury, including presenting multiple claims to more than one insurer, except when these multiple claims are appropriate;
- (4) Knowingly making, or causing or permitting to be made, any false claim for payment of a health care benefit;

- (5) Knowingly submitting, or causing or permitting to be submitted, a claim for a health care benefit that was not used by, or provided on behalf of, the claimant;
 - (6) Knowingly presenting, or causing or permitting to be presented, multiple claims for payment of the same health care benefit except when these multiple claims are appropriate;
 - (7) Knowingly presenting, or causing or permitting to be presented, for payment any undercharges for benefits on behalf of a specific claimant unless any known overcharges for benefits under this article for that claimant are presented for reconciliation at the same time;
 - (8) Aiding, or agreeing or attempting to aid, soliciting, or conspiring with any person who engages in an unlawful act as defined under this section; or
 - (9) Knowingly making, or causing or permitting to be made, any false statements or claims by, or on behalf of, any person or persons during an official proceeding as defined by section 710-1000.
- (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 \$300 or less.
- (c) Where the ability to make restitution can be demonstrated, any person convicted under this section shall be ordered by a court to make restitution to an insurer or any other person for any financial loss sustained by the insurer or other person caused by the act or acts for which the person was convicted.
- (d) A person, if acting without malice, shall not be subject to civil liability for providing information, including filing a report, furnishing oral or written evidence, providing documents, or giving testimony concerning suspected, anticipated, or completed public or private insurance fraud to a court, the commissioner, the insurance fraud investigations unit, the National Association of Insurance Commissioners, any federal, state, or county law enforcement or regulatory agency, or another insurer if the information is provided only for the purpose of preventing, investigating, or prosecuting insurance fraud, except if the person commits perjury.
- (e) This section shall not supersede any other law relating to theft, fraud, or deception. Insurance fraud may be prosecuted under this section, or any other applicable section, and may be enjoined by a court of competent jurisdiction.
- (f) An insurer shall have a civil cause of action to recover payments or benefits from any person who has intentionally obtained payments or benefits in violation of this section; provided that no recovery shall be allowed if the person has made restitution under subsection (c).”

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2003.

(Approved June 2, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 126

S.B. NO. 1201

A Bill for an Act Relating to Motor Vehicle Franchises.

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

SECTION 1. Chapter 437, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately inserted and to read as follows:

“§437-A Waivers void. Any condition, stipulation, or provision in a franchise or distributorship agreement purporting to bind any person acquiring or holding any franchise or distributorship to waive compliance with any provision of this chapter or any other law of the State is void; provided that no person acquiring or holding any franchise or distributorship shall be prohibited under this section from electing in writing, at or after the time a dispute arises, to use any voluntary dispute resolution procedure, or from entering into any voluntary agreement to settle legitimate disputes between the disputing parties.

§437-B Procedures, protections, rights, and remedies made available to licensees. (a) The same procedures, protections, rights, and remedies provided to a dealer under section 437-28(a)(21) and section 437-A shall apply to a distributor that is not a manufacturer; provided that for a distributor that is not a manufacturer, the measure of compensation under section 437-28(a)(21)(C) upon cancellation or failure to renew a franchise agreement shall include compensation related to that distributor’s dealer operations and franchise agreements with other dealers.

(b) Notwithstanding the terms, provisions, or conditions of any dealer or distributor agreement or franchise or the terms or provisions of any waiver, and notwithstanding any other legal or administrative remedies available, any person who is licensed under this chapter and whose business or property is injured by a violation of section 437-28(a)(21), may bring a civil action in a court of competent jurisdiction in the State to enjoin further violations and to recover any damages together with the costs of the suit.

(c) Any person that brings or defends against a civil action under subsection (b) shall be entitled to recover reasonable attorneys’ fees as a part of any damages or injunction; provided that the person substantially prevails in establishing or defending against a violation of section 437-28(a)(21).”

SECTION 2. Section 437-1, Hawaii Revised Statutes, is amended to read as follows:

“§437-1 Legislative findings and declaration. The legislature finds that [the]:

- (1) The manufacture, distribution, and sales of motor vehicles in the State vitally affects the general economy of the State and the public interest and public welfare;
- (2) Manufacturers of motor vehicles whose physical manufacturing facilities are not located within the State, and motor vehicle distributors, are doing business in the State through their control over, and relationships and transactions with their dealers, branches, and representatives; and [that the]
- (3) The geographical location of Hawaii makes it necessary to [insure] ensure the availability of motor vehicles and parts and dependable service therefor within the State to protect and preserve the transportation system and the investments of its residents.

The legislature declares, on the basis of the foregoing findings, that it is necessary to regulate and to license motor vehicle manufacturers, distributors, dealers, salespersons, and auctions in the State, [in order] to prevent frauds, impositions, and other abuses against its residents, and to protect and preserve the economy and the transportation system of the State."

SECTION 3. Section 437-1.1, Hawaii Revised Statutes, is amended by amending the definition of "franchise" to read as follows:

"'Franchise' means any contract or agreement between a dealer and a manufacturer or distributor [~~or branches or representatives thereof, which~~] that authorizes the dealer to engage in the business of selling or purchasing any particular make or makes of new motor vehicles or parts therefor manufactured or distributed by such manufacturer or distributor."

SECTION 4. Section 437-2, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) No person shall engage in the business as or serve in the capacity of, or act as a motor vehicle dealer, [~~motor vehicle~~] salesperson, [~~or motor vehicle~~] auction, manufacturer, or distributor in this State, or otherwise engage in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter. A license issued under this chapter shall authorize the holder to engage in the business or activities permitted by the license, only in the county for which the license is issued.

(b) A license issued under this chapter shall authorize the holder to engage in the same business at branch locations in the same county for which the license is issued during the term thereof; provided that each branch location of a motor vehicle dealer is approved by the board."

SECTION 5. Section 437-6, Hawaii Revised Statutes, is amended to read as follows:

"**§437-6 Powers and duties of the board.** In addition to any other powers and duties authorized by law, the board shall:

- (1) Adopt, amend, and repeal from time to time rules not inconsistent with this chapter, as the board deems appropriate for the carrying out of the provisions and purposes of this chapter and for the efficient administration thereof, and the proper conduct of the business that is subject to this chapter, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of, or as prescribed by the board, which rules, when adopted under chapter 91, shall have the effect of law;
- (2) Grant, deny, suspend, or revoke licenses that are authorized by this chapter, fine licensees, and impose conditions as may be set forth in the rules of the board in connection with the granting of licenses;
- (3) Prescribe the nature of the proof to be furnished, the notices to be given, and the conditions to be met or observed for the issuance of a duplicate license in place of one alleged to have been lost or destroyed, including a requirement for any indemnity deemed appropriate to the case;
- (4) Prescribe all forms to be used for the purposes of this chapter not otherwise provided for;
- (5) Establish, by rules, minimum qualifications [~~for salespersons or dealers~~] which [~~must~~] shall be met by applicants prior to the issuance of any license; and

- (6) The exercise by the board of power, authority, and discretion in it so vested shall be final in each case and shall not be reviewable by or appealable to any court or tribunal, except as otherwise provided in chapter 91 or in this chapter.”

SECTION 6. Section 437-7, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) All applicants for the issuance of a ~~new license shall pay a fee concurrently with each application, except the application fee]~~ manufacturer’s or distributor’s license shall submit:

- (1) If the manufacturer or distributor is publicly traded, a financial statement signed by a certified public accountant or an annual report;
- (2) A copy of the executed agreement granting the distributor applicant the franchise to distribute motor vehicles in this State;
- (3) If the applicant is the manufacturer of the motor vehicles to be distributed, a certified statement to this effect;
- (4) Any other documents or information that may be provided for in rules adopted by the director of commerce and consumer affairs pursuant to chapter 91; and
- (5) The following fees, which shall apply until fees are adopted by the director under this subsection in accordance with chapter 91:
 - (A) Non-refundable application fee: \$50;
 - (B) Original license fee: \$500;
 - (C) Annual compliance resolution fund fee: \$250 for each dealer franchised by the manufacturer or distributor;
 - (D) Biennial compliance resolution fund fee: \$500 for each dealer franchised by the manufacturer or distributor; and
 - (E) Verification or duplicate fees as provided in title 16 Hawaii Administrative Rules, chapter 53.

The nonrefund provisions of section 16-53-4, Hawaii Administrative Rules, shall apply to fees under this subsection. Application fees for a new salesperson’s license shall be a lesser amount than the fee for other licenses issued under this chapter.

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

- (1) A statement that the applicant is not disqualified by this chapter from obtaining or exercising a license and has complied with all the requirements of this chapter relative to the making and filing of the licensee’s application;
- (2) Information relating to any and all other matters and things which pertain to or affect the matter of the application or the issuance or the exercise of the license applied for;
- (3) In the case of an application for a dealer’s or auction’s license the applicant shall submit a report which shall include:
 - (A) A description of the premises intended to become the licensed premises, and the equipment and surrounding conditions; and
 - (B) If the applicant has held a prior dealer’s or auction’s license for the same or any other premises within two years past, a statement as to the manner in which the premises have been operated and the business conducted under the previous license; and

- (4) In the case of an application for a dealer's license, if the applicant proposes to engage in the business of selling new motor vehicles, a copy of the dealer sales and service agreement from the applicable manufacturer[, factory branch, factory representative,] or distributor[, distributor branch, or distributor representative]."

SECTION 7. Section 437-23, Hawaii Revised Statutes, is amended to read as follows:

"§437-23 Term of license. (a) Expiration. All licenses issued pursuant to this chapter shall expire on June 30 of each even-numbered year unless sooner terminated, suspended, or revoked. All applications for renewal of license shall be filed on or before June 30 of each even-numbered year together with the applicable fees.

(b) Reapplication. If a licensee fails to renew the licensee's license on or before June 30 of each even-numbered year and desires to continue in the business or activity for which the license was issued, the licensee shall file a new application for a license and shall pay in addition to the license and filing fee a penalty of twenty-five per cent of the original license fee; provided that the board may for good cause waive the collection of all or a part of the penalty; and provided that nothing contained in this section shall limit the power of the board to deny any application on the grounds provided in this chapter.

(c) Renewal fees for manufacturers and distributors shall be as follows until renewal fees are adopted by the director under this subsection in accordance with chapter 91:

- (1) Biennial renewal fee: \$1,000; and
- (2) Biennial compliance resolution fund fee: \$500 for each dealer franchised by the manufacturer or distributor."

SECTION 8. Section 437-28, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In addition to any other actions authorized by law, the board, after notice and hearing as provided in chapter 91, and subject to appeal to the circuit court of the circuit in which the board has jurisdiction under the procedure and rules prescribed by the laws of the State or the applicable rules of the courts pertaining to appeals to circuit courts, may suspend, revoke, fine, or deny the renewal of any license, or prior to notice and hearing deny the issuance of any license for any cause authorized by law, including but not limited to circumstances where the board finds that the applicant or holder, or any officer, director, general manager, trustee, partner, or stockholder owning more than ten per cent interest of the applicant or holder:

- (1) Has intentionally made a false statement of a material fact in the application for a license or in any other statement required by this chapter or has obtained or attempted to obtain a license by fraud or misrepresentation;
- (2) Has failed to comply[.] with, observe, or adhere to any provision of this chapter or any other law relating to the sale, taxing, or licensing of motor vehicles or any rule or order made pursuant to this chapter;
- (3) Has committed a fraudulent act in selling, purchasing, or otherwise dealing in motor vehicles or has misrepresented the terms and conditions of a sale, purchase, or contract for sale or purchase of a motor vehicle or any interest therein including an option to purchase motor vehicles;

- (4) Has engaged in business under a past or present license issued pursuant to this chapter, in a manner as to cause injury to the public or to those with whom one is dealing;
- (5) Has failed to comply[;] with, observe, or adhere to any law in any other respect on account whereof the board may deem the applicant or holder to be an unfit or improper person to hold a license;
- (6) Has failed to meet or maintain the conditions and requirements necessary to qualify for the issuance of a license;
- (7) Is insolvent or has filed or is the subject of petition for bankruptcy, wage earner's plan, or financial reorganization plan; or has made or proposes to make an assignment for benefit of creditors;
- (8) In the case of an individual applicant or holder of a license, if the applicant or holder is not at least eighteen years of age; in the case of a partnership applicant or holder of a license, if any general or limited partner thereof is not at least eighteen years of age;
- (9) Has charged more than the legal rate of interest on the sale or purchase or attempted sale or purchase or in arranging the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (10) Has violated any of the laws pertaining to false advertising or to credit sales in the offering, soliciting, selling, or purchasing, or arranging to sell or purchase a motor vehicle or any interest therein;
- (11) Has wilfully failed or refused to perform any unequivocal and indisputable obligation under any written agreement involving the sale or purchase of a motor vehicle or any interest therein including an option to purchase;
- (12) Has been denied the issuance of a license under this chapter for substantial culpable cause or for having had a license issued under this chapter suspended, revoked, or the renewal thereof denied for substantial culpable cause;
- (13) Has entered or has attempted to enter or proposes to enter into any contract or agreement contrary to this chapter or any rule adopted thereunder;
- (14) Has been or is engaged or proposes to engage in the business of selling new motor vehicles as a dealer or auction without a proper franchise therefor;
- (15) Has at any time employed or utilized or attempted or proposed to employ or utilize any person not licensed under this chapter who is required to be so licensed;
- (16) Has entered or attempted to enter any one-payment contract, where the contract is required to be signed by the purchaser prior to removal of the motor vehicle for test driving from the seller's premises;
- (17) Being a salesperson or dealer:
 - (A) Has required a purchaser of motor vehicles as a condition of sale and delivery thereof to purchase special features, appliances, accessories, or equipment not desired or requested by the purchaser; provided that this prohibition shall not apply as to special features, appliances, accessories, or equipment which are ordinarily installed on the vehicle when received or acquired by the dealer;
 - (B) Has represented and sold as an unused motor vehicle any motor vehicle which has been operated as a demonstrator, leased, or U-drive motor vehicle;
 - (C) Has sold a new motor vehicle without providing or securing for the purchaser the standard factory new car warranty for the

any other party, to perform any act not required by or to refrain from performing any act not contrary to the reasonable requirements of the franchise agreement with the dealer, by awarding or threatening to award a franchise to another person for the sale of the same make of any motor vehicle in the same sales area of responsibility covered by the existing franchise agreement of the dealer;

- (C) Has attempted to or has canceled or failed to renew the franchise agreement of any dealer in the State without good faith, as defined herein. Upon such a cancellation or failure to renew the franchise agreement, the party canceling or failing to renew the franchise agreement, at the dealer's option, shall either:
- (i) Compensate the dealer at the fair market going business value for the dealer's capital investment, which shall include but not be limited to the going business value of the business, goodwill, property, and improvement owned or leased by the dealer for the purpose of the franchise, inventory of parts, and motor vehicles possessed by the dealer in connection with the franchise, plus reasonable attorney's fees incurred in collecting compensation; provided that the investment shall have been made with reasonable and prudent judgment for the purpose of the franchise agreement; or
 - (ii) Compensate the dealer for damages including attorney's fees as aforesaid, resulting from the cancellation or failure to renew the franchise agreement.

As used in this paragraph, "good faith" means the duty of each party to any franchise agreement to fully comply with that agreement, or to act in a fair and equitable manner towards each other;

- (D) Has delayed delivery of or refused to deliver without cause, any new motor vehicle to a dealer, franchised to sell the new motor vehicle, within a reasonable time after receipt of a written order for the vehicle from the dealer. The delivery to another dealer of a motor vehicle of the same model and similarly equipped as the vehicle ordered by a dealer who has not received delivery thereof, but who had placed the written order for the vehicle prior to the order of the dealer receiving the vehicle, shall be prima facie evidence of a delayed delivery of, or refusal to deliver, a new motor vehicle without cause. The nondelivery of a new motor vehicle to a dealer within sixty days after receipt of a written order for the vehicle from a dealer shall also be prima facie evidence of delayed delivery of, or refusal to deliver, a new motor vehicle without cause; provided that the delayed delivery of, or refusal to deliver, a motor vehicle shall be deemed with cause if the manufacturer establishes that the delay or refusal to deliver is due to a shortage or curtailment of material, labor, transportation, utility service, labor or production difficulty, or other similar cause beyond the reasonable control of the manufacturer;
- (E) Has discriminated against any of their franchised dealers in the State by directly or indirectly charging the dealer more for a new motor vehicle or services, parts, or accessories or a higher rate of transportation for transporting the vehicle from the manufacturing or assembly plant to the dealer or any portion of the distance,

than is charged to any other of their franchised dealers in the State for the same make, model, and year of a new motor vehicle or for the same devices, parts, or accessories for the similar transportation for the vehicle during the same period. A manufacturer or distributor who provides or causes to be provided greater transportation benefits for a new motor vehicle as aforesaid to any of their franchised dealers in the State than is provided to any of their competing franchised dealers in the State for the same or lesser price or charge than that imposed upon the franchised dealer in the State during the same period is deemed to have so discriminated against the competing franchised dealer in the State. Evidence of similar discriminatory practice against franchised dealers in other states shall not constitute a defense to or justification of the commission of the discriminatory act against the franchised dealer in the State. The intent and purpose of this subparagraph is to eliminate inequitable pricing policies set by manufacturers or distributors which result in higher prices of new motor vehicles to the consumer in the State. This subparagraph shall be liberally interpreted to effect its intent and purpose and in the application thereof, the substance and effect and not the form of the acts and transactions shall be primarily considered in determining whether a discriminatory act has been committed. Nothing contained in this subparagraph shall prohibit establishing delivered prices or destination charges to dealers in the State which reasonably reflect the seller's total transportation costs incurred in the manufacture or delivery of products to the dealers, including costs that are related to the geographical distances and modes of transportation involved in shipments to this State, or which meet those lower prices established by competitors;

- (F) Has required a dealer of new motor vehicles in the State as a condition of sale and delivery of new motor vehicles to purchase special features, appliances, accessories, or equipment not desired or requested by the dealer; provided that this prohibition shall not apply to special features, appliances, accessories, or equipment, except heaters, that are regularly installed on that particular model or new motor vehicles as "standard" equipment or to special features, appliances, accessories, or equipment that are an integral part of the new motor vehicles and cannot be removed therefrom without substantial expense. Nothing in this subparagraph shall make it unlawful for a dealer to sell a vehicle that includes a heater that has been installed as standard equipment;
- (G) Has failed to adequately and fairly compensate its dealers for labor, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements. In no event shall any manufacturer or distributor pay its dealers a labor rate per hour for warranty work that is less than that charged by the dealer to the retail customers of the dealer nor shall the rates be more than the retail rates. All claims made by the dealers for compensation for delivery, preparation, and warranty work shall be paid within thirty days after approval and shall be approved or disapproved within thirty days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval;

- (H) Has wilfully failed to affix the vehicle bumper impact notice pursuant to section 437-4.5(a), or willfully misstated any information in the notice. Each failure or misstatement is a separate offense;
- (I) Has wilfully defaced, or removed the vehicle bumper impact notice required by section 437-4.5(a) prior to delivery of the vehicle to which the notice is required to be affixed to the registered owner or lessee. Each wilful defacement, alteration, or removal is a separate offense; or
- (J) Has required a dealer to refrain from participation in the management of, investment in, or the acquisition of, any other line of new motor vehicle or related products; provided that the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicle, remains in compliance with reasonable facilities and other franchise requirements of the manufacturer or distributor, and makes no unauthorized change in the principal management of the dealer.”

SECTION 9. Section 437-29, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Notification of the application of each dealer or auction approved by the board, or a report of the suspension, revocation, or change of status of a dealer’s or auction’s license shall be furnished to the treasurer of the affected county motor vehicle registration division or finance department promptly upon the granting, suspension, revocation, or change of status of the license.”

SECTION 10. Section 437-35, Hawaii Revised Statutes, is amended to read as follows:

“**§437-35 Penalty.** Any person who violates any provision of this chapter or rules of the board, or who engages in the business as, or serves in the capacity of, or acts as a motor vehicle dealer, ~~[motor vehicle]~~ salesperson, ~~[or motor vehicle]~~ auction, manufacturer, or distributor in the State or otherwise engages in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter, shall be fined not more than \$1,000, and each day’s violation or failure to comply shall be deemed a separate offense.”

SECTION 11. Section 437-35.5, Hawaii Revised Statutes, is amended to read as follows:

“**§437-35.5 Misdemeanor.** Any person who is convicted of violating any provision of this chapter or rules of the board, or who engages in the business as or serves in the capacity of, or acts as a motor vehicle dealer, ~~[motor vehicle]~~ salesperson, ~~[or motor vehicle]~~ auction, manufacturer, or distributor in the State or otherwise engages in the business of selling or negotiating for the purchase of motor vehicles in this State without being licensed as provided in this chapter, shall have committed a misdemeanor and be subject to a fine of not more than \$1,000, or imprisoned not more than one year, or both.”

SECTION 12. Section 437-1.1, Hawaii Revised Statutes, is amended by deleting the definitions of “distributor branch”, “distributor representative”, “factory branch”, and “factory representative”.

["~~“Distributor branch” means any office or establishment maintained by a distributor which is not at the same address as the distributor and is used, either directly or indirectly, for the purpose of selling, promoting the sale of, or distributing new motor vehicles to dealers, or for the purpose of directing or supervising, in whole or in part, factory or distributor representatives.~~

~~“Distributor representative” means any representative, employee, agent, contractor, or any person, other than an independent advertising agency, employed by or under a contract with a distributor, directly or indirectly, for the purpose of selling, promoting the sale of, or distributing new motor vehicles or for the purpose of supervising or regulating the business affairs of motor vehicle dealers or prospective dealers.~~

~~“Factory branch” means any office or establishment maintained by a manufacturer, directly or indirectly, for the purpose of selling, offering for sale, or promoting the sale of new motor vehicles to a distributor or dealer, or for directing or supervising, in whole or in part, factory or distributor representatives.~~

~~“Factory representative” means a representative, employee, agent, contractor, or any person, other than an independent advertising agency, employed by a manufacturer or factory branch for the purpose of selling or promoting the sale of new motor vehicles of such manufacturer or for supervising the franchised dealers or prospective dealers of such manufacturer.”]~~

SECTION 13. 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 14. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 15. This Act shall take effect upon its approval; provided that sections 6 and 7 shall take effect on January 1, 2004.

(Approved June 2, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 127

S.B. NO. 1403

A Bill for an Act Relating to Department of Transportation’s Maritime-Related Uses.

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

SECTION 1. The legislature finds that leasing and development procedures of the harbors division of the department of transportation are cumbersome and inflexible and are not conducive to the expeditious development of harbor lands and facilities. The legislature further finds that the economic well-being of the State depends in part on the efficient and effective use of all of its resources, and that fuller use of the State’s resources will enhance and complement efforts to revitalize Hawaii’s economy.

The purpose of this Act is to provide the harbors division of the department of transportation with greater flexibility to develop lands and facilities, subject to the

approval of the board of land and natural resources, without sacrificing health, safety, environmental, and shoreline management requirements.

SECTION 2. Section 171-59, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Disposition of public lands for airline, aircraft, [~~airport-related,~~] airport-related, agricultural processing, cattle feed production, aquaculture, marine, [~~and~~] maritime, and maritime-related operations may be negotiated without regard to the limitations set forth in subsection (a) and section 171-16(c); provided that:

- (1) The disposition encourages competition within the aeronautical, [~~airport-related,~~] airport-related, agricultural, aquaculture, [~~and~~] maritime, and maritime-related industries;
- (2) The disposition shall not exceed a maximum term of thirty-five years; and
- (3) The method of disposition of public lands for cattle feed production as set forth in this subsection shall not apply after December 31, 1988.

For the purpose of this subsection [~~“agricultural processing”~~]: “agricultural processing” means the processing of agricultural products, including dairying, grown, raised, or produced in Hawaii [~~and “airport-related”~~], “airport-related” means a purpose or activity that requires air transportation to achieve that purpose or activity[-], and “maritime-related” means a purpose or activity that requires and is directly related to the loading, off-loading, storage, or distribution of goods and services of the maritime industry.”

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

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

(Approved June 2, 2003.)

ACT 128

H.B. NO. 1163

A Bill for an Act Relating to Dental Insurance.

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

SECTION 1. Act 132, Session Laws of Hawaii 2001, as amended by Act 219, Session Laws of Hawaii 2002, is amended:

- (1) By amending sections 1 and 2 to read as follows:

“SECTION 1. Chapter 423, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§423- Dental service corporation; regulation. Dental service corporations shall be subject to and comply with chapter 431, article 2, parts II and III, and article 15; provided that dental service corporations shall not be subject to sections 431:2-215 and 431:2-216[-]; and provided further that examinations of dental service corporations shall be conducted pursuant to section 431:2-302 at the commissioner’s discretion.”

SECTION 2. Chapter 448D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

ACT 129

“~~§448D-~~ **Dental service organization; regulation.** Dental service organizations shall be subject to and comply with chapter 431, article 2, parts II and III, and article 15; provided that dental service organizations shall not be subject to sections 431:2-215 and 431:2-216[-]; and provided further that examinations of dental service organizations shall be conducted pursuant to section 431:2-302 at the commissioner’s discretion.”

(2) By amending section 4 to read as follows:

“SECTION 4. This Act shall take effect upon its approval and shall be repealed on July 1, [2003:] 2004.”

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

SECTION 3. This Act shall take effect on June 30, 2003.

(Approved June 3, 2003.)

ACT 129

H.B. NO. 1160

A Bill for an Act Relating to the Examination for Licensure as a Certified Public Accountant.

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

SECTION 1. Section 466-5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The examination required to be passed [~~shall be in writing, shall be held twice a year, and] for licensure shall test the applicant’s knowledge of the subjects of accounting theory, accounting practice, auditing, and other related subjects as the board may specify by rule. [~~The time for holding the examination shall be fixed by the board and may be changed from time to time.~~] The board shall prescribe the methods of applying for and conducting the examination, including methods for grading papers and determining a passing grade required by an applicant for a license; provided that the board shall, to the extent possible, see to it that the grading of the examination and the passing grades are uniform with those applicable in all other states. The board may use the Uniform Certified Public Accountant Examination and Advisory Grading Service of the American Institute of Certified Public Accountants, and may contract with third parties to perform the administrative services with respect to the examination as the board deems appropriate to assist it in performing its duties herein.”~~

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

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

(Approved June 3, 2003.)

ACT 130

S.B. NO. 1410

A Bill for an Act Relating to 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 University of Hawaii tuition and fees special fund to UOH 900 - University of Hawaii, system wide support, 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
First Insurance/Karl Perry v. University of Hawaii, Civil No. 00-1-2577-08 SSM, First Circuit Court	\$300,000.00 Settlement
Lynn Matsuoka v. University of Hawaii, Civil No. 01-1-3334-11 SSM, First Circuit Court	\$ 25,000.00 Settlement
Shyamal Premaratne, M.D. v. University of Hawaii, et al., Civil No. CV01-00390 ACK/KSC, United States District Court	\$ 78,265.00 Settlement
Amount of Judgment:	\$ 75,000.00
Interest at 4% from 7/1/02:	\$ 3,265.00
Mary Shepard v. Anthony Wiggins, University of Hawaii, Civil No. 00-1-1116-04 RWP, First Circuit Court	\$ 7,500.00 Settlement
Maryanne B. Maigret vs. University of Hawaii, et al., Civil No. 00-1-3184-10 First Circuit Court	\$ 12,000.00 Settlement
MISCELLANEOUS CLAIMS:	AMOUNT
Claim of Carol Yonemitsu	\$ 60,000.00 Settlement
Claim of John Charlot	\$ 10,000.00 Settlement
Claim of Arbitration between UHPA and Board of Regents, University of Hawaii, Grievance of John F. Scott, Ph.D.	\$356,983.37 Attorneys' Fees & Costs

SECTION 2. Notwithstanding the sums hereinabove appropriated as interest upon judgments or awards 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. 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 4. This Act shall take effect on July 1, 2003.

(Approved June 3, 2003.)

ACT 131

H.B. NO. 75

A Bill for an Act Relating to Condominiums.

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

SECTION 1. In 2000, the legislature, pursuant to Act 213, Session Laws of Hawaii 2000, recognized that the condominium property regimes law codified in chapter 514A, Hawaii Revised Statutes, needed to be updated, clarified, organized, deregulated, and made more consistent and easier to use. Accordingly, the legislature directed the real estate commission to 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 purpose of this Act is to extend the deadline, staffing, and funding for the real estate commission's review and recommended recodification of Hawaii's condominium law, and to expand the membership of the recodification advisory committee.

SECTION 2. Act 213, Session Laws of Hawaii 2000, is amended by amending section 4 to read as follows:

“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[-], and 2003. 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.] 2004.”

SECTION 3. The membership of the real estate commission's recodification advisory committee shall be expanded to include representatives of the Hawaii Council of Associations of Apartment Owners, Hawaii Independent Condominium and Cooperative Owners, Community Associations Institute-Hawaii Chapter, Hawaii Association of Realtors, and the Condominium Council of Maui.

The recodification advisory committee shall meet to review the final version of the recodification draft to be presented at public hearings. The committee shall also meet after the public hearings to review the data from the hearings and to make recommendations to the real estate commission before the final recodification draft is submitted to the legislature.

SECTION 4. There is appropriated out of the condominium management education fund the sum of \$95,000, or so much thereof as may be necessary for fiscal year 2003-2004, to cover necessary expenses of the real estate commission to complete its comprehensive review of the condominium property regimes law, including the cost of continuing one full-time temporary condominium specialist

position in the department of commerce and consumer affairs, and other related costs.

SECTION 5. The sum appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

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

SECTION 7. This Act shall take effect on July 1, 2003.

(Approved June 4, 2003.)

ACT 132

H.B. NO. 1328

A Bill for an Act Relating to the Consumer Advocate.

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

SECTION 1. Section 269-54, Hawaii Revised Statutes, is amended to read as follows:

“§269-54 General powers; duties. (a) The consumer advocate shall have the authority expressly conferred by or reasonably implied from the provisions of this part.

(b) The consumer advocate may:

- (1) Adopt rules pursuant to chapter 91 necessary to effectuate the purposes of this part.
- (2) Conduct investigations to secure information useful in the lawful administration of any provision of this part.
- (3) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of the consumer in the public utilities field.
- (4) Study the operation of laws affecting all consumers, including small businesses, of utility services and recommend to the governor and the legislature new laws and amendments of laws in the consumers' interest in the public utilities field.
- (5) Organize and hold conferences on problems affecting consumers of utility services.
- (6) Perform such other acts as may be incidental to the exercise of the functions, powers, and duties set forth in this section.
- (7) Represent the interests of consumers of utility services before any state or federal agency or instrumentality having jurisdiction over matters which affect those interests.

(c) The consumer advocate shall consider the long-term benefits of renewable resources in the consumer advocate's role as consumer advocate.

~~[(e)]~~ (d) Whenever it appears to the consumer advocate that: (1) any public utility has violated or failed to comply with any provision of this part or of any state or federal law; (2) any public utility has failed to comply with any rule, regulation, or other requirement of the public utilities commission or of any other state or federal agency; (3) any public utility has failed to comply with any provision of its charter or franchise; (4) changes, additions, extensions, or repairs to the plant or service of any public utility are necessary to meet the reasonable convenience or necessity of the

public; or (5) the rates, fares, classifications, charges, or rules of any public utility are unreasonable or unreasonably discriminatory, the consumer advocate may institute proceedings for appropriate relief before the public utilities commission. The consumer advocate may appeal any final decision and order in any proceeding to which the consumer advocate is a party in the manner provided by law.

~~[(d)]~~ (e) The consumer advocate may file with the commission and serve on any public utility a request in writing to furnish any information reasonably relevant to any matter or proceeding before the commission or reasonably required by the consumer advocate to perform the duties hereunder. Any such request shall set forth with reasonable specificity the purpose for which the information is requested and shall designate with reasonable specificity the information desired. The public utility shall comply with such request within the time limit set forth by the consumer advocate unless within ten days following service it requests a hearing on the matter before the public utilities commission and states its reasons therefor. If a hearing is requested, the public utilities commission shall proceed to hold the hearing and make its determination on the request within thirty days after the same is filed. The consumer advocate or the public utility may appeal to the supreme court the decision of the commission on any such request. Subject to the foregoing, such requests may ask the public utility to: (1) furnish any information with which the consumer advocate may require concerning the condition, operations, practices, or services of the public utility; (2) produce and permit the consumer advocate or the consumer advocate's representative to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained), or to inspect and copy, test, or sample any designated tangible thing which is in the possession, custody, or control of the public utility; or (3) permit entry upon land or other property in the possession or control of the utility for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object thereon."

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

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

(Approved June 4, 2003.)

ACT 133

H.B. NO. 736

A Bill for an Act Relating to Professional and Vocational Licenses.

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

SECTION 1. During the regular session of 2002, the legislature recognized that individuals who received state or federal student loans for their college degrees also secured something of value that could not be lost or taken away, and which would give the borrower a continuing, lifelong economic benefit. The legislature also found that student loan recipients must make every effort to honor their financial obligations, which are guaranteed by taxpayer dollars in the event of default. Thus, H.B. No. 2752, H.D. 1, S.D. 1, C.D. 1, was passed by the legislature and subsequently signed into law by the governor as Act 226, Session Laws of Hawaii 2002 (Act 226), effectively providing for professional or vocational license sanctions upon default by the borrower.

The purpose of this Act is to address a perceived lack of due process in Act 226, by requiring that a license may be denied or suspended under Act 226 only if the agency administering the loan provides the licensing authority with certification of the default, breach, or noncompliance based on a judgment from a state district or circuit court.

SECTION 2. Chapter 436C, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§436C-A Judicial certification. (a) The certification of an administering entity under section 436C-2(a) shall be based on the judgment of a district or circuit court in this State that:

- (1) Specifies the amount of the default;
- (2) Finds that the education of the licensee or license applicant was financed by the student loan, student loan repayment contract, or scholarship contract that is in default;
- (3) Finds that the licensee or license applicant has the ability to cure the default without undue financial hardship; and
- (4) Includes proof of service of notice to the licensee or license applicant that the judgment will be reported to the licensing authority with a direction to suspend the license, deny the application for a license, or deny the application for renewal or reinstatement of the license;

provided that no finding under paragraph (3) shall be required in the case of a default judgment or if the licensee or license applicant fails to petition the court as provided in section 436C-B.

(b) A licensing authority shall act on the certification of an administering entity under section 436C-2 only if the certification complies with this section.

§436C-B Judicial finding of financial hardship; guidelines. If a licensee or license applicant who is the subject of a certification issued pursuant to section 436C-A declares to the court that the default cannot be cured without financial hardship, the court may consider the following in determining whether financial hardship exists:

- (1) That the administering entity had notice of the defendant’s financial hardship prior to initiation of civil proceedings in the form of a completed statement of financial status and a request for deferment, forbearance, loan consolidation, extension of the repayment schedule, or a graduated or income-sensitive repayment plan;
- (2) Findings made pursuant to section 636-4;
- (3) The earning potential and borrowing capacity of the licensee or license applicant and any spouse relative to the cost of reasonable necessities; and
- (4) Avoidance of extreme and inequitable changes in the licensee’s or license applicant’s income.”

SECTION 3. Section 436C-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Licensing authority” means any unit of state government, including agencies, departments, boards, commissions, authorities, the supreme court, or any other entity within the State authorized by statute to grant or deny a license.”

SECTION 4. Section 189-2, Hawaii Revised Statutes, is amended to read as follows:

“§189-2 Commercial marine license. (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license as provided in this section.

(b) Additionally, any person providing vessel charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine license.

(c) The department may adopt rules pursuant to chapter 91 necessary for the purpose of this section and to set fees for commercial marine licensing.

(d) The fees for commercial marine licenses and duplicate commercial marine licenses shall be established by the department by rules adopted in accordance with chapter 91.

(e) The department shall suspend, shall refuse to renew, reinstate, or restore, or shall deny any license issued under this section if the department has received certification from the child support enforcement agency pursuant to section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. The department shall issue, renew, reinstate, or restore such a license only upon receipt of authorization from the child support enforcement agency, the office of child support hearings, or the family court.

(f) The department shall not renew or reinstate, or shall deny or suspend any license or application, if the department has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee’s or applicant’s education, or has failed to comply with a repayment plan.

The department in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.”

SECTION 5. Section 302A-807, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The board shall not renew or reinstate, or shall deny[;] or suspend[; or revoke,] any license, credential, or application, if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract[;] that financed the licensee’s or applicant’s education, or has failed to comply with a repayment plan. [Unless]

The board in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, [the board] shall renew, reinstate, or grant the license or credential only upon receipt of an authorization from the administering entity.”

SECTION 6. Section 321-15, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The department shall not renew or reinstate, or shall deny^[;] or suspend^[, or revoke,] any license or application, if the department has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract^[;] that financed the licensee’s or applicant’s education, or has failed to comply with a repayment plan. ~~[Unless]~~

The department in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, ~~[the department]~~ shall grant, renew, or reinstate ~~[a]~~ the license only upon receipt of an authorization from the administering entity.”

SECTION 7. Section 431:9-235, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The commissioner shall not renew or reinstate, or shall deny, suspend, or revoke any license or application, if the commissioner has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract^[;] that financed the licensee’s or applicant’s education, or has failed to comply with a repayment plan. ~~[Unless]~~

The commissioner in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, ~~[the commissioner]~~ shall renew, reinstate, or grant ~~[a]~~ the license only upon receipt of an authorization from the administering entity.”

SECTION 8. Section 431:9A-112, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The commissioner may deny, place on probation, suspend, revoke, or refuse to issue or renew an insurance producer’s license and may levy a civil penalty in accordance with articles 2 and 3, or any combination of these actions, for any of the following causes:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any law, or violating any rule, subpoena, or order of the commissioner or of another state’s commissioner;
- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted to or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive, or dishonest practice or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;

- (9) Having an insurance producer license or its equivalent denied, placed on probation, suspended, or revoked in any other state, province, district, or territory;
- (10) Forging another's name to an application or to any document related to a transaction;
- (11) Improperly using notes or any other reference material while taking an examination for an insurance license;
- (12) Accepting insurance business from a person who is not licensed;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; [øf]
- (14) Failing to pay federal or state income taxes or failing to comply with any administrative or court order directing payment of federal or state income taxes[-]; or
- (15) Receiving certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education, or has failed to comply with a repayment plan.

(b) In the event that the commissioner takes action pursuant to subsection (a), the commissioner shall notify the applicant or licensee in writing of the reason for that action. The applicant or licensee may make written demand upon the commissioner within ten days of the date of receipt of the notice for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within twenty days of receipt of the written demand and shall be held pursuant to chapter 91[-]; provided that this subsection shall not apply to an action taken pursuant to subsection (a)(15), and following such action, unless otherwise provided by law, the commissioner shall without further review or hearing renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity."

SECTION 9. Section 436B-19.6, Hawaii Revised Statutes, is amended to read as follows:

“[§436B-19.6] Denial[, or suspension [, or revocation] of license for default of student loan, student loan repayment contract, or scholarship contract. (a) In addition to any other acts or conditions provided by law, the licensing authority shall not renew or reinstate, or shall deny[, or suspend[, or revoke,] any license or application, if the department has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee's or applicant's education, or has failed to comply with a repayment plan. [Unless]

(b) The licensing authority in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, [the licensing authority] shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity. Chapter 91 and sections 92-17, 436B-18, 436B-20, 436B-21, 436B-24, and 436B-25 shall not apply to a license suspension or denial under this section."

SECTION 10. Section 436C-2, Hawaii Revised Statutes, is amended by amending its title and subsections (a) through (c) to read as follows:

“~~[[§436C-2]] Professional and vocational license sanction for default of student loan, student loan repayment contract, or scholarship contract.~~ (a) In addition to any other acts or conditions provided by law, the ~~[applicable]~~ licensing authority shall not renew or reinstate, or shall deny~~[;]~~ ~~or suspend~~~~[; or revoke]~~ the license or application of any person who has been certified by an administering entity as being:

- (1) In default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract~~[;]~~ that financed the licensee’s or applicant’s education; or
- (2) At least sixty days past due with payments under a repayment plan.

~~[The applicable licensing authority in receipt of the certification shall not renew or reinstate, or shall deny, suspend, or revoke the license or application without further review or hearing.]~~ The licensing authority shall not act on the certification of an administering entity unless it is based upon a court judgment that complies with section 436C-A.

(b) The ~~[applicable]~~ licensing authority in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity stating that the person is making payments or taking other action satisfying the terms of the student loan, student loan repayment contract, or scholarship contract and is no longer in default or breach of the loan or contract.

(c) Any licensing fees paid prior to the denial, suspension, or revocation of a license under the licensing laws shall be forfeited. The ~~[applicable]~~ licensing authority may charge fees for reinstating a license and to cover the costs of administering this chapter.”

SECTION 11. Section 457-9, Hawaii Revised Statutes, is amended as follows:

1. By amending its title to read:

“§457-9 Renewal of license; denial, suspension, or revocation of license for default of student loan, student loan repayment contract, or scholarship contract.”

2. By amending subsection (c) to read:

~~“(c) Notwithstanding any provision in this chapter to the contrary, the board shall not renew or reinstate, or shall deny~~[;]~~ ~~or suspend~~~~[; or revoke,]~~ any license or application, if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract~~[;]~~ that financed the licensee’s or applicant’s education, or has failed to comply with a repayment plan. ~~[Unless]~~~~

The board in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, ~~[the board]~~ shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.”

SECTION 12. Section 466J-8, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The board shall not renew or reinstate, or shall deny~~[,]~~ or¹ suspend~~[, or revoke,]~~ any license or application, if the board has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract~~[,]~~ that financed the licensee’s or applicant’s education or has failed to comply with a repayment plan. ~~[Unless]~~

The board in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license without further review or hearing;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, ~~[the board]~~ shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.”

SECTION 13. Section 605-1, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In addition to other qualifications for licensure and conditions for continuing eligibility to hold a license, applicants for licensure, licensees renewing their licenses, and existing licensees shall be in compliance with any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee’s or applicant’s education or shall be in compliance with a repayment plan as provided in chapter 436C.

The licensing authority shall not renew or reinstate, or shall deny or suspend any license or application, if the licensing authority has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or breach of any obligation under any student loan, student loan repayment contract, or scholarship contract that financed the licensee’s or applicant’s education or has failed to comply with a repayment plan.

The licensing authority in receipt of a certification pursuant to chapter 436C shall, as applicable, and without further review or hearing:

- (1) Suspend the license;
- (2) Deny the application or request for renewal of the license; or
- (3) Deny the request for reinstatement of the license,

and unless otherwise provided by law, shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.”

SECTION 14. Section 436C-1, Hawaii Revised Statutes, is amended by deleting the definition of “applicable licensing authority”.

[~~““Applicable licensing authority” means the director of commerce and consumer affairs, or any licensing board or commission under the administrative control of the director of commerce and consumer affairs, the director of health, the insurance commissioner, or the supreme court.”~~]

SECTION 15. In codifying the new sections 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 16. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 17. This Act shall take effect upon its approval.

(Approved June 4, 2003.)

Notes

1. "Or" should be underscored.
2. Edited pursuant to HRS §23G-16.5.

ACT 134

S.B. NO. 1312

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- Finalizing of pensions. (a) The system shall finalize a retiree's pension benefit within six calendar months following the month of the retiree's retirement. For pension benefits finalized after the sixth calendar month following the month of the retiree's retirement, an interest payment amounting to four and one-half per cent per annum shall be paid to the retiree. Interest shall be calculated on the difference between the amount the retiree is entitled to receive from the retiree's retirement date up to the day the payment is made and the amount the retiree was paid including any refund of member contributions.

Beginning January 1, 2004, or the first day of the seventh calendar month following the month of retirement, whichever is later, interest payments calculated as simple interest shall be prorated up to the date payment is made; provided that any pension adjustment made after the retiree's pension has once been finalized shall not be subject to any interest payment.

The system shall finalize ordinary and service-connected disability retirements within six calendar months following the month that the member's retirement is approved by the board of trustees or the actual retirement date specified by the member, whichever is later.

(b) Any department or agency of the State or counties that fails to comply with the system's request for information shall be subject to a monthly fee for each request as follows:

- (1) For requests for unused sick leave balances and lump sum vacation payments not reported within ninety days of an employee's retirement; and
- (2) For requests for payroll or personnel information not reported within thirty days of receipt of request.

Beginning January 1, 2004, the system shall assess \$10 for each month or fraction thereof that the department or agency fails to provide the system with the requested information for each retiree. All assessments collected shall be deposited to the pension accumulation fund."

SECTION 2. There is appropriated out of the employees' retirement system's investment earnings the sum of \$90,000, or so much thereof as may be necessary for fiscal year 2003-2004 to carry out the purposes of this Act.

The sum appropriated shall be expended by the employees' retirement system for the purposes of this Act; provided that the amount expended shall not exceed \$90,000.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on January 1, 2004; provided that section 2 shall take effect on July 1, 2003.

(Approved June 4, 2003.)

Note

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

ACT 135

S.B. NO. 1395

A Bill for an Act Relating to the Amendment or Repeal of Obsolete Tax Laws.

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

SECTION 1. Section 237-1, Hawaii Revised Statutes, is amended by adding a definition to be appropriately inserted and to read as follows:

““Retailing” or “sales at retail” includes the sale of tangible personal property for consumption or use by the purchaser and not for resale, the renting of tangible personal property, and the rendering of services by one engaged in a service business or calling, as defined in section 237-7, to a person who is not purchasing the services for resale. Persons described in this definition are “retailers”.”

SECTION 2. Section 231-23, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

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

- (1) All refunds shall be paid only upon a form to be known as a “refund voucher” prepared by the collector. The refund vouchers shall set forth all the details of each transaction, shall be approved by the director, and shall be forwarded to the comptroller from time to time. The comptroller shall issue a warrant, in the form prescribed by section 40-52, for the payment of any such refund out of the tax reserve fund hereinafter created; provided that if the person entitled to the refund is delinquent in the payment of any tax, the comptroller, upon demand of the collector and after notice to the delinquent taxpayer, shall withhold the amount of the delinquent taxes, together with penalties and interest thereon, from the amount of the refund and pay the same to the collector.
- (2) There is hereby appropriated, from the general revenues of the State not otherwise appropriated, the sum of \$25,000 which shall be set aside as a [special] trust fund to be known as the tax reserve fund. All refunds of taxes collected by the department under chapters of the law under title 14 administered by the department shall be made out of the tax reserve fund. The director of taxation, from time to time, may deposit taxes collected under chapters of the law under title 14 administered by the department in the state treasury to the credit of the tax reserve fund so that there may be maintained at all times a fund not exceeding \$25,000. The amounts deposited shall be made from the taxes with respect to which a particular refund is made.”

SECTION 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 consti-

- tute 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;~~] provided that insofar as the 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; 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; 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. Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.
 - (B) The department 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, other than as a home service provider, 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.

(E) Where any person is engaged in the business of a home service provider, the tax shall be imposed on the gross income received or derived from providing interstate or foreign mobile telecommunications services to a customer with a place of primary use in this State when such services originate in one state and terminate in another state, territory, or foreign country; provided that all charges for mobile telecommunications services which are billed by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications originate, terminate, or pass through; provided further that the income from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-24, shall be apportioned under any apportionment factor or formula adopted under section 237-13(6)(D). Gross income shall not include:

- (i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;
- (ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;
- (iii) Gross receipts from mobile telecommunications services taxed under section 237-13.8; and
- (iv) Gross receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer.

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22.

(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 237-18, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) Where insurance agents, including general agents, subagents, or solicitors, who are not employees and are licensed pursuant to chapter 431, or real estate brokers or salespersons, who are not employees and are licensed pursuant to chapter 467, produce commissions which are divided between such general agents, subagents, or solicitors, or between such real estate brokers or salespersons, as the case may be, the tax levied under section 237-13(6) [~~or under section 237-16~~] as to real estate brokers or salespersons, or under section 237-13(7) as to insurance general agents, subagents, or solicitors shall apply to each such person with respect to the person's portion of the commissions, and no more."

SECTION 5. 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];~~
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 414D 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, ophthalmic, 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;
- (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;
- (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; and
- (12) Amounts received as rent for the rental or leasing of aircraft or aircraft engines used by the lessees or renters for interstate air transportation of passengers and goods. For purposes of this paragraph, payments made pursuant to a lease shall be considered rent regardless of whether the lease is an operating lease or a financing lease. The definition of "interstate air transportation" is the same as in 49 U.S.C. 40102."

SECTION 6. Section 238-2.3, Hawaii Revised Statutes, is amended to read as follows:

"§238-2.3 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;
 - (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 7. 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, 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, 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 8. Section 239-6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(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 9. Section 235-16, Hawaii Revised Statutes, is repealed.

SECTION 10. Section 237-8.5, Hawaii Revised Statutes, is repealed.

SECTION 11. Section 237-16, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 237-28.2, Hawaii Revised Statutes, is repealed.

SECTION 13. Section 238-2.5, Hawaii Revised Statutes, is repealed.

SECTION 14. Section 248-2.5, Hawaii Revised Statutes, is repealed.

SECTION 15. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 16. This Act shall take effect upon its approval.

(Approved June 4, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Tax Administration.

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

SECTION 1. Because of the terrorist attacks on September 11, 2001, the ensuing war on terrorism, and their impact on the Hawaii economy combined with the sluggish national economy, the size of the State's delinquent tax accounts grew significantly between fiscal year June 30, 2001, and June 30, 2002. To provide taxpayers an opportunity to resolve their delinquent tax accounts and to streamline that process, this Act provides that where the tax is \$50,000 or less, exclusive of penalties and interest, the department of taxation may compromise the claim without the governor's approval. This Act also allows the department of taxation to waive penalties and interest for taxes that are delinquent for more than ninety days in appropriate circumstances, and to hire investigators.

SECTION 2. Chapter 231, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§231- Investigators; appointment and powers. The director may appoint and commission one or more investigators as the exigencies of the public service may require. Persons appointed and commissioned under this section shall have and may exercise all of the powers and authority and the benefits and privileges of a police officer or of a deputy sheriff, including the power to arrest; provided that such powers shall remain in force and effect only while in actual performance of their duties. These investigators shall consist of personnel whose primary duty is to conduct investigations as directed by the director. Persons appointed and commissioned under this section shall be exempt from chapter 76.”

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

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

- (1) Assessment: To make any assessment by law required to be made by the department;
- (2) Collections: To be responsible for the collection of all taxes imposed under title 14, except those which by law are to be collected by county treasurers, and for such other duties as are provided by law;
- (3) Construction of revenue laws: To construe the tax and revenue laws, the administration of which is within the scope of the department's duties, whenever requested by any officer acting under those laws, or by an interested person;
- (4) Enforcement of penalties: To see that penalties are enforced when prescribed by any tax or revenue law of the State (the administration of which is within the scope of the department's duties) for disobedience or evading of its provisions, and to see that complaint is made against persons violating any such law; in the execution of these powers and duties the department may call upon the attorney general or any of the attorney general's deputies, including the county attorneys or public prosecutors, whose duties it shall be to assist in the institution and conduct of all proceedings or prosecutions for penalties and forfeitures,

liabilities, and punishments for violation of the laws administered by the department;

- (5) Forms: To prescribe forms to be used in or in connection with any assessment, including forms to be used in the making of returns by taxpayers or in any other proceedings connected with the assessment, and to change the same from time to time as deemed necessary;
- (6) Inspection, examination of records: To inspect and examine the records of all public officers without charge, and to examine the books and papers of account of any person for the purpose of enabling the department to obtain all information that could in any manner aid the department in discharging its duties under any tax law;
- (7) Recommendations for legislation: To recommend to the governor any amendments, changes, or modifications of the laws as may seem proper or necessary to remedy injustice or irregularity in taxation or to facilitate the assessment of taxes;
- (8) Report to governor: To report to the governor annually, and at such other times and in such manner as the governor may require, concerning the acts and doings and the administration of the department, and any other matters of information concerning taxation as may be deemed of general interest;
- (9) Rules: To adopt such rules as the department may deem proper effectually to carry out the purposes for which the department is constituted and to regulate matters of procedure by or before the department;
- (10) Compromises: With the approval of the governor, to compromise any claim where the tax exceeds \$50,000 (exclusive of penalties and interest) arising under any tax law the administration of which is within the scope of the department's duties[;], and to compromise any tax claim where the tax is \$50,000 or less (exclusive of penalties and interest) without seeking the approval of the governor; provided that the director shall have the discretion to seek the approval of the governor to compromise any tax claim where the director deems it appropriate; and in each case the department shall post each proposed compromise, as set forth in subparagraphs (A) to (D), on the department's Internet website for five calendar days before the director signs the compromise, and there shall be placed on file in the department's office a statement of:
 - (A) The name of the taxpayer and the amount and type of tax assessed, or proposed to be assessed;
 - (B) The amount of penalties and interest imposed or which could have been imposed by law with respect to the amount of tax assessed, as computed by the department;
 - (C) The total amount of liability as determined by the terms of the compromise, and the actual payments made thereon with the dates thereof; and
 - (D) The reasons for the compromise.

Notwithstanding the provisions of any law making unlawful the disclosure of tax returns or return information, statements on file and included in the department's Internet website in respect of compromises shall be open to public inspection;
- (11) Retroactivity of rulings: To prescribe the extent, if any, to which any ruling, rule, or construction of the tax laws, of general application, shall be applied without retroactive effect;
- (12) Remission of delinquency penalties and interest: Except in cases of fraud or wilful violation of the laws or wilful refusal to make a return

setting forth the information required by law (but inclusion in a return of a claim of nonliability for the tax shall not be deemed a refusal to make a return), the department may remit any amount of penalties or interest added, under any law administered by the department, to any tax that is delinquent [~~for not more than ninety days~~], in a case of excusable failure to file a return or pay a tax within the time required by law, or in a case of uncollectibility of the whole amount due; and in that case there shall be placed on file in the department's office a statement showing the name of the person receiving the remission, the principal amount of the tax, and the year or period involved;

- (13) Closing agreements: To enter into an agreement in writing with any taxpayer or other person relating to the liability of the taxpayer or other person, under any law the administration of which is within the scope of the department's duties, in respect of any taxable period, or in respect of one or more separate items affecting the liability for any taxable period; the agreement, signed by or on behalf of the taxpayer or other person concerned, and by or on behalf of the department, shall be final and conclusive, and except upon a showing of fraud or malfeasance, or misrepresentation of a material fact:
- (A) The matters agreed upon shall not be reopened, and the agreement shall not be modified, by any officer or employee of the State; and
 - (B) In any suit, action, or proceeding, the agreement, or any determination, assessment, collection, payment, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside, or disregarded;
- (14) Other powers and duties: In addition to the powers and duties contained in this chapter, the powers and duties contained in other chapters of the law under title 14 administered by the department for levying, assessing, collecting, receiving, and enforcing payments of the tax imposed thereunder, and otherwise relating thereto, shall be severally and respectively conferred, granted, practiced, and exercised for levying, assessing, collecting, receiving, and enforcing payment of the taxes imposed under the authority of those chapters as far as the provisions are consistent with the express provisions of those chapters, as fully and effectually to all intents and purposes as if the same powers and authorities were repeated in those chapters, with reference to those taxes, and all of the provisions shall be applied, construed, deemed, and taken to refer to the taxes imposed under the authority of those chapters, in like manner."

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

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

(Approved June 4, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 137

S.B. No. 1438

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

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

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2003-2005 the Hawaii employer-union health benefits trust fund costs contained in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (1):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$1,964,856	\$4,495,122

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2003-2005 the Hawaii employer-union health benefits trust fund costs for state officers and employees excluded from collective bargaining:

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$2,462	\$6,513

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. Cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2004, and June 30, 2005, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 2003.

(Approved June 4, 2003.)

A Bill for an Act Making Appropriations for Salary Increases for Public Employees.
Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 the Hawaii employer-union health benefits trust fund in the agreements negotiated with the exclusive bargaining representatives of collective bargaining units (2), (3), (4), (6), (8), and (13):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$6,490,831	\$14,624,318

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in each respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 the Hawaii employer-union health benefits trust fund for state officers and employees in the executive branch who are excluded from collective bargaining:

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$765,456	\$1,673,659

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in each respective fiscal year for the purposes of this part.

PART III

SECTION 5. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 2004, and June 30, 2005, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 2003.

(Approved June 4, 2003.)

ACT 139

S.B. NO. 1440

A Bill for an Act Relating to Collective Bargaining Cost Items.

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

PART I

SECTION 1. There are appropriated or authorized from the sources and funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005, the Hawaii employer-union health benefits trust fund costs in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (5):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General fund	\$7,864,862	\$13,841,653

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance in each respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources and funding indicated below to Program Planning, Analysis, and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005, the Hawaii employer-union health benefits trust fund costs for state officers and employees in the department of education who are excluded from collective bargaining:

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General fund	\$13,750	\$23,345

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance in each respective fiscal year for the purposes of this part.

PART III

SECTION 5. The cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act which are not expended or encumbered by June 30, 2004, and June 30, 2005, of the respective fiscal years shall lapse as of those dates.

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

(Approved June 4, 2003.)

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

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

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 the Hawaii employer-union health benefits trust fund costs in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (7):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$1,269,326	\$2,732,512

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005, the Hawaii employer-union health benefits trust fund costs for state officers and employees excluded from collective bargaining:

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$293,382	\$631,583

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2004, and June 30, 2005, of the respective fiscal years, shall lapse as of those dates.

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

(Approved June 4, 2003.)

ACT 141

S.B. NO. 1442

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

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

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 the Hawaii employer-union health benefits trust fund costs in the agreement negotiated with the exclusive bargaining representative of collective bargaining unit (10):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$824,692	\$2,122,975

SECTION 2. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART II

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 the Hawaii employer-union health benefits trust fund costs for state officers and employees excluded from collective bargaining:

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$6,650	\$14,059

SECTION 4. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART III

SECTION 5. Cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 6. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2004, and June 30, 2005, of the respective fiscal years, shall lapse as of those dates.

SECTION 7. This Act shall take effect on July 1, 2003.

(Approved June 4, 2003.)

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

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

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2003-2005 all cost items provided in the arbitrated settlement for salary increases and other wage related costs for bargaining unit (11):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$ 3,882	\$ 8,665
Special funds	\$316,735	\$709,147

SECTION 2. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2003-2005 all cost items provided in the arbitrated settlement for Hawaii employer-union trust fund costs for bargaining unit (11):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$61,733	\$147,777

SECTION 3. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART II

SECTION 4. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis and Budgeting (BUF 101) the following sums or so much thereof as may be necessary to fund for fiscal biennium 2003-2005, all cost items provided in the arbitrated settlement for salary increases and other wage related costs authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$ 289	\$ 528
Special funds	\$21,922	\$39,963

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to Program, Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 all cost items provided in the arbitrated settlement for Hawaii employer-union trust fund costs authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining.

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$1,693	\$3,232

SECTION 6. Funds appropriated or authorized by this part shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of this part.

PART III

SECTION 7. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2004, and June 30, 2005, of the respective fiscal years, shall lapse as of those dates.

SECTION 8. This Act shall take effect on July 1, 2003.

(Approved June 4, 2003.)

ACT 143

S.B. NO. 1444

A Bill for an Act Making Appropriations for Collective Bargaining Cost Items.

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

PART I

SECTION 1. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 all cost items in the arbitrated settlement for salary increases and other wage related costs for bargaining unit (9):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General fund	\$3,618,122	\$7,734,377
Special funds	\$ 4,431	\$ 8,868
Federal funds	\$ 140,908	\$ 294,281
Other funds	\$ 23,431	\$ 47,210

SECTION 2. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 all cost items provided in the arbitrated settlement for Hawaii Employer-Union Trust Fund costs for bargaining unit (9):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General funds	\$494,394	\$1,103,429

SECTION 3. There are appropriated or authorized from the sources of funding indicated below to Administrative Director Services (JUD 201) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 all cost items provided in the arbitrated settlement for salary increases and other wage related costs for bargaining unit (9):

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General fund	\$3,072	\$6,006

SECTION 4. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the

ACT 143

following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 all cost items provided in the arbitrated settlement for salary increases and other wage related costs authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General fund	\$51,493	\$158,457

SECTION 5. There are appropriated or authorized from the sources of funding indicated below to Program Planning, Analysis, Budgeting (BUF 101) the following sums, or so much thereof as may be necessary, to fund for fiscal biennium 2003-2005 all cost items provided in the arbitrated settlement for Hawaii employer-union trust fund costs authorized by chapter 89C, Hawaii Revised Statutes, for state officers and employees excluded from collective bargaining:

	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
General fund	\$2,148	\$4,186

PART II

SECTION 6. Funds appropriated or authorized by each section of this Act to Program Planning, Analysis, Budgeting (BUF 101) shall be allotted by the director of finance to the appropriate state departments in the respective fiscal year for the purposes of that section.

SECTION 7. Funds appropriated or authorized by each section of this Act to Administrative Director Services (JUD 201) shall be allotted by the chief justice in the respective fiscal year for the purposes of that section.

PART III

SECTION 8. Salary increases and cost adjustments provided in this Act for any officer or employee whose compensation is paid, in whole or in part, from federal, special, or other funds shall be paid wholly or proportionately, as the case may be, from the respective funds.

SECTION 9. Funds appropriated or authorized by this Act that are not expended or encumbered by June 30, 2004, and June 30, 2005, of the respective fiscal years, shall lapse as of those dates.

SECTION 8¹. This Act shall take effect on July 1, 2003.

(Approved June 4, 2003.)

Note

1. So in original.

ACT 144

S.B. NO. 975

A Bill for an Act Relating to Government.

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

SECTION 1. The legislature finds that there is strong public demand for public facilities designed for skateboarding. Such activities pose a substantial risk of injury to the users of such facilities due to the inherently dangerous nature of these activities. The legislature further finds that there are no design standards for such facilities to mitigate against the inherently dangerous activities or uses that may occur in skateboard parks. The legislature also finds that such facilities may not be typically monitored or supervised by public employees, that signs warning of dangers of skateboarding activity make no sense because of the inherent danger of the activities, and that persons with recreational equipment other than skateboards may use the facilities in a manner for which the facilities were not designed and sustain injury as a result.

The purpose of this Act is to balance the public demand for public facilities designed for skateboarding with concerns raised by counties, the State, and volunteers, regarding exposure to liability for injuries sustained by users of such facilities.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Counties’ limited liability for skateboard activities at public skateboard parks. (a) No public entity or public employee shall be liable to any person for injury or damage sustained when using a public skateboard park, except when injury or damage is caused by a condition resulting from the public entity’s failure to maintain or repair the skateboard park.

(b) Counties shall maintain a record of all known or reported injuries incurred by skateboard users in a public skateboard park and all claims paid for such injuries and shall submit a report to the legislature on or before twenty days before the convening of the 2008 legislative session, along with any recommendations regarding the need for further immunity from liability.”

SECTION 3. Chapter 662, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§662- Limited liability for skateboarding activities in public skateboard parks. (a) No public entity or public employee shall be liable to any person for injury or damage sustained when using a public skateboard park, except when injury or damage is caused by a condition resulting from the public entity’s failure to maintain or repair the skateboard park.

(b) Public entities that own or maintain public skateboard parks shall maintain a record of all known or reported injuries incurred by skateboard users in a public skateboard park and all claims paid for such injuries and shall submit a report to the legislature on or before twenty days before the convening of the 2008 legislative session, along with any recommendations regarding the need for further immunity from liability.”

SECTION 4. Chapter 662D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§662D- Limited liability for volunteers for activities at public skateboard parks. (a) A volunteer who designs, constructs, maintains, or repairs a skateboard park for a governmental entity shall not be liable to any person for injury or damage sustained when using a public skateboard park, except for injury or damages resulting from gross negligence or intentional misconduct.

(b) No nonprofit organization or nonprofit corporation that provides volunteers to a governmental entity to design, construct, maintain, or repair a public skateboard park shall be liable to any person for injury or damage sustained when using a public skateboard park, except under the doctrine of respondeat superior.”

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were initiated, before its effective date.

SECTION 6. New statutory material is underscored.¹

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

(Approved June 4, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 145

H.B. NO. 324

A Bill for an Act Relating to Driver Licensing.

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

SECTION 1. Section 286-111, Hawaii Revised Statutes, is amended to read as follows:

“§286-111 Application for license or instruction permit; fees. (a) Every application for an instruction permit or for a driver’s license shall be made upon a form furnished by the examiner of drivers and shall be verified by the applicant before a person authorized to administer oaths. The examiner of drivers and officers serving under the examiner [~~are hereby authorized to~~] may administer such oaths without charge. Each application for an instruction permit for a category (1), (2), (3), or (4) license shall be accompanied by a fee to be determined by the council of each county and each application for a driver’s license shall be accompanied by the fee, unless the applicant has already paid the fee upon application for an instruction permit in the same county, in which event no fee shall be chargeable. An additional fee to be determined by the council of each county shall be charged and collected upon the issuance of a driver’s license. All the foregoing fees shall become county realizations.

(b) The director of transportation shall establish a fee schedule for all commercial driver’s licensing examinations. The fees collected for a commercial driver’s license shall become state realizations and deposited in the state highway fund. The State shall reimburse the counties all costs for administering the commercial driver’s licensing program. The amount of reimbursement shall be determined by the director of transportation.

(c) Every application shall state the full name, date of birth, sex, occupation, social security number[.], if the applicant is eligible for a social security number, the residence address and business address, if any, of the applicant, and shall briefly

describe the applicant, and shall state whether the applicant has theretofore been licensed as a driver, and, if so, when and in what state or country, and whether any such license has ever been suspended or revoked, or whether an application has ever been refused, and if so, the date of and reason for the suspension, revocation, or refusal.

(d) If the applicant is not eligible to receive a social security number, the applicant shall submit, in lieu of providing proof of social security number pursuant to subsection (c):

- (1) A United States Social Security Administration letter stating that the applicant is ineligible to obtain a social security number; and
- (2) Either:
 - (A) A government-issued photo identification document; or
 - (B) Other identification documents as deemed acceptable by the director.”

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

SECTION 3. This Act shall take effect on July 1, 2003.

(Approved June 4, 2003.)

ACT 146

H.B. NO. 980

A Bill for an Act Relating to Civil Settlements.

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

SECTION 1. Section 663-15.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) A release, dismissal with or without prejudice, or a covenant not to sue or not to enforce a judgment that is given in good faith under subsection (b) to one or more joint tortfeasors, or to one or more co-obligors who are mutually subject to contribution rights, shall:

- (1) Not discharge any other [party] joint tortfeasor or co-obligor not released from liability unless its terms so provide;
- (2) Reduce the claims against the other [party] joint tortfeasor or co-obligor not released in the amount stipulated by the release, dismissal, or covenant, or in the amount of the consideration paid for it, whichever is greater; and
- (3) Discharge the party to whom it is given from all liability for any contribution to any other [party:] joint tortfeasor or co-obligor.

This subsection shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves.

(b) For purposes of subsection (a), [a] any party shall petition the court for a hearing on the issue of good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, serving notice to all other known joint tortfeasors or co-obligors. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

The petition shall indicate the settling parties and, except for a settlement that includes a confidentiality agreement regarding the case or the terms of the settlement, the basis, terms, and settlement amount.

~~[Except for a settlement that includes a confidentiality agreement regarding the case or the terms of the settlement, the]~~ The notice, petition, and proposed order shall be served as provided by rules of court or by certified mail, return receipt requested. Proof of service shall be filed with the court. Within twenty-five days of the mailing of the notice, petition, and proposed order, a nonsettling [party] alleged joint tortfeasor or co-obligor may file an objection to contest the good faith of the settlement. If none of the nonsettling [parties] alleged joint tortfeasors or co-obligors files an objection within the twenty-five days, the court may approve the settlement without a hearing. An objection by a nonsettling [party] alleged joint tortfeasor or co-obligor shall be served upon all [other] parties. ~~[The party]~~ A nonsettling alleged joint tortfeasor or co-obligor asserting a lack of good faith shall have the burden of proof on that issue.

Where a confidentiality agreement has been entered into regarding the claim or settlement terms, the court shall hear the matter in a manner consistent with preventing public disclosure of the agreement while providing other joint tortfeasors and co-obligors sufficient information to object to a proposed settlement.”

2. By amending subsection (d) to read:

“(d) A determination by the court that a settlement was made in good faith shall ~~[bar]~~:

- (1) Bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor [for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault.], except those based on a written indemnity agreement; and
- (2) Result in a dismissal of all cross-claims filed against the settling joint tortfeasor or co-obligor, except those based on a written indemnity agreement.”

SECTION 2. If any provision of section 663-15.5, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of section 663-15.5, which can be given effect without the invalid provision or application, and to this end the provisions of section 663-15.5 are severable.

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

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

(Approved June 4, 2003.)

ACT 147

H.B. NO. 10

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. The legislature finds that there is a need to increase consumer awareness of retail electricity services and the fuel choices made by the electric utilities operating in Hawaii. Pursuant to chapter 196, Hawaii Revised Statutes, the

department of business, economic development, and tourism annually issues reports on the fuel mix of Hawaii's electricity generation system in the "Energy Resources Coordinator's Annual Report." The legislature finds that Hawaii's utilities and other energy providers have been cooperative in providing detailed information on their fuel mix to the department.

The legislature finds that although this information is available through public documents, there is a need to more widely disseminate this information to the State's electricity consumers. Consumer disclosure ensures that retail electricity consumers purchasing electric energy receive basic information about the characteristics associated with their electricity service in a form that facilitates consumer understanding of retail electricity services and the development of new services responsive to consumer preferences. This disclosure requirement is not intended to increase costs to utilities or ratepayers.

Accordingly, the purpose of this Act is to require retail suppliers of electricity in Hawaii to annually disclose information on the average retail price and fuel mix of the electricity services they sell.

SECTION 2. Chapter 269, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§269- Annual fuel mix disclosure. (a) Beginning June 1, 2004, and every June 1 thereafter, each retail supplier of electricity shall disclose fuel mix information by generation category to its existing and new retail electricity customers for the prior calendar year.

(b) Beginning June 1, 2004, and every June 1 thereafter, each retail supplier of electricity shall state the average retail price of electricity (per kilowatt-hour) for each rate class of service for the prior calendar year. The average retail price of electricity for each rate class of service shall be determined by dividing the total electric revenues for each rate class of service by the total kilowatt-hours sold to each respective rate class.

(c) The disclosure required by this section shall be:

(1) Printed either on the customer's bill or as a bill insert; provided that this disclosure requirement shall not result in increased costs to ratepayers; and

(2) Posted and updated on the supplier's Internet website, if any.

(d) As used in this section, the term "fuel mix" means the electricity sold to retail electricity customers expressed in terms of percentage contribution by generation category. The total fuel mix included in each disclosure shall total one hundred per cent."

SECTION 3. New statutory material is underscored.¹

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

(Approved June 4, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Workforce Development.

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

SECTION 1. The legislature finds that the State's economic future is dependent upon the quality of its workforce. Over the years, several programs have been initiated to improve workforce development in Hawaii and meet the needs of the private sector. The private sector fuels the State's economy and is in need of qualified and skilled employees. Therefore, workforce development programs should be developed and implemented in a manner that ensures that the private sector has extensive participation and obtains the greatest benefit possible.

The State, through its various agencies, expends between \$80,000,000 and \$100,000,000 in federal, state, and county funding on workforce development programs. However, the private sector, especially small businesses, continues to express dissatisfaction with the delays in accessing workforce training services and funding and with the overall quality of skills possessed by Hawaii's workforce. Hawaii's workforce has a disproportionate level of low-skilled workers, totaling forty-four per cent of the workforce, compared to high-skilled workers that total eighteen percent of the workforce. Considering the amount of funding available, the State's workforce training programs should result in the development of higher skill levels in Hawaii's workforce, which in turn should result in higher paying jobs.

The purpose of this Act is to address critical industry needs and promote business development by requiring the department of business, economic development, and tourism to report on efforts to increase the number of high-skilled jobs and clarifying the duties of the workforce development council.

SECTION 2. Chapter 201, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§201- Annual report; workforce development. The department of business, economic development, and tourism shall submit an annual report to the legislature on the department's efforts to increase the number of high-skilled jobs in targeted industry clusters consistent with the efforts of the workforce development council. The department of business, economic development, and tourism shall post the annual report electronically on the Internet."

SECTION 3. Chapter 202, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§202- Report on workforce development programs. (a)¹ The department of labor and industrial relations, University of Hawaii, department of human services, department of education, department of public safety, and department of business, economic development, and tourism shall annually report to the governor, legislature, and the workforce development council on the programs being offered, the number of individuals that have been placed in employment through their respective workforce development programs, the type or category of employment garnered, and the amount and nature of expenditures made on workforce development programs. The departments and University of Hawaii shall post their respective reports electronically on the Internet."

SECTION 4. 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 strategic goals and measurable outcomes[;]. The comprehensive state plan shall include:
 - (A) Strategic goals of workforce development programs, including the identification of the desired number of highly skilled workers in the workforce, the number of placements of individuals into higher-skilled jobs, the identification of high-demand areas for job growth, the need for skilled workers in the next five and ten years, and the time frame for training and development;
 - (B) Methods to educate the private sector about state, federal, and private financial assistance available for workforce development;
 - (C) Methods to facilitate access to workforce development resources, including the reduction of regulatory burdens for employers and employees;
 - (D) The creation and improvement of educational opportunities for individuals to learn and develop new skills, including mentoring, project-based learning, and internships;
 - (E) Methods to facilitate the department of education’s development of curriculum in the public schools to prepare students for employment in the private sector;
 - (F) Recommendations to change and improve existing state programs, including the elimination of ineffective programs and the creation of new programs to improve workforce development;
 - (G) The identification of resources required, obstacles to overcome, and best practice models to implement the comprehensive state strategic plan; and
 - (H) A detailed budget for the comprehensive state plan with a justification for each expenditure;
- (2) Review and assess the coordination between the State’s workforce development programs, including programs of the federal government operating in the State, and placements in higher-skilled jobs to expand 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) Establish reporting requirements for job placement results by category of occupations in high-demand and high-growth areas;
 - ~~(B)~~ (C) Encourage a program of useful research into the State's workforce requirements, development, and utilization; and
 - ~~(C)~~ (D) 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 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 annual reports of its activities and recommendations to the governor and the legislature [at least once a year;], and post the annual reports electronically on the Internet no later than twenty days before the convening of each regular session. Annual reports shall include:
 - (A) The status of the comprehensive state plan for workforce development; and
 - (B) Information regarding the workforce development programs offered throughout the State, the number of individuals placed in high-demand or high-growth employment through workforce development programs by departments, the type or category of employment garnered, and allocations of state, federal, and other funding to achieve placements into higher-skilled jobs;
- (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 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 Technical Education Amendments of 1998, Public Law 105-332.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

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

(Approved June 4, 2003.)

Notes

1. No subsection (b).

2. Edited pursuant to HRS §23G-16.5.

ACT 149

H.B. NO. 135

A Bill for an Act Relating to International Matchmaking Organizations.

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
INTERNATIONAL MATCHMAKING ORGANIZATIONS**

§ -1 **Definitions.** As used in this chapter:

“Hawaii resident” includes aliens lawfully admitted for permanent residence and residing in Hawaii.

“International matchmaking organization” means a corporation, partnership, or other legal entity, whether or not organized under the laws of the United States or any state, that does business in the United States and for profit offers to residents of this State, dating, matrimonial, or social referral services involving citizens of a foreign country or countries who are not residing in the United States, by:

- (1) An exchange of names, telephone numbers, addresses, or statistics;
- (2) Selection of photographs; or
- (3) A social environment provided by the organization in a country other than the United States.

“Marital history information” means a declaration of the person’s current marital status, the number of times the person has previously been married, and whether any previous marriages occurred as a result of receiving services from an international matchmaking organization.

“Recruit” means a noncitizen, nonresident person, recruited by an international matchmaking organization for the purpose of providing dating, matrimonial, or social referral services.

§ -2 **Dissemination of criminal record and marital history information.** (a) Each international matchmaking organization doing business in this state shall:

- (1) Notify all recruits that criminal history record information and marital history information is available upon request;
- (2) Provide the notice required by paragraph (1) in the recruit’s native language and display it in a manner that separates it from other information, is conspicuous, and in lettering not less than one-quarter of an inch high; and
- (3) Upon request, disseminate to a recruit in the recruit’s native language all criminal conviction information and marital history information in the possession of the international matchmaking organization relating to a Hawaii resident about whom any information is provided to the recruit.

(b) Upon receipt of a request for criminal conviction or marital history information from a recruit, an international matchmaking organization shall refrain from providing any further services to the recruit or the Hawaii resident with regard to facilitating future interaction between the recruit and the Hawaii resident until the Hawaii resident has submitted to the organization:

- (1) The complete transcript of any criminal history record or a statement that there is no record of convictions; provided that these are obtained from the Hawaii criminal justice data center based on a submission of fingerprint impressions and sent directly to the organization by the Hawaii criminal justice data center; and
- (2) The Hawaii resident’s marital history information, accompanied by an affirmation by the Hawaii resident that any marital history information provided is complete and accurate and includes information regarding marriages, annulments, and dissolutions that occurred in other states or countries.

§ **-3 Jurisdiction.** An international matchmaking organization shall be deemed to be doing business in Hawaii if it contracts for matchmaking services with a Hawaii resident or is considered to be doing business under any other law of this State.

§ **-4 Penalties.** (a) Any person who violates this chapter shall be deemed to have engaged in an unfair or deceptive act or practice in the conduct of any trade or commerce within the meaning of section 480-2(a).

(b) A wilful violation of this chapter shall be punishable by a fine of up to \$500 and up to thirty days imprisonment.

§ **-5 Other relief available.** The penalties provided in this chapter are in addition to penalties and remedies otherwise available against the same conduct under the common law or other state or federal statutes or rules.”

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 and stricken. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on January 1, 2004.

(Approved June 4, 2003.)

Note

1. No bracketed or underscored material.

ACT 150

H.B. NO. 287

A Bill for an Act Relating to Public Employees.

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

SECTION 1. The legislature finds that the public trust in government has been shaken by recent criminal convictions of public officials. The legislature believes that public officials and other public employees who are convicted of a felony for conduct in violation of their duties should be removed from office or terminated.

The purpose of this Act is to allow for the removal of a public official or termination of a public employee if the public official or public employee is convicted of a felony related to their public office or duties. This Act also provides for reinstatement and back pay, under certain circumstances, if the public employee's conviction is overturned and the employee is not otherwise terminated in accordance with any other provision of law.

SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§78- **Public employees; termination.** (a) If a public employee is convicted of a felony for conduct related to the public employee's duties, the public employee shall be terminated from the public employee's position.

(b) If the felony conviction that results in the termination of a public employee pursuant to subsection (a) is overturned on appeal, the public employee shall receive back pay and be returned to the position the public employee held prior to conviction, or an equivalent position if the public employee's position was filled; provided that the employee is not terminated from the employee's position in accordance with any other provision of law.

(c) For purposes of this section:

- (1) "Public employee" means any public employee of the State or any county, and the political subdivisions and agencies thereof, any employees under contract with the State or county, any civil service employees, and any probationary or provisional employees of the State or county;
- (2) Employees covered by chapter 89 shall be entitled to a grievance procedure culminating in a final and binding decision; and
- (3) A rebuttable presumption shall arise that the criminal conviction is just and proper cause for the employee's termination."

SECTION 3. Section 831-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) A public office held at the time of conviction is forfeited as of the date of the conviction, if the conviction is in this State, or, if the conviction is in another state or in a federal court, as of the date a certification of the conviction from the trial court is filed in the office of the lieutenant governor who shall receive and file it as a public document. An appeal or other proceeding taken to set aside or otherwise nullify the conviction or sentence does not affect the application of this section~~[-but if the conviction is reversed the defendant shall be restored to any public office forfeited under this chapter from the time of the reversal and shall be entitled to the emoluments thereof from the time of the forfeiture].~~

For purposes of this section~~[-"time of conviction"]~~:

"Public office" means an office held by an elected official, department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor, chief justice, office of Hawaiian affairs, or the judicial selection commission, or are required by law to be confirmed by the senate.

"Time of conviction" means the day upon which the person was found guilty of the charges by the trier of fact or determined to be guilty by the court."

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

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

(Approved June 4, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 151

H.B. NO. 1217

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) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol (except levo- alphacetylmethadol, levomethadyl acetate, or 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-piperidinyl]-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) Levophenacymorphan;
- (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[-];
- (56) N-[1-benzyl-4-piperidyl]-N-phenylpropanamide (benzylfentanyl), its optical isomers, salts, and salts of isomers; and
- (57) N-[1-(2-thienyl)methyl-4-piperidyl]-N-phenylpropanamide (thenylfentanyl), its optical isomers, salts, and salts of isomers.”

SECTION 2. Section 329-14, Hawaii Revised Statutes is amended by amending subsection (d) to read as follows:

“(d) Any material, compound, mixture, or preparation that contains any quantity of the following hallucinogenic substances, their salts, isomers, and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alpha-ethyltryptamine (AET);
- (2) 2,5-dimethoxy-4-ethylamphetamine (DOET);
- (3) 2,5-dimethoxyamphetamine (2,5-DMA);
- (4) 3,4-methylenedioxy amphetamine;
- (5) 3,4-methylenedioxymethamphetamine (MDMA);
- (6) N-hydroxy-3,4-methylenedioxyamphetamine (N-hydroxy-MDA);
- (7) 3,4-methylenedioxy-N-ethylamphetamine (MDE);
- (8) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (9) 4-bromo-2,5-dimethoxy-amphetamine(4-bromo-2,5-DMA);
- (10) 4-Bromo-2,5-dimethoxyphenethylamine (Nexus);
- (11) 3,4,5-trimethoxy amphetamine;
- (12) Bufotenine;
- (13) 4-methoxyamphetamine (PMA);
- (14) Diethyltryptamine;
- (15) Dimethyltryptamine;
- (16) 4-methyl-2,5-dimethoxy-amphetamine;
- (17) Gamma hydroxybutyrate (GHB)[:]; (some other names include gamma hydroxybutyric acid; 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

- (18) Ibogaine;
- (19) Lysergic acid diethylamide;
- (20) Marijuana;
- (21) Parahexyl;
- (22) Mescaline;
- (23) Peyote;
- (24) N-ethyl-3-piperidyl benzilate;
- (25) N-methyl-3-piperidyl benzilate;
- (26) Psilocybin;
- (27) Psilocyn;
- (28) 1-[1-(2-Thienyl) cyclohexyl] Pyrrolidine (TCPy);
- (29) Tetrahydrocannabinols;
- (30) Ethylamine analog of phencyclidine (PCE);
- (31) Pyrrolidine analog of phencyclidine (PCPy, PHP);
- (32) Thiophene analog of phencyclidine (TCP; TCP)[-];
- (33) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)- furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number 96-48-0 when any such substance is intended for human ingestion;
- (34) 1,4 butanediol, including butanediol; butane-1,4-diol; 1,4- butylenes glycol; butylene glycol; 1,4-dihydroxybutane; 1,4- tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4- diol with Chemical Abstract Service number 110-63-4 when any such substance is intended for human ingestion;
- (35) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), its optical isomers, salts, and salts of isomers;
- (36) N-benzylpiperazine (BZP; 1-benzylpiperazine) its optical isomers, salts, and salts of isomers;
- (37) 1-(3-trifluoromethylphenyl)piperazine (TFMPP), its optical isomers, salts, and salts of isomers;
- (38) Alpha-methyltryptamine (AMT), its isomers, salts, and salts of isomers; and
- (39) 5-methoxy-N,N-diisopropyltryptamine (5-MeO-DIPT), its isomers, salts, and salts of isomers.”

SECTION 3. Section 329-16, Hawaii Revised Statutes, is amended by amending subsections (b), (c), and (d) to read as follows:

“(b) Any of the following substances, except those narcotic drugs listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, including the following:
 - (A) Raw opium;
 - (B) Opium extracts;
 - (C) Opium fluid;
 - (D) Powdered opium;
 - (E) Granulated opium;
 - (F) Codeine;
 - (G) Ethylmorphine;
 - (H) Etorphine hydrochloride;

- (I) Hydrocodone;
 - (J) Hydromorphone;
 - (K) Metopon;
 - (L) Morphine;
 - (M) Oxycodone;
 - (N) Oxymorphone; and
 - (O) Thebaine;
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (1), but not including the isoquinoline alkaloids of opium;
- (3) Opium poppy and poppy straw; [and]
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions which do not contain cocaine or ecgonine; cocaine or any salt [øf] or isomer thereof[-]; and
- (5) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid, or powder form that contains the phenanthrene alkaloids of the opium poppy).
- (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) (10) Isomethadone;~~
 - ~~[(12) (11) Levo-alphaacetylmethadol (LAAM);~~
 - ~~[(13) (12) Levomethorphan;~~
 - ~~[(14) (13) Levorphanol;~~
 - ~~[(15) (14) Metazocine;~~
 - ~~[(16) (15) Methadone;~~
 - ~~[(17) (16) Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;~~
 - ~~[(18) (17) Moramide-Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;~~
 - ~~[(19) (18) Pethidine (Meperidine);~~
 - ~~[(20) (19) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;~~
 - ~~[(21) (20) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;~~
 - ~~[(22) (21) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;~~
 - ~~[(23) (22) Phenazocine;~~
 - ~~[(24) (23) Piminodine;~~
 - ~~[(25) (24) Racemethorphan;~~
 - ~~[(26) (25) Racemorphan;~~

~~[(27)]~~ (26) Remifentanyl; and

~~[(28)]~~ (27) Sufentanyl.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Amobarbital;

(2) Glutethimide;

~~[(2)]~~ (3) Pentobarbital;

~~[(3)]~~ (4) Phencyclidine;

~~[(4)]~~ (5) Phencyclidine immediate precursors:

(A) 1-phenycyclohexylamine;

(B) 1-piperidinocyclohexanecarbonitrile (PCC); and

~~[(5)]~~ (6) Secobarbital.”

SECTION 4. Section 329-18, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

“(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation containing 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, including the substance butalbital;
- (4) [~~Chlorexadol~~]; Chlorhexadol;
- (5) Ketamine hydrochloride;
- (6) Lysergic acid;
- (7) Lysergic acid amide;
- (8) Methyprylon;
- (9) Sulfondiethylmethane;
- (10) Sulfonethylmethane;
- (11) Sulfonmethane; and
- (12) Tiletamine/Zolazepam [~~(Telazol)~~] (Telazol, 2-(ethylamino)-2-(2-thienyl)-cyclohexanone, fluprazapon) or any salts thereof.”

2. By amending subsection (e) to read:

“(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[-]; and
 - (9) Buprenorphine.”

SECTION 5. Section 329-20, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Depressants. Any material, compound, mixture, or preparation which contains any quantity of the following substances having a degree of danger or probable danger associated with a depressant effect on the central nervous system:

- (1) Alprazolam;
- (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) Dichloralphenazone (Midrin);
- ~~[(16)]~~ (17) Diazepam;
- ~~[(17)]~~ (18) Estazolam;
- ~~[(18)]~~ (19) Ethchlorvynol;
- ~~[(19)]~~ (20) Ethinamate;
- ~~[(20)]~~ (21) Ethyl loflazepate;
- ~~[(21)]~~ (22) Fludiazepam;
- ~~[(22)]~~ (23) Flunitrazepam;
- ~~[(23)]~~ (24) Flurazepam;
- ~~[(24)]~~ (25) Halazepam;
- ~~[(25)]~~ (26) Haloxazolam;
- ~~[(26)]~~ (27) Ketazolam;

- [(27)] (28) Loprazolam;
 [(28)] (29) Lorazepam;
 [(29)] (30) Lormetazepam;
 [(30)] (31) Mebutamate;
 [(31)] (32) Medazepam;
 [(32)] (33) Meprobamate;
 [(33)] (34) Methohexital;
 [(34)] (35) Methylphenobarbital (mephobarbital);
 [(35)] (36) Midazolam;
 [(36)] (37) Nimetazepam;
 [(37)] (38) Nitrazepam;
 [(38)] (39) Nordiazepam;
 [(39)] (40) Oxazepam;
 [(40)] (41) Oxazolam;
 [(41)] (42) Paraldehyde;
 [(42)] (43) Petrichloral;
 [(43)] (44) Phenobarbital;
 [(44)] (45) Pinazepam;
 [(45)] (46) Prazepam;
 [(46)] (47) Quazepam;
 [(47)] (48) Temazepam;
 [(48)] (49) Tetrazepam;
 [(49)] (50) Triazolam;
 (51) Zaleplon; and
 [(50)] (52) Zolpidem.”

SECTION 6. Section 329-22, Hawaii Revised Statutes, is amended to read as follows:

“**§329-22 Schedule V.** (a) The controlled substances listed in this section are included in Schedule V.

(b) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;
- (2) Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;
- (3) Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams[-]; and
- (6) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) [Buprenorphine.] Stimulants. Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Pyrovalerone.”

SECTION 7. Section 329-32, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) A separate registration shall be required at each principal place of business or professional practice where the applicant manufactures, distributes, prescribes, or dispenses controlled substances[-], except an office used by a practitioner (who is registered at another location) where controlled substances are prescribed but neither administered nor otherwise dispensed as a regular part of the professional practice of the practitioner at such office, and where no supplies of controlled substances are maintained.”

SECTION 8. Section 329-38, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Partial filling of controlled substance prescriptions shall be determined as follows:

- (1) The partial filling of a prescription for a controlled substance listed in schedule II is permissible if the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and the pharmacist makes a notation of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription). The remaining portion of the prescription may be filled within seventy-two hours of the first partial filling; provided that if the remaining portion is not or cannot be filled within the seventy-two-hour period, the pharmacist shall notify the prescribing individual practitioner. No further quantity shall be supplied beyond seventy-two hours without a new prescription;
- (2) The partial filling of a prescription for a controlled substance listed in schedule III, IV, or V is permissible; provided that:
 - (A) Each partial filling is recorded in the same manner as a refilling;
 - (B) The total quantity dispensed in all partial fillings does not exceed the total quantity prescribed;
 - (C) No dispensing occurs more than three months after the date on which the prescription was issued; and
 - (D) The prescription is refilled no more than two times after the initial date of the prescription, unless the prescription is renewed by the practitioner; and
- (3) A prescription for a schedule II controlled substance written for a patient in a long-term care facility or for a patient with a medical diagnosis documenting a terminal illness may be filled in partial quantities to include individual dosage units. If there is any question whether a patient may be classified as having a terminal illness, the pharmacist must contact the practitioner prior to partially filling the prescription. Both the pharmacist and the prescribing practitioner have a corresponding responsibility to assure that the controlled substance is for a terminally ill patient. The pharmacist must record on the prescription whether the patient is “terminally ill” or a “long-term care facility patient”. For the purposes of this section, “TI” means terminally ill and “LTCF” means long-term care facility. A prescription that is partially filled and does not contain the notation “TI” or “LTCF patient” shall be deemed to have been filled in violation of this section. For each partial filling, the dispensing pharmacist shall record on the back of the prescription (or on another appropriate record, uniformly maintained, and readily retrievable) the date of the partial filling, quantity dispensed, remaining quantity authorized to be dispensed, and the identification of the dispensing pharmacist. The total quantity of

schedule II controlled substances dispensed in all partial fillings must not exceed the total quantity prescribed[-], nor shall a prescription be partially filled more than three times after the initial date of the prescription. Schedule II controlled substance prescriptions for patients in a long-term care facility or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed [sixty] thirty days from the issue date unless sooner terminated by the discontinuance of medication.”

SECTION 9. Section 329-61, Hawaii Revised Statutes, is amended to read as follows:

“**§329-61 Substances subject to reporting.** (a) List 1 chemicals. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the following substances to any person in this State or for use in this State shall submit a report to the department of all those transactions:

- (1) Phenyl-2-propanone;
- (2) Methylamine and its salts;
- (3) Phenylacetic acid, its esters and salts;
- (4) Ephedrine, its salts, optical isomers, and salts of optical isomers;
- (5) Pseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (6) Norpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (7) Phenylpropanolamine, its salts, optical isomers, and salts of optical isomers;
- (8) Hydriodic acid;
- (9) Benzyl cyanide;
- (10) Benzyl chloride;
- (11) N-methylformamide;
- (12) N-methylephedrine, its salts, optical isomers, and salts of optical isomers;
- (13) N-ethylephedrine;
- (14) N-ethylpseudoephedrine;
- (15) N-methylpseudoephedrine, its salts, optical isomers, and salts of optical isomers;
- (16) Chloroephedrine;
- (17) Chloropseudoephedrine;
- (18) Ethylamine;
- (19) D-lysergic acid;
- (20) Ergotamine and its salts;
- (21) Piperidine and its salts;
- (22) N-acetylanthranilic acid, its esters and salts;
- (23) Anthranilic acid, its esters and salts;
- (24) Propionic anhydride;
- (25) Isosafrole;
- (26) Safrole;
- (27) Piperonal;
- (28) Thionylchloride;
- (29) Ergonovine and its salts;
- (30) 3,4-Methylenedioxyphenyl-2-propanone;
- (31) Benzaldehyde;
- (32) Nitroethane;
- (33) Red phosphorus;
- (34) Iodine crystals;

- (35) Iodine at concentrations greater than 1.5 per cent by weight in a solution or matrix above the threshold of two ounces in a single transaction;
- (36) Gamma butyrolactone (GBL) including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone; and 4-hydroxybutanoic acid lactone with chemical abstract service number 96-48-0;
- (37) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; and tetramethylene; 1,4-diol[-];
- (38) Hypophosphorous acid and its salts (including ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, and sodium hypophosphite);
- (39) White phosphorus (other names yellow phosphorus); and
- (40) Anhydrous ammonia.

(b) List 2 chemicals. Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any extraordinary quantity of any of the following chemicals, or sells, transfers, or otherwise furnishes the chemicals through the use of an uncommon method of payment or delivery or under any other circumstances that may make that person believe that the following chemicals could be used in violation of this part by any person in this State, shall report to the department all those transactions of:

- (1) Acetic anhydride;
- (2) Acetone;
- [3] ~~Benzyl chloride;~~
- (4) (3) Ethyl ether;
- [5] (4) Potassium permanganate;
- [6] (5) 2-Butanone (or methyl ethyl ketone or MEK);
- [7] (6) Toluene;
- [8] (7) Hydrochloric acid;
- [9] (8) Sulfuric acid;
- [10] (9) Methyl isobutyl ketone (MIBK);
- [11] ~~Anhydrous ammonia;~~
- (12) (10) Hydrogen chloride; and
- [13] (11) Methyl sulfone (MSM, DMS, Dimethyl sulfone or DMSO2).''

SECTION 10. Section 329-65, Hawaii Revised Statutes, is amended to read as follows:

“§329-65 Penalty. (a) Any manufacturer, wholesaler, retailer, or other person who does not submit a report as required by section 329-63 or who knowingly submits a report with false or fictitious information shall be fined not more than \$5,000, or imprisoned not more than thirty days, or both.

(b) Any manufacturer, wholesaler, retailer, or other person who has previously been convicted of violating subsection (a), upon a subsequent conviction thereof, shall be fined not more than \$100,000, or imprisoned not more than one year, or both.

(c) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any of the substances listed in section 329-61 with knowledge or the intent that the recipient will use the substance to unlawfully manufacture any controlled substance shall be fined not more than \$100,000, or

imprisoned not more than five years, or both. For the purpose of this part, “unlawfully manufacture” means to manufacture, compound, convert, produce, derive, process, or prepare, either directly or indirectly by chemical extraction, or independently by means of chemical synthesis, any controlled substance specified in section 329-14, 329-16, 329-18, 329-20, or 329-22 without a valid State controlled substance registration as designated under section 329-33.

(d) Any manufacturer, wholesaler, retailer, or other person who possesses any of the substances listed in section 329-61 with the intent to [illegally] unlawfully manufacture any controlled substance shall be fined not more than \$100,000, or imprisoned not more than ten years, or both.

(e) Any person who possesses, sells, distributes, purchases for resale, or causes to be sold, distributed, or purchased for resale any ephedrine-containing product with a label that claims or implies that consumption of the product will produce effects such as ecstasy, euphoria, increased sexual sensations, legal “highs”, and other similar effects shall be fined not more than \$5,000, or imprisoned not more than one year, or both.

(f) It is unlawful for any person to knowingly or intentionally obtain or attempt to obtain any of the substances listed in section 329-61 or procure or attempt to procure any substances listed in section 329-61:

- (1) By fraud, deceit, misrepresentation, embezzlement, or theft;
- (2) By furnishing fraudulent documentation or information or the concealment of a material fact regarding the use, location, or ultimate user of the substances listed in section 329-61; or
- (3) By the use of a false name, photo identification, general excise tax information, or the giving of a false address.

~~[Any person who violates this section shall be fined not more than \$100,000, or imprisoned not more than five years, or both.]~~

(g) Any person who violates subsection (f) shall be fined not more than \$100,000, or imprisoned not more than five years, or both.”

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

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

(Approved June 4, 2003.)

ACT 152

H.B. NO. 1303

A Bill for an Act Relating to the Office of Hawaiian Affairs.

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

SECTION 1. Section 87A-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““State agency” includes the office of Hawaiian affairs.”

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect on July 1, 2003.

(Approved June 4, 2003.)

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. Section 281-33.1, Hawaii Revised Statutes, is amended to read as follows:

“**§281-33.1 Individual permits to receive shipments of liquor.** (a) Notwithstanding any other provisions of law, any unlicensed adult person may apply to the liquor commission and be issued, for a nominal fee, except as hereinafter provided, a permit to receive a single shipment of liquor from outside the State, not to exceed five gallons, (19 liters), for use and consumption by the applicant and the applicant’s household and not for sale in any form.

(b) In the case of a shipment [~~which~~] that the applicant shows is an unsolicited gift, the quantities permitted to be received under subsection (a) [~~above~~] shall be limited to 3.2 gallons (12 liters) in total of all kinds of liquor.

(c) In the case of a shipment in respect of which the applicant shows to the liquor commission that the liquor was prior to the date of the application the personal property of the applicant, formed a part of the applicant’s household goods, was used and stored outside the State, and was originally acquired (or made by the applicant) outside the State, the quantity of wine, or other liquor capable of aging and originating from grapes or other fruit, which shall be permitted to be received under subsection (a) [~~above~~] may exceed the limit there stated if the commission finds that it is reasonable to do so consistent with the intent of this statute to allow persons taking up residency in the State the free movement of their household goods into this State.

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

(e) Except in the case of applications meeting the requirements of [~~subsections~~] subsection (b), (c), or (d), the permit shall not be issued unless the applicant demonstrates to the satisfaction of the liquor commission that each of the brands to be brought in under the permit is otherwise unavailable in the State.

(f) No more than one permit may be issued pursuant to subsection (a) in respect of any one household in any calendar year, and each applicant shall be required to affirm, under penalty of perjury, that no member of the applicant’s household has previously received such a permit in the applicable calendar year.

(g) All such applications and shipments shall be in accordance with regulations promulgated by the liquor commission.

(h) A common carrier to whom the permit is presented is authorized to make delivery of the described shipment to the person named in the permit. Delivery of such a shipment pursuant to the permit shall not be deemed to constitute a sale in this State.

(i) An unlicensed adult person shall not be required to obtain a permit under this section to receive shipments of liquor pursuant to section 281-33.5.”

SECTION 2. Section 281-33.5, Hawaii Revised Statutes, is amended to read as follows:

“[§281-33.5] Reciprocal shipments of wine. Notwithstanding any other law to the contrary, the holder of a license to manufacture wine in another state that

affords holders of a class 1 license to manufacture wine under section 281-31 an equal reciprocal shipping privilege, may ship for personal use and not for resale not more than ~~two~~ three cases of wine of its own manufacture per year, with each case containing not more than nine liters, to any resident twenty-one years of age or older. Out-of-state wine manufacturers that are authorized to ship wine under this section shall submit, to the appropriate liquor commission, a shipping invoice for each delivery into this State. Delivery of a shipment into this State under this section shall not be deemed to constitute a sale in this State.”

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

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

(Approved June 4, 2003.)

ACT 154

S.B. NO. 528

A Bill for an Act Relating to the Transfer of County Lands and Improvements.

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

SECTION 1. The legislature finds that Act 97, Session Laws of Hawaii 1965, transferred the responsibility for functions that were deemed to be of statewide concern from the counties to the State. Among these functions were the planning, construction, improvement, and maintenance of public school facilities and grounds, and the transportation of school children. Prior to the passage of Act 97, the counties issued bonds to plan, construct, improve, and maintain public school facilities and grounds. Since these functions are now wholly the responsibility of the State, it only makes sense to begin transferring all remaining county lands and improvements under the department of education to the State.

SECTION 2. The following lands, and any improvements situated thereon, are hereby transferred from the county of Hawaii to the State:

TAX MAP KEY

SCHOOL/OFFICE NAME	ZONE	SEC-TION	PLAT	PARCEL	ACREAGE
De Silva Elem.	2	5	8	13	8.497
Holualoa Elem.	7	6	4	2	5.115
Honaunau Elem.	8	3	13	21	12.000
Honokaa High & Inter.	4	5	3	20	2.630
				(portion)	
Honokaa High & Inter.	4	5	5	1	0.620
Kalaniana'ole Elem. & Inter.	2	7	22	3	0.367
Kau High & Pahala Elem.	9	6	5	39	6.442
Keaau Middle School	1	6	3	59	10.596
Konawaena High	8	1	2	67	0.290
Konawaena High	8	1	2	68	1.880
Laupahoehoe High & Elem.	3	5	5	1	16.875
Laupahoehoe High & Elem.	3	5	4	26	0.750
Naalehu Elem. & Inter.	9	5	9	15	2.270
Pahoa Elem.	1	5	114	25	5.141

TAX MAP KEY

SCHOOL/OFFICE NAME	ZONE	SEC-TION	PLAT	PARCEL	ACREAGE
Pahoa Elem.	1	5	114	2	0.323
Pahoa High & Inter.	1	5	3	39	9.325
Pahoa High & Inter.	1	5	114	26	0.362

In addition, the following buildings and improvements that are under executive order from the State of Hawaii to the department of education, and that were constructed by the county of Hawaii prior to 1967 on state land:

2-3-015:001	DPI-Hilo	71,604.51
2-9-002:005	DPI-Hakalau	11,063.90
1-9-004:019	DPI-Keakelani	4,743.00
7-5-008:013	DPI-Kona Annex	16,697.00
2-3-016:037	Hilo Union	104,548.06
2-3-016:037	Hilo Union	8,203.16
2-3-021:058	Hilo Inter.	204,320.32
2-3-015:001	Hilo High	762,310.38
2-5-008:013	Ernest B. De Silva	327,336.73
2-5-005:084	Kaumana	22,888.74
2-2-020:001	Kapiolani	322,295.40
2-1-020:001	Keaukaha	111,237.73
2-4-001:015	Waiakea Elem.	416,415.80
2-4-001:015	Waiakea Inter.	600,796.39
2-2-042:017	Waiakeawaena	136,392.31
1-6-002:001	Keaau Elem. & Inter. (excluding Buildings B, D, and G, which shall be maintained by the County of Hawaii)	8,075
1-8-001:007	Mt. View Elem.	25,206.93
1-5-003:038	Pahoa High & Elem.	123,573.12
9-6-005:008	Kau High & Elem.	222,990.86
9-5-009:006	Naalehu Elem.	106,473.46
2-6-020:038	Haaheo	10,779.67
2-7-022:002	Kalaniana'ole Elem. & Inter.	226,491.82
3-5-004:059	Laupahoehoe High & Elem.	914,546.48
4-3-003:024	Paauiho Elem. & Inter.	399,449.71
4-5-012:025	Honokaa High & Elem.	107,497.13
4-5-012:025	Honokaa High & Elem.	12,315.00
4-5-012:021	Honokaa High & Elem.	800.00
6-7-002:015	Waimea Elem. & Inter.	110,903.05
5-4-007:014	Kohala High & Inter.	879,303.24
5-3-010:056	Halaula Elem.	44,986.76
8-1-002:038	Konaweana High & Inter.	1,564,444.56
8-1-002:038	Konawaena High & Inter.	312,743.36
8-6-010:009	Hookena	28,006.87
8-3-013:021	Honaunau	162,911.59
7-6-004:002	Holualoa	36,285.83
	Kalaoa	10,104.01
	Napoopoo	20,152.30

SECTION 3. This Act shall take effect on July 1, 2003.

(Approved June 4, 2003.)

ACT 155

H.B. NO. 139

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. In 1990, the legislature barred the payment of commissions on the sale of rental vehicle collision damage waivers because of consumer confusion about the nature of the product and the potential for abuse relating to its sale. At the time there were over thirty-five rental companies operating in Hawaii, and the legislature had, in 1988, recently enacted a collision damage disclosure law. That law required sales of collision damage waivers to be accompanied by a boldface plain language description of the scope, optional nature, and cost of the collision damage waiver, as well as of the possibility that the consumer might already be covered under the consumer's personal automobile policy.

At present there are fewer than fifteen rental companies in Hawaii. In addition, and in part due to the consumer protections provided under the disclosure law, there exists much less of a basis to regulate the rental car industry through a blanket prohibition against commissions in any way related to the sale of collision damage waivers.

The legislature finds that commissions based on employee sales are a legitimate and valuable component of business, and that there are many segments of the tourism industry that pay commissions and evaluate or reward their employees based on their sales of products and services.

Given this, the legislature believes that the motor vehicle rental industry should no longer be singled out by a law that bars any and all commissions that are in any way associated with the sale of collision damage waivers. The legislature finds that the legitimate interests of business will be accommodated by a more limited law that prohibits only commissions based solely on the sale of collision damage waivers, and that the law will, in combination with the disclosure law, provide consumers with ample protection against abuse in the sale of collision damage waivers.

The legislature further finds that in addition to changes to the law in 1988 requiring certain disclosures, a major deterrent to problems in the sales of collision damage waivers was the fact that violation, deception, or misleading practices relating to such sales was made an unfair and deceptive trade practice where a violator in accordance with section 480-2, Hawaii Revised Statutes, would be subject to treble damages, civil penalties, and payment of attorney's fees and costs. It is not the intent of the legislature to change or alter these penalties. Thus, any deception or misleading practice in such sales or other rental activities will still be subject to these same penalties.

The purpose of this Act is to allow for the payment and receipt of commissions that may be related to, but do not directly correspond to the sale of collision damage waivers for rental vehicles.

SECTION 2. Section 437D-8.5, Hawaii Revised Statutes, is amended to read as follows:

“§437D-8.5 Commissions. (a) No lessor or officer, employee, agent, or other representative of the lessor shall pay or receive a commission for selling collision damage waivers[-], except as provided in subsection (b). Any violation of this section shall be an unfair or deceptive act or practice as provided in section 480-2.

(b) As used in this section[-, “~~commission~~”];

~~“Commission for selling collision damage waivers” includes any compensation, bonus, award, or remuneration[, whether direct, indirect, or otherwise, which is calculated by means of a formula, process, evaluation, or other mechanisms which considers sales of collision damage waivers as a factor in any manner. “Commission for selling collision damage waivers” also includes any performance evaluation which could be used in determining promotions, raises, or other personnel decisions, or any other device which serves to encourage the sale] that corresponds directly to the amount of sales of collision damage waivers. “Commission for selling collision damage waivers” does not include any compensation, bonus, award, or remuneration to an employee that corresponds to the overall gross receipts of a sales location, where sales of collision damage waivers are one of many factors contributing to overall gross receipts.~~

“Sales location” means any location at which the employee worked or had oversight responsibility during the applicable compensation period.”

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

SECTION 4. This Act shall take effect on July 1, 2003.

(Approved June 5, 2003.)

ACT 156

S.B. NO. 1423

A Bill for an Act Relating to a Commission on Fatherhood.

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

SECTION 1. The legislature finds that children benefit from positive relationships with not only their mothers but also their fathers:

- (1) It is widely recognized that children are more likely to thrive with support, guidance, and nurturing from both parents;
- (2) Paternal involvement is important especially for very young children, since early childhood contributes to the development of emotional security, curiosity, and math and verbal skills;
- (3) Children whose fathers are involved in their activities, eat meals together, go on outings with them, and help them with their homework, have fewer behavioral problems, are more social, and perform better in school;
- (4) Fathers who are involved in their children’s schooling, such as volunteering at school and attending school meetings, parent-teacher conferences, and class events, tend to have children who have higher grades, enjoy school more, and are at lower risk of being suspended or expelled;
- (5) The father-child relationship affects daughters as well as sons, since girls who live with both parents do better academically and are less likely to engage in risky behaviors, early sexual involvement, and the use of alcohol, tobacco, or other drugs; and
- (6) Although negative peer influence is the major reason children use drugs, research suggests that a positive family influence is the main reason children do not use drugs, and boys and girls are less likely to experiment with alcohol, tobacco, or other drugs if their fathers are involved in their lives.

The legislature agrees with the National Governors Association's position that government at all levels can and should take immediate action to encourage active participation by fathers of all ages in raising their children and the development and implementation of comprehensive strategies to strengthen the role of fathers in their children's lives.

The legislature further agrees that additional investment in fatherhood would broaden the population served; provided that there should be support of and coordination between existing programs, and that these new initiatives should not be funded at the expense of another vital human service program.

The purpose of this Act is to establish a commission on fatherhood to promote healthy family relationships between parents and children.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
COMMISSION ON FATHERHOOD**

§ -1 **Findings and purpose.** The legislature finds that, across the United States, there is a renewed understanding of the unique importance of fathers in the lives of their children, families, and communities. It is widely recognized that children are more likely to thrive with support, guidance, and nurturing from both parents. The absence of one parent from a child's life can place that child at a greater risk of health, emotional, educational, and behavioral problems associated with the child's development. However, many young men today are themselves fatherless, lack appropriate role models, and are in need of information and education regarding the appropriate roles and responsibilities of fathers.

The legislature further finds that the role of fathers in the raising of children and in the health and well-being of families is often unintentionally overlooked in government contracts, programs, and services dealing with children's health, welfare, and education.

It is the purpose of this chapter to provide for a statewide program to promote healthy family relationships between parents and children.

§ -2 **State commission on fatherhood.** There is established the state commission on fatherhood within the office of the lieutenant governor for administrative purposes.

§ -3 **Members; terms; chair; quorum; compensation.** (a) The commission shall consist of fifteen members and reflect the geographic and cultural diversity of the State. The membership shall include:

- (1) Ex officio, the director of human services, superintendent of education, director of health, attorney general, director of the office of children and youth, and executive director of the office of youth services, or their designees; and
- (2) Eight voting members shall be appointed by the governor as provided in section 26-34, except as otherwise provided in this section, as follows:
 - (A) Two members shall be appointed by the governor from a list of three nominees submitted by the president of the senate, and two members shall be appointed by the governor from a list of three nominees submitted by the speaker of the house of representatives; and

(B) Four members shall be appointed by the governor from the community.

(3) One voting member shall be designated by the Hawaii Coalition for Dads.

(b) Of the appointed members, there shall be at least one member from each of the counties of Kauai, Maui, and Hawaii.

(c) All members shall serve for a term of two years. Any vacancies occurring in the membership of the commission shall be filled for the remainder of the unexpired term in the same manner as the original appointments.

(d) The chair and vice chair of the board shall be selected annually from the nongovernmental members of the commission appointed pursuant to subsection (a)(2). A simple majority shall constitute a quorum, whose affirmative vote shall be necessary for all actions.

(e) The members shall serve without compensation.

(f) Any member of the commission shall be immune from civil liability as provided in section 26-35.5.

§ **-4 Duties.** The commission shall serve in an advisory capacity to state agencies to promote healthy family relationships between parents and children. In addition, the commission may make recommendations on programs, services, and contracts relating to children and families, and may:

- (1) Act as a central clearinghouse and coordinating body for governmental and nongovernmental activities and information relating to the promotion of healthy families;
- (2) Identify promising best practices that support and engage both parents in the emotional and financial support of their children;
- (3) Identify obstacles that impede or prevent the involvement of fathers in the lives of their children;
- (4) Raise public awareness of the consequences that the absence of the father may cause in a child's life;
- (5) Recommend policies and practices, both within and without state government, that sustain and reengage fathers in the lives of their children;
- (6) Promote, foster, encourage, and otherwise support programs designed to educate and train young men who are both current and future fathers as to effective parenting skills, behaviors, and attitudes;
- (7) Promote, foster, encourage, and otherwise support programs that promote fatherhood;
- (8) Promote, foster, encourage, and otherwise support programs that counter poverty and low income by increasing the capacity of fathers to overcome personal challenges and become productive, independent, and financially responsible contributors to their family; and
- (9) Do any and all things necessary to carry out its duties and the purposes of this chapter.

§ **-5 Meetings.** The meetings of the commission shall be subject to the requirements of chapter 92.

§ **-6 Exemption from administrative supervision of boards and commissions.** Notwithstanding any law to the contrary, the commission shall be exempt from section 26-35 with the exception of section 26-35(2), (3), (7), and (8).

§ **-7 Administration of funds.** The commission shall administer funds appropriated or allocated for its work and shall be authorized to accept, disburse, and allocate funds 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 any specific designation, the funds shall be disbursed or allocated on projects related to any of the purposes of this chapter.”

SECTION 3. This Act shall take effect on July 1, 2003, and be repealed on June 30, 2005.

(Approved June 14, 2003.)

ACT 157

H.B. NO. 377

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Not-For-Profit Corporations that Provide Health Care Facilities.

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

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Cardiac Institute, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility in the Koa Ridge area of Central Oahu, and thereby serves the public.

The legislature further finds that Pacific Cardiac Institute, Inc., is engaged in the planning, design, and construction on a portion of a two hundred ten acre Koa Ridge parcel of land.

The legislature further finds that Pacific Cardiac Institute, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

The purpose of this Act is to extend from June 30, 2003, to June 30, 2008, the authorization to issue special purpose revenue bonds previously authorized by Act 279, Session Laws of Hawaii 1999.

SECTION 2. Act 279, Session Laws of Hawaii 1999, is amended by amending section 4 to read as follows:

“SECTION 4. The department of budget and finance is authorized to issue, from time to time, including times subsequent to June 30, 2008, refunding special purpose revenue bonds in such [in] principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2[-] and any refunding of special purpose revenue bonds authorized in this section regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.”

SECTION 3. Act 279, Session Laws of Hawaii 1999, is amended by amending section 5 to read as follows:

“SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [~~2003.~~] 2008.”

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

SECTION 5. This Act shall take effect on June 29, 2003.

(Approved June 16, 2003.)

ACT 158

H.B. NO. 378

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Not-For-Profit Corporations that Provide Health Care Facilities.

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

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Community Health & Wellness, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility in the Koa Ridge area of Central Oahu, and thereby serves the public.

The legislature further finds that Pacific Community Health & Wellness, Inc., is engaged in the planning, design, and construction on a portion of a two hundred ten acre Koa Ridge parcel of land.

The legislature further finds that Pacific Community Health and Wellness, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

The purpose of this Act is to extend from June 30, 2003, to June 30, 2008, the authorization to issue special purpose revenue bonds previously authorized by Act 293, Session Laws of Hawaii 1999, and permit the refunding of the authorized bonds, at any time appropriate, including after the sunset date of June 30, 2008, by the department of budget and finance.

SECTION 2. Act 293, Session Laws of Hawaii 1999, is amended by amending sections 4 and 5 to read as follows:

“SECTION 4. The department of budget and finance is authorized to issue, from time to time, including times subsequent to June 30, 2008, refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2[-], and any refunding of special purpose revenue bonds authorized in this section regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [2003-] 2008.”

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

SECTION 4. This Act shall take effect on June 29, 2003.

(Approved June 16, 2003.)

ACT 159

H.B. NO. 379

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Not-For-Profit Corporations that Provide Health Care Facilities.

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

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Saging Center, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility in the Koa Ridge area of Central Oahu, and thereby serves the public.

The legislature further finds that Pacific Saging Center, Inc., is engaged in the planning, design, and construction of a patient focused facility on a portion of a two hundred ten acre Koa Ridge parcel of land. The development would include such items and activities as:

- (1) Saging center;
- (2) Child care;
- (3) Adult care;
- (4) Mentoring programs; and
- (5) Activity centers.

The legislature further finds that Pacific Saging Center, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

The purpose of this Act is to extend from June 30, 2003 to June 30, 2008, the authorization to issue special purpose revenue bonds previously authorized by Act 292, Session Laws of Hawaii 1999.

SECTION 2. Act 292, Session Laws of Hawaii 1999, is amended by amending sections 4 and 5 to read as follows:

“SECTION 4. The department of budget and finance is authorized to issue, from time to time, including times subsequent to June 30, 2008, refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2[-] and any refunding of special purpose revenue bonds authorized in this section regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the

multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [2003-] 2008.”

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

SECTION 4. This Act shall take effect on June 29, 2003.

(Approved June 16, 2003.)

ACT 160

H.B. NO. 380

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Not-For-Profit Corporations that Provide Health Care Facilities.

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

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Sports Medicine and Research Center, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility in the Koa Ridge area of Central Oahu, and thereby serves the public.

The legislature further finds that Pacific Sports Medicine and Research Center, Inc., is engaged in the planning, design, and construction of a patient focused facility on a portion of a two hundred ten-acre Koa Ridge parcel of land.

The legislature further finds that Pacific Sports Medicine and Research Center, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

The purpose of this Act is to extend from June 30, 2003 to June 30, 2008, the authorization to issue special purpose revenue bonds previously authorized by Act 181, Session Laws of Hawaii 1999.

SECTION 2. Act 181, Session Laws of Hawaii 1999, is amended by amending sections 4 and 5 to read as follows:

“SECTION 4. The department of budget and finance is authorized to issue, from time to time, including times subsequent to June 30, 2008, refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2[-], and any refunding of special purpose revenue bonds authorized in this section regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption of whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the depart-

ment shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [~~2003.~~] 2008.”

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

SECTION 4. This Act shall take effect on June 29, 2003.

(Approved June 16, 2003.)

ACT 161

H.B. NO. 381

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Not-For-Profit Corporations that Provide Health Care Facilities.

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

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Wellness Center, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility in the Koa Ridge area of Central Oahu, and thereby serves the public.

The legislature further finds that Pacific Wellness Center, Inc. is engaged in the planning, design, and construction on a portion of a two hundred ten-acre Koa Ridge parcel of land. The Pacific Wellness Center, Inc.’s health focus would be on the Hawaiian healing arts, medicinal plants, and also contain an Institute of Acupuncture.

The legislature further finds that Pacific Wellness Center, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

The purpose of this Act is to extend from June 30, 2003 to June 30, 2008, the authorization to issue special purpose revenue bonds previously authorized by Act 281, Session Laws of Hawaii 1999.

SECTION 2. Act 281, Session Laws of Hawaii 1999, is amended by amending sections 4 and 5 to read as follows:

“SECTION 4. The department of budget and finance is authorized to issue, from time to time, including times subsequent to June 30, 2008, refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2[.], and any refunding of special purpose revenue bonds authorized in this section regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the depart-

ACT 162

ment shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, ~~[2003.]~~ 2008.”

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

SECTION 4. This Act shall take effect on June 29, 2003.

(Approved June 16, 2003.)

ACT 162

H.B. NO. 382

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Not-For-Profit Corporations that Provide Health Care Facilities.

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

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Pacific Women’s Center, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility in the Koa Ridge area of Central Oahu, and thereby serves the public.

The legislature further finds that Pacific Women’s Center, Inc., is engaged in the planning, design, and construction of a patient focused facility on a portion of a two hundred ten acre Koa Ridge parcel of land. The Pacific Women’s Center would consist primarily of a birthing center with postpartum, nursery, labor, and delivery services.

The legislature further finds that Pacific Women’s Center, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

The purpose of this Act is to extend from June 30, 2003, to June 30, 2008, the authorization to issue special purpose revenue bonds previously authorized by Act 291, Session Laws of Hawaii 1999.

SECTION 2. Act 291, Session Laws of Hawaii 1999, is amended by amending sections 4 and 5 to read as follows:

“SECTION 4. The department of budget and finance is authorized to issue, from time to time, including times subsequent to June 30, 2008, refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2[-], and any refunding of special purpose revenue bonds authorized in this section regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the depart-

ment shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, ~~[2003-]~~ 2008.”

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

SECTION 4. This Act shall take effect on June 29, 2003.

(Approved June 16, 2003.)

ACT 163

H.B. NO. 383

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Not-For-Profit Corporations that Provide Health Care Facilities.

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

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Wahiawa-Central Oahu Health Center, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility in the Koa Ridge area of Central Oahu, and thereby serves the public.

The legislature further finds that Wahiawa-Central Oahu Health Center, Inc., is engaged in the planning, design, and construction of a patient-focused facility on a portion of a two hundred ten acre Koa Ridge parcel of land, that includes, but is not limited to, the following:

- (1) Outpatient diagnostics facilities;
- (2) Emergency room facilities with observation beds; and
- (3) An ambulatory surgical unit.

The legislature further finds that Wahiawa-Central Oahu Health Center, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

The purpose of this Act is to extend from June 30, 2003, to June 30, 2008, the authorization to issue special purpose revenue bonds previously authorized by Act 180, Session Laws of Hawaii 1999.

SECTION 2. Act 180, Session Laws of Hawaii 1999, is amended by amending sections 4 and 5 to read as follows:

“SECTION 4. The department of budget and finance is authorized to issue, from time to time, including times subsequent to June 30, 2008, refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2[-], and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or

whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, [2003.] 2008.”

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

SECTION 4. This Act shall take effect on June 29, 2003.

(Approved June 16, 2003.)

ACT 164

H.B. NO. 384

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Not-For-Profit Corporations that Provide Health Care Facilities.

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

SECTION 1. The legislature finds and declares that it is in the public interest to encourage the development of health care in the State. The legislature further finds that Wahiawa General Hospital, Inc., a not-for-profit Hawaii corporation, is engaged in the development of a health care facility in Central Oahu, and thereby serves the public.

The legislature further finds that Wahiawa General Hospital, Inc., may be assisted through the issuance of special purpose revenue bonds because its health care facility is a health care project pursuant to part II, chapter 39A, Hawaii Revised Statutes.

The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

The purpose of this Act is to extend from June 30, 2003 to June 30, 2008, the authorization to issue special purpose revenue bonds previously authorized by Act 179, Session Laws of Hawaii 1999.

SECTION 2. Act 179, Session Laws of Hawaii 1999, is amended by amending sections 4 and 5 to read as follows:

“SECTION 4. The department of budget and finance is authorized to issue, from time to time, including times subsequent to June 30, 2008, refunding special purpose revenue bonds in such principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2[-] and any refunding of special purpose revenue bonds authorized in this section regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized under this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, ~~[2003.]~~ 2008.”

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

SECTION 4. This Act shall take effect on June 29, 2003.

(Approved June 16, 2003.)

ACT 165

S.B. NO. 1068

A Bill for an Act Relating to Health Care Facilities.

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

SECTION 1. Act 296, Session Laws of Hawaii 1999, is amended by amending section 6 to read as follows:

“SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on ~~[the later of] June 30, [2003, or the sunset date of section 39A-52, Hawaii Revised Statutes.]~~ 2008.”

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

SECTION 3. This Act shall take effect on June 29, 2003.

(Approved June 16, 2003.)

ACT 166

H.B. NO. 485

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Hanahau‘oli School.

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

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public’s general welfare.

SECTION 2. Pursuant to Act 257, Session Laws of Hawaii 2002, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in the total amount not to exceed \$5,000,000, in one or more series, for the purpose of assisting Hanahau‘oli School to finance the construction and improvement of its educational facilities and the acquisition of land for future school needs in the State of Hawaii. The legislature finds and determines that the construction and improvement of the educational facilities and acquisition of land for its future use is a project as defined in Act 257, Session Laws of Hawaii 2002, and the financing thereof is assistance to a not-for-profit private elementary school that is in the public interest.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to Act 257, Session Laws of Hawaii 2002, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the public interest.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to Act 257, Session Laws of Hawaii 2002, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to Act 257, Session Laws of Hawaii 2002, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is further authorized to issue, from time to time, including times subsequent to June 30, 2008, special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under section 2 of this Act shall lapse on June 30, 2008.

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

(Approved June 16, 2003.)

ACT 167

H.B. NO. 488

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Mid-Pacific Institute.

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

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to Act 257, Session Laws of Hawaii 2002, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$15,000,000, in one or more series, for the purpose of assisting Mid-Pacific Institute to finance and refinance the planning, acquisition, construction and improvement of its educational facilities in the State of Hawaii. The legislature finds and determines that the planning, acquisition, construction, and improvement of these educational facilities constitutes a "project" as defined in or pursuant to Act 257, Session Laws of Hawaii

2002, and the financing thereof is assistance to a not-for-profit private sectarian elementary school and secondary school that serves the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to Act 257, Session Laws of Hawaii 2002, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to Act 257, Session Laws of Hawaii 2002, and the department of budget and finance may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to Act 257, Session Laws of Hawaii 2002, separately authorized, in a total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is authorized to issue, from time to time, including times subsequent to June 30, 2008, to issue¹ special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. The refunding special purpose revenue bonds may be issued in one or more series for the refunding of the special purpose revenue bonds authorized in section 2 and may be combined into a single issue of refunding special purpose revenue bonds, in one or more series, with refunding special purpose revenue bonds to be issued by the department to refund any other special purpose revenue bonds authorized by any one or more other separate acts of the legislature pursuant to Act 257, Session Laws of Hawaii 2002. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2008.

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

(Approved June 16, 2003.)

Note

1. So in original.

ACT 168

H.B. NO. 939

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Hoala School.

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

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public's general welfare.

ACT 168

SECTION 2. Pursuant to Act 257, Session Laws of Hawaii 2002, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in the total amount not to exceed \$5,000,000, in one or more series, for the purpose of assisting Hoala School to finance or refinance the planning, acquisition, construction, and improvement of its educational facilities in the State of Hawaii. The legislature finds and determines that the planning, acquisition, construction, and improvement of the educational facilities is a project as defined in Act 257, Session Laws of Hawaii 2002, and the financing thereof is assistance to a not-for-profit private elementary school that is in the public interest.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to Act 257, Session Laws of Hawaii 2002, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the public interest.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to Act 257, Session Laws of Hawaii 2002, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to Act 257, Session Laws of Hawaii 2002, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is further authorized to issue, from time to time, including times subsequent to June 30, 2008, special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under section 2 of this Act shall lapse on June 30, 2008.

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

(Approved June 16, 2003.)

ACT 169

H.B. NO. 1362

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for St. Patrick School.

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

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public's general welfare.

SECTION 2. Pursuant to Act 257, Session Laws of Hawaii 2002, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in the total amount not to exceed \$7,000,000, in one or more series, for the purpose of assisting St. Patrick School to finance or refinance the planning, acquisition, construction, or improvement of its educational facilities in the State of Hawaii. The legislature finds that the planning, acquisition, construction, or improvement of such educational facilities is a project as defined in Act 257, Session Laws of Hawaii 2002, and the financing thereof is assistance to a not-for-profit private elementary school that serves the general public.

SECTION 3. The special purpose revenue bonds authorized by this Act shall be issued pursuant to Act 257, Session Laws of Hawaii 2002, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to Act 257, Session Laws of Hawaii 2002, and the department may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to Act 257, Session Laws of Hawaii 2002, separately authorized, in the total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is further authorized to issue from time to time, including times subsequent to June 30, 2008, 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. Such refunding special purpose revenue bonds may be issued in one or more series for the refunding of the special purpose revenue bonds authorized in section 2 and may be combined into a single issue of refunding special purpose revenue bonds, in one or more series, with refunding special purpose revenue bonds to be issued by the department to refund any other special purpose revenue bonds authorized by any one or more other separate acts of the legislature pursuant to Act 257, Session Laws of Hawaii 2002. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under section 2 of this Act shall lapse on June 30, 2008.

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

(Approved June 16, 2003.)

ACT 170

H.B. NO. 1564

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Chaminade University.

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

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to Act 257, Session Laws of Hawaii 2002, 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 Chaminade University of Honolulu to refinance, acquire, construct, and furnish its educational facilities in the State of Hawaii, undertake improvements to and acquire furnishings for its existing educational facilities in the State of Hawaii, as well as procure the professional planning services necessary to perform these activities. The legislature finds and determines that the refinancing, planning, acquisition, construction, improvement, and furnishing of these educational facilities constitutes a "project" as defined in or pursuant to Act 257, Session Laws of Hawaii 2002, and the financing thereof is assistance to a not-for-profit private sectarian university that serves the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to Act 257, Session Laws of Hawaii 2002, relating to the power to issue special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve the general public.

SECTION 4. The special purpose revenue bonds issued under this Act may be issued in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of this Act or the combined authority of this Act and any one or more other separate acts of the legislature pursuant to Act 257, Session Laws of Hawaii 2002, and the department of budget and finance may combine into a single issue of special purpose revenue bonds, in one or more series, two or more proposed issues of special purpose revenue bonds to be issued pursuant to Act 257, Session Laws of Hawaii 2002, separately authorized, in a total amount not to exceed the aggregate of the proposed separate issues of special purpose revenue bonds.

SECTION 5. The department of budget and finance is authorized, from time to time, including times subsequent to June 30, 2008, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2. The refunding special purpose revenue bonds may be issued in one or more series for the refunding of the special purpose revenue bonds authorized in section 2 and may be combined into a single issue of refunding special purpose revenue bonds, in one or more series, with refunding special purpose revenue bonds to be issued by the

department to refund any other special purpose revenue bonds authorized by any one or more other separate acts of the legislature pursuant to Act 257, Session Laws of Hawaii 2002. In making this determination, the department shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2008.

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

(Approved June 16, 2003.)

ACT 171

H.B. NO. 731

A Bill for an Act Relating to Workers' Compensation.

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

SECTION 1. Section 386-1, Hawaii Revised Statutes, is amended by amending the definition of "medical care", "medical services", or "medical supplies" to read:

““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 [§]section[§] 461J-3(e), nurse, advanced practice registered nurse as recognized pursuant to chapter 457, [~~or masseur.~~] occupational therapist, certified occupational therapy assistant as recognized pursuant to chapter 457G, or licensed massage therapist as recognized pursuant to chapter 452.”

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

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

(Approved June 16, 2003.)

ACT 172

S.B. NO. 1394

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. The purpose of this Act is to comply with section 235-2.5, Hawaii Revised Statutes, which mandates that the department of taxation submit a bill to each regular session of the legislature that amends Hawaii income tax law to conform with changes to the Internal Revenue Code.

SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.3 Conformance to the federal Internal Revenue Code; general application. (a) For all taxable years beginning after December 31, [~~2001~~,] 2002, as used in this chapter “Internal Revenue Code” means subtitle A, chapter 1 of the federal Internal Revenue Code of 1986, as amended as of December 31, [~~2001~~,] 2002, 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.
- (b) The following Internal Revenue Code subchapters, parts of subchapters, sections, subsections, and parts of subsections shall not be operative for the purposes of this chapter, unless otherwise provided:

- (1) Subchapter A (sections 1 to 59A) (with respect to determination of tax liability), except section 1(h)(3) (relating to net capital gain reduced by the amount taken into account as investment income), except section 41 (with respect to the credit for increasing research activities), except section 42 (with respect to low-income housing credit), and except sections 47 and 48, as amended, as of December 31, 1984 (with respect to certain depreciable tangible personal property). For treatment, see sections 235-110.91, 235-110.7, and 235-110.8;
- (2) Section 78 (with respect to dividends received from certain foreign corporations by domestic corporations choosing foreign tax credit);
- (3) Section 86 (with respect to social security and tier 1 railroad retirement benefits);
- (4) Section 103 (with respect to interest on state and local bonds). For treatment, see section 235-7(b);
- (5) Section 114 (with respect to extraterritorial income);
- ~~(5)~~ (6) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);
- ~~(6)~~ (7) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);
- ~~(7)~~ (8) Section 135 (with respect to income from United States savings bonds used to pay higher education tuition and fees). For treatment, see section 235-7(a)(1);
- ~~(8)~~ (9) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
- ~~(9)~~ (10) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
- ~~(10)~~ (11) Section 196 (with respect to deduction for certain unused investment credits);
- ~~(11)~~ (12) Section 222 (with respect to qualified tuition and related expenses);
- ~~(12)~~ (13) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);

- [(13)] (14) Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;
- [(14)] (15) Section 291 (with respect to special rules relating to corporate preference items);
- [(15)] (16) Section 367 (with respect to foreign corporations);
- [(16)] (17) Section 501(c)(12), (15), (16) (with respect to exempt organizations);
- [(17)] (18) Section 515 (with respect to taxes of foreign countries and possessions of the United States);
- [(18)] (19) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);
- [(19)] (20) Subchapter H (sections 581 to 597) (with respect to banking institutions), except section 584 (with respect to common trust funds). For treatment, see chapter 241;
- [(20)] (21) Section 642(a) and (b) (with respect to special rules for credits and deductions applicable to trusts). For treatment, see sections 235-54(b) and 235-55;
- [(21)] (22) Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);
- [(22)] (23) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
- [(23)] (24) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
- [(24)] (25) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
- [(25)] (26) Subchapter N (sections 861 to 999) (with respect to tax based on income from sources within or without the United States), except sections 985 to 989 (with respect to foreign currency transactions). For treatment, see sections 235-4, 235-5, and 235-7(b), and 235-55;
- [(26)] (27) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
- [(27)] (28) Section 1055 (with respect to redeemable ground rents);
- [(28)] (29) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
- [(29)] (30) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);
- [(30)] (31) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations);
- [(31)] (32) Subchapter U (sections 1391 to 1397F) (with respect to designation and treatment of empowerment zones, enterprise communities, and rural development investment areas). For treatment, see chapter 209E; and
- [(32)] (33) Subchapter W (sections 1400 to 1400C) (with respect to District of Columbia enterprise zone).”

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 165 (with respect to losses) of the Internal Revenue Code shall be operative for purposes of this chapter. Section 165 as operative for this chapter shall also apply to losses sustained from the sale of stocks or other interests issued through the exercise of the stock options or warrants granted by a qualified high technology business as defined in section 235-7.3.

(e) Section 168 (with respect to the accelerated cost recovery system) of the Internal Revenue Code shall be operative for purposes of this chapter, except that provisions relating to property on Indian reservations in section 168(j) and special allowance for certain property acquired after September 10, 2001, and before September 11, 2004, in section 168(k) shall not be operative for purposes of this chapter.

[(e)] (f) 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.

[(f)] (g) 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.

[(g)] (h) Section 265 (with respect to expenses and interest relating to tax-exempt income) of the Internal Revenue Code shall be operative for purposes of this chapter; except that it shall not apply to expenses for royalties and other income derived from any patents, copyrights, and trade secrets by an individual or a qualified high technology business as defined in section 235-7.3. Such expenses shall be deductible.

[(h)] (i) 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.

~~[(i)]~~ (j) 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.

~~[(j)]~~ (k) 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.

~~[(k)]~~ (l) 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.

~~[(l)]~~ (m) 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 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.

~~[(m)]~~ (n) 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.

~~[(n)]~~ (o) 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.

~~[(o)]~~ (p) Section 529 (with respect to qualified tuition programs) shall be operative for the purposes of this chapter, except that section 529(c)(6) shall not be operative.

~~(p)~~ (q) 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.”

SECTION 4. Section 235-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) (1) For taxable years ending before January 1, 1967, the net operating loss deductions allowed as carrybacks and carryovers by the Internal Revenue Code shall not be allowed. In lieu thereof the net operating loss deduction shall consist of the excess of the deductions allowed by this chapter over the gross income, computed with the modifications specified in paragraphs (1) to (4) of section 172(d) of the Internal Revenue Code, and with the further modification stated in paragraph (3) hereof; and shall be allowed as a deduction in computing the taxable income of the taxpayer for the succeeding taxable year[-];
- (2) (A) With respect to net operating loss deductions resulting from net operating losses for taxable years ending after December 31, 1966, the net operating loss deduction provisions of the Internal Revenue Code shall apply[-]; provided that there shall be no net operating loss deduction carried back to any taxable year ending prior to January 1, 1967[-];
- (B) In the case of a taxable year beginning in 1966 and ending in 1967, the entire amount of all net operating loss deductions carried back to the taxable year shall be limited to that portion of taxable income for such taxable year which the number of days in 1967 bears to the total days in the taxable year ending in 1967[-]; and
- (C) The computation of any net operating loss deduction for a taxable year covered by this subsection shall require the further modifications stated in paragraphs (3), (4), and (5) of this subsection[-];
- (3) In computing the net operating loss deduction allowed by this subsection, there shall be included in gross income the amount of interest which is excluded from gross income by subsection (a), decreased by the amount of interest paid or accrued which is disallowed as a deduction by subsection (e). In determining the amount of the net operating loss deduction under this subsection of any corporation, there shall be disregarded the net operating loss of such corporation for any taxable year for which the corporation is an electing small business corporation[-];
- (4) No net operating loss carryback or carryover shall be allowed by this chapter if not allowed under section 172 of the Internal Revenue Code[-];
- (5) The election to relinquish the entire carryback period with respect to a net operating loss allowed under section 172(b)(3)(C) of the Internal Revenue Code shall be operative for the purposes of this chapter; provided that no taxpayer shall make such an election as to a net operating loss of a business where such net operating loss occurred in the taxpayer’s business prior to the taxpayer entering business in this State[-]; and
- (6) The five-year carryback period for net operating losses for any taxable year ending during 2001 and 2002 in section 172(b)(1)(H) of the

Internal Revenue Code shall not be operative for purposes of this chapter.”

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

SECTION 6. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2002, except as otherwise provided in this Act.

(Approved June 16, 2003.)

ACT 173

S.B. NO. 1397

A Bill for an Act Relating to Simplified Tax Administration.

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

SECTION 1. The legislature finds that a nationwide effort is being undertaken among the various states to join in multistate discussions to simplify sales and use tax administration to reduce the burden of tax compliance for all sellers and for all types of commerce. This “simplification” movement (known as the Streamlined Sales Tax Project (project)) arose from a recognition that traditional tax collection systems could not deal adequately with the rapid growth of the Internet and e-commerce. The inefficiency of existing methods arises from a multiplicity of tax rates, definitions, and layers of taxing jurisdictions—states, counties, municipalities, authorities—that make it difficult for e-businesses to apply the proper sales and use taxes on e-sales to all corners of the country.

Among the goals of the project are a single state sales tax rate, uniform definitions of sales and use tax terms, requiring states to administer any local sales and use taxes, and a central electronic registration system to allow a seller to register to collect and remit sales and use taxes for all states. It is anticipated that technology will help cure problems of increased trans-state sales brought about by advanced technology.

The legislature further finds that this Act is substantively similar to model legislation drafted by the National Conference of State Legislatures. This model legislation directs the state revenue departments to join in multistate discussions to develop a simpler, uniform, and fairer system of state and use taxation that removes the burden imposed on retailers, preserves state sovereignty, and enhances the ability of United States firms to compete in the global economy.

A key component of this model legislation further directs and commits the states to continuing discussions aimed at developing an interstate agreement to govern a streamlined sales tax administration system for the 21st century.

Although the State of Hawaii imposes a general excise tax on business, it is applied at different rates to gross receipts from business activities in Hawaii, including wholesale and retail sales of goods and services, as compared to a sales tax which is imposed on the customer and generally applies only to retail sales. The legislature finds that participation in the project will preserve Hawaii’s voting rights on issues brought before the participating states, protect its tax base, and improve Hawaii’s ability to collect tax revenues derived from e-commerce transactions.

The legislature finds that a simplified sales and use tax system, including the Hawaii general excise tax, will reduce, and over time eliminate, the burden and cost for all vendors to pay Hawaii’s general excise and use taxes. The legislature further finds that Hawaii should participate in multistate discussions to simplify and

modernize general excise, sales, and use tax administration to substantially reduce the burden of tax compliance for all sellers and for all types of commerce.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII SIMPLIFIED SALES AND USE TAX ADMINISTRATION
ACT**

§ -1 **Short title.** This chapter shall be known and may be cited as the “Hawaii Simplified Sales and Use Tax Administration Act”.

§ -2 **Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

“Agreement” means the streamlined sales and use tax agreement as adopted.

“Certified automated system” means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

“Certified service provider” means an agent who performs all of the seller’s sales tax functions and is certified jointly by the states that are signatories to the agreement.

“Department” means the department of taxation.

“Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

“Sales tax” means the general excise tax levied under chapter 237.

“Seller” means any person making sales, leases, or rentals of personal property or services.

“State” means any state of the United States and the District of Columbia.

“Use tax” means the use tax levied under chapter 238.

§ -3 **Authority to participate in multistate negotiations.** (a) For the purposes of reviewing or amending the agreement embodying the simplification requirements in section -6, the State may enter into multistate discussions. For purposes of these discussions, the State shall be represented by the department. The department shall regularly consult with an advisory council regarding these discussions.

(b) The department shall regularly consult with the advisory council and use its best efforts to consult with the advisory council before any multistate discussions in which it is anticipated that amendments may be proposed to the agreement embodying the simplification requirements in section -6.

(c) The advisory council shall consist of not more than five members who shall be appointed by the governor under section 26-34. The members shall serve without compensation but shall be reimbursed for actual expenses, including travel expenses, that are necessary for the performance of their duties.

§ -4 **Authority to enter agreement.** The department may enter into the streamlined sales and use tax agreement with one or more states to simplify and modernize sales and use tax administration to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the department may act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and

certified automated system and establish performance standards for multistate sellers. The department may take other actions reasonably required to implement this section. Other actions authorized by this section include but are not limited to the adoption of rules not subject to chapter 91 and the joint procurement not subject to chapter 103D, with other member states, of goods and services in furtherance of the cooperative agreement. The department, or the department's designee, may represent this State before the other states that are signatories to the agreement.

§ **-5 Relationship to state law.** No provision of the agreement authorized by this chapter in whole or part invalidates or amends any provision of the law of this State. Adoption of the agreement by this State does not amend or modify any law of this State. Implementation of any condition of the agreement in this State, whether adopted before, at, or after membership of this State in the agreement, must be by the action of this State.

§ **-6 Agreement requirements.** The department shall not enter into the streamlined sales and use tax agreement unless the agreement requires each state to abide by the following requirements:

- (1) The agreement must set restrictions to limit over time the number of state tax rates;
- (2) The agreement must establish uniform standards for:
 - (A) The sourcing of transactions to taxing jurisdictions;
 - (B) The administration of exempt sales; and
 - (C) Sales and use tax returns and remittances;
- (3) The agreement must provide a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states;
- (4) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory states will not be used as a factor in determining whether the seller has a nexus with a state for any tax;
- (5) The agreement must provide for reduction of the burdens of complying with local sales and use taxes by:
 - (A) Restricting variances between the state and local tax bases;
 - (B) Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions;
 - (C) Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes; and
 - (D) Providing notice of changes in local sales and use tax rates and of changes in the boundaries of local taxing jurisdictions;
- (6) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers;
- (7) The agreement must allow for a joint public and private sector study of the compliance cost for sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity to be completed by July 1, 2004;
- (8) The agreement must require each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member;

- (9) The agreement must require each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information; and
- (10) The agreement must provide for the appointment of an advisory council of private sector representatives and an advisory council of nonmember state representatives to consult with in the administration of the agreement.

§ **-7 Cooperating sovereigns.** The agreement authorized by this chapter is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

§ **-8 Limited binding and beneficial effect.** (a) The agreement authorized by this chapter binds and inures only to the benefit of this State and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the law of this State and the other member states and not by the terms of the agreement.

(b) Consistent with subsection (a), no person shall have any cause of action or defense under the agreement or by virtue of this State's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, other instrumentality of this State, or any political subdivision of this State on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this State, or the application thereof, shall be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

§ **-9 Seller and third party liability.** (a) A certified service provider is the agent of a seller, with whom the certified service provider has contracted for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for the sales and use taxes due each member state on all sales transactions it processes for the seller except as provided in this section.

(b) A seller that contracts with a certified service provider is not liable to the State for sales or use taxes due on transactions processed by the certified service provider unless the seller misrepresented the type of items it sells or committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions not processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and the extent to which the seller's transactions are being processed by the certified service provider.

(c) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the State for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the State for reporting and remitting tax.

(d) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance

standard for that system is liable for the failure of the system to meet the performance standard.”

SECTION 3. Upon becoming a member of the streamlined sales and use tax agreement, the department of taxation shall prepare legislation conforming state law as necessary and shall provide such legislation to the legislature before the appropriate legislative deadline for introducing legislation in any regular session.

SECTION 4. This Act shall take effect on July 1, 2003, except that section -9 of section 2 of this Act shall take effect when the State becomes a member of the streamlined sales and use tax agreement.

(Approved June 16, 2003.)

ACT 174

S.B. NO. 1446

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 subsequent to the establishment of the Hawaii tobacco settlement special fund in 1999, and various amendments to the cigarette and tobacco tax law codified in chapter 245, Hawaii Revised Statutes, much has been done to further cancer prevention in Hawaii. However, we must increase its efforts in the area of early cancer detection and possible cures for skin and other types of cancer through the work of the Cancer Research Center of Hawaii and other private initiatives located in the State.

The legislature finds that the high technology sector of our economy has spawned many exciting enterprises that are involved in medical research and development. One such initiative is working toward securing approval from the federal Food and Drug Administration for a non-invasive method of detecting skin and cervical cancers utilizing hyper-spectral diagnostic imaging. This technology reportedly detects cervical cancer by capturing the unique color fingerprint of different types of cells. Pre-cancerous and cancer cells have a larger blood flow than normal tissue and thus appear as different colors. The technology can distinguish nearly three hundred separate colors compared to the red, blue, and green recorded by ordinary cameras and can create a photograph of the cervix with detail not seen through a microscope. This technology was developed in Hawaii and should be encouraged with the support of state and federal funding.

The legislature further finds that it is in the interest of the public health and welfare, as well as in the interest of the State's economy, to support Hawaii-based companies that can contribute to the health and well-being of all, including the State's residents.

The purpose of this Act is to establish a revolving fund to support Hawaii-based development of healthcare and biomedical technology to detect cancer in its early stages.

SECTION 2. Chapter 211F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§211F- Cancer detection development revolving fund; establishment. (a) There is established the cancer detection development revolving fund to be administered by the Hawaii strategic development corporation to assist enterprises

that develop healthcare and biomedical technology to detect cancer, including cervical cancer, in its early stages.

(b) The fund shall not be considered part of the general fund and shall consist of moneys:

- (1) Appropriated by the legislature;
- (2) Received as repayments of loans;
- (3) Earned on investments;
- (4) Received pursuant to a venture agreement;
- (5) Received as royalties; and
- (6) Received as premiums, or fees charged by the corporation or otherwise received by the corporation.”

SECTION 3. New statutory material is underscored.¹

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

(Approved June 16, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 175

S.B. NO. 3

A Bill for an Act Relating to Special Purpose Revenue Bonds for North Hawaii Community Hospital, Inc.

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

SECTION 1. Act 256, Session Laws of Hawaii (SLH) 1999 (Act 256), authorized the issuance of special purpose revenue bonds for North Hawaii Community Hospital, Inc., but the authorization for the bond issuance lapsed on June 30, 2002, prior to the issuance of any bonds. At the time of Act 256’s lapsing, section 39A-52, Hawaii Revised Statutes (HRS), prohibited the issuance of new special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public after June 30, 2003. However, section 39A-52, HRS, was repealed by Act 100, SLH 2002, thus enabling the reissuance of special purpose revenue bonds for such purposes.

The purpose of this Act is to reauthorize the issuance of special purpose revenue bonds for North Hawaii Community Hospital.

SECTION 2. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare of the State.

SECTION 3. Pursuant to part II, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$20,000,000 in one or more series for the purpose of assisting North Hawaii Community Hospital, Inc., in financing, refinancing, or both, of one or more of the following:

- (1) Retirement of outstanding debt on North Hawaii Community Hospital, Inc.’s, existing health care facilities;
- (2) Retirement of outstanding debt and purchase of leases on the existing equipment used in connection with North Hawaii Community Hospital, Inc.’s, health care facilities;

- (3) Construction of new additions to North Hawaii Community Hospital, Inc.'s, existing health care facilities;
- (4) Acquisition and installation of additional equipment and other assets for use in connection with North Hawaii Community Hospital, Inc.'s, health care facilities; and
- (5) Renovation and repair of North Hawaii Community Hospital, Inc.'s, existing health care facilities.

The legislature further finds and determines that the activity and facilities of North Hawaii Community Hospital, Inc., constitute a project as defined in part II, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to a health care facility.

SECTION 4. The special purpose revenue bonds issued under this Act shall be issued pursuant to part II, chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist nonprofit corporations that provide health care facilities to the general public.

SECTION 5. The department of budget and finance is authorized to issue from time to time, including times subsequent to June 30, 2005, refunding special purpose revenue bonds in whatever principal amounts as the department shall determine to be necessary to refund the special purpose revenue bonds authorized in this section, and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 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 by this section.

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 16, 2003.)

Note

1. So in original.

ACT 176

H.B. NO. 645

A Bill for an Act Relating to Special Purpose Revenue Bonds for Assisting Not-For-Profit Corporations that Provide Health Care Facilities to the General Public.

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

SECTION 1. The legislature finds and declares that the issuance of special purpose revenue bonds under this Act is in the public interest and for the public health, safety, and general welfare.

SECTION 2. Pursuant to part II of 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 \$200,000,000 in one or more series for the purpose of assisting The Queen's Health Systems, a

Hawaii nonprofit corporation, and one or more of its nonprofit affiliates, to finance the costs of construction of, improvements to, and equipping of health care facilities, including the following:

- (1) Renovation of existing health care facilities;
- (2) Construction of new health care facilities;
- (3) Acquisition of equipment;
- (4) Acquisition of assets, including land and improvements;
- (5) Acquisition and installation of information systems and technology; and
- (6) Other related projects for The Queen’s Health Systems and its non-profit affiliates.

The legislature hereby finds and determines that the activities and facilities of The Queen’s Health Systems and its nonprofit affiliates constitute a “project” as defined in part II of chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to not-for-profit corporations that provide health care facilities to the general public.

SECTION 3. The special purpose revenue bonds and the refunding special purpose revenue bonds issued under this Act shall be issued pursuant to part II of chapter 39A, Hawaii Revised Statutes, relating to the power to issue special purpose revenue bonds to assist not-for-profit corporations that provide health care facilities to the general public.

SECTION 4. The department of budget and finance is authorized, from time to time, including time subsequent to June 30, 2008, to issue special purpose revenue bonds in whatever principal amounts the department of budget and finance shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and any refunding of special purpose revenue bonds authorized in this section, regardless of whether the outstanding special purpose revenue bonds or refunding special purpose revenue bonds have matured or are the subject of redemption or whether the refunding special purpose revenue bonds shall be bonds for the multi-project programs described in section 2. In making this determination, the department of budget and finance shall comply with federal law relating to the exemption from federal income taxation of the interest on bonds of the nature authorized by this section.

SECTION 5. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2008.

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

(Approved June 16, 2003.)

ACT 177

S.B. NO. 1279

A Bill for an Act Relating to Tobacco.

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

SECTION 1. Section 28-15, Hawaii Revised Statutes, is amended by amending subsections (a) to (c) to read as follows:

“(a) There is established in the state treasury the tobacco enforcement special fund, into which shall be deposited the tobacco settlement moneys as provided by section 328L-2(a)[.], the allocated portion of the stamp fee designated to

pay for the cost of enforcing the cigarette tax stamp as provided by section 245-26, and fines as provided for by section 245-41.

(b) The tobacco enforcement special fund shall be administered by the department of the attorney general and shall be used for administering, operating, monitoring, and ensuring compliance with and enforcement of:

- (1) The Master Settlement Agreement as defined in chapter 675 and any other statutes or programs relating to that agreement;
- (2) Chapter 675;
- (3) Tobacco prevention programs;~~[and]~~
- (4) ~~[Any other requirement deemed necessary to carry out the purposes of the fund.]~~ The cigarette tax stamp as defined in chapter 245 and any other statutes or programs relating to that chapter;
- (5) Chapter 245;
- (6) Chapter 486P and any other statutes or programs relating to that chapter; and
- (7) Any other requirement deemed necessary to carry out the purposes of the fund.

(c) All unencumbered and unexpended moneys in excess of ~~[\$350,000]~~ \$1,000,000 remaining on balance in the tobacco enforcement special fund at the close of June 30 of each year shall lapse to the credit of the ~~[Hawaii tobacco settlement special fund.]~~ state general fund.”

SECTION 2. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“§36-27 Transfers from special funds for central service expenses.

Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) 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) Hawaii tobacco settlement special fund under section 328L-2;
- (24) Emergency and budget reserve fund under section 328L-3;
- (25) Probation services special fund under section 706-649;
- (26) High technology special fund under section 206M-15.5;
- (27) Public schools special fees and charges fund under section 302A-1130(f);
- [~~(28)~~] ~~Cigarette tax stamp enforcement special fund established by section 28-14;~~
- [~~(29)~~] (28) Cigarette tax stamp administrative special fund established by section 245-41.5;
- [~~(30)~~] (29) Tobacco enforcement special fund established by section 28-15;
- [~~(31)~~] (30) Sport fish special fund under section 187A-9.5;
- [~~(32)~~] (31) Neurotrauma special fund under section 321H-4;
- [~~(33)~~] (32) Deposit beverage container deposit special fund under section 342G-104; and
- [~~(34)~~] (33) Glass advance disposal fee special fund established by section 342G-82,

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 3. 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 out-of-school time instructional program 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 enterprise special fund established under section 201B-8;
 - (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 under section 231-3.2;
- (20) Hawaii tobacco settlement special fund under section 328L-2;
- (21) Emergency and budget reserve fund under section 328L-3;
- (22) Probation services special fund under section 706-649;
- (23) High technology special fund under section 206M-15.5;
- (24) Public schools special fees and charges fund under section 302A-1130(f);
- ~~[(25) Cigarette tax stamp enforcement special fund established by section 28-14;~~
- (26) (25) Cigarette tax stamp administrative special fund established by section 245-41.5;
- ~~[(27) (26) Tobacco enforcement special fund established by section 28-15;~~
- ~~[(28) (27) Sport fish special fund under section 187A-9.5; and~~
- ~~[(29) (28) Neurotrauma special fund under section 321H-4;~~

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 4. Section 245-26, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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, with ~~[such]~~ that amount to be deposited to the credit of the department of taxation’s cigarette tax stamp administrative special fund; and
- (2) 1.5 per cent of the denominated value of the stamp to pay for the cost of enforcing the stamp tax, with ~~[such]~~ that amount to be deposited to the credit of the department of the attorney general’s ~~[cigarette tax stamp enforcement special fund;]~~ tobacco enforcement special fund;

provided that the department¹ by rule may modify the stamp fee to reflect actual costs incurred by the State in providing the stamps.”

SECTION 5. Section 245-41, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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 to be deposited to the credit of the department of the attorney general’s ~~[cigarette tax stamp]~~ tobacco enforcement special fund; 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.”

SECTION 6. Section 328L-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury the Hawaii tobacco settlement special fund into which shall be deposited:

- (1) All tobacco settlement moneys; and
- (2) All interest and earnings accruing from the investment of moneys in the fund;

provided that of all tobacco settlement moneys received by the State each fiscal year, the sum representing ~~[the difference between]~~ the first \$350,000 of ~~[such]~~ those

moneys [and the unexpended and unencumbered balance of the tobacco enforcement special fund at the close of the previous fiscal year] shall first be deposited in the state treasury in each fiscal year to the credit of the tobacco enforcement special fund. The Hawaii tobacco settlement special fund shall be administered by the department.”

SECTION 7. Section 675-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§675-3**~~]]~~ **Requirements.** Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following:

- (a) become a participating manufacturer (as that term is defined in section II(j) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or
- (b) (1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—
 - 1999: \$.0094241 per unit sold after the date of enactment of this Act;
 - 2000: \$.0104712 per unit sold;
 - for each of 2001 and 2002: \$.0136125 per unit sold;
 - for each of 2003 through 2006: \$.0167539 per unit sold;
 - for each of 2007 and each year thereafter: \$.0188482 per unit sold.
- (2) a tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—
 - (A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;
 - (B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow [~~in a particular year was greater than the State’s allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment)] on account of units sold in the State in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold had it been a participating manufacturer, the~~

- excess shall be released from escrow and revert back to such tobacco product manufacturer; or
- (C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.
- (3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—
- (A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the State in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;
 - (B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and
 - (C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation.

The State shall be awarded its attorneys' fees and expenses incurred in prosecuting violations of this chapter."

SECTION 8. Section 28-14, Hawaii Revised Statutes, is repealed.

SECTION 9. If this Act, or any portion of the amendment to subparagraph (B) of section 675-3(b)(2), Hawaii Revised Statutes, made by this Act, is held by a court of competent jurisdiction to be unconstitutional, then subparagraph (B) of section 675-3(b)(2) shall be deemed to be repealed in its entirety. If section 675-3(b)(2) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then the amendment to subparagraph (B) of section 675-3(b)(2) made by this Act shall be deemed repealed, and subparagraph (B) of section 675-3(b)(2) shall be reenacted as it read on the day before the effective date of this Act. Neither any holding of unconstitutionality nor the repeal of subparagraph (B) of section 675-3(b)(2) shall affect, impair, or invalidate any other portion of section 675-3, or the application of such section to any other person or circumstance, and such remaining portions of section 675-3 shall at all times continue in full force and effect.

ACT 178

SECTION 10. The director of finance shall transfer the unexpended balance, including encumbrances and accrued liabilities, of the cigarette tax stamp enforcement special fund as of the close of business on June 29, 2003, to the credit of the tobacco enforcement special fund. Encumbered moneys shall continue to be encumbered until paid out or released from prior encumbrances.

SECTION 11. There is appropriated out of the tobacco enforcement special fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2003-2004 and the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the administration and operation of tobacco enforcement activities.

The sums appropriated shall be expended by the department of the attorney general for the purposes of this Act.

SECTION 12. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 13. This Act shall take effect on June 29, 2003; provided that:

- (1) The amendments made to section 36-27, Hawaii Revised Statutes, by section 2 of 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;
- (2) Section 8 shall take effect on June 30, 2003; and
- (3) Section 11 shall take effect on July 1, 2003.

(Approved June 16, 2003.)

Notes

1. Prior to amendment "of taxation" appeared here.
2. Edited pursuant to HRS §23G-16.5.

ACT 178

H.B. NO. 1152

A Bill for an Act Relating to State Funds.

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

PART I

The purpose of this part is to repeal certain revolving and special funds that no longer serve the purpose for which they were originally established, are not an appropriate means of financing for the programs or activities, or are not financially self-sustaining. Unexpended and unencumbered balances in the funds shall be transferred to the state general fund. General fund appropriations are provided in fiscal year 2003-2004 and fiscal year 2004-2005 to finance the continuation of selected programs or activities.

SECTION 1. Section 125C-7, Hawaii Revised Statutes, is repealed.

SECTION 2. Section 201-15, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 201-106, Hawaii Revised Statutes, is repealed.

SECTION 4. Subpart N of part III of chapter 201G, Hawaii Revised Statutes, is repealed.

SECTION 5. Section 211E-2, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 225M-5, Hawaii Revised Statutes, is repealed.

SECTION 7. Section 210-3, Hawaii Revised Statutes, is repealed.

SECTION 8. Section 211F-5, Hawaii Revised Statutes, is repealed.

SECTION 9. Section 225M-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§225M-6[H] Fees for statewide geographic information system services.~~ The office of planning may charge fees for statewide geographic information system services and products. ~~[All fees collected for geographic information system analyses and other related services shall be deposited into the statewide planning and geographic information system special fund for the sole purpose of supporting the statewide planning and geographic information system.]~~ The office shall adopt rules setting fees for geographic information system services and products.”

SECTION 10. Act 142, Session Laws of Hawaii 1998, as amended by section 18 of Act 163, Session Laws of Hawaii 1999, as amended by section 19 of Act 39, Session Laws of Hawaii 2002, is amended by amending section 9 to read as follows:

“SECTION 9. This Act shall take effect upon its approval and shall be repealed on ~~[July 31, 2003,]~~ June 29, 2003, except that section 3 of this Act shall not be repealed; provided that sections 36-27 and 397-5(b), Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the approval of this Act; and provided further that the amendments made to section 36-27, Hawaii Revised Statutes, by section 2 of Act 39, Session Laws of Hawaii 2002, shall be retained.”

SECTION 11. On June 30, 2003, the director of finance shall transfer to the credit of the state general fund, all unexpended and unencumbered balances remaining in the petroleum products control fund established pursuant to section 125C-7, Hawaii Revised Statutes, as of June 29, 2003.

SECTION 12. On June 30, 2003, the director of finance shall transfer to the credit of the state general fund, all unexpended and unencumbered balances remaining in the Hawaii film facility special fund established pursuant to section 201-15, Hawaii Revised Statutes, as of June 29, 2003.

SECTION 13. On June 30, 2003, the director of finance shall transfer to the credit of the state general fund, all unexpended and unencumbered balances remaining in the clean Hawaii fund established pursuant to section 201-106, Hawaii Revised Statutes, as of June 29, 2003.

SECTION 14. On June 30, 2003, the director of finance shall transfer to the credit of the state general fund, all unexpended and unencumbered balances remaining in the homes revolving fund established pursuant to section 201G-401, Hawaii Revised Statutes, as of June 29, 2003.

SECTION 15. Any revenues owing to the homes revolving fund abolished by this Act shall be deposited into the dwelling unit revolving fund established by section 201G-411, Hawaii Revised Statutes.

SECTION 16. On June 30, 2003, the director of finance shall transfer to the credit of the state general fund, all unexpended and unencumbered balances remaining in the Hawaii innovation development fund established pursuant to section 211E-2, Hawaii Revised Statutes, as of June 29, 2003.

SECTION 17. On June 30, 2003, the director of finance shall transfer to the credit of the state general fund, all unexpended and unencumbered balances remaining in the statewide planning and geographic information system special fund established pursuant to section 225M-5, Hawaii Revised Statutes, as of June 29, 2003.

SECTION 18. On June 30, 2003, the director of finance shall transfer to the credit of the state general fund, all unexpended and unencumbered balances remaining in the boiler and elevator safety revolving fund established pursuant to section 397-5.5, Hawaii Revised Statutes, as of June 29, 2003.

SECTION 19. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,431 or so much thereof as may be necessary for fiscal year 2003-2004 and the sum of \$175,431 or so much thereof as may be necessary for fiscal year 2004-2005 to operate the Hawaii film studio. The sums appropriated shall be expended by the department of business, economic development and tourism.

PART II

SECTION 20. The legislature determines that there is in the cigarette tax stamp enforcement special fund at least \$740,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the cigarette tax stamp enforcement special fund to the general fund the sum of \$740,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 21. The legislature determines that there is in the medicaid investigations recovery fund at least \$400,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the medicaid investigations recovery fund to the general fund the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 22. The legislature determines that there is in the litigation settlement clearance account at least \$2,500,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the litigation settlement clearance account to the general fund the sum of \$2,500,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 23. The legislature determines that there is in the Aloha Tower fund at least \$1,600,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the Aloha Tower fund to the general fund the sum of \$1,600,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 24. The legislature determines that there is in the dwelling unit revolving fund at least \$15,000,000 in excess of the requirements of the fund. On

July 1, 2003, the director of finance is authorized to transfer from the dwelling unit revolving fund to the general fund the sum of \$15,000,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 25. The legislature determines that there is in the teachers' housing revolving fund at least \$400,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the teachers' housing revolving fund to the general fund the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 26. The legislature determines that there is in the housing finance revolving fund at least \$3,000,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the housing finance revolving fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 27. The legislature determines that there is in the Waialua loan and subsidy account at least \$11,566 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the Waialua loan and subsidy account to the general fund the sum of \$11,566 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 28. The legislature determines that there is in the compliance resolution fund at least \$15,000,000 in excess of the requirements of the fund. On January 1, 2004, the director of finance is authorized to transfer from the compliance resolution fund to the general fund the sum of \$15,000,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 29. The legislature determines that there is in the spouse and child abuse special account, established pursuant to section 601-3.6, Hawaii Revised Statutes, at least \$200,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the spouse and child abuse special account, established pursuant to section 601-3.6, Hawaii Revised Statutes, to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 30. The legislature determines that there is in the bureau of conveyances special fund at least \$4,500,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the bureau of conveyances special fund to the general fund the sum of \$4,500,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 31. The legislature determines that there is in the agricultural loan reserve fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the agricultural loan reserve fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 32. The legislature determines that there is in the agricultural loan revolving fund at least \$1,000,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the agricultural loan revolving fund to the general fund the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 33. The legislature determines that there is in the animal quarantine special fund at least \$350,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the animal quarantine special fund to the general fund the sum of \$350,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 34. The legislature determines that there is in the state disaster revolving fund at least \$400,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the state disaster revolving fund to the general fund the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 35. The legislature determines that there is in the Waiahole water system revolving fund at least \$400,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the Waiahole water system revolving fund to the general fund the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 36. The legislature determines that there is in the stadium special fund at least \$100,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the stadium special fund to the general fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 37. The legislature determines that there is in the state motor pool revolving fund at least \$900,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the state motor pool revolving fund to the general fund the sum of \$900,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 38. The legislature determines that there is in the state parking revolving fund at least \$2,200,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the state parking revolving fund to the general fund the sum of \$2,200,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 39. The legislature determines that there is in the state identification revolving fund at least \$100,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the state identification revolving fund to the general fund the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 40. The legislature determines that there is in the Hawaii capital loan revolving fund at least \$4,000,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the Hawaii capital loan revolving fund to the general fund the sum of \$4,000,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 41. The legislature determines that there is in the foreign trade zone special fund at least \$50,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the foreign trade zone special fund to the general fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 42. The legislature determines that there is in the public utilities commission special fund, established pursuant to section 26-9(o), Hawaii Revised Statutes, in the department of commerce and consumer affairs at least \$1,083,824 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the public utilities commission special fund, established pursuant to section 26-9(o), Hawaii Revised Statutes, in the department of commerce and consumer affairs to the general fund the sum of \$1,083,824 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 43. The legislature determines that there is in the real estate education fund at least \$150,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the real estate education fund to the general fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 44. The legislature determines that there is in the insurance commissioner's education training fund at least \$355,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the insurance commissioner's education training fund to the general fund the sum of \$355,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 45. The legislature determines that there is in the state health planning and development agency fund at least \$171,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the state health planning and development agency fund to the general fund the sum of \$171,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 46. The legislature determines that there is in the tobacco settlement special fund at least \$1,900,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the tobacco settlement special fund to the general fund the sum of \$1,900,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 47. The legislature determines that there is in the driver education and training fund, established pursuant to section¹ 286G, Hawaii Revised Statutes, at least \$500,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the driver education and training fund, established pursuant to section¹ 286G, Hawaii Revised Statutes, to the general fund the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 48. The legislature determines that there is in the occupational safety and health training assistance fund at least \$737,669 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the occupational safety and health training assistance fund to the general fund the sum of \$737,669 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 49. The legislature determines that there is in the special land and development fund at least \$3,000,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the special land and development fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 50. The legislature determines that there is in the controlled substance registration revolving fund at least \$200,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the controlled substance registration revolving fund to the general fund the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 51. The legislature determines that there is in the Halawa correctional facility inmate store fund at least \$140,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the Halawa correctional facility inmate store fund to the general fund the sum of \$140,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 52. The legislature determines that there is in the Oahu community correctional facility inmate store fund at least \$130,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the Oahu community correctional facility inmate store fund to the general fund the sum of \$130,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 53. The legislature determines that there is in the Waiawa correctional facility inmate store fund at least \$50,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the Waiawa correctional facility inmate store fund to the general fund the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2003-2004.

SECTION 54. The legislature determines that there is in the compliance resolution fund at least \$3,000,000 in excess of the requirements of the fund. On January 1, 2005, the director of finance is authorized to transfer from the compliance resolution fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 55. The legislature determines that there is in the special land and development fund at least \$3,000,000 in excess of the requirements of the fund. On July 1, 2004, the director of finance is authorized to transfer from the special land and development fund to the general fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2004-2005.

SECTION 56. The legislature determines that there is in the Hawaii strategic development corporation revolving fund at least \$1,300,000 in excess of the requirements of the fund. On July 1, 2003, the director of finance is authorized to transfer from the Hawaii strategic development corporation revolving fund to the general fund the sum of \$1,300,000 or so much thereof as may be necessary for fiscal year 2003-2004.

PART III

SECTION 57. Section 328L-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The fund shall be used for the purpose of receiving, allocating, and appropriating the tobacco settlement moneys as follows:

- (1) Twenty-four and one-half per cent shall be appropriated into the emergency and budget reserve fund under section 328L-3;
- (2) Thirty-five per cent shall be appropriated to the department for purposes of section 328L-4;

- (3) Twelve and one-half per cent shall be appropriated into the Hawaii tobacco prevention and control trust fund under section 328L-5; and
- (4) Twenty-eight per cent shall be appropriated into the university revenue-undertakings fund created in section 306-10, to be applied solely to the payment of the principal of and interest on, and to generate required coverage, if any, for, revenue bonds issued by the board of regents of the University of Hawaii to finance the cost of construction of a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu, for the succeeding fiscal year; provided that any moneys in excess of the amount required to pay principal of and interest on, and to generate required coverage, if any, for such revenue bonds in any fiscal year, shall be transferred [tø] as follows:
- (A) To the emergency and budget reserve fund under section 328L-3, eighty per cent of the excess; and
- (B) To the Hawaii tobacco prevention and control trust fund under section 328L-5, twenty per cent of the excess;
 in the succeeding fiscal year[~~-, in the same proportion as to the amount of moneys appropriated to those funds in accordance with this subsection.~~].”

SECTION 58. Section 502-8, Hawaii Revised Statutes, is amended to read as follows:

“~~[§502-8]~~ **Bureau of conveyances special fund.** (a) There is established in the state treasury the bureau of conveyances special fund, into which shall be deposited the revenues remitted pursuant to sections 501-23.5 and 502-25, interest earnings, grants, donations, and appropriations from the legislature that shall be held separate and apart from all other moneys, funds, and accounts in the state treasury.

(b) Moneys in the bureau of conveyances special fund shall be used by the bureau of conveyances for the following purposes:

- (1) Planning, design, construction, and acquisition of equipment, furnishings, and software necessary for the development of the recording system described in this chapter and chapter 501;
- (2) Operating, maintaining, and improving the recording system described in this chapter and chapter 501 or any other purpose deemed necessary by the bureau of conveyances for the purpose of planning, improving, developing, operating, and maintaining the recording system described in this chapter and chapter 501;
- (3) Permanent and temporary staff positions for the purposes of this chapter and chapter 501; and
- (4) Administrative costs for the purposes of this chapter and chapter 501.

(c) All moneys in excess of \$500,000 remaining on balance in the bureau of conveyances special fund on June 30 of each year shall lapse to the credit of the state general fund. On July 1, of each year, the director of finance is authorized to transfer any excess funds in the bureau of conveyances special fund to the state general fund.”

SECTION 59. Section 103-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a works of art special fund, into which shall be transferred one per cent of all state fund appropriations for capital improvements designated for the construction cost element; provided that this transfer shall apply only to capital improvement appropriations that are designated for the construction or renovation of state buildings. The one per cent transfer requirement shall not

apply to appropriations from the passenger facility charge special fund established by section 261- .”

SECTION 60. Section 201G-341, Hawaii Revised Statutes, is repealed.

SECTION 61. Section 201G-343, Hawaii Revised Statutes, is repealed.

SECTION 62. Section 201G-344, Hawaii Revised Statutes, is repealed.

SECTION 63. Section 201G-345, Hawaii Revised Statutes, is repealed.

SECTION 64. Section 201G-422, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 65. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 66. This Act shall take effect on July 1, 2003, provided that:

- (1) Sections 1, 2, 3, 4, 5, and 6 shall take effect on June 29, 2003;
- (2) Sections 9, 10, 11, 12, 13, 14, 15, and 16 shall take effect on June 30, 2003; and
- (3) Sections 7 and 8 shall take effect on July 1, 2004; provided further that any remaining balances in the Hawaii capital loan revolving fund and the Hawaii strategic development corporation revolving fund shall lapse to the general fund.

(Approved June 16, 2003.)

Notes

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

ACT 179

S.B. NO. 1311

A Bill for an Act Relating to Special Funds.

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

SECTION 1. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;

- (7) 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)] (10) Funds of the employees' retirement system created by section 88-109;~~
- ~~[(14)] (11) Unemployment compensation fund established under section 383-121;~~
- ~~[(15)] (12) Hawaii hurricane relief fund established under chapter 431P;~~
- ~~[(16)] (13) Hawaii health systems corporation special funds;~~
- ~~[(17)] (14) Boiler and elevator safety revolving fund established under section 397-5.5;~~
- ~~[(18)] (15) 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) (16) Universal service fund established under chapter 269;~~
- ~~[(22)] (17) Integrated tax information management systems special fund under section 231-3.2;~~
- ~~[(23) Hawaii tobacco settlement special fund under section 328L-2;~~
- ~~(24) (18) Emergency and budget reserve fund under section 328L-3;~~
- ~~[(25) Probation services special fund under section 706-649;~~
- ~~(26) High technology special fund under section 206M-15.5;~~
- ~~(27) (19) Public schools special fees and charges fund under section 302A-1130(f);~~
- ~~[(28) Cigarette tax stamp enforcement special fund established by section 28-14;~~
- ~~(29) Cigarette tax stamp administrative special fund established by section 245-41.5;~~
- ~~(30) Tobacco enforcement special fund established by section 28-15;~~
- ~~(31) (20) Sport fish special fund under section 187A-9.5;~~
- ~~[(32)] (21) Neurotrauma special fund under section 321H-4;~~
- ~~[(33)] (22) Deposit beverage container deposit special fund under section 342G-104; and~~
- ~~[(34)] (23) Glass advance disposal fee special fund established by section 342G-82,~~

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 2. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special out-of-school time instructional program 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) (8) Funds of the employees' retirement system created by section 88-109;~~
- ~~(12) (9) Unemployment compensation fund established under section 383-121;~~
- ~~(13) (10) Hawaii hurricane relief fund established under chapter 431P;~~
- ~~(14) (11) Convention center enterprise special fund established under section 201B-8;~~
- ~~(15) (12) Hawaii health systems corporation special funds;~~
- ~~(16) (13) Tourism special fund established under section 201B-11;~~
- ~~(17) Compliance resolution fund established under section 26-9;~~
- ~~(18) (14) Universal service fund established under chapter 269;~~
- ~~(19) (15) Integrated tax information management systems special fund under section 231-3.2;~~
- ~~(20) Hawaii tobacco settlement special fund under section 328L-2;~~
- ~~(21) (16) Emergency and budget reserve fund under section 328L-3;~~
- ~~(22) Probation services special fund under section 706-649;~~
- ~~(23) High technology special fund under section 206M-15.5;~~
- ~~(24) (17) Public schools special fees and charges fund under section 302A-1130(f);~~
- ~~(25) Cigarette tax stamp enforcement special fund established by section 28-14;~~
- ~~(26) Cigarette tax stamp administrative special fund established by section 245-41.5;~~
- ~~(27) Tobacco enforcement special fund established by section 28-15;~~
- ~~(28) (18) Sport fish special fund under section 187A-9.5; and~~
- ~~(29) (19) Neurotrauma special fund under section 321H-4;~~

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

SECTION 3. There is appropriated out of the cigarette tax stamp enforcement special fund the sum of \$55,200 or so much thereof as may be necessary for fiscal year 2003-2004 and the sum of \$55,200 or so much thereof as may be necessary for fiscal year 2004-2005 for the operating expenses of this fund, including the payment of central service expenses and the fund’s pro rata share of departmental administrative expenses.

The sums appropriated shall be expended by the department of the attorney general.

SECTION 4. There is appropriated out of the cigarette tax stamp administrative special fund the sum of \$10,000 or so much thereof as may be necessary for fiscal year 2003-2004 and the sum of \$10,000 or so much thereof as may be necessary for fiscal year 2004-2005 for the operating expenses of this fund, including the payment of central service expenses and the fund’s pro rata share of departmental administrative expenses.

The sums appropriated shall be expended by the department of taxation.

SECTION 5. There is appropriated out of the tobacco enforcement special fund the sum of \$17,800 or so much thereof as may be necessary for fiscal year 2003-2004 and the sum of \$17,800 or so much thereof as may be necessary for fiscal year 2004-2005 for the operating expenses of this fund, including the payment of central service expenses and the fund's pro rata share of departmental administrative expenses.

The sums appropriated shall be expended by the department of the attorney general.

SECTION 6. There is appropriated out of the spouse and child abuse special account the sum of \$15,794 or so much thereof as may be necessary for fiscal year 2003-2004 and the sum of \$15,794 or so much thereof as may be necessary for fiscal year 2004-2005 for the operating expenses of this account, including the payment of central service expenses and the account's pro rata share of departmental administrative expenses.

The sums appropriated shall be expended by the department of human services.

SECTION 7. There is appropriated out of the compliance resolution fund the sum of \$1,785,302 or so much thereof as may be necessary for fiscal year 2003-2004 and the sum of \$1,785,302 or so much thereof as may be necessary for fiscal year 2004-2005 for the operating expenses of this fund, including the payment of central service expenses and the fund's pro rata share of departmental administrative expenses.

The sums appropriated shall be expended by the department of commerce and consumer affairs.

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

SECTION 9. This Act shall take effect on July 1, 2003; provided that the amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted on July 31, 2003, by section 9 of Act 142, Session Laws of Hawaii 1998.

(Approved June 16, 2003.)

ACT 180

S.B. NO. 1051

A Bill for an Act Relating to Personal Transportation.

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

SECTION 1. This Act provides a definition for electric personal assistive mobility devices and amends the motor vehicle code to provide for the operation of electric personal assistive mobility devices. Furthermore, this Act responds to a major innovation in personal travel for the residents of Hawaii. It is a clean fuel and quiet technological transportation device that will improve productivity, enhance mobility for a variety of individuals, improve the environment, and reduce our dependence on foreign oil.

SECTION 2. Chapter 291C, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§291C- Electric personal assistive mobility devices; restrictions. (a) An electric personal assistive mobility device may be operated on the sidewalks, at a speed no greater than eight miles per hour, and bicycle paths of the State. The sale of consumer models of electric personal assistive mobility devices in the State shall be limited to those models operated by a key that can set the maximum forward speed at no more than eight miles per hour.

(b) An electric personal assistive mobility device operator shall be sixteen years of age or older.

(c) An electric personal assistive mobility device operator on a sidewalk or bicycle path shall exercise due care to avoid colliding with, and shall yield the right-of-way to, persons traveling on foot and those using mobility aids.

(d) An electric personal assistive mobility device operator shall give an audible signal before overtaking and passing any pedestrian.

(e) An electric personal assistive mobility device operator shall wear or equip the electric personal assistive mobility device with reflectors and a headlamp when operating between one-half hour after sunset and one-half hour before sunrise.

(f) Any operator who operates an electric personal assistive mobility device recklessly in disregard for the safety of persons or property shall be assessed penalties as set forth in section 291C-161.”

SECTION 3. Chapter¹ 291C-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Electric personal assistive mobility device” means a self-balancing, two-wheeled, non-tandem-wheeled device, designed to transport only one person, using an electric propulsion system that limits the maximum speed of the device to twelve and a half miles per hour or less.”

SECTION 4. New statutory material is underscored.²

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

(Approved June 16, 2003.)

Notes

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

ACT 181

S.B. NO. 402

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

“PART . HAWAII MEDICAL EDUCATION COUNCIL

§304-A Definitions. As used in this part:

“Centers for medicaid and medicare services” means the centers for medicaid and medicare services within the United States department of health and human services.

“Council” means the medical education council created under section 304-C.

“Graduate medical education” means that period of clinical training of a physician following receipt of the medical doctor degree and prior to the beginning of an independent practice of medicine.

“Graduate medical education program” means a graduate medical education training program accredited by the American Council on Graduate Medical Education.

“Health care training program” means a health care training program that is accredited by a nationally-recognized accrediting body.

§304-B Medical education program. (a) There is created a graduate medical education program to be administered by the medical education council in cooperation with the department of health.

(b) The program shall be funded with moneys received for graduate medical education and deposited into the Hawaii medical education special fund established under section 304-F.

(c) All funding for this program shall be nonlapsing.

(d) Program moneys shall only be expended if:

(1) Approved by the council; and

(2) Used for graduate medical education in accordance with sections 304-D and 304-E.

§304-C Medical education council. (a) There is created within the University of Hawaii, the medical education council consisting of the following thirteen members:

(1) The dean of the school of medicine at the University of Hawaii;

(2) The dean of the school of nursing and dental hygiene at the University of Hawaii;

(3) The vice dean for academic affairs at the school of medicine who represents graduate medical education at the University of Hawaii;

(4) The director of health or the director’s designated representative;

(5) The director of the Cancer Research Center of Hawaii; and

(6) Eight persons to be appointed by the governor as follows:

(A) Three persons each of whom shall represent a different hospital at which accredited graduate medical education programs are conducted;

(B) Three persons each who represent the health professions community;

(C) One person who represents the federal health care sector; and

(D) One person from the general public.

(b) Except as provided in subsection (a)(1), (2), (3), and (4), no two council members may be employed by or affiliated with the same:

(1) Institution of higher education;

(2) State agency outside of higher education; or

(3) Private entity.

(c) Terms of office of council members shall be as follows:

(1) Except as provided in paragraph (2), the dean of the school of medicine, dean of nursing and dental hygiene, vice dean of academic affairs of the school of medicine at the University of Hawaii, and the director of health, or the director’s designated representative, shall be permanent ex officio members of the council, and the remaining non-permanent council members shall be appointed to four-year terms of office;

(2) Notwithstanding paragraph (1), the governor at the time of the initial appointment shall reduce the terms of four nonpermanent council

members to two years to ensure that approximately half of the non-permanent council members are appointed every two years; and

- (3) If a vacancy occurs in the membership for any reason, the replacement shall be appointed by the governor for the unexpired term in the same manner as the original appointment was made.

(d) The dean of the school of medicine at the University of Hawaii shall chair the council. The council shall annually elect a vice chair from among the members of the council.

(e) All council members shall have voting rights. A majority of the council members shall constitute a quorum. The action of a majority of a quorum shall be the action of the council.

(f) Per diem and expenses incurred in the performance of official duties may be paid to a council member who:

- (1) Is not a government employee; or
- (2) Is a government employee, but does not receive salary, per diem, or expenses from the council member's employing unit for service to the council.

A council member may decline to receive per diem and expenses for service to the council.

§304-D Council duties. The council shall:

- (1) Conduct a comprehensive analysis of the health care workforce requirements of the State for the present and the future, focusing in particular on the State's need for physicians;
- (2) Conduct a comprehensive assessment of the State's health care training programs, focusing in particular on graduate medical education programs and their role in and ability to meet the health care workforce requirements identified by the council;
- (3) Recommend to the legislature and the board of regents such changes in or additions to the health care training programs in the State identified by the council's assessment;
- (4) Work with such other entities and state agencies as necessary, develop a plan to assure the adequate funding of health care training programs in the State, with an emphasis on graduate medical education programs, and after consultation with the legislature and the board of regents, implement the plan. The plan shall specify the funding sources for health care training programs and establish the methodology for funding disbursement. Funds shall be expended for the types of costs normally associated with health care training programs, including but not limited to physician salaries and other operating and administrative costs. The plan may include the submission of an application in accordance with federal law for a demonstration project to the centers for medicaid and medicare services, for the purpose of receiving and disbursing federal funds for direct and indirect graduate medical education expenses;
- (5) Seek funding from public sources, including state and federal government, and private sources to support the plan;
- (6) Monitor the implementation and effectiveness of the plan, making such modifications as may be required by future developments and changing needs and after consulting with the legislature and the board of regents, as appropriate; and
- (7) Submit a summary report to the legislature no later than twenty days before the convening of each regular session, of the expenditures of program moneys authorized by the council under this part.

§304-E Council powers. The council may:

- (1) Conduct surveys, with the assistance of the department of health and the department of commerce and consumer affairs, to assess and meet changing market and education needs;
- (2) Appoint advisory committees of broad representation on interdisciplinary clinical education, workforce mix planning and projections, funding mechanisms, and other topics as is necessary;
- (3) Use federal moneys for necessary administrative expenses to carry out its duties and powers as permitted by federal law;
- (4) Distribute program moneys in accordance with this part; provided that any expenditures authorized shall be for a public purpose and shall not be subject to chapters 42F, 103, 103D, and 103F;
- (5) Hire employees not subject to chapters 76 and 89 necessary to carry out its duties under this part; and
- (6) Adopt rules in accordance with chapter 91, necessary to carry out the purposes of this part.

§304-F Hawaii medical education special fund. There is established within the state treasury a special fund to be known as the Hawaii medical education special fund, into which shall be deposited all funds received by the Hawaii medical education council, including:

- (1) Moneys from the federal Centers for Medicaid and Medicare Services or other federal agencies;
- (2) State appropriations; and
- (3) Grants, contracts, donations, or private contributions.

The fund shall be administered by the council. Moneys in the fund shall be expended by the council in accordance with this part.”

SECTION 2. There is appropriated out of the revenues of the Hawaii medical education special fund the sum of \$800,000, or so much thereof as may be necessary for fiscal year 2003-2004, and the same sum, or so much thereof as may be necessary for fiscal year 2004-2005, for the establishment and operation of the Hawaii medical education council.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 3. In codifying the new part added by section 1 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 on July 1, 2003.

(Approved June 16, 2003.)

ACT 182

H.B. NO. 130

A Bill for an Act Relating to Pension and Retirement Systems.

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

SECTION 1. Section 88-83, Hawaii Revised Statutes, is amended to read as follows:

“§88-83 Election of mode of retirement allowance. (a) Maximum allowance: Upon retirement, any member may elect to receive the maximum retirement allowance to which the member is entitled computed in accordance with [~~the provisions described under~~] section 88-74, 88-76, or 88-80 and in the event of the member’s death, there shall be paid to the member’s beneficiary, otherwise to the member’s estate, the difference between the balance of the member’s accumulated contributions at the time of the member’s retirement and the retirement allowance paid or payable to the member prior to death.

In lieu of this maximum allowance, the member may elect to receive the member’s retirement allowance under any one of the optional plans described below, which shall be actuarially equivalent to the maximum allowance.

Option 1: The member may elect to receive a lesser retirement allowance during the member’s lifetime. At the member’s retirement, there shall be established an amount of initial insurance [~~which~~] that shall be computed on the basis of actuarial factors adopted by the board of trustees. Upon the death of the retirant, any balance remaining in the initial insurance reserve, after deducting the retirement allowance paid to the retirant prior to death, shall be paid to the retirant’s beneficiary, otherwise to the retirant’s estate. In lieu of the lump sum balance, the beneficiary may elect to receive an allowance for life based on the value of the balance; provided that the allowance is not less than \$100 per month.

Option 2: The member may elect to receive a lesser retirement allowance during the member’s lifetime and have [~~sueh~~] those allowances, including cumulative post retirement, if applicable, continued after the member’s death to the member’s beneficiary during the lifetime of [~~sueh~~] the person. In the event of death of the beneficiary prior to that of the retirant, all further payments shall cease upon the death of the retirant.

Option 3: The member may elect to receive a lesser retirement allowance during the member’s lifetime and have one-half of such allowance, including fifty per cent of all cumulative post retirement allowances, if applicable, continued after the member’s death to the member’s beneficiary during the lifetime of [~~sueh~~] that person. In the event of death of the beneficiary prior to that of the retirant, all further payments shall cease upon the death of the retirant.

Option 4: The member may elect to receive a lesser retirement allowance during the member’s lifetime and provide some other benefit to the member’s beneficiary in accordance with the member’s own specification; provided that [~~sueh~~] this election shall be certified by the actuary to be the actuarial equivalent of the member’s retirement allowance and shall be approved by the board.

Option 5: The member may elect to receive the balance of the member’s accumulated contributions at the time of retirement in a lump sum and, during the member’s lifetime, a retirement allowance equal to the maximum retirement allowance reduced by the actuarial equivalent of these contributions. Upon the death of the retirant, all further payments shall cease. Only a member retiring [~~for~~] from service having at least ten years of credited service or for disability may elect this mode of retirement.

To receive benefits, the beneficiary must have been designated by the member in [~~sueh~~] the form and manner [~~as-is~~] prescribed by the board.

In the event of the death of the retirant within one year after the date of retirement, the retirant’s beneficiary may elect to receive either the death benefits under the mode of retirement selected, or in lieu thereof, such benefits as would have been paid had the retirant died immediately prior to retirement, less any payments [~~which~~] that the retirant received.

Any election of a mode of retirement allowance shall be irrevocable[-] and subject to the spousal or reciprocal beneficiary notification requirement under subsection (c).

(b) Section 88-84 to the contrary notwithstanding, in the event of the death of a member after the date of the filing of the member's written application to retire, the designated beneficiary, otherwise the personal representative of the member's estate, shall receive the allowance under the option selected by the member [which] that would have been payable had the member retired, and the benefits paid to the beneficiary or representative shall be computed as though the member had died on or after the effective date of the member's retirement.

[Any election of a mode of retirement shall be irrevocable.]

(c) No election under this section shall take effect unless:

(1) The spouse or reciprocal beneficiary of the member is furnished written notification that:

(A) Specifies the retirement date, the benefit option selected, and the beneficiary designated by the member;

(B) Provides information indicating the effect of the election; and

(C) Is determined adequate by rules established by the board pursuant to chapter 91; or

(2) The member selects option 2 or option 3/option A or option B and designates the spouse or reciprocal beneficiary as the beneficiary; or

(3) It is established to the satisfaction of the board that the notice required under paragraph (1) cannot be provided because:

(A) There is no spouse or reciprocal beneficiary;

(B) The spouse or reciprocal beneficiary cannot be located;

(C) The member has failed to notify the system that the member has a spouse or reciprocal beneficiary or has failed to provide the system with the name and address of the member's spouse or reciprocal beneficiary; or

(D) Of other reasons, as established by rules of the board pursuant to chapter 91. Any notice provided to a spouse or reciprocal beneficiary, or determination that the notification of a spouse or reciprocal beneficiary cannot be provided, shall be effective only with respect to that spouse or reciprocal beneficiary. The system will rely upon the representations made by a member as to whether the member has a spouse or reciprocal beneficiary and the name and address of the member's spouse or reciprocal beneficiary.

(d) Each member, within a reasonable period of time before the member's retirement date, shall be provided a written explanation of:

(1) The terms and conditions of the various benefit options;

(2) The rights of member's spouse or reciprocal beneficiary under subsection (c) to be notified of the member's election of a benefit option; and

(3) The member's right to make, and the effect of, a revocation of an election of a benefit option.

(e) The system shall not be liable for any false statements made by the member."

SECTION 2. Section 88-283, Hawaii Revised Statutes, is amended to read as follows:

"§88-283 Retirement allowance options. (a) In lieu of the maximum retirement allowance described in sections 88-282, 88-284, and 88-285, a member may elect to receive the member's retirement allowance under one of the options described below, which shall be actuarially equivalent to the maximum retirement allowance:

(1) Option A: A reduced allowance payable to the member, then upon the member's death, one-half of the allowance, including fifty per cent of

all cumulative post retirement allowances, to the member's beneficiary designated by the member at the time of retirement, for the life of the beneficiary;

- (2) Option B: A reduced allowance payable to the member, then upon the member's death, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary designated by the member at the time of retirement, for the life of the beneficiary; or
- (3) Option C: A reduced allowance payable to the member, and if the member dies within ten years of retirement, the same allowance, including cumulative post retirement allowances, paid to the member's beneficiary for the balance of the ten-year period.

(b) Any election of a mode of retirement shall be irrevocable~~[-]~~ and subject to the spousal or reciprocal beneficiary notification requirement under subsection (c).

(c) No election under this section shall take effect unless:

(1) The spouse or reciprocal beneficiary of the member is furnished written notification that:

- (A) Specifies the retirement date, the benefit option selected, and the beneficiary designated by the member;
- (B) Provides information indicating the effect of the election; and
- (C) Is determined adequate by rules established by the board pursuant to chapter 91; or

(2) The member selects option 2 or option 3/option A or option B and designates the spouse or reciprocal beneficiary as the beneficiary; or

(3) It is established to the satisfaction of the board that the notice required under paragraph (1) cannot be provided because:

- (A) There is no spouse or reciprocal beneficiary;
- (B) The spouse or reciprocal beneficiary cannot be located;
- (C) The member has failed to notify the system that the member has a spouse or reciprocal beneficiary or has failed to provide the system with the name and address of the member's spouse or reciprocal beneficiary; or

(D) Of other reasons, as established by rules of the board pursuant to chapter 91. Any notice provided to a spouse or reciprocal beneficiary, or determination that the notification of a spouse or reciprocal beneficiary cannot be provided, shall be effective only with respect to that spouse or reciprocal beneficiary. The system shall rely upon the representations made by a member as to whether the member has a spouse or reciprocal beneficiary and the name and address of the member's spouse or reciprocal beneficiary.

(d) Each member, within a reasonable period of time before the member's retirement date, shall be provided a written explanation of:

- (1) The terms and conditions of the various benefit options;
- (2) The rights of member's spouse or reciprocal beneficiary under subsection (c) to be notified of the member's election of a benefit option; and
- (3) The member's right to make, and the effect of, a revocation of an election of a benefit option.

(e) The system shall not be liable for any false statements made by the member."

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

SECTION 4. This Act shall take effect on January 1, 2004.

(Approved June 16, 2003.)

ACT 183

H.B. NO. 1300

A Bill for an Act Relating to the Budget of the Office of Hawaiian Affairs.

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

SECTION 1. This Act shall be known and may be cited as the Office of Hawaiian Affairs Appropriations Act of 2003.

SECTION 2. Unless otherwise clear from the context, as used in this Act: “Means of Financing”, or “MOF”, means the source from which funds are appropriated or authorized, as the case may be, to be expended for the programs and projects specified in this Act. Letter symbols following appropriations have the following meanings:

A: General Funds

T: Trust Funds

“Position ceiling” means the maximum number of permanent positions authorized for a particular program during a specified period or periods, as noted by an asterisk.

“Program ID” means the unique identifier for the specific program, and consists of the abbreviation for the office of Hawaiian affairs followed by a designated number for the program.

SECTION 3. The following sums, or so much thereof as may be necessary to accomplish the purposes and programs designated herein, are appropriated or authorized, as the case may be, from the sources of funding specified to the office of Hawaiian affairs for the fiscal biennium beginning July 1, 2003, and ending June 30, 2005. The total general fund expenditures and the number of permanent positions established in each fiscal year of the biennium shall not exceed the sums and the position ceiling indicated for each year, except as provided elsewhere in this Act.

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
1. OHA150 - OFFICE OF THE TRUSTEES							
	OPERATING		OHA	.925*		.908*	
			OHA	34,972A		34,992A	
			OHA	4.075*		4.092*	
			OHA	186,812T		191,279T	
2. OHA160 - ADMINISTRATION							
	OPERATING		OHA	5.18*		5.082*	
			OHA	1,685,726A		1,662,823A	
			OHA	22.82*		22.918*	
			OHA	3,056,171T		3,071,803T	

ACT 183

3. OHA175 - BENEFICIARY ADVOCACY

		5.365*	5.264*
OPERATING	OHA	811,949A	834,832A
		23.635*	23.737*
	OHA	1,738,202T	1,788,211T

SECTION 4. Provided that the general fund appropriations in section 3 of this Act shall be expended by the office of Hawaiian affairs.

SECTION 5. Provided that of the funds appropriated for beneficiary advocacy (OHA 175), the sum of \$298,000 in general funds and \$298,000 in trust funds for fiscal year 2003-2004 and the sum of \$298,000 in general funds and \$298,000 in trust funds for fiscal year 2004-2005 shall be expended for services on a fee work contracted to Alu Like, Inc.

SECTION 6. Provided that of the funds appropriated for administration (OHA 160), the sum of \$290,974 in general funds and \$290,974 in trust funds for fiscal year 2003-2004 and the sum of \$290,974 in general funds and \$290,974 in trust funds for fiscal year 2004-2005 shall be expended for the gifted and talented native Hawaiian children program, Na Pua No'eau.

SECTION 7. Provided that of the funds appropriated for administration (OHA 160), the sum of \$40,000 in general funds and \$40,000 in trust funds for fiscal year 2003-2004 and the sum of \$40,000 in general funds and \$40,000 in trust funds for fiscal year 2004-2005 shall be expended for the native Hawaiian diet program.

SECTION 8. Provided that of the funds appropriated for administration (OHA 160), the sum of \$388,301 in general funds and \$388,302 in trust funds for fiscal year 2003-2004 and the sum of \$388,301 in general funds and \$388,302 in trust funds for fiscal year 2004-2005 shall be expended for the native Hawaiian rights and land title projects contractually administered through the Native Hawaiian Legal Corporation.

SECTION 9. Provided that whenever the need arises, the administrator of the office of Hawaiian affairs is authorized to transfer sufficient funds and positions between programs for operating purposes; provided further that these transfers shall not be inconsistent with legislative intent; and provided further that a report shall be made to the legislature no later than thirty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 10. In the event manifest clerical, typographical, or other mechanical errors are found in this Act, the board of trustees of the office of Hawaiian affairs is hereby authorized to correct such errors. All changes made pursuant to this section shall be reported to the legislature at its next session.

SECTION 11. This Act shall take effect on July 1, 2003.

(Approved June 16, 2003.)

ACT 184

S.B. NO. 1594

A Bill for an Act Relating to the Commission on Water Resource Management.

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

SECTION 1. Section 174C-7, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) There is established within the department a commission on water resource management consisting of [~~six~~] seven members which shall have exclusive jurisdiction and final authority in all matters relating to implementation and administration of the state water code, except as otherwise specifically provided in this chapter.

(b) [~~Four~~] Five members shall be appointed by the governor subject to confirmation by the senate, in a manner prescribed in subsection (d). Each member shall have substantial experience in the area of water resource management[.]; provided that at least one member shall have substantial experience or expertise in traditional Hawaiian water resource management techniques and in traditional Hawaiian riparian usage such as those preserved by section 174C-101. The chairperson of the board of land and natural resources shall be the chairperson of the commission. The director of health shall serve as an ex officio voting member.”

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

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

(Approved June 16, 2003.)

ACT 185

S.B. NO. 1492

A Bill for an Act Relating to Assisted Living Facilities.

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

SECTION 1. The department of health and the real estate commission shall conduct a study on the impact and feasibility of allowing condominium and cooperative housing corporation projects to become licensed as assisted living facilities to provide assisted living services for its residents. The report shall address issues, including, but not limited to, the following:

- (1) A new definition of “assisted living services” that would be provided in a condominium or cooperative housing corporation project that becomes licensed as an “assisted living facility,” taking into consideration that such projects would differ from other assisted living facilities in the provision of housing services;
- (2) Liability insurance, including cost, availability and access to financing, and effect of conversion on property and resale values;
- (3) Potential liability exposure of the individual owners and the board of directors of a condominium or cooperative housing corporation project that becomes licensed as an assisted living facility to provide assisted living services to its residents;
- (4) Apportionment of costs and fees between the individual owners of the condominium or cooperative housing corporation project and those

owners who have elected from time to time to receive assisted living services, including, but not limited to, the apportionment of:

- (A) Maintenance fees;
 - (B) Costs relating to the provision of assisted living services, including the costs of contracting with a qualified provider of assisted living services;
 - (C) Personnel costs relating to the recruitment and training of support staff (i.e., doorman, receptionist) to support the assisted living facility;
 - (D) Insurance, including liability insurance, maintained by a licensed assisted living facility; and
 - (E) Any other cost apportionment issues that result from the condominium or cooperative housing corporation project becoming licensed as an assisted living facility to provide assisted living services for its residents; and
- (5) The appropriateness of licensing vendors that would provide assisted living services to residents of a condominium or cooperative housing corporation project for a fee, under contract with the board of directors of the condominium or cooperative housing corporation project.

The department of health and the real estate commission shall submit a joint report of findings and recommendations, including proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2004.

SECTION 2. The department of health shall not issue any new license for any condominium or cooperative housing corporation project as an assisted living facility until the legislature has acted upon the report described in section 1 of this Act, or until July 1, 2004, whichever occurs first.

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

(Approved June 16, 2003.)

ACT 186

H.B. NO. 320

A Bill for an Act Relating to Risk Management.

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

SECTION 1. The purpose of this Act is to assist the University of Hawaii in managing its risks by:

- (1) Creating the University of Hawaii risk management special fund; and
- (2) Providing the board of regents with the authority to approve the indemnification of persons, companies, and government entities, as necessary to receive research and other funds for educational purposes.

With the passage of Act 115, Session Laws of Hawaii 1998, which granted significant autonomy to the University of Hawaii, the legislature has increasingly looked to the university to become more autonomous in the management of its affairs. Since 2001, the legislature has required the university to identify funds from its revenue sources to pay for settlements and judgments. This requirement, coupled with the trend of expecting the university to become less dependent on general funds in the future, has caused the university to creatively manage its risks and exposures by augmenting the State's excess insurance coverage. The university has opted to

establish a risk management program to manage its risks and exposures by purchasing insurance, establishing a self-insurance program, or a combination of the two. This Act provides the statutory authority for the university to implement its risk management program in cooperation with the State's risk management program. The authorization provided hereunder shall not alter the university's status as an agency of the State. Within the parameters provided by the legislature, as provided in this Act, the university is charged with the responsibility of paying for its own legal claims, including settlements and judgments, and directed to be responsible for managing its risks and exposures by purchasing insurance, establishing a self-insurance program, or both.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- University of Hawaii risk management special fund. (a) There is created the University of Hawaii risk management special fund. The following may be deposited into the special fund:

- (1) Appropriations by the legislature;
- (2) Assessments for risk management costs as applicable against any funds of the university;
- (3) Moneys received from the settlement of claims or losses of the university that are not contractually or otherwise obligated for other purposes; and
- (4) Moneys received pursuant to an insurance policy.

(b) Notwithstanding any other law to the contrary, the university may transfer funds at its disposal into the special fund to be expended for the purposes provided herein.

(c) Revenues deposited into the special fund may be expended by the university for costs and expenses associated with the administration and operation of the risk management program, including but not limited to insurance premiums, retention payments, claims administration and operation, settlements, payment of judgments, other obligations, and legal fees and costs.

(d) Notwithstanding any other law to the contrary, the board of regents may agree in writing to an indemnity provision by which the University of Hawaii agrees to indemnify, defend, and hold harmless any person, corporation, or entity that sponsors research at the university when all of the following conditions are satisfied:

- (1) When such person, corporation, or entity requires an indemnity in writing as a condition for receiving a grant, benefit, service, or interest in or right to use property;
- (2) The president, or the president's designee, following a favorable review by the university general counsel, or the counsel's designee, approves the proposed indemnification; and
- (3) The chief financial officer, pursuant to section 304-6, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the university that may be reasonably anticipated to arise under the indemnity provision or has determined that it is not in the best interest of the university to obtain insurance.

(e) Nothing in this section shall be construed to expand the scope of liability of the university beyond that set forth in chapters 661 and 662.

(f) Nothing in this section shall be construed to waive the immunity of the university from suit in federal courts guaranteed by the Eleventh Amendment to the United States Constitution. An indemnity provision not in strict compliance with this section shall not give rise to a claim against the university under chapter 304 or 661 or otherwise waive the university's sovereign immunity.

ACT 187

(g) The board shall develop internal policies and procedures for the management of risk at the university that are consistent with the goals of public accountability.

(h) The board shall report annually to the legislature the sources of revenue into and expenditures made from the special fund no later than twenty days before the convening of each regular session of the legislature.”

SECTION 3. 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 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on July 1, 2003.

(Approved June 16, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 187

H.B. NO. 1175

A Bill for an Act Relating to the Department of Education.

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

SECTION 1. Section 302A-101¹, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Complex area superintendent” means the chief administrative officer of a complex area and the school complexes therein.”

SECTION 2. Section 26-53, Hawaii Revised Statutes, is amended to read as follows:

“**§26-53 Deputies or assistants to department heads.** [(a)] Effective January 1, 1989, and January 1, 1990, the salaries of deputies or assistants to the head of any department of the State, other than the department of education, shall be set by the governor within the range from \$69,748 to \$74,608 and \$72,886 to \$77,966 a year, respectively.

[(b) Effective January 1, 1989, and January 1, 1990, the salary of the deputy to the superintendent of education shall be \$81,629 and \$85,302 a year, respectively.]”

SECTION 3. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The civil service to which this 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 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 noncompliance, 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 director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, 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) (A) Teachers, principals, vice-principals, [~~district~~] complex area superintendents, [~~chief~~] deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;
- (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psycholo-

- gists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
- (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
 - (D) 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 meal periods in the distribution, collection, and counting of meal tickets, 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;
- (26) A gender and other fairness coordinator hired by the judiciary; and
- (27) Positions in the Hawaii national guard youth challenge academy.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 4. 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] complex area 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.”

SECTION 5. Section 302A-412, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each secondary public school, upon the approval of the principal and the ~~[district] complex area~~ superintendent, may allow on the premises vending machines operated as a concession; provided that the concession shall be operated only by a blind or visually handicapped person, as defined in sections 235-1, 347-1, and 347-2. The location and operation of the vending machines and the items dispensed shall be approved by the department.”

SECTION 6. Section 302A-438, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-438]~~ **Facilities, service, when required.** Where one or more exceptional children are found in any one ~~[district] complex area~~ superintendent’s district, the superintendent of education shall provide instruction, special facilities, and special services according to the specifications of sections 302A-436 to 302A-443 in a manner most expedient and economical.”

SECTION 7. Section 302A-604, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-604]~~ **District Complex area superintendents.** The superintendent of education, with the approval of the board, shall appoint ~~[district] complex area~~ superintendents for schools. The complex area superintendents shall supervise the delivery of administrative and instructional support services within their respective complex areas, including:

- (1) Personnel, fiscal, and facilities support;
- (2) Monitoring of compliance with applicable state and federal laws; and
- (3) Curriculum development, student assessment, and staff development services.”

SECTION 8. Section 302A-621, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-621]~~ **Salary; deputy superintendent, assistant superintendents, [district superintendents, deputy district] complex area superintendents.** The salaries of the deputy superintendent, assistant superintendents, ~~[district superintendents, and deputy district]~~ and complex area superintendents shall be set by the board ~~[Effective July 1, 1991, the salaries of deputy district superintendents shall be not less than \$65,683 nor more than \$72,886 a year.]; provided that the salaries of the deputy superintendent, assistant superintendents, and the complex area superintendents shall not exceed eighty per cent of the superintendent’s salary.~~”

SECTION 9. Section 302A-1130, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) If the principal, upon a hearing on the charges, has reasonable cause to believe that the pupil is responsible for the loss, destruction, breakage, or damage of school books, equipment, or supplies, the principal shall design a restitution program

that shall be submitted to the pupil and the pupil's parents or guardian for agreement in writing.

If restitution is made in this fashion, then no information about the charges, the hearing, and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the pupil and parent or guardian do not agree with the determination made by the principal, the principal shall report to the [district] complex area superintendent the determination and the findings made by the principal, including all the records and documents regarding the investigation, for any further action."

SECTION 10. Section 302A-1134, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If for any reason a child becomes a detriment to the morals or discipline of any school, the child may be precluded from attending school by the principal, with the approval of the [district] complex area superintendent. The department shall seek the active participation of other public and private agencies in providing help to these children before and after they have left school. An appeal may be taken on behalf of the child to the superintendent of education within ten days from the date of such action."

SECTION 11. Section 302A-1153, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

"(d) At the conference, the principal of the school in which the vandalism occurred shall present the findings of the investigation and the requirements of restitution to the pupil and parents or guardian.

If the pupil and the parents or guardian agree with the findings of the principal and the manner in which restitution is to be made, the principal and the pupil and parent or guardian shall execute a written agreement which shall specify the manner in which restitution is to be made.

Agreements shall be made only for damages that do not exceed \$3,500.

If restitution is made in this fashion, then no information about the investigation, conference, and the actions taken shall be communicated to any person not directly involved in the proceedings.

If the pupil and parent or guardian do not agree with the findings made by the principal, the principal shall report the findings, including all the records and documents regarding the investigation and conference, to the [district] complex area superintendent, who shall review the findings and may refer the matter to the attorney general for any further action pursuant to section 577-3.

(e) If the damages exceed \$3,500, the principal shall report the matter to the [district] complex area superintendent, who shall refer the matter to the attorney general for any further action pursuant to section 577-3."

SECTION 12. Section 302A-1308, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~302A-1308] **Use of resources by schools.** School principals shall consult with teachers, parents, and students to solicit their advice on the use of moneys and positions. Prior to expending moneys and implementing position assignments, principals shall submit plans for the use of the moneys and positions to their [district] complex area superintendents who shall review the plans for conformance with departmental policies and rules. Upon approval of the plans, moneys may be expended by the principals for supplies, textbooks, equipment, and services. Positions may be used to meet the unique needs of the schools."

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on July 1, 2003.

(Approved June 17, 2003.)

Note

- 1. "302A-101" substituted for "302-101".

ACT 188

H.B. NO. 281

A Bill for an Act Relating to State Educational Facilities Repair and Maintenance.

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

PART I

SECTION 1. The children and teachers of Hawaii's public schools require safe, secure, well-maintained, and clean schools to achieve high levels of teaching and learning. It has become increasingly clear that the conditions of our public schools depend on the availability of funds and effective management of facility needs. Currently, the facility needs of many of our schools are not being met or properly addressed. Support, resources, technical assistance, training, and services are necessary to enable our school community to reach and maintain the highest level of performance standards.

The State has invested approximately \$1,700,000,000 in the construction and maintenance of our public schools. However, the funds have not been available to adequately repair and maintain these facilities. In 2001, the legislature passed and the governor enacted Act 316, which:

- (1) Established the school physical plant operations and maintenance account to pay for normal ongoing school repairs and preventive maintenance projects scheduled after June 30, 2001;
- (2) Established the state educational facilities repair and maintenance account to eliminate the backlog of projects existing on June 30, 2000;
- (3) Specified how school repairs and maintenance are to be prioritized and moneys allocated; and
- (4) Provided for the establishment of eight school business and fiscal officers to oversee school facilities planning.

The repair and maintenance program is currently operated under a memorandum of agreement between the department of education and the department of accounting and general services. Under this arrangement, the department of accounting and general services serves as the expending agency and overall project manager, and controls the implementation of all school-related repair and maintenance activities. A 1992 report by the auditor and other reports have attributed much of the increasing backlog and overall inefficiencies in school repair and maintenance to the lack of control afforded to the department of education under this agreement. To maximize the use of valuable taxpayer dollars, the department of education should be provided with the authority to oversee repair and maintenance moneys and hold the department of accounting and general services accountable for effectively and responsibly performing these duties.

Accordingly, the purpose of this part is to enable the department of education to set priorities for school repair and maintenance projects, which would then be carried out by the department of accounting and general services.

SECTION 2. In order for the department of education to effectively manage the educational facilities under their control, the following data shall be compiled and reported as follows:

- (1) The department of accounting and general services shall compile and submit a report not less than quarterly to the department of education regarding the current status of projects on pre-June 30, 2001, and post-June 30, 2001, lists, respectively, including:
 - (A) Information regarding proposed projects, including, but not limited to: date of project request, description, amount and date of estimated cost, priority code, current status, projected start date, and link to any other proposed project, which shall be reported in a format that will enable the information to be sorted by district, complex, school, building, classroom or other site-specific identifying criteria, and by type of work involved, site of project, and priority rank assignment;
 - (B) Other information to assist the department of accounting and general services and the department of education, and others to assess the possibility of combining projects by type (i.e., roofing, electrical), geographic location, or availability of government and private sector resources, to create synergies that facilitate earlier completion dates;
 - (C) A monthly status report of on-going projects, including: budgeted cost, cost accrued to date, estimated cost to complete, total projected completed cost, and projected budget overruns or savings amounts; and
 - (D) A monthly list of projects by school complex and school that will be ready for preliminary and final inspection for preparation of punch-lists and transmittal of final documents to the department of education;
- (2) The department of education shall compile and report information to all school complexes and schools indicating the current status of projects on pre-June 30, 2001, and post-June 30, 2001, lists, respectively, as follows:
 - (A) At least annually, a listing of requested capital improvement projects by school complex and school, including all information needed to enable the department of accounting and general services, the department of education, and others to evaluate the priority of appropriations and expending funds for facilities of a school or within a complex, whether the project is a capital improvement project, repair and maintenance project (pre-June 30, 2001, or post-June 30, 2001), or is placed in a lump sum or other category of work;
 - (B) At least annually, an integrated list of all project requests (i.e., capital improvement, repair and maintenance, emergency, etc.) by complex and school, and the current status of each request (i.e., completed, in process, pending funding, or disapproved); and
 - (C) On a quarterly basis, schedules for projects to commence at each school and complex; provided that the school and complex shall acknowledge and accept each project, including final completion; and
- (3) The department of education and the department of accounting and general services shall submit interim or final reports to the governor,

the legislature, the board of education, the department of budget and finance, and each school complex and school by September 30, 2003.

SECTION 3. The department of education and the department of accounting and general services shall submit a report to the legislature, not later than twenty days prior to the convening of each regular session, on actions taken to maximize utilization of available funding to develop a work schedule that incorporates all available resources to reduce the backlog of all identified repair and maintenance projects, including projects identified in the pre-June 30, 2001, and post-June 30, 2001, lists, from \$640,000,000 to \$100,000,000, together with recommendations and proposed legislation to implement the suggested transfer of authority over repair and maintenance funds from the department of accounting and general services and the department of education, if any.

PART II

SECTION 4. Section 36-35, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created in the state general fund under AGS 807 (physical plant operations and maintenance) the state educational facilities repair and maintenance account, into which shall be deposited legislative appropriations to the account designated for use solely to eliminate the backlog of school repair and maintenance projects, including the repair or replacement of fixtures, furnishings, and equipment, existing on June 30, 2000. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. [Appropriations] Based on the prioritization approved by the department of education as prescribed by section 302A-1505, appropriations or authorizations from the account shall be expended by the comptroller.”

SECTION 5. Section 36-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created in the state general fund under AGS 807 (physical plant operations and maintenance) the school physical plant operations and maintenance account, into which shall be deposited all legislative appropriations to the account.

The moneys in the account shall be used solely for school repairs and preventive maintenance projects scheduled after June 30, 2001. Expenditures from the account shall be subject to sections 37-31 and 37-33 to 37-40. [Appropriations] Based on the prioritization approved by the department of education as prescribed by section 302A-1505, appropriations or authorizations from the account shall be expended by the comptroller.”

SECTION 6. Section 302A-604.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Departmental school district business and fiscal officers shall be responsible for:

- (1) Coordinating physical plant operations and maintenance activities with the [department] departments of education and accounting and general services;
- (2) Coordinating the training and selection of school custodians; monitoring the performance of school custodians in accomplishing minor repairs with funds from school-level minor repairs and maintenance accounts; and overseeing these accounts at the direction of school principals;
- (3) Planning for capital improvement projects with the department of education [and the department of accounting and general services];

- (4) Ensuring that school facilities comply with the laws and rules regarding:
 - (A) The provision of a free appropriate public education for exceptional children with disabilities; and
 - (B) The provision of a free appropriate public education for qualified students with disabilities;
- (5) Assisting the department, individual schools, and school complexes in forming partnerships with community groups, volunteers, and businesses to obtain donated and discounted repair and maintenance services and materials; and
- (6) Developing, coordinating, overseeing, and participating in the data collection for the physical plant analysis report and the maintenance plan for each school.”

SECTION 7. Section 302A-1312, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§302A-1312~~ **Six-year program and financial plan for school repair and maintenance.** (a) The department of accounting and general services, in consultation with the department of education, shall prepare a six-year program and financial plan for school repair and maintenance which shall be:

- (1) Based on:
 - (A) Estimated preventive and scheduled maintenance costs;
 - (B) Budgeted recurring maintenance;
 - (C) Health and safety requirements; and
 - (D) Legal mandates;
- (2) Insofar as is practical, prepared in accordance with the principles and procedures contained in section 514A-83.6; and
- (3) Submitted initially to the legislature not less than thirty days prior to the convening of the 2002 regular session, with annual funding requirements for the physical plant operations and maintenance account submitted not less than thirty days prior to the convening of the 2002 regular session and each regular session thereafter;

provided that the governor may incorporate the six-year program and financial plan required by this subsection into the six-year program and financial plan required by section 37-69, if the plan required by this subsection is incorporated without reductions or restrictions.

(b) The department of accounting and general services, in consultation with the department of education, shall develop and maintain a facilities physical analysis report and a facilities financial analysis report for each public school. These reports shall be posted electronically on the Internet.

(c) For the purposes of this section, the comptroller shall develop and implement appropriate planning procedures and follow-up accountability reports to ensure sound planning, control, and accountability in the use of moneys allocated by the legislature, as prescribed by section 302A-1309. The department of accounting and general services shall submit an annual report to the legislature, which shall include:

- (1) The priority listing established by section 302A-1505;
- (2) List of projects initiated by the department of accounting and general services; and
- (3) List of projects completed with associated actual cost.”

SECTION 8. Section 302A-1505, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each school shall meet with the [department] departments of education and accounting and general services on an annual basis to advise the department of school needs. Before any repair and maintenance projects for the upcoming fiscal year are implemented, each individual school administration shall prioritize and approve its repair and maintenance needs, and approve the scope of the implementation plan for the individual projects. After schools have prioritized their repair and maintenance projects, a statewide list shall be prepared and reviewed by the department of accounting and general services, and reviewed and approved by the department of education; provided that the department of education may make adjustments among schools and districts. Each school repair and maintenance priority listing shall be submitted by the department of education to the department of accounting and general services for implementation. Each listing shall be posted electronically on the Internet. The department of accounting and general services shall implement the school repair and maintenance program in accordance with the priorities set forth by the department of education. Where there are differing views as to priorities, the department of education shall make the final decision.”

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect on July 1, 2003.

(Approved June 17, 2003.)

ACT 189

S.B. NO. 337

A Bill for an Act Relating to the Management of School Facilities.

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

SECTION 1. The department of education shall convert forty-two full-time equivalent (42.00 FTE) business assistant positions from temporary status to permanent status.

SECTION 2. This Act shall take effect on July 1, 2003.

(Approved June 17, 2003.)

ACT 190

S.B. NO. 617

A Bill for an Act Relating to Criminal Offenses.

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

SECTION 1. The judicial council of Hawaii, established pursuant to section 601-4, Hawaii Revised Statutes, shall convene a task force to engage in a comprehensive review of criminal charging procedures for the purpose of recommending to the legislature amendments, if any, to existing procedures.

The task force shall serve without compensation and its membership shall be a balanced representation of interested parties in the community. The task force shall include but not be limited to representatives of:

- (1) The judiciary;

- (2) The department of the attorney general;
- (3) The departments of the county prosecuting attorneys;
- (4) The office of the public defender;
- (5) The county police departments;
- (6) Private citizens interested in criminal law and civil liberties; and
- (7) Attorneys in private practice involving the criminal law.

In addition to a review of existing criminal charging procedures in Hawaii, the task force shall review:

- (1) Differing charging procedures throughout the nation;
- (2) Applicable state statutes and rules from jurisdictions other than Hawaii;
- (3) Cost factors involved with various charging procedures used in other jurisdictions;
- (4) Evaluations of statutes and charging procedures and the anticipated impact of enacting similar laws in Hawaii; and
- (5) Other relevant issues as deemed appropriate for discussion by the task force.

Findings shall provide the legislature with factual information, the national experience, and “best practices” for the purpose of assisting the legislature in determining and developing the most appropriate criminal charging procedures for Hawaii. Findings shall specifically include but are not limited to:

- (1) A compilation of the relevant Hawaii statutes and rules;
- (2) A compilation of the number of cases in each circuit of Hawaii affected by the proposed change in charging procedure;
- (3) A compilation of statutes and charging practices in other jurisdictions; and
- (4) An evaluation of statutes and charging practices and their impact on the administration of justice.

The task force shall report its findings and recommendations to the legislature no later than twenty days before the convening of the regular session of 2004.

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

(Approved June 17, 2003.)

ACT 191

H.B. NO. 1361

A Bill for an Act Relating to the Medicaid Prescription Drug Expansion Program.

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

SECTION 1. The expansion of prescription drug benefits under the medicaid program, established by section 346-59.8, Hawaii Revised Statutes, enacted by Act 75, Session Laws of Hawaii 2002, provides for discounted prescription drugs to qualified individuals whose incomes are at or below three hundred per cent of the federal poverty level. Since the enactment of Act 75, the Centers for Medicare and Medicaid Services have indicated that medicaid expansions will be limited to individuals with incomes not exceeding two hundred per cent of the federal poverty level.

The purpose of this Act is to amend section 346-59.8, Hawaii Revised Statutes, to ensure federal approval and funding of the medicaid prescription drug expansion program by allowing income eligibility limits to be lower than three hundred per cent as currently specified in section 346-59.8, Hawaii Revised Statutes, if necessary for federal Centers for Medicare and Medicaid Services approval.

SECTION 2. Section 346-59.8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall provide for an expansion of prescription drug benefits under the medicaid program, which shall offer discounted prescription drugs to qualified individuals whose income is at or below ~~[three]~~:

- (1) Three hundred per cent of the federal poverty level[-]; or
- (2) Any other maximum income limit established by the Centers for Medicare and Medicaid Services for approval of federal funding for this program; and
- (3) Meets the eligibility criteria required by the Centers for Medicare and Medicaid Services.”

SECTION 3. Act 75, Session Laws of Hawaii 2002, is amended by amending section 4 to read as follows:

“SECTION 4. There is appropriated out of the medicaid prescription drug rebate special fund the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2002-2003 for the following purposes:

- (1) Paying \$1 to a participating ~~[pharmacist]~~ pharmacy under the medicaid program for each prescription written for a qualified individual; provided that:
 - (A) The department of human services obtains a waiver from the federal government to provide prescription drugs at medicaid rates to qualified individuals; and
 - (B) “Qualified individual” means an individual whose income is at or below ~~[three]~~:
 - (i) Three hundred per cent of the federal poverty level; or
 - (ii) Any other maximum income limit established by the Centers for Medicare and Medicaid Services for approval of federal funding for the expansion of prescription drug benefits under the medicaid program; and
 - (iii) Meets the eligibility criteria required by the Centers for Medicare and Medicaid Services; and
- (2) Administrative costs associated with the ~~[medicaid]~~ expansion of prescription drug [expansion] benefits under the medicaid program, including salary and benefits of eight full-time equivalent employees and related operating costs including lease rent, equipment, consultant contracts, and contractual services of the medicaid pharmacy fiscal agent.

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

SECTION 4. Act 75, Session Laws of Hawaii 2002, is amended by amending section 7 to read as follows:

“SECTION 7. This Act shall take effect on July 1, 2002[-], and shall be repealed on July 1, 2006.”

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

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

(Approved June 17, 2003.)

ACT 192

S.B. NO. 637

A Bill for an Act Relating to Missing Children.

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

SECTION 1. The legislature finds that the Hawaii missing children's clearinghouse trust fund, created in 1997 under section 28-122, Hawaii Revised Statutes (HRS), has disappointed advocates for locating, protecting, and recovering missing children. Potential private donors to the fund are under the impression that the fund belongs to the attorney general, because section 28-122(d), HRS, provides that the fund is "administered by the department of the attorney general unless specifically appropriated to the clearinghouse trust fund". Therefore, there has reportedly been a reluctance on the part of private donors to contribute to the fund.

The legislature further finds that under section 28-122(a), HRS, the Hawaii missing children's clearinghouse trust fund was created as a separate fund of the Hawaii Justice Foundation, a Hawaii nonprofit entity. Currently, there are no state moneys in the fund, and private donations constitute the balance of approximately \$50,000.

The purpose of this Act is to repeal the Hawaii missing children's clearinghouse trust fund, and to transfer the balance of the funds to the newly created Friends of the Missing Child Center Hawaii, a Hawaii nonprofit corporation, formed for the same express purpose of locating, recovering, and protecting missing children.

SECTION 2. Section 28-122, Hawaii Revised Statutes, is repealed.

SECTION 3. Section 28-123, Hawaii Revised Statutes, is repealed.

SECTION 4. Section 28-124, Hawaii Revised Statutes, is repealed.

SECTION 5. The moneys in the Hawaii missing children's clearinghouse trust fund as of the effective date of this Act shall be transferred to the Friends of the Missing Child Center Hawaii, a Hawaii nonprofit corporation, to be expended for the purpose of locating, recovering, and protecting missing children, and to promote community awareness of the problem of missing children.

SECTION 6. Statutory material to be repealed is bracketed and stricken.¹

SECTION 7. This Act shall take effect on January 1, 2004.

(Approved June 18, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 193

H.B. NO. 638

A Bill for an Act Relating to the Hawaii State Public Library System.

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

SECTION 1. The legislature finds that library books and materials, including electronic resources of the Hawaii state public library system, should be supported with ongoing stable funding. Demands are increasingly made on the system to

provide these materials in new formats, to keep up with new technology, and to respond to the requests of individuals to their respective local libraries.

The purpose of this Act is to provide an opportunity for the public to support the Hawaii state public library system by making a contribution toward the libraries' need for additional funds for library books and materials through the implementation of a tax check-off box for the state library system.

SECTION 2. Section 235-102.5, Hawaii Revised Statutes, is amended to read as follows:

“§235-102.5 Income check-off authorized. (a) Any individual whose state income tax liability for any taxable year is \$2 or more may designate \$2 of the liability to be paid over to the Hawaii election campaign fund, any other law to the contrary notwithstanding, when submitting a state income tax return to the department of taxation. In the case of a joint return of a husband and wife having a state income tax liability of \$4 or more, each spouse may designate that \$2 be paid to the fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. An explanation shall be included which clearly states that the check-off does not constitute an additional tax liability. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made whether by an original or amended return may not be revoked.

(b) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$2 or more may designate \$2 of the refund to be deposited into the school-level minor repairs and maintenance special fund established by section 302A-1504.5, when submitting a state income tax return to the department of taxation. In the case of a joint return of a husband and wife having a state income tax refund of \$4 or more, each spouse may designate that \$2 be deposited into the special fund. The director of taxation shall revise the individual state income tax return form to allow the designation of contributions to the special fund on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked.

(c) Notwithstanding any law to the contrary, any individual whose state income tax refund for any taxable year is \$2 or more may designate \$2 of the refund to be paid over to the libraries special fund established by section 312-3.6, when submitting a state income tax return to the department of taxation. In the case of a joint return of a husband and wife having a state income tax refund of \$4 or more, each spouse may designate that \$2 be deposited into the special fund. The director of taxation shall revise the individual state income tax form to allow the designation of contributions to the fund on the face of the tax return and immediately above the signature lines. If no designation was made on the original tax return when filed, a designation may be made by the individual on an amended return filed within twenty months and ten days after the due date for the original return for such taxable year. A designation once made, whether by an original or amended return, may not be revoked.”

SECTION 3. Section 312-3.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury a libraries special fund into which shall be deposited all moneys collected pursuant to section 312-3.5[-], and all moneys designated to be paid to this fund pursuant to section 235-102.5(c).”

SECTION 4. The state librarian may receive privately donated moneys and use such moneys in any of the library system’s accounts or funds to support the operations of the library system, including the payment of staff salaries and expenses related to operations of library facilities; provided that the donor is advised that the donated moneys may be used for these purposes.

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

SECTION 6. This Act shall take effect upon its approval and shall apply to taxable years beginning after December 31, 2003.

(Approved June 18, 2003.)

ACT 194

H.B. NO. 373

A Bill for an Act Relating to Political Speech.

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

PART I

SECTION 1. The legislature finds that during the 2002 primary and general elections, candidates learned that persons who leased or rented property and who wanted to support a political candidate were sometimes prohibited by their landlords or landowners from placing campaign signs at their residence.

These situations bring to light a conflict between two separate, yet equally important rights—the citizen’s need to reasonably exercise political speech, and the ability of landowners to use their property without unreasonable government intrusion.

The common law has long held that every owner of real property has the right to restrain the use of land by grantees within limits “to prevent its appropriation to purposes which will impair the value or diminish the pleasure of the enjoyment of the land” that is retained. Browder, Cunningham, and Smith, *Basic Property Law*, at 662, citing 11 Gray 359, 11 Mass. 359, 71 Am. Dec. 716-17. As such, the courts have held that a personal covenant or agreement restricting the use of land is valid and binding in equity on a purchaser taking an estate with notice.

However, there are limitations on this common law right. Covenants or agreements that restrict the use of land must be “exercised reasonably, with a due regard to public policy, and without creating any unlawful restraint of trade.” Browder, Cunningham, and Smith, *supra*, at 662 (emphasis added).

The legislature further finds that the foundation of democracy rests on the ability of citizens to participate in and express political speech. In Palko v. Connecticut, 302 U.S. 319, Justice Cardozo characterized protection of speech as a “fundamental” liberty in part because “our history, political and legal,” recognized “freedom of thought and speech” as “the indispensable condition of nearly every other form of freedom.”

Accordingly, the legislature believes that a citizen's need to reasonably exercise political speech must be protected as long as it does not unreasonably interfere with the landowner's ability to use their property.

The purpose of this part is to regulate the use of personal covenants and agreements under chapter 521, Hawaii Revised Statutes, so that a tenant may exercise political speech in a reasonable manner. Specifically, this part provides that in a rental agreement for a single family residence, a landlord shall not prohibit a tenant from erecting, maintaining, or displaying an otherwise legal sign or outdoor advertising device that urges voters to vote for or against any person or issue; provided that reasonable restrictions are permissible to comply with applicable building and housing laws affecting health and public safety.

SECTION 2. Section 521-52, Hawaii Revised Statutes, is amended to read as follows:

“§521-52 Tenant to use properly. (a) The tenant shall comply with all obligations or restrictions, whether denominated by the landlord as rules, or otherwise, concerning the tenant's use, occupancy, and maintenance of the tenant's dwelling unit, appurtenances thereto, and the premises of which the dwelling unit is a part, if:

- (1) Such obligations or restrictions are brought to the attention of the tenant at the time of the tenant's entry into the rental agreement; or
 - (2) Such obligations or restrictions, if not so known by the tenant at the time of the tenant's entry into the rental agreement, are brought to the attention of the tenant and, if they work a substantial modification of the tenant's bargain under the rental agreement, are consented to in writing by the tenant.
- (b) No such obligation or restriction shall be enforceable against the tenant

unless:

- (1) It is for the purpose of promoting the convenience, safety, or welfare of the tenants of the property, or for the preservation of the landlord's property from abusive use, or for the fair distribution of services and facilities held out for the tenants generally;
- (2) It is reasonably related to the purpose for which it is established;
- (3) It applies to all tenants of the property in a fair manner; and
- (4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply.

(c) In a rental agreement for a single family residence, a landlord shall not prohibit a tenant from erecting, maintaining, or displaying an otherwise legal sign or outdoor advertising device that urges voters to vote for or against any person or issue; provided that reasonable restrictions are permissible for purposes of complying with applicable building and housing laws affecting health and safety.

~~[(e)]~~ (d) If the dwelling unit is an apartment in a condominium property regime the tenant shall comply with the bylaws of the association of apartment owners and if the dwelling unit is an apartment in a cooperative housing corporation the tenant shall comply with the bylaws of the corporation.”

PART II

SECTION 3. The legislature finds that political speech, including the posting of signs in support of a candidate or issue, is a unique and important manner in which our citizens can participate in the democratic process. In Hawaii, however, a citizen's right to post political signs is restricted by law to a fifty-five day period

surrounding an election. The legislature is concerned that this short time frame may not give our residents ample time to make their viewpoints known, and thus limits their ability to participate in the electoral process.

The legislature further finds that the restrictive time frame for posting political signs may violate our residents' right to freedom of speech and expression contained both in the state and federal constitutions. Federal court decisions from other jurisdictions make clear that political speech enjoys the highest form of protection under the federal constitution. Moreover, the state attorney general has issued a formal opinion that the provision of the Hawaii Revised Statutes that places durational limits on the posting of political signs is unconstitutional (Attorney General Opinion Letter 96-04). The legislature believes that the right of our citizens to post political signs and to participate in the democratic process should not be restricted to merely forty-five days prior to and ten days following an election.

SECTION 4. Section 445-112, Hawaii Revised Statutes, is amended to read as follows:

“§445-112 Where and when permitted. No person shall erect, maintain, or use a billboard or display any outdoor advertising device, except as provided in this section:

- (1) The display of official notices and signs, posted by order of any court or public office, or posted by any public officer in the performance of a public duty, or posted by any person required to do so by any law or rule having the force of law[-];
- (2) Any outdoor advertising device announcing a meeting or series of meetings is not prohibited by this section if displayed on the premises where the meeting or series of meetings will be or is being held. Meeting, as used in this section, includes all meetings regardless of whether open to the public or conducted for profit and includes but is not limited to sports events, conventions, fairs, rallies, plays, lectures, concerts, motion pictures, dances, and religious services[-];
- (3) Any outdoor advertising device indicating that the building or premises on which it is displayed is the residence, office, or place of business, commercial or otherwise, of any individual, partnership, joint venture, association, club, or corporation, and stating the nature of the business[-];
- (4) Any outdoor advertising device that advertises property or services that may be bought, rented, sold, or otherwise traded in on the premises or in the building on which the outdoor advertising device is displayed[-];
- (5) The offering for sale of merchandise bearing incidental advertising, including books, magazines, and newspapers, in any store, newsstand, vending machine, rack, or other place where such merchandise is regularly sold[-];
- (6) Any outdoor advertising device offering any land, building, or part of a building for sale or rent, if displayed on the property so offered or on the building of which part is so offered[-];
- (7) Any outdoor advertising device carried by persons or placed upon vehicles used for the transportation of persons or goods[-];
- (8) Any outdoor advertising device warning the public of dangerous conditions that they may encounter in nearby sections of streets, roads, paths, public places, power lines, gas and water mains, or other public utilities[-];
- (9) Signs serving no commercial purpose that indicate places of natural beauty, or of historical or cultural interest and that are made according

- to designs approved by the department of business, economic development, and tourism[-];
- (10) Any outdoor advertising device or billboard erected, placed, or maintained upon a state office building, if erected, placed, or maintained by authority of a state agency, department, or officer for the sole purpose of announcing cultural or educational events within the State, and if the design and location thereof has been approved by the department of business, economic development, and tourism[-];
 - (11) Signs urging voters to vote for or against any person or issue, ~~[if erected not more than forty five days before, and removed not less than ten days after, the election in which the person is a candidate or in which the issue is to be voted upon.]~~ may be erected, maintained, and used, except where contrary to or prohibited by law;
 - (12) Signs stating that a residence that is offered for sale, lease, or rent is open for inspection at the actual time the sign is displayed and showing the route to the residence; provided that the sign contains no words or designs other than the words "Open House", the address of the residence, the name of the person or agency responsible for the sale, and an arrow or other directional symbol and is removed during such time as the residence is not open for inspection[-];
 - (13) The erection, maintenance, and use of billboards if the billboard is used solely for outdoor advertising devices not prohibited by this section[-];
 - (14) The continued display and maintenance of outdoor advertising devices actually displayed on July 8, 1965, in accordance with all laws and ordinances immediately theretofore in effect[-];
 - (15) The continued maintenance of any billboard actually maintained on July 8, 1965, and the display thereon of the same or new advertising devices, all in accordance with all laws and ordinances in effect immediately prior to July 9, 1965[-];
 - (16) Any outdoor advertising device displayed with the authorization of the University of Hawaii on any scoreboard of any stadium owned by the university. An outdoor advertising device displayed under this paragraph shall be on the front of the scoreboard and face the interior of the stadium[-];
 - (17) Any temporary outdoor advertising device attached to or supported by the structure of any stadium owned by the University of Hawaii, located within and facing the interior of the stadium, and authorized to be displayed by the university. For the purpose of this paragraph, "temporary" means displayed for a short period before the official start of organized athletic competition, during the organized athletic competition, and for a short period after the official end of the organized athletic competition; and
 - (18) Any outdoor advertising device displayed with the authorization of the stadium authority on any scoreboard of any stadium operated by the stadium authority. An outdoor advertising device displayed under this paragraph shall be on the front of the scoreboard and face the interior of the stadium."

PART III

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

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

(Approved June 18, 2003.)

ACT 195

H.B. NO. 1255

A Bill for an Act Making an Appropriation for the Office of Elections.

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

SECTION 1. The federal Help America Vote Act of 2002, P.L. 107-252, provides for payments to states to improve the administration of federal elections. The State could receive a projected \$5,000,000 to improve the administration of elections and to replace punch cards and lever machines. The State could also receive an estimated \$15,000,000 to meet the requirements of the Help America Vote Act of 2002, train poll workers, provide voter education, and improve the administration of federal elections. The Help America Vote Act of 2002 requires the development of a state plan, matching funds of approximately five per cent, and maintenance of effort funding to maintain the expenditures of the State for activities funded to not less than the level of expenditures maintained by the State in the fiscal year ending prior to November 2000.

The purpose of this Act is to appropriate funds for the office of elections to meet the five per cent matching fund requirement of the Help America Vote Act of 2002.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2003-2004 and the same sum or so much thereof as may be necessary for fiscal year 2004-2005 for the office of elections to meet the five per cent matching fund requirement of the federal Help America Vote Act of 2002.

The sums appropriated shall be expended by the office of elections for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2003.

(Approved June 19, 2003.)

ACT 196

S.B. NO. 78

A Bill for an Act Relating to Elder Abuse.

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

SECTION 1. The purpose of this Act is to authorize the attorney general to seek civil penalties in dependent elder abuse cases.

SECTION 2. Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to part VI to be appropriately designated and to read as follows:

“§28- **Dependent elder abuse; suits by the State; civil penalties.** (a) The attorney general may bring a civil action on behalf of the State, against any caregiver who commits abuse of a dependent elder, to prevent, restrain, or remedy

such conduct. Any caregiver against whom a civil judgment is entered on a complaint alleging that the caregiver committed abuse against a dependent elder, shall be subject to a civil penalty of not less than \$500 nor more than \$1,000 for each day that the abuse occurred, and the costs of investigation.

(b) For the purposes of this section:

“Abuse” means actual or imminent physical injury, psychological abuse or neglect, sexual abuse, financial exploitation, negligent treatment, or maltreatment.

Abuse occurs where:

(1) Any dependent elder exhibits evidence of:

- (A) Substantial or multiple skin bruising or any other internal bleeding;
- (B) Any injury to skin causing substantial bleeding;
- (C) Malnutrition;
- (D) A burn or burns;
- (E) Poisoning;
- (F) The fracture of any bone;
- (G) A subdural hematoma;
- (H) Soft tissue swelling;
- (I) Extreme physical pain; or
- (J) Extreme mental distress which includes a consistent pattern of actions or verbalizations including threats, insults, or harassment, that humiliates, provokes, intimidates, confuses, and frightens the dependent elder;

and the injury is not justifiably explained, or where the history given is at variance with the degree or type of injury, or circumstances indicate that the injury is not the product of an accidental occurrence;

(2) Any dependent elder has been the victim of nonconsensual sexual contact or conduct by a caregiver, including but not limited to:

- (A) Sexual assault, molestation, sexual fondling, incest, prostitution;
- (B) Obscene or pornographic photographing, filming, or depiction;
- or
- (C) Other similar forms of sexual exploitation;

(3) Any dependent elder is provided with dangerous, harmful, or detrimental drugs as defined by section 712-1240; however, this paragraph shall not apply when such drugs are provided to the dependent elder pursuant to the direction or prescription of a practitioner, as defined in section 712-1240;

(4) Any dependent elder is subject to neglect.

(5) Any dependent elder appears to lack sufficient understanding or capacity to make or communicate responsible decisions concerning the dependent elder’s person, and appears to be exposed to a situation or condition which poses an imminent risk of death or risk of serious physical harm; or

(6) There is financial and economic exploitation.

“Caregiver” means any person who has undertaken the care, custody, or physical control of, or who has a legal or contractual duty to care for the health, safety, and welfare of a dependent elder, including, but not limited to, owners, operators, employees, or staff of:

- (1) Hospitals;
- (2) Hospices;
- (3) Adult residential care homes;
- (4) Developmentally disabled domiciliary homes;
- (5) Developmentally disabled adult foster homes;
- (6) Intermediate care facilities;

- (7) Skilled nursing facilities;
- (8) Special treatment facilities;
- (9) Assisted living facilities;
- (10) Adult foster family homes;
- (11) Adult day health care centers and adult day care programs;
- (12) Independent living centers;
- (13) Long-term care facilities;
- (14) Community care facilities for the elderly;
- (15) Respite care facilities;
- (16) Foster homes; and
- (17) Private residences used for commercial purposes to care for dependent elders.

“Dependent elder” means any person sixty-two years of age or older who, because of mental or physical impairment, is dependent upon another person, a care organization, or a care facility for personal health, safety, or welfare.

“Financial and economic exploitation” means the wrongful or negligent taking, withholding, misappropriation, or use of a dependent elder’s money, real property, or personal property. “Financial and economic exploitation” may include but is not limited to:

- (1) Breaches of fiduciary relationships such as the misuse of a power of attorney or the abuse of guardianship privileges, resulting in the unauthorized appropriation, sale, or transfer of property;
- (2) The unauthorized taking of personal assets;
- (3) The misappropriation, misuse, or unauthorized transfer of moneys belonging to the dependent elder from a personal or joint account; or
- (4) The intentional or negligent failure to effectively use a dependent elder’s income and assets for the necessities required for the elder’s support and maintenance.

The exploitations may involve coercion, manipulation, threats, intimidation, misrepresentation, or exertion of undue influence.

“Neglect” means the reckless disregard for the health, safety or welfare of a dependent elder, that results in injury, loss, or damage. “Neglect” includes, but is not limited to:

- (1) Failure to assist in personal hygiene, or in the provision of food, clothing, or shelter;
- (2) Failure to provide or arrange for necessary psychological, physical, or health care; except when such failure is in accordance with the dependent elder’s directive;
- (3) Failure to protect a dependent elder from known health or safety hazards; and
- (4) Failure to protect against known acts of abuse by third parties.”

SECTION 3. New statutory material is underscored.¹

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

(Approved June 24, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Mental Health.

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

SECTION 1. Chapter 431M, Hawaii Revised Statutes (HRS), mandates that certain levels of mental health and alcohol and drug abuse treatment benefits be included in health insurance coverage. The law was enacted by Act 202, Session Laws of Hawaii (SLH) 1988, and was to sunset on July 1, 1994. However, this date was extended twice by the legislature until it was finally repealed by Act 239, SLH 2002, thereby making chapter 431M permanent.

In 1999, the coverage requirements under chapter 431M, HRS, were amended by Act 121, SLH 1999, to require parity in mental illness benefits. Act 121 mandated that the coverage provided for serious mental illnesses be the same as that provided for other medical or surgical conditions. Act 121 was to sunset on July 1, 2005, a date that was amended by Act 243, SLH 2000, to June 30, 2003.

The legislature finds that the parity provision of section 431M-5, HRS, should be made permanent, consistent with the legislative Act making chapter 431M, HRS, permanent. Accordingly, the purpose of this Act is to make the requirement for parity in serious mental illness insurance benefits permanent. In addition, this Act clarifies the definition of "serious mental illness" and adds to its definition, bipolar types I and II.

SECTION 2. Section 431M-1, Hawaii Revised Statutes, is amended by amending the definition of "serious mental illness" to read as follows:

""Serious mental illness" means schizophrenia, schizo-affective disorder,¹ bipolar ~~[mood disorder,]~~ types I and II, as defined in the most recent version of the Diagnostic and Statistical Manual of the American Psychiatric Association, which is of sufficient severity to result in substantial interference with the activities of daily living."

SECTION 3. Act 121, Session Laws of Hawaii 1999, as amended by Act 243, section 8(2), Session Laws of Hawaii 2000, is amended by amending section 6 to read as follows:

~~"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 June 30, 2003]."~~

SECTION 4. Act 243, Session Laws of Hawaii 2000, is amended by amending section 11 to read as follows:

~~"SECTION 11. This Act shall take effect on July 1, 2001; provided that[; (1) Sections] 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]."~~

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

SECTION 6. This Act shall take effect on June 29, 2003.

(Approved June 24, 2003.)

Note

1. Prior to amendment "and" appeared here.

ACT 198

H.B. NO. 422

A Bill for an Act Relating to a Center for Nursing.

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

SECTION 1. The legislature finds that there is a need for a state center for nursing to ensure the quality of healthcare for the people of Hawaii. The center can proactively address issues of the State's current and future shortage of registered nurses and others within the healthcare workforce that provide nursing care. In particular, the primary nursing workforce issues are the supply and demand for nursing services, recruitment and retention of nurses and other healthcare personnel, and the development of a strategic plan.

The purpose of this Act is to establish a center for nursing to address nursing workforce issues.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**"CHAPTER
CENTER FOR NURSING**

§ **-1 Center for nursing; established.** (a) There is established within the University of Hawaii school of nursing and dental hygiene, a center for nursing.

(b) The dean of the school of nursing and dental hygiene, or the dean's designee, shall direct the activities of the center for nursing. There shall be an advisory board comprised of fifteen members appointed by the governor pursuant to section 26-34 to staggered terms as follows:

- (1) Five members from the business and labor community:
 - (A) One of whom shall represent the Healthcare Association of Hawaii;
 - (B) Two of whom shall represent other business entities; and
 - (C) Two of whom shall represent labor organizations;
- (2) Five members from the nursing profession:
 - (A) One of whom shall represent the American Organization of Nurse Executives;
 - (B) One of whom shall represent the Hawaii Government Employees Association; and
 - (C) Three of whom shall represent the Hawaii Nurses' Association, professional component;
- (3) Two members from among the State's nurse educators:
 - (A) One of whom shall be a doctorally-prepared nurse educator; and
 - (B) The other, a doctorally-prepared nurse researcher; and
- (4) Three members from community agencies or consumer groups with an interest in healthcare.

(c) The members of the advisory board for the center for nursing shall serve without compensation.

§ **-2 Board; powers and duties.** The advisory board of the center for nursing shall have the powers and duty to:

- (1) Employ an executive director and no more than two other staff positions, at least one of whom shall be an independent doctorally-prepared nurse researcher;
- (2) Adopt a mission statement and operational policy;
- (3) Elect a chairperson;
- (4) Establish committees of the board as needed;
- (5) Seek input from individuals and community groups interested in the issue of nursing shortages;
- (6) Implement the major functions of the center for nursing; and
- (7) Seek and accept nonstate funds for carrying out the mission of the center for nursing.

§ **-3 Functions of the center.** The center for nursing shall:

- (1) Collect and analyze data and prepare and disseminate written reports and recommendations regarding the current and future status and trends of the nursing workforce;
- (2) Conduct research on best practices and quality outcomes;
- (3) Develop a plan for implementing strategies to recruit and retain nurses; and
- (4) Research, analyze, and report data related to the retention of the nursing workforce.

§ **-4 Collaboration.** The University of Hawaii school of nursing and dental hygiene, the state board of nursing, other schools of nursing within the State, professional nursing organizations, employers in the healthcare industry, and labor unions representing nurses and healthcare workers shall collaborate with the center for nursing and provide workforce data to the center for nursing when requested.

§ **-5 Center for nursing special fund.** There is established in the treasury of the State a center for nursing special fund into which shall be deposited any legislative appropriations, federal or private grants, and any other funds collected for the purposes of this chapter. The fund shall be administered by the board of regents of the University of Hawaii, and moneys in the fund shall be expended to support the center's activities."

SECTION 3. Chapter 457, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§457- **Center for nursing fee.** Upon the issuance of a new license and at each license renewal period, each nurse shall pay an additional fee of \$40, which shall be deposited in a separate account in the compliance resolution fund established pursuant to section 26-9(o).”

SECTION 4. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Special out-of-school time instructional program fund under section 302A-1310;
- (2) School cafeteria special funds of the department of education;
- (3) Special funds of the University of Hawaii;
- (4) State educational facilities improvement special fund;
- (5) Convention center enterprise special fund under section 201B-8;
- (6) Special funds established by section 206E-6;
- (7) 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) Hawaii tobacco settlement special fund under section 328L-2;
- (24) Emergency and budget reserve fund under section 328L-3;
- (25) Probation services special fund under section 706-649;
- (26) High technology special fund under section 206M-15.5;
- (27) Public schools special fees and charges fund under section 302A-1130(f);
- (28) Cigarette tax stamp enforcement special fund established by section 28-14;
- (29) Cigarette tax stamp administrative special fund established by section 245-41.5;
- (30) Tobacco enforcement special fund established by section 28-15;
- (31) Sport fish special fund under section 187A-9.5;
- (32) Neurotrauma special fund under section 321H-4;
- (33) Deposit beverage container deposit special fund under section 342G-104; [and]
- (34) Glass advance disposal fee special fund established by section 342G-82; and
- (35) Center for nursing special fund under section -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 5. 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 out-of-school time instructional program 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 enterprise special fund established under section 201B-8;
 - (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 under section 231-3.2;
 - (20) Hawaii tobacco settlement special fund under section 328L-2;
 - (21) Emergency and budget reserve fund under section 328L-3;
 - (22) Probation services special fund under section 706-649;
 - (23) High technology special fund under section 206M-15.5;
 - (24) Public schools special fees and charges fund under section 302A-1130(f);
 - (25) Cigarette tax stamp enforcement special fund established by section 28-14;
 - (26) Cigarette tax stamp administrative special fund established by section 245-41.5;
 - (27) Tobacco enforcement special fund established by section 28-15;
 - (28) Sport fish special fund under section 187A-9.5; and
 - (29) Neurotrauma special fund under section 321H-4; and
 - (30) Center for nursing special fund under section -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 6. The director of commerce and consumer affairs shall disburse on a quarterly basis from the compliance resolution fund, established pursuant to section 26-9(o), to the credit of the center for nursing special fund all moneys deposited in the separate account established pursuant to section 457-

SECTION 7. There is appropriated out of the center for nursing special fund the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2003-2004 and the same sum or so much thereof as may be necessary for fiscal year 2004-2005 to the center for nursing to perform its duties under this Act.

The sums appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 8. There is appropriated out of the compliance resolution fund the sum of \$5,000 or so much thereof as may be necessary for fiscal year 2003-2004 to be deposited to the credit of the center for nursing special fund; provided that this sum shall be reimbursed from the center for nursing special fund to the compliance resolution fund by July 1, 2004.

SECTION 9.¹ The center for nursing shall submit a status report on its activities to the legislature no later than twenty days prior to the convening of the regular session of 2004.²

SECTION 10.¹ This Act shall take effect on July 1, 2003; provided that the amendments made to section 36-27, Hawaii Revised Statutes, by this Act shall not be repealed when that section is reenacted pursuant to Act 142, Session Laws of Hawaii 1998; and provided further that sections 3 and 6 shall be repealed on July 1, 2009.

(Approved June 24, 2003.)

Notes

1. Section number redesignated.
2. No Ramseyer clause.

ACT 199

H.B. NO. 507

A Bill for an Act Relating to Emergency Medical Technicians.

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 part II to be appropriately designated and to read as follows:

“§88- Unreduced allowance on service retirement; when applicable. In addition to those positions identified in section 88-74(1), and notwithstanding any law in this part that requires a member to attain age fifty-five to qualify for an unreduced service retirement allowance, if the member has at least thirty years of credited service through June 30, 2003; twenty-nine years of credited service on or after July 1, 2004; twenty-eight years of credited service on or after July 1, 2005; twenty-seven years of credited service on or after July 1, 2006; twenty-six years of credited service on or after July 1, 2007; and twenty-five years of credited service on or after July 1, 2008, as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, then upon retirement and irrespective of age, that member’s service retirement allowance shall not be reduced for actuarial purposes.”

SECTION 2. Section 88-21, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Emergency medical technician” means a person regularly employed by the city and county of Honolulu’s emergency services department whose principal duty is to provide emergency medical services and who is licensed to provide emergency medical services.”

SECTION 3. Section 88-281, Hawaii Revised Statutes, is amended to read as follows:

“**§88-281 Service retirement.** (a) A member who has ten years of credited service and has attained age sixty-two, or a member with thirty years credited service who has attained the age of fifty-five, shall become eligible to receive a retirement allowance after the member has terminated service.

(b) If a member has at least twenty-five years of credited service as a sewer worker or as a water safety officer of which the last five or more years prior to retirement is credited in such a capacity, then the sewer worker or water safety officer shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

(c) A member who has twenty years of credited service and has attained age fifty-five shall be eligible to receive an early retirement allowance reduced for age after the member has terminated service.

(d) A member who has ten years of credited service and terminates service prior to attaining age sixty-two shall have a vested right and shall be eligible to receive a retirement allowance when the member has attained age sixty-five.

(e) If a member has at least thirty years of credited service through June 30, 2003; twenty-nine years of credited service on or after July 1, 2004; twenty-eight years of credited service on or after July 1, 2005; twenty-seven years of credited service on or after July 1, 2006; twenty-six years of credited service on or after July 1, 2007; and twenty-five years of credited service on or after July 1, 2008, as an emergency medical technician, of which the last five or more years prior to retirement is credited service in that capacity, the emergency medical technician shall be eligible to receive a retirement benefit unreduced for age after the member has terminated service.

~~(e)~~ (f) A member may retire upon the written application to the board, specifying the desired date of retirement, which shall be not less than thirty days nor more than one hundred fifty days subsequent to the date of filing. Retirement shall be effective on the first day of a month, except for the month of December when retirement on the first or last day of the month shall be allowed.

~~(f)~~ (g) In the event of the death of a member after the date of the filing of the member’s written application to retire, but prior to the effective date of retirement, the designated beneficiary, otherwise the personal representative of the member’s estate shall receive the allowance payable under the option selected by the member; provided that the member meets the eligibility requirements to retire on the member’s date of death. The designated beneficiary shall be eligible for a retirement benefit no earlier than thirty days from the date the application was filed or the day following the member’s date of death, whichever is later. Retirement benefits shall be effective on the first day of a month, except for the month of December when benefits shall be effective on the first or last day of the month.”

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

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

(Approved June 24, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 200

H.B. NO. 200

A Bill for an Act Relating to the State Budget.

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

PART I. GENERAL PROVISIONS

SECTION 1. SHORT TITLE. This Act shall be known and may be cited as the General Appropriations Act of 2003.

SECTION 2. DEFINITIONS. Unless otherwise clear from the context, as used in this Act:

- (a) "Program ID" means the unique identifier for the specific program, and consists of the abbreviation for the organization responsible for carrying out the program, followed by the organization number for the program.
- (b) "Expending agency" means the executive department, independent commission, bureau, office, board, or other establishment of the state government (other than the legislature, Office of Hawaiian Affairs and judiciary), the political subdivisions of the State, or any quasi-public institution supported in whole or in part by state funds, which is authorized to expend specified appropriations made by this Act. Abbreviations where used to denote the expending agency shall mean the following:
 - AGR Department of Agriculture
 - AGS Department of Accounting and General Services
 - ATG Department of the Attorney General
 - BED Department of Business, Economic Development and Tourism
 - BUF Department of Budget and Finance
 - CCA Department of Commerce and Consumer Affairs
 - DEF Department of Defense
 - EDN Department of Education
 - GOV Office of the Governor
 - HHL Department of Hawaiian Home Lands
 - HMS Department of Human Services
 - HRD Department of Human Resources Development
 - HTH Department of Health
 - LBR Department of Labor and Industrial Relations
 - LNR Department of Land and Natural Resources
 - LTG Office of the Lieutenant Governor
 - PSD Department of Public Safety
 - SUB Subsidies
 - TAX Department of Taxation
 - TRN Department of Transportation
 - UOH University of Hawaii
 - CCH City and County of Honolulu
 - COH County of Hawaii
 - COK County of Kauai
 - COM County of Maui
- (c) "Means of financing," or "MOF" means the source from which funds are appropriated, or authorized, as the case may be, to be expended for the programs and projects specified in this Act. All appropriations are

followed by letter symbols. Such letter symbols, where used, shall have the following meaning:

- A general funds
- B special funds
- C general obligation bond fund
- D general obligation bond fund with debt service cost to be paid from special funds
- E revenue bond funds
- J federal aid interstate funds
- K federal aid primary funds
- L federal aid secondary funds
- M federal aid urban funds
- N other federal funds
- R private contributions
- S county funds
- T trust funds
- U interdepartmental transfers
- W revolving funds
- X other funds

- (d) "Position ceiling" means the maximum number of permanent positions that an expending agency is authorized for a particular program during a specified period or periods, as denoted by an asterisk.
- (e) "Capital project number" means the official number of the capital project, as assigned by the responsible organization.

PART II. PROGRAM APPROPRIATIONS

SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 2003, and ending June 30, 2005. 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 fiscal 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 2003-04	M O F	FISCAL YEAR 2004-05	M O F
A. ECONOMIC DEVELOPMENT							
1.	BED101	BUSINESS DEVELOPMENT AND MARKETING					
	OPERATING		BED	15.00*		15.00*	
				1,655,276A		1,600,391A	
2.	BED102	BUSINESS SERVICES					
	OPERATING		BED	12.00*		14.00*	
			BED	1,453,865A		1,529,129A	
			BED	199,768B		199,768B	
			BED	2.00*		2.00*	
			BED	963,832W		821,915W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
3.	BED107	FOREIGN TRADE ZONE					
	OPERATING		BED	21.00*		21.00*	
				1,951,051B		1,951,051B	
4.	BED120	ENERGY AND NATURAL RESOURCES					
	OPERATING		BED	12.00*		12.00*	
			BED	1,160,057A		1,160,057A	
				3,314,706N		3,314,706N	
5.	BED142	GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT					
	OPERATING		BED	32.00*		32.00*	
				1,935,045A		1,935,045A	
6.	BED113	TOURISM					
	OPERATING		BED	25,000A			A
				3.00*		3.00*	
			BED	109,000,000B		109,000,000B	
7.	AGR101	FINANCIAL ASSISTANCE FOR AGRICULTURE					
	OPERATING		AGR	10.00*		10.00*	
			AGR	1,016,965B		1,025,173B	
				5,000,000W		5,000,000W	
8.	AGR122	PLANT, PEST, AND DISEASE CONTROL					
	OPERATING		AGR	94.00*		94.00*	
			AGR	4,485,502A		4,485,502A	
			AGR	324,581N		324,581N	
			AGR	363,600T		363,600T	
				1.00*		1.00*	
			AGR	171,165U		171,165U	
			AGR	58,360W		58,360W	
9.	AGR131	RABIES QUARANTINE					
	OPERATING		AGR	45.00*		45.00*	
				3,025,264B		3,027,864B	
10.	AGR132	ANIMAL DISEASE CONTROL					
	OPERATING		AGR	23.50*		23.50*	
			AGR	1,155,974A		1,155,974A	
				282,481U		282,481U	
11.	LNR172	FORESTRY - PRODUCTS DEVELOPMENT					
	OPERATING		LNR	19.00*		19.00*	
			LNR	722,154A		722,154A	
				700,000B		700,000B	
				3.00*		3.00*	
			LNR	425,193N		425,193N	
12.	AGR151	QUALITY AND PRICE ASSURANCE					
	OPERATING		AGR	29.00*		29.00*	
				1,406,243A		1,406,243A	
				2.00*		2.00*	
			AGR	262,492B		262,492B	
			AGR	52,424N		52,424N	
			AGR	300,000T		300,000T	
			AGR	447,132W		451,112W	
13.	AGR171	AGRICULTURAL DEVELOPMENT AND MARKETING					
				19.00*		19.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
	OPERATING		AGR	1,367,296A		1,367,296A	
			AGR	75,000N		75,000N	
14.	AGR141 - AGRICULTURAL RESOURCE MANAGEMENT			2.00*		2.00*	
	OPERATING		AGR	253,401A		253,401A	
				3.00*		3.00*	
			AGR	390,907B		391,097B	
				10.00*		10.00*	
	INVESTMENT CAPITAL		AGR	1,064,811W		1,064,811W	
			AGR	2,550,000C			C
			AGR	150,000N			N
15.	AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH			1.00*		1.00*	
	OPERATING		AGR	735,279A		685,279A	
			AGR	3,396,826W		3,346,826W	
16.	AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE			29.00*		29.00*	
	OPERATING		AGR	1,510,188A		1,510,188A	
17.	LNR153 - COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT			9.00*		9.00*	
	OPERATING		LNR	762,186A		762,186A	
			LNR	300,000B		300,000B	
			LNR	308,210N		308,210N	
18.	AGR153 - AQUACULTURE DEVELOPMENT PROGRAM			8.00*		8.00*	
	OPERATING		AGR	490,996A		490,996A	
			AGR	30,000B		30,000B	
			AGR	78,747N		78,747N	
	INVESTMENT CAPITAL		AGR	500,000C			C
19.	BED143 - HIGH TECHNOLOGY DEVELOPMENT CORPORATION			1.50*		1.50*	
	OPERATING		BED	1,178,663A		1,046,884A	
				1.50*		1.50*	
			BED	2,080,223B		2,218,427B	
			BED	2,006,787N		2,006,787N	
			BED	1,500,000W		1,500,000W	
20.	BED145 - HAWAII STRATEGIC DEVELOPMENT CORPORATION						
	OPERATING		BED		A	153,297A	
			BED	427,262W			W
21.	BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY						
	OPERATING		BED	597,510A		397,790A	
			BED	2,607,180B		3,661,122B	
			BED	6,550,213N		6,550,213N	
22.	LNR141 - WATER AND LAND DEVELOPMENT			3.00*		3.00*	
	OPERATING		LNR	275,779A		275,779A	
			LNR	110,000W		110,000W	
	INVESTMENT CAPITAL		LNR	1,400,000C			C
23.	BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY			2.00*		2.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
	OPERATING		BED	139,537A		139,537A	
			BED	2,500,000B		2,500,000B	
			BED	207,000W		205,000W	
	INVESTMENT CAPITAL		BED	1,312,000C		1,327,000C	
24.	BED151 - ALOHA TOWER DEVELOPMENT CORPORATION				1.00*		1.00*
	OPERATING		BED	1,525,689B		1,525,689B	
B. EMPLOYMENT							
1.	LBR111 - PLACEMENT SERVICES				4.30*		4.30*
	OPERATING		LBR	282,455A		282,455A	
			LBR	9,800,412B		9,800,412B	
			LBR	119.20*		119.20*	
			LBR	49,182,640N		49,182,640N	
			LBR	1,316,913U		1,330,287U	
2.	LBR135 - WORKFORCE DEVELOPMENT COUNCIL				3.00*		3.00*
	OPERATING		LBR	174,335A		174,335A	
			LBR	432,921N		432,921N	
3.	LBR143 - OCCUPATIONAL SAFETY AND HEALTH				43.00*		43.00*
	OPERATING		LBR	2,156,437A		2,156,437A	
			LBR	25.00*		25.00*	
			LBR	1,821,121N		1,821,121N	
4.	LBR152 - WAGE STANDARDS AND FAIR EMPLOYMENT PRACTICES				27.35*		27.35*
	OPERATING		LBR	1,198,926A		1,198,926A	
			LBR	53,131U		53,131U	
5.	LBR153 - CIVIL RIGHTS COMMISSION				21.50*		21.50*
	OPERATING		LBR	1,117,684A		1,117,684A	
			LBR	4.00*		4.00*	
			LBR	467,646N		467,646N	
6.	LBR161 - PUBLIC AND PRIVATE EMPLOYMENT				2.00*		2.00*
	OPERATING		LBR	459,538A		459,538A	
7.	LBR171 - UNEMPLOYMENT COMPENSATION				231.90*		231.90*
	OPERATING		LBR	166,610,592B		166,610,592B	
			LBR	14,663,088N		14,663,088N	
8.	LBR183 - DISABILITY COMPENSATION				112.00*		112.00*
	OPERATING		LBR	4,868,853A		4,868,853A	
			LBR	4.00*		4.00*	
			LBR	23,675,713B		23,675,713B	
9.	HMS802 - VOCATIONAL REHABILITATION				93.93*		93.93*
	OPERATING		HMS	3,865,138A		3,825,138A	
				93.93*		93.93*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			HMS	10,719,862N		10,784,036N	
			HMS	1,330,200W		1,330,200W	
		INVESTMENT CAPITAL	HMS	500,000C			C
10.	LBR901 - DLIR - DATA GATHERING, RESEARCH, AND ANALYSIS						
				8.88*		8.88*	
	OPERATING		LBR	691,653A		691,653A	
				29.12*		29.12*	
			LBR	2,398,369N		2,398,369N	
11.	LBR902 - GENERAL ADMINISTRATION						
				27.66*		27.66*	
	OPERATING		LBR	1,459,237A		1,459,237A	
				36.68*		36.68*	
			LBR	2,930,195N		2,930,195N	
12.	LBR903 - OFFICE OF COMMUNITY SERVICES						
				4.00*		4.00*	
	OPERATING		LBR	4,461,565A		4,321,565A	
				3.00*		3.00*	
	INVESTMENT CAPITAL		LBR	5,909,960N		5,909,960N	
				3,825,000C			C
13.	LBR812 - LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD						
				12.00*		12.00*	
	OPERATING		LBR	675,316A		675,316A	
C. TRANSPORTATION FACILITIES							
1.	TRN102 - HONOLULU INTERNATIONAL AIRPORT						
				648.75*		648.75*	
	OPERATING		TRN	103,919,080B		90,967,840B	
				4,415,000N		2,600,000N	
	INVESTMENT CAPITAL		TRN	700,000B			B
			TRN	3,800,000E		20,000,000E	
			TRN	6,000,000N		25,000,000N	
			TRN	2,300,000X			X
2.	TRN104 - GENERAL AVIATION						
				30.00*		30.00*	
	OPERATING		TRN	5,124,225B		5,075,932B	
	INVESTMENT CAPITAL		TRN	50,000B		50,000B	
			TRN			400,000N	
3.	TRN111 - HILO INTERNATIONAL AIRPORT						
				80.00*		80.00*	
	OPERATING		TRN	11,416,928B		14,631,182B	
	INVESTMENT CAPITAL		TRN	750,000B			B
			TRN	300,000E			E
			TRN	600,000N			N
4.	TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOLE						
				94.00*		94.00*	
	OPERATING		TRN	13,125,007B		10,455,041B	
			TRN	495,000N		693,000N	
	INVESTMENT CAPITAL		TRN	1,500,000E			E
5.	TRN116 - WAIMEA-KOHALA AIRPORT						
				2.00*		2.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		OPERATING	TRN	493,178B		271,978B	
6.	TRN118	UPOLO AIRPORT OPERATING	TRN	62,889B		28,389B	
7.	TRN131	KAHULUI AIRPORT		172.00*		172.00*	
		OPERATING	TRN	21,220,868B		23,516,579B	
		INVESTMENT CAPITAL	TRN	7,500,000E		E	
			TRN	14,120,000N		N	
8.	TRN133	HANA AIRPORT		2.00*		2.00*	
		OPERATING	TRN	1,105,272B		122,272B	
9.	TRN135	KAPALUA AIRPORT		6.00*		6.00*	
		OPERATING	TRN	1,381,018B		876,018B	
10.	TRN141	MOLOKAI AIRPORT		15.00*		15.00*	
		OPERATING	TRN	1,994,732B		2,665,506B	
11.	TRN143	KALAUPAPA AIRPORT		1.00*		1.00*	
		OPERATING	TRN	350,727B		50,727B	
12.	TRN151	LANAI AIRPORT		10.00*		10.00*	
		OPERATING	TRN	2,106,132B		1,698,702B	
13.	TRN161	LIHUE AIRPORT		108.00*		108.00*	
		OPERATING	TRN	12,437,656B		12,917,212B	
			TRN	577,500N		N	
		INVESTMENT CAPITAL	TRN	2,500,000B		B	
			TRN	9,000,000E		E	
14.	TRN163	PORT ALLEN AIRPORT OPERATING	TRN	1,860B		1,860B	
15.	TRN195	AIRPORTS ADMINISTRATION		117.00*		117.00*	
		OPERATING	TRN	94,107,898B		109,154,424B	
		INVESTMENT CAPITAL	TRN	10,025,000B		6,275,000B	
			TRN	4,700,000N		100,000N	
16.	TRN301	HONOLULU HARBOR		123.00*		123.00*	
		OPERATING	TRN	15,279,434B		14,359,029B	
		INVESTMENT CAPITAL	TRN	250,000B		2,500,000B	
			TRN	34,500,000E		E	
17.	TRN303	KALAELOA BARBERS POINT HARBOR		3.00*		3.00*	
		OPERATING	TRN	536,987B		536,987B	
		INVESTMENT CAPITAL	TRN	B		400,000B	
18.	TRN305	KEWALO BASIN		2.00*		2.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		OPERATING	TRN	978,555B		1,059,555B	
19.	TRN311	- HILO HARBOR					
		OPERATING	TRN	15.00*		15.00*	
				1,803,631B		1,832,047B	
20.	TRN313	- KAWAIHAE HARBOR					
		OPERATING	TRN	1.00*		1.00*	
				770,521B		519,105B	
21.	TRN331	- KAHULUI HARBOR					
		OPERATING	TRN	16.00*		16.00*	
		INVESTMENT CAPITAL	TRN	2,176,650B		2,138,650B	
			TRN	1,500,000E			E
22.	TRN341	- KAUNAKAKAI HARBOR					
		OPERATING	TRN	1.00*		1.00*	
				612,060B		462,060B	
23.	TRN361	- NAWILIWILI HARBOR					
		OPERATING	TRN	15.00*		15.00*	
		INVESTMENT CAPITAL	TRN	1,733,652B		1,734,652B	
			TRN	300,000B			B
24.	TRN363	- PORT ALLEN HARBOR					
		OPERATING	TRN	1.00*		1.00*	
				332,836B		293,836B	
25.	TRN351	- KAUMALAPAU HARBOR					
		OPERATING	TRN				
				257,000B		257,000B	
26.	TRN395	- HARBORS ADMINISTRATION					
		OPERATING	TRN	62.00*		62.00*	
		INVESTMENT CAPITAL	TRN	42,752,096B		40,073,733B	
			TRN	9,275,000B		1,775,000B	
			TRN	2,000,000N			N
27.	TRN501	- OAHU HIGHWAYS					
		OPERATING	TRN	264.00*		264.00*	
			TRN	44,368,085B		44,490,720B	
		INVESTMENT CAPITAL	TRN	800,000N		800,000N	
			TRN	42,995,000E		2,365,000E	
			TRN	43,020,000N		9,460,000N	
28.	TRN511	- HAWAII HIGHWAYS					
		OPERATING	TRN	126.00*		126.00*	
		INVESTMENT CAPITAL	TRN	19,238,820B		19,415,583B	
			TRN	3,400,000E		630,000E	
			TRN	1,200,000N		1,120,000N	
			TRN	1,000,000X			X
29.	TRN531	- MAUI HIGHWAYS					
		OPERATING	TRN	79.50*		79.50*	
		INVESTMENT CAPITAL	TRN	14,931,134B		15,563,174B	
			TRN	12,745,000E		210,000E	
			TRN	34,340,000N		840,000N	
			TRN	1,500,000X			X
30.	TRN541	- MOLOKAI HIGHWAYS					
				12.00*		12.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		OPERATING	TRN	1,007,378B		3,621,281B	
		INVESTMENT CAPITAL	TRN	365,000E			E
			TRN	560,000N			N
31.		TRN551 - LANAI HIGHWAYS					
		OPERATING	TRN	4.00*		4.00*	
				3,497,446B		295,413B	
32.		TRN561 - KAUAI HIGHWAYS					
		OPERATING	TRN	51.00*		51.00*	
		INVESTMENT CAPITAL	TRN	11,214,239B		10,840,562B	
			TRN	940,000E		2,020,000E	
			TRN	2,160,000N		2,060,000N	
33.		TRN595 - HIGHWAYS ADMINISTRATION					
		OPERATING	TRN	80.00*		80.00*	
			TRN	66,860,341B		69,247,855B	
			TRN	8,908,865N		8,908,865N	
		INVESTMENT CAPITAL	TRN	8,500,000B		8,500,000B	
			TRN	3,314,000E		3,024,000E	
			TRN	9,961,000N		10,001,000N	
34.		TRN597 - HIGHWAY SAFETY					
		OPERATING	TRN	36.00*		36.00*	
				5,922,255B		5,944,631B	
			TRN	3.00*		3.00*	
				3,577,276N		3,077,276N	
35.		TRN995 - GENERAL ADMINISTRATION					
		OPERATING	TRN	99.00*		99.00*	
			TRN	12,551,040B		13,319,721B	
			TRN	2,138,000N		2,200,000N	
			TRN	112,500R		112,500R	

D. ENVIRONMENTAL PROTECTION

1. HTH840 - ENVIRONMENTAL MANAGEMENT

		OPERATING	HTH	55.00*		55.00*	
				3,111,909A		3,111,909A	
			HTH	50.20*		50.20*	
				8,343,064B		8,343,064B	
			HTH	46.40*		46.40*	
				6,082,129N		6,082,129N	
			HTH	52.40*		52.40*	
		INVESTMENT CAPITAL	HTH	97,195,676W		97,195,676W	
			HTH	3,697,000C		3,697,000C	
			HTH	18,482,000N		18,482,000N	

2. AGR846 - PESTICIDES

		OPERATING	AGR	16.00*		16.00*	
				732,008A		732,008A	
			AGR	380,392N		380,392N	
			AGR	4.00*		4.00*	
				715,063W		715,063W	

3. LNR401 - AQUATIC RESOURCES

		OPERATING	LNR	27.00*		27.00*	
				2,241,259A		2,239,778A	
				1.00*		1.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			LNR	1,196,081N		1,205,132N	
4.	LNR402 - FORESTS AND WILDLIFE RESOURCES						
	OPERATING		LNR	56.00*		56.00*	
			LNR	3,079,295A		3,079,295A	
			LNR	1,017,735B		1,017,735B	
			LNR	7.00*		7.00*	
			LNR	5,119,532N		5,119,532N	
5.	LNR404 - WATER RESOURCES						
	OPERATING		LNR	21.00*		21.00*	
			LNR	1,620,977A		1,620,977A	
			LNR	3.00*		3.00*	
			LNR	342,766B		342,766B	
6.	LNR405 - CONSERVATION AND RESOURCES ENFORCEMENT						
	OPERATING		LNR	97.50*		97.50*	
			LNR	4,856,925A		4,856,925A	
			LNR	18.00*		18.00*	
			LNR	1,320,442B		1,320,442B	
			LNR	2.50*		2.50*	
			LNR	646,473N		646,473N	
			LNR	1.00*		1.00*	
			LNR	17,729W		17,729W	
7.	LNR407 - NATURAL AREA RESERVES AND MANAGEMENT						
	OPERATING		LNR	27.00*		27.00*	
			LNR	1,228,511A		1,228,511A	
			LNR	3,300,000B		3,300,000B	
8.	HTH850 - POLICY DEVELOPMENT, COORINATION, AND ANALYSIS FOR NATURAL PHYSICAL ENVIRONMENT						
	OPERATING		HTH	5.00*		5.00*	
				283,122A		283,122A	
9.	LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT						
	OPERATING		LNR	34.00*		34.00*	
			LNR	1,855,957A		1,855,957A	
			LNR	4.00*		4.00*	
	INVESTMENT CAPITAL		LNR	471,750B		511,823B	
			LNR	1,750,000C		1,750,000C	
10.	HTH849 - ENVIRONMENTAL HEALTH ADMINISTRATION						
	OPERATING		HTH	15.50*		15.50*	
			HTH	768,653A		768,653A	
			HTH	17.50*		17.50*	
			HTH	1,598,129N		1,598,129N	
			HTH	10.00*		10.00*	
			HTH	2,941,054W		2,941,054W	
E. HEALTH							
1.	HTH101 - TUBERCULOSIS CONTROL						
	OPERATING		HTH	33.00*		33.00*	
			HTH	2,285,494A		2,285,494A	
			HTH	2.00*		2.00*	
			HTH	1,318,876N		1,318,876N	
2.	HTH111 - HANSEN'S DISEASE SERVICES						
				69.00*		69.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
	OPERATING		HTH	4,448,744A		4,448,744A	
			HTH	3.00*		3.00*	
			HTH	695,669N		695,669N	
3.	HTH121 - STD/AIDS PREVENTION SERVICES			15.00*		15.00*	
	OPERATING		HTH	5,463,945A		5,463,945A	
			HTH	4.50*		4.50*	
			HTH	4,672,303N		4,672,303N	
4.	HTH131 - DISEASE OUTBREAK CONTROL			19.00*		19.00*	
	OPERATING		HTH	1,370,236A		1,370,236A	
			HTH	22.00*		22.00*	
			HTH	12,588,085N		12,588,085N	
5.	HTH141 - DENTAL DISEASES			25.60*		25.60*	
	OPERATING		HTH	1,610,135A		1,610,135A	
6.	HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM			13.00*		13.00*	
	OPERATING		HTH	38,027,956A		38,027,956A	
			HTH	3.00*		3.00*	
			HTH	1,356,757N		1,356,757N	
7.	HTH501 - DEVELOPMENTAL DISABILITIES			243.75*		243.75*	
	OPERATING		HTH	38,479,541A		38,338,173A	
			HTH	3.00*		3.00*	
			HTH	1,000,000B		1,000,000B	
8.	HTH530 - CHILDREN WITH SPECIAL HEALTH NEEDS SERVICES			121.75*		121.75*	
	OPERATING		HTH	9,742,839A		9,718,339A	
			HTH	3.00*		3.00*	
			HTH	1,273,228B		1,253,539B	
			HTH	40.00*		40.00*	
			HTH	4,834,427N		4,222,327N	
9.	HTH165 - WOMEN, INFANTS AND CHILDREN (WIC) SERVICES			116.50*		116.50*	
	OPERATING		HTH	33,677,385N		33,677,385N	
10.	HTH550 - MATERNAL AND CHILD HEALTH SERVICES			18.00*		18.00*	
	OPERATING		HTH	19,353,269A		19,441,625A	
			HTH	300,000B		300,000B	
			HTH	22.50*		22.50*	
			HTH	5,676,089N		5,674,872N	
			HTH	1.00*		1.00*	
			HTH	750,000U		750,000U	
11.	HTH180 - CHRONIC DISEASE MANAGEMENT AND CONTROL			20.80*		20.80*	
	OPERATING		HTH	1,117,554A		1,117,554A	
			HTH	18,000B		18,000B	
			HTH	3,362,821N		3,362,821N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
12.	HTH570 - COMMUNITY HEALTH NURSING						
	OPERATING		HTH	442.00*		442.00*	
			HTH	14,401,062A		14,401,062A	
				90,720B		90,720B	
13.	HTH595 - HEALTH RESOURCES ADMINISTRATION						
	OPERATING		HTH	32.00*		32.00*	
				3,653,656A		3,653,656A	
				2.00*		2.00*	
			HTH	52,842,603B		52,842,603B	
				6.50*		6.50*	
	INVESTMENT CAPITAL		HTH	817,504N		817,362N	
			HTH	750,000C			C
14.	HTH210 - HAWAII HEALTH SYSTEMS CORPORATION						
	OPERATING		HTH	31,220,000A			A
				2836.25*		2836.25*	
			HTH	260,637,937B		260,637,937B	
	INVESTMENT CAPITAL		HTH	20,171,000C			C
15.	HTH420 - ADULT MENTAL HEALTH - OUTPATIENT						
	OPERATING		HTH	226.00*		226.00*	
				49,591,759A		49,958,363A	
			HTH	2,507,430B		2,507,430B	
			HTH	1,620,229N		1,620,229N	
16.	HTH430 - ADULT MENTAL HEALTH - INPATIENT						
	OPERATING		HTH	561.50*		561.50*	
				43,392,741A		42,635,879A	
17.	HTH440 - ALCOHOL AND DRUG ABUSE						
	OPERATING		HTH	22.00*		22.00*	
				9,192,364A		8,892,364A	
			HTH	150,000B		150,000B	
				6.00*		6.00*	
			HTH	10,859,867N		10,859,867N	
18.	HTH460 - CHILD AND ADOLESCENT MENTAL HEALTH						
	OPERATING		HTH	171.00*		171.00*	
				62,987,235A		63,011,735A	
			HTH	7,488,706B		7,488,706B	
			HTH	693,203N		693,203N	
			HTH	2,250,000U		2,250,000U	
19.	HTH495 - BEHAVIORAL HEALTH SERVICES ADMINISTRATION						
	OPERATING		HTH	65.00*		65.00*	
				7,435,392A		7,509,802A	
			HTH	443,502N		443,502N	
20.	HTH610 - ENVIRONMENTAL HEALTH SERVICES						
	OPERATING		HTH	139.00*		139.00*	
				6,485,374A		6,485,374A	
				7.00*		7.00*	
			HTH	707,693B		707,693B	
				7.00*		7.00*	
			HTH	515,230N		515,230N	
				2.00*		2.00*	
			HTH	74,974U		74,974U	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
21.	HTH710 - STATE LABORATORY SERVICES						
	OPERATING		HTH		86.00*		86.00*
				5,148,178A		5,148,178A	
22.	HTH720 - MEDICAL FACILITIES - STDs, INSPECTION, AND LICENSING						
	OPERATING		HTH		14.40*		14.40*
				997,193A		997,193A	
			HTH		20.70*		20.70*
				1,559,994N		1,559,994N	
23.	HTH906 - COMPREHENSIVE HEALTH PLANNING						
	OPERATING		HTH		8.00*		8.00*
			HTH	477,463A		477,463A	
				29,000B		29,000B	
24.	HTH760 - HEALTH STATUS MONITORING						
	OPERATING		HTH		28.00*		28.00*
			HTH	1,484,388A		1,484,388A	
				250,000B		250,000B	
				2.00*		2.00*	
			HTH	397,214N		397,214N	
25.	HTH905 - POLICY DEVELOPMENT AND ADVOCACY FOR DEVELOPMENTAL DISABILITIES						
	OPERATING		HTH		1.50*		1.50*
				95,002A		95,002A	
				6.50*		6.50*	
			HTH	433,728N		433,728N	
26.	HTH907 - GENERAL ADMINISTRATION						
	OPERATING		HTH		115.50*		115.50*
			HTH	7,106,304A		7,106,304A	
				321,060N		321,060N	
F. SOCIAL SERVICES							
1.	HMS301 - CHILD WELFARE SERVICES						
	OPERATING		HMS		264.44*		264.44*
			HMS	20,336,742A		20,336,742A	
				450,000B		450,000B	
				187.06*		187.06*	
			HMS	26,110,567N		26,110,567N	
2.	HMS302 - CHILD CARE SERVICES						
	OPERATING		HMS		25.00*		25.00*
				1,139,110A		1,139,110A	
				1.00*		1.00*	
			HMS	5,606,896N		5,616,977N	
3.	HMS303 - CHILD PLACEMENT BOARD AND RELATED CLIENT PAYMENTS						
	OPERATING		HMS		30,579,126A		33,182,056A
			HMS	14,681,586N		15,884,108N	
4.	HMS305 - CHILD CARE PAYMENTS						
	OPERATING		HMS		22,411,811A		22,411,811A
			HMS	39,531,967N		39,531,967N	
5.	HMS501 - YOUTH SERVICES ADMINISTRATION						
	OPERATING		HMS		22.00*		22.00*
				1,169,532A		1,169,532A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		INVESTMENT CAPITAL	HMS HMS	4,475,940N 650,000C		4,475,940N C	
6.	HMS502	YOUTH SERVICES PROGRAM OPERATING	HMS HMS	3,542,811A 1,309,342N		3,527,311A 1,309,342N	
7.	HMS503	YOUTH RESIDENTIAL PROGRAMS OPERATING	HMS HMS HMS	88.50* 5,472,979A 1,463,704N 0.50* 15,940U		88.50* 5,472,979A 1,463,704N 0.50* 15,940U	
8.	DEF112	SERVICES TO VETERANS OPERATING INVESTMENT CAPITAL	DEF DEF	24.00* 1,154,201A 150,000C		24.00* 1,154,201A C	
9.	HMS601	ADULT AND COMMUNITY CARE SERVICES BRANCH OPERATING	HMS HMS HMS HMS HMS	99.58* 8,144,765A 17.92* 5,265,240N 10,000R 280,106U 500,000C		99.58* 8,144,765A 17.92* 5,265,240N 10,000R 280,106U C	
10.	HMS201	TEMPORARY ASSISTANCE TO NEEDY FAMILIES OPERATING	HMS HMS	17,699,544A 55,842,104N		17,003,411A 50,220,369N	
11.	HMS202	PAYMENTS TO ASSIST THE AGED, BLIND, AND DISABLED OPERATING	HMS	6,644,528A		6,644,528A	
12.	HMS204	GENERAL ASSISTANCE PAYMENTS OPERATING	HMS	21,911,632A		21,711,632A	
13.	HMS206	FEDERAL ASSISTANCE PAYMENTS OPERATING	HMS	1,809,458N		1,809,458N	
14.	HMS203	TEMPORARY ASSISTANCE TO OTHER NEEDY FAMILIES OPERATING	HMS	25,510,633A		25,306,766A	
15.	BED220	RENTAL HOUSING SERVICES OPERATING	BED BED BED	1,007,337A 198.00* 42,926,350N 23.00* 3,800,686W		1,007,337A 198.00* 42,926,350N 23.00* 3,800,686W	
16.	BED807	TEACHER HOUSING OPERATING	BED	358,567W		358,567W	
17.	BED229	HCDCH ADMINISTRATION OPERATING	BED BED	29.00* 10,409,223N 20.00* 2,848,629W		29.00* 10,409,223N 20.00* 2,848,629W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
18.		BED225 - PRIVATE HOUSING DEVELOPMENT AND OWNERSHIP					
	OPERATING		BED	11.00*		11.00*	
			BED	1,528,333N		1,528,333N	
			BED	11.00*		11.00*	
			BED	2,044,603W		2,044,603W	
19.		BED223 - BROADENED HOMESITE OWNERSHIP					
	OPERATING		BED	237,012W		237,012W	
20.		BED227 - HOUSING FINANCE					
	OPERATING		BED	3,000,000N		3,000,000N	
			BED	11.00*		11.00*	
			BED	1,405,532W		1,405,532W	
21.		BED222 - RENTAL ASSISTANCE SERVICES					
	OPERATING		BED	5.25*		5.25*	
			BED	1,220,647A		1,594,041A	
			BED	11.75*		11.75*	
			BED	25,490,030N		25,490,030N	
22.		BED224 - HOMELESS SERVICES					
	OPERATING		BED	4.00*		4.00*	
			BED	4,914,387A		4,914,387A	
			BED	1,369,108N		1,369,108N	
23.		BED231 - RENTAL HOUSING TRUST FUND					
	OPERATING		BED	14,008,563T		14,008,563T	
24.		HMS230 - HEALTH CARE PAYMENTS					
	OPERATING		HMS	203,462,452A		213,726,573A	
			HMS	301,551,381N		316,924,852N	
			HMS	10,341,215U		10,341,215U	
25.		HMS603 - HOME AND COMMUNITY BASED CARE SERVICES					
	OPERATING		HMS	13,027,039A		13,377,039A	
			HMS	51,505,685N		52,004,581N	
			HMS	21,798,316U		23,793,802U	
26.		HMS245 - QUEST HEALTH CARE PAYMENTS					
	OPERATING		HMS	132,878,792A		133,088,489A	
			HMS	176,414,907N		187,667,721N	
27.		HMS605 - COMMUNITY-BASED RESIDENTIAL SUPPORT					
	OPERATING		HMS	12,711,261A		12,711,261A	
28.		HMS236 - ELIGIBILITY DETERMINATION AND EMPLOYMENT RELATED SERVICES					
	OPERATING		HMS	332.89*		332.89*	
			HMS	12,647,582A		12,647,582A	
			HMS	258.11*		258.11*	
			HMS	14,868,909N		14,991,194N	
29.		HMS238 - DISABILITY DETERMINATION					
	OPERATING		HMS	45.00*		45.00*	
			HMS	5,048,313N		5,048,313N	
30.		ATG500 - CHILD SUPPORT ENFORCEMENT SERVICES					
	OPERATING		ATG	52.02*		52.02*	
			ATG	3,105,599A		1,905,599A	
			ATG	128.04*		128.04*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			ATG	16,406,623N		14,106,623N	
				13.94*		13.94*	
			ATG	2,703,228T		2,703,228T	
31.	HMS237 - EMPLOYMENT AND TRAINING OPERATING		HMS	491,214A		491,214A	
			HMS	1,197,541N		1,197,541N	
32.	HHL602 - PLANNING, DEVELOPMENT, MANAGEMENT, AND GENERAL SUPPORT FOR HAWAIIAN HOMESTEADS			29.00*		29.00*	
	OPERATING		HHL	1,297,007A		1,277,007A	
				89.00*		89.00*	
	INVESTMENT CAPITAL		HHL	7,115,343B		7,172,586B	
			HHL	600,000C			C
33.	HTH904 - EXECUTIVE OFFICE ON AGING			3.55*		3.55*	
	OPERATING		HTH	6,060,687A		5,830,687A	
				7.45*		7.45*	
			HTH	7,119,320N		7,119,320N	
34.	HTH520 - PROGRAM DEVELOPMENT, COORDINATION OF SERVICES, AND ACCESS FOR PERSONS WITH DISABILITIES			5.00*		5.00*	
	OPERATING		HTH	820,018A		820,018A	
			HTH	10,000B		10,000B	
35.	HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS			107.74*		107.74*	
	OPERATING		HMS	9,044,794A		9,044,794A	
				110.26*		110.26*	
			HMS	16,756,953N		16,756,953N	
36.	HMS903 - GENERAL SUPPORT FOR BENEFIT, EMPLOYMENT, AND SUPPORT SERVICES			57.07*		57.07*	
	OPERATING		HMS	10,208,142A		10,208,142A	
				47.93*		47.93*	
			HMS	26,966,839N		26,966,839N	
37.	HMS904 - GENERAL ADMINISTRATION			172.84*		172.84*	
	OPERATING		HMS	8,050,754A		8,050,754A	
				15.16*		15.16*	
			HMS	1,388,339N		1,388,339N	
38.	HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES			27.56*		27.56*	
	OPERATING		HMS	1,591,073A		1,591,073A	
				19.44*		19.44*	
			HMS	1,512,407N		1,512,407N	
G. FORMAL EDUCATION							
1.	EDN100 - SCHOOL-BASED BUDGETING			11683.50*		11663.50*	
	OPERATING		EDN	967,163,889A		1,018,878,690A	
			EDN	5,372,924B		5,372,924B	
			EDN	115,318,574N		126,959,759N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			EDN	5,950,000T		5,950,000T	
			EDN	1,600,000U		1,800,000U	
			EDN	2,000,000W		2,000,000W	
		INVESTMENT CAPITAL	AGS	72,703,000B		46,050,000B	
			EDN	250,000B		250,000B	
2.		EDN150 - COMPREHENSIVE SCHOOL SUPPORT SERVICES		4963.50*		4963.50*	
		OPERATING	EDN	284,037,140A		284,096,823A	
				2.00*		2.00*	
			EDN	33,903,370N		36,125,986N	
3.		EDN200 - INSTRUCTIONAL SUPPORT		220.50*		220.50*	
		OPERATING	EDN	20,314,325A		20,314,023A	
			EDN	1,600,000B		1,600,000B	
			EDN	1,413,378N		1,363,378N	
			EDN	800,000U		800,000U	
4.		EDN300 - STATE AND DISTRICT ADMINISTRATION		404.00*		404.00*	
		OPERATING	EDN	31,226,941A		31,226,036A	
			EDN	65,000N		65,000N	
5.		EDN400 - SCHOOL SUPPORT		1627.60*		1630.60*	
		OPERATING	EDN	101,481,391A		100,185,677A	
				728.50*		728.50*	
			EDN	33,101,168B		27,321,290B	
				3.00*		3.00*	
			EDN	43,247,751N		40,669,737N	
			EDN	2,000,000W		2,000,000W	
6.		EDN500 - SCHOOL COMMUNITY SERVICE		35.50*		35.50*	
		OPERATING	EDN	8,216,835A		8,216,533A	
			EDN	1,939,006B		1,939,006B	
			EDN	2,916,650N		3,208,314N	
			EDN	6,000,000U		6,000,000U	
			EDN	530,000W		530,000W	
7.		AGS807 - PHYSICAL PLANT OPERATIONS AND MAINTENANCE - AGS		241.00*		241.00*	
		OPERATING	AGS	22,841,005A		22,841,005A	
		INVESTMENT CAPITAL	AGS	35,000,000C		7,000,000C	
8.		EDN407 - PUBLIC LIBRARIES		534.55*		553.55*	
		OPERATING	EDN	24,530,903A		25,107,253A	
			EDN	3,125,000B		3,125,000B	
			EDN	865,244N		865,244N	
		INVESTMENT CAPITAL	AGS	1,550,000C		C	
9.		DEF114 - HAWAII NATL GUARD YOUTH CHALLENGE ACADEMY					
		OPERATING	DEF	1,043,835A		1,043,835A	
			DEF	1,680,000N		1,680,000N	
10.		UOH100 - UNIVERSITY OF HAWAII, MANOA		3435.34*		3435.34*	
		OPERATING	UOH	186,086,473A		186,086,473A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
					79.75*		79.75*
			UOH	71,044,995B		71,044,995B	
					78.06*		78.06*
			UOH	5,762,014N		5,762,014N	
					302.75*		302.75*
		INVESTMENT CAPITAL	UOH	108,655,933W		107,062,781W	
			UOH	115,000C			C
			UOH	10,000,000N			N
11.		UOH210 - UNIVERSITY OF HAWAII, HILO					
		OPERATING	UOH	361.25*		361.25*	
				20,449,410A		20,449,410A	
				14.00*		14.00*	
			UOH	7,940,557B		7,940,557B	
			UOH	394,543N		394,543N	
				11.50*		11.50*	
		INVESTMENT CAPITAL	UOH	4,084,938W		4,084,938W	
			UOH	3,260,000C			C
12.		UOH220 - SMALL BUSINESS DEVELOPMENT					
		OPERATING	UOH	638,224A		638,224A	
13.		UOH700 - UNIVERSITY OF HAWAII, WEST OAHU					
		OPERATING	UOH	47.50*		47.50*	
			UOH	2,554,228A		2,554,228A	
			UOH	1,985,000B		1,985,000B	
			UOH	7,000N		7,000N	
			UOH	125,000W		125,000W	
14.		UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES					
		OPERATING	UOH	1532.25*		1532.25*	
				75,920,657A		75,860,657A	
				77.50*		77.50*	
			UOH	40,783,445B		42,623,100B	
				15.60*		15.60*	
			UOH	3,540,927N		3,540,927N	
				4.50*		4.50*	
		INVESTMENT CAPITAL	UOH	4,848,882W		4,848,882W	
			UOH	300,000C			C
15.		UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT					
		OPERATING	UOH	323.00*		323.00*	
				171,985,620A		192,345,037A	
				4.00*		4.00*	
			UOH	6,368,128B		6,368,128B	
				4.00*		4.00*	
			UOH	457,667N		457,667N	
				5.00*		5.00*	
		INVESTMENT CAPITAL	UOH	13,157,802W		13,157,802W	
			UOH	19,129,000C		6,910,000C	
H. CULTURE AND RECREATION							
1.		UOH881 - UNIVERSITY OF HAWAII, AQUARIA					
		OPERATING	UOH	13.00*		13.00*	
				542,225A		542,225A	
				7.00*		7.00*	
			UOH	1,718,689B		1,718,689B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
2.	AGS881 - PERFORMING AND VISUAL ARTS EVENTS						
	OPERATING		AGS	10.00*		10.00*	
			AGS	1,863,595A		1,733,595A	
			AGS	9.00*		9.00*	
			AGS	4,156,414B		4,156,414B	
			AGS	750,336N		750,336N	
3.	AGS818 - ETHNIC GROUP PRESENTATIONS						
	OPERATING		AGS	36,000A		36,000A	
4.	LNR802 - HISTORIC PRESERVATION						
	OPERATING		LNR	13.00*		13.00*	
			LNR	804,496A		804,496A	
			LNR	126,679B		126,679B	
			LNR	466,101N		466,101N	
5.	LNR804 - FOREST RECREATION						
	OPERATING		LNR	36.00*		36.00*	
			LNR	1,383,307A		1,383,307A	
			LNR	3.50*		3.50*	
			LNR	422,401B		422,401B	
			LNR	3.50*		3.50*	
			LNR	526,193N		526,193N	
			LNR	416,062W		416,062W	
6.	LNR805 - RECREATIONAL FISHERIES						
	OPERATING		LNR	7.00*		7.00*	
			LNR	217,419A		218,900A	
			LNR	68,000B		68,000B	
			LNR	438,149N		444,344N	
7.	LNR806 - PARKS ADMINISTRATION AND OPERATION						
	OPERATING		LNR	108.00*		108.00*	
			LNR	5,129,700A		5,129,700A	
			LNR	584,164B		584,164B	
	INVESTMENT CAPITAL		LNR	285,201N		285,201N	
			LNR	500,000C		500,000C	
8.	LNR801 - OCEAN-BASED RECREATION						
	OPERATING		LNR	96.00*		96.00*	
			LNR	15,607,162B		15,608,563B	
	INVESTMENT CAPITAL		LNR	700,000N		700,000N	
			LNR	125,000C		125,000C	
			LNR	1,400,000D		650,000D	
			LNR	375,000N		375,000N	
9.	AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM						
	OPERATING		AGS	39.50*		39.50*	
	INVESTMENT CAPITAL		AGS	6,706,527B		6,661,873B	
			AGS	650,000B		B	
			AGS	300,000C		300,000C	
10.	LNR807 - PARK INTERPRETATION						
	OPERATING		LNR	18.00*		18.00*	
			LNR	2,481,782B		2,481,782B	
I. PUBLIC SAFETY							
1.	PSD402 - HALAWA CORRECTIONAL FACILITY						
				407.00*		407.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		OPERATING	PSD PSD	18,384,712A 52,419W		18,082,519A 52,419W	
2.		PSD403 - KULANI CORRECTIONAL FACILITY			79.00*		79.00*
		OPERATING	PSD	3,890,566A		3,890,566A	
		INVESTMENT CAPITAL	AGS	5,300,000C			C
3.		PSD404 - WAIAWA CORRECTIONAL FACILITY			108.00*		108.00*
		OPERATING	PSD PSD	4,379,493A 15,000W		4,379,493A 15,000W	
4.		PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER			162.00*		162.00*
		OPERATING	PSD	5,834,337A		5,729,413A	
5.		PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER			188.00*		188.00*
		OPERATING	PSD PSD	6,780,609A 200,000S		6,748,887A 200,000S	
6.		PSD407 - OAHU COMMUNITY CORRECTIONAL CENTER			484.00*		484.00*
		OPERATING	PSD PSD	21,926,511A 30,000W		21,653,878A 30,000W	
7.		PSD408 - KAUAI COMMUNITY CORRECTIONAL CENTER			69.00*		69.00*
		OPERATING	PSD	2,768,758A		2,768,758A	
8.		PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER			137.00*		137.00*
		OPERATING	PSD	5,381,406A		5,296,061A	
9.		PSD410 - INTAKE SERVICE CENTERS			48.00*		48.00*
		OPERATING	PSD	2,266,337A		2,266,337A	
10.		PSD420 - CORRECTION PROGRAM SERVICES			196.50*		196.50*
		OPERATING	PSD	16,639,067A		16,639,067A	
11.		PSD421 - HEALTH CARE			160.93*		160.93*
		OPERATING	PSD	13,326,043A		13,531,864A	
12.		PSD501 - PROTECTIVE SERVICES			85.00*		85.00*
		OPERATING	PSD	2,879,230A		2,879,230A	
			PSD	7.00*		7.00*	
			PSD	541,407N		541,407N	
			PSD	13.00*		13.00*	
			PSD	1,368,262U		1,368,262U	
13.		PSD502 - NARCOTICS ENFORCEMENT			11.00*		11.00*
		OPERATING	PSD	594,501A		594,501A	
				5.00*		5.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			PSD	408,868W		378,968W	
14.	PSD503 -	SHERIFF					
	OPERATING		PSD	148.00*		148.00*	
			PSD	5,791,602A		5,662,450A	
			PSD	63.00*		63.00*	
				4,243,524U		4,243,524U	
15.	PSD611 -	ADULT PAROLE DETERMINATIONS					
	OPERATING		PSD	2.00*		2.00*	
				196,352A		196,352A	
16.	PSD612 -	ADULT PAROLE SUPERVISION AND COUNSELING					
	OPERATING		PSD	44.00*		44.00*	
				2,194,714A		2,191,214A	
17.	PSD613 -	CRIME VICTIM COMPENSATION COMMISSION					
	OPERATING		PSD	6.00*		6.00*	
				1,672,089B		1,672,089B	
18.	PSD900 -	GENERAL ADMINISTRATION					
	OPERATING		PSD	143.10*		143.10*	
			PSD	40,455,031A		40,455,031A	
			PSD	693,832B		693,832B	
			PSD	75,065T		75,065T	
				9.00*		9.00*	
			PSD	7,578,537W		7,578,537W	
			PSD	742,980X		742,980X	
19.	ATG231 -	STATE CRIMINAL JUSTICE INFORMATION AND IDENTIFICATION					
	OPERATING		ATG	30.00*		30.00*	
			ATG	1,576,076A		1,576,076A	
			ATG	1,800,000N		1,800,000N	
				12.00*		12.00*	
			ATG	2,430,245W		2,430,245W	
20.	LNR810 -	PREVENTION OF NATURAL DISASTERS					
	OPERATING		LNR	2.35*		2.35*	
			LNR	128,870A		128,870A	
			LNR	1.65*		1.65*	
			LNR	166,021N		166,021N	
21.	DEF110 -	AMELIORATION OF PHYSICAL DISASTERS					
	OPERATING		DEF	120.80*		120.80*	
			DEF	7,127,151A		7,127,151A	
			DEF	43.70*		43.70*	
	INVESTMENT CAPITAL		AGS	7,891,420N		7,891,420N	
			AGS	1,167,000C		1,167,000C	
			AGS	100,000N		100,000N	
J. INDIVIDUAL RIGHTS							
1.	CCA102 -	CABLE TELEVISION					
	OPERATING		CCA	4.00*		4.00*	
				1,107,241B		1,107,241B	
2.	CCA103 -	CONSUMER ADVOCATE FOR COMMUNICATION, UTILITIES, AND TRANSPORTATION SERVICES					
				23.00*		23.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		OPERATING	CCA	2,445,969B		2,445,969B	
3.		CCA104 - FINANCIAL INSTITUTION SERVICES			29.00*		29.00*
		OPERATING	CCA	2,132,488B		2,132,488B	
4.		CCA105 - PROFESSIONAL, VOCATIONAL, AND PERSONAL SERVICES			57.00*		57.00*
		OPERATING	CCA	4,101,752B		4,101,752B	
			CCA	1,476,265T		1,476,265T	
5.		BUF901 - TRANSPORTATION, COMMUNICATIONS, AND UTILITIES			43.00*		43.00*
		OPERATING	BUF	7,490,045B		7,170,476B	
6.		CCA106 - INSURANCE REGULATORY SERVICES			76.00*		76.00*
		OPERATING	CCA	10,140,295B		9,518,686B	
			CCA	200,000T		200,000T	
7.		CCA110 - OFFICE OF CONSUMER PROTECTION - UNFAIR AND DECEPTIVE PRACTICES			16.00*		16.00*
		OPERATING	CCA	1,261,351B		1,261,351B	
			CCA	50,681T		50,681T	
8.		AGR812 - MEASUREMENT STANDARDS			17.00*		17.00*
		OPERATING	AGR	677,088A		677,088A	
9.		CCA111 - BUSINESS REGISTRATION			68.00*		68.00*
		OPERATING	CCA	5,336,237B		5,332,421B	
10.		CCA112 - REGULATED INDUSTRIES COMPLAINTS OFFICE			17.00*		17.00*
		OPERATING	CCA	5,393,874B		5,434,860B	
11.		CCA191 - GENERAL SUPPORT - PROTECTION OF THE CONSUMER			40.00*		40.00*
		OPERATING	CCA	4,484,312B		4,458,751B	
12.		LTG105 - ENFORCEMENT OF INFORMATION PRACTICES			5.00*		5.00*
		OPERATING	LTG	347,703A		347,703A	
13.		BUF151 - LEGAL ASSISTANCE IN CRIMINAL ACTIONS			83.00*		83.00*
		OPERATING	BUF	8,105,793A		8,105,793A	
14.		LNR111 - CONVEYANCES AND RECORDINGS			48.00*		48.00*
		OPERATING	LNR	1,802,298A		1,802,298A	
			LNR	781,339B		531,339B	
15.		LTG888 - COMMISSION ON THE STATUS OF WOMEN			1.00*		1.00*

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
	OPERATING		LTG	94,623A		94,623A	
K. GOVERNMENT-WIDE SUPPORT							
1.	GOV100 - OFFICE OF THE GOVERNOR						
	OPERATING		GOV	34.00*		34.00*	
	INVESTMENT CAPITAL		GOV	3,069,976A		3,069,976A	
				1,000C		1,000C	
2.	LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR						
	OPERATING		LTG	3.00*		3.00*	
				586,546A		586,546A	
3.	GOV102 - OTHER POLICY DEVELOPMENT AND COORDINATION						
	OPERATING		GOV	3.00*		3.00*	
				225,015A		225,015A	
4.	BED144 - STATEWIDE PLANNING AND COORDINATION						
	OPERATING		BED	20.00*		20.00*	
			BED	1,601,676A		1,601,676A	
			BED	120,000B		120,000B	
			BED	4.00*		4.00*	
			BED	1,024,298N		1,024,298N	
			BED	1,000,000W		1,000,000W	
5.	BED103 - STATEWIDE LAND USE MANAGEMENT						
	OPERATING		BED	7.00*		7.00*	
				426,921A		426,921A	
6.	BED130 - ECONOMIC PLANNING AND RESEARCH						
	OPERATING		BED	16.00*		16.00*	
			BED	922,104A		922,104A	
			BED	4.00*		4.00*	
			BED	1,305,904B		1,305,904B	
7.	BUF101 - PROGRAM PLANNING, ANALYSIS, AND BUDGETING						
	OPERATING		BUF	50.00*		50.00*	
			BUF	140,326,979A		153,602,960A	
			BUF	169,129,928U		186,443,480U	
	INVESTMENT CAPITAL		AGS	2,000,000C		2,000,000C	
			BUF	138,166,000C		113,800,000C	
8.	LTG101 - CAMPAIGN SPENDING COMMISSION						
	OPERATING		LTG	4.00*		4.00*	
				394,801T		4,423,489T	
9.	LTG102 - OFFICE OF ELECTIONS						
	OPERATING		LTG	4.00*		4.00*	
				2,483,224A		2,582,818A	
10.	TAX102 - INCOME ASSESSMENT AND AUDIT						
	OPERATING		TAX	103.00*		103.00*	
				4,600,626A		4,600,626A	
11.	TAX103 - TAX COLLECTIONS ENFORCEMENT						
	OPERATING		TAX	83.50*		83.50*	
				2,955,978A		2,955,978A	
12.	TAX105 - TAX SERVICES AND PROCESSING						
				88.50*		88.50*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		OPERATING	TAX	4,881,057A		4,881,057A	
13.		TAX107 - SUPPORTING SERVICES - REVENUE COLLECTION					
				57.00*		57.00*	
		OPERATING	TAX	5,896,489A		5,896,489A	
			TAX	8,579,542B		1,494,252B	
14.		AGS101 - ACCOUNTING SYSTEM DEVELOPMENT AND MAINTENANCE					
				7.00*		7.00*	
		OPERATING	AGS	698,111A		698,111A	
15.		AGS102 - EXPENDITURE EXAMINATION					
		OPERATING	AGS	19.00*		19.00*	
				1,041,789A		1,041,789A	
16.		AGS103 - RECORDING AND REPORTING					
		OPERATING	AGS	12.00*		12.00*	
				591,596A		591,596A	
17.		AGS104 - INTERNAL POST AUDIT					
		OPERATING	AGS	13.00*		13.00*	
				1,348,466A		1,348,466A	
18.		BUF115 - FINANCIAL ADMINISTRATION					
		OPERATING	BUF	16.00*		16.00*	
				208,001,199A		223,604,869A	
			BUF	4.00*		4.00*	
				3,407,742T		3,259,868T	
			BUF	1.00*		1.00*	
				144,643,293U		155,397,605U	
19.		ATG100 - LEGAL SERVICES					
		OPERATING	ATG	201.15*		201.15*	
				17,676,600A		17,676,600A	
			ATG	15.00*		15.00*	
				1,475,959B		1,442,959B	
			ATG	12.00*		12.00*	
				9,435,058N		9,435,058N	
			ATG	3,918,000T		3,918,000T	
				40.85*		40.85*	
			ATG	6,879,698U		6,879,698U	
				4.00*		4.00*	
			ATG	3,016,392W		3,016,392W	
20.		AGS131 - INFORMATION PROCESSING SERVICES					
		OPERATING	AGS	171.00*		171.00*	
				14,603,159A		14,603,159A	
			AGS	33.00*		33.00*	
				2,182,654U		2,182,654U	
21.		HRD102 - WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION, AND EFFICIENCY					
		OPERATING	HRD	106.00*		106.00*	
				12,765,024A		12,765,024A	
			HRD	700,000B		700,000B	
			HRD	4,886,281U		4,886,281U	
22.		HRD191 - SUPPORTING SERVICES					
				9.00*		9.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		OPERATING	HRD	1,109,733A		1,109,733A	
23.	BUF141 - RETIREMENT	OPERATING	BUF	137,882,906A		168,895,353A	
			BUF	194,800,270U		238,594,245U	
				67.00*		67.00*	
			BUF	16,554,244X		10,453,380X	
24.	BUF143 - HAWAII EMPLOYER - UNION TRUST FUND			23.00*		23.00*	
		OPERATING	BUF	3,439,250T		2,889,000T	
25.	LNR101 - PUBLIC LANDS MANAGEMENT			56.00*		56.00*	
		OPERATING	LNR	5,876,441B		5,876,441B	
			LNR	72,634N		72,634N	
		INVESTMENT CAPITAL	LNR	7,705,000B			B
26.	AGS203 - RISK MANAGEMENT			4.00*		4.00*	
		OPERATING	AGS	359,198A		359,198A	
			AGS	10,450,000W		10,450,000W	
27.	AGS211 - LAND SURVEY			18.00*		18.00*	
		OPERATING	AGS	837,561A		837,561A	
			AGS	285,000U		285,000U	
28.	AGS223 - OFFICE LEASING			5.00*		5.00*	
		OPERATING	AGS	11,834,547A		11,834,547A	
			AGS	5,500,000U		5,500,000U	
29.	AGS221 - CONSTRUCTION			18.00*		18.00*	
		OPERATING	AGS	1,145,462A		1,145,462A	
			AGS	4,000,000W		4,000,000W	
		INVESTMENT CAPITAL	AGS	7,750,000C		7,750,000C	
30.	AGS231 - CUSTODIAL SERVICES			154.50*		154.50*	
		OPERATING	AGS	11,054,471A		11,054,471A	
			AGS	58,744B		58,744B	
			AGS	894,001U		894,001U	
31.	AGS232 - GROUNDS MAINTENANCE			41.50*		41.50*	
		OPERATING	AGS	1,344,400A		1,344,400A	
32.	AGS233 - BUILDING REPAIRS AND ALTERATIONS			30.00*		30.00*	
		OPERATING	AGS	2,561,079A		2,561,079A	
		INVESTMENT CAPITAL	AGS	1,000,000C		1,000,000C	
33.	AGS240 - STATE PROCUREMENT			21.00*		21.00*	
		OPERATING	AGS	1,043,020A		1,043,020A	
			AGS	50,000W		50,000W	
34.	AGS244 - SURPLUS PROPERTY MANAGEMENT						

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		OPERATING	AGS	5.00*		5.00*	
				1,009,030W		1,009,030W	
35.	AGS251 -	MOTOR POOL					
		OPERATING	AGS	13.50*		13.50*	
				2,180,030W		2,180,030W	
36.	AGS252 -	PARKING CONTROL					
		OPERATING	AGS	26.50*		26.50*	
				2,981,124W		2,981,124W	
37.	AGS111 -	RECORDS MANAGEMENT					
		OPERATING	AGS	19.00*		19.00*	
				775,334A		775,334A	
38.	AGS901 -	GENERAL ADMINISTRATIVE SERVICES					
		OPERATING	AGS	44.00*		44.00*	
				2,180,688A		2,180,688A	
			AGS	1.00*		1.00*	
				54,188U		54,188U	
39.	SUB501 -	COUNTY OF KAUAI INVESTMENT CAPITAL	COK				
			COK	430,000C			C
				430,000S			S

PART III. PROGRAM APPROPRIATION PROVISIONS

ECONOMIC DEVELOPMENT

SECTION 4. Provided that of the general fund appropriation for business services (BED 102), the sum of \$100,000 for fiscal year 2003-2004 shall be used to contract with the Pacific International Center for High Technology Research (PICHTR), to establish a program to assist in the commercialization of technology developed by the university of Hawaii and by the private sector in Hawaii; provided further that the sum made available to PICHTR is matched by at least \$1,000,000 in federal and other non-state funds.

SECTION 5. Provided that for tourism (BED 113), the Hawaii tourism authority shall submit a detailed report for expenditures comparing budget appropriations to actual expenditures for fiscal years 2002-2003 and 2003-2004 (four months actual, eight months forecasted) with accompanying explanations for variances for Hawaii convention center operations; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 regular session.

SECTION 6. Provided that of the general fund appropriation for agricultural resource management (AGR 141), the sum of \$140,400 for fiscal year 2003-2004 and the sum of \$140,400 for fiscal year 2004-2005 shall be deposited into the irrigation system revolving fund to be expended for purposes of the fund.

SECTION 7. Provided that of the general fund appropriation for agribusiness development and research (AGR 161), the sum of \$240,558 for fiscal year 2003-

2004 and the sum of \$240,558 for fiscal year 2004-2005 shall be deposited into the Hawaii agricultural development revolving fund to be expended for purposes of the fund.

SECTION 8. Provided that of the revolving fund appropriation for agribusiness development corporation (AGR 161), the sum of \$50,000 for fiscal year 2003-2004 shall be expended from the Hawaii agricultural development revolving fund for the operation and maintenance of the east Kauai irrigation system.

SECTION 9. Provided that of the revolving fund appropriation from the Hawaii community development authority (BED 150), the sum of \$100,000 for fiscal year 2003-2004 and fiscal year 2004-2005 shall be transferred to park development and operation (LNR 806), to continue basic maintenance of Kakaako Waterfront Park and Kewalo Basin Park; provided further that such maintenance shall meet or exceed the level of maintenance provided by the department of land and natural resources during fiscal year 2002-2003; and provided further that this amount shall not be increased.

EMPLOYMENT

SECTION 10. Provided that of the general fund appropriation for occupational safety and health (LBR 143), the sum of \$160,676 for fiscal year 2003-2004 and 2004-2005 shall be expended for occupational safety and health training; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse into the general fund; provided further that the department of labor and industrial relations shall submit detailed reports each year that shall include but not be limited to the amount of expenditures, the amount of revenues, and effectiveness of the training program, as well as, the complete report from the previous fiscal year; and provided further that the reports shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 11. Provided that of the general fund appropriation for occupational safety and health (LBR 143), the sum of \$950,000 for fiscal year 2003-2004 and 2004-2005 shall be expended for boiler and elevator safety; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse into the general fund; provided further that the department of labor and industrial relations shall submit detailed reports each year that shall include but not be limited to the amount of expenditures, the amount of revenues, and effectiveness of the safety program and shall include the complete report from the previous fiscal year; and provided further that the reports shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

TRANSPORTATION

SECTION 12. Provided that of the special fund appropriations for the airports division (TRN 102-TRN 195), the following sums specified for special repair and maintenance projects for fiscal biennium 2003-2005, shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
TRN 102	\$ 4,120,000	\$ 7,005,000
TRN 104	\$ 638,000	\$ 738,000

ACT 200

<u>Program I.D.</u>	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
TRN 111	\$ 580,000	\$ 5,805,000
TRN 114	\$ 1,336,090	\$ 506,000
TRN 116	\$ 220,000	-0-
TRN 118	\$ 34,500	-0-
TRN 131	\$ 2,325,000	\$ 6,080,000
TRN 133	\$ 993,000	\$ 10,000
TRN 135	\$ 505,000	-0-
TRN 141	\$ 250,000	\$ 1,325,000
TRN 143	\$ 300,000	-0-
TRN 151	\$ 59,500	\$ 41,000
TRN 161	\$ 700,000	\$ 2,230,000;

provided further that any unexpended funds shall be lapsed to the airport special fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 13. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$67,590,462 for fiscal year 2003-2004 and the sum of \$81,448,438 for fiscal year 2004-2005 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
Interest and principal on general obligation bonds	\$ 12,702	\$ 12,290
Interest and principal on revenue bonds	\$ 67,577,760	\$ 81,436,148;

and provided further that any funds not expended for these purposes shall be lapsed to the airport special fund.

SECTION 14. Provided that of the special fund appropriations for the harbors division (TRN 301-TRN 395), the following sums specified for special repair and maintenance projects for fiscal biennium 2003-2005, shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
TRN 301	\$ 4,395,000	\$ 3,707,000
TRN 303	\$ 230,000	\$ 230,000
TRN 305	\$ 401,000	\$ 482,000
TRN 311	\$ 735,000	\$ 762,000
TRN 313	\$ 622,000	\$ 372,000
TRN 331	\$ 902,000	\$ 864,000
TRN 341	\$ 513,000	\$ 363,000
TRN 351	\$ 257,000	\$ 257,000
TRN 361	\$ 652,000	\$ 653,000
TRN 363	\$ 259,000	\$ 220,000;

provided further that any unexpended funds shall be lapsed to the state harbor fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; provided further this report shall include

the previous fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 15. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$21,493,000 for fiscal year 2003-2004 and the sum of \$22,454,000 for fiscal year 2004-2005 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
Interest and principal on general obligation bonds	\$ 26,000	\$ 25,000
Interest and principal on revenue bonds	\$ 21,467,000	\$ 22,429,000;

and provided further that any funds not expended for these purposes shall be lapsed to the harbor special fund.

SECTION 16. Provided that of the special fund appropriations for the highways division (TRN 501-TRN 595), the following sums specified for special repair and maintenance projects for fiscal biennium 2003-2005, shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
TRN 501	\$ 20,815,000	\$ 20,815,000
TRN 511	\$ 10,418,204	\$ 10,418,204
TRN 531	\$ 9,087,146	\$ 9,605,183
TRN 541	-0-	\$ 2,686,362
TRN 551	\$ 3,204,399	-0-
TRN 561	\$ 6,476,534	\$ 6,476,534;

provided further that any unexpended funds shall be lapsed to the state highway fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of June 30 for each fiscal year; provided further each report shall include the previous fiscal year; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 17. Provided that of the special fund appropriation for highways administration (TRN 595), the sum of \$50,241,076 for fiscal year 2003-2004 and the sum of \$51,806,286 for fiscal year 2004-2005 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2003-2004</u>	<u>FY 2004-2005</u>
Interest and principal on general obligation bonds	\$ 14,057,149	\$ 13,815,057
Interest and principal on revenue bonds	\$ 32,116,144	\$ 34,806,475;

and provided further that any funds not expended for this purpose shall be lapsed to the state highway fund.

ENVIRONMENTAL PROTECTION

SECTION 18. Provided that the environmental health administration (HTH 849), shall submit a report on all revenues and expenditures from the environmental response revolving fund; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

HEALTH

SECTION 19. Provided that the maternal and child health services division (HTH 550), shall provide a detailed progress report on the number of clients served and services provided by contracts; provided further that the report shall include projected population versus actual population by month for fiscal years 2003, 2004 and 2005; provided further that the report shall include projected expenditures versus actual expenditures by month for fiscal years 2003, 2004 and 2005; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 20. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$12,374,543 or so much thereof as may be necessary for fiscal year 2003-2004, and the sum of \$12,374,543 or so much thereof as may be necessary for fiscal year 2004-2005, shall be deposited into the emergency budget and reserve fund.

SECTION 21. Provided that the health resources administration (HTH 595), which includes the healthy Hawaii initiative, a statewide effort to encourage healthy lifestyles emphasizing the healthy development of children to overcome poor nutrition as well as tobacco use and promotion of physical activities for better health, shall prepare a detailed progress report each year to include but not be limited to the status of the healthy Hawaii initiative, including a listing of any and/or all statistical successes due to implementation of this program; and provided further that the report shall identify the impact on the following three components of the healthy Hawaii initiative:

- (1) community based initiatives;
- (2) public awareness and professional educational campaigns; and
- (3) school-based programs;

or any other aspect of the healthy Hawaii initiative success due to the reallocation of funds from the tobacco settlement fund to the healthy start purchase of service under maternal and children health services (HTH 550); and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 22. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$17,512,184, or so much thereof as may be necessary for fiscal year 2003-2004, and the sum of \$17,512,184, or so much thereof as may be necessary for fiscal year 2004-2005, shall be expended by the department of health for purposes specified in section 328L-4, Hawaii Revised Statutes. A sum not to exceed \$5,051,000 of the special fund appropriation for fiscal year 2003-2004, and a sum not to exceed \$5,051,000 of the special fund appropriation for fiscal year 2004-2005, shall be transferred to the department of human services to be expended for the children's health insurance program, pursuant to section 328L-4, Hawaii Revised Statutes; provided that the amount of moneys

transferred shall not exceed the amount of expenditures anticipated for each fiscal year by the children's health insurance program.

SECTION 23. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$6,313,542 or so much thereof as may be necessary for fiscal year 2003-2004, and the sum of \$6,313,542 or so much thereof as may be necessary for fiscal year 2004-2005, shall be deposited into the Hawaii tobacco prevention and control trust fund.

SECTION 24. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$5,336,023 or so much thereof as may be necessary for fiscal year 2003-2004, and the sum of \$5,247,667 or so much thereof as may be necessary for fiscal year 2004-2005, shall be expended by the department of health to purchase healthy start home visit services as provided in section 328L-4(2), Hawaii Revised Statutes.

SECTION 25. Provided that of the special fund appropriation for health resources administration (HTH 595), the sum of \$14,142,334 or so much thereof as may be necessary for fiscal year 2003-2004, and the sum of \$14,142,334 or so much thereof as may be necessary for fiscal year 2004-2005, shall be deposited into the university revenue-undertakings fund.

SECTION 26. Provided that the adult mental health - outpatient division (HTH 420), shall prepare and submit a detailed quarterly status report of the funds expended by the department of health under the community plan for the Hawaii state hospital; provided further that this report shall include, but not be limited to the requirements stipulated by the community plan, the budgeted versus actual expenditures for the quarter and cumulative for the fiscal year, and data detailing compliance or noncompliance; and provided further that this report shall be submitted to the legislature no later than thirty days after the end of each quarter.

SECTION 27. Provided that of the general fund appropriation for the alcohol and drug abuse division (HTH 440), the sum of \$2,200,000 for fiscal year 2004 and the sum of \$2,200,000 for fiscal year 2005 shall be expended for the integrated case management and substance abuse treatment criminal justice initiative to deal with alcohol and drug abuse; provided further that the division shall prepare and submit a detailed report on the purchase of substance abuse services, the number of individuals in the criminal justice population served, by category, and the success and recidivism rate for each population category; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 28. Provided that the child and adolescent mental health division (HTH 460), shall prepare and submit a report on mental health services; provided further that the report shall include, but not be limited to, the following information:

- (1) The number of Felix class children and adolescents served;
- (2) Average expenditure by Felix class children and adolescents;
- (3) Average hours of services by Felix class children and adolescents;
- (4) Treatment outcome and performance reports on each service provided by Felix class children and adolescents;
- (5) Success rate of Felix class children and adolescents;
- (6) The number of discharged Felix class children and adolescents;
- (7) Monthly caseload report per mental health care coordinator including those positions acting as mental health care coordinators, monthly total

number of cases and monthly total number of mental health care coordinators; and

- (8) Total number of exempt positions and their related civil service position, if any, and a comparison of exempt salary versus civil service salary for each position listed;

and provided further that the report shall be submitted to the legislature twenty days after the end of each quarter during the fiscal biennium 2003-2005.

SECTION 29. Provided that the behavioral health administration (HTH 495), shall submit a detailed progress report each year to ensure fiscal accountability on the use of funds for the special master's plan for community mental health services based on the utilization management findings; provided further that this report to the legislature shall include but not be limited to the following:

- (1) Progress made in complying with the community plan;
- (2) Progress made in developing an appropriate array of community services for patients discharged or diverted from the state hospital;
- (3) Provide an assessment of the available capacity for services in the community and level of service utilization;
- (4) Number of discharged and diverted patients entering the system by month;
- (5) The amount of funds expended by type of service; and
- (6) The amount of funds expended by provider;

provided further that the report shall be detailed for each of the eight proposed community mental health centers located in the Honolulu, Hawaii, Kauai, and Maui counties; provided further that the adult mental health division chief shall be responsible for providing the legislature with any relevant reports submitted to the special master; and provided further that this progress report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 30. Provided that the department of health shall notify the legislature on a monthly basis of expenditures relative to the Felix Consent Decree made to the United States Ninth District Court, the Felix Special Monitor, the Felix Monitoring Project, or any other agent of the United States Judiciary.

HUMAN SERVICES

SECTION 31. Provided that of the general fund appropriation for child welfare services (HMS 301), the sum of \$606,803 for fiscal year 2003-2004 and the sum of \$606,803 for fiscal year 2004-2005 shall be expended for multi-agency case coordinators and case support aides; and provided further that the department of human services shall submit a report each year to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions that shall include, but not be limited to, the following information:

- (1) The availability of federal funding in support of this initiative, including the amount of this funding and requirements that the department of human services must fulfill to receive this funding; and
- (2) The number of children aided by the services provided by this initiative and the capacity of service provided by this initiative.

SECTION 32. Provided that of the general fund appropriation for child welfare services (HMS 301), the sum of \$82,476 for fiscal year 2003-2004 and the sum of \$82,476 for fiscal year 2004-2005 shall be expended for the centralized Title IV-E eligibility determination unit; provided further that the department of human

services shall submit a report each year on the amount of federal fund reimbursement received by the eligibility determination unit, the amounts and purposes of the actual (previous fiscal year and current fiscal four months) and planned expenditure of the federal funds, and the actual (previous fiscal year and current fiscal year four months) and planned number of children aided and types of services provided by the additional federal funds; and provided further that the department of human services shall submit this report to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 33. Provided that of the general fund appropriation for child out-of-home payments (HMS 303), the sum of \$30,579,126 for fiscal year 2003-2004 and the sum of \$33,182,056 for fiscal year 2004-2005 shall be expended for adoption assistance, permanency assistance, relative foster board, non-relative foster board, and board-related costs and difficulty of care payments; and provided further that the department of human services shall submit a report each year to the legislature on the number of children who receive adoption assistance or difficulty of care payments and the amount of these payments for the previous fiscal year and the current fiscal year, five months actual, no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 34. Provided that the department of human services shall submit a report each year on child out-of-home payments (HMS 303); provided further that the report shall include, but not be limited to, the following information:

- (1) The feasibility of collecting child support payments from parents, whose children have been placed in foster homes or other out-of-home placements by the department, for the purpose of funding services for these children;
- (2) The average adoption payment per child per month for each year since 1999;
- (3) The average foster board payment per child per month for each year since 1999;
- (4) The average adoption difficulty of care payment per child per month for each year since 1999;
- (5) The average foster board difficulty of care payment per child per month for each year since 1999; and
- (6) The number of children served in relation to the following types of payments: adoption assistance, adoption difficulty of care, foster board, and foster board difficulty of care;

and provided further that the report shall be submitted each year to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 35. Provided that of the general fund appropriation for adult and community care services (HMS 601), the sum of \$1,833,307 for fiscal year 2003-2004 and the sum of \$1,833,307 for fiscal year 2004-2005 shall be used to pay for chore services cash payments; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of human services shall submit a report each year that shall include, but not be limited to:

- (1) All expenditures made broken down by cost element; and
- (2) The number of individuals served by the program;

and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 36. Provided that of the general fund appropriation for health care payments (HMS 230), the sum of \$47,284,020 for fiscal year 2003-2004 and the sum of \$54,849,463 for fiscal year 2004-2005 shall be expended for prescription drugs for fee-for-service clients; provided further that the department shall not restrict, by any prior or retroactive approval process, restrictive formulary, therapeutic substitution, or preferred drug list, a physician's ability to treat a mental health consumer with an atypical anti-psychotic medication that has been approved and designated as safe and effective by the Food and Drug Administration, and which the physician, in the physician's professional judgment and within the lawful scope of the physician's practice, considers appropriate for the treatment of a mental health consumer; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of human services shall submit a report that shall include, but not be limited to:

- (1) All expenditures made listed by prescription drugs;
- (2) The number of recipients by type of drug prescribed; and
- (3) Possible cost containment measures;

and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 37. Provided that of the general fund appropriation for home and community-based care services (HMS 603), the sum of \$11,585,054 for fiscal year 2003-2004 and the sum of \$11,585,054 for fiscal year 2004-2005 shall be expended for the nursing home without walls and residential alternative community care programs; provided further that the department of human services shall submit a report each year on the number of clients receiving services and projected to receive services, the number of individuals requesting services or on any waitlists, and the number of individuals in the State that qualify for these services; and provided further that this report shall be submitted to the legislature each year no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 38. Provided that of the general fund appropriation for general administration (HMS 904), the sum of \$75,000 for fiscal year 2003-2004 and the sum of \$75,000 for fiscal year 2004-2005 shall be expended for a temporary Health Insurance Portability and Accountability Act project coordinator for the department of human services; provided further that the department of human services shall submit a status report to the legislature each year that shall include, but not be limited to, the progress made in complying with Health Insurance Portability and Accountability Act mandates, all outstanding tasks, and an expenditure report of all Health Insurance Portability and Accountability Act related activities performed by the department of human services; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

EDUCATION

SECTION 39. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$123,918,240 for fiscal year 2003-2004 and the sum of \$136,579,047 for fiscal year 2004-2005 shall be used to pay for health fund benefits for department of education employees and transferred to the program planning, analysis and budgeting program (BUF 101) of the department of budget and finance for this purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 40. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$98,933,822 for fiscal year 2003-2004 and the sum of \$106,291,688 for fiscal year 2004-2005 shall be used to pay for debt service on general obligation bonds issued for department of education projects and shall be transferred to the financial administration program (BUF 115) of the department of budget and finance for this purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 41. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$76,403,876 for fiscal year 2003-2004 and the sum of \$105,883,879 for fiscal year 2004-2005 shall be used to pay for pension accumulation contributions for department of education employees; provided further that the sum of \$63,911,192 for fiscal year 2003-2004 and the sum of \$65,914,430 for fiscal year 2004-2005 shall be used to pay for social security/Medicare contributions for department of education employees; provided further that the amounts shall be transferred to the retirement program (BUF 141) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 42. Provided that of the general fund appropriations for school based budgeting (EDN 100), the following fiscal year 2004-2005 cost items shall be considered non-recurring cost items:

- | | |
|--|-----------|
| (1) Equipment for new facilities-regular instruction | 4,281,492 |
| (2) Equipment for new facilities-special Education | 128,122 |
| (3) Equipment for new facilities-school Administration | 106,143 |
| (4) Equipment for new facilities-school libraries | 259,164; |

and provided further that the aforementioned cost items shall be reduced by the appropriate amount at the beginning of fiscal biennium 2005-2007.

SECTION 43. Provided that the department of education shall complete a comprehensive assessment each year of the department's efforts towards meeting and maintaining compliance with the No Child Left Behind Act of 2001; provided further that this assessment shall include, but not be limited to, identifying department needs, such as funding, positions (full time equivalents, temporary and others), organizational schemes (school based and administrative), facilities and equipment, and statutory/constitutional amendments necessary to maintain compliance with the No Child Left Behind Act; provided further that this assessment shall discuss the nexus between each identified department need and the mandated requirement to justify current and additional resources; and provided further that this assessment shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 44. Provided that the board of education, department of education, new century charter school program office, and/or any other entity authorized, by the board of education and/or the department of education, to administer new century charter schools or new century conversion charter schools, shall allocate funds to new century charter schools or new century conversion charter schools pursuant strictly to section 302A-1185, Hawaii Revised Statutes. Any reimbursements for administrative services assessed to new century charter schools or new century conversion charter schools shall be limited to those allowed under section 302A-1185(b), Hawaii Revised Statutes.

SECTION 45. Provided that of the federal fund appropriation for school-based budgeting (EDN 100), \$100,000 shall be expended to develop reports to make

recommendations on possible implementation models of a weighted pupil allocation system and to evaluate the feasibility of implementation for the department of education; provided that the evaluation shall consider the implementation of weighted pupil allocation models in other jurisdictions and assess the relevance to Hawaii's public school system; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the 2004 regular session.

SECTION 46. Provided that the department for education shall submit on a quarterly basis a report on cumulative revenues and expenditures from the food services program by means of finance.

SECTION 47. Provided that comprehensive school support services (EDN 150), shall submit a detailed report to the legislature in regard to the recruitment and hiring of personnel required by the department of education for mental health services; and provided further that the report shall be submitted to the legislature for fiscal year 2003-2004 and fiscal year 2004-2005 on a quarterly basis.

SECTION 48. Provided that the department of education (department) shall continue its assessment of the department's efforts toward maintaining compliance with the Felix Consent Decree and associated federal statutes and requirements; provided further that this assessment shall include, but not be limited to, the identification of department and new century charter school needs, such as funding, positions (full time equivalent, temporary and others), organizational schemes (school based and administrative), facilities and equipment as well as any constitutional, statutory, and/or administrative amendments necessary to maintain compliance with the Felix Consent Decree, the Individuals With Disabilities Education Act (IDEA), and Section 504 of the Rehabilitation Act of 1973; provided further that the aforementioned needs assessment shall explain the nexus between each identified department need and its mandated provision in order to justify currently provided and any additional resources requested; and provided further that the department's compliance and needs assessment shall be summarized in a comprehensive report to the legislature that shall be submitted no later than twenty days prior to the convening of the 2004 regular session.

SECTION 49. Provided that the department of education shall complete a comprehensive assessment each year of the department's efforts towards adequately servicing students with autism spectrum disorder; provided further that this assessment shall include, but not be limited to identifying department needs, such as funding, positions (full time equivalents, temporary and others), organizational schemes (school based and administrative), facilities and equipment; and provided further that this assessment shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

HIGHER EDUCATION

SECTION 50. Provided that of the revolving fund appropriation for University of Hawaii, Manoa (UOH 100), the sum of \$11,628,689 for fiscal year 2003-2004 and the sum of \$10,035,537 for fiscal year 2004-2005 shall be applied solely to the payment of the principal of and interest on, and to generate required coverage, if any, for, revenue bonds issued by the board of regents of the University of Hawaii to finance the cost of construction of a university health and wellness center, including a new medical school facility, to be situated on the island of Oahu; provided further that any amounts transferred to the university of Hawaii improvement fund pursuant to section 328L-2(b)(4), Hawaii Revised Statutes determined to be in excess of debt

service requirements for the health and wellness center shall be returned to the emergency budget and reserve fund and the tobacco prevention and control trust fund; and provided further that of the amount determined to be in excess eighty percent shall be deposited into the emergency budget and reserve fund and twenty percent be deposited into the tobacco prevention and control trust fund.

SECTION 51. Provided that of the general fund appropriation for systemwide support (UOH 900), the sum of \$45,211,688 for fiscal year 2003-2004 and the sum of \$49,864,433 for fiscal year 2004-2005 shall be used to pay for health fund benefits for university of Hawaii employees and transferred to the program planning, analysis and budgeting program (BUF 101) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 52. Provided that of the general fund appropriation for systemwide support (UOH 900), the sum of \$45,661,764 for fiscal year 2003-2004 and the sum of \$49,057,702 for fiscal year 2004-2005 shall be used to pay for debt service on general obligation bonds issued for university of Hawaii projects and transferred to the financial administration program (BUF 115) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 53. Provided that of the general fund appropriation for systemwide support (UOH 900), the sum of \$29,936,414 for fiscal year 2003-2004 and the sum of \$41,477,688 for fiscal year 2004-2005 shall be used to pay for pension accumulation contributions for university of Hawaii employees; provided further that the sum of \$24,548,788 for fiscal year 2003-2004 and the sum of \$25,318,248 for fiscal year 2004-2005 shall be used to pay for social security/Medicare contributions for university of Hawaii employees; provided further that the amounts shall be transferred to the retirement program (BUF 141) of the department of budget and finance for that purpose; and provided further that the funds shall be transferred no later than July 16 of each respective fiscal year.

SECTION 54. Provided that of the general fund appropriation for the university of Hawaii, the president of the university of Hawaii is allowed to make transfers between program IDs; provided further that the university of Hawaii shall submit a detailed report each year on each transfer; provided further that this report shall include but not be limited to the amount transferred, the origin and destination of each transfer, the program IDs involved with each transfer, the justification for each transfer, and shall include the complete report from the previous fiscal year; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions respectively.

SECTION 55. The University of Hawaii shall perform a review of the University of Hawaii's non-general funds and accounts, including, but not limited to, the state higher education loan fund, the research and training revolving fund, the parking fund, the real property and facilities use revolving fund, and the tuition and special fees special fund, in order to properly organize University of Hawaii non-general funds and accounts by fund name, account number, statutory authorization, and expenditure ceiling; provided further that the University of Hawaii shall provide reports of expenditure plans for all ending cash balances over one-third of the ceiling of the respective fund for fiscal year 2003-2004 and fiscal year 2004-2005; and provided further that these reports shall be submitted to the legislature no later than

twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

PUBLIC SAFETY

SECTION 56. Provided that of the general fund appropriation for intake service centers (PSD 410), corrections program services (PSD 420), and adult parole supervision and counseling (PSD 612), the sum of \$418,401 for fiscal year 2003-2004 and the sum of \$418,401 for fiscal year 2004-2005 shall be expended for substance abuse treatment, job development, and mental health treatment programs for the pretrial, incarcerated, and parolee populations; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of public safety shall submit a report each year on all services provided and expenditures for the previous fiscal year and the current fiscal year, four months actual; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 57. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$28,523,136 for fiscal year 2003-2004 and the sum of \$28,523,136 for fiscal year 2004-2005 shall be expended for mainland prison contracts for transportation and necessary operation costs of housing; provided further that if the department of public safety determines that there are inmates who can be released or paroled for the purpose of treatment, and that such release or parole lowers the number of beds that need to be leased in mainland facilities, then an appropriate part of this sum may be used for treatment services; provided further that any unexpended funds shall lapse into the general fund; provided further that the department of public safety shall submit a report each year of all expenditures made for the mainland prisoners for the previous fiscal year and the current fiscal year, four months actual; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 58. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$2,628,000 for fiscal year 2003-2004 and the sum of \$2,628,000 for fiscal year 2004-2005 shall be expended for the housing of inmates at the Hawaii based federal detention centers or mainland facilities; provided further that the department of public safety shall provide a report to the legislature each year concerning its actions surrounding the transportation of additional inmates to mainland facilities to make available more space, the total cost including transportation and housing of an inmate on the mainland versus renting bed space at the federal detention center, and a detailed breakdown of the criteria used to select which inmates are eligible to be moved to mainland facilities; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 59. Provided that of the general fund appropriation for amelioration of physical disasters (DEF 110), the sum of \$500,000 for fiscal year 2003-2004 and the sum of \$500,000 for fiscal year 2004-2005 shall be expended exclusively for relief from major disasters pursuant to chapter 127-11, Hawaii Revised Statutes.

INDIVIDUAL RIGHTS

SECTION 60. Provided that the department of commerce and consumer affairs shall submit a detailed report each year on how the department's expenditures will be aligned with their special fund revenue collections; and provided further that this report shall include a discussion of the plans for the lowering of its fees to appropriate levels; and provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 61. Provided that of the special fund appropriation for the bureau of conveyances (LNR 111), the sum of \$150,000 in fiscal year 2003-2004 shall be expended by the bureau to contract for a workflow study; provided further that this study shall encompass a review of all areas of the operations of the bureau and include, but not be limited to evaluating the recording procedures, staffing, and performance so as to streamline the process to create efficiencies within the bureau; provided further that the study shall include recommendations by the consultant for changes to current job descriptions and identify operational delays; provided further that the recommendations shall result in increasing productivity and efficiencies within the bureau; and provided further that the consultant's report with recommendations shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 regular session.

GOVERNMENT-WIDE SUPPORT

SECTION 62. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$15,000 in fiscal year 2003-2004, and the sum of \$15,000 in fiscal year 2004-2005 shall be used for the governor's "contingent fund" pursuant to section 37-71(f) of the Hawaii Revised Statutes; and provided further that such funds may be transferred to other programs and agencies and allotted, with the approval of the governor, to meet contingencies as they arise.

SECTION 63. Provided that of the general fund and inter-departmental transfer funds appropriated for program planning, analysis and budgeting (BUF 101), the sums of \$300,106,277 and \$330,724,775, respectively for fiscal year 2003-2004 and fiscal year 2004-2005, or so much thereof as shall be necessary, shall be expended for the State employers share of health premiums for active employees and retirees; provided further that the Hawaii employer-union health benefits trust fund shall only contract for and offer health benefit and insurance plans that satisfy the objectives of chapter 87A, Hawaii Revised Statutes; provided further that the total aggregate cost of plans contracted for and offered to state active employees and retirees in fiscal year 2003-2004 and fiscal year 2004-2005 shall not exceed the total aggregate amount appropriated for the state employers' share of that fiscal year adjusted for active and retiree enrollment levels; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 64. Provided that of the general fund appropriation for program, planning, analysis and budgeting (BUF 101), the sum of \$600,789 for fiscal year 2003-2004 and \$570,789 for fiscal year 2004-2005 shall be expended as a subsidy to the Bishop Museum; and provided further that any unexpended funds for this purpose shall lapse to the general fund.

SECTION 65. Provided that of the general fund appropriation for the office of elections (LTG 102), the sum of \$1,229,348 for fiscal year 2004-2005 shall be expended for election day workers which shall include but not be limited to section heads, specialists, assistants, computer programmers, warehouse workers, warehouse supervisors, precinct officials, troubleshooters, and other various poll workers; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 66. Provided that of the general fund appropriation for the office of elections (LTG 102), the sum of \$200,000 for fiscal year 2003-2004 shall be expended to comply for the Help America Vote Act; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse into the general fund.

SECTION 67. Provided that of the general fund appropriation for supporting services - revenue collection (TAX 107), the sum of \$25,000 for fiscal year 2003-2004 shall be expended for auditors' mainland travel in order to conduct revenue producing audits; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse into the general fund.

SECTION 68. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$206,109,206 for fiscal year 2003-2004 and the sum of \$221,437,876 for fiscal year 2004-2005 shall be used to pay for interest and principal on general obligation bonds; provided further that the funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 69. Provided that of the special, trust and revolving fund appropriations for legal services (ATG 100), state criminal justice information and identification (ATG 231), and child support enforcement services (ATG 500), the attorney general shall submit a comprehensive report concerning all special, trust, and revolving funds within the department of the attorney general whether created by statute or otherwise including, but not limited, to the following:

- (1) The source and amount of all revenue for each fund;
- (2) Detailed accounts of all expenditures from each fund;
- (3) The purpose of all expenditures from each fund;
- (4) The source of revenue for each fund; and provided further that:
 - (a) Each fund shall be treated separately in the report; and
 - (b) Litigation Settlements shall be done separately by each sub-account;

provided further that the report shall be submitted under the above established guidelines to the legislature for the preceding completed fiscal year no later than twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 70. Provided that the department of attorney general with the assistance and cooperation of the department of health, shall provide a detailed report on the state's compliance with the Master Settlement Agreement (MSA) which will include but not be limited to the effect on the MSA from the diversion of funds in the initial allocation to the multitude of programs that are being included each year through various provisions; provided further that this report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 regular session.

SECTION 71. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of \$2,221,620 for fiscal year 2003-2004 and the sum of \$2,221,620 for fiscal year 2004-2005 shall be expended for unemployment compensation claims of former state employees; provided further that any unrequired and unexpended funds appropriated for this purpose may be expended to meet workers' compensation claims.

SECTION 72. Provided that of the general fund appropriation for work force attraction, selection, classification and effectiveness (HRD 102), the sum of \$4,933,726 for fiscal year 2003-2004 and the sum of \$4,933,726 for fiscal year 2004-2005 shall be expended for workers' compensation claims; and provided further that the department of human resources development shall submit a detailed report each year of all expenditures, including the number of claims for workers' compensation claim payments; statistics on the duration of payments made to claimants; statistics on the average compensation paid per claimant; and a breakdown of the claims paid by department. This report shall be submitted to the legislature no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 73. Provided that of the general fund appropriation for retirement (BUF 141), the sum of \$75,273,422 for fiscal year 2003-2004 and the sum of \$104,323,431 for fiscal year 2004-2005 shall be expended for the employees' retirement system's pension accumulation; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 74. Provided that of the interdepartmental transfer appropriation for retirement (BUF 141), the sum of \$106,340,290 for fiscal year 2003-2004 and the sum of \$147,361,567 for fiscal year 2004-2005 shall be expended for the university of Hawaii and department of education's employees' retirement system's pension accumulation; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 75. Provided that of the general fund appropriation for the department of budget and finance, retirement (BUF 141), the sum of \$62,609,484 for fiscal year 2003-2004 and the sum of \$64,571,922 for fiscal year 2004-2005 shall be expended for the employer's share of the social security/Medicare payment for employees; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

SECTION 76. Provided that of the interdepartmental transfer appropriation for retirement (BUF 141), the sum of \$88,459,980 for fiscal year 2003-2004 and the sum of \$91,232,678 for fiscal year 2004-2005 shall be expended for the university of Hawaii and department of education's employer's share of the social security/Medicare payment; provided further that funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse to the general fund.

PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 77. 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

ACT 200

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; and provided further 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 2003-04	M O	FISCAL YEAR 2004-05	M O

A. ECONOMIC DEVELOPMENT

AGR141 - AGRICULTURAL RESOURCE MANAGEMENT

- 200202 STATE AGRICULTURAL WATER AND USE DEVELOPMENT PLAN, STATEWIDE

PLANS TO PREPARE STATE AGRICULTURAL WATER PLAN AS MANDATED BY ACT 101, SLH 1998. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS			300		
TOTAL FUNDING	AGR		150C		C
	AGR		150N		N

- 970001 WAIANAE AGRICULTURAL PARK, DRAINAGE IMPROVEMENTS, OAHU

CONSTRUCTION FOR THE WAIANAE AGRICULTURAL PARK SUBDIVISION, CONSISTING OF OPEN DITCHES, SEDIMENT PONDS AND OTHER APPURTENANT WORKS.

CONSTRUCTION			2,200		
TOTAL FUNDING	AGR		2,200C		C

- MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI

PLANS FOR THE IDENTIFICATION OF NEW SOURCES FOR THE MOLOKAI IRRIGATION SYSTEM, IMPROVEMENTS TO ADDRESS LONG-TERM NEEDS, AND EXPANSION.

PLANS			200		
TOTAL FUNDING	AGR		200C		C

AGR153 - AQUACULTURE DEVELOPMENT PROGRAM

- THE OCEANIC INSTITUTE, HAWAII

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE OCEANIC INSTITUTE'S CENTER FOR APPLIED AQUACULTURE AND MARINE BIOTECHNOLOGY AQUATIC FEEDS RESEARCH AND PILOT PRODUCTION FACILITY IN HILO. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

DESIGN			1		
CONSTRUCTION			498		
EQUIPMENT			1		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		TOTAL FUNDING	AGR	500C			C

LNR141 - WATER AND LAND DEVELOPMENT

5. J32 WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS, OAHU

CONSTRUCTION FOR INCREMENTAL IMPROVEMENTS TO MEET WATER QUALITY STANDARDS, 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.

CONSTRUCTION		1,400		
TOTAL FUNDING	LNR	1,400C		C

BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY

6. HCD001 KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, OAHU

PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR COSTS FOR PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROJECTS FOR HAWAII COMMUNITY DEVELOPMENT AUTHORITY'S KAKAAKO COMMUNITY DEVELOPMENT DISTRICT. FUNDS MAY BE USED TO MATCH FEDERAL AND NON-STATE FUNDS, AS MAY BE AVAILABLE.

PLANS		1,309		1,324
LAND		1		1
DESIGN		1		1
CONSTRUCTION		1		1
TOTAL FUNDING	BED	1,312C		1,327C

B. EMPLOYMENT

HMS802 - VOCATIONAL REHABILITATION

1. LANAKILA REHABILITATION CENTER, OAHU

DESIGN AND CONSTRUCTION FOR THE RENOVATION AND IMPROVEMENT OF THE HOOPONO ANNEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

DESIGN		1		
CONSTRUCTION		499		
TOTAL FUNDING	HMS	500C		C

LBR903 - OFFICE OF COMMUNITY SERVICES

2. HONOLULU COMMUNITY ACTION PROGRAM, OAHU

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		LAND ACQUISITION FOR THE ACQUISITION OF THE MENDONCA BUILDING FOR THE HONOLULU COMMUNITY ACTION PROGRAM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND				625	
		TOTAL FUNDING	LBR			625C	C
3.		ORI ANUENUE HALE, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT AND EQUIP ORI ANUENUE HALE'S COMMUNITY SERVICE FACILITY IN CENTRAL OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN				1	
		CONSTRUCTION				2,000	
		EQUIPMENT				499	
		TOTAL FUNDING	LBR			2,500C	C
4.		SEAGULL SCHOOLS, OAHU					
		DESIGN AND CONSTRUCTION FOR CHILDCARE CENTERS ON OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN				1	
		CONSTRUCTION				699	
		TOTAL FUNDING	LBR			700C	C

C. TRANSPORTATION FACILITIES

TRN102 - HONOLULU INTERNATIONAL AIRPORT

1.	A20A	HONOLULU INTERNATIONAL AIRPORT, INTRA-TERMINAL TRANSPORTATION SYSTEM, OAHU					
		CONSTRUCTION TO IMPLEMENT THE RECOMMENDATIONS OF THE INTRA-TERMINAL TRANSPORTATION SYSTEM, PHASE I PLANNING STUDY AND RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					45,000
		TOTAL FUNDING	TRN			E	20,000E
			TRN			N	25,000N
2.	A24A	HONOLULU INTERNATIONAL AIRPORT, EMERGENCY OPERATIONS CENTER, OAHU					
		CONSTRUCTION OF AN EMERGENCY OPERATIONS CENTER AND RELATED IMPROVEMENTS AT THE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				9,800	
		TOTAL FUNDING	TRN			3,800E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			TRN	6,000N			N
3.	A41K	HONOLULU INTERNATIONAL AIRPORT, ARCHITECTURAL BARRIER REMOVAL, OAHU					
		CONSTRUCTION FOR ARCHITECTURAL BARRIER REMOVAL TO COMPLY WITH THE AMERICANS WITH DISABILITIES ACT (ADA) REQUIREMENTS AT HONOLULU INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		3,000			
		TOTAL FUNDING	TRN	700B			B
			TRN	2,300X			X
TRN104 - GENERAL AVIATION							
4.	A71C	KALAELOA AIRPORT FACILITY IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR KALAELOA AIRPORT FACILITY IMPROVEMENTS INCLUDING LEASE LOTS, APRONS, RUNWAYS, TAXIWAYS, AND AVIATION FACILITIES SUCH AS THE CONTROL TOWER, AIRPORT RESCUE FIRE FIGHTING (ARFF) BUILDING, HANGAR, AND AVIATION FUEL SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		50			
		CONSTRUCTION					450
		TOTAL FUNDING	TRN	50B			50B
			TRN	N			400N
TRN111 - HILO INTERNATIONAL AIRPORT							
5.	B10P	HILO INTERNATIONAL AIRPORT, INSTALLATION OF NEW FIRE ALARM SYSTEM, HAWAII					
		CONSTRUCTION FOR THE INSTALLATION OF A NEW FIRE ALARM SYSTEM.					
		CONSTRUCTION		250			
		TOTAL FUNDING	TRN	250B			B
6.	B10Q	HILO INTERNATIONAL AIRPORT, INSTALLATION OF SECURITY FENCING, HAWAII					
		CONSTRUCTION FOR THE INSTALLATION OF SECURITY FENCING AND RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		900			
		TOTAL FUNDING	TRN	300E			E
			TRN	600N			N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
7.	B10S	HILO INTERNATIONAL AIRPORT, MAINTENANCE BASEYARD IMPROVEMENTS, HAWAII					
		CONSTRUCTION FOR MAINTENANCE BASEYARD IMPROVEMENTS, INCLUDING REPLACING THE ROOF AND OTHER STRUCTURAL MEMBERS OF THE MAINTENANCE BUILDING, ADDING A NEW INVENTORY STORAGE BUILDING, AND A NEW CRASH FIRE REPAIR BAY.					
			CONSTRUCTION			500	
			TOTAL FUNDING	TRN		500B	B
TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOLE							
8.	C03B	KONA INTERNATIONAL AIRPORT AT KEAHOLE, PARKING LOT EXPANSION, HAWAII					
		CONSTRUCTION FOR ADDITIONAL PARKING SPACES AT THE EXISTING EMPLOYEE PARKING LOT TO RELIEVE OVERFLOW CONDITIONS.					
			CONSTRUCTION			1,500	
			TOTAL FUNDING	TRN		1,500E	E
TRN131 - KAHULUI AIRPORT							
9.	D08E	KAHULUI AIRPORT GENERAL PURPOSE APRON AND ASAP BUILDING, MAUI					
		CONSTRUCTION FOR AN AVIATION FACILITY INCLUDING GENERAL PURPOSE APRON AND ALIEN SPECIES ACTION PLAN (ASAP) BUILDING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
			CONSTRUCTION			21,620	
			TOTAL FUNDING	TRN		7,500E	E
				TRN		14,120N	N
TRN161 - LIHUE AIRPORT							
10.	E03F	LIHUE AIRPORT HELIPORT IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR A HELIPORT AT THE AIRPORT.					
			CONSTRUCTION			9,000	
			TOTAL FUNDING	TRN		9,000E	E
11.	E03J	LIHUE AIRPORT, BAGGAGE CLAIM IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR IMPROVEMENTS TO BAGGAGE FACILITIES TO ACCOMMODATE THE LARGER BAGGAGE CAPACITY OF WIDE-BODY AIRCRAFT.					
			CONSTRUCTION			2,500	
			TOTAL FUNDING	TRN		2,500B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
TRN195 - AIRPORTS ADMINISTRATION							
12.	F04J	AIRPORT PLANNING STUDY, STATEWIDE					
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1,000		1,000	
		TOTAL FUNDING	TRN	900B		900B	
			TRN	100N		100N	
13.	F05A	AIRPORT FIRE ALARM SYSTEM IMPROVEMENTS, STATEWIDE					
		CONSTRUCTION FOR FIRE ALARM SYSTEM IMPROVEMENTS AT AIRPORTS, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		3,000			
		TOTAL FUNDING	TRN	1,000B			B
			TRN	2,000N			N
14.	F06G	LAND ACQUISITION, STATEWIDE					
		LAND ACQUISITION FOR AVIGATIONAL EASEMENTS, PROPERTY ACQUISITION, AND RELATED COSTS SUCH AS TITLE SEARCH, BOUNDARY SURVEYS, AND LAND APPRAISALS AT AIRPORTS STATEWIDE.					
		LAND		100			
		TOTAL FUNDING	TRN	100B			B
15.	F08F	AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECT 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 PROJECT RELATED POSITIONS.					
		PLANS		100		100	
		DESIGN		800		800	
		CONSTRUCTION		850		850	
		TOTAL FUNDING	TRN	1,750B		1,750B	
16.	F08G	MISCELLANEOUS AIRPORT PROJECTS, STATEWIDE					
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS AT VARIOUS STATE AIRPORTS. IMPROVEMENTS FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)				
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F	
		DESIGN			300		300	
		CONSTRUCTION			2,700		2,700	
		TOTAL FUNDING	TRN		3,000B		3,000B	
17.	F08H	PROJECT DEFINITION REPORTS, STATEWIDE						
		PLANS FOR PROJECT SCOPING FOR PROJECTS UNDER THE CAPITAL IMPROVEMENT PROGRAM AT STATEWIDE AIRPORTS.						
		PLANS			750			
		TOTAL FUNDING	TRN		750B		B	
18.	F08N	AIRPORT ARCHITECTURAL BARRIER REMOVAL, STATEWIDE						
		CONSTRUCTION FOR ARCHITECTURAL BARRIER REMOVAL AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		CONSTRUCTION			2,000			
		TOTAL FUNDING	TRN		1,000B		B	
			TRN		1,000N		N	
19.	F08O	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE						
		CONSTRUCTION FOR CONSTRUCTION MANAGEMENT SUPPORT AT AIRPORT FACILITIES, STATEWIDE.						
		CONSTRUCTION			125		125	
		TOTAL FUNDING	TRN		125B		125B	
20.	F08Q	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE						
		DESIGN AND CONSTRUCTION OF VARIOUS PROJECTS REQUIRING ARCHITECTURAL OR ENGINEERING CONSULTANT SUPPORT AT AIRPORTS STATEWIDE.						
		DESIGN			250		250	
		CONSTRUCTION			250		250	
		TOTAL FUNDING	TRN		500B		500B	
21.	F08S	RIAT RECOMMENDATIONS FOR AIRFIELD IMPROVEMENTS, STATEWIDE						
		CONSTRUCTION FOR RUNWAY INCURSION ACTION TEAM (RIAT) RECOMMENDATIONS FOR AIRFIELD IMPROVEMENTS REQUIRED BY THE FAA AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		CONSTRUCTION			2,500			
		TOTAL FUNDING	TRN		900B		B	
			TRN		1,600N		N	

TRN301 - HONOLULU HARBOR

22. J04 IMPROVEMENTS TO FACILITIES AT PIERS 19-29, HONOLULU HARBOR, OAHU

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AND PIER AREAS INCLUDING VESSEL BERTHING FACILITIES, UTILITIES, ROADWAYS, PAVED PARKING, AND OTHER IMPROVEMENTS.					
		DESIGN			250		
		CONSTRUCTION					2,500
		TOTAL FUNDING	TRN		250B		2,500B
23.	J06	SAND ISLAND CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, LIGHTING, UTILITIES, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION			24,500		
		TOTAL FUNDING	TRN		24,500E		E
24.	J26	CRUISE TERMINAL IMPROVEMENTS AT PIER 2, HONOLULU HARBOR, OAHU					
		CONSTRUCTION FOR RENOVATIONS AND SITE IMPROVEMENTS TO THE EXISTING FACILITIES FOR USE AS A CRUISE TERMINAL, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION			10,000		
		TOTAL FUNDING	TRN		10,000E		E

TRN303 - KALAELOA BARBERS POINT HARBOR

25. J10 KALAELOA-BARBERS POINT HARBOR MODIFICATIONS, OAHU

DESIGN FOR DEEPENING OF THE TURNING BASIN AND CHANNEL MODIFICATIONS AT KALAELOA-BARBERS POINT HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN 400
 TOTAL FUNDING TRN B 400B

TRN331 - KAHULUI HARBOR

26. M09 BARGE TERMINAL IMPROVEMENTS, KAHULUI HARBOR, MAUI

CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING PIERS, YARDS, SHEDS, AND OTHER IMPROVEMENTS.

CONSTRUCTION 1,500
 TOTAL FUNDING TRN 1,500E E

TRN361 - NAWILIWILI HARBOR

27. K07 NAWILIWILI HARBOR CHANNEL MODIFICATIONS, KAUAI

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE ENTRANCE CHANNEL AT NAWILIWILI HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			300		
		TOTAL FUNDING	TRN		300B		B
TRN395 - HARBORS ADMINISTRATION							
28.	I00	HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM PROJECTS 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		750B		750B
29.	I01	HARBOR PLANNING, STATEWIDE					
		PLANS FOR CONTINUING HARBOR STUDIES, RESEARCH, AND ADVANCE PLANNING OF HARBOR AND TERMINAL FACILITIES ON ALL ISLANDS.					
		PLANS			350		350
		TOTAL FUNDING	TRN		350B		350B
30.	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			300		300
		TOTAL FUNDING	TRN		375B		375B
31.	I04	COMMERCIAL HARBORS SEWER SYSTEM IMPROVEMENTS, STATEWIDE					
		CONSTRUCTION FOR THE PHASE-OUT OF LARGE CAPACITY CESSPOOLS AT COMMERCIAL HARBOR FACILITIES AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		1,000B		B
32.	I05	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT OAHU PORTS, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, AND OTHER FACILITIES.					
		DESIGN			50		50
		CONSTRUCTION			250		250
		TOTAL FUNDING	TRN		300B		300B
33.	107	ENVIRONMENTAL REMEDIATION OF COMMERCIAL HARBOR FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR STUDIES AND ENVIRONMENTAL REMEDIATION MEASURES TO PROVIDE A SAFE WORKING ENVIRONMENT FOR MARITIME BUSINESSES AND PERSONNEL WORKING AT HARBOR FACILITIES.					
		PLANS			500		
		DESIGN			500		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		2,000B		B
34.	113	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE					
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION PROJECTS AT HARBOR FACILITIES STATEWIDE.					
		CONSTRUCTION			1,000		
		TOTAL FUNDING	TRN		1,000B		B
35.	115	SECURITY IMPROVEMENTS AT COMMERCIAL HARBORS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION OF SECURITY SYSTEM IMPROVEMENTS AT COMMERCIAL HARBOR FACILITIES, STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			500		
		DESIGN			1,000		
		CONSTRUCTION			2,750		
		TOTAL FUNDING	TRN		3,250B		B
			TRN		1,000N		N
36.	116	INTELLIGENT TRANSPORTATION SYSTEMS STUDIES, STATEWIDE					
		PLANS FOR STUDIES TO IMPROVE THE INTERMODAL MOVEMENT OF CARGO BETWEEN WATER TRANSPORTATION TERMINALS AND LANDSIDE DESTINATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1,250		
		TOTAL FUNDING	TRN		250B		B
			TRN		1,000N		N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
TRN501 - OAHU HIGHWAYS							
37.	S269	KAMEHAMEHA HIGHWAY, SOUTH PUNALUU BRIDGE REPLACEMENT, OAHU					
		CONSTRUCTION FOR REPLACEMENT OF SOUTH PUNALUU BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
			CONSTRUCTION			12,250	
			TOTAL FUNDING	TRN		2,450E	E
				TRN		9,800N	N
38.	S271	INTERSTATE ROUTE H-1 AND MOANALUA FREEWAYS IMPROVEMENTS, PUULOA INTERCHANGE TO KAPIOLANI INTERCHANGE, OAHU					
		CONSTRUCTION FOR AN ADDITIONAL LANE ON THE H-1 FREEWAY EASTBOUND LANES FROM THE VICINITY OF MIDDLE STREET TO THE VICINITY OF VINEYARD BOULEVARD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
			CONSTRUCTION			6,500	
			TOTAL FUNDING	TRN		1,300E	E
				TRN		5,200N	N
39.	S276	KALANIANAOLE HIGHWAY IMPROVEMENTS, RETAINING WALL AT MAKAPUU, OAHU					
		CONSTRUCTION FOR CONSTRUCTING AND/OR REPAIRING A RETAINING WALL ALONG KALANIANAOLE HIGHWAY IN THE VICINITY OF MAKAPUU POINT, INCLUDING SUBSURFACE INVESTIGATION AND SLOPE PROTECTION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
			CONSTRUCTION			6,000	
			TOTAL FUNDING	TRN		1,200E	E
				TRN		4,800N	N
40.	S280	INTERSTATE ROUTE H-1, PEARL CITY VIADUCT AND WAIMALU VIADUCT IMPROVEMENTS, OAHU					
		DESIGN FOR THE REPLACING, REPAIRING, AND/OR STRENGTHENING OF THE PEARL CITY AND WAIMALU VIADUCT'S CONCRETE DECK AND OTHER STRUCTURAL COMPONENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
			DESIGN			1,500	
			TOTAL FUNDING	TRN		300E	E
				TRN		1,200N	N
41.	S287	KAMEHAMEHA HIGHWAY BIKEWAY, VICINITY OF RADFORD DRIVE TO THE ARIZONA MEMORIAL, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		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.					
		CONSTRUCTION			1,250		
		TOTAL FUNDING	TRN		250E		E
			TRN		1,000N		N
42.	S298	KAMEHAMEHA HIGHWAY, KOKOLOLIO STREAM BRIDGE REPLACEMENT, OAHU					
		CONSTRUCTION FOR REPLACEMENT OF KOKOLOLIO STREAM BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			4,100		
		TOTAL FUNDING	TRN		820E		E
			TRN		3,280N		N
43.	S313	INTERSTATE ROUTE H-1, ADDITION AND MODIFICATION OF FREEWAY ACCESS, MAKAKILO TO PALAILAI INTERCHANGES, OAHU					
		PLANS FOR IMPROVING/MODIFYING THE MAKAKILO AND PALAILAI INTERCHANGES AND CONSTRUCTING A NEW INTERCHANGE (KAPOLEI INTERCHANGE). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					2,000
		TOTAL FUNDING	TRN			E	400E
			TRN			N	1,600N
44.	S314	KAMEHAMEHA HIGHWAY, UPPER POAMOHO STREAM BRIDGE REPLACEMENT, OAHU					
		DESIGN FOR REPLACEMENT OF A MULTI-GIRDER REINFORCED CONCRETE BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF WAHIAWA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			2,275		
		TOTAL FUNDING	TRN		455E		E
			TRN		1,820N		N
45.	S315	KAMEHAMEHA HIGHWAY, REHABILITATION OF LAIELOA STREAM BRIDGE, OAHU					
		DESIGN FOR REHABILITATION OF A CONCRETE SLAB BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF LAIE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					725
		TOTAL FUNDING	TRN			E	145E
			TRN			N	580N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
46.	S316	KAMEHAMEHA HIGHWAY, KAALAEA STREAM BRIDGE REPLACEMENT, OAHU					
		DESIGN FOR REPLACEMENT OF A TWO SPAN CONCRETE BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF KAHALUU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					1,000
		TOTAL FUNDING	TRN		E		200E
			TRN		N		800N
47.	S317	KAMEHAMEHA HIGHWAY, REHABILITATION OF WAIPILOPILO STREAM BRIDGE, OAHU					
		DESIGN FOR REHABILITATION OF A CONCRETE TEE-BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF HAUULA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					600
		TOTAL FUNDING	TRN		E		120E
			TRN		N		480N
48.	S318	HIGHWAY LIGHTING REPLACEMENT AT VARIOUS LOCATIONS, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACING AND/OR UPGRADING THE EXISTING HIGHWAY LIGHTING SYSTEM ON STATE HIGHWAYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				900	
		CONSTRUCTION					3,000
		TOTAL FUNDING	TRN		180E		600E
			TRN		720N		2,400N
49.	S319	PEARL CITY, WAIANAE AND KANEOHE BASEYARDS, WASHDOWN RACKS, OAHU					
		DESIGN FOR INSTALLING WASHDOWN RACKS TO INCLUDE A WATER RECYCLING UNIT, STEAM PRESSURE WASHERS, AND A CONCRETE PAD FOR COMPLIANCE WITH THE DEPARTMENT OF HEALTH REGULATIONS AND THE CLEAN WATER ACT.					
		DESIGN				250	
		TOTAL FUNDING	TRN		250E		E
50.	S320	KAMEHAMEHA HIGHWAY WIDENING, LANIKUHANA AVENUE TO KA UKA BOULEVARD, OAHU					
		PLANS FOR WIDENING KAMEHAMEHA HIGHWAY TO A FOUR-LANE DIVIDED FACILITY WITH SHOULDERS FOR BICYCLES AND DISABLED VEHICLES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1,500

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		TOTAL FUNDING	TRN		E		300E
			TRN		N		1,200N
51.	S321	INTERSTATE ROUTE H-1 IMPROVEMENTS, EASTBOUND, WARD AVENUE ON-RAMP TO UNIVERSITY INTERCHANGE, OAHU					
		PLANS FOR IMPROVING EASTBOUND TRAFFIC FLOW ON INTERSTATE ROUTE H-1 FROM WARD AVENUE ON-RAMP TO UNIVERSITY INTERCHANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1,500			
		TOTAL FUNDING	TRN	300E			E
			TRN	1,200N			N
52.	S322	INTERSTATE ROUTE H-1, WAIAWA INTERCHANGE, WESTBOUND, WAIPAHU OFF-RAMP IMPROVEMENTS, OAHU					
		DESIGN FOR WIDENING THE WAIPAHU OFF-RAMP FROM ONE TO TWO LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					3,000
		TOTAL FUNDING	TRN		E		600E
			TRN		N		2,400N
53.	S323	INTERSTATE ROUTE H-1, ADDITIONAL WESTBOUND LANE, VICINITY OF THE PEARL CITY VIADUCT TO PAIWA INTERCHANGE, OAHU					
		DESIGN FOR CONSTRUCTING AN ADDITIONAL H-1 WESTBOUND LANE THROUGH THE WAIAWA INTERCHANGE AND AN ADDITIONAL LANE TO THE OFF-RAMP AT THE PAIWA INTERCHANGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		2,500			
		TOTAL FUNDING	TRN	500E			E
			TRN	2,000N			N
54.	SP9901	FORT WEAVER ROAD WIDENING, VICINITY OF LAULAUNUI STREET TO VICINITY OF GEIGER ROAD, OAHU					
		CONSTRUCTION FOR WIDENING OF FORT WEAVER ROAD TO A SIX-LANE FACILITY FROM VICINITY OF LAULAUNUI STREET TO THE VICINITY OF GEIGER ROAD, INCLUDING INSTALLING A TRAFFIC CAMERA SYSTEM FROM WAIPAHU STREET TO PAPIPI ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		15,000			
		TOTAL FUNDING	TRN	3,000E			E
			TRN	12,000N			N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
55.		FARRINGTON HIGHWAY IMPROVEMENTS, HAKIMO ROAD TO KAUKAMA ROAD, OAHU					
		DESIGN AND CONSTRUCTION OF IMPROVEMENTS BETWEEN HAKIMO ROAD AND KAUKAMA ROAD INCLUDING A MEDIAN, PAVED SHOULDERS, SIDEWALKS, UTILITY WORK, AND OTHER IMPROVEMENTS.					
		DESIGN			2,500		
		CONSTRUCTION			22,500		
		TOTAL FUNDING	TRN		25,000E		E
56.		FRANKLIN D. ROOSEVELT AVENUE EXTENSION, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE EXTENSION OF FRANKLIN D. ROOSEVELT AVENUE TO MEET THE INTERSECTION OF KAMOKILA BLVD/ KAPOLEI PARKWAY.					
		LAND			2,000		
		DESIGN			275		
		CONSTRUCTION			1,850		
		TOTAL FUNDING	TRN		4,125E		E
57.		KAHEKILI HIGHWAY CONTRAFLOW LANE, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A CONTRAFLOW LANE FROM HAIKU ROAD TO HUI IWA STREET/VALLEY OF THE TEMPLES.					
		PLANS			1		
		DESIGN			49		
		CONSTRUCTION			450		
		TOTAL FUNDING	TRN		500E		E
58.		KAMEHAMEHA HIGHWAY IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A LEFT TURN FROM KAMEHAMEHA HIGHWAY INTO THE KAHUKU HIGH SCHOOL CAMPUS ENTRANCE.					
		PLANS			5		
		DESIGN			20		
		CONSTRUCTION			75		
		TOTAL FUNDING	TRN		100E		E
59.		KAMEHAMEHA HIGHWAY IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR CROSSWALKS ON KAMEHAMEHA HIGHWAY NEAR BUS STOPS FROM KAHALUU TO KAWELA BAY.					
		DESIGN			15		
		CONSTRUCTION			50		
		TOTAL FUNDING	TRN		65E		E
60.		REGIONAL TRAFFIC STUDY, OAHU					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		PLANS FOR STUDIES TO DEVELOP ALTERNATIVES TO REDUCE TRAFFIC CONGESTION IN THE AREAS BOUNDED BY WARD AVENUE, LUNALILO HI FREEWAY, KAPAHULU AVENUE, ALONG KALAKAUA AVENUE, AND ALA MOANA BOULEVARD.					
		PLANS			200		
		TOTAL FUNDING		TRN	200E		E
61.	S325	KUNIA ROAD IMPROVEMENTS, VICINITY OF HONOWAI STREET TO VICINITY OF SOUTH KUPUNA LOOP, OAHU					
		CONSTRUCTION FOR WIDENING KUNIA ROAD, INSTALLING TRAFFIC SIGNALS AT HONOWAI STREET, AND CONSTRUCTING CURB AND GUTTER, CONCRETE SIDEWALK, AND DRAINAGE STRUCTURES.					
		CONSTRUCTION			2,000		
		TOTAL FUNDING		TRN	2,000E		E
TRN511 - HAWAII HIGHWAYS							
62.	T11	PUAINAKO STREET WIDENING, KANOELEHUA AVENUE TO KOMOHANA STREET, HAWAII					
		LAND ACQUISITION AND DESIGN TO WIDEN AND REALIGN PUAINAKO STREET FROM 2 TO 4 LANES FROM KANOELEHUA AVENUE TO KOMOHANA STREET.					
		LAND DESIGN			100		
		TOTAL FUNDING		TRN	350		E
					450E		
63.	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 END POSTS AND CRASH ATTENUATOR, AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			100		
		CONSTRUCTION			1,400		1,400
		TOTAL FUNDING		TRN	300E		280E
				TRN	1,200N		1,120N
64.	T080	KAWAIHAE ROAD, WAIAKA STREAM BRIDGE REPLACEMENT AND REALIGNMENT, HAWAII					
		DESIGN FOR REPLACING THE EXISTING WAIAKA STREAM BRIDGE, REALIGNING THE BRIDGE APPROACHES, RECONSTRUCTING THE ROUTE 19/ ROUTE 250 INTERSECTION, AND INSTALLING SAFETY IMPROVEMENTS.					
		DESIGN			1,000		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		TOTAL FUNDING	TRN	1,000X			X
65.	T118	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, HAWAII					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		DESIGN			100		
		CONSTRUCTION			1,750		
		TOTAL FUNDING	TRN		1,850E		E
66.	T133	VOLCANO ROAD DRAINAGE IMPROVEMENTS, KULANI ROAD TO MOUNTAIN VIEW SCHOOL, HAWAII					
		DESIGN FOR DRAINAGE IMPROVEMENTS, INCLUDING INSTALLING A CONCRETE-LINED DITCH WITH GRATING, AN ASPHALT-LINED DITCH, GUARDRAILS, CULVERTS, AND FENCING.					
		DESIGN			350		
		TOTAL FUNDING	TRN		350E		E
67.	T134	HONOKAA BASEYARD IMPROVEMENTS, HAWAII					
		DESIGN FOR IMPROVEMENTS TO HONOKAA BASEYARD, INCLUDING EXTENDING THE EXISTING GARAGE AND CONSTRUCTING A STORAGE ROOM.					
		DESIGN			100		
		TOTAL FUNDING	TRN		100E		E
68.	T135	MAMALAOA HIGHWAY DRAINAGE IMPROVEMENTS AT KAWA, HAWAII					
		DESIGN FOR DRAINAGE IMPROVEMENTS, INCLUDING THE INSTALLATION OF DRAINAGE BOX CULVERTS AND RAISING OF THE ROADWAY.					
		DESIGN			350		
		TOTAL FUNDING	TRN		350E		E
69.	T136	HAWAII BELT ROAD DRAINAGE IMPROVEMENTS, VICINITY OF HAKALAU BRIDGE, HAWAII					
		DESIGN FOR DRAINAGE IMPROVEMENTS, INCLUDING INSTALLING A DRAINAGE SPILLWAY AND BOX CULVERTS.					
		DESIGN					350
		TOTAL FUNDING	TRN			E	350E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
TRN531 - MAUI HIGHWAYS							
70.	V42	HALEAKALA HIGHWAY WIDENING, PUKALANI BYPASS TO HANA HIGHWAY, MAUI					
		CONSTRUCTION FOR THE WIDENING OF HALEAKALA HIGHWAY FROM 3 TO 4 LANES BETWEEN PUKALANI BYPASS TO HANA HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			19,525		
		TOTAL FUNDING	TRN		3,905E		E
			TRN		15,620N		N
71.	V74	PAIA BYPASS, MAUI					
		PLANS AND DESIGN FOR ALTERNATIVE TRAFFIC IMPROVEMENTS IN THE VICINITY OF PAIA TOWN.					
		PLANS			100		
		DESIGN			1,500		
		TOTAL FUNDING	TRN		1,600E		E
72.	V78	HONOAPIILANI HIGHWAY PASSING LANES, MAALAEA HARBOR TO PUAMANA, MAUI					
		DESIGN FOR CONSTRUCTING PASSING LANES ON HONOAPIILANI HIGHWAY BETWEEN MAALAEA HARBOR AND PUAMANA.					
		DESIGN			1,500		
		TOTAL FUNDING	TRN		1,500X		X
73.	V93	WAIEHU BEACH ROAD, REHABILITATION OF IAO STREAM BRIDGE, MAUI					
		LAND ACQUISITION AND DESIGN FOR REHABILITATION OF A CONCRETE TEE-BEAM BRIDGE ON WAIEHU BEACH ROAD IN THE VICINITY OF WAILUKU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					300
		DESIGN			900		
		TOTAL FUNDING	TRN		180E		60E
			TRN		720N		240N
74.	V94	HONOAPIILANI HIGHWAY, REPLACEMENT OF HONOLUA BRIDGE, MAUI					
		DESIGN FOR REPLACEMENT OF A CONCRETE TEE-BEAM BRIDGE ON HONOAPIILANI HIGHWAY IN THE VICINITY OF HONOLUA BAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					750
		TOTAL FUNDING	TRN			E	150E
			TRN			N	600N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
75.	V95	HALEAKALA HIGHWAY WIDENING AT MILEPOST 0.8, MAUI					
		DESIGN FOR WIDENING THE HIGHWAY FROM ONE TO TWO LANES, EXTENDING A BOX CULVERT, AND CONSTRUCTING HEADWALLS AND WING WALLS.					
		DESIGN				60	
		TOTAL FUNDING	TRN			60E	E
76.	V073	PUUNENE AVENUE/MOKULELE HIGHWAY WIDENING, KUIHELANI HIGHWAY TO PILANI HIGHWAY, MAUI					
		CONSTRUCTION FOR THE WIDENING OF PUUNENE AVENUE AND MOKULELE HIGHWAY FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				22,500	
		TOTAL FUNDING	TRN			4,500E	E
			TRN			18,000N	N
77.		HONOAPILANI HIGHWAY WIDENING, LAHAINA TO MAALAEA, MAUI					
		PLANS FOR THE WIDENING OF HONOAPILANI HIGHWAY FROM LAHAINA TO MAALAEA.					
		PLANS				2,500	
		TOTAL FUNDING	TRN			2,500E	E
TRN541 - MOLOKAI HIGHWAYS							
78.	W08	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MOLOKAI					
		CONSTRUCTION TO BUILD ASPHALT CONCRETE PAVED SHOULDERS AND INSTALLING AND/OR UPGRADING EXISTING GUARDRAIL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				700	
		TOTAL FUNDING	TRN			140E	E
			TRN			560N	N
79.	W012	MAUNALOA HIGHWAY SLOPE STABILIZATION AT MP 13 AND MP 14.3, MOLOKAI					
		DESIGN FOR THE STABILIZATION OF THE EMBANKMENT AT MILE POST 13 AND MILE POST 14.3.					
		DESIGN				225	
		TOTAL FUNDING	TRN			225E	E
TRN561 - KAUAI HIGHWAYS							
80.	X51	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, 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			200		
		CONSTRUCTION			1,000		1,000
		TOTAL FUNDING	TRN		280E		200E
			TRN		920N		800N
81.	X112	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, KAUAI					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION, INCLUDING ELIMINATING CONSTRUCTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		LAND			150		
		DESIGN					100
		CONSTRUCTION					1,200
		TOTAL FUNDING	TRN		150E		1,300E
82.	X122	KUHIO HIGHWAY, ROUTE 560, SLOPE PROTECTION, HANAIEI HILL, KAUAI					
		LAND ACQUISITION AND DESIGN FOR CONSTRUCTING SLOPE STABILIZATION AND PROTECTION.					
		LAND					100
		DESIGN			200		
		TOTAL FUNDING	TRN		200E		100E
83.	X123	WAIMEA CANYON DRIVE/KOKEE ROAD IMPROVEMENTS, MP 0-14, KAUAI					
		DESIGN FOR CONSTRUCTING PAVED SHOULDERS, INSTALLING GUARDRAIL, AND OTHER IMPROVEMENTS.					
		DESIGN					100
		TOTAL FUNDING	TRN		E		100E
84.	X124	KUHIO HIGHWAY, KAPAIA BRIDGE REPLACEMENT, KAUAI					
		DESIGN FOR REPLACEMENT OF A MULTI-TEE BEAM REINFORCED CONCRETE GIRDER BRIDGE ON KUHIO HIGHWAY IN THE VICINITY OF KAPAIA. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					1,300
		TOTAL FUNDING	TRN		E		260E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
			TRN		N		1,040N
85.	X125	KAUMUALII HIGHWAY, OMAO BRIDGE REHABILITATION, KAUAI					
		LAND ACQUISITION AND DESIGN FOR REHABILITATION OF A CONCRETE TEE GIRDER BRIDGE ON KAUMUALII HIGHWAY IN THE VICINITY OF OMAO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					280
		DESIGN		1,050			
		TOTAL FUNDING	TRN	210E			60E
			TRN	840N			220N
86.	X126	POULI ROAD CONNECTOR, KUHIO HIGHWAY TO TEMPORARY KAPAA BYPASS, KAUAI					
		PLANS FOR CONSTRUCTING A NEW ROAD CONNECTING KUHIO HIGHWAY TO THE TEMPORARY KAPAA BYPASS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		500			
		TOTAL FUNDING	TRN	100E			E
			TRN	400N			N
TRN595 - HIGHWAYS ADMINISTRATION							
87.	X91	PEDESTRIAN FACILITIES AND ADA COMPLIANCE AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CONSTRUCTING PEDESTRIAN FACILITIES AND 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			
		CONSTRUCTION		450			1,000
		TOTAL FUNDING	TRN	190E			200E
			TRN	360N			800N
88.	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 PROVIDES FOR THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.					
		LAND		200			
		TOTAL FUNDING	TRN	200E			E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
89.	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			100		
		CONSTRUCTION			1,000		1,275
		TOTAL FUNDING	TRN		1,100E		1,275E
90.	X98	IMPROVEMENTS TO INTERSECTIONS AND HIGHWAY FACILITIES, STATEWIDE					
		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		
		CONSTRUCTION					2,500
		TOTAL FUNDING	TRN		375E		500E
			TRN		N		2,000N
91.	X99	HIGHWAY PLANNING, STATEWIDE					
		PLANS FOR ROAD USE, ROAD LIFE, ECONOMIC STUDIES, RESEARCH, ADVANCE PLANNING, AND SCOPING OF FEDERAL AID AND NON-FEDERAL AID HIGHWAY PROJECTS AND PROGRAMS, AND STUDIES REQUIRED BY THE FEDERAL HIGHWAYS ADMINISTRATION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1,000		
		TOTAL FUNDING	TRN		200E		E
			TRN		800N		N
92.	X221	TRAFFIC SIGNAL MODERNIZATION AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR REPLACING EXISTING TRAFFIC SIGNAL SYSTEMS; PROVIDING INTERCONNECTION OF SIGNALIZED INTERSECTIONS; UPGRADING EXISTING TRAFFIC SIGNAL SYSTEMS TO MEET CURRENT AMERICANS WITH DISABILITIES STANDARDS; AND INSTALLING CLOSE 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

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
93.	X225	HIGHWAYS 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 THE DEPARTMENT OF TRANSPORTATION'S HIGHWAYS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECT RELATED POSITIONS.					
		PLANS			1		1
		LAND			1		1
		DESIGN			1		1
		CONSTRUCTION			14,497		14,497
		TOTAL FUNDING	TRN		8,500B		8,500B
			TRN		6,000N		6,000N
94.	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		249E		249E
			TRN		1N		1N
95.	X227	ROCKFALL PROTECTION/SLOPE STABILIZATION AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN FOR ROCKFALL/SLOPE PROTECTION AND SLOPE STABILIZATION MITIGATION MEASURES AT VARIOUS LOCATIONS STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,000		
		TOTAL FUNDING	TRN		200E		E
			TRN		800N		N
96.	X230	BIKEWAY IMPROVEMENTS AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN TO PROVIDE BICYCLE FACILITIES ON STATE HIGHWAYS. THE FEDERAL LEGISLATION TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (TEA-21) PROVIDES FOR IMPROVING CONDITIONS AND SAFETY FOR THE BICYCLING MODE OF TRAVEL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,000		
		TOTAL FUNDING	TRN		200E		E
			TRN		800N		N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
97.	X231	HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY RENOVATION, STATEWIDE					
		DESIGN FOR RENOVATION AND IMPROVEMENTS TO THE HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY.					
		DESIGN					500
		TOTAL FUNDING	TRN		E		500E

D. ENVIRONMENTAL PROTECTION

HTH840 - ENVIRONMENTAL MANAGEMENT

- 840401 WASTEWATER TREATMENT REVOLVING FUND FOR POLLUTION CONTROL, STATEWIDE

CONSTRUCTION FOR FUNDS TO MATCH FEDERAL CAPITALIZATION GRANTS FOR WASTEWATER PROJECTS. FUNDS APPROPRIATED TO BE TRANSFERRED TO WATER POLLUTION CONTROL REVOLVING FUND ESTABLISHED PURSUANT TO CHAPTER 342-D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		12,515	12,515
TOTAL FUNDING	HTH	2,086C	2,086C
	HTH	10,429N	10,429N

- 840402 SAFE 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		9,664	9,664
TOTAL FUNDING	HTH	1,611C	1,611C
	HTH	8,053N	8,053N

LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT

- 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 IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF LAND AND NATURAL RESOURCES. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.

PLANS		1,750	1,750
TOTAL FUNDING	LNR	1,750C	1,750C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
E. HEALTH							
HTH595 - HEALTH RESOURCES ADMINISTRATION							
1.		ST. FRANCIS HEALTHCARE SYSTEM, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ST. FRANCIS HEALTHCARE SYSTEM'S MAUI RENAL DIALYSIS CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			1		
		CONSTRUCTION			748		
		EQUIPMENT			1		
		TOTAL FUNDING	HTH		750C		C
HTH210 - HAWAII HEALTH SYSTEMS CORPORATION							
2.		HHSC41 KOHALA HOSPITAL, EMERGENCY ELECTRICAL SYSTEM SWITCH, HAWAII					
		CONSTRUCTION TO ADD SWITCHGEAR EQUIPMENT TO FACILITATE EMERGENCY POWER DISTRIBUTION.					
		CONSTRUCTION			100		
		TOTAL FUNDING	HTH		100C		C
3.		HHSC43 KAUAI VETERANS MEMORIAL HOSPITAL, REROOF MEDICAL SURGICAL, SNF, NURSING ADMINISTRATION, PT, AND OT, KAUAI					
		DESIGN AND CONSTRUCTION TO REROOF THE MEDICAL SURGICAL, SNF, NURSING ADMINISTRATION, PT, AND OT AREAS.					
		DESIGN			25		
		CONSTRUCTION			296		
		TOTAL FUNDING	HTH		321C		C
4.		HAWAII HEALTH SYSTEMS FOUNDATION, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A LONG-TERM CARE VETERANS HOME LOCATED ON THE CAMPUS OF HILO MEDICAL CENTER.					
		PLANS			1		
		LAND			1		
		DESIGN			2,000		
		CONSTRUCTION			12,998		
		EQUIPMENT			1,000		
		TOTAL FUNDING	HTH		16,000C		C
5.		KULAMALU SKILLED NURSING/INTERMEDIATE CARE FACILITY, MAUI					
		LAND ACQUISITION AND DESIGN FOR A SKILLED NURSING/INTERMEDIATE CARE FACILITY.					
		LAND			2,900		
		DESIGN			850		
		TOTAL FUNDING	HTH		3,750C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F

F. SOCIAL SERVICES

HMS501 - YOUTH SERVICES ADMINISTRATION

1.		HALE KIPA, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE DEVELOPMENT OF THE HALE KIPA COMPREHENSIVE PROGRAM SUPPORT CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS			50		
		LAND			200		
		DESIGN			200		
		CONSTRUCTION			200		
		TOTAL FUNDING	HMS		650C		C

DEF112 - SERVICES TO VETERANS

2.	OVS004	AIEA BAY PUMPHOUSE PROPERTY ENVIRONMENTAL REMEDIATION, OAHU					
		DESIGN FOR REMEDIATION ACTIONS FOR ENVIRONMENTAL CLEANUP. SITE ASSESSMENT WILL INCLUDE A PRIORITY FOCUS ON THE MERCURY CONTAMINATION ISSUE. MAY ALSO INCLUDE MISCELLANEOUS WORK RELATING TO SITE CLEANUP, SECURITY OF PROPERTY, AND VARIOUS CLOSE OUT ACTIONS REQUIRED BY OTHER STATE AND FEDERAL GOVERNMENT AGENCIES.					
		DESIGN			150		
		TOTAL FUNDING	DEF		150C		C

HMS601 - ADULT AND COMMUNITY CARE SERVICES BRANCH

3.		PALOLO CHINESE HOME, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO CONSTRUCT THE PALOLO CHINESE HOME'S FOOD SERVICE COMPLEX, WELLNESS CENTER, AND SUPPORTING INFRASTRUCTURE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			1		
		CONSTRUCTION			498		
		EQUIPMENT			1		
		TOTAL FUNDING	HMS		500C		C

HHL602 - PLANNING, DEVELOPMENT, MANAGEMENT, AND GENERAL SUPPORT FOR HAWAIIAN HOMESTEADS

4.		WAIMANALO HAWAIIAN HOMES ASSOCIATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A NEW HALAU BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			598		
		TOTAL FUNDING	HHL		600C		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 IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

DESIGN			200	200
CONSTRUCTION			3,600	3,600
EQUIPMENT			200	200
TOTAL FUNDING	AGS		4,000B	4,000B

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			1,700	1,700
EQUIPMENT			150	150
TOTAL FUNDING	AGS		2,000B	2,000B

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			245	245
LAND			5	5
TOTAL FUNDING	AGS		250B	250B

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 2003-04	M O F	FISCAL YEAR 2004-05	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.					
					200		200
					800		800
		TOTAL FUNDING	AGS		1,000B		1,000B
5.	005	LUMP SUM CIP - FIRE PROTECTION, CODE VIOLATIONS, AND ALARM SYSTEMS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE CODE VIOLATIONS TO MEET COUNTY FIRE PROTECTION STANDARDS AND/OR FIRE CODE VIOLATIONS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
					100		100
					400		400
		TOTAL FUNDING	AGS		500B		500B
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.					
					300		300
					1,700		1,700
		TOTAL FUNDING	AGS		2,000B		2,000B
7.	00701	LUMP SUM CIP - PUBLIC ACCOMMODATIONS TRANSITION PLANS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISIONS OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
					250		250
					500		500
		TOTAL FUNDING	AGS		750B		750B
8.	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.					
					100		100
					300		300

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		EQUIPMENT			100		100
		TOTAL FUNDING	AGS		500B		500B
9.	008	LUMP SUM CIP - ASBESTOS REMOVAL 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			50		50
		CONSTRUCTION			450		450
		TOTAL FUNDING	AGS		500B		500B
10.	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			400		400
		TOTAL FUNDING	AGS		500B		500B
11.	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 DEPARTMENT OF EDUCATION PROJECTS WITHIN THIS ACT WITH UNREQUIRED BALANCES MAY BE TRANSFERRED INTO THIS PROJECT.					
		DESIGN			200		200
		CONSTRUCTION			700		700
		EQUIPMENT			100		100
		TOTAL FUNDING	AGS		1,000B		1,000B
12.	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			250		250
		CONSTRUCTION			1,700		1,700
		EQUIPMENT			50		50
		TOTAL FUNDING	AGS		2,000B		2,000B
13.	014	LUMP SUM CIP - CAPITAL IMPROVEMENTS PROGRAM COSTS, STATEWIDE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		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.					
		PLANS			250		250
		TOTAL FUNDING	EDN		250B		250B
14.	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			25		25
		CONSTRUCTION			50		50
		EQUIPMENT			25		25
		TOTAL FUNDING	AGS		100B		100B
15.	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			400		400
		CONSTRUCTION			1,100		1,100
		TOTAL FUNDING	AGS		1,500B		1,500B
16.	P00026	LUMP SUM CIP - PLAYGROUND EQUIPMENT, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DO NOT MEET U.S. CONSUMER PRODUCTS SAFETY COMMISSION 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			100		100
		CONSTRUCTION			500		500
		EQUIPMENT			150		150
		TOTAL FUNDING	AGS		750B		750B
17.	009002	LUMP SUM CIP - PLAYGROUND EQUIPMENT ACCESSIBILITY, 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					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			40		40
		CONSTRUCTION			260		260
		EQUIPMENT			200		200
		TOTAL FUNDING	AGS		500B		500B
18.	018	LUMP SUM CIP - ELIMINATION OF CESSPOOLS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE ELIMINATION OF CESSPOOLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			250		250
		CONSTRUCTION			950		950
		TOTAL FUNDING	AGS		1,200B		1,200B
19.	019	LUMP SUM CIP - GENDER EQUITY, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR GENDER EQUITY PROJECTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			300		300
		CONSTRUCTION			1,500		1,500
		EQUIPMENT			200		200
		TOTAL FUNDING	AGS		2,000B		2,000B
20.		CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENT AND UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			150		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	AGS		1,150B		B
21.		FERN ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE THE ROOFS OF BUILDINGS J, B, AND C; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			35		
		CONSTRUCTION			200		
		TOTAL FUNDING	AGS		235B		B
22.	402051	HANA HIGH AND ELEMENTARY SCHOOL, MAUI					
		CONSTRUCTION AND EQUIPMENT FOR A SIX-CLASSROOM BUILDING AT HANA HIGH AND ELEMENTARY SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			2,900		
		EQUIPMENT			100		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		TOTAL FUNDING	AGS	3,000B			B
23.		HEEIA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		30			
		CONSTRUCTION		150			
		TOTAL FUNDING	AGS	180B			B
24.		HIGHLANDS INTERMEDIATE SCHOOL, OAHU					
		CONSTRUCTION FOR THE EXTENSION OF THE MUSIC BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		704			
		TOTAL FUNDING	AGS	704B			B
25.		HONOWAI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF AIR CONDITIONING FOR THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		25			
		CONSTRUCTION		50			
		EQUIPMENT		125			
		TOTAL FUNDING	AGS	200B			B
26.		KAHUKU HIGH AND INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS AND IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		25			
		CONSTRUCTION		350			
		EQUIPMENT		25			
		TOTAL FUNDING	AGS	400B			B
27.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A SCIENCE CENTER IN BUILDING G; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		25			
		CONSTRUCTION		105			
		TOTAL FUNDING	AGS	130B			B
28.		KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ATHLETIC FIELD RESTROOM FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DESIGN				33	
		CONSTRUCTION				300	
		TOTAL FUNDING	AGS			333B	B
29.		KALIHI-WAENA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REROOF BUILDINGS A AND B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				25	
		CONSTRUCTION				260	
		TOTAL FUNDING	AGS			285B	B
30.		KALIHI-WAENA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE AND IMPROVE BUILDING H FOR THE RELOCATION OF THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				50	
		CONSTRUCTION				250	
		TOTAL FUNDING	AGS			300B	B
31.		KAPALAMA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING STALLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				20	
		CONSTRUCTION				130	
		TOTAL FUNDING	AGS			150B	B
32.		KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL AND PLUMBING SYSTEMS IN THE AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				100	
		CONSTRUCTION				500	
		TOTAL FUNDING	AGS			600B	B
33.		KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION, IMPROVEMENT, AND/OR EXPANSION OF THE MUSIC BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				50	
		CONSTRUCTION				300	
		TOTAL FUNDING	AGS			350B	B
34.		KILAUEA ELEMENTARY SCHOOL, KAUAI					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		PLANS AND DESIGN FOR A CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS DESIGN			1		
		TOTAL FUNDING	AGS		299		
					300B		B
35.		LAHAINALUNA HIGH SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN ATHLETIC LOCKER ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1		
		CONSTRUCTION			1,998		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		2,000B		B
36.		LEILEHUA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE CONVERSION OF ROOM FIFTY-THREE INTO A TECHNOLOGY CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			25		
		CONSTRUCTION			225		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		251B		B
37.		LEILEHUA HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			999		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		1,000B		B
38.		MANOA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			250		
		TOTAL FUNDING	AGS		300B		B
39.	851100	MAUI LANI ELEMENTARY SCHOOL, MAUI					
		LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE FIRST AND SECOND INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		LAND			1		
		DESIGN			1,000		
		CONSTRUCTION			11,500		11,500

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		EQUIPMENT			499		500
		TOTAL FUNDING	AGS		13,000B		12,000B
40.		MCKINLEY HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			65		
		CONSTRUCTION			250		
		EQUIPMENT			5		
		TOTAL FUNDING	AGS		320B		B
41.	216051	MILILANI HIGH SCHOOL, OAHU					
		DESIGN FOR A TEN CLASSROOM BUILDING AT MILILANI HIGH SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			360		
		TOTAL FUNDING	AGS		360B		B
42.		MOANALUA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			750		
		TOTAL FUNDING	AGS		800B		B
43.	263151	NANAKULI HIGH SCHOOL, OAHU					
		DESIGN FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			300		
		TOTAL FUNDING	AGS		300B		B
44.		NANAKULI IV ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1		
		CONSTRUCTION			100		
		EQUIPMENT			349		
		TOTAL FUNDING	AGS		450B		B
45.	293100	OCEAN POINTE ELEMENTARY SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR FIRST AND SECOND INCREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION					12,500
		EQUIPMENT					500

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		TOTAL FUNDING	AGS		B	13,000B	
46.	383151	PAHOA HIGH SCHOOL, HAWAII					
		DESIGN FOR A GYMNASIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				650	
		TOTAL FUNDING	AGS			650B	B
47.		PEARL CITY ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING OF BUILDING C; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				75	
		CONSTRUCTION				400	
		EQUIPMENT				25	
		TOTAL FUNDING	AGS			500B	B
48.		PEARLRIDGE ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE EXPANSION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				1	
		DESIGN				150	
		CONSTRUCTION				799	
		TOTAL FUNDING	AGS			950B	B
49.		ROOSEVELT HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AN AIR CONDITIONING SYSTEM FOR BUILDING A; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				50	
		CONSTRUCTION				450	
		TOTAL FUNDING	AGS			500B	B
50.		ROOSEVELT HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF BUILDING A; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				2,498	
		EQUIPMENT				1	
		TOTAL FUNDING	AGS			2,500B	B
51.		SALT LAKE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE BUILDING E TO CREATE MORE CLASSROOMS AND RELATED IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DESIGN			83		
		CONSTRUCTION			437		
		TOTAL FUNDING	AGS		520B		B
52.		SHAFTER ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING STALLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			15		
		CONSTRUCTION			75		
		TOTAL FUNDING	AGS		90B		B
53.		WAIAKEA HIGH SCHOOL, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE TRACK, INCLUDING INSTALLATION OF AN ALL WEATHER TRACK AND FIELD IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS			100		
		DESIGN			250		
		CONSTRUCTION			2,450		
		TOTAL FUNDING	AGS		2,800B		B
54.	272051	WAIANAE HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION			4,800		
		EQUIPMENT			100		
		TOTAL FUNDING	AGS		4,900B		B
55.		WAIKELE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXTENSION OF THE PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			15		
		CONSTRUCTION			110		
		TOTAL FUNDING	AGS		125B		B
56.		WAIMEA HIGH SCHOOL, KAUAI					
		DESIGN AND CONSTRUCTION OF NEW LOCKER ROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1		
		CONSTRUCTION			799		
		TOTAL FUNDING	AGS		800B		B
57.		WAIMEA MIDDLE SCHOOL, HAWAII					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		PLANS AND DESIGN FOR THE FIRST AND SECOND INCREMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS		1,000			
		DESIGN		1,000			
		TOTAL FUNDING	AGS	2,000B			B
58.	277251	WAIPAHAU HIGH SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		4,750			
		EQUIPMENT		100			
		TOTAL FUNDING	AGS	4,850B			B
59.		WAIPAHAU INTERMEDIATE SCHOOL, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR A CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION		3,199			
		EQUIPMENT		1			
		TOTAL FUNDING	AGS	3,200B			B
60.		WASHINGTON MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE BELL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		20			
		CONSTRUCTION		150			
		TOTAL FUNDING	AGS	170B			B

AGS807 - PHYSICAL PLANT OPERATIONS AND MAINTENANCE - AGS

61. CSD03 LUMP SUM CIP - SCHOOL BUILDING IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC SCHOOL FACILITIES, STATEWIDE. MAY INCLUDE PROJECT MANAGEMENT AND CONSTRUCTION MANAGEMENT SERVICES, ROOFING, AIR CONDITIONING, PAINTING, PLUMBING, AND OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC SCHOOL FACILITIES.

DESIGN		5,000		2,000
CONSTRUCTION		30,000		5,000
TOTAL FUNDING	AGS	35,000C		7,000C

EDN407 - PUBLIC LIBRARIES

62. 01-H&S HEALTH AND SAFETY, STATEWIDE

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR HEALTH, SAFETY, ACCESSIBILITY, AND OTHER CODE REQUIREMENTS. PROJECT MAY INCLUDE, BUT NOT BE 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.					
		PLANS				45	
		DESIGN				150	
		CONSTRUCTION				800	
		EQUIPMENT				5	
		TOTAL FUNDING	AGS			1,000C	C
63.		KAPAA PUBLIC LIBRARY, KAUAI					
		PLANS AND DESIGN FOR THE EXPANSION OF THE LIBRARY.					
		PLANS				1	
		DESIGN				49	
		TOTAL FUNDING	AGS			50C	C
64.		MANOA PUBLIC LIBRARY, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE EXPANSION AND IMPROVEMENT OF THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS				1	
		LAND				50	
		DESIGN				49	
		CONSTRUCTION				400	
		TOTAL FUNDING	AGS			500C	C
UOH100 - UNIVERSITY OF HAWAII, MANOA							
65.	693	UHM, USDA FRUIT FLY FACILITY IN WAIMANALO, OAHU					
		CONSTRUCTION FOR THE USDA FRUIT FLY FACILITY IN WAIMANALO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				10,000	
		TOTAL FUNDING	UOH			10,000N	N
66.		UHM, MAKAI ATHLETIC TRAINING ROOM, RENOVATION AND EXPANSION, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR THE MAKAI ATHLETIC TRAINING ROOM RENOVATION AND EXPANSION; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION				114	
		EQUIPMENT				1	
		TOTAL FUNDING	UOH			115C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
UOH210 - UNIVERSITY OF HAWAII, HILO							
67.	448	UHH, STUDENT LIFE AND EVENTS COMPLEX, HAWAII					
		DESIGN FOR THE STUDENT LIFE AND EVENTS COMPLEX. PROJECT MAY INCLUDE PARKING FACILITIES AND THE RELOCATION OF PROGRAMS AFFECTED BY THIS PROJECT.					
		DESIGN			1,260		
		TOTAL FUNDING	UOH		1,260C		
68.		UHH, PACIFIC AQUACULTURE AND COASTAL RESOURCES CENTER, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS FOR THE PACIFIC AQUACULTURE AND COASTAL RESOURCES CENTER. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1		
		CONSTRUCTION			1,998		
		EQUIPMENT			1		
		TOTAL FUNDING	UOH		2,000C		
UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES							
69.		KAP, CANNON CLUB SITE DEVELOPMENT, OAHU					
		PLANS, LAND ACQUISITION, AND DESIGN FOR THE DEVELOPMENT OF THE CANNON CLUB SITE FOR THE CULINARY ARTS PROGRAM AT KAPIOLANI COMMUNITY COLLEGE.					
		PLANS			148		
		LAND			1		
		DESIGN			1		
		TOTAL FUNDING	UOH		150C		
70.		LEE, FOOD SERVICES PROGRAM, PHASE II, OAHU					
		DESIGN FOR THE RENOVATION AND EXPANSION OF THE DINING ROOM FOR THE CULINARY ARTS PROGRAM.					
		DESIGN			150		
		TOTAL FUNDING	UOH		150C		
UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT							
71.	521	SYS, INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR INFRASTRUCTURE AND RELATED IMPROVEMENTS AT UNIVERSITY CAMPUSES, SYSTEMWIDE.					
		DESIGN			420		
		CONSTRUCTION			7,417		
		TOTAL FUNDING	UOH		7,837C		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
72.	536	SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND CODE REQUIREMENTS.					
		DESIGN			51		
		CONSTRUCTION			3,266		
		TOTAL FUNDING	UOH		3,317C		C
73.	537	SYS, FIRE SAFETY CODE COMPLIANCE, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE SAFETY SYSTEMS. PROJECT MAY INCLUDE FIRE ALARM SYSTEMS, FIRE DETECTION SYSTEMS, FIRE SPRINKLER SYSTEMS, CENTRAL FIRE ALARM SYSTEMS, AND ALL OTHER FIRE SAFETY IMPROVEMENTS, SYSTEMWIDE.					
		DESIGN			626		
		CONSTRUCTION			2,349		1,910
		TOTAL FUNDING	UOH		2,975C		1,910C
74.	541	SYS, CAPITAL RENEWAL AND DEFERRED MAINTENANCE, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE CAPITAL RENEWAL AND DEFERRED MAINTENANCE PROJECTS AT THE UNIVERSITY OF HAWAII. PROJECT TO INCLUDE REROOFING, MECHANICAL AND ELECTRICAL SYSTEMS, RENOVATIONS, RESURFACING, REPAINTING, AND OTHER REPAIRS AND PROJECT COSTS TO UPGRADE FACILITIES AT ALL UNIVERSITY CAMPUSES.					
		PLANS			50		50
		DESIGN			400		400
		CONSTRUCTION			4,545		4,545
		EQUIPMENT			5		5
		TOTAL FUNDING	UOH		5,000C		5,000C

H. CULTURE AND RECREATION

LNR806 - PARKS ADMINISTRATION AND OPERATION

1.	F07	LUMP SUM CIP, STATE PARK FACILITY IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REMOVAL OF CESSPOOLS AND IMPROVEMENTS AND RENOVATIONS TO PARK FACILITIES TO INCLUDE SEWAGE DISPOSAL SYSTEMS, UPGRADE OF FACILITIES, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN			50		
		CONSTRUCTION			450		500
		TOTAL FUNDING	LNR		500C		500C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
LNR801 - OCEAN-BASED RECREATION							
2.	299B	IMPROVEMENTS TO HARBOR FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION OF REPAIRS/IMPROVEMENTS AT VARIOUS BOATING FACILITIES THROUGHOUT THE STATE TO INCLUDE DREDGING, PAVING, UTILITIES, AND OTHER BERTHING AND SHORE FACILITIES INCLUDING BOAT RAMPS.					
		PLANS			10		10
		DESIGN			20		20
		CONSTRUCTION			120		120
		TOTAL FUNDING	LNR		150D		150D
3.	299C	IMPROVEMENTS TO BOAT RAMP FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO VARIOUS BOAT RAMP FACILITIES STATEWIDE, INCLUDING DREDGING, PAVING, UTILITIES, LOADING DOCKS, COMFORT STATIONS, AND OTHER FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			50		50
		DESIGN			50		50
		CONSTRUCTION			400		400
		TOTAL FUNDING	LNR		125C		125C
			LNR		375N		375N
4.	310K	COMFORT STATION/SEWER IMPROVEMENTS TO BOATING FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION OF NEW COMFORT STATIONS AND REPLACEMENT OF EXISTING DETERIORATED COMFORT STATIONS THROUGHOUT THE STATE, INCLUDING SITE PREPARATION, SEWER IMPROVEMENTS, UTILITIES, AND PARKING FACILITIES.					
		PLANS			25		25
		DESIGN			25		25
		CONSTRUCTION			450		450
		TOTAL FUNDING	LNR		500D		500D
5.	320A	KEEHI BOAT HARBOR, REPLACEMENT OF PIERS 100 AND 200, OAHU					
		PLANS AND DESIGN FOR THE REPLACEMENT OF DETERIORATED PIERS 100 AND 200.					
		PLANS			95		
		DESIGN			190		
		TOTAL FUNDING	LNR		285D		D
6.	340F	HALEIWA BOAT HARBOR IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE REPAIR OF DETERIORATED FACILITIES AND NEEDED IMPROVEMENTS.					
		PLANS			65		
		DESIGN			135		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		CONSTRUCTION				265	
		TOTAL FUNDING	LNR			465D	D

AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM

- 7. SA0004 ALOHA STADIUM, PROCURE AIR BEARINGS FOR MOVABLE STANDS AND PEDESTRIAN BRIDGES, OAHU

EQUIPMENT FOR PROCURING NEW AIR BEARINGS FOR THREE OF THE MOVABLE STANDS AND EACH OF THE FOUR PEDESTRIAN BRIDGE SYSTEMS OF THE ALOHA STADIUM.

EQUIPMENT		650	
TOTAL FUNDING	AGS	650B	B

- 8. SA0006 ALOHA STADIUM, FIELD TURF REPLACEMENT, OAHU

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO INSTALL FIELD TURF AND ASSOCIATED SUPPORT COMPONENTS.

PLANS		1	
DESIGN		1	
CONSTRUCTION		297	
EQUIPMENT		1	
TOTAL FUNDING	AGS	300C	C

- 9. SA0005 PLANS FOR A NEW STADIUM, OAHU

PLANS FOR ADVANCED PLANNING INCLUDING BUT NOT LIMITED TO FUNCTIONAL NEEDS ASSESSMENT, AND AS APPLICABLE RESULTANT SITE SELECTION AND ASSOCIATED ENVIRONMENTAL PLANNING.

PLANS				300
TOTAL FUNDING	AGS		C	300C

I. PUBLIC SAFETY

PSD403 - KULANI CORRECTIONAL FACILITY

- 1. 20025 KULANI CORRECTIONAL FACILITY, NEW SEWER SYSTEM, HAWAII

CONSTRUCTION FOR A NEW SEWER SYSTEM AT KULANI CORRECTIONAL FACILITY TO REPLACE EXISTING SYSTEM.

CONSTRUCTION		5,300	
TOTAL FUNDING	AGS	5,300C	C

DEF110 - AMELIORATION OF PHYSICAL DISASTERS

- 2. C13 DISASTER WARNING AND COMMUNICATION DEVICES, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INCREMENTAL ADDITION, REPLACEMENT, AND UPGRADE OF STATE CIVIL DEFENSE WARNING

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		AND COMMUNICATIONS EQUIPMENT. THIS WILL EXPAND THE COVERAGE AND RELIABILITY OF THE WARNING AND CONTROL SYSTEM, AS WELL AS MODERNIZE AND ALLEVIATE SIREN COVERAGE GAP AREAS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1		1
		LAND			1		1
		DESIGN			85		85
		CONSTRUCTION			1,003		1,003
		EQUIPMENT			177		177
		TOTAL FUNDING	AGS		1,167C		1,167C
			AGS		100N		100N

K. GOVERNMENT-WIDE SUPPORT

GOV100 - OFFICE OF THE GOVERNOR

- 1. G01 PROJECT ADJUSTMENT FUND, STATEWIDE

PLANS FOR THE ESTABLISHMENT OF A CONTINGENCY FUND FOR PROJECT ADJUSTMENT PURPOSES SUBJECT TO THE PROVISIONS OF THE APPROPRIATIONS ACT.

PLANS			1		1
TOTAL FUNDING	GOV		1C		1C

BUF101 - PROGRAM PLANNING, ANALYSIS, AND BUDGETING

- 2. 00-01 HAWAIIAN HOME LANDS TRUST FUND, STATEWIDE

CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE HAWAIIAN HOME LANDS TRUST FUND TO SATISFY THE PROVISIONS OF ACT 14 SPSLH 1995.

CONSTRUCTION			30,000		30,000
TOTAL FUNDING	BUF		30,000C		30,000C

- 3. 00-02 STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND, STATEWIDE

CONSTRUCTION TO AUTHORIZE THE TRANSFER OF GENERAL OBLIGATION BOND FUNDS TO THE STATE EDUCATIONAL FACILITIES IMPROVEMENT SPECIAL FUND.

CONSTRUCTION			108,166		83,800
TOTAL FUNDING	BUF		108,166C		83,800C

- 4. BISHOP MUSEUM, OAHU

PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION AND IMPROVEMENT OF THE BISHOP MUSEUM'S HAWAIIAN HALL COMPLEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

PLANS			400		
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		DESIGN			400		
		CONSTRUCTION			1,200		50
		EQUIPMENT					1,950
		TOTAL FUNDING	AGS		2,000C		2,000C
LNR101 - PUBLIC LANDS MANAGEMENT							
5.	E0302	DLNR HAZARDOUS WASTE MANAGEMENT PLAN, STATEWIDE					
		PLANS FOR DEVELOPMENT OF A HAZARDOUS WASTE MANAGEMENT PLAN FOR PUBLIC LANDS.					
		PLANS			250		
		TOTAL FUNDING	LNR		250B		B
6.	E0304	PLANNING FOR THE DEVELOPMENT OF PUBLIC LANDS, STATEWIDE					
		PLANS FOR MARKET ANALYSIS, FEASIBILITY STUDIES, MASTER PLANNING, ENVIRONMENTAL STUDIES, AND OTHER PLANNING ACTIVITIES FOR THE DEVELOPMENT OF UNDERUTILIZED PUBLIC LANDS STATEWIDE FOR THE PURPOSE OF INCREASED REVENUE GENERATION.					
		PLANS			500		
		TOTAL FUNDING	LNR		500B		B
7.		OLD PUUNUI QUARRY SITE ROCKFALL MITIGATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO MITIGATE ROCKFALL CONDITIONS ON STATE LANDS AT THE OLD PUUNUI QUARRY SITE IN NUUANU.					
		PLANS			100		
		DESIGN			155		
		CONSTRUCTION			2,600		
		TOTAL FUNDING	LNR		2,855B		B
8.		KOMO MAI DRIVE ROCKFALL MITIGATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO MITIGATE ROCKFALL CONDITIONS ON STATE LANDS ABOVE KOMO MAI DRIVE.					
		PLANS			100		
		DESIGN			100		
		CONSTRUCTION			3,200		
		TOTAL FUNDING	LNR		3,400B		B
9.		WAIKIKI BEACH MAINTENANCE, OAHU					
		DESIGN AND CONSTRUCTION FOR BEACH MAINTENANCE AT WAIKIKI BEACH, INCLUDING WIDENING OF THE BEACH BY REPLENISHING THE SAND BETWEEN THE NORTH KUHIO BEACH GROIN AND THE KAPAHULU STORM DRAIN.					
		DESIGN			50		
		CONSTRUCTION			650		
		TOTAL FUNDING	LNR		700B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F

AGS221 - CONSTRUCTION

10. B101M HEALTH AND SAFETY REQUIREMENTS, STATEWIDE

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE MITIGATION/ELIMINATION OF CONDITIONS HAZARDOUS TO HEALTH AND SAFETY, INCLUDING THE REMOVAL OF HAZARDOUS MATERIALS AND/OR CORRECTIONS OF PHYSICAL CONDITIONS IN STATE FACILITIES TO MEET CURRENT CODE AND/OR SAFETY REQUIREMENTS, STATEWIDE.

DESIGN		45		45
CONSTRUCTION		200		200
EQUIPMENT		5		5
TOTAL FUNDING	AGS	250C		250C

11. E109 CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES. PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENTS PROGRAM RELATED POSITIONS.

PLANS		7,496		7,496
LAND		1		1
DESIGN		1		1
CONSTRUCTION		1		1
EQUIPMENT		1		1
TOTAL FUNDING	AGS	7,500C		7,500C

AGS233 - BUILDING REPAIRS AND ALTERATIONS

12. CSD01 LUMP SUM CIP - PUBLIC BUILDING IMPROVEMENTS, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS OF PUBLIC OFFICE BUILDINGS, STATEWIDE. PROJECT MAY INCLUDE ROOFING, AIR CONDITIONING, ELEVATOR, OTHER REPAIRS AND IMPROVEMENTS TO PUBLIC FACILITIES.

DESIGN		200		200
CONSTRUCTION		800		800
TOTAL FUNDING	AGS	1,000C		1,000C

SUB501 - COUNTY OF KAUAI

13. ANTONE K. VIDINHA STADIUM COMPLEX, RUBBERIZED TRACK, KAUAI

DESIGN AND CONSTRUCTION FOR A 400 METER RUBBERIZED TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

DESIGN		60		
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CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL NO.	PROJECT TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2003-04	M O F	FISCAL YEAR 2004-05	M O F
		CONSTRUCTION			800		
		TOTAL FUNDING	COK		430C		C
			COK		430S		S

PART V. CAPITAL IMPROVEMENT PROGRAM PROVISIONS

SECTION 78. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 150), the sum of \$1,312,000 for fiscal year 2003-2004 and the sum of \$1,327,000 for fiscal year 2004-2005 shall be used for Hawaii community development authority capital improvements program staff costs, statewide.

SECTION 79. Provided that of the special funds appropriation for airports administration (TRN 195), the sum of \$1,750,000 for fiscal year 2003-2004 and the sum of \$1,750,000 for fiscal year 2004-2005 shall be used for airports division capital improvements program staff costs, statewide.

SECTION 80. Provided that of the special funds appropriation for harbors administration (TRN 395), the sum of \$750,000 for fiscal year 2003-2004 and the sum of \$750,000 for fiscal year 2004-2005 shall be used for harbors division capital improvements program staff costs, statewide.

SECTION 81. Provided that of the special funds, revenue bond funds, and other federal funds appropriations for highways administration (TRN 595), the sum of \$14,500,000 for fiscal year 2003-2004 and the sum of \$14,500,000 for fiscal year 2004-2005 shall be used for highways division capital improvements program staff costs, statewide.

SECTION 82. Provided that of the general obligation bond fund appropriation for land and natural resources – natural physical environment (LNR 906), the sum of \$1,750,000 for fiscal year 2003-2004 and the sum of \$1,750,000 for fiscal year 2004-2005 shall be used for department of land and natural resources capital improvements program staff costs, statewide.

SECTION 83. Provided that of the special funds appropriation for school-based budgeting (EDN 100), the sum of \$250,000 for fiscal year 2003-2004 and the sum of \$250,000 for fiscal year 2004-2005 shall be used for department of education capital improvements program staff costs, statewide.

SECTION 84. Provided that of the general obligation bond fund appropriation for construction (AGS 221), the sum of \$7,500,000 for fiscal year 2003-2004 and the sum of \$7,500,000 for fiscal year 2004-2005 shall be used for department of accounting and general services capital improvements program staff costs, statewide.

SECTION 85. Act 259, Session Laws of Hawaii 2001, section 91, as amended by Act 3, Third Special Session Laws of Hawaii 2001, section 3, and as

further amended by Act 177, Session Laws of Hawaii 2002, section 5, is amended to read as follows:

(1) By amending Item A-0A to read:

“F1001 FILM FACILITY RENOVATIONS AND IMPROVEMENTS, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR
~~[CONVERTING OLD STAGE TO MILL, DEMOLISH
 OLD MILL, AND ADD A SOUND STAGE.]~~
IMPROVEMENTS TO DIAMOND HEAD FILM
 FACILITY.

DESIGN			300
CONSTRUCTION			6,900
EQUIPMENT			100
TOTAL FUNDING	BED		7,300C”

(2) By amending Item C-45 to read:

“J-16 ~~[GANTRY CRANE,]~~ NAVIGATIONAL LIGHTING IMPROVEMENTS AT
 KALAELOA BARBERS POINT HARBOR, OAHU

DESIGN AND CONSTRUCTION FOR THE
 INSTALLATION OF ~~[A CARGO CONTAINER
 GANTRY CRANE, A CRANE RAIL SYSTEM,]~~
NAVIGATIONAL LIGHTING AT THE HARBOR
 BASIN AND CHANNEL PERIMETER, AND OTHER
 RELATED IMPROVEMENTS.

DESIGN		[400]	50
CONSTRUCTION			[4,400] 450
TOTAL FUNDING	BED ²	[400B]	[4,400B]500B”

(3) By amending Item G-19B to read:

“KAMALII ELEMENTARY SCHOOL, ~~[MAUI]~~ OAHU”³

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR
 VARIOUS IMPROVEMENTS TO INCLUDE THE
 INSTALLATION OF A PERMANENT STAGE IN THE
 CAFETERIUM, AND THE INSTALLATION OF AN
 ACCESSIBLE WALKWAY TO PLAYGROUND
 EQUIPMENT; GROUND AND SITE
 IMPROVEMENTS; EQUIPMENT AND
 APPURTENANCES.

DESIGN			7
CONSTRUCTION			40
EQUIPMENT			5
TOTAL FUNDING	AGS		52R”

(4) By amending Item K-9 to read:

“E00000 MAUNALAHA ~~[HEIGHTS SUBDIVISION]~~ HOMESITES WATER SYSTEM
 IMPROVEMENTS, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR
 WATER SYSTEM IMPROVEMENTS AT
 MAUNALAHA ~~[HEIGHTS SUBDIVISION]~~
HOMESITES TO PROVIDE FIREFLOW
 PROTECTION.

PLANS		25
DESIGN		100

CONSTRUCTION			555
TOTAL FUNDING	LNR	125C	555C"

(5) By amending Item K-21A to read:

“WATER SOURCE AND DISTRIBUTION SYSTEM, HAWAII

[PLANS] PLANS, DESIGN, AND CONSTRUCTION
FOR WATER SOURCE IDENTIFICATION AND
DISTRIBUTION FOR THE ISLAND OF HAWAII
FROM SOUTH POINT TO HOOKENA.

<u>[PLANS</u>			500]
<u>PLANS</u>			498
<u>DESIGN</u>			1
<u>CONSTRUCTION</u>			1
TOTAL FUNDING	COH	1	500C"

SECTION 86. Any law to the contrary notwithstanding, the appropriations 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 amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-2	\$ 7,254 E
C-12	964,676 B"

SECTION 87. Any law to the contrary notwithstanding, the appropriations under Act 300, Session Laws of Hawaii 1985, section 136, as amended and renumbered by Act 345, Session Laws of Hawaii 1986, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-9	\$ 95,717 E
C-10	50,912 E
C-10	15,384 B
C-14	110,952 B"

SECTION 88. Any law to the contrary notwithstanding, the appropriations under Act 216, Session Laws of Hawaii 1987, section 280, as amended and renumbered by Act 390, Session Laws of Hawaii 1988, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-10	\$ 530,219 B
C-12	6,899 E
C-12	146 B
C-19	212,790 E
C-20	14,744 B"

SECTION 89. Any law to the contrary notwithstanding, the appropriations under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, in the amounts

indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-2	\$ 6,850 E
C-7	500 E
C-9	145,800 E
C-12	824,831 E
C-14	47,404 E
C-17	156 E
C-18	245,752 E
C-19	700,000 E
C-19	32,280 B
C-21	34,072 E
C-22	1,000 B''

SECTION 90. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, in the amount indicated or balance thereof, unallotted, encumbered, and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
H-18	\$ 228,855 C''

SECTION 91. Any law to the contrary notwithstanding, the appropriations under Act 289, Session Laws of Hawaii 1993, section 127, as amended and renumbered by Act 252, Session Laws of Hawaii 1994, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-1	\$ 46,824 E
C-2	2,926 E
C-2	3,967,997 B
C-3	724,286 E
C-3	17,174 B
C-4	5,407,313 E
C-6	444,069 E
C-10	2,341,285 E
C-10	39,605 B
C-11	661,086 E
C-11	154,348 B
C-12	319,751 B
C-13	81,942 B
C-14	20,145 B
C-14	131,435 E
C-15	270,920 B
C-16	2,408,524 B
C-18	2,206,287 B
C-18	10,108 E
C-19	1,530 E
C-19	1,062 B

<u>Item No.</u>	<u>Amount (MOF)</u>
C-21	419,772 E
C-21	1,354,140 B''

SECTION 92. 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 balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
C-1	\$ 205,883 E
C-1	2,349,844 B
C-2	1,000,000 E
C-2	654,500 B
C-4	26,822 B
C-6	16,388,017 B
C-7B	42,756 B
C-10	140,771 E
C-19	52,584 B
G-8	810 B
G-10	5,103 B
G-30	6,470 B''

SECTION 93. 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 balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-21	\$ 300,000 C
A-23	1,232,000 C
A-25	491,000 C
C-10A	2,762,069 B
C-42	30,153,719 B
C-42	5,000,000 N
C-66	1,000,000 B
C-66	9,000,000 N
C-67	7,470,000 N
C-67	22,930,000 B
C-77	75,000 B
C-77	225,000 N
C-80	1,000,000 B
G-1	1,770 B
G-2	231,055 B
G-3	105,305 B
G-4	96,981 B
G-5	151,069 B
G-6	141,963 B
G-7	832 B
G-9	15,565 B
G-11	298,929 B
G-15	240,165 B

<u>Item No.</u>	<u>Amount (MOF)</u>
G-18	27,399 B
G-25	937 B
G-27	321,569 B
G-32	346,678 B
G-37	600,000 B
G-38	39,631 B
G-41	1,379 B
G-53	1,816 B
G-57	21,060 B
G-58	331,973 C
G-96	669,778 C
G-107	2,605,383 C
K-21	513,745 C''

SECTION 94. Any law to the contrary notwithstanding, the appropriations under Act 91, Session Laws of Hawaii 1999, section 64, as amended and re-numbered by Act 281, Session Laws of Hawaii 2000, section 5, in the amounts indicated or balances thereof, unallotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
G-1	\$ 176,262 B
G-2	1,150 B
G-7	14,243 B
G-13	51,896 B
G-15	1,712 B
G-17	5,000 B
G-20	725,180 B
G-21	223,336 B
G-22	388,780 B
G-23	15,109 B
G-51	440,704 C''

SECTION 95. Any law to the contrary notwithstanding, the appropriations under Act 259, Session Laws of Hawaii 2001, section 91, as amended and re-numbered by Act 3, Third Special Session Laws of Hawaii 2001, section 3, and as further amended and renumbered by Act 177, Session Laws of Hawaii 2002, section 5, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
A-3	\$ 200,000 C
A-6	22,000 C
A-8C	1,058 C
A-15A	725,000 C
A-16	74,891 C
C-7D	3,800,000 B
C-12	1,365,000 B
C-22	1,000,000 R
C-22	3,600,000 N
C-26A	9,500,000 B
C-27	150,000 B
C-40	12,600,000 E

<u>Item No.</u>	<u>Amount (MOF)</u>
C-41	6,400,000 E
C-42	475,000 B
C-44A	2,200,000 E
C-45	4,300,000 B
C-46	500,000 B
D-7	350,433 C
F-3	10,000,000 C
G-11	493,000 C
G-19	5,528,050 B
I-5A	3,700,000 C''

SECTION 96. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 1, First Special Session Laws of Hawaii 1981, section 92, as amended and renumbered by Act 264, Session Laws of Hawaii 1982, section 5, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2004.

SECTION 97. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 301, Session Laws of Hawaii 1983, section 80, as amended and renumbered by Act 285, Session Laws of Hawaii 1984, section 7, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2004.

SECTION 98. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 300, Session Laws of Hawaii 1985, section 136, as amended and renumbered by Act 345, Session Laws of Hawaii 1986, section 6, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2004.

SECTION 99. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 216, Session Laws of Hawaii 1987, section 280, as amended and renumbered by Act 390, Session Laws of Hawaii 1988, section 6, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2004.

SECTION 100. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 316, Session Laws of Hawaii 1989, section 222, as amended and renumbered by Act 299, Session Laws of Hawaii 1990, section 6, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2004.

SECTION 101. Any law to the contrary notwithstanding, all appropriations which are denoted as necessary to qualify for federal aid financing and/or reimbursements under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, including any balances unallotted, allotted, or encumbered, shall lapse on June 30, 2004.

PART VI. ISSUANCE OF BONDS

SECTION 102. GOVERNOR'S DISCRETIONARY POWERS. When it is deemed in the public interest of the State, the governor, in the governor's discretion,

is authorized to use general fund savings or balances determined to be available from authorized general fund program appropriations to finance capital improvement projects authorized in this Act or any other act currently authorized by the legislature, where the method of financing is designated to be the general obligation bond fund. Any law or provision to the contrary notwithstanding, the governor may replace general obligation bond funds appropriated for capital improvement projects with general obligation reimbursable bond funds, when the expenditure of such general obligation reimbursable bond funds is deemed appropriate for the project.

SECTION 103. AIRPORT REVENUE BONDS. The department of transportation is authorized to issue airport revenue bonds for airport capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such airport revenue bonds during the estimated period of construction of the capital improvements program project for which such airport revenue bonds are issued, to establish, maintain, or increase reserves for the airport revenue bonds and to pay the expenses of issuance of such bonds. The aforementioned airport revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on airport revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from airports and related facilities under the ownership of the State or operated and managed by the department and the aviation fuel taxes levied and paid pursuant to sections 243-4(a)(2) and 248-8, Hawaii Revised Statutes, or such parts of either thereof as the department may determine, including rents, landing fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of airports and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such airport revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the airport revenue fund.

The governor, in the governor's discretion, is authorized to use the airport revenue fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by airport revenue bond funds.

SECTION 104. HARBOR REVENUE BONDS. The department of transportation is authorized to issue harbor revenue bonds for harbor capital improvement program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement program projects, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the estimated construction period of the capital improvement project for which such harbor revenue bonds are issued to establish, maintain, or increase reserves for the harbor revenue bonds or harbor revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay the expenses of issuance of such bonds. The aforementioned harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from

time to time. The principal of and interest on harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues derived from harbors and related facilities under the ownership of the State or operated and managed by the department, including rents, mooring, wharfage, dockage, pilotage fees, and other fees or charges presently or hereafter derived from or arising through the ownership, operation, and management of harbor and related facilities and the furnishing and supplying of the services thereof. The expenses of the issuance of such harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

The governor, in the governor's discretion, is authorized to use the harbor revenue fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by harbor revenue bond funds.

SECTION 105. HIGHWAY REVENUE BONDS. The department of transportation is authorized to issue highway revenue bonds for highway capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with the debt service cost to be paid from special funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvement projects, and, if so determined by the department and approved by the governor, such additional principal amount as may be deemed necessary by the department to pay interest on such highway revenue bonds during the estimated period of construction of the capital improvement project for which such highway revenue bonds are issued, to establish, maintain, or increase reserves for such highway revenue bonds or highway revenue bonds heretofore authorized (whether authorized and issued or authorized and still unissued), and to pay all or any part of the expenses related to the issuance of such highway revenue bonds. The aforementioned highway revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on such highway revenue bonds, to the extent not paid from the proceeds of such highway revenue bonds, shall be payable from and secured by the revenues derived from highways and related facilities under the ownership of the State or operated and managed by the department, from the highway fuel taxes, vehicle weight taxes, and vehicle registration fees, levied and paid pursuant to sections 243-4, 248-8, 249-31, and 249-33, Hawaii Revised Statutes, and federal moneys received by the State or any department thereof which are available to pay principal of and/or interest on indebtedness of the State, or such part of any thereof as the department may determine, and other user taxes, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of highways and related facilities and the furnishing and supplying of the services thereof. The expenses related to the issuance of such highway revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the State highway fund.

The governor, in the governor's discretion, is authorized to use moneys in the State highway fund to finance those highway capital improvement projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by revenue bond funds.

SECTION 106. SMALL BOAT HARBOR REVENUE BONDS. The department of land and natural resources is authorized to issue small boat harbor revenue bonds for small boat harbor capital improvement projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds or by general obligation bond funds with debt service cost to be paid from

special funds. The principal amount of such bonds shall be sufficient to yield the amounts appropriated for such capital improvements, and, if so determined by the department and approved by the governor, such additional amounts as may be deemed necessary by the department to pay interest on such revenue bonds during the construction period of the capital improvement project for which such small boat harbor revenue bonds are issued, to establish, maintain, or increase reserves for the small boat harbor revenue bonds, and to pay the expenses for the issuance of such bonds. The aforementioned small boat harbor revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time. The principal of and interest on the small boat harbor revenue bonds, to the extent not paid from the proceeds of such bonds, shall be payable solely from and secured solely by the revenues from small boat harbors and related facilities under the ownership of the State or operated and managed by the department. The revenues shall include rents, mooring, wharfage, dockage, and permit fees, and other fees or charges presently or hereafter derived from or arising through the ownership and operation of small boating activities and the furnishing and supplying of the services thereof. The expenses of the issuance of such small boat harbor revenue bonds shall, to the extent not paid from the proceeds of such bonds, be paid from the harbor special fund.

SECTION 107. HOSPITAL REVENUE BONDS. The Hawaii Health Systems Corporation is authorized to issue hospital revenue bonds for hospital capital improvements program projects authorized in part II and listed in part IV of this Act and designated to be financed by revenue bond funds, in such principal amount as shall be required to yield the amounts appropriated for such capital improvements program projects, and if so determined by the corporation and approved by the governor, such additional principal amount as may be deemed necessary by the corporation to pay interest on such hospital revenue bonds during the estimated period of construction of the capital improvements program project for which such hospital revenue bonds are issued, to establish, maintain, or increase reserves for such hospital revenue bonds, and to pay all or any part of the expenses related to the issuance of such hospital revenue bonds. The aforementioned hospital revenue bonds shall be issued pursuant to the provisions of part III of chapter 39, Hawaii Revised Statutes, as the same may be amended from time to time, except that such bonds shall be issued in the name of the corporation and not in the name of the State. The principal of and interest on such hospital revenue bonds, to the extent not paid from the proceeds of such hospital revenue bonds, shall be payable from and secured by the revenues derived from facilities under the ownership of the corporation or operated and managed by the corporation, or such part of any thereof as the corporation may determine, including other moneys, rates, rents, fees or charges currently or hereafter derived from or arising through the ownership, operation, and management of hospitals and related facilities and the furnishings and supplying of the services thereof. The expenses related to the issuance of such hospital revenue bonds, to the extent not paid from the proceeds of such bonds, shall be paid from the facility administration fund of the corporation.

PART VII. SPECIAL PROVISIONS

SECTION 108. Provided that to the extent that the sums appropriated for the payment of principal and interest on general obligation bonds are insufficient to meet and pay all such obligations when due in accordance with the terms of such bonds, the governor shall direct the utilization of any or all appropriations available or unexpended from any other state program, as the first charge for the payment of principal and interest on the bonds when due; and provided further that the legisla-

ture shall, under procedures established in section 10 of article III of the Hawaii State Constitution, meet in special session to comply with the provisions of sections 12 of article VII of the Hawaii State Constitution, which pledge the full faith and credit of the State for the payment of principal and interest on all general obligation and reimbursable general obligation bonds.

SECTION 109. All general obligation bond funds used for a public undertaking, improvement, or system, designated by the letter (D), shall have the bond principal and interest reimbursed from the special fund in which the net revenue, or net user tax receipts, or combination of both, of such public undertaking, improvement or system, are deposited or credited. Bonds issued for irrigation and housing projects shall be reimbursed, as provided by section 174-21 and chapter 201E, Hawaii Revised Statutes, respectively.

The governor is authorized to use, at the governor's discretion, the state highway fund, the harbor special fund, the boating special fund, the airport revenue fund, the special land and development fund, the economic development special fund, or other appropriate special fund, to finance the respective public undertaking, improvement, or system described above and authorized in this Act, where the method of financing is designated to be by general obligation bond fund with debt service cost to be paid from the funds; provided that the governor shall submit a report to the legislature on such changes in the method of financing of such projects within 10 days of the changes.

SECTION 110. In the event that the authorized appropriations specified for a capital improvement project listed in this Act is insufficient and where the source of funding is designated as special funds, general obligation bond fund with debt service cost to be paid from special funds, revenue bond funds, or revolving funds, the governor may make supplemental allotments from the special fund or revolving fund responsible for cash or 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 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 notify the legislature within 10 days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 111. The governor may supplement funds for any cost element for a capital improvement project authorized under this Act by transferring such sums as may be needed from the funds appropriated for other cost elements of the same project, by this Act or any other prior or future act which has not lapsed; provided that the total expenditure of funds for all cost elements shall not exceed the total appropriations for that project; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 112. After the objectives of appropriations made in this Act from the general obligation bond fund or the general fund for capital improvement projects have been met, unrequired balances shall be transferred to the project adjustment fund appropriated in part II and described in part IV of this Act and shall

be considered a supplementary appropriation thereto; provided that all other unrequired allotment balances, unrequired appropriation balances, and unrequired encumbrance balances shall lapse as of June 30, 2006, as provided in section 116 of this Act; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 113. In the event that authorized appropriations specified for capital improvement projects listed in this Act or in any other act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the general obligation bond fund or the general fund, the governor may make supplemental allotments from the project adjustment fund appropriated in part II and described in part IV of this Act to supplement any currently authorized capital investment cost elements; provided further that such supplemental allotments from the project adjustment fund shall not be used to increase the scope of the project; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 114. After the objectives of appropriations made in this Act for capital investment purposes from the state educational facilities improvement special fund have been met, any unrequired balances shall be transferred to the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV, and shall be considered a supplementary appropriation thereto.

SECTION 115. In the event that currently authorized appropriations specified for capital investment purposes listed in this Act or in any other Act currently authorized by the legislature are insufficient, and where the source of funding for the project is designated as the state educational facilities improvement special fund, the governor may make supplemental allotments from the special funded project adjustment fund for state educational facilities appropriated in part II and described further in part IV; provided that such supplemental allotments from the special funded project adjustment fund for state educational facilities shall not be used to increase the scope of the project, and may only be made to supplement currently authorized capital investment project cost elements.

SECTION 116. 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 appropriations made to be expended in fiscal biennium 2003-2005 which are unencumbered as of June 30, 2006, shall lapse as of that date; provided further that this lapsing date shall not apply to: (a) appropriations for projects described in section 77 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 77 of this Act where such appropriations have been deemed necessary to qualify for federal aid financing and reimbursement.

SECTION 117. Where it has been determined that changed conditions, such as a reduction in the particular population being served, permit the reduction in the scope of a capital improvement project described in this Act, the governor may authorize such reduction of project scope; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 118. In releasing funds for capital improvement projects, the governor shall consider legislative intent and the objectives of the user agency and its programs, the scope and level of the user agency's intended service, and the means, efficiency, and economics by which the project will meet the objectives of the user agency and the State. Agencies responsible for construction shall take into consideration legislative intent and the objectives of the user agency, its programs, the scope and level of the user agency's intended service and construct the improvement to meet the objectives of the user agency in the most efficient and economical manner possible.

SECTION 119. With the approval of the governor, designated expending agencies for capital improvement projects authorized in this Act may delegate to other state or county agencies the implementation of such projects when it is advantageous to do so.

SECTION 120. Where county capital improvement projects are partially or totally funded by state grants-in-aid as authorized in this Act or any other act of the legislature, this fact should be appropriately acknowledged during construction and upon completion of these projects.

SECTION 121. The governor may authorize the expenditure of funds for capital improvement projects not previously authorized in this Act to cope with the effects of natural disasters, or unforeseen emergencies, provided that the effects of the natural disaster, or unforeseen emergencies create an urgent need to pursue a course of action which is in the best interest of the State; provided further that the governor shall use the project adjustment fund authorized in part II and described in part IV to accomplish the purposes of this section.

SECTION 122. Notwithstanding any provision in part III of this Act, the governor is authorized to transfer savings or unrequired balances as may be available from the appropriated funds of any program in this Act to supplement the appropriation for any other program in this Act to cope with the effects of natural disasters or other unforeseen emergencies; provided that the effects of such natural disaster or emergencies create an urgent need to pursue a course of action which is in the best interest of the State; and provided further that the use of such funds does not conflict with general law.

SECTION 123. No appropriation authorized in this Act for expenditure by a political subdivision of this State shall be considered to be a mandate to undertake new programs or to increase the level of services under existing programs of that political subdivision. If any appropriation authorized in this Act constitutes such a mandate within the provisions of section 5 of article VIII of the Hawaii State Constitution, such authorization shall be void and, in the case of capital improvement appropriations designated to be financed from the general obligation bond fund, the total general obligation bonds authorized for such projects shall be correspondingly decreased.

SECTION 124. There is hereby appropriated out of the public trust fund created by section 5(f) of the Admissions Act (Public Law No. 86-3) the total amount of the proceeds from the sale or other disposition of any lands, and the income therefrom granted to the State by section 5(b) or later conveyed to the State by section 5(e), with the exception of such proceeds covered under section 171-19, Hawaii Revised Statutes, to be disposed of by the board of land and natural resources, and with the exception of such proceeds to be expended by the office of Hawaiian affairs under chapter 10, Hawaii Revised Statutes, in order to reimburse the general fund for the appropriation made in part II of this Act to the department of education for the support of public schools, to the extent such proceeds are realized for the period beginning July 1, 2003 to June 30, 2005. The above proceeds shall be exclusive of the amount disposed of under the provisions of the Hawaiian Homes Commission Act of 1920, as amended.

SECTION 125. All grants to private organizations in this Act are made in accordance with the standard that the private programs so funded yield direct benefits to the public and accomplish public purposes.

SECTION 126. Whenever the expending agency to which an appropriation is made is changed due to legislation enacted during any session of the legislature which affects the appropriations made by this Act, the governor shall transfer the necessary funds and positions to the proper expending agency as provided by law.

SECTION 127. In the event the State should assume the direct operation of any non-governmental agency receiving state funds under the provisions of this Act, all such funds shall constitute a credit to the State against the costs of acquiring all or any portion of the property, real, personal, or mixed, of such non-governmental agency. This credit shall be applicable regardless of when such acquisition takes place.

SECTION 128. In the event that unanticipated federal funding cutbacks diminish or curtail essential, federally-funded state programs, the governor may utilize savings as determined to be available from other state programs for the purpose of maintaining such programs until the next legislative session; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 129. Provided that the governor may approve the expenditure of federal funds which are in excess of levels authorized by the legislature when the legislature is not in session; provided further that the governor may allow for an increase in the federal fund authorization ceiling for the program to accommodate the expenditure of such funds; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 130. Where an agency is authorized to secure funds or other property from private organizations or individuals to be expended or utilized in connection with any authorized program, the agency, with the governor's approval, may enter into such undertaking, provided that the provisions of the undertaking comply with applicable State constitutional and statutory requirements.

SECTION 131. Except as otherwise provided by general law, negotiations for the purchase of land by state agencies shall be subject to the approval of the governor and the department of land and natural resources, or other appropriate agency; provided further that private lands may be acquired for the purpose of exchange for federal lands when the department of land and natural resources and the governor determine that such acquisition and exchange are necessary for the completion of any project specifically authorized by this Act.

SECTION 132. Any law or provision to the contrary notwithstanding, in expending funds for social welfare programs, education programs, and other programs and agencies having appropriations which are based on population and workload data as specified in the executive budget document, only so much as is necessary to provide the level of services intended by the legislature shall be expended. Affected agencies shall reduce expenditures below appropriations under procedures prescribed by the department of budget and finance in the event actual population and workload trends are less than the figures projected.

SECTION 133. Unless otherwise provided in this Act, the governor is authorized to transfer operating funds between appropriations with the same means of funding, within an expending agency for operating purposes; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 134. Except as otherwise provided in this Act, each department or agency is authorized to transfer positions within its respective authorized position ceiling, for the purpose of maximizing the utilization of personnel resources and staff productivity; provided further, that all such actions shall be with the prior approval of the governor, and shall be consistent with appropriations provided in this Act, and with provisions of part II of chapter 37 of the Hawaii Revised Statutes; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 135. With the approval of the governor, agencies that use appropriations authorized in part II of this Act for audit services, may delegate that responsibility and transfer funds authorized for that purpose to the internal post audit program (AGS 104), when it is determined by such agencies that it is advantageous to do so.

SECTION 136. With the approval of the governor, expending agencies that use appropriations authorized in part II of this Act for repair and alterations, may delegate responsibility and transfer funds to the construction program (AGS 221), for the implementation of such repair and alterations, when it is determined by such agencies that it is advantageous to do so.

SECTION 137. 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.

SECTION 138. With the approval of the director of finance, the Hawaii Health Systems Corporation in the department of health may transfer to the

department of human services funds appropriated to the Hawaii Health Systems Corporation for the care and treatment of patients, whenever the department of human services can utilize such funds to match federal funds which may be available to help finance the cost of outpatient, acute hospital, or long-term care of indigents or medical indigents in designated critical access hospitals; and provided further that the director of finance shall notify the legislature within 10 days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 139. With the approval of the governor, the department of health may transfer to the department of human services, funds appropriated to the department of health for the care and treatment of patients, whenever the department of human services can utilize such funds to match federal funds to finance the cost of outpatient, hospital, or skilled nursing home care of indigents or medical indigents; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 140. The department of human services is authorized to enter into agreements with the department of health to furnish outpatient, hospital, and skilled nursing home care of indigents or medical indigents and to pay the department of health for such care; provided that with the approval of the director of finance, the department of health may deposit part of such receipts into the appropriations from which transfers were made as provided elsewhere in this Act; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 141. The governor may authorize the transfer of positions and funds between the department of health and the department of education to address Felix Consent Decree requirements; provided that any transfers shall be based on the transfer of responsibility for Felix clients and/or treatments between the department of health and the department of education; and provided further that the governor shall notify the legislature within 10 days of each use of this proviso and submit a report to the legislature of all uses of this proviso for the previous 12 months, twenty days prior to the convening of the 2004 and 2005 regular sessions.

SECTION 142. Provided that, with the approval of the director of finance, the department of human services shall transfer to the department of education, to offset the expenses of the After School A Plus program, not less than \$5 million in federal funds available to the department of human services for child care each fiscal year of the fiscal biennium 2003-2005; provided further that the departments of human services and education shall determine the specific terms and conditions for the aforementioned transfer of federal funds via written agreement in the form of an interdepartmental memorandum of agreement or equivalent legal and binding instrument; and recommend any changes needed to maximize the amount of federal funding available for child care and/or improve the process transferring of federal funds; and provided further that the department of education shall incorporate the above-requested assessment, determination, and recommendations in written reports to the legislature each year, which shall be submitted no later than twenty days prior to the convening of the 2004 and 2005 regular sessions, respectively.

SECTION 143. Provided that, of the respective appropriation for each principal state department as defined by section 26-4, Hawaii Revised Statutes, the sum of \$2,500 in fiscal year 2003-2004 and the sum of \$2,500 in fiscal year 2004-2005 shall be made available in each department to be established as a separate account for a protocol fund to be expended at the discretion of the executive heads of such departments which are respectively known as its directors, chairpersons, comptroller, adjutant-general, superintendent, state librarian, president, and attorney general.

SECTION 144. Provided that the department of education and department of health shall notify the legislature on a quarterly basis on cumulative expenditures for each year since the State entered into the Felix Consent Decree; provided further that the expenditure report breakout payments made to the United States Ninth District Court, the Felix Special Monitor, the Felix Monitoring Project, or any another agent of the United States judiciary.

SECTION 145. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$4,000 for fiscal year 2003-2004 and the sum of \$4,000 for fiscal year 2004-2005 may be used to establish a separate protocol account to be expended at the discretion of the director of finance for the promotion and improvement of state bond ratings and sales.

SECTION 146. provided that of the special fund appropriation for spectator events and shows - Aloha Stadium (AGS 889), the sum of \$2,500 for fiscal year 2003-2004 and the sum of \$2,500 for fiscal year 2004-2005 may be expended at the discretion of the stadium manager for promotion and other stadium-related purposes.

SECTION 147. Except as otherwise provided, the appropriation for the office of the governor (GOV 100), shall be expended at the discretion of the governor.

SECTION 148. Except as otherwise provided, the appropriation for the office of the lieutenant governor (LTG 100), shall be expended at the discretion of the lieutenant governor.

SECTION 149. Provided that of the appropriations authorized for executive programs in part II of this Act for fiscal year 2003-2004 and fiscal year 2004-2005, settlements and judgments approved by the legislature in HB 1111,⁵ shall be funded within each program's departmental allocation for the respective fiscal year.

SECTION 150. Provided that, in the event that the amount of settlements and judgments approved by the legislature in HB 1111,⁵ exceeds program allocations for fiscal year 2003-2004 or fiscal year 2004-2005, as applicable, for the purposes of meeting such obligations:

- (1) A department with the approval of the governor, is authorized to utilize allocated savings determined to be available from any other program within the department; and
- (2) Unless otherwise provided by general law, the governor is authorized to transfer funds between allocations of appropriations within a department, for the purposes of paying settlements and judgments of a program.

SECTION 151. The director of finance is authorized to expend general fund, special fund, and revolving fund savings or balances determined to be available from

authorized general fund, special fund, and revolving fund program appropriations, up to an aggregate total of \$20,000,000 for fiscal year 2003-2004 and \$20,000,000 for fiscal year 2004-2005, for municipal lease payments under financing agreements entered into pursuant to chapter 37D, Hawaii Revised Statutes, to finance the acquisition of depreciable assets, including, but not limited to, automobiles, computers, printers, and telecommunications equipment; and provided further that designated expending agencies (including the department of education and the university of Hawaii) for municipal lease payments and for depreciable assets, including, but not limited to, automobiles, computers, printers, and telecommunications equipment authorized in this Act may delegate to the director of finance the implementation of such acquisitions when it is determined by all involved agencies that it is advantageous to do so.

PART VIII. MISCELLANEOUS AND EFFECTIVE DATE

SECTION 152. MISCELLANEOUS. If any portion of this Act or its application to any person, entity, or circumstance is held to be invalid for any reason, then the legislature declares that the remainder of the Act and each and every other provision thereof shall not be affected thereby. If any portion of a specific appropriation is held to be invalid for any reason, the remaining portion shall be expended to fulfill the objective of such appropriation to the extent possible.

SECTION 153. 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 154. Material to be repealed is bracketed and stricken. New material in prior enacted laws is underscored.

SECTION 155. EFFECTIVE DATE. This Act shall take effect on July 1, 2003.

(Approved June 24, 2003.)

Notes

1. Prior to amendment "C" appeared here.
2. Prior to amendment "TRN" appeared here.
3. So in original.
4. Prior to amendment "R" appeared here.
5. Act 58.

ACT 201

H.B. NO. 123

A Bill for an Act Relating to the Practice of Pharmacy.

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

SECTION 1. In 2002, the legislature passed H.B. 1842, H.D. 1, S.D. 2, C.D. 1, which became Act 256, Session Laws of Hawaii 2002, to enable pharmacists to provide services in a broader range of clinical settings. The legislature noted that the increasing complexity of drug therapy required pharmacists to participate in the treatment of, and be the advocate for, the patient, in collaboration with other health care professionals.

Unintended pregnancies are a major public health concern affecting individuals and society in general. Each year, about three million five hundred thousand

unintended pregnancies occur in this country, half of which result from contraceptive failure or inadequate contraceptive technique. According to the department of health's office of health status monitoring, in 2000, fifty-three per cent of pregnancies were unintended for women of all ages in Hawaii, and seventy-eight per cent were unintended among women under twenty years of age.

Emergency contraception is a highly cost-effective method of reducing unintended pregnancies, if taken within seventy-two hours after unprotected sex. However, in a statewide study conducted in early January of 2002, the Healthy Mothers, Healthy Babies Coalition of Hawaii learned that there are significant barriers to accessing emergency contraceptives in Hawaii within the recommended seventy-two hour time frame. The American College of Obstetricians and Gynecologists, American Academy of Pediatricians, American Public Health Association, and more than fifty other national organizations support increased access to emergency contraception.

The purpose of this Act is to enable pharmacists with appropriate training and who are working in collaboration with a physician to initiate emergency contraception oral drug therapy.

SECTION 2. Section 461-1, Hawaii Revised Statutes, is amended as follows:

1. By adding a new definition to be appropriately inserted and to read:

“Emergency contraception” means a drug that:

- (1) Is used postcoitally;
- (2) Prevents pregnancy by delaying ovulation, preventing fertilization of an egg, or preventing implantation of an egg in a uterus; and
- (3) Is approved by the United States Food and Drug Administration.”

2. By amending the definition of “licensed medical doctor” and “practice of pharmacy” to read:

“~~“Licensed [medical-doctor]”~~ physician” means a ~~[medical-doctor]~~ physician licensed by the board of medical examiners pursuant to chapter 453 or ~~[the board of osteopathic examiners under chapter]~~ 460.

“Practice of pharmacy” means:

- (1) The interpretation and evaluation of prescription orders; the compounding, dispensing, and labeling of drugs and devices (except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially legend drugs and devices); the participation in drug selection and drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records therefore; the responsibility for advising when necessary or where regulated, of therapeutic values, content, hazards, and use of drugs and devices;
- (2) Performing the following procedures or functions as part of the care provided by and in concurrence with a “health care facility” and “health care service” as defined in section 323D-2, or a “pharmacy” or a licensed ~~[medical-doctor,]~~ physician, or a “managed care plan” as defined in section 432E-1, in accordance with policies, procedures, or protocols developed collaboratively by health professionals, including physicians and surgeons, pharmacists, and registered nurses, and for which a pharmacist has received appropriate training required by these policies, procedures, or protocols:

- (A) Ordering or performing routine drug therapy related patient assessment procedures;
- (B) Ordering drug therapy related laboratory tests;
- (C) Initiating emergency contraception oral drug therapy in accordance with a written collaborative agreement approved by the board, between a licensed physician and a pharmacist who has

- received appropriate training that includes programs approved by the American Council of Pharmaceutical Education (ACPE), curriculum-based programs from an ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy;
- ~~[(C)]~~ (D) Administering drugs orally, topically, or by injection, pursuant to the patient's licensed ~~[medical-doctor's]~~ physician's order, by a pharmacist having appropriate training that includes programs approved by the ~~[American Council of Pharmaceutical Education—(ACPE)],~~ curriculum-based programs from an ~~[American Council of Pharmaceutical Education-accredited]~~ ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy;
- ~~[(D)]~~ (E) Administering immunizations by injection to persons eighteen years of age or older, by a pharmacist having appropriate training that includes programs approved by the ~~[American Council of Pharmaceutical Education,]~~ ACPE, curriculum-based programs from an ~~[American Council of Pharmaceutical Education-accredited]~~ ACPE-accredited college of pharmacy, state or local health department programs, or programs recognized by the board of pharmacy;
- ~~[(E)]~~ (F) As authorized by a licensed ~~[medical-doctor's]~~ physician's written instructions, initiating or adjusting the drug regimen of a patient pursuant to an order or authorization made by the patient's licensed ~~[medical-doctor]~~ physician and related to the condition for which the patient has been seen by the licensed ~~[medical-doctor,]~~ physician; provided that the pharmacist shall issue written notification to the patient's licensed ~~[medical-doctor]~~ physician or enter the appropriate information in an electronic patient record system shared by the licensed ~~[medical-doctor,]~~ physician, within twenty-four hours;
- ~~[(F)]~~ (G) Transmitting a valid prescription to another pharmacist for the purpose of filling or dispensing; or
- ~~[(G)]~~ (H) Providing consultation, information, or education to patients and health care professionals based on the pharmacist's training and for which no other licensure is required; and
- (3) The offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.”

SECTION 3. Section 431:10A-116.6, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) For purposes of this section:

“Contraceptive services” means physician-delivered, physician-supervised, physician assistant-delivered, nurse practitioner-delivered, certified nurse midwife-delivered, ~~or~~ nurse-delivered, or pharmacist-delivered medical services intended to promote the effective use of contraceptive supplies or devices to prevent unwanted pregnancy.

“Contraceptive supplies” means all United States Food and Drug Administration-approved contraceptive drugs or devices used to prevent unwanted pregnancy.”

ACT 202

SECTION 4. Section 431:10A-116.7, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) For purposes of this section:

“Contraceptive services” means physician-delivered, physician-supervised, physician assistant-delivered, nurse practitioner-delivered, certified nurse midwife-delivered, ~~[or]~~ nurse-delivered, or pharmacist-delivered medical services intended to promote the effective use of contraceptive supplies or devices to prevent unwanted pregnancy.

“Contraceptive supplies” means all United States Food and Drug Administration-approved contraceptive drugs or devices used to prevent unwanted pregnancy.”

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

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

(Approved June 24, 2003.)

ACT 202

H.B. NO. 914

A Bill for an Act Relating to Adult Residential Care Homes.

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

SECTION 1. Section 321-15.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All adult residential care homes shall be licensed to ensure the health, safety, and welfare of the individuals placed therein. The department shall conduct unannounced visits, other than the inspection for relicensing, to every licensed adult residential care home and expanded adult residential care home on an annual basis and at such intervals as determined by the department to ensure the health, safety, and welfare of each resident. Unannounced visits may be conducted during or outside regular business hours. All inspections relating to follow-up visits, visits to confirm correction of deficiencies, or visits to investigate complaints or suspicion of abuse or neglect shall be conducted unannounced during or outside regular business hours. Annual inspections for relicensing may be conducted during regular business hours or at intervals determined by the department. Annual inspections for relicensing shall be conducted with notice, unless otherwise determined by the department.”

SECTION 2. New statutory material is underscored.

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

(Approved June 24, 2003.)

ACT 203

S.B. NO. 1700

A Bill for an Act Relating to Charter Schools.

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

SECTION 1. Section 302A-1181, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§302A-1181**~~[H]~~ **New century charter schools**~~[-]; definitions.~~ (a)¹ All schools previously designated as student-centered schools shall be designated as new century charter schools.

For the purposes of this subpart:

“Executive director” means the chief executive officer of the charter school administrative office established under section 302A-1187.”

SECTION 2. Section 302A-1182, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-1182 New century charter schools; establishment.** (a) Up to a total of twenty-three schools may be established as new century charter schools. These new century charter schools may be established by:

- (1) The creation of a new school; or
- (2) The creation of a new school, comprising programs or sections of existing public school populations and using existing public school facilities, pursuant to subsection (b).

(b) Any community, group of teachers, group of teachers and administrators, entity recognized as a nonprofit organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, or any program within an existing school may submit a letter of intent to the board to form a new century charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to subsection (c).

(c) The local school board, with the support and guidance of the ~~superintendent,~~ executive director, shall formulate and develop a detailed implementation plan that meets the requirements of this subsection and section 302A-1184. The plan shall include the following:

- (1) A description of employee rights and management issues and a framework for addressing those issues that protect the rights of employees;
- (2) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;
- (3) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
- (4) A comprehensive plan for the assessment of student, administrative support, and teaching personnel performance, that:
 - (A) Recognizes the interests of the general public;
 - (B) Incorporates or exceeds state educational content and performance standards;
 - (C) Includes a system of faculty and staff accountability that holds faculty and staff both individually and collectively accountable for their performance, and that is at least equivalent to the average system of accountability in public schools throughout the State; and
 - (D) Provides for program audits and annual financial audits.
- (5) The governance structure of the school;

- (6) A plan for any necessary design, construction, renovation, and management of facilities that is consistent with the state facilities plan; provided that:
 - (A) 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; and
 - (B) The final determination of use shall fall within the board's discretion.

(d) The detailed implementation plan shall be submitted to the new century charter school review panel, which shall be composed of seven members as follows:

- (1) Four of the members shall be board of education members or their designees appointed by the chairperson of the board of education;
- (2) Two of the members shall be members of the new century charter school community approved by the chairperson of the board of education from a list submitted by existing new century charter schools; and
- (3) One member shall be the ~~superintendent of education or the superintendent's~~ executive director or the executive director's designee.

Panel review procedures shall be as provided in this section. The board may adopt rules pursuant to chapter 91 to further guide the panel's review process.

(e) The new century charter school review panel shall have sixty working days to review the completed implementation plan for a proposed new century charter school to ensure that it meets the requirements of subsection (c) and section 302A-1184. Within forty-five working days, the panel shall issue a report of its preliminary findings to the board of education and the local school board. If the panel subsequently determines that the implementation plan:

- (1) Meets the requirements of subsection (c) and section 302A-1184, the panel shall by the sixtieth working day submit a recommendation to the board of education to issue a charter to the proposed new century charter school. Upon receipt of the panel's recommendation, the board shall issue a charter, and the implementation plan shall be converted to a written performance contract between the school and the board; or
- (2) Fails to meet the requirements of subsection (c) or section 302A-1184, the panel:
 - (A) 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;]~~ address the findings; and
 - (B) May submit a recommendation to the board to issue a provisional approval for a charter if the panel determines that the applicant may reasonably be expected to expeditiously resolve any remaining ~~[conflict or conflicts]~~ findings impeding the issuance of a charter. The provisional approval shall be effective for one year. The board may extend the provisional approval beyond a period of one year. If a charter is subsequently issued, the amended implementation plan shall be converted to a written performance contract between the school and the board.

(f) An amended implementation plan shall be submitted within thirty working days of notification pursuant to subsection (e)(2)(A). The board shall deny the issuance of a charter if the local school board does not submit an amended implementation plan within the thirty working day period. The panel shall have thirty working days to review the amended implementation plan. If the amended implementation plan:

- (1) Meets the requirements of subsection (c) and section 302A-1184, the panel shall by the thirtieth working day submit a recommendation to the board of education to issue a charter to the proposed new century

charter school. If a charter is issued, the amended implementation plan shall be converted to a written performance contract between the school and the board; or

- (2) Fails to ~~[resolve any conflicts]~~ address the findings to the panel's satisfaction ~~[or involves new and different issues of conflict with subsection (c) or section 302A-1184,]~~ the panel shall deny issuance of a charter.

(g) A local school board may file an appeal of the denial of an application for a charter with the panel. Upon filing an appeal, the panel shall forward the implementation plan and appropriate documentation of the appeal to the board of education. Within thirty working days, the board of education shall issue a report of its findings and final determination to the local school board. If the implementation plan is approved, the board of education shall issue a charter and the implementation plan shall be converted to a written performance contract between the school and the board of education.

(h) ~~[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 of education.

(i) Any new century conversion charter school may, prior to the beginning of the school year, enter into an annual contract with the department of education for centralized services to be provided by the department."

SECTION 3. Section 302A-1185, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1185 New century charter schools; funding. ~~[(a) New century charter schools shall receive an allocation of state funds based upon the operational and educational funding requirements of the schools; provided that:~~

- ~~(1) Beginning in fiscal year 2001-2002, and every year thereafter, the auditor shall determine the appropriate allocation based on the total department general fund allocation for EDN 100, 200, 300, and 400 and projected per pupil allocation for the current fiscal year;~~
- ~~(2) Small schools with fewer than one hundred twenty students may 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; provided further that the department shall provide appropriate transitional resources to a conversion charter school for its first year of operation as a charter school based on the department's allocation to the school for the year prior to conversion;~~
- ~~(4) The auditor shall take into consideration any changes to the department's budget made by the legislature, the governor, department imposed restrictions, or any applicable collective bargaining negotiated amounts; provided that the auditor shall exclude from the per pupil allocation funds for:

 - ~~(A) Services that must be provided at the state level;~~
 - ~~(B) Specific programs or projects that target individual schools, complexes, or districts;~~
 - ~~(C) Grants in aid; and~~~~

- (D) Resources of new facilities that target specific, new construction projects.
- (5) Any new century charter school may enter into an annual memorandum of agreement for centralized services to be provided by the department prior to the beginning of each school year, provided that:
 - (A) The allocation of the new century charter school shall be reduced in an amount based upon the per pupil amount expended by the department for such services; and
 - (B) The department may not retain new century charter school funds in excess of the actual cost of the service.
- (6) The department shall determine and provide the appropriate level of special education staff and services necessary to ensure that the student's educational needs as indicated in the individualized educational plans are met; and
- (7) 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; and
- (8) The auditor shall develop a methodology for allocating funds for conversion charter schools, by basing the allocation for each newly converted school on the EDN 100 and 200 program budgets, and upon written agreement between the conversion charter school's local school board and the department, specified sections of the EDN 300 and 400 program budgets the school received in the year prior to conversion; provided that the allocation may be adjusted to account for any changes that may be made by the legislature, the governor, department imposed restrictions, or applicable collective bargaining negotiated amounts.

(b)] (a) Beginning with the fiscal year 2004-2005 supplemental budget request, and each budget request thereafter, the charter school administrative office shall submit a request for general fund appropriations for each new century charter school based upon:

- (1) The actual and projected enrollment figures in the current school year for each charter school; and
- (2) A per pupil amount for each regular education and special education student, which shall be equivalent to the total per pupil cost based upon average enrollment in all cost categories, including comprehensive school support services but excluding special education services, and for all means of financing except federal funds, as reported in the most recently published department of education consolidated annual financial report.

The legislature shall make an appropriation based upon the budget request; provided that legislature may make additional appropriations for collective bargaining increases for charter school employee members of collective bargaining units and for other requested amounts. The governor, pursuant to chapter 37, may impose restrictions or reductions on charter school appropriations similar to those imposed on other public schools.

(b) All federal financial support for new century charter schools shall be no less than all other public schools; provided that if administrative services related to federal grants and subsidies 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 federal grants and subsidies.

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 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 boards.

(c) To enable new century charter schools to access state funding prior to the start of each school year, foster their fiscal planning, and enhance their accountability, the ~~[department]~~ charter school administrative office shall:

- (1) Provide ~~[fifty]~~ forty per cent of a new century charter school's per pupil allocation based on the new century charter school's projected student enrollment no later than August 1 of each fiscal year; provided that the new century charter school shall submit to the ~~[department]~~ charter school administrative office a projected student enrollment no later than May 15 of each year; ~~[and]~~
- (2) Provide an additional forty per cent of a new century charter school's per pupil allocation no later than October 15 of each year; provided that the new century charter school shall submit to the charter school administrative office a verified student enrollment no later than September 15 of each year; and
- (3) Provide the remaining twenty per cent per pupil allocation of a new century charter school based on the new century charter school's verified student enrollment no later than ~~[October 15]~~ January 1 of each year; provided that the new century charter school shall submit to the ~~[department]~~ charter school administrative office a ~~[verified]~~ revised student enrollment no later than ~~[September 15]~~ December 1 of each year.

~~(d) [If, at any time, the new century charter school dissolves or is denied continuation, the State of Hawaii shall have first right, at no cost to the State, to all the assets and facilities of the new century charter school, except as otherwise provided in the detailed implementation plan.]~~

The department shall provide appropriate transitional resources to a new century conversion charter school for its first year of operation as a charter school based upon the department's allocation to the school for the year prior to the charter school's conversion.

(e) No new century charter school nor new century conversion charter school may assess tuition."

SECTION 4. Section 302A-1186, Hawaii Revised Statutes, is amended to read as follows:

"§302A-1186 New century charter schools; accountability[-] probationary status; revocation of charter. (a) Every new century charter school shall conduct annual self-evaluations [annually-] which shall be submitted to the charter school administrative office within sixty working days after the completion of the school year. 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;

- (3) The impact of ~~[any changes made upon the students of]~~ the new century charter school~~;~~ upon student achievement within that school; [and]
- (4) A profile of the charter school's enrollment and community it serves~~;~~, including a breakdown of regular education and special education students.

~~[Every new century charter school shall submit a report of its self-evaluation to the board within sixty working days after the completion of the school year; provided that the department shall have thirty working days to respond to any recommendation regarding improvements and modifications that would directly impact the department.]~~

(b) The board shall initiate an annual independent evaluation of each new century charter school ~~[annually]~~ for the first two years after its establishment and every four years thereafter to assure organizational viability and compliance with applicable state laws, 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 one year 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]~~ revoke the charter of the new century charter school.

For the purposes of this subsection, "organizational viability" means that a new century charter school:

- (1) Has been duly constituted in accordance with its charter;
- (2) Has a local school board established in accordance with law and its charter;
- (3) Employs sufficient faculty and staff to provide the necessary educational program and support services and to operate the facility in accordance with its charter; and
- (4) Maintains comprehensive records regarding students, employees, and complies with federal and state health and safety requirements.

(c) The board of education may adopt guidelines to supplement accountability measures incorporated in the written performance contracts required under section 302A-1182. The board of education may adopt guidelines under which new century charter schools shall be reviewed on an annual basis by the board for the first two years upon their formation under section 302A-1182. The review guidelines may include:

- (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;
- (4) Assurance that each school will meet legal standards for the expenditure of state and federal funds; and
- (5) Assurance that each school will be in compliance with applicable state and federal laws.

(d) If, at any time, a new century charter school dissolves or the charter is revoked, the State of Hawaii shall have first right, at no cost to the State, to all the assets and facilities of the new century charter school, except as otherwise provided by law."

SECTION 5. Section 302A-1187, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1187 New century charter schools; [administrative supervision.] charter school administrative office; administration. ~~[Whenever any new century charter school is established under section 302A-1182, the following provisions shall apply except as otherwise specifically provided by this chapter:~~

- ~~(1) Following consultation with the new century charter school, the board shall represent the new century charter school in communications with the governor and with the legislature;~~
- ~~(2) The financial requirements for state funds of the new century charter school shall be submitted through the board and included in the budget for the department;~~
- ~~(3) The approval of all policies and rules adopted by the new century charter school shall be preceded by an open public meeting and shall not be subject to chapter 91;~~
- ~~(4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the new century charter school shall be determined by the new century charter school and applicable personnel laws and collective bargaining agreements;~~
- ~~(5) Except as set forth in this section, the board or the superintendent of education shall not have the power to supervise or control the new century charter school in the exercise of its functions, duties, and powers; and~~
- ~~(6) Local school boards may enter into an annual business contract for centralized services to be provided by the department prior to the beginning of each school year.]~~

(a) There is established a charter school administrative office, which shall be attached to the department of education for administrative purposes only. The office shall be administered by an executive director, who shall be appointed without regard to chapters 76 and 89 by the board of education based upon the recommendations of an organization of charter schools operating within the State or from a list of nominees submitted by the charter schools. The executive director may hire necessary staff without regard to chapters 76 and 89 to assist in the administration of the office.

(b) The executive director, under the direction of the board of education and charter schools, shall be responsible for the internal organization, operation, and management of the charter schools, including:

- (1) Preparation and execution of the budget for the charter schools, including submission of the budget request to the board of education and to the governor;
- (2) Allocation of annual appropriations to the charter schools, and annual financial audits of each charter school;
- (3) Compliance with applicable state laws related to the administration of the charter schools;
- (4) Preparation and execution of contracts between the charter schools and the department of education for centralized services to be provided by the department;
- (5) Preparation and execution of contracts between the charter schools and other state agencies for financial or personnel services to be provided by such agencies to the charter schools;
- (6) Representation of charter schools in communications with the board of education, the governor, and the legislature; and

(7) Monitoring and supporting the development, growth, and progress of charter schools.

(c) The salary of the executive director and staff shall be set by the board of education based upon the recommendations of an organization of charter schools within the State; provided that the salaries and operational expenses of the charter school administrative office shall be paid from the annual charter school appropriation and shall not exceed two per cent of the total allocation in any fiscal year."

SECTION 6. Section 302A-1188, Hawaii Revised Statutes, is amended to read as follows:

~~"[**§302A-1188**] New century charter schools; [mandate to support.] responsibilities of department of education; special education services. [The department, together with key representatives of the major divisions in the department, representatives from the unions, as well as individuals from the new century charter schools shall collaborate together on a system of technical assistance that will provide a baseline for success of each new century charter school. In addition, the department, through the board and its superintendent, shall provide any other information and technical assistance upon request necessary to support the establishment and expansion of new century charter schools.]~~ (a) The department shall collaborate with the charter school administrative office to develop a system of technical assistance related to compliance with federal and state laws and access to federal and state funds. The department and the charter school administrative office shall collaborate to develop a list of central services that the department of education may offer for purchase by a new century charter school at an annual cost to be negotiated between an individual new century charter school and the department. The department shall enter into a contract with a new century charter school to provide these services, which shall be re-negotiated on an annual basis.

(b) Any new century charter school that enrolls special education students or identifies one of its students as eligible for special education shall be responsible for providing the educational and related services required by a student's individualized education plan; provided that if the charter school is unable to provide all of the required services due to limited resources within its control, then services to the student shall be determined and provided by the department of education. The department of education shall collaborate with the charter school administrative office to develop guidelines related to the provision of special education services and resources to each charter school. In making the determination about the provision of services to a special education student enrolled in a charter school, the department shall review all of the current individualized education plans of special education students enrolled in a charter school, and may offer staff or funding, or both, to the charter school based upon a per pupil weighted formula implemented by the department and used to allocate resources for special education students in the public schools. The department may also offer services to the special education student at a public school within the same school complex that the charter school is located."

SECTION 7. Section 302A-1191, Hawaii Revised Statutes, is amended to read as follows:

~~"[**§302A-1191**] New century conversion charter schools; conversion schools.~~ (a) As used in this section:

~~"New century conversion charter school"~~ means:

- (1) Any existing department school that is managed and operated in accordance with subsection (d); or

- (2) Any existing department school that is managed and operated by a nonprofit organization in accordance with this section, excluding subsection (d).

“Nonprofit organization” means a private, nonprofit, tax-exempt entity that:

- (1) Is recognized as a tax exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986, as amended;
- (2) Is domiciled in this State; and
- (3) Makes a minimum annual contribution of \$1 per pupil toward the operation of a new century conversion charter school for every \$4 per pupil allocated by the [department] charter school administrative office for the operation of the charter school.

(b) A nonprofit organization may submit a letter of intent to the board of education to operate and manage an existing public school as a new century conversion charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to section 302A-1182(c); provided that:

- (1) The local school board as the governing body of the new century conversion charter school shall be composed of the board of directors of the nonprofit organization and not the participants specified in subsection (d)(1). The nonprofit organization may also appoint advisory panels of community representatives for each school managed by the organization, with whom the organization may consult; provided that these panels shall not have governing authority over the school and shall serve only in an advisory capacity to the nonprofit organization;
- (2) The detailed implementation plan for each new century conversion charter school to be operated by the nonprofit organization shall be formulated, developed, and submitted by the local school board. The detailed implementation plan shall be approved by a majority of the votes cast by 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;
- (3) After the detailed implementation plan for a new century conversion charter school operated and managed by the nonprofit organization has been approved by the new century charter school review panel and the board of education as provided in section 302A-1182(d) to (g), the board of education shall issue a charter, and the implementation plan shall be converted to a written performance contract between the nonprofit organization and the board of education, under which the new century conversion charter school shall be managed and operated as a division of the nonprofit organization;
- (4) The board of directors of the nonprofit organization, as the governing body for the new century conversion charter school that it operates and manages, shall have the same protections that are afforded to the state board of education;
- (5) Any new century conversion charter school that is managed and operated by a nonprofit organization shall be eligible for the same federal and state funding as ~~allowed to~~ other [department] public schools; provided that the nonprofit organization may allocate federal and state funds among two or more of the new century conversion charter schools that it operates and manages to the extent permitted by law; and
- (6) If, at any time, the new century conversion charter school dissolves or ~~[is denied continuation]~~ the charter is revoked, the State of Hawaii shall

have first right, at no cost to the State, to all the assets and facilities of the new century conversion charter school, except as provided in the detailed implementation plan.

(c) Any nonprofit organization that seeks to manage or operate a new century conversion charter school as provided in subsection (b) shall comply with the following at the time of application:

- (1) Have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;
- (2) Have experience in the management and operation of public or private schools, or, to the extent necessary, agree to obtain appropriate services from another entity or entities possessing such experience;
- (3) Comply with all applicable federal, state, and county laws, including being licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments; and
- (4) Comply with any other requirements prescribed by the department to ensure adherence with applicable federal, state, and county laws and the purposes of this chapter.

(d) As an alternative to subsection (b), any public school or schools may submit a letter of intent to the board of education to form a new century conversion charter school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to section 302A-1182(c); provided that:

- (1) The local school board as its governing body shall be composed of, at a minimum, one representative from each of the following participant groups:
 - (A) Principals;
 - (B) Instructional staff members selected by the school instructional staff;
 - (C) Support staff selected by the support staff of the school;
 - (D) Parents of students attending the school selected by the parents of the school;
 - (E) Student body representatives selected by the students of the school; and
 - (F) The community at-large; and
- (2) The detailed implementation plan shall be approved by a majority of the votes cast by 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.

(e) Up to a total of twenty-five schools may be established as new century conversion charter schools. Any new century conversion charter school may, prior to the beginning of the school year, enter into an annual contract with the department of education for centralized services to be provided by the department.

(f) This section does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before April 4, 2002.

(g) Unless otherwise provided in this section, the provisions in this subpart, as they relate to new century charter schools, shall apply to new century conversion charter schools. In the event of a conflict between the provisions in this section, as they relate to new century conversion charter schools, and the provisions in this subpart, this section shall control.”

SECTION 8. Section 302A-1302, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1302 School-based budget flexibility. (a) Beginning with the 1995-1997 fiscal biennium, the department shall implement school-based budget flexibility for schools, complexes, and learning support centers. The flexibility shall be limited to the school-based budgeting program EDN 100 of the department for all schools except new century charter schools defined in section 302A-101 and new century conversion charter schools defined in section 302A-1191[; provided that beginning].

(b) Beginning in fiscal year [1998-1999,] 2004-2005, and every year thereafter, the [department] charter school administrative office shall distribute the [full appropriation] allocations due to a new century charter school or new century conversion charter school pursuant to sections 302A-1185 and 302A-1191, directly to the new century charter school or new century conversion charter school.”

SECTION 9. It is the intent of the legislature that the charter school administrative office shall be established no later than October 1, 2003. However, to enable new century charter schools and new century conversion charter schools to access funds in the fiscal year 2003-2004, prior to the establishment of the charter school administrative office, the department of education shall make allocations directly to the charter schools based upon a per pupil allocation of \$5,355 for each regular and special education student as follows:

- (1) Forty per cent of a charter school's allocation no later than August 1, 2003, based upon projected enrollment count to be submitted by the charter schools to the department no later than July 1, 2003;
 - (2) Forty per cent of a charter school's allocation no later than October 15, 2003, based upon a verified enrollment count to be submitted by the charter schools to the department no later than September 15, 2003; and
 - (3) The remaining twenty per cent of a charter school's allocation not later than January 1, 2004, based upon a revised enrollment count to be submitted by the charter schools no later than December 1, 2003;
- provided that not more than \$250,000 shall be allocated to the charter school administrative office, for salaries and operational expenses of the office.

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. 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 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval; provided that section 9 shall take effect on July 1, 2003.

(Approved June 24, 2003.)

Note

1. No subsection (b).

A Bill for an Act Relating to Health.

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

PART I

SECTION 1. Section 349-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established within the [~~office of the governor,~~] department of health, for administrative purposes only, an executive office on aging.”

SECTION 2. All rights, powers, functions, and duties of the office of the governor, relating to the executive office on aging, are transferred to the department of health. All officers and employees whose functions are transferred by this Act shall be transferred with their functions and shall continue to perform their regular duties upon their transfer, subject to the state personnel laws and this Act.

Any employee who, prior to this Act, was exempt from civil service and may be transferred as a consequence of this Act, shall continue to retain the employee's exempt status and shall not be appointed to a civil service position because of this Act. The employee shall continue in an exempt position upon transfer to the department of health until such time that the exempt position is converted to a civil service position in accordance with applicable state personnel rules, regulations, policies, or procedures.

All officers or employees whose positions are transferred by this Act shall be transferred to the department of health. The functions, duties, classifications, pay, benefits, tenure, seniority, prior service credit, vacation, sick leave, or other employee benefit or privilege of any officer or employee shall not be changed in the execution of the transfer. Subsequent changes in status shall be made in accordance with applicable state personnel laws, rules, policies, procedures, and collective bargaining agreements.

If an office or position held by an officer or employee is abolished as a result of this Act, the employment action affecting the officer or employee shall be in accordance with applicable state personnel laws, rules, policies, procedures, and collective bargaining agreements.

SECTION 3. All rules, policies, procedures, guidelines, and other material adopted or developed by the office of the governor to implement provisions of the Hawaii Revised Statutes which are reenacted or made applicable to the department of health by this Act, shall remain in full force and effect until amended or repealed by the department of health pursuant to chapter 91, Hawaii Revised Statutes. In the interim, every reference to the office of the governor in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of health.

SECTION 4. All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the office of the governor pursuant to the provisions of the Hawaii Revised Statutes, which are reenacted or made applicable to the department of health by this Act, shall remain in full force and effect. Upon the effective date of this Act, every reference to the office of the governor, relating to the executive office on aging, shall be construed as a reference to the department of health.

SECTION 5. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, computer software and data, authorizations, and other property, both real and personal, heretofore made, used, acquired, or held by the office of the governor in the exercise of the functions and programs transferred by this Act shall be transferred to the department of health when the functions or programs are so transferred.

SECTION 6. 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, 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 adopted under this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

PART II

SECTION 7. The legislature finds that the continued provision of mental health services is vital to the community. It is essential that providers be able to efficiently submit and collect available insurance reimbursements for such services. Insurance reimbursement claims typically require information on the patient treated. Therefore, any statutory authorization for the release of patient medical records must be limited in scope and ensure the privacy of the patient.

Accordingly, the purpose of this part is to permit mental health service providers to release records for billing purposes under limited circumstances while preserving a patient's right to confidentiality.

SECTION 8. Section 334-5, Hawaii Revised Statutes, is amended to read as follows:

“§334-5 Confidentiality of records. All certificates, applications, records, and reports made for the purposes of this chapter and directly or indirectly identifying a person subject hereto shall be kept confidential and shall not be disclosed by any person except so far (1) as the person identified, or the person's legal guardian, consents, or (2) as disclosure may be deemed necessary by the director of health or by the administrator of a private psychiatric or special treatment facility to carry out this chapter, or (3) as a court may direct upon its determination that disclosure is necessary for the conduct [F]of[] proceedings before it and that failure to make the disclosure would be contrary to the public interest, or (4) as disclosure may be deemed necessary under the federal Protection and Advocacy for Mentally Ill Individuals Act of 1986, Public Law 99-319, to protect and advocate the rights of persons with mental illness who reside in facilities providing treatment or care[-], or (5) as disclosure is made to the person's health care insurer to obtain reimbursement for services rendered to the person, except for records subject to Title 42 Code of Federal Regulations Part 2, confidentiality of alcohol and drug abuse patient records; provided that disclosure shall be made only if the insurer informs the person that a reimbursement claim will be made to the person's insurer, the person is afforded an opportunity to pay the reimbursement claim directly, and the person does not pay. For the purposes of this section, “facilities” shall include, but not be limited to, hospitals, nursing homes, community facilities for mentally ill individuals, boarding homes, and care homes.

Nothing in this section shall preclude disclosure, upon proper inquiry, of any information relating to a particular patient and not clearly adverse to the interests of the patient, to the patient, the patient's family, legal guardian, or relatives, nor,

ACT 205

except as provided above, affect the application of any other rule or statute of confidentiality. The use of the information disclosed shall be limited to the purpose for which the information was furnished.”

PART III

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 and stricken. New statutory material is underscored.

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

(Approved June 24, 2003.)

ACT 205

S.B. NO. 574

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. Section 431:19-101.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be established within the office of the commissioner, a captive insurance administrator, who shall be solely responsible for assisting the [insurance] commissioner in the monitoring, regulation, and development of captive insurance companies under this article. The [insurance] commissioner [shall], with the approval of the director of commerce and consumer affairs, shall appoint the administrator who shall be exempt from chapter 76. The administrator shall serve at the pleasure of the director of commerce and consumer affairs[-] and shall report directly to the commissioner.”

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

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

(Approved June 26, 2003.)

ACT 206

S.B. NO. 665

A Bill for an Act Relating to Prepaid Health Care Plan.

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

SECTION 1. Existing law in section 393-7(a), Hawaii Revised Statutes (HRS), requires the director of labor and industrial relations, after consulting with the prepaid health care advisory council, to determine whether a prepaid health care plan is qualified under Hawaii law to offer benefits under chapter 393, HRS, relating

to the Prepaid Health Care Act. The legislature finds that new health plans seeking entry into Hawaii, particularly employer-sponsored health plans, have had difficulty obtaining approval from the advisory council. This gatekeeper process, though well intended, has resulted in a lack of competition in the marketplace for prepaid health care plans, with a probable impact on health insurance rates.

The federal Employee Retirement Income Security Act (ERISA), title 29 United States Code section 1144, as amended, supersedes any amendment to the Prepaid Health Care Act enacted after September 2, 1974, that provides for “more than the effective administration of such Act ...”. This Act does not amend substantive provisions of the Prepaid Health Care Act or impose new obligations upon employers; therefore, it is not affected by the ERISA preemption.

The purpose of this Act is to provide for more effective administration of the Prepaid Health Care Act by mandating that the prepaid health care advisory council shall not include a member from the insurance industry.

SECTION 2. Section 393-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The prepaid health care advisory council shall be appointed by the director and shall include representatives of the medical and public health professions, representatives of consumer interests, and persons experienced in prepaid health care protection[-]; provided that a person representing a health maintenance organization under chapter 432D, a mutual benefit society issuing individual and group hospital or medical service plans under chapter 432, or any other health care organization shall not be a member. The membership of the council shall not exceed seven individuals.”

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

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

(Approved June 26, 2003.)

ACT 207

S.B. NO. 855

A Bill for an Act Relating to Energy.

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

SECTION 1. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§196- Energy-efficiency policy review and evaluation.** (a) The energy resources coordinator shall ensure that review and evaluation comparable to those accomplished by the energy-efficiency policy task force established pursuant to Act 163, Session Laws of Hawaii 1998, are undertaken, and that the findings and recommendations of the review and evaluation are reported to the legislature no later than twenty days prior to the convening of the regular session of 2007.

(b) The review and evaluation shall include:

- (1) The efficacy of section 235- to determine whether the tax credits should be continued or enhanced based on impact and cost-benefit analyses or other public policy considerations;

- (2) Whether the energy technology systems eligible for tax credits under section 235- should be expanded, reduced, or remain the same; and
- (3) Any other issue regarding energy technology systems identified during the seven-year review.
- (c) The energy resources coordinator, in undertaking the review and evaluation, shall consult with representatives from:
 - (1) The department of business, economic development, and tourism;
 - (2) The solar, wind, and photovoltaic industries;
 - (3) The utilities industry;
 - (4) The building industry; and
 - (5) Any other professional or public sector group the energy resources coordinator deems appropriate.”

SECTION 2. Chapter 235, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§235- Renewable energy technologies; income tax credit.** (a) When the requirements of subsection (c) are met, each individual or corporate resident taxpayer that files an individual or corporate net income tax return for a taxable year may claim a tax credit under this section against the Hawaii state individual or corporate net income tax. The tax credit may be claimed for every eligible renewable energy technology system that is installed and placed in service by a taxpayer after June 30, 2003. The tax credit may be claimed as follows:

- (1) Solar thermal energy systems for:
 - (A) Single family residential property: thirty-five per cent of the actual cost or \$1,750, whichever is less;
 - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less;
 - (C) Commercial property: thirty-five per cent of the actual cost or \$250,000, whichever is less; and
- (2) Wind powered energy systems for:
 - (A) Single family residential property: twenty per cent of the actual cost or \$1,500, whichever is less;
 - (B) Multi-family residential property: twenty per cent of the actual cost or \$200 per unit, whichever is less; and
 - (C) Commercial property: twenty per cent of the actual cost or \$250,000, whichever is less; and
- (3) Photovoltaic energy systems for:
 - (A) Single family residential property: thirty-five per cent of the actual cost or \$1,750, whichever is less;
 - (B) Multi-family residential property: thirty-five per cent of the actual cost or \$350 per unit, whichever is less; and
 - (C) Commercial property: thirty-five per cent of the actual cost or \$250,000, whichever is less;

provided that multiple owners of a single system shall be entitled to a single tax credit; and provided further that the tax credit shall be apportioned between the owners in proportion to their contribution to the cost of the system.

(b) For the purposes of this section:

“Actual cost” means costs related to the renewable energy technology systems under subsection (a), including accessories and installation, but not including the cost of consumer incentive premiums unrelated to the operation of the system or offered with the sale of the system and costs for which another credit is claimed under this chapter.

“Renewable energy technology system” means a system that captures and converts a renewable source of energy, such as wind, heat (solar thermal), or light (photovoltaic) from the sun into:

- (1) A usable source of thermal or mechanical energy;
- (2) Electricity; or
- (3) Fuel.

“Solar or wind energy system” means any identifiable facility, equipment, apparatus, or the like that converts insolation or wind energy to useful thermal or electrical energy for heating, cooling, or reducing the use of other types of energy that are dependent upon fossil fuel for their generation.

(c) The dollar amount of any new federal energy tax credit similar to the credit provided in this section that is established after June 30, 2003, and any utility rebate, shall be deducted from the cost of the qualifying system and its installation before applying the state tax credit.

(d) The director of taxation shall prepare any forms that may be necessary to claim a tax credit under this section, including forms identifying the technology type of each tax credit claimed under this section, whether for solar thermal, photovoltaic from the sun, or wind. The director may also require the taxpayer to furnish reasonable 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) By or before December, 2005, to the extent feasible, using existing resources to assist the energy-efficiency policy review and evaluation, the department shall assist with data collection on the following:

- (1) The number of renewable energy technology systems that have qualified for a tax credit during the past year by:
 - (A) Technology type (solar thermal, photovoltaic from the sun, and wind); and
 - (B) Taxpayer type (corporate and individual); and
- (2) The total cost of the tax credit to the State during the past year by:
 - (A) Technology type; and
 - (B) Taxpayer type.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2003, and shall be repealed January 1, 2008.

(Approved June 26, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 208

S.B. NO. 1058

A Bill for an Act Relating to Captive Insurance.

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

SECTION 1. Section 431:19-110, Hawaii Revised Statutes, is amended to read as follows:

“**§431:19-110 Legal investments.** Each captive insurance company shall be subject to the restrictions on allowable investments provided under sections

ACT 209

431:6-101 to 431:6-501[; ~~except that pure captive insurance companies may obtain approval from the commissioner for investments that are not specified in the insurance code.;~~ provided that the commissioner may approve other investments and investment provisions as the commissioner deems appropriate for each captive insurance company licensed under this article.”

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

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

(Approved June 26, 2003.)

ACT 209

S.B. NO. 1200

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 amending the definition of “captive insurance company” to read as follows:

““Captive insurance company” means a class 1, class 2, class 3, class 4, or class 5 captive insurance company formed or [~~licensed~~] authorized under this article.”

SECTION 2. Section 431:19-102, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsections (a) to (c) to read:

“§431:19-102 [~~Licensing; authority.~~] Certificate of authority.

(a) Any captive insurance company, when permitted by its articles of association or [~~charter.~~] articles of incorporation, may apply to the commissioner for a [~~license~~] certificate of authority 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; 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~~] certificate of authority 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 and registered office 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]~~ designates a registered resident agent in accordance with chapter 414 or 414D, to accept service of process and to otherwise act on its behalf in this State. Whenever the registered resident 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.

(c) Before receiving a [~~license,~~] certificate of authority, a captive insurance company shall file with the commissioner a certified copy of its [~~charter~~] articles of incorporation or articles of association and bylaws, a statement under oath of [~~its president and secretary~~] any two of its principal officers, or its attorney-in-fact in the case of a captive insurance company formed as a reciprocal insurer, showing its financial condition, and any other statements or documents required by the commissioner.”

2. By amending subsections (e) to (g) to read:

“(e) Each captive insurance company applying for a certificate of authority under this article shall pay to the commissioner a nonrefundable fee for examining, investigating, and processing its application for the [~~license,~~] certificate of authority. In addition, each captive insurance company receiving a [~~license~~] certificate of authority from the commissioner shall pay an annual [~~license~~] fee therefor for the year of registration and for each annual renewal thereafter. The amount of the application fee and the annual [~~license~~] certificate of authority fee shall be set forth in rules adopted by the commissioner. In addition, the commissioner may adopt rules with respect to fees for the issuance of other documents as may be deemed necessary or requested by captive insurance companies.

(f) The commissioner shall establish a list of advisors to assist with the review of captive applications. The commissioner ~~[shall]~~ may appoint one advisor from the list to review a specific application. The advisor’s fee, ~~[to] if any, shall~~ be paid by the captive applicant, and shall be a reasonable fee authorized by the commissioner pursuant to section 431:19-114.

(g) If the commissioner is satisfied that the documents and statements filed by the captive insurance company comply with this article, the commissioner may ~~[grant a license]~~ issue a certificate of authority authorizing it to do insurance business in this State until April 1 thereafter, which [~~license~~] certificate of authority may be renewed.”

SECTION 3. Section 431:19-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Subject to subsection (c), no captive insurance company incorporated as a stock insurer shall be issued a [~~license~~] certificate of authority unless it shall possess and thereafter maintain unimpaired paid-in capital of an amount established and deemed appropriate by the commissioner.”

SECTION 4. Section 431:19-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Subject to section 431:19-104(c), no captive insurance company formed other than as a stock insurer shall be issued a [~~license~~] certificate of authority unless it shall possess and thereafter maintain a free surplus of an amount established and deemed appropriate by the commissioner.”

SECTION 5. Section 431:19-106, Hawaii Revised Statutes, is amended by amending subsection (j) to read as follows:

“(j) The articles of incorporation of a risk retention captive insurance company incorporated as a stock insurer shall provide that no ~~[member]~~ stockholder shall own more than ten per cent of the risk retention captive insurance company’s outstanding stock; provided that as an alternative, the commissioner, if the commissioner deems it in the best interest of the risk retention captive, the policyholders, and the public, may permit the articles of incorporation to state that no ~~[member]~~ stockholder shall vote more than ten per cent of the outstanding stock.”

SECTION 6. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Each 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 captive insurance company shall not be required to file risk-based capital reports with the National Association of Insurance Commissioners.”

SECTION 7. Section 431:19-109, Hawaii Revised Statutes, is amended to read as follows:

“**§431:19-109 Grounds and procedures for suspension and revocation of ~~[license.]~~ certificate of authority.** (a) The ~~[license]~~ certificate of authority of a captive insurance company to do business in this State may be suspended or revoked by the commissioner for any of the following reasons:

- (1) Insolvency or impairment of capital or surplus;
- (2) Failure to meet the requirements of section 431:19-104 or section 431:19-105;
- (3) Refusal or failure to submit an annual report, as required by section 431:19-107 or any other report or statement required by law or by lawful order of the commissioner;

- (4) Failure to comply with the provisions of its own [~~charter~~] articles of incorporation, articles of association, or bylaws;
- (5) Failure to submit to examination or any legal obligation relative thereto, as required by section 431:19-108;
- (6) Refusal or failure to pay the cost of examination as required by section 431:19-108;
- (7) Use of methods that, although not otherwise specifically prohibited by law, nevertheless render its operation detrimental or its condition unsound with respect to the public or to its policyholders;
- (8) Failure to maintain actuarially appropriate loss reserves as determined by the commissioner; provided that the commissioner shall issue at least one warning to the captive insurance company to correct the problem prior to suspending or revoking the [~~license~~] certificate of authority; and
- (9) Failure otherwise to comply with the laws of this State.

(b) If the commissioner, upon examination, hearing, or other evidence, finds that any captive insurance company has committed any of the acts specified in subsection (a), the commissioner may suspend or revoke the [~~license~~] certificate of authority if the commissioner deems it in the best interest of the public and the policyholders of such captive insurance company, notwithstanding any other law.”

SECTION 8. Section 431:19-111.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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~~] authorized under this article may reinsure or provide excess insurance, or both, for the risks and lines of insurance approved by the commissioner.”

SECTION 9. 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,~~] sections 431:3-302 to 431:3-304, section 431:3-307, 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 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~~] authorized under this article.”

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

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

(Approved June 26, 2003.)

ACT 210

S.B. NO. 1319

A Bill for an Act Relating to the Uniform Limited Partnership 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 LIMITED PARTNERSHIP ACT
ARTICLE 1
GENERAL PROVISIONS**

§ -101 **Short title.** This chapter may be cited as the “Uniform Limited Partnership Act”.

§ -102 **Definitions.** As used in this chapter:

“Certificate of limited partnership” means the certificate required by section -201. The term includes the certificate as amended or restated.

“Contribution”, except in the phrase “right of contribution,” means any benefit provided by a person to a limited partnership in order to become a partner or in the person’s capacity as a partner.

“Debtor in bankruptcy” means a person that is the subject of:

- (1) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
- (2) A comparable order under federal, state, or foreign law governing insolvency.

“Director” means the director of the department of commerce and consumer affairs.

“Distribution” means a transfer of money or other property from a limited partnership to a partner in the partner’s capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

“Foreign limited liability limited partnership” means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to section -404(c).

“Foreign limited partnership” means a partnership formed under the laws of a jurisdiction other than this State and required by those laws to have one or more general partners and one or more limited partners. The term includes a foreign limited liability limited partnership.

“General partner” means:

- (1) With respect to a limited partnership, a person that:
 - (A) Becomes a general partner under section -401; or
 - (B) Was a general partner in a limited partnership when the limited partnership became subject to this chapter under section -1204(a) or (b);

and

- (2) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

“Limited liability limited partnership”, except in the phrase “foreign limited liability limited partnership,” means a limited partnership whose certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

“Limited partner” means:

- (1) With respect to a limited partnership, a person that:
- (A) Becomes a limited partner under section -301; or
 - (B) Was a limited partner in a limited partnership when the limited partnership became subject to this chapter under section -1204(a) or (b);

and

- (2) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

“Limited partnership”, except in the phrases “foreign limited partnership” and “foreign limited liability limited partnership,” means an entity, having one or more general partners and one or more limited partners, which is formed under this chapter by two or more persons or becomes subject to this chapter under article 11 or section -1204(a) or (b). The term includes a limited liability limited partnership.

“Partner” means a limited partner or general partner.

“Partnership agreement” means the partners’ agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. The term includes the agreement as amended.

“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.

“Person dissociated as a general partner” means a person dissociated as a general partner of a limited partnership.

“Principal office” means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this State.

“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.

“Registered office” means the office that a domestic or foreign limited partnership is required to register and maintain under section -114.

“Required information” means the information that a limited partnership is required to maintain under section -111.

“Sign” means to execute or adopt a tangible symbol with the present intent to authenticate a record or to attach or logically associate an electronic symbol, sound, or process to or with a record with the present intent to authenticate the record.

“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.

“This State” means the State of Hawaii.

“Transfer” includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

“Transferable interest” means a partner’s right to receive distributions.

“Transferee” means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner.

§ -103 Knowledge and notice. (a) A person knows a fact if the person has actual knowledge of it.

(b) A person has notice of a fact if the person:

- (1) Knows of it;
- (2) Has received a notification of it;
- (3) Has reason to know it exists from all of the facts known to the person at the time in question; or
- (4) Has notice of it under subsection (c) or (d).

(c) A certificate of limited partnership on file in the office of the director is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection (d), the certificate is not notice of any other fact.

(d) A person has notice of:

(1) Another person's dissociation as a general partner:

- (A) Ninety days after the effective date of an amendment to the certificate of limited partnership which states that the other person has dissociated; or
- (B) Ninety days after the effective date of a statement of dissociation pertaining to the other person,

whichever occurs first;

- (2) A limited partnership's dissolution, ninety days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;
- (3) A limited partnership's termination, ninety days after the effective date of a statement of termination;
- (4) A limited partnership's conversion under article 11, ninety days after the effective date of the articles of conversion; or
- (5) A merger under article 11, ninety days after the effective date of the articles of merger.

(e) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in the ordinary course, whether or not the other person learns of it.

(f) A person receives a notification when the notification:

- (1) Comes to the person's attention; or
- (2) Is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(g) Except as otherwise provided in subsection (h), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(h) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact

relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership.

§ **-104 Nature, purpose, and duration of entity.** (a) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate states that the limited partnership is a limited liability limited partnership.

(b) A limited partnership may be organized under this chapter for any lawful purpose.

(c) A limited partnership has a perpetual duration.

§ **-105 Powers.** A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership.

§ **-106 Governing law.** The law of this State governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership.

§ **-107 Supplemental principles of law; rate of interest.** (a) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(b) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section 478-2.

§ **-108 Name.** (a) The name of a limited partnership may contain the name of any partner.

(b) The name of a limited partnership that is not a limited liability limited partnership shall contain the phrase "limited partnership" or the abbreviation "L.P." or "LP", and shall not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."

(c) The name of a limited liability limited partnership shall contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P.", and shall not contain the abbreviation "L.P." or "LP".

(d) Unless authorized by subsection (e), the name of a domestic limited partnership or limited liability limited partnership or foreign limited partnership or limited liability limited partnership as set forth in the certificate of limited partnership or certificate of authority shall not be the same as, or substantially identical to, the name of any domestic corporation, partnership, limited liability partnership, limited partnership, limited liability limited partnership, or limited liability company existing or registered under the laws of this State, any foreign corporation, partnership, limited liability partnership, limited partnership, limited liability limited partnership, or foreign limited liability company 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:

- (1) 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

- (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.

(e) A limited partnership may apply to the director for authorization to use a name that does not comply with subsection (d). The director shall authorize use of the name applied for if, for each conflicting name:

- (1) The present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the director to change the conflicting name to a name that complies with subsection (d) and is not substantially identical to a name in the records of the director;
- (2) The applicant delivers to the director a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this State the name applied for; or
- (3) The applicant delivers to the director proof satisfactory to the director that the present user, registrant, or owner of the conflicting name:
 - (A) Has merged into the applicant;
 - (B) Has been converted into the applicant; or
 - (C) Has transferred substantially all of its assets, including the conflicting name, to the applicant.

(f) Subject to section -905, this section applies to any foreign limited partnership transacting business in this State, having a certificate of authority to transact business in this State, or applying for a certificate of authority.

§ -108.5 Administrative order of abatement for infringement of limited partnership name. (a) Any domestic limited partnership or limited liability limited partnership in good standing or foreign limited partnership or limited liability limited partnership authorized to transact business in this State claiming that the name of another domestic corporation, partnership, limited partnership, limited liability 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 limited partnership, limited liability partnership, or limited liability company authorized to transact business in this State is substantially identical to, or confusingly similar with, its name may file a petition with the 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 and the registrant shall be given an opportunity to address the petition at a full 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 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 director; and
 - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the 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 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 chapter 414, 414D, 415A, 425, or 428, as applicable.

(c) Any person aggrieved by the director's order under this section may obtain judicial review in accordance with chapter 91 by filing a notice of appeal within thirty days after the issuance of the 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.

§ -109 Reserved name. (a) A person may reserve the exclusive use of a name that complies with section -108 including a fictitious name for a foreign limited partnership whose name is not available, by delivering an application to the director for filing. The application shall set forth the name and address of the applicant and the name proposed to be reserved. If the director finds that the name applied for is available, it shall be reserved for the applicant's exclusive use for a one hundred twenty-day period from the date of filing.

(b) The owner of a name so reserved may transfer the reservation to another person by delivering to the director a signed notice of the transfer which states the name and address of the transferee.

§ -110 Effect of partnership agreement; nonwaivable provisions. (a) Except as otherwise provided in subsection (b), the partnership agreement governs relations among the partners, and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners, and between the partners and the partnership.

(b) A partnership agreement may not:

- (1) Vary a limited partnership's power under section -105 to sue, be sued, and defend in its own name;
- (2) Vary the law applicable to a limited partnership under section -106;
- (3) Vary the requirements of section -204;
- (4) Vary the information required under section -111 or unreasonably restrict the right to information under section -304 or -407, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;
- (5) Eliminate the duty of loyalty under section -408, but the partnership agreement may:
 - (A) Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and
 - (B) Specify the number or percentage of partners that may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;
- (6) Unreasonably reduce the duty of care under section -408(c);
- (7) Eliminate the obligation of good faith and fair dealing under sections -305(b) and -408(d), but the partnership agreement may prescribe the standards by which the performance of the obligation shall be measured, if the standards are not manifestly unreasonable;
- (8) Vary the power of a person to dissociate as a general partner under section -604(a) except to require that the notice under section -603(1) be in a record;

- (9) Vary the power of a court to decree dissolution in the circumstances specified in section -802;
- (10) Vary the requirement to wind up the partnership's business as specified in section -803;
- (11) Unreasonably restrict the right to maintain an action under article 10;
- (12) Restrict the right of a partner under section -1110(a) to approve a conversion or merger or the right of a general partner under section -1110(b) to consent to an amendment to the certificate of limited partnership which deletes a statement that the limited partnership is a limited liability limited partnership; or
- (13) Restrict rights under this chapter of a person other than a partner or a transferee.

§ **-111 Required information.** A limited partnership shall maintain at its registered office the following information:

- (1) A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;
- (2) A copy of the certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been executed;
- (3) A copy of any filed articles of conversion or merger;
- (4) A copy of the limited partnership's federal, state, and local income tax returns and reports, if any, for the three most recent years;
- (5) A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;
- (6) A copy of any financial statement of the limited partnership for the three most recent years;
- (7) A copy of the three most recent annual statements delivered by the limited partnership to the director pursuant to section -210;
- (8) A copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and
- (9) Unless contained in a partnership agreement made in a record, a record stating:
 - (A) The amount of cash, and a description and statement of the agreed value of any other property or services, contributed or agreed to be contributed by each partner;
 - (B) The time or events that trigger any additional contributions agreed to be made by each partner are to be made;
 - (C) Unless contained in a written partnership agreement, a writing setting out any right of a partner to receive, or of a general partner to make, distributions to a partner which include a return of all or any part of the partner's contribution;
 - (D) For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and
 - (E) Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up.

§ **-112 Business transactions between a partner and the partnership.** A partner may lend money to and transact other business with the limited partnership

and has the same rights and obligations with respect to the loan or other transaction as a person who is not a partner.

§ **-113 Dual capacity.** A person may be both a general partner and a limited partner. A person that is both a general and limited partner shall have the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person shall be subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person shall be subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners.

§ **-114 Registered office and registered agent.** Each domestic limited partnership or foreign limited partnership shall 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 entity authorized to transact business in this State whose business office is identical with the registered office; or
 - (C) A foreign entity authorized to transact business in this State whose business office is identical with the registered office.

§ **-115 Designation or change of registered office or registered agent.**

(a) A domestic limited partnership or foreign limited partnership that does not already have a registered office and registered agent shall designate its registered office and registered agent by delivering to the director for filing, a statement of designation that sets forth:

- (1) The name of the limited partnership;
- (2) The street address of its initial registered office in this State and the name of its initial registered agent at its initial registered office; and
- (3) That the street addresses of its initial registered office and agent shall be identical.

(b) A domestic or foreign limited partnership may change its registered office or its registered agent by delivering to the director for filing, a statement of change that sets forth:

- (1) The name of the limited partnership;
- (2) The street address of its current registered office, the name of its current registered agent at its registered office, and any changes required to keep the information current; and
- (3) That after the change or changes are made, the street addresses of its registered office and agent shall be identical.

(c) If the registered agent's street address changes, the registered agent may change the street address of the limited partnership's registered office by notifying the limited partnership in writing of the change and signing (either manually or in facsimile) and delivering to the director for filing, a statement that complies with the requirements of subsection (a) and recites that the limited partnership has been notified of the change.

§ **-116 Resignation of registered agent.** (a) A registered agent may resign from the registered agent's appointment by signing and delivering to the director for filing, a signed statement of resignation. The statement may include a statement that the registered office shall also be discontinued.

(b) The registered agent shall mail one copy to the registered office (if not discontinued) and the other copy to the limited partnership at its principal office.

(c) The appointment of the agent shall be terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed.

§ -117 **Service on the partnership.** (a) Service of any notice or process authorized by law issued against any limited partnership, 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 or general partner of the limited partnership who is found within the jurisdiction of the court, officer, or board; or if a registered agent or general partner cannot be found, upon any person who is found in charge of the property, business, or office of the limited partnership within the jurisdiction of the court, officer, or board.

(b) If no general partner or other person in charge of the property, business, or office of the limited partnership can be found within this State, and in case the limited partnership has not filed with the director pursuant to this chapter the name of a registered agent upon whom legal notice and process from the courts of this State may be served, or the person named is not found within this State, service may be made upon the limited partnership by registered or certified mail, return receipt requested, addressed to the limited partnership at its principal office. Service by registered or certified mail shall be perfected at the earliest of:

- (1) The date the limited partnership receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the limited partnership; 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 limited partnership in any other manner permitted by law.

§ -118 **Consent and proxies of partners.** Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney in fact.

**ARTICLE 2
FORMATION; CERTIFICATE OF LIMITED PARTNERSHIP;
OTHER FILINGS; FEES**

§ -201 **Certificate of limited partnership.** (a) In order to form a limited partnership, a certificate of limited partnership 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 mailing address of the limited partnership's initial principal office, the street address of the limited partnership's initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (3) The name and the address of each general partner;
- (4) The name and address of each limited partner;
- (5) Whether the limited partnership is a limited liability limited partnership;
- (6) Any additional information required by article 11; and
- (7) Any other matter the general partners determine to include therein.

(b) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in section -110(b) in a manner inconsistent with that section.

(c) A limited partnership is formed at the time of the filing of the certificate of limited partnership in the office of the director if there has been substantial compliance with the requirements of this section.

(d) Subject to subsection (b), if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:

- (1) The partnership agreement prevails as to partners and transferees; and
- (2) The filed certificate of limited partnership, statement of dissociation, termination, or change or articles of conversion or merger prevail as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment.

§ -202 Amendment or restatement of certificate. (a) In order to amend its certificate of limited partnership, a limited partnership shall deliver to the director for filing an amendment or, pursuant to article 11, articles of merger stating:

- (1) The name of the limited partnership;
- (2) The date of filing of its initial certificate; and
- (3) The changes the amendment makes to the certificate as most recently amended or restated.

(b) A limited partnership shall within thirty days deliver to the director for filing an amendment to a certificate of limited partnership to reflect:

- (1) The admission of a new general partner;
- (2) The dissociation of a person as a general partner; or
- (3) The appointment of a person to wind up the limited partnership's activities under section -803(c) or (d).

(c) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

- (1) Cause the certificate to be amended; or
- (2) If appropriate, deliver to the director for filing a statement of change pursuant to section -115 or a certificate of correction pursuant to section -207.

(d) A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

(e) A restated certificate of limited partnership may be delivered to the director for filing in the same manner as an amended certificate.

(f) Subject to section -206(c), an amendment or restated certificate shall be effective when filed with the director.

§ -203 Statement of termination. (a) A dissolved limited partnership that has completed winding up may deliver to the director for filing a statement of termination that states:

- (1) The name of the limited partnership;
- (2) The date of filing of its initial certificate of limited partnership; and
- (3) 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.

(b) A limited partnership shall be terminated upon the effective date of its statement of termination. The statement of termination may specify a delayed effective time and date, and if so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document shall

be effective at the close of business on that date. A delayed effective date for a document shall not be later than the thirtieth day after the date it is filed.

(c) If a partnership has terminated by the expiration of its term of existence, the partners may, at any time within two years of such termination, by taking action consistent with the partnership agreement and by amending the partnership's certificate of limited partnership, extend the term of partnership. Such extension shall be effective from the original filing of the certificate.

(d) Within the applicable two-year period, should the name of the limited partnership, or a name substantially identical, be registered or reserved by another entity or should such name or a name substantially identical be registered as a trade name, trademark, or service mark, then extension of its term of existence shall be allowed only upon the registration of a new name by the limited partnership pursuant to the amendment provisions of this chapter.

§ -204 Execution of records. (a) Each record delivered to the director for filing pursuant to this chapter shall be executed in the following manner:

- (1) A certificate of limited partnership shall be signed by at least one general partner;
- (2) An amendment that changes the status of the limited partnership as a limited liability limited partnership shall be signed by at least one general partner who shall certify that a majority of the general partners have agreed to the amendment;
- (3) An amendment designating as a general partner a person admitted under section -801(3)(B) following the dissociation of a limited partnership's last general partner shall be signed by the designated person;
- (4) An amendment required by section -803(c) following the appointment of a person to wind up the dissolved limited partnership's activities shall be signed by the appointed person;
- (5) Any other amendment shall be signed by:
 - (A) At least one general partner listed in the certificate;
 - (B) Each person designated in the amendment as a new general partner; and
 - (C) Each person that the amendment indicates has dissociated as a general partner, unless:
 - (i) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or
 - (ii) The person has previously delivered to the director for filing a statement of dissociation;
- (6) A restated certificate of limited partnership shall be signed by at least one general partner listed who shall certify that a majority of the general partners have agreed to the restatement and to the extent the restated certificate effects a change under any other paragraph of this subsection, the certificate shall be signed in a manner that satisfies that paragraph;
- (7) A statement of termination shall be signed by at least one general partner who shall certify that all of the general partners have agreed to the termination or if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to section -803(c) or (d) to wind up the dissolved limited partnership's activities;

- (8) Articles of conversion shall be signed by at least one general partner who shall certify that a majority of the general partners have agreed to the conversion;
 - (9) Articles of merger shall be signed as provided in section -1107(a);
 - (10) Any other record delivered on behalf of a limited partnership to the director for filing shall be signed by at least one general partner;
 - (11) A statement by a person pursuant to section -605(a)(4) stating that the person has dissociated as a general partner shall be signed by that person;
 - (12) A statement of withdrawal by a person pursuant to section -306 shall be signed by that person;
 - (13) A record delivered on behalf of a foreign limited partnership to the director for filing shall be signed by at least one general partner of the foreign limited partnership; and
 - (14) Any other record delivered on behalf of any person to the director for filing shall be signed by that person.
- (b) Any person may sign by an attorney-in-fact any record to be filed pursuant to this chapter.

§ -205 Signing and filing pursuant to judicial order. (a) If a person required by this chapter to sign a record or deliver a record to the director for filing does not do so, any other person that is aggrieved may petition the circuit court to order:

- (1) The person to sign the record and deliver the record to the director for filing; or
- (2) The director to file the record unsigned.

(b) If the person aggrieved under subsection (a) is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (a) may seek the remedies provided in subsection (a) in the same action in combination or in the alternative.

(c) A record filed unsigned pursuant to this section shall be effective without being signed.

§ -206 Filing in the office of the director; effective time and date. (a) A certified and executed certificate of limited partnership, any certificate of amendment or cancellation, or of any judicial decree of amendment or cancellation, an application for registration as a foreign limited partnership, or any certificate relating thereto, shall be delivered to the director for filing. A person who executes a certificate as an agent or fiduciary need not exhibit evidence of that person's authority as a prerequisite to filing. Unless the director finds that any certificate does not conform to law, upon receipt of all filing fees required by law, the director shall:

- (1) Stamp the document with the word "Filed" and the date of delivery thereof; and
- (2) File the document in the director's office.

(b) Upon the filing of a certificate of amendment or judicial decree of amendment in the office of the director, the certificate of limited partnership shall be amended as set forth therein, and upon the effective date of a certificate of cancellation or a judicial decree thereof, the certificate of limited partnership shall be canceled.

(c) Except as otherwise provided in subsection (d) and section -207, a document accepted for filing shall be effective at the time of filing on the date it is filed, as evidenced by the director's date and time endorsement on the original document.

(d) Articles of conversion and articles of merger may specify a delayed effective time and date, and if so, the document becomes effective at the time and date specified. If a delayed effective date but no time is specified, the document shall be effective at the close of business on that date. A delayed effective date for a document shall not be later than the thirtieth day after the date it is filed.

§ -206.5 **Filing requirements; filing duty of the director.** (a) To be entitled to filing by the director a document shall satisfy the requirements of this section, and of any other section that adds to or varies from these requirements.

(b) The document shall contain the information required by this chapter. It may contain other information as well.

(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 chapter 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 document is valid or invalid or that information contained in the document is correct or incorrect.

§ -207 **Correcting a filed document.** (a) A domestic or foreign limited partnership may correct a document filed by the director if the document:

- (1) Contains an incorrect statement; or
 - (2) Was defectively executed, attested, sealed, verified, or acknowledged.
- (b) A document is corrected:

- (1) By preparing a certificate of correction that:
 - (A) Describes the document, including its file date or attaches a copy of it to the certificate;
 - (B) Specifies the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
 - (C) Corrects the incorrect statement or defective execution;and

(2) By delivering the certificate to the director for filing.

(c) A certificate of correction shall be effective as of the effective date of the document it corrects; provided that the certificate shall be effective when filed:

- (1) For the purposes of section -103(c) and (d); and
- (2) As to persons relying on the uncorrected record and adversely affected by the correction.

§ -208 **Liability for false information in a filed record.** (a) If a record delivered to the director for filing under this chapter contains false information, any person that suffers loss by reliance on the false information may recover damages for the loss from:

- (1) Any person who executes the record, or causes another to execute it on the person's behalf, and knew the information to be false or should have known the information was false at the time the record was executed; and
- (2) Any general partner who has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under section -202, file a petition pursuant to section -205, or deliver to the director for filing a statement of

change pursuant to section -115 or a certificate of correction pursuant to section -207.

(b) Signing a record authorized or required to be filed under this chapter constitutes an affirmation under the penalties of perjury that the facts stated in the record are true.

§ -209 **Certificates and certified copies to be received in evidence.** All certificates issued by the director pursuant to this chapter, and all copies of documents filed in the director's office pursuant to this chapter when certified by the director, shall be taken and received in all courts, public offices, and official bodies, as prima facie evidence of the facts therein stated. A certificate by the director, under the seal of 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.

§ -210 **Annual statement.** (a) Each limited partnership and each foreign limited partnership authorized to transact business in this State shall deliver to the director for filing an annual statement that sets forth:

- (1) The name of the limited partnership and the state or country under whose law it is organized; and
- (2) The mailing address of the limited partnership's principal office, the street address of the limited partnership's registered office in this State, and the name of its registered agent at its registered office in this State.

(b) The annual statement shall be filed within the time periods prescribed in subsection (c).

(c) Effective January 1, 2005, for each limited partnership whose date of registration in this State falls between:

- (1) January 1 and March 31, an annual statement shall be filed on or before March 31 of each year and shall reflect the state of the limited partnership's affairs as of January 1 of the year when filed;
- (2) April 1 and June 30, an annual statement shall be filed on or before June 30 of each year and shall reflect the state of the limited partnership's affairs as of April 1 of the year when filed;
- (3) July 1 and September 30, an annual statement shall be filed on or before September 30 of each year and shall reflect the state of the limited partnership's affairs as of July 1 of the year when filed; and
- (4) October 1 and December 31, an annual statement shall be filed on or before December 31 of each year and shall reflect the state of the limited partnership's affairs as of October 1 of the year when filed;

provided that if a limited partnership is registered in the same year in which the annual statement is due, the limited partnership shall not be required to file an annual statement for that year. Thereafter, the limited partnership shall comply with the requirements of this section.

(d) Each annual statement shall be certified as correct by any general partner.

§ -211 **Fees for filing documents and issuing certificates.** (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, \$25;
 - (12) 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, \$25 per certificate;
 - (16) Special handling fee for certification of documents, \$25; 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.
- (b) The director shall charge and collect:
 - (1) For furnishing a certified copy of any document, instrument, or paper relating to a limited partnership, \$20 for the certificate and affixing the seal thereto; and
 - (2) At the time of any service of process on the director as agent for service of process of a limited partnership, \$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.
 - (c) All fees collected under this section shall be managed in accordance with section 26-9.

**ARTICLE 3
LIMITED PARTNERS**

§ **-301 Limited partner.** A person becomes a limited partner:

- (1) As provided in the partnership agreement;
- (2) As the result of a conversion or merger under article 11; or
- (3) With the consent of all the partners.

§ **-302 No right or power as limited partner to bind limited partnership.** A limited partner shall not have the right or the power as a limited partner to act for or bind the limited partnership.

§ **-303 Liability as a limited partner.** An obligation of a limited partnership, whether arising in contract, tort, or otherwise, shall not be the obligation of a limited partner. A limited partner shall not be personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership.

§ **-304 Right of limited partner and former limited partner to information.** (a) Within ten days of a demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during

regular business hours in the limited partnership's designated office. The limited partner need not have any particular purpose for seeking the information.

(b) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:

- (1) The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;
- (2) The limited partner makes a demand in a record received by the limited partnership, describing with reasonable particularity the information sought and the purpose for seeking the information; and
- (3) The information sought is directly connected to the limited partner's purpose.

(c) Within ten days after receiving a demand pursuant to subsection (b), the limited partnership in a record shall inform the limited partner who made the demand:

- (1) What information the limited partnership will provide in response to the demand;
- (2) When and where the limited partnership will provide the information; and
- (3) If the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(d) Subject to subsection (f), a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office if:

- (1) The information pertains to the period during which the person was a limited partner;
- (2) The person seeks the information in good faith; and
- (3) The person meets the requirements of subsection (b).

(e) The limited partnership shall respond to a demand made pursuant to subsection (d) in the same manner as provided in subsection (c).

(f) If a limited partner dies, section -704 applies.

(g) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(h) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(i) Whenever this chapter or a partnership agreement provides for a limited partner to give or withhold consent to a matter, before the consent is given or withheld, the limited partnership shall, without demand, provide the limited partner with all information material to the limited partner's decision that the limited partnership knows.

(j) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (g) or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

(k) The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner.

§ **-305 Limited duties of limited partners.** (a) A limited partner shall not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(b) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(c) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest.

§ **-306 Person erroneously believing self to be a limited partner.** (a) Except as otherwise provided in subsection (b), a person that makes an investment in a business enterprise and erroneously but in good faith believes that the person has become a limited partner in the enterprise shall not be liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

- (1) Causes an appropriate certificate of limited partnership, amendment, or certificate of correction to be signed and delivered to the director for filing; or
- (2) Withdraws from future participation as an owner in the enterprise by signing and delivering to the director for filing a statement of withdrawal under this section.

(b) A person that makes an investment described in subsection (a) shall be liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before a statement of withdrawal, certificate of limited partnership, amendment, or certificate of correction is filed with the director to show that the person is not a general partner.

(c) If a person makes a diligent effort in good faith to comply with subsection (a)(1) and is unable to cause the appropriate certificate of limited partnership, amendment, or certificate of correction to be signed and delivered to the director for filing, the person has the right to withdraw from the enterprise pursuant to subsection (a)(2) even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise.

ARTICLE 4 GENERAL PARTNERS

§ **-401 General partner.** A person becomes a general partner:

- (1) As provided in the partnership agreement;
- (2) Under section -801(3)(B) following the dissociation of a limited partnership's last general partner;
- (3) As the result of a conversion or merger under article 11; or
- (4) With the consent of all the partners.

§ **-402 General partner is an agent of the limited partnership.** (a) Each general partner shall be an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the

general partner was dealing knew, had received a notification, or had notice under section -103(d) that the general partner lacked authority.

(b) An act of a general partner which is not apparently for carrying on in the ordinary course the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners.

§ -403 Limited partnership liable for general partner's actionable conduct. (a) A limited partnership shall be liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

(b) If, in the course of the limited partnership's activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property from a person not a partner, and the money or property is misapplied by a general partner, the limited partnership shall be liable for the loss.

§ -404 General partner's liability. (a) Except as otherwise provided in subsections (b) and (c), all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

(b) A person that becomes a general partner of an existing limited partnership shall not be personally liable for an obligation of a limited partnership incurred before the person became a general partner.

(c) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the limited partnership. A general partner shall not be personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under section -406(b)(2).

§ -405 Actions by and against partnership and partners. (a) To the extent not inconsistent with section -404, a general partner may be joined in an action against the limited partnership or named in a separate action.

(b) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(c) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the general partner is personally liable for the claim under section -404 and:

- (1) A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;
- (2) The limited partnership is a debtor in bankruptcy;
- (3) The general partner has agreed that the creditor need not exhaust limited partnership assets;
- (4) A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy

the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

- (5) Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership.

§ -406 Management rights of general partners. (a) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(b) The consent of each general partner shall be necessary to:

- (1) Amend the partnership agreement;
- (2) Amend the certificate of limited partnership to add or, subject to section -1110, delete a statement that the limited partnership is a limited liability limited partnership; and
- (3) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(c) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(d) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(e) A payment or advance made by a general partner that gives rise to an obligation of the limited partnership under subsection (c) or (d) constitutes a loan to the limited partnership which accrues interest from the date of the payment or advance.

(f) A general partner shall not be entitled to remuneration for services performed for the partnership.

§ -407 Right of general partner and former general partner to information. (a) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

- (1) In the limited partnership's designated office, required information; and
- (2) At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(b) Each general partner and the limited partnership shall furnish to a general partner:

- (1) Without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and
- (2) On demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(c) Subject to subsection (e), within ten days of a demand made in a record received by the limited partnership, a person dissociated as a general partner may

have access to the information and records described in subsection (a) at the location specified in subsection (a) if:

- (1) The information or record pertains to the period during which the person was a general partner;
- (2) The person seeks the information or record in good faith; and
- (3) The person satisfies the requirements imposed on a limited partner by section -304(b).

(d) The limited partnership shall respond to a demand made pursuant to subsection (c) in the same manner as provided in section -304(c).

(e) If a general partner dies, section -704 applies.

(f) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership shall bear the burden of proving reasonableness.

(g) A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(h) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (f) or by the partnership agreement shall apply both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(i) The rights under this section shall not extend to a person as transferee, but the rights under subsection (c) of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under section -603(7)(B) or (C).

§ -408 General standards of a general partner's conduct. (a) The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections (b) and (c).

(b) A general partner's duty of loyalty to the limited partnership and the other partners shall be limited to the following:

- (1) To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;
- (2) To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and
- (3) To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

(c) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities shall be limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(d) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(e) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest.

ARTICLE 5
CONTRIBUTIONS AND DISTRIBUTIONS

§ **-501 Form of contribution.** A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed.

§ **-502 Liability for contribution.** (a) A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership shall not be excused by the partner's death, disability, or other inability to perform personally.

(b) If a partner does not make a promised non-monetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution which has not been made.

(c) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership that extends credit or otherwise acts in reliance on an obligation described in subsection (a), without notice of any compromise under this subsection, may enforce the original obligation.

§ **-503 Sharing of distributions.** A distribution by a limited partnership shall be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner.

§ **-504 Interim distributions.** A partner shall not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution.

§ **-505 No distribution on account of dissociation.** A person shall not have a right to receive a distribution on account of dissociation.

§ **-506 Distribution in kind.** A partner shall not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to section -812(b), a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions.

§ **-507 Right to distribution.** When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made.

§ **-508 Limitations on distribution.** (a) A limited partnership may not make a distribution in violation of the partnership agreement.

(b) A limited partnership may not make a distribution if after the distribution:

- (1) The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

- (2) The limited partnership's total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited partnership were to be dissolved, wound up, and terminated at the time of the distribution, to satisfy the preferential rights upon dissolution, winding up, and termination of partners whose preferential rights are superior to those of persons receiving the distribution.

(c) A limited partnership may base a determination that a distribution is not prohibited under subsection (b) 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.

(d) Except as otherwise provided in subsection (g), the effect of a distribution under subsection (b) shall be measured:

- (1) In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and
- (2) In all other cases, as of the date:
- (A) The distribution is authorized, if the payment occurs within one hundred twenty days after that date; or
- (B) The payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.

(e) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section shall be at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(f) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, shall not be considered a liability for purposes of subsection (b) if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(g) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which is measured on the date the payment is made.

§ -509 Liability for improper distributions. (a) A general partner that consents to a distribution made in violation of section -508 shall be personally liable to the limited partnership for the amount of the distribution which exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with section -408.

(b) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of section -508 shall be personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under section -508.

(c) A general partner against which an action is commenced under subsection (a) may:

- (1) Implead in the action any other person that is liable under subsection (a) and compel contribution from the person; and
- (2) Implead in the action any person that received a distribution in violation of subsection (b) and compel contribution from the person in the amount the person received in violation of subsection (b).

(d) An action under this section is barred if it is not commenced within two years after the distribution.

**ARTICLE 6
DISSOCIATION**

§ -601 **Dissociation as a limited partner.** (a) A person shall not have a right to dissociate as a limited partner before the termination of the limited partnership.

(b) A person shall be dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

- (1) The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;
- (2) An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;
- (3) The person's expulsion as a limited partner pursuant to the partnership agreement;
- (4) The person's expulsion as a limited partner by the unanimous consent of the other partners if:
 - (A) It is unlawful to carry on the limited partnership's activities with the person as a limited partner;
 - (B) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;
 - (C) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to transact business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to transact business; or
 - (D) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
- (5) On application by the limited partnership, the person's expulsion as a limited partner by judicial order because:
 - (A) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;
 - (B) The person wilfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under section -305(b); or
 - (C) The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities with the person as limited partner;
- (6) In the case of a person who is an individual, the person's death;
- (7) In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;
- (8) In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;
- (9) Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

- (10) The limited partnership's participation in a conversion or merger under article 11, if the limited partnership:
- (A) Is not the converted or surviving entity; or
 - (B) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner.

§ **-602 Effect of dissociation as a limited partner.** (a) Upon a person's dissociation as a limited partner:

- (1) Subject to section -704, the person shall not have further rights as a limited partner;
- (2) The person's obligation of good faith and fair dealing as a limited partner under section -305(b) continues only as to matters arising and events occurring before the dissociation; and
- (3) Subject to section -704 and article 11, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation shall be owned by the person as a mere transferee.

(b) A person's dissociation as a limited partner shall not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a limited partner.

§ **-603 Dissociation as a general partner.** A person shall be dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

- (1) The limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;
- (2) An event agreed to in the partnership agreement as causing the person's dissociation as a general partner;
- (3) The person's expulsion as a general partner pursuant to the partnership agreement;
- (4) The person's expulsion as a general partner by the unanimous consent of the other partners if:
 - (A) It is unlawful to carry on the limited partnership's activities with the person as a general partner;
 - (B) There has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, which has not been foreclosed;
 - (C) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to transact business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to transact business; or
 - (D) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;
- (5) On application by the limited partnership, the person's expulsion as a general partner by judicial determination because:
 - (A) The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;
 - (B) The person wilfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under section -408; or

- (C) The person engaged in conduct relating to the limited partnership's activities which makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;
- (6) The person's:
 - (A) Becoming a debtor in bankruptcy;
 - (B) Execution of an assignment for the benefit of creditors;
 - (C) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or
 - (D) Failure, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;
- (7) In the case of a person who is an individual:
 - (A) The person's death;
 - (B) The appointment of a guardian or general conservator for the person; or
 - (C) A judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;
- (8) In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;
- (9) In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;
- (10) Termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or
- (11) The limited partnership's participation in a conversion or merger under article 11, if the limited partnership:
 - (A) Is not the converted or surviving entity; or
 - (B) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner.

§ -604 Person's power to dissociate as a general partner; wrongful dissociation. (a) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to section -603(1).

- (b) A person's dissociation as a general partner is wrongful only if:
 - (1) It is in breach of an express provision of the partnership agreement; or
 - (2) It occurs before the termination of the limited partnership, and:
 - (A) The person withdraws as a general partner by express will;
 - (B) The person is expelled as a general partner by judicial determination under section -603(5);
 - (C) The person is dissociated as a general partner by becoming a debtor in bankruptcy; or
 - (D) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise

dissociated as a general partner because it wilfully dissolved or terminated.

(c) A person that wrongfully dissociates as a general partner shall be liable to the limited partnership and, subject to section -1001, to the other partners for damages caused by the dissociation. The liability shall be in addition to any other obligation of the general partner to the limited partnership or to the other partners.

§ -605 Effect of dissociation as a general partner. (a) Upon a person's dissociation as a general partner:

- (1) The person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;
- (2) The person's duty of loyalty as a general partner under section -408(b)(3) terminates;
- (3) The person's duty of loyalty as a general partner under section -408(b)(1) and (2) and duty of care under section -408(c) continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;
- (4) The person may sign and deliver to the director for filing a statement of dissociation pertaining to the person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership which states that the person has dissociated; and
- (5) Subject to section -704 and article 11, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

(b) A person's dissociation as a general partner shall not of itself discharge the person from any obligation to the limited partnership or the other partners which the person incurred while a general partner.

§ -606 Power to bind, and liability to, limited partnership before dissolution of partnership of a person dissociated as general partner. (a) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under article 11, or merged out of existence under article 11, the limited partnership shall be bound by an act of the person only if:

- (1) The act would have bound the limited partnership under section -402 before the dissociation; and
- (2) At the time the other party enters into the transaction:
 - (A) Less than two years has passed since the dissociation; and
 - (B) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(b) If a limited partnership is bound under subsection (a), the person dissociated as a general partner which caused the limited partnership to be bound shall be liable:

- (1) To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (a); and
- (2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

§ -607 Liability to other persons of person dissociated as a general partner. (a) A person's dissociation as a general partner shall not of itself discharge the person's liability as a general partner for an obligation of the limited partnership

incurred before dissociation. Except as otherwise provided in subsections (b) and (c), the person shall not be liable for a limited partnership's obligation incurred after dissociation.

(b) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities shall be liable to the same extent as a general partner under section -404 on an obligation incurred by the limited partnership under section -804.

(c) A person that has dissociated as a general partner but whose dissociation did not result in a dissolution and winding up of the limited partnership's activities shall be liable on a transaction entered into by the limited partnership after the dissociation only if:

- (1) A general partner would be liable on the transaction; and
- (2) At the time the other party enters into the transaction:
 - (A) Less than two years has passed since the dissociation; and
 - (B) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(d) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

(e) A person dissociated as a general partner shall be released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation.

ARTICLE 7 TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

§ -701 **Partner's transferable interest.** The only interest of a partner which shall be transferable is the partner's transferable interest. A transferable interest shall be personal property.

§ -702 **Transfer of partner's transferable interest.** (a) A transfer, in whole or in part, of a partner's transferable interest:

- (1) Is permissible;
 - (2) Shall not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and
 - (3) Shall not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (c), or to inspect or copy the required information or the limited partnership's other records.
- (b) A transferee has a right to receive, in accordance with the transfer:
- (1) Distributions to which the transferor would otherwise be entitled; and
 - (2) Upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

(c) In a dissolution and winding up, a transferee shall be entitled to an account of the limited partnership's transactions only from the date of dissolution.

(d) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(e) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(f) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement shall be ineffective as to a person having notice of the restriction at the time of transfer.

(g) A transferee that becomes a partner with respect to a transferable interest shall be liable for the transferor's obligations under sections -502 and -509. However, the transferee shall not be liable for obligations unknown to the transferee at the time the transferee became a partner.

§ **-703 Rights of creditors of partners or transferees.** (a) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or which the circumstances of the case may require to give effect to the charging order.

(b) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(c) At any time before foreclosure, an interest charged may be redeemed:

- (1) By the judgment debtor;
- (2) With property other than limited partnership property, by one or more of the other partners; or
- (3) With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(d) This chapter shall not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

(e) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest.

§ **-704 Power of estate of deceased partner.** If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in section -702 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under section -304.

ARTICLE 8 DISSOLUTION

§ **-801 Nonjudicial dissolution.** Except as otherwise provided in section -802, a limited partnership shall be dissolved, and its activities shall be wound up, only upon the occurrence of any of the following:

- (1) The happening of an event specified in the partnership agreement;
- (2) The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;
- (3) After the dissociation of a person as a general partner:
 - (A) If the limited partnership has at least one remaining general partner, the consent to dissolve the limited partnership is given within ninety days after the dissociation by partners owning a majority of the rights to receive distributions as partners at the time the consent is to be effective; or

- (B) If the limited partnership does not have a remaining general partner, the passage of ninety days after the dissociation, unless before the end of the period:
 - (i) Consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and
 - (ii) At least one person is admitted as a general partner in accordance with the consent;
- (4) The passage of ninety days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or
- (5) The signing and filing of a declaration of dissolution by the director under section -809.

§ -802 **Judicial dissolution.** On application by a partner, the circuit court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement.

§ -803 **Winding up.** (a) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(b) In winding up its activities, the limited partnership:

- (1) May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in section -203, and perform other necessary acts; and
- (2) Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(c) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

- (1) Has the powers of a general partner under section -804; and
- (2) Shall promptly amend the certificate of limited partnership to state:
 - (A) That the limited partnership does not have a general partner;
 - (B) The name of the person that has been appointed to wind up the limited partnership; and
 - (C) The street and mailing address of the person.

(d) On the application of any partner, the circuit court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

- (1) A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (c); or
- (2) The applicant establishes other good cause.

§ -804 Power of general partner and person dissociated as general partner to bind partnership after dissolution. (a) A limited partnership shall be bound by a general partner's act after dissolution that:

- (1) Is appropriate for winding up the limited partnership's activities; or
 - (2) Would have bound the limited partnership under section -402 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.
- (b) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:
- (1) At the time the other party enters into the transaction:
 - (A) Less than two years has passed since the dissociation; and
 - (B) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and
 - (2) The act:
 - (A) Is appropriate for winding up the limited partnership's activities; or
 - (B) Would have bound the limited partnership under section -402 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution.

§ -805 Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partners. (a) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under section -804(a) by an act that is not appropriate for winding up the partnership's activities, the general partner shall be liable:

- (1) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and
 - (2) If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.
- (b) If a person dissociated as a general partner causes a limited partnership to incur an obligation under section -804(b), the person shall be liable:
- (1) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and
 - (2) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability.

§ -806 Known claims against dissolved limited partnership. (a) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection (b).

(b) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice shall:

- (1) Specify the information required to be included in a claim;
- (2) Provide a mailing address to which the claim is to be sent;
- (3) State the deadline for receipt of the claim, that may not be less than one hundred twenty days after the date the notice is received by the claimant;
- (4) State that the claim will be barred if not received by the deadline; and

- (5) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section -404.

(c) A claim against a dissolved limited partnership shall be barred if the requirements of subsection (b) are met and:

- (1) The claim is not received by the specified deadline; or
- (2) In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within ninety days after the receipt of the notice of the rejection.

(d) This section shall not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date.

§ -807 Other claims against dissolved limited partnership. (a) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(b) The notice shall:

- (1) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this State, in the county in which the limited partnership's designated office is or was last located;
- (2) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;
- (3) State that a claim against the limited partnership shall be barred unless an action to enforce the claim is commenced within five years after publication of the notice; and
- (4) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership shall also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on section -404.

(c) If a dissolved limited partnership publishes a notice in accordance with subsection (b), the claim of each of the following claimants shall be barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within five years after the publication date of the notice:

- (1) A claimant that did not receive notice in a record under section -806;
- (2) A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and
- (3) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(d) A claim not barred under this section may be enforced:

- (1) Against the dissolved limited partnership, to the extent of its undistributed assets;
- (2) If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this paragraph shall not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

- (3) Against any person liable on the claim under section -404.

§ -808 Liability of general partner and person dissociated as general partner when claim against limited partnership barred. If a claim against a dissolved limited partnership is barred under section -806 or -807, any corresponding claim under section -404 shall also be barred.

§ -809 Administrative dissolution. (a) The director may cancel the certificate of a limited partnership administratively if the partnership fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual statement for a period of two years;
- (3) Appoint and maintain an agent for service of process as required; or
- (4) File a statement of a change in the name or business address of the agent as required.

Administrative dissolution shall not relieve the general partners of liability for the penalties for the failure to file any statement or certificate required by this chapter.

(b) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections -803 and -812 and to notify claimants under sections -806 and -807.

(c) The administrative dissolution of a limited partnership shall not terminate the authority of its agent for service of process.

§ -810 Reinstatement following administrative dissolution. (a) A limited partnership that has been administratively dissolved may apply to the director for reinstatement within two years after the effective date of dissolution. The application shall be delivered to the director for filing and:

- (1) State the name of the limited partnership and the effective date of its administrative dissolution;
- (2) State that the grounds for dissolution either did not exist or have been eliminated;
- (3) State that the limited partnership's name satisfies the requirements of section -108; and
- (4) Include a certificate from the department of taxation reciting that all taxes owed by the limited partnership have been paid.

(b) If the director determines that an application contains the information required by subsection (a) and that the information is correct, the director shall issue an order of reinstatement.

(c) When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its activities as if the administrative dissolution had never occurred.

§ -811 Appeal from denial of reinstatement. (a) If the director denies a limited partnership's application for reinstatement following administrative dissolution, the director shall notify the limited partnership of the reason or reasons for the denial.

(b) The limited partnership may appeal the denial of reinstatement to the circuit court within thirty days after the mailing of the notice of denial. The limited partnership may appeal by petitioning the court to set aside the dissolution and attaching to the petition copies of the director's declaration of dissolution, the limited partnership's application for reinstatement, and the director's notice of denial.

(c) The court may summarily order the director to reinstate the dissolved limited partnership or may take other action the court considers appropriate.

(d) The court's final decision may be appealed as in other civil proceedings.

§ -812 **Disposition of assets; when contributions required.** (a) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, shall be applied to satisfy the limited partnership's obligations to creditors, including, to the extent permitted by law, partners that are creditors.

(b) Any surplus remaining after the limited partnership complies with subsection (a) shall be paid in cash as a distribution.

(c) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (a), with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

- (1) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under section -607 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons shall be in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred;
- (2) If a person does not contribute the full amount required under paragraph (1) with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by paragraph (1) on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons shall be in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred; and
- (3) If a person does not make the additional contribution required by paragraph (2), further additional contributions are determined and due in the same manner as provided in that paragraph.

(d) A person that makes an additional contribution under subsection (c)(2) or (3) may recover from any person whose failure to contribute under subsection (c)(1) or (2) necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(e) The estate of a deceased individual shall be liable for the person's obligations under this section.

(f) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection (c).

ARTICLE 9 FOREIGN LIMITED PARTNERSHIPS

§ -901 **Governing law.** (a) Subject to the constitution of this State:

- (1) The laws of the state under which a foreign limited partnership is organized govern its organization and internal affairs and the liability of its limited partners; and
- (2) A foreign limited partnership may not be denied registration by reason of any difference between those laws and the laws of this State.

(b) A certificate of authority shall not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this State.

§ -902 Application for certificate of authority. (a) A foreign limited partnership 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 state:

- (1) The name of the foreign limited partnership and, if the name does not comply with section -108, an alternate name adopted pursuant to section -905(a).
- (2) The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;
- (3) The mailing address of the foreign limited partnership's initial principal office, the street address of its initial registered office in this State, and the name of its initial registered agent at its initial registered office;
- (4) The name and address of each general partner;
- (5) Whether the foreign limited partnership is a foreign limited liability limited partnership; 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.

(b) The foreign limited partnership shall deliver with the completed application a certificate of good standing or a record of similar import duly authenticated by the secretary of state or other official having custody of limited partnership records in the state or country under whose law it is formed; provided that the certificate shall be dated not earlier than sixty days prior to the filing of the application. If the certificate is in a foreign language, a translation in English attested to under oath by the translator shall accompany the certificate.

§ -903 Activities not constituting transacting business. (a) Activities of a foreign limited partnership that do not constitute transacting business in this State within the meaning of this article include:

- (1) Maintaining, defending, and settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) Maintaining accounts in financial institutions;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited 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 electronic means or through employees or agents or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, mortgages, or security interests in real or personal property;
- (8) Securing or collecting debts or enforcing 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 of a like manner; and
- (10) Transacting business in interstate commerce.

(b) For purposes of this article, the ownership in this State of income-producing real property or tangible personal property, other than property excluded under subsection (a), constitutes transacting business in this State.

(c) This section shall not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this State.

§ -904 Issuance of certificate of authority. (a) If the director finds that an application for registration conforms to law and all requisite fees have been paid, the director shall issue a certificate of authority to transact business in this State.

(b) The certificate of authority shall be returned to the person who filed the application or that person's representative.

§ -905 Name. (a) A foreign limited partnership whose name does not comply with section -108 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this State, an alternate name that complies with section -108. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this State under that name unless the foreign limited partnership is authorized to transact business in this State under another name.

(b) If a foreign limited partnership authorized to transact business in this State changes its name to one that does not comply with section -108, it shall not thereafter transact business in this State until it complies with subsection (a) and obtains an amended certificate of authority.

§ -906 Cancellation of certificate of authority. (a) The director may cancel the certificate of authority of a limited partnership administratively if:

- (1) The partnership fails to:
 - (A) Pay any fees prescribed by law;
 - (B) File its annual statement for a period of two years;
 - (C) Appoint and maintain an agent for service of process as required; or
 - (D) File a statement of a change in the name or business address of the agent as required; or
- (2) A misrepresentation has been made of any material matter in any application, report, affidavit, or other record or document submitted by the partnership.

(b) Cancellation of a certificate of authority shall not relieve the general partners of liability for the penalties for failure to file any statement or certificate required by this chapter.

§ -907 Certificate of withdrawal; effect of failure to have certificate. (a) A foreign limited partnership registered to transact business in this State may withdraw from 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 address of each general partner;
- (6) The dates that notice of the foreign limited partnership's intent to withdraw from this State was published, once in each of four successive weeks (four publications) in a newspaper of general circulation published in this State; or a statement that publication was not made;
- (7) That all taxes, debts, obligations, and liabilities of the foreign limited partnership in 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.

(b) After the filing of the application of withdrawal, the director shall issue a certificate of withdrawal which shall be effective as of the date of the filing of the application of withdrawal, and the authority of the foreign limited partnership to transact business in this State shall cease.

(c) A withdrawal shall not terminate the authority of the director to accept service of process on the foreign limited partnership with respect to causes of action arising out of the transaction of business in this State.

(d) A foreign limited partnership transacting business in this State may not maintain an action or proceeding in this State unless it has a certificate of authority to transact business in this State.

(e) The failure of a foreign limited partnership to have a certificate of authority to transact business in this State shall not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this State.

(f) A partner of a foreign limited partnership shall not be liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this State without a certificate of authority.

(g) If a foreign limited partnership transacts business in this State without a certificate of authority or cancels its certificate of authority, it shall appoint the director as its agent for service of process for rights of action arising out of the transaction of business in this State.

§ -908 Changes and amendments. If any statement in the application for registration of a foreign limited partnership was false when made or any arrangement or other facts described have changed, making the application inaccurate in any respect, the foreign limited partnership shall promptly file in the office of the director a certificate, certified and signed by a general partner, correcting such statement.

**ARTICLE 10
ACTIONS BY PARTNERS**

§ **-1001 Direct action by a partner.** (a) Subject to subsection (b), a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(b) A partner commencing a direct action under this section shall be required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(c) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up shall not revive a claim barred by law.

§ **-1002 Derivative action.** A partner may maintain a derivative action to enforce a right of a limited partnership if:

- (1) The partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or
- (2) A demand would be futile.

§ **-1003 Proper plaintiff.** A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

- (1) That was a partner when the conduct giving rise to the action occurred; or
- (2) Whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct.

§ **-1004 Pleading.** In a derivative action, the complaint shall state with particularity:

- (1) The date and content of the plaintiff's demand and the general partners' response to the demand; or
- (2) Why demand should be excused as futile.

§ **-1005 Proceeds and expenses.** (a) Except as otherwise provided in subsection (b):

- (1) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff; and
- (2) If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(b) If a derivative action is successful in whole or in part, the court may award the derivative plaintiff reasonable expenses, including reasonable attorney's fees, from the recovery of the limited partnership.

**ARTICLE 11
CONVERSION AND MERGER**

§ **-1101 Definitions.** As used in this article:

“Constituent limited partnership” means a constituent organization that is a limited partnership.

“Constituent organization” means an organization that is a party to a merger.

“General partner” means a general partner of a limited partnership.

“Governing statute” of an organization means the statute that governs the organization’s internal affairs.

“Organizing articles” means:

- (1) For a corporation or nonprofit corporation, the articles of incorporation;
- (2) For a general partnership or limited liability partnership, the registration statement;
- (3) For a limited partnership, or limited liability limited partnership, the certificate of limited partnership; and
- (4) For a limited liability company, the articles of organization.

“Other business entity” means a corporation, limited liability company, general partnership, or limited liability partnership.

“Personal liability” means personal liability for a debt, liability, or other obligation of an organization which is imposed on a person that co-owns, has an interest in, or is a member of the organization:

- (1) By the organization’s governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or
- (2) By the organization’s organizational documents under a provision of the organization’s governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person or persons co-owning, having an interest in, or being a member of the organization.

§ -1102 Conversion into or from limited partnerships. (a) A domestic limited partnership may adopt a plan of conversion and convert to a foreign limited partnership or any other entity if:

- (1) The domestic limited partnership acts on and its partners approve a plan of conversion in the manner prescribed by sections 425-203 and 428-904 to 428-906, as if the conversion is 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 such laws;
- (3) At the time the conversion becomes effective, each partner of the converting entity, unless otherwise agreed to by that partner, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, owner, or other security holder of, the converted entity; and
- (4) The converted entity shall be incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign limited partnership or other entity may adopt a plan of conversion and convert to a domestic limited partnership if the conversion is permitted by and complies with the laws of the state or country in which the foreign limited partnership 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; and
- (4) The manner and basis of converting the partnership interests, or other forms of ownership of the converting entity into partnership interests, or other forms of ownership of the converted entity, or any combination thereof.

(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 partnership agreement of the converted entity.

§ -1103 Articles of conversion. (a) If a plan of conversion has been approved in accordance with section -1102 and has not been abandoned, articles of conversion shall be executed by a partner, officer, or other duly authorized representative of the converting entity and shall set forth:

- (1) A statement certifying the following:
 - (A) The name, entity type, and state or country of incorporation, formation, or organization of the converting and converted entities;
 - (B) That a plan of conversion has been approved in accordance with section -1102;
 - (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 the converted entity after the conversion, on written request and without cost, to any limited partner of the converting entity or the converted entity; and
- (2) A statement that the approval of the plan of conversion was duly authorized by all action required by the laws under which the converting entity was incorporated, formed, or organized.
- (b) The articles of conversion shall be delivered to the director for filing.
- (c) The converted entity, if a domestic corporation, domestic professional corporation, foreign corporation, domestic nonprofit corporation, domestic general partnership, domestic limited partnership, or domestic limited liability company shall attach a copy of its respective registration documents to the articles of conversion.

§ -1104 Effective date of the conversion. A conversion takes effect upon the filing date of the articles of conversion, or on the date subsequent to the filing set forth in the articles of conversion; provided that the effective date shall not be more than thirty days from the filing date.

- § -1105 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 the 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 partnership interests and other forms of ownership in the converting entity that are to be converted into partnership interests or other forms of ownership in the converted entity, as provided in the plan of conversion, shall be converted;
- (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 such shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for such debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion for such 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 limited partnership or other entity, the converted entity shall appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or rights of dissenting limited partners of the converting domestic limited partnership; and
- (9) If the converting partnership is a domestic limited partnership, section -1106 shall apply as if the converted entity were the survivor of a merger with the converting entity.

§ -1106 Merger. (a) Pursuant to a plan of merger, a domestic or foreign limited partnership or limited liability limited partnership may merge with one or more domestic professional corporations or with one or more limited partnerships, limited liability limited partnerships, or other business entities formed or organized under the laws of this State, any state or territory of the United States, any foreign jurisdiction, or any combination thereof, with one of the domestic professional corporations, domestic or foreign limited partnerships, limited liability limited partnerships, or other business entities whether domestic or foreign, being the surviving entity, as provided in the plan; provided that the merger is permitted by the law of the state or country under whose law each foreign entity that is a party to the merger is organized.

- (b) The plan of merger shall set forth:
 - (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger;
 - (2) The name of the surviving entity with or into which the other entity or entities will merge;
 - (3) The terms and conditions of the merger;
 - (4) The manner and basis for converting the interests of each party to the merger into interests or obligations of the surviving entity, or into money or other property in whole or in part;
 - (5) The street address of the surviving entity's principal place of business, 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

- (6) Amendments, if any, to the organizing articles of the surviving entity or, if no amendments are desired, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger.
- (c) A plan of merger may:
 - (1) Amend the partnership agreement of the limited or limited liability limited partnership; or
 - (2) Adopt a new partnership agreement, for a limited or limited liability limited partnership if it is the surviving entity in the merger.

Any amendment to a partnership agreement or adoption of a new partnership agreement made pursuant to this subsection shall be effective upon the effective date of the merger. This subsection shall not limit the accomplishment of a merger or of any of the matters referred to in this subsection by any other means provided for in a limited partnership or limited liability limited partnership's partnership agreement or other agreement, or as otherwise permitted by law; provided that the partnership agreement of any constituent limited partnership or constituent limited liability limited partnership to the merger (including a limited partnership or limited liability limited partnership formed for the purpose of consummating a merger) shall be the partnership agreement of the surviving limited or limited liability limited partnership.

- (d) A plan of merger may set forth other provisions relating to the merger.
- (e) A plan of merger shall be approved:
 - (1) In the case of a domestic limited or limited liability limited partnership that is a party to the merger, unless otherwise provided by the partnership agreement, by the vote of all general partners and by the limited partners; provided that if there is more than one class of limited partners, then by each class of limited partners, in either case, by limited partners who own more than fifty per cent of the then current percentage owned by all of the limited partners or by the limited partners in each class as appropriate; and
 - (2) In the case of a foreign limited or limited liability limited partnership that is a party to the merger, by the vote required for approval of a merger by the laws of the state or foreign jurisdiction in which the foreign limited or limited liability limited partnership is organized.
- (f) If a foreign limited or limited liability limited partnership is the surviving entity of a merger, it shall not do business in this State until an application for a certificate of authority is filed with the director if the foreign limited or limited liability limited partnership is not already authorized to transact business in this State.
- (g) The surviving entity shall furnish a copy of the plan of merger, on request and without cost, to any member, shareholder, or partner of any entity that is a party to the merger.
- (h) A plan of merger may provide that at any time prior to the time that the plan becomes effective, the plan may be terminated by the partners of any limited or limited liability limited partnership notwithstanding approval by all or any of the constituent parties. If the plan of merger is terminated after the filing of the articles but before the plan has become effective, a certificate of termination shall be filed with the director. A plan of merger may allow the partners of the constituent partnerships to amend the plan at any time prior to the time that the plan becomes effective; provided that an amendment made subsequent to the adoption of the plan by the partners of any constituent partnership shall not:
 - (1) Alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the interests of the partnership; or

- (2) Alter or change any term of the organizing articles of the surviving entity to be effected by the merger.

If the plan of merger is amended after the articles are filed with the director but before the plan has become effective, a certificate of amendment shall be filed with the director.

§ -1107 Articles of merger. (a) After approval of the plan of merger, unless the merger is terminated, articles of merger shall be signed on behalf of each limited partnership, and each entity that is a party to the merger and delivered to the director for filing. The articles shall set forth:

- (1) The name and jurisdiction of formation or organization of each entity that is a party to the merger, and the name, address, and jurisdiction of organization of the entity with or into which they propose to merge, which is hereinafter designated as the surviving entity;
- (2) A statement that the plan of merger was approved by each entity that is a party to the merger;
- (3) A statement indicating any changes in the organizing articles of the surviving entity to be given effect by the merger; provided that if no changes are made, a statement that the organizing articles of the surviving entity shall not be amended pursuant to the merger;
- (4) The future effective date (which shall be a date certain) of the merger if it is not to be effective upon the filing of the articles of merger; provided that the effective date shall not be more than thirty days from the filing date; and
- (5) A statement that includes:
 - (A) An agreement that the surviving entity 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 as its agent to accept service of process in any such proceeding, and 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.
- (b) If the articles of merger provide for a future effective date, and:
 - (1) The plan of merger is amended to change the future effective date;
 - (2) The plan of merger permits the amendment of the articles of merger to change the future effective date without an amendment to the plan of merger; or
 - (3) The plan of merger is amended to change any other matter contained in the articles of merger so as to make the articles of merger inaccurate in any material respect, prior to the future effective date;

then the articles of merger shall be amended by filing with the director a certificate of amendment that identifies the articles of merger and sets forth the amendment to the articles of merger.

If the articles of merger provide for a future effective date and if the plan of merger is terminated prior to the future effective date, the articles of merger shall be terminated by filing with the director a certificate of termination that identifies the articles of merger and states that the plan of merger has been terminated.

(c) Articles of merger shall operate as an amendment to the limited partnership's organizing articles.

(d) Articles of merger shall act as a statement of dissolution or as an application for withdrawal for the respective domestic or foreign limited or limited

liability limited partnership that is not the surviving entity in the merger; provided that:

- (1) If the surviving entity is a foreign entity registered in this State, it shall file with the director a certificate evidencing the merger duly authenticated by the proper officer of the state or country under the laws of which the foreign entity was organized no later than sixty days after the merger is effective; or
- (2) If a foreign entity registered in this State shall not survive the merger, the surviving entity shall file with the director a certificate evidencing the merger as provided in paragraph (1), together with an application for withdrawal for each nonsurviving constituent foreign entity no later than sixty days after the merger is effective.

§ **-1108 Effective date of the merger.** A merger takes effect upon the filing date of the articles of merger, or on the date subsequent to the filing as set forth in the articles of merger; provided that the effective date shall not be more than thirty days from the filing date.

§ **-1109 Effect of merger; dissenter's rights.** (a) When a merger becomes effective:

- (1) The separate existence of each entity that is a party to the merger, other than the surviving entity, terminates;
- (2) All property owned by each of the entities that are parties to the merger vests in the surviving entity;
- (3) All debts, liabilities, and other obligations of each entity that is a party to the merger become the obligations of the surviving entity;
- (4) An action or proceeding pending by or against an entity that is a party to a merger may be continued as if the merger had not occurred or the surviving entity may be substituted as a party to the action or proceeding; and
- (5) Except as prohibited by other law, all rights, privileges, immunities, powers, and purposes of every entity that is a party to a merger become vested in the surviving entity.

(b) If a surviving entity fails to appoint or maintain an agent designated for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the designated office, service of process may be made upon the surviving entity by sending a copy of the process by registered or certified mail, return receipt requested, to the surviving entity at the address set forth in the articles of merger. Service is effected under this subsection at the earliest of:

- (1) The date the surviving entity receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the surviving entity; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(c) A general partner or limited partner of a surviving limited partnership shall be liable for all obligations of a party to the merger for which the general partner or limited partner was personally liable prior to the merger.

(d) Unless otherwise agreed, a merger of a limited partnership that is not the surviving entity in the merger shall not require the limited partnership to wind up its business under this chapter or pay its liabilities and distribute its assets pursuant to this chapter.

(e) The shareholders of a domestic corporation that is a party to a merger authorized by section -1106 shall have the rights of dissenting shareholders in the manner provided in part XIV of chapter 414.

§ -1110 Restrictions on approval of conversions and mergers and on relinquishing limited liability limited partnership status. (a) If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger shall be ineffective without the consent of the partner, unless:

- (1) The limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and
- (2) The partner has consented to this provision in the limited partnership's partnership agreement.

(b) An amendment to a certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership shall be ineffective without the consent of each general partner unless:

- (1) The limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and
- (2) Each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(c) A partner does not give the consent required by subsection (a) or (b) merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners.

§ -1111 Liability of general partners after conversion or merger. (a) A conversion or merger under this article does not discharge any liability under sections - 404 and -607 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership; provided that:

- (1) The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;
- (2) For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and
- (3) If a person is required to pay any amount under this subsection:
 - (A) The person shall have a right of contribution from each other person that was liable as a general partner under section - 404 when the obligation was incurred and has not been released from the obligation under section -607; and
 - (B) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) In addition to any other liability provided by law:

- (1) A person that immediately before a conversion or merger became effective, was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership shall be personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if, at the time the third party enters into the transaction, the third party:
 - (A) Does not have notice of the conversion or merger; and
 - (B) Reasonably believes that:
 - (i) The converted or surviving business is the converting or constituent limited partnership;
 - (ii) The converting or constituent limited partnership is not a limited liability limited partnership; and

- (iii) The person is a general partner in the converting or constituent limited partnership; and
- (2) A person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective shall be personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:
 - (A) Immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership; and
 - (B) At the time the third party enters into the transaction less than two years have passed since the person dissociated as a general partner and the third party:
 - (i) Does not have notice of the dissociation;
 - (ii) Does not have notice of the conversion or merger; and
 - (iii) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership.

§ -1112 Power of general partners and persons dissociated as general partners to bind organization after conversion or merger. (a) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

- (1) Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section -402; and
 - (2) At the time the third party enters into the transaction, the third party:
 - (A) Does not have notice of the conversion or merger; and
 - (B) Reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.
- (b) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:
- (1) Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under section -402 if the person had been a general partner; and
 - (2) At the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:
 - (A) Does not have notice of the dissociation;
 - (B) Does not have notice of the conversion or merger; and
 - (C) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(c) If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection (a) or (b), the person shall be liable:

- (1) To the converted or surviving organization for any damage caused to the organization arising from the obligation; and
- (2) If another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability.

§ **-1113 Article not exclusive.** This article shall not preclude an entity from being converted or merged under other law.

§ **-1114 Foreign mergers.** Filings for mergers between foreign entities registered in this State shall be subject to section - 1107(d).

ARTICLE 12 MISCELLANEOUS PROVISIONS

§ **-1201 Uniformity of application and construction.** In applying and construing this chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ **-1202 Severability clause.** If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity shall 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.

§ **-1203 Relation to electronic signatures in global and national commerce act.** This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, title 15 United States Code section 7001 et seq.; provided that this chapter does not modify, limit, or supersede section 101(c) of that Act or authorize electronic delivery of any of the notices described in section 103(b) of that Act.

§ **-1204 Application to existing relationships.** (a) Before December 31, 2004, this chapter governs only:

- (1) A limited partnership formed on or after July 1, 2004; and
- (2) Except as otherwise provided in subsections (c) and (d), a limited partnership formed before July 1, 2004, which elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(b) Except as otherwise provided in subsection (c), on and after December 31, 2004, this chapter shall govern all limited partnerships.

(c) With respect to a limited partnership formed before July 1, 2004, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

- (1) Section - 104(c) shall not apply and the limited partnership has whatever duration it had under the law applicable immediately before July 1, 2004;
- (2) The limited partnership shall not be required to amend its certificate of limited partnership to comply with section - 201(a)(4);
- (3) Sections - 601 and - 602 shall not apply and a limited partner has the same right and power to dissociate from the limited partnership,

with the same consequences, as existed immediately before July 1, 2004;

- (4) Section - 603(4) shall not apply;
 - (5) Section - 603(5) shall not apply and a court has the same power to expel a general partner as the court had immediately before July 1, 2004; and
 - (6) Section - 801(3) shall not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before July 1, 2004.
- (d) With respect to a limited partnership that elects pursuant to subsection (a)(2) to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:
- (1) Before December 31, 2004, to:
 - (A) A third party that had not done business with the limited partnership in the year before the election took effect; and
 - (B) A third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and
 - (2) On and after December 31, 2004, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under paragraph (1)(B).

§ -1205 Savings clause. This chapter shall not affect an action commenced, proceeding brought, or right accrued before this chapter takes effect."

SECTION 2. Section 92-28, Hawaii Revised Statutes, is amended to read as follows:

“§92-28 State service fees; increase or decrease of. Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, in order to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

- (1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 414, 414D, 421, 425, [425D,] ____, 428, 431, 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 485, 501, 502, 505, 572, 574, and 846 (part II);
- (2) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapters 304, 305, 306, and 308 shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;

- (3) This section shall not apply to judicial fees as may be set by any chapter cited in this section;
- (4) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt from the public notice and public hearing requirements of chapter 91; and
- (5) Fees for copies of proposed and final rules and public notices of proposed rulemaking actions under chapter 91 shall not exceed 10 cents a page, as required by section 91-2.5.”

SECTION 3. Section 235-68, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) As used in this section:

“Nonresident person” means every person other than a resident person.

“Property” or “real property” has the meaning as the same term is defined in section 231-1.

“Resident person” means any:

- (1) Individual included in the definition of resident in section 235-1;
- (2) Corporation incorporated or granted a certificate of authority under chapter 414, 414D, or 415A;
- (3) Partnership formed or registered under chapter 425 or [425D;] ____;
- (4) Foreign partnership qualified to transact business pursuant to chapter 425 or [425D;] ____;
- (5) Limited liability company formed under chapter 428 or any foreign limited liability company registered under chapter 428;
- (6) Limited liability partnership formed under chapter 425;
- (7) Foreign limited liability partnership qualified to transact business under chapter 425;
- (8) Trust included in the definition of resident trust in section 235-1; or
- (9) Estate included in the definition of resident estate in section 235-1.

“Transferee” means any person, the State and the counties and their respective subdivisions, agencies, authorities, and boards, acquiring real property which is located in Hawaii.

“Transferor” means any person disposing real property which is located in Hawaii.”

SECTION 4. Section 247-3, Hawaii Revised Statutes, is amended to read as follows:

“**§247-3 Exemptions.** The tax imposed by section 247-1 shall not apply to:

- (1) Any document or instrument that is executed prior to January 1, 1967;
- (2) Any document or instrument that is given to secure a debt or obligation;
- (3) Any document or instrument that only confirms or corrects a deed, lease, sublease, assignment, transfer, or conveyance previously recorded or filed;
- (4) Any document or instrument between husband and wife, reciprocal beneficiaries, or parent and child, in which only a nominal consideration is paid;
- (5) Any document or instrument in which there is a consideration of \$100 or less paid or to be paid;
- (6) Any document or instrument conveying real property that is executed pursuant to an agreement of sale, and where applicable, any assignment of the agreement of sale, or assignments thereof; provided that the taxes under this chapter have been fully paid upon the agreement of sale, and

where applicable, upon such assignment or assignments of agreements of sale;

- (7) Any deed, lease, sublease, assignment of lease, agreement of sale, assignment of agreement of sale, instrument or writing in which the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof are the only parties thereto;
- (8) Any document or instrument executed pursuant to a tax sale conducted by the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof for delinquent taxes or assessments;
- (9) Any document or instrument conveying real property to the United States or any agency or instrumentality thereof or the State or any agency, instrumentality, or governmental or political subdivision thereof pursuant to the threat of the exercise or the exercise of the power of eminent domain;
- (10) Any document or instrument that solely conveys or grants an easement or easements;
- (11) Any document or instrument whereby owners partition their property, whether by mutual agreement or judicial action; provided that the value of each owner's interest in the property after partition is equal in value to that owner's interest before partition;
- (12) Any document or instrument between marital partners or reciprocal beneficiaries who are parties to a divorce action or termination of reciprocal beneficiary relationship that is executed pursuant to an order of the court in the divorce action or termination of reciprocal beneficiary relationship;
- (13) Any document or instrument conveying real property from a testamentary trust to a beneficiary under the trust;
- (14) Any document or instrument conveying real property from a grantor to the grantor's revocable living trust, or from a grantor's revocable living trust to the grantor as beneficiary of the trust;
- (15) Any document or instrument conveying real property, or any interest therein, from an entity that is a party to a merger or consolidation under chapter 414, 414D, 415A, 421, 421C, 425, [425D,] ____, or 428 to the surviving or new entity; and
- (16) Any document or instrument conveying real property, or any interest therein, from a dissolving limited partnership to its corporate general partner that owns, directly or indirectly, at least a ninety per cent interest in the partnership, determined by applying section 318 (with respect to constructive ownership of stock) of the federal Internal Revenue Code of 1986, as amended, to the constructive ownership of interests in the partnership."

SECTION 5. Section 414-53, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 414D, 415A, 425, [425D,] ____, or 428, as applicable."

SECTION 6. Section 414D-64, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 require the entity to register a new trade name with the department director under which the entity shall conduct business in this State; or
- (2) Require the entity to change its registered name, register a new name with the department director, and require the entity to conduct business in this State under its new name.

If an 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 chapters 414, 415A, 425, [425D,] ____, and 428, as applicable."

SECTION 7. Section 415A-8.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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 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 director; and
 - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the 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 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 chapter 414, 414D, 415A, 425, [425D,] ____, or 428, as applicable."

SECTION 8. Section 425-196, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 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 director; and
 - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the 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 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 chapter 414, 414D, 415A, 425, [425D,] ___, or 428, as applicable.”

SECTION 9. Section 428-105.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 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 director; and
 - (C) Require the entity to conduct business in this State under its new name.

If an entity fails to comply with the order of abatement within sixty days, the 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 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 chapter 414, 414D, 415A, 425, [425D,] ___, or 428, as applicable.”

SECTION 10. Section 428-901, Hawaii Revised Statutes, is amended by amending the definition of “limited partnership” to read as follows:

““Limited partnership” means a limited partnership created under the Uniform Limited Partnership Act, chapter [425D,] ___, a predecessor law, or comparable law of another jurisdiction.”

SECTION 11. Section 436B-15.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other provision of law to the contrary, a licensee who has converted its form of business entity in accordance with sections [415-77.5,] 414-271, 414D-207, 415A-16.5, [415B-87, 425-192, 425D-1110,] ___-1102, and 428-902.5, and desires to continue engaging in a profession or vocation subject to this chapter in its new form of business entity shall:

- (1) File an application for conversion of a license and pay the initial application fee specified in the statutes or rules of the profession or vocation, within thirty calendar days after the effective date of the conversion; and
- (2) Continue to meet the other licensing requirements of that profession or vocation.”

SECTION 12. Section 482-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon receiving the application accompanied by the fee, the director shall cause the print, label, or trade name to be recorded and shall issue to the applicant a certificate of registration under the seal of the director; and the certificate of registration shall be constructive notice to all persons of the applicant’s claim of the use of the print, label, or trade name throughout the State, for the term of one year from the date thereof; provided that the director shall not register any print, label, or trade name which is substantially identical with any registered print, label, or trade name or with the name of any corporation, partnership, or limited liability company registered in accordance with chapters 414, 414D, 415A, 425, [425D,] ____, and 428; provided further that the print, label, or trade name is continued in actual use by the applicant in the State or elsewhere in the United States, or is registered in the name of the applicant in the patent and trademark office of the United States. The acceptance of an application and issuance of a certificate of registration by the director shall not abrogate or limit any common law or other right of any person to any corporation, partnership, or limited liability company name, or trade name.”

SECTION 13. Section 482-8.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 require the entity to:
 - (A) Register a new trade name with the director; and
 - (B) Conduct business in this State under the new trade name; or
- (2) Require the entity to change its registered name, and to:
 - (A) Register a new trade name with the director; and
 - (B) Conduct business in this State under the new trade name.

If the entity fails to comply with the order of abatement within sixty days, the 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 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 414, 414D, 415A, 425, [425D,] ____, or 428, as applicable.”

SECTION 14. Chapter 425D, Hawaii Revised Statutes, is repealed.

SECTION 15. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 16. This Act shall take effect on July 1, 2004.

(Approved June 26, 2003.)

A Bill for an Act Relating to Conciliation Panels.

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

SECTION 1. Chapter 671, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§671- **Certificate of consultation.** (a) Any claim filed with the medical claim conciliation panel under this chapter shall be accompanied by a certificate which declares one of the following:

- (1) That the claimant or the claimant’s attorney has consulted with at least one physician who is licensed to practice in this State or any other state, and who is knowledgeable or experienced in the same medical specialty as the health care professional against whom the claim is made, and that the claimant or claimant’s attorney has concluded on the basis of such consultation that there is a reasonable and meritorious cause for filing the claim. If the claimant or the claimant’s attorney is not able to consult with a physician in the same medical specialty as the health care professional against whom the claim is made, the claimant or claimant’s attorney may consult with a physician who is licensed in this State or in any other state who is knowledgeable and experienced in a medical specialty that is as closely related as practicable to the medical specialty of the health care professional against whom the claim is made. The physician or physicians consulted by the claimant or the claimant’s attorney may not be a party to the case, nor be compelled to testify or otherwise participate in the hearing before the medical claim conciliation panel;
- (2) That the claimant or the claimant’s attorney was unable to obtain the consultation required by paragraph (1) because a statute of limitations would impair the action and that the certificate required by paragraph (1) could not be obtained before the impairment of the action. If a certificate is executed pursuant to this paragraph, the certificate required by paragraph (1) shall be filed by the claimant or the claimant’s attorney within ninety days after filing the claim; or
- (3) That the claimant or the claimant’s attorney was unable to obtain the consultation required by paragraph (1) after the claimant or the claimant’s attorney had made a good faith attempt to obtain such consultation and the physician contacted would not agree to such a consultation. For purposes of this paragraph, “good faith attempt” refers to the responsibility of a claimant or claimant’s attorney to make reasonable efforts to contact a physician for the purpose of reviewing the circumstances upon which a claim is based. The claimant or claimant’s attorney may contact physicians by letter, telephone, facsimile, or other electronic means of communication. If the physician does not respond within a reasonable time, the claimant or claimant’s attorney may submit its claim to the medical claim conciliation panel along with a certificate declaring such nonresponse to claimant’s good faith attempt. A “good faith attempt” shall ultimately be evaluated in light of the goal of having a qualified physician assist the claimant or claimant’s attorney in understanding the basis of the claim, and such determination shall depend upon the circumstances of each individual case.

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

(c) For the purposes of this section, the claimant or the claimant's attorney shall not be required to disclose the names of any physician consulted to fulfill the requirements of subsection (a) to any of the other parties to the claim. The medical claims conciliation panel may require the claimant or the claimant's attorney to disclose the name of any physician consulted to fulfill the requirements of subsection (a). No disclosure of the name of any physician consulted to fulfill the requirements of subsection (a) shall be made to any of the other parties to the claim; provided that the medical claim conciliation panel may contact any such physician to determine if the requirements of subsection (a) were met.

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

SECTION 2. Chapter 671, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§671- Submission of claim to an alternative dispute resolution provider. (a) Any claim initially filed with the medical claim conciliation panel may be subsequently submitted to an alternative dispute resolution provider upon the written agreement of all of the parties to the claim and with the written approval of the director. The director shall approve the alternative dispute resolution provider and the alternative dispute resolution procedures.

(b) The parties shall comply with the procedures established by the alternative dispute resolution provider and approved by the director. If a party does not comply with those procedures, any other party may file a motion with the director to have the claim resubmitted to the medical claim conciliation panel.

(c) Within thirty days after the completion of the alternative dispute resolution process, the alternative dispute resolution provider shall notify all parties concerned, their counsel, and the representative of each health care provider's liability insurance carrier authorized to act for the carrier, as appropriate, that the alternative dispute resolution process has been completed.

(d) The claimant may institute litigation based upon the claim in an appropriate court only if:

- (1) The parties were not able to resolve the entire claim through the alternative dispute resolution process and the matter has not been resubmitted to the medical claim conciliation panel pursuant to subsection (b) of this section; or
- (2) The claim has not been resolved through the alternative dispute resolution process after twelve months from the date the claim was filed with the approved alternative dispute resolution provider.

(e) No statement made in the course of the approved alternative dispute resolution process shall be admissible in evidence as an admission, to impeach the credibility of a witness, or for any other purpose in any trial of the action. No decision, conclusion, finding, or recommendation of the approved alternative dispute resolution provider on the issue of liability or on the issue of damages shall be admitted into evidence in any subsequent trial, nor shall any party to the approved alternative dispute resolution hearing, their counsel, or other representative of such party, refer or comment thereon in an opening statement, in an argument, or at any time, to the court or jury."

SECTION 3. Section 671-16, Hawaii Revised Statutes, is amended to read as follows:

“§671-16 Subsequent litigation; excluded evidence. The claimant may institute litigation based upon the claim in an appropriate court only after a party to a medical claim conciliation panel hearing rejects the decision of the panel, or after the ~~[eighteen-month]~~ twelve-month period under section 671-18 has expired.

No statement made in the course of the hearing of the medical claim conciliation panel shall be admissible in evidence either as an admission, to impeach the credibility of a witness, or for any other purpose in any trial of the action~~[;]~~; provided that such statements may be admissible for the purpose of section 671-19, hereof. No decision, conclusion, finding, or recommendation of the medical claim conciliation panel on the issue of liability or on the issue of damages shall be admitted into evidence in any subsequent trial, nor shall any party to the medical claim conciliation panel hearing, or the counsel or other representative of such party, refer or comment thereon in an opening statement, an argument, or at any other time, to the court or jury~~[;]~~; provided that such decision, conclusion, finding, or recommendation may be admissible for the purpose of section 671-19, hereof.”

SECTION 4. Section 671-18, Hawaii Revised Statutes, is amended to read as follows:

“§671-18 Statute of limitations tolled. The filing of the claim with the medical claim conciliation panel or with an approved alternative dispute resolution provider shall toll any applicable statute of limitations, and any such statute of limitations shall remain tolled until sixty days after the date the decision of the panel or the notification of completion from the approved alternative dispute resolution provider is mailed or delivered to the parties~~[; provided that in no case shall the applicable statute of limitations be tolled for more than eighteen months]~~. If a decision by the medical claim conciliation panel is not reached within ~~[eighteen]~~ twelve months, or the alternative dispute resolution process is not completed within twelve months, the statute of limitations shall resume running and the party filing the claim may commence a suit based on the claim in any appropriate court of this State. The panel or the approved alternative dispute resolution provider shall notify all parties in writing ~~[all parties]~~ of this provision.”

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on September 1, 2003.

(Approved June 26, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

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 9A a new section to be appropriately designated and to read as follows:

“§431:9A- Suspension or denial of license for noncompliance with support order. In addition to any other acts or conditions provided by law, the commissioner shall refuse to renew, reinstate, or restore, or shall deny or suspend any license if the commissioner has received certification from the child support enforcement agency pursuant to the terms of section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. Unless otherwise provided by law, following receipt of certification pursuant to this section, the commissioner shall renew, reinstate, restore, or grant the license only upon receipt of an authorization from the child support enforcement agency, office of child support hearings, or the family court. Sections 92-17, 431:9A-112, and 431:9A-126 shall not apply to a refusal to renew, reinstate, or restore a license or to a license suspension or denial pursuant to this section.”

SECTION 2. Section 41D-1, Hawaii Revised Statutes, is amended by amending the definition of “casualty insurance” to read as follows:

““Casualty insurance” shall have the same meaning as general casualty insurance has in section 431:1-209[.]; provided that in this chapter “casualty insurance” shall exclude ~~[disability]~~ accident and health or sickness insurance as defined in section 431:1-205, and includes marine and transportation insurance as defined in section 431:1-207, vehicle insurance as defined in section 431:1-208, surety insurance as defined in section 431:1-210, and ocean marine insurance as defined in section 431:1-211.”

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; provided that insofar as the 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; 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;

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 improve-

ments 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. Notwithstanding the foregoing, a wholesaler under section 237-4(a)(10) shall be subject to section 237-13.3.

- (B) The department 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, other than as a home service provider, 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.
- (E) Where any person is engaged in the business of a home service provider, the tax shall be imposed on the gross income received or derived from providing interstate or foreign mobile telecommunications services to a customer with a place of primary use in this State when such services originate in one state and terminate in another state, territory, or foreign country; provided that all charges for mobile telecommunications services which are billed

by or for the home service provider are deemed to be provided by the home service provider at the customer's place of primary use, regardless of where the mobile telecommunications originate, terminate, or pass through; provided further that the income from charges specifically derived from interstate or foreign mobile telecommunications services, as determined by books and records that are kept in the regular course of business by the home service provider in accordance with section 239-24, shall be apportioned under any apportionment factor or formula adopted under section 237-13(6)(D). Gross income shall not include:

- (i) Gross receipts from mobile telecommunications services provided to a customer with a place of primary use outside this State;
- (ii) Gross receipts from mobile telecommunications services that are subject to the tax imposed by chapter 239;
- (iii) Gross receipts from mobile telecommunications services taxed under section 237-13.8; and
- (iv) Gross receipts of a home service provider acting as a serving carrier providing mobile telecommunications services to another home service provider's customer.

For the purposes of this paragraph, "charges for mobile telecommunications services", "customer", "home service provider", "mobile telecommunications services", "place of primary use", and "serving carrier" have the same meaning as in section 239-22.

- (7) Tax on insurance [~~solicitors and agents.~~] producers. Upon every person engaged as a licensed [~~solicitor, general agent, or subagent~~] producer pursuant to chapter 431, there is hereby levied and shall be assessed and collected a tax equal to [-15] 0.15 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 383-7, Hawaii Revised Statutes, is amended to read as follows:

“§383-7 Excluded service. “Employment” [does] shall not include the following service:

- (1) Agricultural labor as defined in section 383-9 if it is performed by an individual who is employed by an employing unit:
 - (A) Which, during each calendar quarter in both the current and the preceding calendar years, paid less than \$20,000 in cash remuneration to individuals employed in agricultural labor; and
 - (B) Which had, in each of the current and the preceding calendar years:
 - (i) No more than nineteen calendar weeks, whether consecutive or not, in which agricultural labor was performed by its employees; or
 - (ii) No more than nine individuals in its employ performing agricultural labor in any one calendar week, whether or not the same individuals performed the labor in each week;
- (2) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority as set forth in section 3306(c)(2) of the Internal Revenue Code of 1986, as amended;
- (3) Service not in the course of the employing unit’s trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service. For the purposes of this paragraph, an individual shall be deemed to be regularly employed to perform service not in the course of an employing unit’s trade or business during a calendar quarter only if:
 - (A) On each of some twenty-four days during the quarter the individual performs the service for some portion of the day; or
 - (B) The individual was regularly employed as determined under subparagraph (A) by the employing unit in the performance of the service during the preceding calendar quarter;
- (4) (A) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
- (B) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
 - (i) The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);
 - (ii) The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employing unit which had in its employ one or more individuals performing the service for some portion of a day

- in each of twenty calendar weeks all occurring, whether consecutive or not, in either the current or the preceding calendar year; and
- (iii) Service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
- (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
 - (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation law, all of the provisions of this chapter shall apply to those instrumentalities, and to services performed for those instrumentalities, in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided that if this State is not certified for any year by the Secretary of Labor under section 3304(c) of the federal Internal Revenue Code, the payments required of those instrumentalities with respect to that year shall be refunded by the department of labor and industrial relations from the fund in the same manner and within the same period as is provided in section 383-76 with respect to contributions erroneously collected;
 - (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to the service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1986, as amended;
 - (8) Service with respect to which unemployment compensation is payable under an unemployment system established by an act of Congress;
 - (9) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) of the federal Internal Revenue Code (other than an organization described in section 401(a) or under section 521 of the Code), if:
 - (i) The remuneration for the service is less than \$50; or
 - (ii) The service is performed by a fully ordained, commissioned, or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of duties required by the order;
 - (B) Service performed in the employ of a school, college, or university, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university; or
 - (C) Service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines

- academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers;
- (10) Service performed in the employ of a foreign government (including service as a consular or other officer or employee of a nondiplomatic representative);
 - (11) Service performed in the employ of an instrumentality wholly owned by a foreign government:
 - (A) If the service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
 - (B) If the United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
 - (12) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or approved pursuant to state law;
 - (13) Service performed by an individual for an employing unit as an insurance ~~agent or as an insurance solicitor,~~ producer, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
 - (14) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;
 - (15) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employing unit during the period covered by the employing unit's duly approved election, are deemed to be performed entirely within the agency's state;
 - (16) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
 - (17) Service performed by an individual for an employing unit as a real estate salesperson, if all service performed by the individual for the employing unit is performed for remuneration solely by way of commission;
 - (18) Service performed by a registered sales representative for a registered travel agency, when the service performed by the individual for the travel agent is performed for remuneration by way of commission;
 - (19) Service performed by a vacuum cleaner salesperson for an employing unit, if all services performed by the individual for the employing unit are performed for remuneration solely by way of commission;
 - (20) Service performed for a family-owned private corporation organized for profit that employs only members of the family who each own at

least fifty per cent of the shares issued by the corporation[;]; provided that:

- (A) The private corporation elects to be excluded from coverage under this chapter;
 - (B) The election for exclusion shall apply to all shareholders and under the same circumstances;
 - (C) No more than two members of a family may be eligible per entity for exclusion under this paragraph;
 - (D) The exclusion shall be irrevocable for five years;
 - (E) The family-owned private corporation presents to the department proof that it has paid federal unemployment insurance taxes as required by federal law; and
 - (F) The election to be excluded from coverage shall be effective the first day of the calendar quarter in which the application and all substantiating documents requested by the department are filed with the department;
- (21) Service performed by a direct seller as defined in section 3508 of the Internal Revenue Code of 1986; and
 - (22) Service performed by an election official or election worker as defined in section 3309(b)(3)(F) of the Internal Revenue Code of 1986, as amended.

None of the foregoing exclusions (1) to (22) shall apply to any service with respect to which a tax is required to be paid under any federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter.”

SECTION 5. Section 386-200, Hawaii Revised Statutes, is amended to read as follows:

“**§386-200 Licensing of [agent.] producer.** Except for a salaried employee of a group, its administrator, or its service company, any person soliciting membership in a workers’ compensation self-insurance group shall be licensed as a [general agent or subagent as provided under sections 431-361 to 431-407.] producer under chapter 431:9A.”

SECTION 6. Section 392-5, Hawaii Revised Statutes, is amended to read as follows:

“**§392-5 Excluded services.** “Employment” as defined in section 392-3 [does] shall not include the following [service:] services:

- (1) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, performed in any calendar quarter by an individual if the cash remuneration paid by the employer for such service is less than \$225;
- (2) Service not in the course of the employer’s trade or business performed in any calendar quarter by an individual, unless the cash remuneration paid for the service is \$50 or more and the service is performed by an individual who is regularly employed by the employer to perform the service. An individual shall be deemed to be regularly employed to perform service not in the course of the employer’s trade or business during a calendar quarter only if:

- (A) ~~[on]~~ On each of some twenty-four days during the quarter the individual performs the service for some portion of the day~~;~~_;; or
 - (B) ~~[the]~~ The individual was regularly employed (as determined under subparagraph (A)) by the employer in the performance of the service during the preceding calendar quarter;
- (3) Service performed on or in connection with a vessel not an American vessel, if the individual performing the service is employed on and in connection with the vessel when outside the United States;
 - (4) Service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, including service performed as an ordinary incident thereto, except:
 - (A) ~~[the]~~ The service performed in connection with a vessel of more than ten net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States)~~;~~_; ~~and~~_;;
 - (B) ~~[the]~~ The service performed in connection with a vessel of ten net tons or less (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States) by an individual who is employed by an employer who, for some portion in each of twenty different calendar weeks in either the current or preceding calendar year, had in the employer's employ one or more persons performing the service, whether or not the weeks were consecutive and whether or not the same individuals performed the service in each week~~;~~_; and
 - (C) ~~[service]~~ The service performed in connection with the catching or taking of salmon or halibut for commercial purposes;
 - (5) Service performed by an individual in the employ of the individual's son, daughter, or spouse, and service performed by a child under the age of twenty-one in the employ of the child's father or mother;
 - (6) Service performed in the employ of the United States government or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter;
 - (7) Service performed in the employ of any other state, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more such states or political subdivisions; and any service performed in the employ of any instrumentality of one or more other states or their political subdivisions to the extent that the instrumentality is, with respect to such service, exempt from the tax imposed by section 3301 of the Internal Revenue Code of 1986;
 - (8) Service with respect to which temporary disability compensation is payable for sickness under a temporary disability insurance system established by an act of Congress;
 - (9) Service performed in any calendar quarter in the employ of any non-profit organization exempt from income tax under section 501 of the Internal Revenue Code of 1986, if:
 - (A) ~~[the]~~ The remuneration for such service is less than \$50~~;~~_; ~~or~~_;;
 - (B) ~~[the]~~ The service is performed by a student who is enrolled and is regularly attending classes at a school, college, or university~~;~~_; ~~or~~_;;

- (C) ~~[the]~~ The service is performed by a duly ordained, commissioned, or licensed minister or licensed minister of a church in the exercise of the minister's ministry or by a member of a religious order in the exercise of nonsecular duties required by the order~~;~~ or
 - (D) ~~[the]~~ The service is performed for a church by an employee who fails to meet the eligibility requirements of section 392-25;
- (10) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents, if:
- (A) ~~[no]~~ No part of its net earnings inures (other than through such payments) to the benefit of any private shareholder or individual~~;~~ and
 - (B) ~~[eighty-five]~~ Eighty-five per cent or more of its income consists of amounts collected from members and amounts contributed by the employer of the members for the sole purpose of making such payments and meeting expenses;
- (11) Service performed in the employ of a voluntary employees' beneficiary association providing for the payment of life, sick, accident, or other benefits to the members of the association or their dependents or their designated beneficiaries, if:
- (A) ~~[admission]~~ Admission to membership in the association is limited to individuals who are officers or employees of the United States government~~;~~ and
 - (B) ~~[no]~~ No part of the net earnings of the association inures (other than through such payments) to the benefit of any private shareholder or individual;
- (12) Service performed in the employ of a school, college, or university, not exempt from income tax under section 501 of the Internal Revenue Code of 1986, if the service is performed by a student who is enrolled and is regularly attending classes at the school, college, or university;
- (13) Service performed in the employ of any instrumentality wholly owned by a foreign government, if:
- (A) ~~[the]~~ The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and
 - (B) ~~[the]~~ The United States Secretary of State has certified or certifies to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;
- (14) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an intern in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to state law;
- (15) Service performed by an individual for an employer as an insurance ~~[agent or as an insurance solicitor,]~~ producer, if all such service performed by the individual for the employer is performed for remuneration solely by way of commission;
- (16) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including

- delivery or distribution to any point for subsequent delivery or distribution;
- (17) Service covered by an arrangement between the department and the agency charged with the administration of any other state or federal unemployment compensation law pursuant to which all services performed by an individual for an employer during the period covered by the employer's duly approved election, are deemed to be performed entirely within the agency's state;
 - (18) Service performed by an individual who, pursuant to the Federal Economic Opportunity Act of 1964, is not subject to the federal laws relating to unemployment compensation;
 - (19) Domestic, which includes attendant care, and day care services authorized by the department of human services under the Social Security Act, as amended, performed by an individual in the employ of a recipient of social service payments;
 - (20) Service performed by a vacuum cleaner salesperson for an employing unit, if all such services performed by the individual for such employing unit are performed for remuneration solely by way of commission; or
 - (21) Service performed by an individual for an employer as a real estate salesperson or as a real estate broker, if all the service performed by the individual for the employer is performed for remuneration solely by way of commission."

SECTION 7. Section 398-1, Hawaii Revised Statutes, is amended by amending the definition of "employment benefits" to read as follows:

"“Employment benefits” means all benefits (other than salary or wages) provided or made available to employees by an employer, and includes group life insurance, accident and health or sickness insurance, [~~disability insurance,~~] sick leave, annual leave, educational benefits, and pensions, regardless of whether the benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).”

SECTION 8. Section 412:5-205.5, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and section 412:5-205.6 and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, may transact a business of insurance, including but not limited to making contracts of insurance and selling insurance as [~~general agent, subagent, broker, or solicitor,~~] a producer, selling insurance through an independent insurance [~~agent or agency~~] producer or a producer under contract, selling annuities, and engaging in any related or incidental activities, within the State; provided that any insurance activities conducted pursuant to the authority conferred in this subsection shall be governed by and comply with chapter 431 and any insurance administrative rules adopted under chapter 431. Administration of chapter 431 and any insurance administrative rules shall be vested with the insurance commissioner.

(b) With the prior written approval of the commissioner, and subject to the limitations set forth in this section and section 412:5-205.6 and to any conditions the commissioner may impose, any bank organized under the laws of the State, at the discretion of its board of directors, may transact a business of insurance, including but not limited to the making of contracts of insurance and the sale of insurance as

~~[general agent, subagent, broker, or solicitor,]~~ a producer, selling insurance through an independent insurance ~~[agent or agency]~~ producer or a producer under contract, selling annuities, and engaging in any related or incidental activities, in any places outside this State, including any other states of the United States, dependencies or insular possessions of the United States, or any foreign countries; provided that any insurance activities conducted in this State pursuant to the authority conferred in this subsection shall be governed by and comply with chapter 431 and any insurance administrative rules adopted under chapter 431; provided further that any insurance activities conducted outside the State pursuant to the authority in this subsection shall be governed by and comply with the laws and administrative rules of the state, dependency, insular possession, or foreign country applicable to the conduct of insurance activities within that jurisdiction.”

SECTION 9. Section 412:5-205.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Pursuant to section 412:5-205.5, a bank may engage in insurance sales through an independent insurance ~~[agent or agency]~~ producer or a producer under contract. In addition, a bank may engage in insurance sales pursuant to section 412:5-205.5, either directly in any department or division of the bank or through a subsidiary or affiliate of the bank, subject to chapter 431.”

SECTION 10. Section 412:6-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:6-201, a savings bank shall not:

- (1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares, and merchandise, except as an incidental operation or when related to another permitted activity, or by owning or operating industrial or manufacturing plants of any kind;
- (2) Own or control the capital stock of any other corporation after July 1, 1994;
- (3) Deal in gold bullion, except a savings bank may buy and sell gold coins minted by the United States Treasury; or
- (4) Engage in any business for which a real estate broker’s license is required, in any business for which an insurance ~~[agent or agency]~~ producer license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance.”

SECTION 11. Section 412:7-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as otherwise expressly authorized by this chapter or by the commissioner under section 412:7-201, a savings and loan association shall not:

- (1) Employ its funds, directly or indirectly, in trade or commerce, by buying or selling ordinary goods, chattels, wares, and merchandise, except as an incidental operation or when related to another permitted activity, or by owning or operating industrial or manufacturing plants of any kind;
- (2) Own or control the capital stock of any other corporation after July 1, 1994;

- (3) Deal in gold bullion, except a savings and loan association may buy and sell gold coins minted by the United States Treasury; or
- (4) Engage ~~[in]~~ any business for which a real estate broker's license is required, in any business for which an insurance ~~[agent or agency]~~ producer license is required, or in any business of a securities broker or dealer. This prohibition shall not apply to the sale of credit life and other forms of credit related insurance products and shall not affect previous licenses or approvals granted to sell securities or non-credit related forms of insurance."

SECTION 12. Section 412:8-200, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Except as otherwise expressly authorized by this chapter, a trust company shall not:

- (1) Issue bills of exchange or letters of credit;
- (2) Discount commercial paper;
- (3) Solicit, accept, or hold deposits;
- (4) Engage in a general banking, savings bank, or savings and loan association business;
- (5) Engage in any business for which a real estate broker's license is required, in any business for which an insurance ~~[agent or agency]~~ producer license is required, or in any business of a securities broker or dealer; and
- (6) Make any loans or extensions of credit to any person; except, a trust company may:
 - (A) Make loans to its affiliates not exceeding in the aggregate amount twenty per cent of the trust company's capital and surplus;
 - (B) Make loans to its clients for the sole purpose of preventing overdrafts in the client's account or accounts or securing repayment of overdrafts in the client's account or accounts. A trust company may charge interest on such advances, subject to chapter 478. A trust company shall have a lien on the assets in the client's account or accounts for the amount of the advance or credit and interest; and
 - (C) Pay or advance premiums due and owing by any person to an insurance company, before the payment by the person; provided that the total amount of the payments and advances at any one time for the benefit of any one person shall not exceed two per cent of the capital and surplus of the trust company, and for the benefit of all such persons shall not exceed fifteen per cent of the capital and surplus of the trust company."

SECTION 13. Section 412:9-400, Hawaii Revised Statutes, is amended to read as follows:

"§412:9-400 Special powers of a depository financial services loan company. In addition to the powers granted in parts II and III of this article, depository financial services loan companies, but not nondepository financial services loan companies, shall have the right, power, and privilege to:

- (1) Solicit, accept, and hold deposits from any person, whether or not a resident of or domiciled in this State, and issue documents evidencing the accounts; provided that a depository financial services loan company shall not solicit, accept, or hold demand deposits or authorize a

depositor to make transfers by check, draft, debit card, negotiable order of withdrawal, or similar order, payable to third parties;

- (2) Sell fixed rate annuities and collect premiums and fees for the sale or referral of those fixed rate annuities, if the written approval of the commissioner is first obtained. The depository financial services loan company shall comply with all applicable requirements of chapter 431. Sales shall be made by a [~~general agent, subagent, or solicitor~~] producer licensed pursuant to chapter 431. In approving any request to sell or refer fixed rate annuities pursuant to this paragraph, the commissioner may impose conditions and restrictions that are in the public interest; and
- (3) Offer gifts, premiums, other considerations, or promotional items to solicit deposits. Premiums may be offered in lieu of all or part of the interest on deposits.”

SECTION 14. 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, accident and health or sickness insurance as 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; provided that service contracts, as defined and meeting the requirements of chapter 481X, 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 or type of insurance as defined in [{}sections{}] 431:1-204 to 431:1-211, if such insurance is not contrary to law or public policy.”

SECTION 15. Section 431:2-201, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commissioner may:

- (1) Make reasonable rules for effectuating any provision of this code, except those relating to the commissioner’s appointment, qualifications, or compensation. The commissioner shall adopt rules to effectuate article 10C of chapter 431, subject to the approval of the governor’s office and the requirements of chapter 91[-];
- (2) Conduct examinations and investigations to determine whether any person has violated any provision of this code or to secure information useful in the lawful administration of any provision[-]; and
- (3) Require, upon reasonable notice, that insurers report any claims information the commissioner may deem necessary to protect the public interest.”

SECTION 16. Section 431:2-216, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) 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 accident and health or sickness insurance under article 10A, shall deposit with the commissioner by July 1 of each year an assessment of \$10,000 for the first¹ 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 compliance resolution fund. If assessments are increased, the commissioner shall provide to any organization or entity subject to the increased assessment, justification for the increase.

(b) The assessments shall be used to defray any administrative costs, including personnel costs, associated with [health] insurance regulation, and costs incurred by supporting offices and divisions. Any law to the contrary notwithstanding, the commissioner may use the moneys from assessments to employ, without regard to chapter 76, necessary professional, technical, administrative, and support personnel to implement and carry out the purposes of title 24 as it relates to accident and health or sickness insurance.”

SECTION 17. Section 431:2-304, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“§431:2-304 Examination of [the] guaranty associations.”

SECTION 18. Section 431:2-308, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Application for a hearing made to the commissioner pursuant to this code shall be in writing and shall specify in what respects the person so applying was aggrieved and the grounds to be relied upon as a basis for the relief to be demanded at the hearing. Where the commissioner has used the authority contained in section 431:9-236 or section 431:9A-112 to suspend, revoke, or refuse to extend a license subject to the right of the licensee to have a hearing and has suspended the license pending the hearing, the commissioner shall hold the hearing within thirty days after the commissioner’s receipt of the application unless postponed by mutual consent.”

SECTION 19. Section 431:3-204, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-204 Classes of insurance authorized. An insurer which otherwise qualifies therefor may be authorized to transact any one or more classes of insurance as defined in [section] sections 431:1-204 to [section] 431:1-211; provided that:

- (1) A life insurer shall not transact any insurance in addition to life insurance except [~~disability,~~] accident and health or sickness insurance; provided that nothing herein shall limit a life insurer existing and authorized on July 1, 1988, from writing any authorized insurance stated in its charter; and
- (2) A reciprocal insurer shall not transact life or [~~disability~~] accident and health or sickness insurance.”

SECTION 20. Section 431:3-205, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-205 Funds required of new insurers. Subject to section 431:3-203(a)(2), to qualify to transact any one class of insurance, an insurer, not existing and authorized in this State on July 1, 1988, shall:

- (1) Deposit in a federally insured financial institution within the State, paid-up capital stock in the case of a stock insurer, or unimpaired surplus if (A) a reciprocal insurer, or (B) a mutual insurer which does not seek to qualify upon the basis of applications and premiums collected as provided in sections 431:4-303 to 431:4-307, in an amount not less than shown in the applicable Schedule “A”;

- (2) Maintain this deposit at all times while the insurer is licensed and transacting insurance in this State; and
- (3) Secure the approval of the commissioner before making withdrawals from the depository.

Schedule "A"

Class of Insurance	Amount Required
Life	\$ 600,000
<u>[Disability] Accident and Health or Sickness</u>	450,000
Property	750,000
Marine and Transportation Vehicle	1,000,000
General Casualty	1,500,000
Surety	1,000,000
Title	400,000"

SECTION 21. Section 431:3-212, Hawaii Revised Statutes, is amended to read as follows:

"§431:3-212 Application for authority. To apply for an original certificate of authority, an insurer shall:

- (1) File with the commissioner its request showing:
 - (A) Its name, home office location, type of insurer, organization date, and state or country of its domicile[;], and name and location of principal office of its attorney-in-fact if a reciprocal insurer;
 - (B) The classes of insurance it proposes to transact; and
 - (C) Additional information as the commissioner may reasonably require[-];
- (2) File with the commissioner:
 - (A) A copy of its charter as amended[;] or such copy certified by the proper public officer of the state or country of domicile if a foreign or alien insurer;
 - (B) A copy of its bylaws as amended, certified by its proper officer;
 - (C) A copy of its annual statement as of December 31 last preceding;
 - (D) An appointment of the commissioner as its attorney to receive service of legal process, if a foreign or alien insurer, or a domestic reciprocal insurer[-];
 - (E) The name and business address of its authorized resident agent upon whom process may be served in all cases, if a foreign or alien insurer;
 - ~~(F)~~ (F) A copy of the appointment and authority of its United States manager, certified by its proper officer, if an alien insurer;
 - ~~(G)~~ (G) A certificate from the proper public official of its state or country of domicile showing that it is duly organized and is authorized to transact the classes of insurance proposed to be transacted, if a foreign or alien insurer;
 - ~~(H)~~ (H) The declaration required by section 431:4-409 if a domestic reciprocal insurer;
 - ~~(I)~~ (I) Certificate of the proper public official as to any deposit made or held in compliance with this code;
 - ~~(J)~~ (J) Copy of report of the last examination made of the insurer certified by the insurance supervisory official of its state of domicile or entry into the United States, if a foreign or alien insurer; and

- ~~[(J) Certificate of appointment of producer; and]~~
~~(K) Other documents or stipulations as the commissioner may reasonably require to evidence compliance with this code[-]; and~~
 (3) Deposit with the commissioner the appropriate fees required by this code.”

SECTION 22. Section 431:3-301, Hawaii Revised Statutes, is amended to read as follows:

“**§431:3-301 Annual and quarterly filings with commissioner.** (a) ~~[Annually on or before March 1, or such day subsequent thereto as the commissioner upon request and for cause may specify, the following documents shall be filed with the commissioner:~~

(1) ~~By each insurer:~~

~~(A) A true statement of its financial condition, transactions, and affairs as of the immediately preceding December 31, shall be filed using the National Association of Insurance Commissioners’ annual statement blank plus any additional information required by the commissioner.] Each domestic, foreign, and alien insurer that is authorized to transact insurance in this State shall file annually with the commissioner, on or before March 1 of each year, a copy of its annual statement convention blank, statement of actuarial opinion by a qualified actuary or specialist, and additional filings as prescribed by the commissioner for the preceding year. Each insurer shall file quarterly, on or before the forty-fifth day after each quarter, a copy of its quarterly statement. The [annual statement] statements 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. The [reported information] annual and quarterly statements shall be verified by oaths of at least two of the insurer’s principal officers, or the attorney-in-fact in the case of a reciprocal insurer, or the United States manager in the case of an alien insurer. The statement of an alien insurer shall relate only to its transactions and affairs in the United States[-]. Foreign and alien insurers that are in compliance with section 431:3-302 are not required to file annual and quarterly statements with this State.~~

~~[(B) The]~~ (b) Each insurer shall file the tax statement provided for by section 431:7-201[-] and

- ~~(C) In the event of a change in any of the other information which section 431:3-212 requires an insurer to file with the commissioner at the time of its application for a certificate of authority, the current information in the form stated in section 431:3-212;~~
 (2) By each insurer, the certificate of valuation provided for by section 431:5-307 and documentation of the liabilities provided for by section 431:5-203(2) and (3). The certificate of valuation and documentation of liabilities shall be accompanied by an actuarial opinion by a qualified actuary or specialist;
 (3) By each foreign or alien insurer, a certificate from the proper public official of its state or country of domicile showing that it is duly authorized to transact the classes of insurance that it is transacting; and

(4) By each alien insurer, a certificate from the proper public official as to any deposit made or held as compliance with this code].

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

SECTION 23. Section 431:3-302, Hawaii Revised Statutes, is amended to read as follows:

“§431:3-302 Annual and quarterly filings with the National Association of Insurance Commissioners. (a) Each domestic, foreign, and alien insurer that is authorized to transact insurance in this State shall file annually with the National Association of Insurance Commissioners, on or before March 1 of each year, [file] a copy of its annual statement convention blank, statement of actuarial opinion by a qualified actuary or specialist, and [along with] additional filings as prescribed by the commissioner for the preceding year [with the National Association of Insurance Commissioners]. Each insurer shall file quarterly, on or before the forty-fifth day after each quarter, a copy of its quarterly statement with the [commissioner and the] National Association of Insurance Commissioners. The information filed with the National Association of Insurance Commissioners shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addenda to the statement filing subsequently filed with the commissioner shall also be filed with the National Association of Insurance Commissioners. In addition to the printed annual [statement blank, quarterly statements, and other reports] and quarterly filings addressed in this section, the annual [filing] and [the] quarterly filings shall [include diskettes containing annual and quarterly statement information] also be filed electronically in the format prescribed by the National Association of Insurance Commissioners’ annual [and quarterly] statement [diskette filing specifications.] instructions. The annual and quarterly [diskette] electronic filings shall be due on the same dates as the corresponding printed information.

~~(b)~~ In respect to quarterly filings, foreign insurers that are domiciled in a state that has a law substantially similar to subsection (a) shall be deemed to be in compliance with this section and are not required to file the statements with this State. All other filings are required to be filed in accordance with this section.

(e) (b) Any insurer failing or refusing to submit the annual or quarterly filings in accordance with this section shall be liable for a penalty in an amount not less than \$100 and not more than \$500 for each day of delinquency.”

SECTION 24. Section 431:3-306.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The cost of an examination under this section shall be assessed against the insurer being examined and remitted to the commissioner for deposit into the [insurance regulation fund.] compliance resolution fund.”

SECTION 25. Section 431:3-401, Hawaii Revised Statutes, is amended by amending the definition of “life or health insurer” to read as follows:

““Life or accident and health or sickness insurer” means any insurer that is within the definition of section 431:1-204 or 431:1-205 and is licensed under article 3, or a licensed property and casualty insurer writing only accident and health or sickness insurance.”

SECTION 26. Section 431:3-402, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A life or accident and health or sickness insurer’s risk-based capital shall be determined in accordance with the formula set forth in the risk-based capital instructions. The formula shall take into account and may adjust for the covariance among the following, which shall be determined in each case by applying the factors in the manner set forth in the risk-based capital instructions:

- (1) The risk with respect to the insurer’s assets;
- (2) The risk of adverse insurance experience with respect to the insurer’s liabilities and obligations;
- (3) The interest rate risk with respect to the insurer’s business; and
- (4) All other business risks and any other relevant risks that are set forth in the risk-based capital instructions.”

SECTION 27. Section 431:3-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) “Company action level event” means any of the following events:

- (1) The filing of a risk-based capital report by an insurer which indicates that:
 - (A) The insurer’s total adjusted capital is greater than or equal to its regulatory action level risk-based capital but less than its company action level risk-based capital; or
 - (B) If a life or accident and health or sickness insurer, the insurer has total adjusted capital which is greater than or equal to its company action level risk-based capital but less than the product of its authorized control level risk-based capital and 2.5, and has a negative trend;
- (2) The notification by the commissioner to the insurer of an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), if the insurer does not challenge the adjusted risk-based capital report under section 431:3-407; or
- (3) If, pursuant to section 431:3-407, the insurer challenges an adjusted risk-based capital report that indicates the occurrence of the event in paragraph (1), the notification by the commissioner to the insurer that the commissioner has, after a hearing, rejected the insurer’s challenge.”

SECTION 28. Section 431:3-406, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In the event of a mandatory control level event:

- (1) With respect to a life or accident and health or sickness insurer, the commissioner shall take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15. In that event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under article 15, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in article 15. In the event the commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections that are afforded to insurers under section 431:15-201. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period; or

- (2) With respect to a property and casualty insurer, the commissioner shall take any actions that are necessary to cause the insurer to be placed under regulatory control under article 15, or, in the case of an insurer that is writing no business and is running-off its existing business, may allow the insurer to continue its run-off under the supervision of the commissioner. In either event, the mandatory control level event shall be deemed sufficient grounds for the commissioner to take action under article 15, and the commissioner shall have the rights, powers, and duties with respect to the insurer as are set forth in article 15. In the event the commissioner takes actions pursuant to an adjusted risk-based capital report, the insurer shall be entitled to the protections that are afforded to insurers under section 431:15-201. Notwithstanding any of the foregoing, the commissioner may forego action for up to ninety days after the mandatory control level event if the commissioner finds there is a reasonable expectation that the mandatory control level event may be eliminated within the ninety-day period.”

SECTION 29. Section 431:3-408, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The comparison of an insurer’s total adjusted capital to any of its risk-based capital levels is a regulatory tool which may indicate the need for possible corrective action with respect to the insurer and is not intended as a means to rank insurers generally. Therefore, except as otherwise required under this part, the making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio or television station, or in any other way, an advertisement, announcement, or statement containing an assertion, representation, or statement with regard to the risk-based capital levels of any insurer, or of any component derived in the calculation, by any insurer, [~~agent, broker,~~] producer, or other person engaged in any manner in the insurance business would be misleading and is therefore prohibited; provided that if any materially false statement with respect to the comparison regarding an insurer’s total adjusted capital to its risk-based capital levels (or any of them) or an inappropriate comparison of any other amount to the insurer’s risk-based capital levels is published in any written publication and the insurer is able to demonstrate to the commissioner with substantial proof the falsity of the statement, or the inappropriateness, as the case may be, then the insurer may publish an announcement in a written publication if the sole purpose of the announcement is to rebut the materially false statement.”

SECTION 30. Section 431:3A-102, Hawaii Revised Statutes, is amended by amending the definition of “publicly available information” to read as follows:

““Publicly available information” means any information that a licensee has a reasonable basis to believe is lawfully made available to the general public from:

- (1) Federal, state, or local government records;
- (2) Widely distributed media; or
- (3) Disclosures to the general public that are required to be made by federal, state, or local law.

For purpose of this definition, a licensee has a reasonable basis to believe that information is lawfully made available to the general public if the licensee has taken steps to determine[~~]~~ that:

- (1) ~~[That the]~~ The information is of the type that is available to the general public; and
- (2) ~~[That the]~~ The licensee's consumer has ~~[not]~~ made the information available to the general public, for information that is of a nature that an individual can direct not be made available to the general public."

SECTION 31. Section 431:3A-201, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) When an existing customer obtains a new insurance product or service from a licensee that is to be used primarily for personal, family, or household purposes, the licensee shall be deemed to satisfy the initial notice requirements of subsection (a) if:

- (1) The licensee provides a revised ~~[policy]~~ privacy notice, under section 431:3A-205, that covers the customer's new insurance product or service; or
- (2) The initial, revised, or annual notice that the licensee most recently provided to that customer was accurate with respect to the new insurance product or service, in which case the licensee does not need to provide a new privacy notice under subsection (a)."

SECTION 32. Section 431:3A-302, Hawaii Revised Statutes, is amended to read as follows:

"~~[H]~~§431:3A-302[H] **Limits on redisclosure and reuse of nonpublic personal financial information.** (a) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution under an exception in ~~[sections]~~ section 431:3A-402 ~~[and]~~ or 431:3A-403, the licensee's disclosure and use of that information shall be as follows:

- (1) The licensee may disclose the information to the affiliates of the financial institution from which the licensee received the information;
- (2) The licensee may disclose the information to its affiliates who may disclose and use the information only to the extent that the licensee may disclose and use the information; and
- (3) The licensee may disclose and use the information pursuant to an exception under ~~[sections]~~ section 431:3A-402 ~~[and]~~ or 431:3A-403, in the ordinary course of business to carry out the activity covered by the exception under which the licensee received the information.

(b) If a licensee receives nonpublic personal financial information from a nonaffiliated financial institution other than under an exception in ~~[sections 431:3A-201 and 431:3A-202,]~~ section 431:3A-402 or 431:3A-403, the licensee may disclose the information only:

- (1) To the affiliates of the financial institution from which the licensee received the information;
- (2) To its affiliates who may disclose the information only to the extent that the licensee may disclose the information; and
- (3) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which the licensee received the information.

(c) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party under an exception in ~~[sections 431:3A-201 and 431:3A-202,]~~ section 431:3A-402 or 431:3A-403, the third party may disclose and use that information, as follows:

- (1) Disclose to the licensee's affiliates;

- (2) Disclose to its affiliates, who may disclose and use the information only to the extent that the third party may disclose and use the information; and
 - (3) Disclose and use the information pursuant to an exception under ~~[sections 431:3A-201 and 431:3A-202]~~ section 431:3A-402 or 431:3A-403 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.
- (d) If a licensee discloses nonpublic personal financial information to a nonaffiliated third party other than under an exception under ~~[sections 431:3A-201 and 431:3A-202,]~~ section 431:3A-402 or 431:3A-403, the third party may disclose the information only:
- (1) To the licensee's affiliates;
 - (2) To the third party's affiliates who may disclose the information only to the extent the third party can disclose the information; and
 - (3) To any other person, if the disclosure would be lawful if the licensee made it directly to that person."

SECTION 33. Section 431:4-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Before applying to the commissioner for an initial certificate of authority, ~~[an]~~ a stock or mutual insurer is required to file with the commissioner an affidavit, sworn to by the president, secretary, and treasurer of the corporation as named in the articles of incorporation."

SECTION 34. Section 431:4-232, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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]~~ on 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."

SECTION 35. Section 431:4-314, Hawaii Revised Statutes, is amended to read as follows:

"**§431:4-314 Limitation on expenses incurred in writing property and casualty.** For any calendar year after its first two full calendar years of operation, no

domestic mutual insurer, other than one issuing nonassessable policies, shall incur any costs or expense in the writing or administration of property, ~~[disability,]~~ accident and health or sickness, and casualty insurances, other than boiler and machinery or elevator, transacted by it which, exclusive of losses paid, loss adjustment expenses, investment expenses, dividends, and taxes exceeds the sum of:

- (1) Forty per cent of the net premium income during that year after deducting therefrom net earned reinsurance premiums for the year, plus
- (2) All of the reinsurance commissions received on reinsurance ceded by it.”

SECTION 36. Section 431:4-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon complying with the provisions of this part, a reciprocal insurer, as defined in section 431:3-108, may transact any class or classes of insurance defined by this code, other than life or ~~[disability]~~ accident and health or sickness insurance.”

SECTION 37. Section 431:4-405, Hawaii Revised Statutes, is amended to read as follows:

“**§431:4-405 Attorney.** Attorney as used in this part~~[-]~~ refers to the attorney-in-fact of a reciprocal insurer. The attorney may be an individual, partnership, or corporation ~~[whose].~~ The principal office of the attorney for a domestic reciprocal insurer shall be maintained within this State.”

SECTION 38. Section 431:5-203, Hawaii Revised Statutes, is amended to read as follows:

“**§431:5-203 Liabilities.** In any determination of the financial condition of an insurer, liabilities to be charged against its assets shall include:

- (1) The amount of its capital stock outstanding, if any;
- (2) The amount, estimated consistent with this article, necessary to pay all of its unpaid losses and claims incurred on or prior to the date of statement, whether reported or unreported, together with the expense of adjustment or settlement thereof;
- (3) With reference to life and ~~[disability]~~ accident and health or sickness insurance, and annuity contracts:
 - (A) The amount of reserves on life insurance policies and annuity contracts in force, valued according to the tables of mortality, rates of interest, and methods adopted pursuant to this article which are applicable thereto;
 - (B) Reserves for ~~[disability]~~ accident and health or sickness benefits, for both active and disabled lives;
 - (C) Reserves for accidental death benefits; and
 - (D) Any additional reserves which may be required by the commissioner, consistent with ~~[practice formulated]~~ practices adopted or approved by the National Association of Insurance Commissioners, on account of such insurances;
- (4) With reference to insurance other than those specified in ~~[item]~~ paragraph (3), the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, computed in accordance with this article;
- (5) Taxes, expenses, and other obligations accrued at the date of the statement; and

- (6) Any additional reserve set up by the insurer for a specific liability purpose or required by the commissioner consistent with practices adopted or approved by the National Association of Insurance Commissioners.”

SECTION 39. Section 431:5-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every insurer shall maintain an unearned premium reserve on all policies in force for:

- (1) Insurance against loss or damage to property, except as provided in section 431:5-302;
- (2) General casualty insurance;
- (3) [Disability] Accident and health or sickness insurance, except as provided in section 431:5-303 and section 431:5-307; and
- (4) Surety insurance.”

SECTION 40. Section 431:5-307, Hawaii Revised Statutes, is amended by amending subsections (b) through (f) to read as follows:

“(b) Reserve valuation:

- (1) The commissioner, annually, shall value, or cause to be valued, the reserve liabilities, hereinafter called reserves, for all outstanding life insurance [policies], annuity, and pure endowment contracts of every life insurer doing business in this State. The commissioner may certify the amount of any reserves, specifying the mortality table or tables, rate or rates of interest, and methods (net level premium method or others) used in the calculation of the reserves. In calculating the reserves, the commissioner may use group methods and approximate averages for fractions of a year or otherwise. In lieu of the valuation of the reserves required under this section of any foreign or alien insurer, the commissioner may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction, when the valuation complies with the minimum standard under this section, and if the official of that state or jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the commissioner when the certification states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction;
 - (2) The actual cost of making valuations under this section shall be assessed on the insurer, whose policies are so valued, by the commissioner; and
 - (3) Any insurer, at any time, that has adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided, with the approval of the commissioner, may adopt any lower standard of valuation, but not lower than the minimum provided in this section.
- (c) Computation of minimum standard:
- (1) Old policies: Except as otherwise provided in paragraph (3), the minimum standard for the valuation of all policies and contracts issued prior to the operative date of section 431:10D-104, shall be that provided by the laws in effect immediately prior to January 1, 1956;
 - (2) Except as otherwise provided in paragraph (3), the minimum standard for the valuation of all policies and contracts issued on or after the operative date of section 431:10D-104, shall be the commissioner’s

reserve valuation methods defined in subsections (d), (e), and (h), three and one-half per cent interest; in the case of policies and contracts, other than annuity and pure endowment contracts, issued on or after June 1, 1976, four per cent interest; for the policies issued prior to June 1, 1979, five and one-half per cent interest for single premium life insurance policies and four and one-half per cent interest for all other policies issued on or after June 1, 1979; and the following tables:

- (A) For all ordinary policies of life insurance issued on the standard basis, excluding any [disability] accident and health or sickness and accidental death benefits in the policies—the Commissioners 1941 Standard Ordinary Mortality Table for the policies issued prior to the operative date of section 431:10D-104(e)(8), and the Commissioners 1958 Standard Ordinary Mortality Table for the policies issued on or after the operative date; provided that for any category of the policies issued on female risks, all modified net premiums and present values referred to in this section may be calculated according to an age not more than six years younger than the actual age of the insured; and for the policies issued on or after the operative date of section 431:10D-104(e)(8), the Commissioners 1980 Standard Ordinary Mortality Table, or at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or any ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for policies;
- (B) For all industrial life insurance policies issued on the standard basis, excluding any [disability] accident and health or sickness and accidental death benefits in the policies—the 1941 Standard Industrial Mortality Table for the policies issued prior to the operative date of section 431:10D-104(e)(7), and for the policies issued on or after the operative date, the Commissioners 1961 Standard Industrial Mortality Table or any industrial mortality table adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for those policies;
- (C) For individual annuity and pure endowment contracts, excluding any [disability] accident and health or sickness and accidental death benefits in the policies—the 1937 Standard Annuity Mortality Table or, at the option of the insurer, the Annuity Mortality Table for 1949, ultimate, or any modification of either of these tables approved by the commissioner;
- (D) For group annuity and pure endowment contracts, excluding any [disability] accident and health or sickness and accidental death benefits in the policies—the Group Annuity Mortality Table for 1951, any modification of the table approved by the commissioner or, at the option of the insurer, any of the tables or modifications of tables specified for individual annuity and pure endowment contracts;
- (E) For total and permanent disability benefits in or supplementary to ordinary policies or contracts—for policies or contracts issued after December 31, 1965, the tables of period 2 disablement rates

and the 1930 to 1950 termination rates of the 1952 disability study of the Society of Actuaries, with due regard to the type of benefit or any tables of disablement rates and termination rates, adopted after 1980 by the National Association of Insurance Commissioners that are approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the policies; for policies or contracts issued after December 31, 1960, and prior to January 1, 1966, either the tables or, at the option of the insurer, the Class (3) Disability Table (1926); and for policies issued prior to January 1, 1961, the Class (3) Disability Table (1926). Any table, for active lives, shall be combined with a mortality table permitted for calculating the reserves for life insurance policies;

- (F) For accidental death benefits in or supplementary to policies—for policies issued after December 31, 1965, the 1959 Accidental Death Benefits Table or any accidental death benefits table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the policies; for policies issued after December 31, 1960, and prior to January 1, 1966, either the table or, at the option of the insurer, the Inter-company Double Indemnity Mortality Table; and for policies issued prior to January 1, 1961, the Inter-company Double Indemnity Mortality Table. Either table shall be combined with a mortality table permitted for calculating the reserves for life insurance policies; and
 - (G) For group life insurance, life insurance issued on the substandard basis, and other special benefits—any tables that may be approved by the commissioner;
- (3) Except as provided in paragraph (4), the minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this paragraph, and for all annuities and pure endowments purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioner's reserve valuation methods defined in subsections (d) and (e) and the following tables and interest rates:
- (A) For individual annuity and pure endowment contracts issued prior to June 1, 1979, excluding any [~~disability~~] accident and health or sickness and accidental death benefits in the contracts—the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the commissioner, and six per cent interest for single premium immediate annuity contracts, and four per cent interest for all other individual annuity and pure endowment contracts;
 - (B) For individual single premium immediate annuity contracts issued on or after June 1, 1979, excluding any [~~disability~~] accident and health or sickness and accidental death benefits in the contracts—the 1971 Individual Annuity Mortality Table, or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and seven and one-half per cent interest;

- (C) For individual annuity and pure endowment contracts issued on or after June 1, 1979, other than single premium immediate annuity contracts, excluding any [disability] accident and health or sickness and accidental death benefits in the contracts—the 1971 Individual Annuity Mortality Table or any individual annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the contracts, or any modification of these tables approved by the commissioner, and five and one-half per cent interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent interest for all other individual annuity and pure endowment contracts; and
- (D) For all annuities and pure endowments purchased on or after June 1, 1979, under group annuity and pure endowment contracts, excluding any [disability] accident and health or sickness and accidental death benefits in the contracts—the 1971 Group Annuity Mortality Table or any group annuity mortality table, adopted after 1980 by the National Association of Insurance Commissioners, that is approved by rules adopted by the commissioner for use in determining the minimum standard of valuation for the annuities and pure endowments, or any modification of these tables approved by the commissioner and seven and one-half per cent interest.

After June 1, 1976, any insurer may file with the commissioner a written notice of its election to comply with this paragraph after a specified date before January 1, 1979, which shall be the operative date of this paragraph for the insurer; provided that an insurer may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If an insurer makes no election, the operative date of this paragraph for the insurer shall be January 1, 1979; and

(4) Applicability of this section:

- (A) The interest rates used in determining the minimum for the valuation of:
- (i) All life insurance policies issued in a particular calendar year, on or after the operative date of section 431:10D-104(e)(8);
 - (ii) All individual annuity and pure endowment contracts issued in a particular calendar year after December 31, 1982;
 - (iii) All annuities and pure endowments purchased in a particular calendar year after December 31, 1982, under group annuity and pure endowment contracts; and
 - (iv) The net increase, if any, in a particular calendar year after 1982, in amounts held under guaranteed interest contracts shall be the calendar year statutory valuation rates as defined in this paragraph;
- (B) The calendar year statutory valuation interest rates, I, shall be determined as follows and the results rounded to the nearer one-quarter of one per cent:
- (i) For life insurance,

$$I = .03 + W (R_1 - .03) + \frac{W}{2}(R_2 - .09);$$

- (ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and from guaranteed interest contracts with cash settlement options,

$$I = .03 + W (R - .03)$$

where R_1 is the lesser of R and $.09$, R_2 is the greater of R and $.09$, R is the reference interest rate defined in this section, and W is the weighting factor defined in this section;
 - (iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on an issue year basis, except as stated in clause (ii), the formula for life insurance stated in clause (i) shall apply to annuities and guaranteed interest contracts with guarantee durations in excess of ten years, and the formula for single premium immediate annuities stated in clause (ii) shall apply to annuities and guaranteed interest contracts with guarantee duration of ten years or less;
 - (iv) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the formula for single premium immediate annuities stated in clause (ii) shall apply; and
 - (v) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, the formula for single premium immediate annuities stated in clause (ii) shall apply;
- (C) However, if the calendar year statutory valuation interest rate for any life insurance policies issued in any calendar year determined without reference to this sentence differs from the corresponding actual rate for similar policies issued in the immediately preceding calendar year by less than one-half of one per cent, the calendar year statutory valuation interest rate for those life insurance policies shall be equal to the corresponding actual rate for the immediately preceding calendar year. For purposes of applying the immediately preceding sentence, the calendar year statutory valuation interest rate for life insurance policies issued in a calendar year shall be determined for 1980 (using the reference interest rate defined for 1979) and shall be determined for each subsequent calendar year regardless of when section 431:10D-104(e)(8) becomes operative;
- (D) The weighting factors referred to in the formulas stated above are given in the following tables:
- (i) Weighting factors for life insurance:

Guarantee Duration (Years)	Weighting Factors
10 or fewer	.50
More than 10, but not more than 20	.45
More than 20	.35

- For life insurance, the guarantee duration is the maximum number of years the life insurance can remain in force on a basis guaranteed in the policy, or under options to convert to plans of life insurance with premium rates or nonforfeiture values, or both, which are guaranteed in the original policy;
- (ii) Weighting factor for single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options: .80; and
 - (iii) Weighting factors for other annuities and for guaranteed interest contracts, except as stated in clause (ii), shall be as specified in the tables below, according to the rules and definitions stated below:

Table I:

For annuities and guaranteed interest contracts valued on an issue year basis;

Guarantee Duration (Years)	Weighting Factor For Plan Type		
	<u>A</u>	<u>B</u>	<u>C</u>
5 or less:	.80	.60	.50
More than 5, but not more than 10:	.75	.60	.50
More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

Table II:

For annuities and guaranteed interest contracts valued on a change in fund basis, the factors shown in clause (i) increased by:

	Plan Type		
	<u>A</u>	<u>B</u>	<u>C</u>
	.15	.25	.05

Table III:

For annuities and guaranteed interest contracts valued on an issue year basis (other than those with no cash settlement options) which do not guarantee interest on considerations received more than one year after issue or purchase, and for annuities and guaranteed interest contracts valued on a change in fund basis which do not guarantee interest rates on considerations received more than twelve months beyond the valuation date, the factors shown in Table I or derived in Table II increased by:²

	Plan Type		
	<u>A</u>	<u>B</u>	<u>C</u>
	.05	.05	.05

For other annuities with cash settlement options [~~with~~] and guaranteed interest contracts [~~and~~] with cash settlement options, the guarantee duration is the number of years for which the contract guarantees interest rates in excess of the calendar year statutory valuation interest rate for life insurance policies with guarantee duration in excess of twenty years. For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the guarantee duration is the number of years from the date of issue or date of purchase to the date annuity benefits are scheduled to commence. Plan type as used in the above tables is defined as follows:

Plan Type A: At any time the policyholder may withdraw funds only: (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; (2) without adjustment but in installments over five years or more; (3) as an immediate life annuity; or (4) no withdrawal permitted;

Plan Type B: Before expiration of the interest rate guarantee, the policyholder may withdraw funds only: (1) with an adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; (2) without adjustment but in installments over five years or more; or (3) no withdrawal permitted. At the end of the interest rate guarantee, funds may be withdrawn without adjustment in a single sum or in installments over less than five years;

Plan Type C: The policyholder may withdraw funds before expiration of the interest rate guarantee in a single sum or in installments over less than five years either: (1) without adjustment to reflect changes in interest rates or asset values since receipt of the funds by the insurance company; or (2) subject only to a fixed surrender charge stipulated in the contract as a percentage of the fund.

A company may elect to value guaranteed interest contracts with cash settlement options and annuities with cash settlement options on either an issue year basis or on a change in fund basis. Guaranteed interest contracts with no cash settlement options and other annuities with no cash settlement options shall be valued on an issue year basis. As used in this section, an issue year basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard for the entire duration of the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of issue or year of purchase of the annuity or guaranteed interest contract, and the change in fund basis of valuation refers to a valuation basis under which the interest rate used to determine the minimum valuation standard applicable to each change in the fund held under the annuity or guaranteed interest contract is the calendar year valuation interest rate for the year of the change in the fund;

- (E) The reference interest rate referred to in paragraph (4)(B) shall be defined as follows:

- (i) For all life insurance, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year next preceding the year of issue, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.;
 - (ii) For single premium immediate annuities and for annuity benefits involving life contingencies arising from other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or year of purchase, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.;
 - (iii) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in clause (ii), with guarantee duration in excess of ten years, the lesser of the average over a period of thirty-six months and the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.;
 - (iv) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a year of issue basis, except as stated in clause (ii), with guarantee duration of ten years or less, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.;
 - (v) For other annuities with no cash settlement options and for guaranteed interest contracts with no cash settlement options, the average over a period of twelve months, ending on June 30 of the calendar year of issue or purchase, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.; and
 - (vi) For other annuities with cash settlement options and guaranteed interest contracts with cash settlement options, valued on a change in fund basis, except as stated in clause (ii), the average over a period of twelve months, ending on June 30 of the calendar year of the change in the fund, of Moody's Corporate Bond Yield Average-Monthly Average Corporates, as published by Moody's Investors Service, Inc.; and
- (F) Alternative method for determining references interest rates: In the event that Moody's Corporate Bond Yield Average-Monthly Average Corporates is no longer published by Moody's Investors Service, Inc., or in the event that the National Association of Insurance Commissioners determines that Moody's Corporate Bond Yield Average-Monthly Average Corporates as published by Moody's Investors Service, Inc., is no longer appropriate for the determination of the reference interest rate, then an alternative method for determination of the reference interest rate,

which is adopted by the National Association of Insurance Commissioners and approved by rules adopted by the commissioner, may be substituted.

(d) Commissioner's reserve valuation methods:

- (1) Except as otherwise provided in subsections (e) and (h), reserves, according to the commissioner's reserve valuation methods, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of the future guaranteed benefits provided for by the policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be the uniform percentage of the respective contract premiums for the benefits (excluding extra premiums on a substandard policy) that the present value, at the date of issue of the policy, of all the modified net premiums shall be equal to the sum of the then present value of the benefits provided for by the policy and the excess of subparagraph (A) over subparagraph (B) as follows:
 - (A) A net level annual premium equal to the present value, at the date of issue, of the benefits provided for after the first policy year, divided by the present value, at the date of issue, of an annuity of one a year payable on the first and each subsequent anniversary of the policy on which a premium falls due; provided that the net level annual ~~[[premium]]~~ shall not exceed the net level annual premium on the nineteen-year premium whole life plan for insurance of the same amount at an age one year higher than the age of issue of the policy~~[-]; and~~
 - (B) A net one-year term premium for the benefits provided for in the first policy year~~[-. Provided];~~ provided that for any life insurance policy issued on or after January 1, 1986, for which the contract premium in the first policy year exceeds that of the second year, and no comparable additional benefit is provided in the first year for the excess, which provides an endowment benefit, a cash surrender value, or a combination thereof, in an amount greater than the excess premium, the reserve, according to the commissioner's reserve valuation method as of any policy anniversary occurring on or before the assumed ending date, defined herein as the first policy anniversary on which the sum of any endowment benefit and any cash surrender value then available is greater than the excess premium, except as otherwise provided in subsection (h), shall be the greater of the reserve as the policy anniversary calculated as described above and the reserve as of the policy anniversary calculated as described, but with:
 - (i) The value defined in subparagraph (A) being reduced by fifteen per cent of the amount of the excess first year premium;
 - (ii) All present values benefits and premiums being determined without reference to premiums or benefits provided for by the policy after the assumed ending date;
 - (iii) The policy being assumed to mature on that date as an endowment; and
 - (iv) The cash surrender value provided on that date being considered as an endowment benefit.

In making the above comparison, the mortality and interest bases stated in subsection (c)(2) and (3) shall be used; and

- (2) Reserve according to the commissioner's reserve valuation methods for:
- (A) Life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums;
 - (B) Group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended;
 - (C) ~~[Disability]~~ Accident and health or sickness and accidental death benefits in all policies and contracts; and
 - (D) All other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts;
- shall be calculated by a method consistent with the principles of this subsection.

(e) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioner's annuity reserve method for benefits under annuity or pure endowment contracts, excluding any ~~[disability]~~ accident and health or sickness and accidental death benefits in those contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed nonforfeiture benefits, provided for by those contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of the contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate, or rates, specified in the contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of the contracts to determine nonforfeiture values.

(f) Minimum aggregate reserves: In no event shall an insurer's aggregate reserves for all life insurance policies excluding ~~[disability]~~ accident and health or sickness and accidental death benefits, issued on or after the operative date of section 431:10D-104, be less than the aggregate reserves calculated in accordance with the methods set forth in subsections (d), (e), (h), and (i), and the mortality tables and rates of interest used in calculating nonforfeiture benefits for those policies. In no event shall the aggregate reserves for all policies, contracts, and benefits be less than the aggregate reserves determined by the qualified actuary to be necessary to render the opinion required by subsection (j)."

SECTION 41. Section 431:7-201, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Each authorized insurer shall file with the commissioner annually, on or before March 1 in each year, a statement signed by a duly authorized person on its

behalf, setting forth the total business transacted, and the amount of gross premiums [received] reported by the insurer, pursuant to section 431:7-202, during the year ending on the preceding December 31, from all risks or property resident, situated, or located within this State, together with such other information as may be required by the commissioner [in order] to determine the taxability of premiums. The term [gross premiums] "gross premiums" as used in this part shall not include consideration paid for annuities.

(b) Each authorized insurer shall file with the commissioner quarterly, on or before the last day of the calendar month following the quarter, a statement signed by a duly authorized person on its behalf, setting forth the total business transacted and the amount of gross premiums [received] reported by the insurer, pursuant to section 431:7-202, during the quarter from all risks or property resident, situated, or located within this State, together with other information as may be required by the commissioner to determine the taxability of premiums."

SECTION 42. Section 431:7-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Each authorized insurer, except with respect to all life insurance contracts, ocean marine insurance contracts, and real property title insurance contracts, shall pay to the director of finance through the commissioner a tax of 4.265 per cent on the gross premiums [received] written from all risks or property resident, situated, or located within this State, during the year ending on the preceding December 31, less return premiums (but not including dividends paid or credited to policyholders), and less any reinsurance accepted (the tax upon such business being payable by the direct writing insurer).

All premiums written, procured, or received in the State shall be presumed to have been from risks or property resident, situated, or located within the State. This presumption may be rebutted as to any premium:

- (1) By showing that it has been properly allocated or apportioned and reported as a taxable premium of another state or other appropriate taxing authority; or
- (2) By facts as to the residence, situation, or location of the risks or property, conclusively showing the nontaxability of the premium."

SECTION 43. Section 431:8-201, Hawaii Revised Statutes, is amended to read as follows:

"§431:8-201 Transacting insurance business without certificate of authority prohibited. It shall be unlawful for any insurer to transact an insurance business in this State, as defined in section 431:1-215, without a certificate of authority, except that this section shall not apply to:

- (1) The lawful transaction of surplus lines insurance;
- (2) The lawful transaction of reinsurance by insurers;
- (3) Transactions in this State involving a policy lawfully solicited, written, and delivered outside of this State covering only subjects of insurance not resident, located, or expressly to be performed in this State at the time of issuance, and which transactions are subsequent to the issuance of such policy;
- (4) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;
- (5) Transactions in this State involving group life and group accident and health or sickness or blanket accident and health or sickness insurance or group annuities where the master policy of such groups was lawfully

- issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business;
- (6) Transactions in this State involving any policy of insurance or annuity contract issued prior to July 1, 1988; and
 - (7) Transactions in this State involving ocean marine insurance.”

SECTION 44. Section 431:8-205, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) This section shall not apply to life insurance, accident and health or sickness insurance, or annuities.”

SECTION 45. Section 431:8-208, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Before any unauthorized insurer files or causes to be filed [~~in~~] any pleading in any court action, suit, or proceeding, or [~~in~~] any notice, order, pleading, or process in [~~such~~] an administrative proceeding before the commissioner, instituted against such person or insurer[~~]~~ by [~~services~~] service made as provided in section 431:8-207, such insurer shall either:

- (1) Deposit with the clerk of the court in which such action, suit, or proceeding is pending, or with the commissioner in administrative proceedings, cash or securities, or file a bond with good and sufficient sureties to be approved by the court or commissioner, in an amount fixed by the court or commissioner sufficient to secure the payment of any final judgment which may be rendered in such action or administrative proceeding, or
- (2) Procure a certificate of authority to transact insurance in this State.”

SECTION 46. Section 431:8-307, Hawaii Revised Statutes, is amended to read as follows:

“**§431:8-307 Broker’s duty to notify insured.** No contract of insurance placed by a surplus lines broker under this part and no premium charged therefor shall be due and payable until the surplus lines broker, when business is originated by a surplus lines broker, or the producer, when business is referred to a surplus lines broker from a licensed producer, [~~shall have~~] has notified the insured in writing that:

- (1) The insurer with which the surplus lines broker placed the insurance is not licensed by this State and is not subject to its supervision; and
- (2) In the event of the insolvency of the surplus lines insurer, losses will not be paid by any of the State’s insurance guaranty funds.

A copy of the notice shall be maintained by the broker with the records of the contract and available for [~~possible~~] examination.

Nothing in this section shall nullify any agreement by any insurer to provide insurance.”

SECTION 47. Section 431:8-313, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each surplus lines broker shall file with the commissioner on or before March [~~16~~] 15 of each year [~~file with the commissioner~~] a verified statement of all surplus lines insurance transacted during the preceding calendar year.”

SECTION 48. Section 431:8-315, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [~~Before March 16~~] On or before March 15 of each year each surplus lines broker shall pay to the director of finance, through the commissioner, a

premium tax on surplus lines insurance transacted by such broker during the preceding calendar year. The tax shall be in amount of 4.68 per cent of gross premiums, less return premiums, on taxable surplus lines insurance.”

SECTION 49. Section 431:8-316, Hawaii Revised Statutes, is amended to read as follows:

“**§431:8-316 Penalty for failure to file statement or remit tax.** If any surplus lines broker fails to:

- (1) File an annual statement, or
- (2) Pay the premium tax required by section 431:8-315 [after] when the tax is due,

the surplus lines broker shall be liable for a fine of \$25 for each day of delinquency [commencing March 16]. The tax may be collected by distraint, or the tax and fine for failure to pay the tax may be recovered by action instituted by the commissioner in any court of competent jurisdiction. The fine for failure to file the annual statement may be recovered by an action instituted by the commissioner in any court of competent jurisdiction.”

SECTION 50. Section 431:8-317, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may suspend, revoke, or refuse to extend any surplus lines broker’s license ~~[]~~for~~[]~~ any cause specified in any other provision of this chapter, or for any of the following causes:

- (1) Failure to file the annual statement required by section 431:8-313 or to pay the tax required by section 431:8-315;
- (2) Failure to maintain an office in this State, or to keep records, or to allow the commissioner to examine such surplus lines broker’s records as provided in this article;
- (3) Removal of office accounts and records from this State during the period in which such accounts are required to be maintained under this article;
- ~~[(4)]~~ ~~Failure to maintain the bond required by section 431:8-310;~~
- ~~[(5)]~~ (4) Any of the causes for which a producer’s license may be suspended or revoked under article 9A;
- ~~[(6)]~~ (5) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- ~~[(7)]~~ (6) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- ~~[(8)]~~ (7) If the licensee has obtained or attempted to obtain the license through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9A-105;
- ~~[(9)]~~ (8) If the licensee has misappropriated, converted to the licensee’s own use, or illegally withheld moneys required to be held in a fiduciary capacity;
- ~~[(10)]~~ (9) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract~~;~~, or has engaged or is about to engage in any fraudulent transaction;
- ~~[(11)]~~ (10) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- ~~[(12)]~~ (11) If in the conduct of the licensee’s affairs under the license, the licensee has been a source of injury and loss to the public;

- [(13)] (12) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind; or
- [(14)] (13) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee's licenses."

SECTION 51. Section 431:8-318, Hawaii Revised Statutes, is amended to read as follows:

"§431:8-318 Examination of surplus lines broker's accounts and records. Whenever deemed necessary the commissioner may examine the records and accounts of any surplus lines broker to determine whether the broker is conducting business in accordance with the requirements of this article."

SECTION 52. Article 9, chapter 431, Hawaii Revised Statutes, is amended by amending the title to read as follows:

**"ARTICLE 9.
LICENSING OF [AGENTS, BROKERS, SOLICITORS,]
ADJUSTERS[,] AND BILL REVIEWERS"**

SECTION 53. Section 431:9-229, Hawaii Revised Statutes, is amended to read as follows:

"§431:9-229 Records of [general agent, subagent,] adjuster[,] or independent bill reviewer. (a) Every adjuster or independent bill reviewer shall keep a record of all transactions consummated under [their] the licensee's license. This record shall be in organized form according to class of insurance and shall include:

- (1) 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 the investigation or adjustment;
- (2) 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) Any additional information as shall be customary, or as may reasonably be required by the commissioner.

(b) All such records as to any particular transaction shall be kept in the licensee's office, available and open to the inspection of the commissioner during business hours during the five years, and in the case of workers' compensation claims during the eight years, immediately after the date of the completion of such transaction.

(c) This section shall not apply to life or [disability] accident and health or sickness insurance if the records required of such insurance are customarily maintained in the offices of the insurer."

SECTION 54. Section 431:9-235, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner may suspend, revoke, or refuse to extend any license issued under this article for any cause specified in any other provision of this article, or for any of the following causes:

- (1) For any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (2) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- (3) If the licensee has obtained or attempted to obtain any such license through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9-206;
- (4) If the licensee has misappropriated, or converted to the licensee's own use, or has illegally withheld moneys required to be held in a fiduciary capacity;
- (5) If the licensee has, with intent to deceive, materially misrepresented the terms or effect of any insurance contract; or has engaged or is about to engage in any fraudulent transaction;
- (6) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- (7) If in the conduct of the licensee's affairs under the license, the licensee has shown oneself to be a source of injury and loss to the public; or
- ~~(8) If the licensee issues or purports to issue any binder as to any insurer named therein as to which the licensee is not then authorized so to bind;~~
or
- (9) (8) If the licensee has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee's licenses."

SECTION 55. Section 431:9A-101, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:9A-101]~~ **Scope.** This article governs qualifications and procedures for the licensing of insurance producers. It simplifies and organizes statutory language to improve efficiency, to permit the use of new technology, and to reduce costs associated with issuing and renewing insurance licenses.

This article does not apply to excess and surplus lines ~~[agents and]~~ brokers licensed through article 8, except as provided in ~~[section]~~ sections 431:9A-108 and ~~[section]~~ 431:9A-116 ~~[of this article]~~.”

SECTION 56. Section 431:9A-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person shall not sell, solicit, or negotiate insurance in this State for any line, class, or classes of insurance unless the person is licensed for the proper line ~~[or class]~~ of authority or class in accordance with this article.”

SECTION 57. Section 431:9A-104, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A license as an insurance producer shall not be required of the following:

- (1) An officer, director, or employee of an insurer or of an insurance producer~~;~~; provided that the officer, director, or employee does not receive any commission or remuneration on policies written or sold to insure risks residing, located, or to be performed in this State and:
 - (A) The officer, director, or employee's activities are executive, administrative, managerial, clerical, or a combination of these and are only indirectly related to the sale, solicitation, or negotiation of insurance;

- (B) The officer, director, or employee's functions relate to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance; or
- (C) The officer, director, or employee is acting in the capacity of a special agent or agency supervisor, assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation, or negotiation of insurance;
- (2) A person who secures and furnishes information ~~[for the purpose of]~~ regarding group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health or sickness insurance, for the purpose of enrolling individuals ~~[under such plans,]~~ or issuing certificates under such plans, or otherwise assists³ assisting in administering the plans, or who performs administrative services related to mass marketed property and casualty insurance, ~~[or]~~ where no commission is paid to the person for the service;
- (3) An employer or association or its officers, directors, employees, or the trustee of any employee trust plan, to the extent that the ~~[employers,]~~ employer, association, officers, employees, directors, or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, so long as the employers, associations, officers, directors, employees, or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;
- (4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating, or classification of risks, or in the supervision or the training of insurance producers, and who are not individually engaged in the sale, solicitation, or negotiation of insurance;
- (5) A person whose activities in this State are limited to advertising without the intent to solicit insurance in this State through communications in printed publications or other forms of electronic mass media, whose distribution is not limited to residents of this State~~[-];~~; provided that the person does not sell, solicit, or negotiate insurance that would insure risks residing, located, or to be performed in this State;
- (6) A person who is not a resident of this State who sells, solicits, or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract~~[-];~~ provided that the person is otherwise licensed as an insurance producer to sell, solicit, or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or
- (7) A salaried, full-time employee who counsels or advises the person's employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer~~[-];~~ provided that the employee does not sell or solicit insurance or receive commissions."

SECTION 58. Section 431:9A-105, Hawaii Revised Statutes, is amended to read as follows:

"§431:9A-105 Insurance producer license examination. (a) A resident applicant applying for an insurance producer license shall pass a written examination

unless exempt pursuant to section 431:9A-109. The examination shall test the knowledge of the applicant concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer, and the insurance laws and rules of this State.

(b) The commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting fees pursuant to section 431:7-101. The fees collected shall be nonrefundable.

~~[(e) Each person applying for an examination shall remit a fee as set forth in section 431:7-101. The fee shall be nonrefundable.~~

~~(d)~~ (c) An applicant, who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

~~[(e)]~~ (d) An applicant's examination scores shall be valid for two years from the date of the examination or last renewal, whichever is later."

SECTION 59. Section 431:9A-106, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

"(b) A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the uniform business entity application. Before approving the application, the commissioner shall find that:

- (1) The business entity has paid ~~[the] all~~ applicable ~~[fee set forth in chapter 431 or 432;] fees;~~
- (2) The business entity has designated a licensed producer who is a natural person responsible for the business entity's compliance with the insurance laws and rules of this State; and
- (3) Any licensed producer so designated or empowered by a corporation or partnership may not be so designated or empowered by more than one corporation or partnership, except when the corporations or partnerships are affiliates of each other. As used herein, a corporation or partnership is an affiliate of another corporation or partnership if the same person, directly or indirectly through one or more intermediaries, controls both corporations or partnerships. As used herein, "control" has the same meaning as in section 431:11-102."

2. By amending subsection (d) to read:

"(d) Each insurer that sells, solicits, or negotiates any form of limited line credit insurance shall provide to each person whose duties will include selling, soliciting, or negotiating limited line credit insurance a program of instruction that ~~[may] shall~~ be ~~[approved] subject to approval~~ by the commissioner."

SECTION 60. Section 431:9A-107, Hawaii Revised Statutes, is amended by amending subsection (f) as follows:

"(f) Licensees shall inform the commissioner by any means acceptable to the commissioner of a change of legal name or address within thirty days of the change. Failure to timely inform the commissioner of a change ~~[in] of~~ legal name or address shall result in a penalty pursuant to section 431:2-203."

SECTION 61. Section 431:9A-107.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other provision of this article, the commissioner may issue:

- (1) A limited license to persons selling travel tickets of a common carrier of persons or property who shall act only as to travel ticket policies of

- [disability] accident and health or sickness insurance or baggage insurance on personal effects;
- (2) A limited license to each individual who has charge of vending machines used in this State for the effectuation of travel insurance;
 - (3) A limited license to any individual who sells policies of [disability] accident and health or sickness insurance as a promotional device to improve the circulation of a newspaper in this State;
 - (4) A limited license to creditors for the purposes of enrolling debtors under a group credit life insurance or group credit disability insurance policy, issuing certificates of insurance pursuant thereto, or issuing individual credit life insurance or credit disability insurance policies to debtors; or
 - (5) A limited credit insurance license to any individual who sells policies of individual or group credit life, credit [~~accident and health,~~] disability, credit involuntary unemployment, or credit property insurance; provided the individual satisfactorily passes a pre-licensing examination that is limited to the kinds of insurance marketed through creditors.”

SECTION 62. Section 431:9A-108, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Notwithstanding any other provision of this article, an applicant licensed as a surplus lines producer in the applicant’s home state shall receive a nonresident surplus lines ~~producer~~³ broker license if the applicant complies with subsection (a). Except as to subsection (a), nothing in this section otherwise amends or supersedes any provision of article 8.”

SECTION 63. Section 431:9A-109, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [~~An~~] Subject to section 431:9A-116, an individual who applies for an insurance producer license in this State who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety days of the cancellation of the applicant’s previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was licensed in good standing in that state, or the state’s producer database records, maintained by the National Association of Insurance Commissioners, its affiliates, or its subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.”

SECTION 64. Section 431:9A-112, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~431:9A-112~~] License denial, nonrenewal, suspension, or revocation.~~ (a) The commissioner may deny, place on probation, suspend, revoke, or refuse to issue or renew an insurance producer’s license and may levy a civil penalty in accordance with articles 2 and 3, or any combination of these actions, for any of the following causes:

- (1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;
- (2) Violating any law, or violating any rule, subpoena, or order of the commissioner or of another state’s commissioner;

- (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
- (4) Improperly withholding, misappropriating, or converting any moneys or properties received in the course of doing business;
- (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
- (6) Having been convicted of a felony;
- (7) Having admitted to or been found to have committed any insurance unfair trade practice or fraud;
- (8) Using fraudulent, coercive, or dishonest practice or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this State or elsewhere;
- (9) Having an insurance producer license or its equivalent denied, placed on probation, suspended, or revoked in any other state, province, district, or territory;
- (10) Forging another's name [tø] on an application or [tø] on any document related to a transaction;
- (11) Improperly using notes or any other reference material while taking an examination for an insurance license;
- (12) Accepting insurance business from a person who is not licensed;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; or
- (14) Failing to pay federal or state income taxes or failing to comply with any administrative or court order directing payment of federal or state income taxes.

(b) In the event that the commissioner takes action pursuant to subsection (a), the commissioner shall notify the applicant or licensee in writing of the reason for that action. The applicant or licensee may make written demand upon the commissioner within ten days of the date of receipt of the notice for a hearing before the commissioner to determine the reasonableness of the commissioner's action. The hearing shall be held within twenty days of receipt of the written demand and shall be held pursuant to chapter 91.

(c) The commissioner shall not renew or reinstate any license and shall deny, suspend, or revoke any license or application if the commissioner has received certification from an administering entity pursuant to chapter 436C that the licensee or applicant is in default or is in breach of any obligation under any student loan, student loan repayment contract, or scholarship contract, or has failed to comply with a repayment plan. Unless otherwise provided by law, if the commissioner has received such certification, the commissioner shall renew, reinstate, or grant a license only upon receipt of authorization from the administering entity.

~~(e)~~ (d) The license of a business entity may be sanctioned pursuant to subsection (a) if the commissioner finds, after hearing, that any other licensee of the business entity has engaged in misconduct under subsection (a) that was known or should have been known by one or more of the entity's partners, officers, or managers acting on behalf of the entity and the violation was neither reported to the commissioner by the entity nor corrective action taken by the entity.

~~(d)~~ (e) In addition to or in lieu of any applicable sanction under subsection (a), a licensee may, after hearing, be subject to a civil fine according to article 2.

~~(e)~~ (f) The commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this article, chapter 431, ~~chapter~~ 432, or ~~chapter~~ 432D, against any person who is under investigation for or charged with a violation of this article, chapter 431, ~~chapter~~ 432, or ~~chapter~~ 432D, even if that person's license or registration has been surrendered or has lapsed by operation of law."

SECTION 65. Section 431:9A-124, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) ~~[In addition to payment of fees required in section 431:7-101, to]~~ To qualify for a license renewal a licensee shall:

- (1) During the twenty-three months preceding a license renewal, complete the required number of credit hours as set forth in subsection (b) in approved continuing education courses; and
 - (2) Pay the fees as required under section 431:7-101.
- (b) The required number of credit hours shall be as follows:
- (1) For a licensee authorized to sell lines of insurance in only one of the following groups:
 - (A) Life or accident and health or sickness; or
 - (B) Property, marine and transportation, vehicle, general casualty, or surety;

the requisite number of credit hours shall be twenty hours relating to the line of authority for which the license is held, including three credit hours relating to the insurance laws and the insurance rules;

- (2) For a licensee with a license to sell lines of insurance in both groups in paragraph (1), the total requisite number of credit hours shall be thirty hours, of which:
 - (A) Twelve hours shall relate to paragraph (1)(A) of which ~~[three]~~ two hours shall relate to the insurance laws and the rules relating to the line of authority for which the license is held; and
 - (B) Eighteen hours shall relate to paragraph (1)(B) of which ~~[three]~~ two hours shall relate to the insurance laws and the rules relating to the line of authority for which the license is held.”

SECTION 66. Section 431:9A-124, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) After a licensee completes an approved continuing education course, the approved course provider shall issue to the licensee a certificate of completion in a form approved by the commissioner that certifies that the licensee has successfully completed the course. Both the licensee and a person authorized to sign on behalf of the approved course provider shall sign the certificate of completion. The ~~[licensee]~~ approved course provider shall electronically submit the certificate of completion to the insurance division not later than one month prior to the renewal date for the license.”

SECTION 67. Section 431:9A-126, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any fine collected shall be paid by the commissioner to the director of finance for the account of the ~~[insurance regulation]~~ compliance resolution fund.”

SECTION 68. Section 431:9A-129, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner may revoke or suspend the certificate of an approved course provider for any violation of the insurance code, subject to the right of the provider to a hearing as provided in ~~[chapter 91.]~~ section 431:2-308.”

SECTION 69. Section 431:9A-142, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner may issue a limited lines motor vehicle rental company producer license to a motor vehicle rental company; provided:

- (1) A motor vehicle rental company having a limited lines motor vehicle rental company producer's license shall also authorize employees of the motor vehicle rental company to act individually on behalf of, and under the supervision of, the motor vehicle rental company in solicitation and sale of insurance coverages;
- (2) [A] Except as set forth in this section, a limited lines motor vehicle rental company producer and its employees shall not advertise or otherwise represent themselves as licensed insurers, insurance agents, insurance producers, or insurance brokers;
- (3) A limited lines motor vehicle rental company producer may solicit or sell insurance at the rental office or by preselecting coverages in master, corporate, group rental, or individual agreements on policy forms approved by the commissioner in any of the following general categories:
 - (A) Personal accident insurance covering the risks of travel to the motor vehicle renter and other occupants of the rental vehicle for accident and health or sickness insurance covering accidental death or dismemberment and reimbursement for medical expenses resulting from an occurrence during the rental period;
 - (B) Liability insurance, uninsured motorist insurance, or underinsured motorist insurance covering the motor vehicle renter and other authorized drivers of the rental vehicle for liability and damage arising from the operation of the rental vehicle;
 - (C) Personal effects insurance covering the motor vehicle renter and other vehicle occupants for the loss of or damage to personal effects that occur during the rental period;
 - (D) Roadside assistance and emergency sickness protection programs; and
 - (E) Incidental travel or vehicle related coverages which the motor vehicle rental company solicits or sells in connection with the rental of its vehicles;
- (4) The limited lines motor vehicle rental company producer shall have brochures or other written materials readily available for review and dissemination to prospective motor vehicle renters that:
 - (A) Summarize clearly and correctly the material terms of coverages solicited or sold by the motor vehicle rental company producer, including the identity of the insurer;
 - (B) Discloses that the coverages solicited by the motor vehicle rental company producer may provide a duplication of coverages already provided by a renter's personal motor vehicle insurance policy or other sources of coverage;
 - (C) States that purchases by the motor vehicle renter of the kinds of coverages offered by the motor vehicle rental company producer is not required [~~in order~~] to rent a vehicle; and
 - (D) Describes the process for filing a claim if the renter elects to purchase coverages;
- (5) The motor vehicle rental company producer shall disclose in the motor vehicle rental agreement evidence of insurance coverages elected or declined by the motor vehicle renter;
- (6) The motor vehicle rental company producer shall conduct training programs which shall be approved by the commissioner for its employees who solicit and sell the rental company producer's insurance coverages;

- (7) The motor vehicle rental company producer shall not be required to hold funds collected as payments for insurance in a separate trust account; and
- (8) The motor vehicle rental company producer shall comply with all provisions of chapter 437D.”

SECTION 70. Section 431:9C-102, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The commissioner ~~[may]~~ shall require the managing general agent to furnish a bond in an amount ~~[acceptable to the commissioner with an insurance company acceptable to the commissioner]~~ equal to \$100,000 or ten per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, for the protection of the insurer. Each managing general agent shall provide the commissioner with:

- (1) Proof of the bond at the time of the initial application for licensure; and
- (2) Appropriate documentation at the time of each renewal to show that the bond continues to be in effect or that a new bond has been secured.

(d) The commissioner ~~[may]~~ shall require the managing general agent to maintain an errors and omissions policy in an amount ~~[acceptable to the commissioner with an insurance company acceptable to the commissioner.]~~ equal to \$1,000,000 or twenty-five per cent of annual gross direct written premiums, whichever is greater, with an insurance company licensed to do business within the State or an insurance company approved by the commissioner. Each managing general agent shall provide the commissioner with:

- (1) Proof of the policy at the time of the initial application for licensure; and
- (2) Appropriate documentation at the time of each renewal to show that the policy continues to be in effect or that a new policy has been secured.”

SECTION 71. Section 431:9C-103, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:9C-103]~~ **Required contract provisions.** No person, firm, association, or corporation acting as a managing general agent shall place business with an insurer unless there is in force, a written contract between the managing general agent and the insurer which sets forth the responsibilities of each party and, where both the managing general agent and the insurer share responsibility for a particular function, specifies the division of those responsibilities, and which contains at least the following additional provisions:

- (1) The insurer may terminate the contract for cause upon written notice to the managing general agent. The insurer may suspend the underwriting authority of the managing general agent during the pendency of any dispute regarding the cause for termination;
- (2) The managing general agent shall render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis;
- (3) All funds collected for the account of an insurer shall be held by the managing general agent in a fiduciary capacity and deposited in an account in a bank which is a member of the Federal Reserve System. This account shall be used for all payments on behalf of the insurer by the managing general agent. The managing general agent may retain no more than three months estimated claims payments and allocated loss adjustment expenses;

- (4) Separate records of business written by the managing general agent shall be maintained in the licensee's office. The insurer shall have access to and the right to copy all accounts and records of the managing general agent related to the insurer's business in a form usable by the insurer, and the commissioner shall have access to all books, bank accounts, and records of the managing general agent in a form usable to the commissioner. Records shall be in an organized form according to each class of insurance and shall include the following information to the extent it is applicable:
- (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;
 - (B) The names of any other licensees from whom business is accepted and the names of persons to whom commissions or allowances of any kind are promised or paid;
 - (C) 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 the investigation or adjustment;
 - (D) 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
 - (E) Any additional information as shall be customary or as may reasonably be required by the commissioner.

This ~~section~~ paragraph shall not apply to life or ~~[disability]~~ accident and health or sickness insurance if the records required of such insurance are customarily maintained in the offices of the insurer;

- (5) The contract may not be assigned in whole or in part by the managing general agent;
- (6) Appropriate underwriting guidelines including:
 - (A) The maximum annual premium volume;
 - (B) The basis of the rates to be charged;
 - (C) The types of risks which may be written;
 - (D) Maximum limits of liability;
 - (E) Applicable exclusions;
 - (F) Territorial limitations;
 - (G) Policy cancellation provisions; and
 - (H) The maximum policy period.

The insurer shall have the right to cancel or nonrenew any policy of insurance subject to the applicable laws and rules concerning the cancellation and nonrenewal of insurance policies;

- (7) If the contract permits the managing general agent to settle claims on behalf of the insurer:
 - (A) All claims shall be reported to the insurer in a timely manner;
 - (B) A copy of the claim file shall be sent to the insurer at its request or as soon as it becomes known that the claim:
 - (i) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the insurer, whichever is less;
 - (ii) Involves a coverage dispute;
 - (iii) May exceed the managing general agent's claims settlement authority;

- (iv) Is open for more than six months; or
- (v) Is closed by payment of an amount set by the commissioner or an amount set by the insurer, whichever is less;
- (C) All claim files shall be the joint property of the insurer and managing general agent. However, upon an order of liquidation of the insurer, the files shall become the sole property of the insurer or its estate; provided that the managing general agent shall have reasonable access to and the right to copy the files on a timely basis;
- (D) Any settlement authority granted to the managing general agent may be terminated for cause upon the insurer's written notice to the managing general agent or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination; and
- (E) Where electronic claims files are in existence, the contract shall address the timely transmission of the data;
- (8) If the contract provides for a sharing of interim profits by the managing general agent, and the managing general agent has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits shall not be paid to the managing general agent until one year after they are earned for property insurance business and five years after they are earned on casualty business and, in any event, not until the profits have been verified through examination pursuant to section 431:9C-105; and
- (9) The managing general agent shall not:
 - (A) Bind reinsurance or retrocessions on behalf of the insurer, except that the managing general agent may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with whom those automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured, and commission schedules;
 - (B) Commit the insurer to participate in insurance or reinsurance syndicates;
 - (C) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which the producer is appointed;
 - (D) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one per cent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;
 - (E) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer without prior approval of the insurer. If prior approval is given, a report shall be promptly forwarded to the insurer;
 - (F) Permit its subagent to serve on the board of directors of the insurer;
 - (G) Employ an individual who is employed by the insurer also; or
 - (H) Appoint a sub-managing general agent."

SECTION 72. Section 431:10A-116.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~§431:10A-116.5~~[F]~~ **In vitro fertilization procedure coverage.** (a) All individual and group accident and health or sickness insurance policies which provide pregnancy-related benefits shall include in addition to any other benefits for treating infertility, a one-time only benefit for all outpatient expenses arising from in vitro fertilization procedures performed on the insured or the insured’s dependent spouse; provided that:

- (1) Benefits under this section shall be provided to the same extent as the benefits provided for other pregnancy-related benefits;
- (2) The patient is the insured or covered dependent of the insured;
- (3) The patient’s oocytes are fertilized with the patient’s spouse’s sperm;
- (4) The:
 - (A) Patient and the patient’s spouse have a history of infertility of at least five years’ duration; or
 - (B) Infertility is associated with one or more of the following medical conditions:
 - (i) Endometriosis;
 - (ii) Exposure in utero to diethylstilbestrol, commonly known as DES;
 - (iii) Blockage of, or surgical removal of, one or both fallopian tubes (lateral or bilateral salpingectomy); or
 - (iv) Abnormal male factors contributing to the infertility[-];
- (5) The patient has been unable to attain a successful pregnancy through other applicable infertility treatments for which coverage is available under the insurance contract; and
- (6) The in vitro fertilization procedures are performed at medical facilities that conform to the American College of Obstetric and Gynecology guidelines for in vitro fertilization clinics or to the American ~~[Fertility]~~ Society for Reproductive Medicine minimal standards for programs of in vitro fertilization.

~~[(7) The]~~ (b) For the purposes of this section, the term “spouse” means a person who is lawfully married to the patient under the laws of the State.

(c) The requirements of this section shall apply to all new policies delivered or issued for delivery in this State after June 26, 1987.”

SECTION 73. Section 431:10A-116.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any provision of law to the contrary, each employer group accident and health or sickness policy, contract, plan, or agreement issued or renewed in this State on or after January 1, 2000, shall cease to exclude contraceptive services or supplies for the subscriber or any dependent of the subscriber who is covered by the policy, subject to the exclusion under section 431:10A-116.7.”

SECTION 74. Section 431:10A-116.7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) Notwithstanding any other provision of this chapter, any religious employer may request [a] an accident and health or sickness insurance plan without coverage for contraceptive services and supplies that are contrary to the religious employer’s religious tenets. If so requested, the accident and health or sickness insurer, mutual benefit society, or health maintenance organization shall provide a ~~[health insurance]~~ plan without coverage for contraceptive services and supplies.

This subsection shall not be construed to deny an enrollee coverage of, and timely access to, contraceptive services and supplies.”

2. By amending subsections (e) and (f) to read:

“(e) [~~Health~~] Accident and health or sickness insurers, mutual benefit societies, and health maintenance organizations shall allow enrollees in a health plan exempted under this section to directly purchase coverage of contraceptive supplies and outpatient contraceptive services. The enrollee’s cost of purchasing such coverage shall not exceed the enrollee’s pro rata share of the price the group purchaser would have paid for such coverage had the group plan not invoked a religious exemption.

(f) This section shall not be construed as to require [a] an accident and health or sickness insurer, mutual benefit society, health maintenance organization, health care facility, or health care provider to provide any health care services without appropriate payment of premium or fee.”

SECTION 75. Section 431:10A-118, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“[~~§~~431:10A-118[~~]~~] **Genetic information nondiscrimination in accident and health or sickness insurance coverage.**”

SECTION 76. Section 431:10A-120, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each policy of accident and health or sickness insurance, other than life insurance, disability income insurance, and long-term care insurance, issued or renewed in this State, each employer group health policy, contract, plan, or agreement issued or renewed in this State, all accident and health or sickness insurance policies issued or renewed in this State, all policies providing family coverages as defined in section 431:10A-103, and all policies providing reciprocal beneficiary family coverage as defined in section 431:10A-601, shall contain a provision for coverage for medical foods and low-protein modified food products for the treatment of an inborn error of metabolism for its policyholders or dependents of the policyholder in this State; provided that the medical food or low-protein modified food product is:

- (1) Prescribed as medically necessary for the therapeutic treatment of an inborn error of metabolism; and
- (2) Consumed or administered enterally under the supervision of a physician licensed under chapter 453 or 460.

Coverage shall be for at least eighty per cent of the cost of the medical food or low-protein modified food product prescribed and administered pursuant to this subsection.”

SECTION 77. Section 431:10A-206.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) All accident and health or sickness insurance policies issued in this State, which provide coverage for the children of the insured shall provide coverage for child health supervision services from the moment of birth through age five years. These services shall be exempt from any deductible provisions, and immunizations shall be exempt from any copayment provisions, which may be in force in these policies or contracts.”

SECTION 78. Section 431:10A-301, Hawaii Revised Statutes, is amended by amending the definition of “medicare supplement policy” to read as follows:

““Medicare supplement policy” means a group or individual policy of accident and health or sickness insurance or a subscriber contract of hospital and medical service associations or health maintenance organizations, other than a policy issued pursuant to a contract under section 1876 of the federal Social Security Act (42 U.S.C. section 1395 et seq.), or an issued policy under a demonstration project specified in 42 U.S.C. section 1395ss(g)(1), which is advertised, marketed, or designed primarily as a supplement to reimbursements under medicare for the hospital, medical, or surgical expenses of persons eligible for medicare.”

SECTION 79. Section 431:10A-404, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10A-404 Persons authorized to transact insurance.** Notwithstanding the provisions of article [9;] 9A, any person licensed to transact accident and health or sickness insurance as a producer may transact extended health insurance and may be paid a commission in accordance with commission schedules filed with the commissioner as required by section 431:10A-406.”

SECTION 80. Section 431:10A-406, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No policy, contract, certificate, or other evidence of insurance, application, or other form shall be sold, issued, or used and no endorsement shall be attached to or printed or stamped thereon unless its form [~~shall have~~] has been approved by the commissioner or thirty days [~~shall~~] have expired after such filing without written notice from the commissioner of disapproval. The commissioner shall disapprove the forms for such insurance if the commissioner finds:

- (1) That they are unjust, inequitable, misleading, or deceptive; or
- (2) That the rates are by reasonable assumptions excessive in relation to the benefits provided.

In determining whether the rates by reasonable [~~assumption~~] assumptions are excessive in relation to the benefits provided, the commissioner shall give due consideration to past and prospective claim experience, within and outside this State, and to fluctuations in such claim experience, to a reasonable risk charge, to contribution to surplus and contingency funds, to past and prospective expenses, both within and outside this State, and to all other relevant factors within and outside this State, including any differing operating methods of the insurers joining in the issue of the policy. In exercising the powers conferred by this part, the commissioner shall not be bound by any other requirement of this code with respect to standard provisions to be included in [~~disability~~] accident and health or sickness policies or forms.”

SECTION 81. Section 431:10A-602, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:10A-602]~~ **Federally funded programs; exemption.** Requirements relating to mandated coverages shall not be applicable to any insurer offering accident and health or sickness insurance under a federally funded program under the Social Security Act, as amended; provided that this exemption shall apply only to that part of the insurer’s business under the federally funded program.”

SECTION 82. Section 431:10B-104, Hawaii Revised Statutes, is amended to read as follows:

“§431:10B-104 **Forms of credit life insurance and credit disability insurance.** Credit life insurance and credit disability insurance shall be issued only in the following forms:

- (1) Individual policies of life insurance issued to debtors on the term plan;
- (2) Individual policies of [~~disability~~] accident and health or sickness insurance issued to debtors on a term plan or disability benefit provisions in individual policies of credit life insurance;
- (3) Group policies of life insurance issued to creditors pursuant to section 431:10D-203 providing insurance upon the lives of debtors on the term plan; and
- (4) Group policies of [~~disability~~] accident and health or sickness insurance issued to creditors on a term plan insuring debtors or disability benefit provisions in group credit life insurance policies to provide such coverage.”

SECTION 83. Section 431:10C-119, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commissioner shall [~~promulgate~~] adopt rules to permit any licensed accident and health or sickness insurer to secure a license to engage in the business of motor vehicle insurance to provide only those personal injury protection benefits defined in section 431:10C-103.5(a) and optional major medical coverages.”

SECTION 84. Section 431:10C-215, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The commissioner shall assess and collect from each insurer, self-insurer, and from every applicant for a certificate of self-insurance or a license to transact [~~the~~] a motor vehicle insurance and optional additional insurance business in this State, such portion of the full cost of every audit, inspection, examination, visitation, and other services related to motor vehicle insurance required by this or any other article, or performed by the commissioner in the commissioner’s discretion under this article or this code, as the commissioner deems equitable in the⁴ rendering of the service. [~~The charges for audits, inspections, examinations and visitations shall be collected and paid into the insurance examiners revolving fund when moneys from this fund are expended for the purposes of carrying out this section. All other charges~~] Assessments collected shall be [~~collected and~~] paid into the [~~general~~] compliance resolution fund [~~of this State~~].”

SECTION 85. Section 431:10C-405, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The commissioner shall establish within the bureau, a board of governors for the purpose of providing expertise and consultation on all matters pertaining to the operation of the bureau and the joint underwriting plan. The board shall be composed of:

- (1) Five persons from, and members or representatives of, nationally organized insurers or their domestic insurer affiliates;
- (2) One person to represent insurance [~~agents;~~] producers;
- (3) Two members, each a self-insurer under this article, and nominated by all the certified self-insurers in the State;
- (4) Two members, not affiliated with the foregoing organizations, nominated by such nonaffiliated insurers; and
- (5) Two members each, to be selected by the commissioner or nominated by each of the classifications provided for in section 431:10C-407(b).”

SECTION 86. Section 431:10D-104, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) Exceptions. This section shall not apply to any of the following:

- (1) Reinsurance;
- (2) Group insurance;
- (3) Pure endowment;
- (4) Annuity or reversionary annuity contract;
- (5) Term policy uniform amount, which provides no guaranteed nonforfeiture or endowment benefits, or renewal thereof, of twenty years or less expiring before age seventy-one for which uniform premiums are payable during the entire term of the policy;
- (6) Term policy of decreasing amount, which provides no guaranteed nonforfeiture or endowment benefits, issued at the same age and for the same initial amount of insurance and for a term of twenty years or less expiring before age seventy-one, for which uniform premiums are payable during the entire term of the policy;
- (7) Policy, which provides no guaranteed nonforfeiture or endowment benefits, for which no cash surrender value, if any, or present value of any paid-up nonforfeiture benefit, at the beginning of any policy year calculated as specified in subsections (c), (d), and (e), exceeds two and one-half per cent of the amount on insurance at the beginning of the policy year; ~~and~~ and
- (8) Policy which shall be delivered outside this State through ~~[an agent]~~ a producer or other representative of the company issuing the policy.

For purposes of determining the applicability of this section, the age at expiry for a joint term life insurance policy shall be the age at expiry of the oldest life.”

SECTION 87. Section 431:10D-208, Hawaii Revised Statutes, is amended to read as follows:

“**§431:10D-208 Mutual benefit society groups.** The lives of a group of individuals may be insured under a policy issued to a mutual benefit society, which shall be deemed the policyholder, to insure members of the society for the benefit of persons other than the society or any of its officials, subject to the following requirements:

- (1) The society must have been formed for purposes other than obtaining insurance and have, when the policy is placed in force, a membership in the classes eligible for insurance of not less than seventy-five per cent of the number of persons eligible for membership in such classes[-];
- (2) The members eligible for insurance under the policy shall be all of the members of the society, or all of any class or classes thereof[-];
- (3) The premium for the policy shall be paid either from the society’s own funds or from charges collected from the insured members specifically for the insurance, or from both. No policy may be placed in force unless and until at least seventy-five per cent of the then eligible members of the society, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, have elected to be covered and have arranged for payment of their individual contributions to the society. Except as provided in ~~[item]~~ paragraph (4), a policy on which no part of the premium is to be derived from funds contributed by the insured members specifically for their insurance must insure all eligible members[-];

- (4) An insurer may exclude or limit the coverage on any person as to whom evidence of individual insurability is not satisfactory to the insurer[-];
- (5) Charges collected from the insured members specially for the insurance, and the dues of the society if they include the cost of insurance, may be determined according to each attained age or in not less than four reasonably spaced attained age groups[-];
- (6) The policy must cover at least twenty-five persons at date of issue[-]; and
- (7) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the members or by the society.

[(8)] As used in this section, the term “mutual benefit society” has the same meaning as that ascribed to it in section [432:1-103-] 432:1-104. Any mutual benefit society participating in an insurance program under this section shall be exempted from the requirements of chapter 432 relative to the management or operation of its death or [disability] accident and health or sickness benefit funds with respect to the insurance program.”

SECTION 88. Section 431:10D-305, Hawaii Revised Statutes, is amended to read as follows:

“§431:10D-305 Standard provisions required. No policy of industrial life insurance shall be issued or delivered unless it contains in substance the provisions as required by this part, or provisions which in the opinion of the commissioner are at least as favorable to the policyholder. There shall be a provision that:

- (1) Grace period. The insured is entitled to a grace period of four weeks within which the payment of any premium after the first may be made, except that in policies the premiums for which are payable monthly, the grace period shall be not less than thirty days; and that during such period the policy shall continue in full force, but if during the grace period the policy becomes a claim, then any overdue and unpaid premiums may be deducted from any settlement under the policy[-];
- (2) Entire contract. The policy shall constitute the entire contract between the parties, or, if a copy of the application is endorsed upon or attached to the policy when issued, the policy and the application therefor shall constitute the entire contract. If the application is so made a part of the contract, the policy shall also provide that all statements made by the applicant in the application shall, in the absence of fraud, be deemed to be representations and not warranties[-];
- (3) Incontestability. The policy shall be incontestable after it has been in force during the lifetime of the insured for a specific period not more than two years from its date of issue, except for nonpayment of premiums and except for provisions relative to benefits in the event of total and permanent disability and provisions which grant additional insurance specifically against death by accident or accidental means[-];
- (4) Misstatement of age. If it is found that the age of the individual insured, or the age of any other individual considered in determining the premium, has been misstated, any amount payable or benefit accruing under the policy shall be such as the premium would have purchased at the correct age or ages[-];
- (5) Participation. If a participating policy, the insurer shall annually ascertain and apportion any divisible surplus accruing on the policy. This provision shall not prohibit the payment of additional dividends on default of payment of premiums or termination of the policy[-];

- (6) Nonforfeiture benefits. There shall be a provision for nonforfeiture benefits as required by section 431:10D-104[-];
- (7) Cash surrender value. There shall be a provision for a cash surrender value as required by section 431:10D-104[-];
- (8) Reinstatement. The policy be reinstated at any time within two years after the date of default in the payment of any premium, unless the policy has been surrendered for its cash value or the period of any extended insurance provided by the policy has expired, upon evidence of insurability, including good health, satisfactory to the insurer and the payment of all overdue premiums, and payment (or, within the limits permitted by the then cash values of the policy, reinstatement) of any other indebtedness to the insurer upon the policy with interest as to both premiums and indebtedness at a rate not exceeding six per cent a year compounded annually[-];
- (9) Payment of claims. When the policy becomes a claim by the death of the insured, settlement shall be made upon surrender of the policy and receipt of due proof of death, or after a specified period not exceeding two months after the surrender and receipt of proof; provided, however, an insurer is also permitted to require that the premium receipt book be delivered to it prior to settlement[-];
- (10) Authority to alter contract. There shall be a provision that no [agent] producer shall have the power or authority to waive, change, or alter any of the terms or conditions of any policy; except that, at the option of the insurer, the terms or conditions may be changed by an endorsement signed by a duly authorized officer of the insurer[-];
- (11) Conversion; weekly premium policies. In the case of weekly premium policies granting, upon proper written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting the insured's weekly premium industrial insurance to any form of life insurance with less frequent premium payments regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making the conversion need be granted only if the insurer's weekly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of the insurance with less frequent premium payments issued by the insurer at the age of the insured on the plan of industrial or ordinary insurance desired[-]; and
- (12) Conversion; monthly premium policies. In the case of monthly premium industrial policies, granting, upon written request and upon presentation of evidence of the insurability of the insured satisfactory to the insurer, the privilege of converting the insured's monthly premium industrial insurance to any form of ordinary life insurance regularly issued by the insurer, in accordance with terms and conditions agreed upon with the insurer. The privilege of making the conversions need be granted only if the insurer's monthly premium industrial policies on the life insured, in force as premium paying insurance and on which conversion is requested, grant benefits in event of death, exclusive of additional accidental death benefits and exclusive of any dividend additions, in an amount not less than the minimum amount of ordinary insurance issued by the insured at the age of the insured on the plan of ordinary insurance desired."

SECTION 89. Section 431:10D-408, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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[-] or producer. If you do not receive a current illustration of your policy within thirty days from your request, you should contact your state insurance department.””

SECTION 90. Section 431:10D-409 Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(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] producers or other representatives with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (c)(6).”

SECTION 91. Section 431:10D-507, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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] producer 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.””

SECTION 92. Section 431:10D-508, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any failure to comply with this part shall be considered a violation of article 13 of this chapter. ~~[Examples of violations]~~ Violations shall include[:] but are not limited to:

- (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.”

SECTION 93. Section 431:10H-112, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An outline of coverage shall be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose. The commissioner shall prescribe a standard format, including style, arrangement, and overall appearance, and the content of an outline of coverage. In the case of ~~[agent]~~ producer solicitations, ~~[an agent]~~ a producer shall deliver the outline of coverage prior to the presentation of an application or enrollment form. In the case of direct response solicitation, the outline of coverage shall be presented in conjunction with any application or enrollment form. In the case of a policy issued to a group defined in paragraph (1) of the definition of “group long-term care insurance” in section 431:10H-104, an outline of coverage shall not be required to be delivered; provided that the information described ~~[in]~~ subsection (b) is contained in other materials relating to enrollment. Upon request, these other materials shall be made available to the commissioner.”

SECTION 94. Section 431:10H-115, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) No long-term care insurance policy or certificate may be field issued based on medical or health status. For purposes of this subsection, “field issued” means a policy or certificate issued by ~~[an agent]~~ a producer or a third-party administrator pursuant to the underwriting authority granted to the ~~[agent]~~ producer or third party administrator by an insurer.”

SECTION 95. Section 431:10H-117, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:10H-117]~~ Authority to [promulgate regulations.] adopt rules. The commissioner may ~~[issue]~~ adopt reasonable ~~[regulations]~~ rules to promote premium adequacy and to protect the policyholder in the event of substantial rate increases, and to establish minimum standards for marketing practices, ~~[agent]~~ producer compensation, ~~[agent]~~ producer testing, penalties, and reporting practices for long-term care insurance.”

SECTION 96. Section 431:10H-220, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The offer in subsection ~~[(a)(2)]~~ (a) shall not be required of life insurance policies or riders containing accelerated long-term care benefits.”

SECTION 97. Section 431:10H-221, Hawaii Revised Statutes, is amended by amending subsections (a) through (d) to read:

“(a) Application forms shall include questions designed to elicit information as to whether, as of the date of application, the applicant has another long-term care insurance policy or certificate in force or whether a long-term care policy or certificate is intended to replace any other accident and health or sickness or long-term care policy or certificate presently in force. A supplementary application or other form to be signed by the applicant and producer, except where the coverage is sold without a producer, containing the questions may be used. With regard to a replacement policy issued to a group defined by paragraph (1) under the definition of “group long-term care insurance” in section 431:10H-104, the following questions may be modified only to the extent necessary to elicit information about accident and health or sickness and long-term care insurance policies other than the group policy being replaced; provided that the certificate holder has been notified of the replacement:

- (1) Do you have another long-term care insurance policy or certificate in force (including a health care service contract or health maintenance organization contract)?
- (2) Did you have another long-term care insurance policy or certificate in force during the last twelve months?
 - (A) If so, with which company?
 - (B) If that policy lapsed, when did it lapse?
- (3) Are you covered by medicaid?
- (4) Do you intend to replace any of your medical or accident and health or sickness insurance coverage with this policy (certificate)?

(b) Producers shall list any other accident and health or sickness insurance policies they have sold to the applicant, and the producer shall list policies sold that are still in force and list policies sold in the past five years that are no longer in force.

(c) Upon determining that a sale will involve replacement, an insurer, other than an insurer using direct response solicitation methods, or its producer, shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and health or sickness or long-term care coverage. One copy of the notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the same manner as shown in Section 12(C) of the July 1998 NAIC Long-Term Care Insurance Model Regulation.

(d) Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and health or sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the same manner as shown in Section 12(D) of the July 1998 NAIC Long-Term Care Insurance Model Regulation.”

SECTION 98. Section 431:11-103, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize or acquire one or more subsidiaries engaged in the following kinds of business:

- (1) Any kind of insurance business authorized by the jurisdiction in which it is incorporated;
- (2) Acting as an insurance producer for its parent or for any of its parent’s insurer subsidiaries;
- (3) Investing, reinvesting, or trading in securities for its own account, that of its parent, any subsidiary of its parent, or any affiliate or subsidiary;

- (4) Management of any investment company subject to or registered pursuant to the Investment Company Act of 1940, as amended, including related sales and services;
- (5) Acting as a broker/dealer subject to or registered pursuant to the Securities Exchange Act of 1934, as amended;
- (6) Rendering investment advice to governments, government agencies, corporations, or other organizations or groups;
- (7) Rendering other services related to the operations of an insurance business including[;] but not limited to[;] actuarial, loss prevention, safety engineering, data processing, accounting, claims, appraisal, and collection services;
- (8) Ownership and management of assets which the parent corporation could itself own or manage; provided that the aggregate investment by the insurer and its subsidiaries acquired or organized pursuant to this paragraph shall not exceed the limitations applicable to the investments by the insurer;
- (9) Acting as administrative agent for a governmental instrumentality which is performing an insurance function;
- (10) Financing of insurance premiums, [~~agents;~~] producers, and other forms of consumer financing;
- (11) Any other business activity determined by the commissioner to be reasonably ancillary to an insurance business; and
- (12) Owning a corporation or corporations engaged or organized to engage exclusively in one or more of the businesses specified in this section.”

SECTION 99. Section 431:11A-101, Hawaii Revised Statutes, is amended by amending the definition of “producer” to read as follows:

““Producer” means any person, firm, association, or corporation licensed pursuant to article 9A, when, for any compensation, commission, or other thing of value, the [~~insurance broker or brokers or other~~] person, firm, association, or corporation acts or aids in any manner in soliciting, negotiating, or procuring the making of any insurance contract on behalf of an insured other than the [~~insurane broker or brokers;~~] person, firm, association, or corporation.”

SECTION 100. Section 431:12-101, Hawaii Revised Statutes, is amended by amending the definition of “employer” to read as follows:

““Employer” includes any firm, corporation, partnership, sole proprietorship, trust, estate, and unincorporated association or nonprofit organization; it also includes the State, any county, [~~and~~] any municipal corporation, and any governmental unit, agency, or department thereof.”

SECTION 101. Section 431:12-102, Hawaii Revised Statutes, is amended to read as follows:

“**§431:12-102 Applicability.** This article shall apply to motor vehicle insurance and to property and casualty insurance as defined in [~~section~~] sections 431:1-206 and [~~section~~] 431:1-209. The provisions of this article are in addition to, and not in substitution for, other applicable requirements of law relating to motor vehicle[;] and property and casualty insurance and the rules [~~and regulations~~] of the commissioner adopted pursuant thereto. The requirements of this article do not apply to methods of merchandising other than mass merchandising as defined in section 431:12-101.”

SECTION 102. Section 431:12-107, Hawaii Revised Statutes, is amended to read as follows:

“§431:12-107 Payroll deductions and premium collections. A mass merchandising agreement may provide for the collection of premiums from employees by payroll deductions, assessments, or otherwise, and the remittance of the same to the insurer by the employer; provided that:

- (1) No such collection and remittance of premiums by the employer shall constitute collection of premium within the meaning of this code;
- (2) No act of furnishing information about such collection method by the employer to its employees shall constitute solicitation of applications for insurance; and
- (3) The employer shall not be considered an [~~agent, subagent or solicitor of~~] insurance producer for purposes of this code by virtue of the employer's collection and remittance of premiums or the furnishing of information about such collection method.”

SECTION 103. Section 431:12-109, Hawaii Revised Statutes, is amended to read as follows:

“§431:12-109 Cancellation and nonrenewal. Except as provided [~~by~~] section 431:12-108, no policy of an individual employee or participation of an employee in a group policy shall be cancelled or its renewal denied unless a thirty-day written notice of cancellation or renewal is given the employee. All such notices shall set forth the reasons for the cancellation or nonrenewal. The insurer [~~will~~], prior to the expiration of the thirty-day period, shall afford the employer a reasonable opportunity to consult with the insured and to present facts in opposition to cancellation or nonrenewal.”

SECTION 104. 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 terms 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]~~ Terminating or modifying coverage, or ~~[refuse]~~ refusing 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]~~ subparagraph shall not apply to ~~[disability]~~ accident and health or sickness insurance sold by a casualty insurer; provided further that this subparagraph shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance, or renewal of any insurance policy or contract;
 - (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 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 non-participating insurance; provided that any bonus or abatement of premiums shall be fair and equitable to policyholders and [fœr] in 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;
- (B) This paragraph shall not apply to entities licensed under chapter 386 or 431:10C; and
- (C) For entities licensed under chapter 432 or 432D:
 - (i) It shall not be a violation of this section to refuse to provide or limit coverage available to an individual because the entity determines that the individual reasonably appears to have coverage available under chapter 386 or 431:10C; and
 - (ii) Payment of claims to an individual who may have a third-party claim for recovery of damages may be conditioned upon the individual first signing and submitting to the entity documents to secure the lien and reimbursement rights of the entity[,] and providing information reasonably related to the entity's investigation of its liability for coverage.

Any individual who knows or reasonably should know that the individual may have a third-party claim for recovery of damages[,] and who fails to provide timely notice of the potential claim to the entity, shall be deemed to have waived the prohibition of this paragraph against refusal or limitation of coverage. "Third-party claim" for purposes of this paragraph means any tort claim for monetary recovery or damages that the individual has against any person, entity, or insurer, other than the entity licensed under chapter 432 or 432D[-];

- (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[-];
- (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[-]; and
- (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, producer, or individual."

SECTION 105. Section 431:13-108, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsection (a) to read:

“§431:13-108 Reimbursement for accident and health or sickness insurance benefits. (a) This section applies to accident and health or sickness insurance providers under part I of article 10A of chapter 431, mutual benefit societies under article 1 of chapter 432, dental service corporations under chapter 423, and health maintenance organizations under chapter 432D.”

2. By amending subsection (j) to read:

“(j) As used in this section:

“Claim” means any claim, bill, or request for payment for all or any portion of health care services provided by a health care provider of services submitted by an individual or pursuant to a contract or agreement with an entity, using the entity’s standard claim form with all required fields completed with correct and complete information.

“Clean claim” means a claim in which the information in the possession of an entity adequately indicates that:

- (1) The claim is for a covered health care service provided by an eligible health care provider to a covered person under the contract;
- (2) The claim has no material defect or impropriety;
- (3) There is no dispute regarding the amount claimed; and
- (4) The payer has no reason to believe that the claim was submitted fraudulently.

The term does not include:

- (1) Claims for payment of expenses incurred during a period of time when premiums were delinquent;
- (2) Claims that are submitted fraudulently or that are based upon material misrepresentations;
- (3) Medicaid or Medigap claims; and
- (4) Claims that require a coordination of benefits, subrogation, or preexisting condition investigations, or that involve third-party liability.

“Contest”, “contesting”, or “contested” means the circumstances under which an entity was not provided with, or did not have reasonable access to, sufficient information needed to determine payment liability or basis for payment of the claim.

“Deny”, “denying”, or “denied” means the assertion by an entity that it has no liability to pay a claim based upon eligibility of the patient, coverage of a service, medical necessity of a service, liability of another payer, or other grounds.

“Entity” means accident and health or sickness insurance providers under part I of article 10A of chapter 431, mutual benefit societies under article 1 of chapter 432, dental service corporations under chapter 423, and health maintenance organizations under chapter 432D.

“Health care facility” shall have the same meaning as in section 327D-2.

“Health care provider” means a Hawaii health care facility, physician, nurse, or any other provider of health care services covered by an entity.”

SECTION 106. Section 431:13-201, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Any person aggrieved by an order of the commissioner under this section [431:13-201] may obtain judicial review of the order in the manner provided for by chapter 91.”

SECTION 107. Section 431:13-203, Hawaii Revised Statutes, is amended to read as follows:

“§431:13-203 [~~Regulations.~~] Rules. The commissioner may [~~promulgate~~] adopt reasonable rules [~~and regulations~~] in accordance with chapter 91, as are

necessary or proper to identify specific methods of competition or acts or practices which are prohibited by section 431:13-103 or [section] 431:13-104, but the [regulations] rules shall not enlarge upon or extend the provisions of section 431:13-103 or [section] 431:13-104.”

SECTION 108. Section 431:15-308, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) All policies, other than life or accident and health or sickness insurance or annuities, in effect at the time of issuance of an order of liquidation shall continue in force only for the lesser of:

- (1) A period of thirty days from the date of entry of the liquidation orders;
- (2) The expiration of the policy coverage;
- (3) The date when the insured has replaced the insurance coverage with equivalent insurance in another insurer or otherwise terminated the policy; or
- (4) The liquidator has effected a transfer of the policy obligation pursuant to section 431:15-310(a)(8).”

2. By amending subsection (c) to read:

“(c) Policies of life or accident and health or sickness insurance or annuities shall continue in force for such period and under such terms as is provided for by any applicable guaranty fund or association, or foreign guaranty fund or association. Policies of life or accident and health or sickness insurance or annuities or any period or coverage of such policies not covered by a guaranty fund or association or foreign guaranty fund or association shall terminate under subsections (a) and (b).”

SECTION 109. Section 431:15-311, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the court otherwise directs, the liquidator shall give or cause to be given notice of the liquidation order as soon as possible by:

- (1) First class mail and [~~either~~] by telegram [~~or~~], telephone, or other electronic communication to the commissioner of each jurisdiction in which the insurer is doing business;
- (2) First class mail to any guaranty association or foreign guaranty association who is or may become obligated as a result of the liquidation;
- (3) First class mail to all insurance producers of the insurer;
- (4) First class mail to all persons known or reasonably expected to have claims against the insurer including all policyholders, at their last known address as indicated by the records of the insurer; and
- (5) Publication in a newspaper of general circulation in the county in which the insurer has its principal place of business and in such other locations as the liquidator deems appropriate.”

SECTION 110. Section 431:15-324, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The liquidator’s proposal, with respect to an insolvent insurer writing life or accident and health or sickness insurance or annuities, shall provide for disbursements of assets to any guaranty fund or association, or any foreign guaranty fund or association covering life or accident and health or sickness insurance or annuities or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the acts creating such funds or associations.”

SECTION 111. 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 apply to the following:

- (1) Life, annuity, or accident and health or sickness 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 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;
- (8) Any transaction or combination of transactions between a person (including affiliates of the person) and an insurer (including affiliates of the insurer) 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 112. Section 431:16-115, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The amount of and reason for any surcharge shall be separately stated on any billing sent an insured. The surcharge shall not be considered premiums for any other purpose, including the computation of gross premium tax or the determination of [agents’] producer commissions.”

SECTION 113. Section 431:16-203, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) This part shall provide coverage, for the policies and contracts specified in subsection (b) to:

- (1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under [item] paragraph (2)[;]; and
- (2) Persons who are owners of or certificate holders under such policies or contracts and who:
 - (A) Are residents[;]; or
 - (B) Are not residents, but only under all of the following conditions:
 - (i) The insurers which issued such policies or contracts are domiciled in this State[;];
 - (ii) Such insurers never held a license or certificate of authority in the states in which such persons reside[;];
 - (iii) Such states have associations similar to the association created by this part[;]; and
 - (iv) Such persons are not eligible for coverage by such associations.

- (b)(1) This part shall provide coverage to the persons specified in subsection (a) for direct, nongroup life, accident and health or sickness, annuity, ~~and~~ supplemental policies or contracts, and for certificates under direct group policies and contracts, except as limited by this part[-];
- (2) This part shall not provide coverage for:
 - (A) Any portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;
 - (B) Any policy or contract of reinsurance, unless assumption certificates have been issued;
 - (C) Any portion of a policy or contract to the extent that the rate of interest on which it is based:
 - (i) Averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and
 - (ii) On or after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;
 - (D) Any plan or program of an employer, association, or similar entity to provide life, accident and health or sickness, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:
 - (i) A Multiple Employer Welfare Arrangement as defined in section 514 of the Employee Retirement Income Security Act of 1974, as amended;
 - (ii) A minimum premium group insurance plan;
 - (iii) A stop-loss group insurance plan; or
 - (iv) An administrative services only contract;
 - (E) Any portion of a policy or contract to the extent that it provides dividends or experience rating credits, or provides that any fees or allowances be paid to any person, including the policy or contract holder, in connection with the service to or administration of such policy or contract;
 - (F) Any policy or contract issued in this State by a member insurer at a time when it was not licensed or did not have a certificate of authority to issue such policy or contract in this State; and
 - (G) Any annuity contract or group annuity certificate which is not issued to or owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under such contract or certificate."

SECTION 114. Section 431:16-218, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No person, including an insurer, and ~~[an agent]~~ a producer or affiliate of an insurer, shall make, publish, disseminate, circulate, or place before the public, or cause directly or indirectly, to be made, published, disseminated, circulated, or

placed before the public, in any newspaper, magazine, or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, which uses the existence of the Hawaii Life and Disability Insurance Guaranty Association of this State for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by the Hawaii Life and Disability Insurance Guaranty Association Act. This section shall not apply to the Hawaii Life and Disability Insurance Guaranty Association or any other entity which does not sell or solicit insurance.”

SECTION 115. Section 431:19-106.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(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 insurer 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] or merger, and the name of the agent for service of process of the converted or surviving reciprocal insurer.”

SECTION 116. Section 431:19-107, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Each captive insurance company other than a class 3 captive insurance company shall submit to the commissioner [~~a statement of~~] financial statements reporting the financial condition and the results of operations of the insurer written according to generally accepted accounting principles, or other comprehensive basis of accounting as may be deemed appropriate by the commissioner, and audited by an independent certified public accountant, or other qualified professional as deemed appropriate by the commissioner, on or before the last day of the sixth month following the end of the company’s fiscal year.

(b) Each 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; and

(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~~] captive insurance company 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 company shall not be required to file risk-based capital reports with the National Association of Insurance Commissioners.”

SECTION 117. Section 431:20-103, Hawaii Revised Statutes, is amended to read as follows:

“**§431:20-103 General insurance law applicable.** The following provisions shall apply to title insurance and to title insurers:

- (1) [Section] Sections 431:1-103 and [section] 431:1-105;
- (2) [Section] Sections 431:1-212, [section] 431:1-213, and [section] 431:1-214;
- (3) [Section] Sections 431:2-101 to [section] 431:2-106, and section³ sections 431:2-108 to [section] 431:2-110;
- (4) [Section] Sections 431:2-201 to [section] 431:2-204, and section³ sections 431:2-207 to [section] 431:2-212;
- (5) [Section] Sections 431:2-302, [section] 431:2-303, [section] 431:2-305, and [section] 431:2-306;
- (6) [Section] Sections 431:3-101 to [section] 431:3-105;
- (7) [Section] Sections 431:3-201 to [section] 431:3-203, [section] 431:3-205, [section] and 431:3-206, and section³ sections 431:3-209 to [section] 431:3-220;
- (8) [Section] Sections 431:3-301, [section] 431:3-305, [section] 431:3-307, and [section] 431:3-308;
- (9) [Section] Sections 431:4-102 to [section] 431:4-127;
- (10) [Section] Sections 431:4-202 to [section] 431:4-207;
- (11) Section 431:5-101;
- (12) [Section] Sections 431:5-201 to [section] 431:5-203;
- (13) [Section] Sections 431:5-305[-] and [section] 431:5-306, and section³ sections 431:5-308 to [section] 431:5-311;
- (14) Article 6;
- (15) Article 7;
- (16) Article 9;
- (17) (16) Article 9A;
- (18) (17) [Section] Sections 431:10-211, [section] 431:10-216 to [section] 431:10-218, [section] and 431:10-220, [section] 431:10-221, [section] and 431:10-224, [section] 431:10-225, and section³ sections 431:10-235 to [section] 431:10-238;
- (19) (18) Article 13; and
- (20) (19) Article 15.”

SECTION 118. Section 431:21-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The board of directors shall have responsibility and control over the organization, management, policies, and activities of the association. The board of directors of the association shall consist of twelve persons serving terms as established in the plan of operation. The board shall be composed of:

- (1) Eight voting members selected by the member insurers;
- (2) One voting member appointed by the commissioner to represent insurance [agents;] producers; and

- (3) Three voting members appointed by the commissioner to represent the public.”

SECTION 119. Section 431:21-106, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The plan of operation shall:

- (1) Establish procedures for performance of all the powers and duties of the association under section 431:21-105;
- (2) Establish maximum limits of liability to be placed through the association;
- (3) Establish reasonable underwriting standards for determining insurability of a risk which are comparable to the standards used to determine insurability of a risk located outside the area designated by the commissioner as eligible for association coverage;
- (4) Establish a schedule of deductibles, if appropriate;
- (5) Establish the commission to be paid to licensed producers;
- (6) Establish the rates to be charged for the insurance coverages, so that the total premium income from all association policies, when combined with the investment income, shall annually fund the administration of the association. The administration of the association shall include the expenses incurred in processing applications, conducting inspections, issuing and servicing policies, paying commissions, and paying claims, but shall not include assessments approved by the commissioner;
- (7) Establish the manner and scope of the inspection and the form of the inspection report. The inspection guidelines may include setting minimum conditions the property must meet before an inspection is required;
- (8) Establish procedures whereby selections for the board of directors will be submitted to the commissioner for the commissioner’s information;
- (9) Establish procedures for records to be kept of all financial transactions of the association, its [agents,] producers, and its board of directors;
- (10) Establish procedures by which applications will be received and serviced by the association;
- (11) Establish guidelines for the investigation and payment of claims; and
- (12) Establish procedures whereby the association may assume and cede reinsurance on risks written through the association.”

SECTION 120. Section 431M-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431M-2]~~ **Policy coverage.** All individual and group accident and health or sickness insurance policies issued in this State, individual or group hospital or medical service plan contracts, and nonprofit mutual benefit association and health maintenance organization health plan contracts shall include within their hospital and medical coverage the benefits of alcohol dependence, drug dependence, and mental illness treatment services provided in section 431M-4 except that this section shall not apply to insurance policies that are issued solely for single diseases, or otherwise limited, specialized coverage.”

SECTION 121. 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~~ March 1 in each year, a statement under oath, and in such form and detail as the commissioner shall prescribe; provided that any association or society orga-

nized 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. Each mutual benefit society 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. 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.] March 1.'

SECTION 122. Section 432:1-604, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]§432:1-604[.]~~ **In vitro fertilization procedure coverage.** (a) All individual and group hospital or medical service plan contracts which provide pregnancy-related benefits shall include in addition to any other benefits for treating infertility, a one-time only benefit for all outpatient expenses arising from in vitro fertilization procedures performed on the subscriber or member or the subscriber's or member's dependent spouse; provided that:

- (1) Benefits under this section shall be provided to the same extent as the benefits provided for other pregnancy-related benefits;
- (2) The patient is a subscriber or member or covered dependent of the subscriber or member;
- (3) The patient's oocytes are fertilized with the patient's spouse's sperm;
- (4) The:
 - (A) Patient and the patient's spouse have a history of infertility of at least five years' duration; or
 - (B) Infertility is associated with one or more of the following medical conditions:
 - (i) Endometriosis;
 - (ii) Exposure in utero to diethylstilbestrol, commonly known as DES;

- (iii) Blockage of, or surgical removal of, one or both fallopian tubes (lateral or bilateral salpingectomy); or
 - (iv) Abnormal male factors contributing to the infertility[-];
- (5) The patient has been unable to attain a successful pregnancy through other applicable infertility treatments for which coverage is available under the contract; and
- (6) The in vitro fertilization procedures are performed at medical facilities that conform to the American College of Obstetric and Gynecology guidelines for in vitro fertilization clinics or to the American [Fertility] Society for Reproductive Medicine minimal standards for programs of in vitro fertilization.

[~~(7) The~~] (b) For the purposes of this section, the term "spouse" means a person who is lawfully married to the patient under the laws of the State.

(c) The requirements of this section shall apply to all hospital or medical service plan contracts delivered or issued for delivery in this State after June 26, 1987."

SECTION 123. Section 432:2-609, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Fraternal benefit society producers shall be licensed in accordance with the provisions governing producers in article 9A of chapter 431, except that the appointment shall be made by the fraternal benefit society. Fraternal benefit society producers are not prohibited from obtaining additional licenses provided for in article [9A.] 9. No examination shall be required of an individual licensed to represent a fraternal benefit society prior to July 1, 1988."

2. By amending subsection (c) to read:

"(c) Any producer, representative, or member of a society who devotes, or intends to devote, less than fifty per cent of [~~such~~⁵ person's] one's time to the solicitation and procurement of insurance contracts for such⁶ society shall be exempt from the requirements of subsection (a). Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of \$50,000, or, in the case of any other kind or kinds of insurance which the society might write, on the persons of more than twenty-five individuals and who has received or will receive a commission or other compensation therefor, shall be presumed to be devoting, or intending to devote, fifty per cent of the person's time to the solicitation or procurement of insurance contracts for such society."

SECTION 124. Section 432C-1, Hawaii Revised Statutes, is amended by amending the definition of "nonprofit entity" to read as follows:

"~~"Nonprofit entity"~~ means any charitable organization operating pursuant to Title 26 United States Code section 501(c)(3), (4), (8), (9), (26), or [~~(e)~~] 501(e), and whose primary purpose is to provide accident and health or sickness insurance coverage or any type of accident and health or sickness insurance benefits to its members or the public."

SECTION 125. 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 [~~April 30,~~] March 1, a report verified by at least two principal officers 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. These reports shall

comply with sections 431:3-301 and 431:3-302. The commissioner may prescribe 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 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 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 ~~April 30;~~ March 1; 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 ~~April 30;~~ March 1."

SECTION 126. 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]~~ may be considered ~~[as]~~ admitted assets in determination of net worth; provided that these investments are in compliance with article 6 of chapter 431."

SECTION 127. Section 432D-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The deposit required under this section is in addition to the deposit required under section 432D-8 and is an admitted asset of the health maintenance organization in the determination of net worth. All income from the deposits or trust accounts shall be assets of the health maintenance organization and may be withdrawn from the deposit or trust account quarterly with the approval of the commissioner."

SECTION 128. Section 432E-11, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Every mutual benefit society, every health maintenance organization, and every other entity offering or providing health benefits or services under the regulation of the commissioner, except an insurer licensed to offer accident and health or sickness insurance under article 10A of chapter 431, shall deposit with the commissioner a fee to provide for the actual costs of the survey and educational

program to be determined by the commissioner on July 1 of each year, to be credited to the compliance resolution fund.”

SECTION 129. Section 476-8, Hawaii Revised Statutes, is amended to read as follows:

“**§476-8 Insurance provisions.** The amount, if any, charged for insurance, shall not exceed the premiums chargeable in accordance with rate filings made with the commissioner of insurance for similar insurance. The seller or holder, if dual interest insurance on the goods is included in a credit sale contract, and a separate charge is made therefor, shall within thirty days after execution of the credit sale contract send or cause to be sent to the buyer a policy or policies or certificate of insurance, written by an insurance company authorized to do business in this State, clearly setting forth the amount of the premium, the kind or kinds of insurance, and the scope of the coverage and all the terms, exceptions, limitations, restrictions, and conditions of the contract or contracts of insurance. The buyer of goods under a credit sale contract may purchase such insurance from ~~[an agent or broker]~~ a producer of the buyer’s own selection, and in an insurance company of the buyer’s own selection authorized to do business in this State; provided that the seller or holder shall have the right for reasonable cause to disapprove of the insurance company selected by the buyer to underwrite the insurance.

In any credit sale contract for the sale of a motor vehicle where insurance is contracted for as a part of the sale, and the insurance does not include public liability insurance for bodily injury and property damages, the contract shall contain, on the same page as the disclosures therein concerning insurance, a notice substantially similar to the following:

“THIS DOES NOT INCLUDE INSURANCE ON YOUR LIABILITY FOR BODILY INJURY OR PROPERTY DAMAGE. IT DOES NOT MEET THE REQUIREMENTS FOR PROOF OF FINANCIAL RESPONSIBILITY UNDER HAWAII LAW.”

If any such policy or certificate is canceled, the unearned insurance premium refund received by the holder of the contract shall at the option of the holder either be credited to the final maturing installments of the credit sale contract or paid to the buyer, except to the extent applied toward payment for similar insurance protecting the interests of the buyer and holder of the contract or either of them.”

SECTION 130. Section 485-14.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding the requirements of section 485-14, no issuer, dealer, or salesperson shall be required to be registered under this chapter ~~[in order]~~ to be qualified to sell variable annuities; provided the following requirements are met:

- (1) The salesperson is:
 - (A) Appointed by a ~~[general agent]~~ producer who is appointed by a life insurance company admitted to do life insurance and annuity business in this State;
 - (B) Properly licensed by the insurance commissioner to sell life insurance;
 - (C) Properly registered with the National Association of Securities Dealers, Inc. in a category of registration that authorizes the salesperson to sell variable annuities; and
 - (D) Associated with a dealer that is a registered broker/dealer with the Securities and Exchange Commission and a member of the National Association of Securities Dealers, Inc.;

- (2) The dealer is a registered broker/dealer with the Securities and Exchange Commission and a member of the National Association of Securities Dealers, Inc. authorized to sell only variable annuities and other insurance products, and must sell only through a salesperson who satisfies the criteria of paragraph (1);
- (3) The issuer is a life insurance company admitted to do life insurance and annuity business in this State; and
- (4) The issuer and dealer are parent, subsidiary, or related companies through common ownership.”

SECTION 131. Act 39, Session Laws of Hawaii 2002, is amended by amending section 22 to read as follows:

“SECTION 22. This Act shall take effect on July 1, 2002[-]; provided that the amendments made to section 431:2-216 by this Act shall not be repealed when that section is reenacted on June 30, 2003, pursuant to section 11 of Act 243, Session Laws of Hawaii, 2000.”

SECTION 132. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁷

SECTION 133. This Act shall take effect on July 1, 2003.

(Approved June 26, 2003.)

Notes

- 1. Prior to amendment “zero to” appeared here.
- 2. Colon should be underscored.
- 3. Missing brackets.
- 4. “The” should be underscored.
- 5. Prior to amendment “that” appeared here.
- 6. Prior to amendment “the” appeared here. “Such” should be underscored
- 7. Edited pursuant to HRS §23G-16.5.

ACT 213

H.B. NO. 1230

A Bill for an Act Relating to Transportation.

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

PART I

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 transportation for airport and harbor security measures throughout the State’s airports and harbors for fiscal year 2002-2003, a critical funding emergency now exists. The program will expend all appropriated special funds before the end of the current fiscal year and the department will be unable to meet its fiscal obligation to provide the heightened airport and harbor security measures.

The purpose of this Act is to:

- (1) Appropriate additional special fund moneys to allow the airports and harbors divisions to continue to meet the heightened security requirements throughout the airport and harbor systems;
- (2) Appropriate additional funds to the department of transportation for various capital improvement projects; and
- (3) Appropriate funds to reduce the debt service payment for land transportation facilities and support.

SECTION 3. There is appropriated out of the airport special fund of the State of Hawaii the sum of \$5,661,084 or so much thereof as may be necessary for fiscal year 2002-2003 to be expended for security measures at state airports as follows:

<u>TRN 102 Honolulu International Airport</u>	
Security Services	3,658,305
Equipment, rental, and supplies	157,860
<u>TRN 111 Hilo International Airport</u>	
Security Services	481,436
Equipment, rental, and supplies	85,000
<u>TRN 114 Keahole Airport at Kona</u>	
Security Services	338,550
Equipment, rental, and supplies	85,000
<u>TRN 131 Kahului Airport</u>	
Security Services	313,808
Equipment, rental, and supplies	85,000
<u>TRN 141 Molokai Airport</u>	
Security Services	104,108
Equipment, rental, and supplies	18,000
<u>TRN 151 Lanai Airport</u>	
Security Services	103,917
Equipment, rental, and supplies	18,000
<u>TRN 161 Lihue Airport</u>	
Security Services	127,100
Equipment, rental, and supplies	85,000

provided that any funds unexpended for this purpose shall lapse to the airport special fund.

SECTION 4. There is appropriated out of the harbor special fund of the State of Hawaii the sum or \$2,300,000 or so much thereof as may be necessary for fiscal year 2002-2003 to be expended to continue the heightened harbor security throughout the various state harbor locations as follows:

<u>TRN 395 Harbor Administration</u>	
Statewide Security Services	2,300,000

provided that any funds unexpended for this purpose shall lapse to the harbor special fund.

SECTION 5. There is appropriated out of the harbor special fund of the State of Hawaii for Honolulu harbor (TRN 301) the following sums for fiscal year 2003-2004 for capital improvement projects:

1. J32 Snug Harbor Relocation, Honolulu Harbor, Oahu

Plans for the relocation of facilities at Snug Harbor and other related improvements.

Plans		350,000 ¹
Total Funding	TRN	350,000 ¹ B

2. J33 Kapalama Container Terminal Land Acquisition, Oahu

Land acquisition for the development of a new container facility and other related improvements.

Land		8,191,000 ¹
Total Funding	TRN	8,191,000 ¹ B

SECTION 6. There is appropriated out of the highway revenue bond funds and federal funds of the State of Hawaii for Oahu highways (HWY 501) the following sums for fiscal year 2003-2004 for capital improvement projects:

1. S269 Kamehameha Highway, South Punaluu Bridge Replacement, Oahu

Construction for replacement of South Punaluu bridge. This project is deemed necessary to qualify for Federal aid financing and/or reimbursement.

Construction		12,250,000 ¹
Total Funding	TRN	2,450,000 ¹ E 9,800,000 ¹ N

2. S271 Interstate Route H-1 and Moanalua Freeways Improvements, Puuloa IC to Kapiolani IC, Oahu

Construction for an additional lane on the H-1 freeway eastbound lanes from the vicinity of Middle street to the vicinity of Vineyard boulevard. This project is deemed necessary to qualify for Federal aid financing and/or reimbursement.

Construction		6,500,000 ¹
Total Funding	TRN	1,300,000 ¹ E 5,200,000 ¹ N

3. S323 Interstate Route H-1, Additional Westbound Lane, Vicinity of Pearl City Viaduct to Paiwa IC, Oahu

Design for construction of an additional H-1 west bound lane through the Waiawa interchange and an additional lane to the off-ramp at the Paiwa interchange. This project is deemed necessary to qualify for Federal aid financing and/or reimbursement.

Design		2,500,000 ¹
Total Funding	TRN	500,000 ¹ E 2,000,000 ¹ N

4. SP9901 Fort Weaver Road Widening, Vicinity of Laulaunui Street to Geiger Road, Oahu

Construction for widening of Fort Weaver road to a six-lane facility from the vicinity of Laulaunui street to the vicinity of Geiger road, including installing a traffic camera system from Waipahu street to Papipi road. This project is deemed necessary to qualify for Federal aid financing and/or reimbursement.

Construction		15,000,000 ¹
Total Funding	TRN	3,000,000 ¹ E 12,000,000 ¹ N

5. S324 Farrington Highway, Maipalaoa Bridge Replacement, Oahu

Design for replacement of a prestressed tee-beam bridge on Farrington highway in the vicinity of Mai'iili. This project is deemed necessary to qualify for Federal aid financing and/or reimbursement.

Land		350,000 ¹
Design		2,000,000 ¹
Construction		10,250,000 ¹
Total Funding	TRN	2,520,000 ¹ E
		10,080,000 ¹ N

SECTION 7. There is appropriated out of the highway other funds of the State of Hawaii for Oahu highways (HWY 501) the following sum for fiscal year 2003-2004 for a capital improvement project:

- James Campbell Estate Property Land Acquisition, Kalaeloa Barbers Point, Oahu

Land acquisition of James Campbell Estate property for future expansion of roadways at Kalaeloa Barbers Point.

Land		2,700,000 ¹
Total Funding	TRN	2,700,000 ¹ X

SECTION 8. There is appropriated out of the airport special fund of the State of Hawaii the sum of \$20,885,201¹ or so much thereof as may be necessary for fiscal year 2003-2004 to be expended for additional positions, security services, equipment, rental, and supplies at state airports as follows:

TRN 102 Honolulu International Airport

Position Count		2.00
Security Services		8,344,720 ¹
Equipment, rental, and supplies		6,288,800 ¹

TRN 111 Hilo International Airport

Security Services		1,925,746 ¹
Equipment, rental, and supplies		85,000 ¹

TRN 114 Keahole Airport at Kona

Security Services		1,354,200 ¹
Equipment, rental, and supplies		85,000 ¹

TRN 131 Kahului Airport

Position Count		1.00
Security Services		1,255,234 ¹
Equipment, rental, and supplies		85,000 ¹

TRN 141 Molokai Airport

Security Services		416,431 ¹
Equipment, rental, and supplies		18,000 ¹

TRN 151 Lanai Airport

Security Services		415,670 ¹
Equipment, rental, and supplies		18,000 ¹

TRN 161 Lihue Airport

Security Services		508,400 ¹
Equipment, rental, and supplies		85,000 ¹

Airports Administration (TRN 195)

Position Count		1.00
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provided that any funds unexpended for this purpose shall lapse to the airport special fund.

SECTION 9. There is appropriated out of the harbor special fund of the State of Hawaii the sum or \$5,981,676¹ or so much thereof as may be necessary for fiscal year 2003-2004 to be expended for security services and fringe benefits throughout the various state harbor locations as follows:

Honolulu Harbor (TRN 301)

Security Services	582,400 ¹
Add Fringe Benefits	536,869 ¹

Harbor Administration (TRN 395)

Security Services – Statewide	4,600,000 ¹
Add Fringe Benefits	262,407 ¹

provided that any funds unexpended for this purpose shall lapse to the harbor special fund.

SECTION 10. Due to the refinancing of revenue bonds and other cost savings to debt service payments for highways division, the following sum shall be used to reduced the total debt service payment for fiscal year 2003-2004 for the following:

Land Transportation Facilities and Support (TRN 595)

Reduce Debt Service Payments	(4,067,783) ¹
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SECTION 11. For the fiscal biennium 2003-2005, where the department of transportation is authorized to expend from special funds under the department's control, the department may expend so much as may be necessary in excess of the sums appropriated by the legislature to carry out the purpose for which the funds were appropriated; provided that such expenditures in excess of the amounts appropriated by the legislature are approved by the governor or by the director of finance if so delegated by the governor, and shall not exceed the amounts available in the respective special fund from which the appropriation is made. A report on all expenditures made pursuant to this Act shall be transmitted to the legislature not later than twenty days prior to the convening of the 2004 regular session.

SECTION 12. The sums appropriated shall be expended by the department of transportation for the purposes of this Part.

PART II

SECTION 13. Title 49 United States Code section 40117 and 14 Code of Federal Regulation Part 158 prohibit expenditure of passenger facility charge revenue for other than approved projects. The Federal Aviation Administration considers any transfer of the passenger facility charges to reimburse administrative expenses or to the works of art special fund to be revenue diversion. Therefore, passenger facility charges revenue needs to be exempt from the requirements of the reimbursement for central service expenses and the works of art special fund.

SECTION 14. Chapter 261, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§261- **Passenger facility charge revenue fund.** (a) There is established in the state treasury the passenger facility charge revenue fund, into which shall be deposited all proceeds from any passenger facility charge.

(b) Moneys in the passenger facility charge revenue fund shall be used for airport capital improvement program projects approved by the legislature.

(c) The passenger facility charge revenue fund is exempted from section 36-30.

(d) The passenger facility charge revenue fund is exempted from section 103-8.5.

(e) The director of transportation shall administer the passenger facility charge revenue fund.”

SECTION 15. 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 out-of-school time instructional program 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 enterprise special fund established under section 201B-8;
- (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 under section 231-3.2;
- (20) Hawaii tobacco settlement special fund under section 328L-2;
- (21) Emergency and budget reserve fund under section 328L-3;
- (22) Probation services special fund under section 706-649;
- (23) High technology special fund under section 206M-15.5;
- (24) Public schools special fees and charges fund under section 302A-1130(f);
- (25) Cigarette tax stamp enforcement special fund established by section 28-14;
- (26) Cigarette tax stamp administrative special fund established by section 245-41.5;
- (27) Tobacco enforcement special fund established by section 28-15;
- (28) Sport fish special fund under section 187A-9.5; [and]
- (29) Neurotrauma special fund under section 321H-4; and
- (30) Passenger facility charge revenue fund established by section 261- ;

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 16. Section 103-8.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is created a works of art special fund, into which shall be transferred one per cent of all state fund appropriations for capital improvements designated for the construction cost element; provided that this transfer shall apply only to capital improvement appropriations that are designated for the construction or renovation of state buildings. The one per cent transfer requirement shall not apply to appropriations from the passenger facility charge revenue fund established by section 261-”

PART III

SECTION 17. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 18. This Act shall take effect on July 1, 2003; provided that sections 3, 4, 13, 14, 15, and 16 shall take effect upon approval.

(Approved June 26, 2003.)

Notes

1. Item vetoed, replaced with “0”, and initialed “LL”.
2. Edited pursuant to HRS §23G-16.5.

ACT 214

S.B. NO. 58

A Bill for an Act Relating to School Repair and Maintenance.

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

SECTION 1. The legislature finds that the backlog of repair and maintenance projects in public schools continues to be of concern and that all means of addressing the problem should be explored and supported.

The twenty-first legislature, in Act 309, Session Laws of Hawaii 2001, laid the foundation for Hawaii 3R’s, a project of the private, nonprofit organization, Helping Hands Hawaii.

The legislature finds that Hawaii 3R’s has saved the State money by leveraging funds with volunteerism or “sweat equity.” Through remarkable community support, federal funds, private donations, and state grant funds, repair and maintenance projects estimated to cost \$2,885,000 have been completed or are in progress. Of the \$1,000,000 in state grant funds appropriated for Hawaii 3R’s for the biennium ending June 30, 2003, \$625,000 has been expended thus far by Hawaii 3R’s. This means that for every state dollar expended, over four and one-half dollars worth of work is completed. Or, in terms of savings, the State has saved over \$2,200,000 in repair and maintenance costs. It is also noteworthy that Hawaii 3R’s has statewide reach, with thirty-eight grants awarded on the islands of Oahu, Maui, Molokai, Kauai, and Hawaii.

The legislature also finds that the public-private partnership between the State and Hawaii 3R’s is effective and essential to the success of the program. Specifically, the legislature finds that the coordinator position within the department of accounting and general services provides Hawaii 3R’s with expertise, support, quick response, and access to state resources and information. The coordinator position also adds visibility and positive coverage to the efforts of the State.

The legislature acknowledges that Hawaii 3R's also has built a partnership with the military's Joint Venture Education Forum. This relationship benefits not only military-impacted or dependent schools but all of Hawaii's public schools through increased military partnerships. Through Joint Venture Education Forum (i.e., federal) funding, Hawaii 3R's can provide grants to over one hundred military-impacted, dependent, partnered schools.

The legislature understands that it is necessary to maintain the current level of state funding to reach those estimated one hundred fifty public schools that cannot receive grants through Joint Venture Education Forum funding.

The legislature is encouraged by the level of support that the community has given to Hawaii 3R's and, more importantly, the public schools. Skilled and unskilled volunteer labor from the military, civic clubs, churches, teachers, parents, and students, combined with donations from community restaurants and businesses, have made Hawaii 3R's successful. Also, trade unions and associations have been lending invaluable support. Hawaii 3R's, with the assistance of the department of accounting and general services and the community, has created a truly successful public-private partnership.

While Hawaii 3R's has been a project of Helping Hands Hawaii, it has developed the expertise to carry out its operations as an independent entity. Hawaii 3R's has applied to the Internal Revenue Service for designation as a qualified nonprofit organization under section 501(c)(3) of the Internal Revenue Code. The receipt of qualified nonprofit status would enable Hawaii 3R's to receive state, federal, and private funds through grants and contributions. The Internal Revenue Service is expected to make its determination regarding Hawaii 3R's nonprofit status by spring 2003.

Given the uncertainty as to when the Internal Revenue Service will make its determination regarding Hawaii 3R's nonprofit status, the legislature believes that to ensure the continuity of services provided by Helping Hands Hawaii and Hawaii 3R's, moneys must be appropriated to Helping Hands Hawaii for fiscal years 2003-2004 and 2004-2005 to address school repair and maintenance projects. However, upon the Internal Revenue Service's determination that Hawaii 3R's is a qualified nonprofit organization under section 501(c)(3) of the Internal Revenue Code, the legislature directs Helping Hands Hawaii to transfer to Hawaii 3R's all unencumbered and unexpended moneys in the Hawaii 3R's school repair and maintenance fund. In addition, all appropriations made to Helping Hands Hawaii shall be transferred to Hawaii 3R's at that time. After such transfers have been made, the Hawaii school repair and maintenance fund shall be repealed to avoid the possibility of confusion that public and private donors may have given the establishment of the Hawaii 3R's school repair and maintenance fund.

Accordingly, the purpose of this Act is to improve public education facilities by:

- (1) Establishing the Hawaii 3R's school repair and maintenance fund;
- (2) Appropriating state funds to Helping Hands Hawaii; and
- (3) Providing a position and funds for the department of accounting and general services to coordinate public and private efforts to repair and maintain public schools.

Also, upon the determination that Hawaii 3R's is a qualified nonprofit organization, all moneys, appropriations, books, records, and property of Helping Hands Hawaii relating to its project, Hawaii 3R's, shall be transferred to Hawaii 3R's. After the transfer of moneys to Hawaii 3R's, the Hawaii school repair and maintenance fund shall be repealed. The legislature finds that these actions further the public-private efforts to repair and maintain Hawaii's public schools.

Finally, the legislature finds that appropriating public funds to Helping Hands Hawaii and Hawaii 3R's serves the public purpose of expediting the repair and maintenance of Hawaii's public schools.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Hawaii 3R's school repair and maintenance fund. (a) There is established the Hawaii 3R's school repair and maintenance fund (hereinafter, “fund”) as a separate fund of Hawaii 3R's, a Hawaii nonprofit organization. Moneys received from the State, county, or federal government, private contributions of cash or other property, and the income and capital gains earned by the fund shall constitute its assets.

(b) Hawaii 3R's shall expend moneys from the fund in the form of either grants to organizations or contracts with private vendors for the repair and maintenance of public schools in Hawaii in accordance with this section.

(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources, including corporations or other businesses, foundations, government, individuals, and other interested parties. The legislature intends that public and private sectors review and investigate all potential funding sources. The State may appropriate moneys to the fund; provided that any appropriations made by the State are not intended to supplant the funding of any existing school-level minor repairs and maintenance programs, including school-level minor repairs and maintenance accounts established under section 302A-1504.

(d) Hawaii 3R's shall appoint the members of the Hawaii 3R's school maintenance and repair advisory board, which shall be responsible for:

- (1) Soliciting and otherwise raising funds for the fund;
- (2) Establishing criteria for the expenditure of funds;
- (3) Reviewing grant proposals using criteria established by Hawaii 3R's; and
- (4) Making recommendations for grants and other specific expenditures.

Members of the advisory board shall be stakeholders in Hawaii's public educational system, including students, parents, alumni, principals, community and business leaders, and representatives from the department of education and the department of accounting and general services, who shall be represented on the advisory board.

(e) In managing the moneys in the fund, Hawaii 3R's shall exercise ordinary business care and prudence given the facts and circumstances prevailing at the time of action or decision. In doing so, Hawaii 3R's shall consider its long- and short-term needs in carrying out its purposes, its present and anticipated financial requirements, expected total return on its investments, price trends, and general economic conditions.

(f) There may be an endowment component of the fund, and Hawaii 3R's may accumulate net income and add the same to the principal.

(g) The use of any state moneys may be restricted by the legislation appropriating these moneys to the fund.

(h) Hawaii 3R's may expend principal from the fund for the purposes of the fund.

(i) Any organization submitting a proposal to Hawaii 3R's for moneys shall meet the following standards at the time of application:

- (1) Be a for-profit organization duly registered under the laws of the State, or be a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax, or be an agency of the State or a county;

- (2) In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation;
- (3) In the case of an applicant that is not a state or county government agency, have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of a potential situation involving a conflict of interest;
- (4) Have experience with the project or in the program area for which the proposal is being made; and
- (5) Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments.

(j) All proposals submitted to Hawaii 3R's for moneys shall be approved by the department of accounting and general services for consistency in meeting design and materials standards for public schools.

(k) Organizations or agencies to which moneys are awarded shall agree to comply with the following conditions before receiving the award:

- (1) Use persons qualified to engage in the activity to be funded;
- (2) Comply with the applicable federal, state, and county laws; and
- (3) Comply with any other requirements prescribed by Hawaii 3R's to ensure adherence by the recipient of the award with applicable federal, state, and county laws and with the purposes of this section.

(l) Chapter 103D shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that Hawaii 3R's shall be held accountable for the use of the funds under a contract with the department of accounting and general services.

(m) Any contract awarded by Hawaii 3R's shall be made with as much competition as is practical to execute its purposes.

(n) The fund shall be audited annually by an independent auditor. The results of each annual audit shall be submitted to the department of accounting and general services not later than thirty days from the date Hawaii 3R's receives the audit results. In addition, Hawaii 3R's shall retain for a period of three years and permit the department of accounting and general services, the department of education, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to any documents, papers, books, records and other evidence that is pertinent to the fund.

(o) The fund shall not be placed in the state treasury, and the State shall not administer the fund, nor shall the State be liable for the operation or solvency of the fund or Hawaii 3R's.

(p) For every dollar of state moneys granted by the fund to the project, there shall be a minimum of \$1 in value matched by Hawaii 3R's from private, federal, county, or community service.

(q) The state comptroller shall submit an annual report of the progress of the Hawaii 3R's school repair and maintenance fund no later than twenty days prior to the convening of each regular session of the legislature."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$148,688, or so much thereof as may be necessary for fiscal year 2003-2004 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Helping Hands Hawaii for the Hawaii school repair and maintenance fund; provided that upon the Internal Revenue Service's determination that Hawaii 3R's is a qualified nonprofit organization under section 501(c)(3) of the Internal Revenue Code, Helping Hands Hawaii shall transfer to Hawaii 3R's all appropriations made to Helping Hands Hawaii.

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 \$51,312¹, or so much thereof as may be necessary for fiscal year 2003-2004 for a position within the department of accounting and general services to coordinate the public and private efforts to repair and maintain public schools; provided that the coordinator shall serve at the pleasure of the comptroller; and provided further that chapter 76, Hawaii Revised Statutes, shall not apply to any action taken by the comptroller pursuant to this Act.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this section.

SECTION 5. Upon the Internal Revenue Service's determination that Hawaii 3R's is a qualified nonprofit organization under section 501(c)(3) of the Internal Revenue Code, Act 309, Session Laws of Hawaii 2001, is amended by repealing section 3.

~~[“SECTION 3. **Hawaii school repair and maintenance fund.** (a) There is established the Hawaii school repair and maintenance fund (hereinafter, “fund”) as a separate fund of Helping Hands Hawaii, a Hawaii nonprofit organization. Moneys received from the state, county, or federal government, private contributions of cash or other property, and the income and capital gains earned by the fund shall constitute its assets.~~

~~(b) Helping Hands Hawaii shall expend moneys in the form of either grants to organizations or contracts with private vendors from the fund for the repair and maintenance of public schools in Hawaii in accordance with this section.~~

~~(c) The fund may receive contributions, grants, endowments, or gifts in cash or otherwise from all sources, including corporations or other businesses, foundations, government, individuals, and other interested parties. The legislature intends that the public and private sectors work together as partners in securing contributions for the fund, and that Helping Hands Hawaii, through its project, Hawaii 3R's, assist the public and private sectors in reviewing and investigating all potential funding sources. The State may appropriate moneys to the fund; provided that any appropriations made by the State are not intended to supplant the funding of any existing public school repair and maintenance programs, including school-level minor repairs and maintenance accounts established under section 302A-1504, Hawaii Revised Statutes.~~

~~(d) Helping Hands Hawaii shall appoint the members of the Hawaii school maintenance and repair advisory board, which shall be responsible for:~~

- ~~(1) Soliciting and otherwise raising funds for the fund;~~
- ~~(2) Establishing criteria for the expenditure of funds;~~
- ~~(3) Reviewing grant proposals utilizing criteria established by Helping Hands Hawaii; and~~
- ~~(4) Making recommendations for grants and other specific expenditures.~~

~~Members of the advisory board shall be stakeholders in Hawaii's public educational system, including students, parents, alumni, principals, community and business leaders, and representatives from the department of education and the department of accounting and general services, who shall be represented on the advisory board.~~

~~(e) The aggregate principal sum deposited in the fund, and any income and capital gains earned by the fund but not expended for administration, shall be invested in accordance with the provisions of Helping Hands Hawaii in a manner intended to maximize the rate of return on investment of the fund.~~

~~(f) There may be an endowment component of the funds~~

(g) ~~The use of any state moneys may be restricted by the legislation appropriating these moneys to the fund.~~

(h) ~~Helping Hands Hawaii is authorized to expend the principal from the fund for the purposes of the fund.~~

(i) ~~Any organization submitting a proposal to Helping Hands Hawaii for fund moneys shall meet all of the following standards at the time of application:~~

- (1) ~~Be a for-profit organization duly registered under the laws of the State, or be a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax, or be an agency of the State or a county;~~
- (2) ~~In the case of a nonprofit organization, have a governing board whose members have no material conflict of interest and serve without compensation;~~
- (3) ~~In the case of an applicant that is not a state or county government agency, have bylaws or policies that describe the manner in which business is conducted and policies that relate to the management of potential conflict of interest situations;~~
- (4) ~~Have experience with the project or in the program area for which the proposal is being made; and~~
- (5) ~~Be licensed and accredited, as applicable, in accordance with the requirements of federal, state, and county governments.~~

(j) ~~All proposals submitted to Helping Hands Hawaii for fund moneys shall be approved by the department of accounting and general services for consistency in meeting design and materials standards for public schools.~~

(k) ~~Organizations or agencies to which fund moneys are awarded shall agree to comply with the following conditions before receiving the award:~~

- (1) ~~Employ or have under contract persons qualified to engage in the activity to be funded;~~
- (2) ~~Comply with applicable federal, state, and county laws; and~~
- (3) ~~Comply with any other requirements prescribed by Helping Hands Hawaii to ensure adherence by the recipient of the award with applicable federal, state, and county laws and with the purposes of this section.~~

(l) ~~Chapter 103D, Hawaii Revised Statutes, shall not apply to organizations or agencies that apply for grants or contracts under this section; provided that Helping Hands Hawaii shall be held accountable for the use of the funds under a contract with the department of accounting and general services.~~

(m) ~~Any contracts awarded by Helping Hands Hawaii shall be made under as much competition as is practical to execute its purposes.~~

(n) ~~The fund shall be audited annually by an independent auditor. The results of each annual audit shall be submitted to the department of accounting and general services not later than thirty days from the date Helping Hands Hawaii receives the audit results. In addition, Helping Hands Hawaii shall retain for a period of three years and permit the department of accounting and general services, the department of education, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to any documents, papers, books, records, and other evidence that is pertinent to the fund.~~

(o) ~~The fund shall not be placed in the state treasury, and the State shall not administer the fund, nor shall the State be liable for the operation or solvency of the fund, Helping Hands Hawaii, or Hawaii 3R's.~~

(p) ~~For every dollar of state moneys granted by the fund to the project, there shall be a minimum of \$1 in value matched by Helping Hands Hawaii from private, federal, county, or community sources.”]~~

SECTION 6. Upon the Internal Revenue Service's determination that Hawaii 3R's is a nonprofit organization under section 501(c)(3) of the Internal Revenue Code, Helping Hands Hawaii shall transfer to Hawaii 3R's:

- (1) All unencumbered and unexpended moneys in the Hawaii school repair and maintenance fund to the Hawaii 3R's school repair and maintenance fund; and
- (2) All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, and other personal property made, used, developed, acquired, or held by Helping Hands Hawaii, through its project, Hawaii 3R's.

SECTION 7. Upon request of the comptroller, Helping Hands Hawaii shall submit a report to the comptroller, in the form prescribed by the comptroller, accounting for the receipts and disbursements of the Hawaii school repair and maintenance fund and any other information that the comptroller may require.

SECTION 8. After the repeal of the Hawaii school repair and maintenance fund, Helping Hands Hawaii shall submit the results of the annual audit of the Hawaii school repair and maintenance fund to the department of accounting and general services not later than thirty days from the date that Helping Hands Hawaii receives the audit results. Helping Hands Hawaii shall permit the department of accounting and general services, the department of education, state legislators, and the auditor, or their duly authorized representatives, to inspect and have access to any documents, papers, books, records, and other evidence that is pertinent to the Hawaii school repair and maintenance fund.

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. 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 may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefore to the legislature at its next session thereafter for review by the legislature.

SECTION 11. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 12. This Act shall take effect on July 1, 2003.

(Approved June 26, 2003.)

Notes

1. Item vetoed, replaced with "0", and initialed "LL".
2. Edited pursuant to HRS §23G-16.5.

ACT 215¹

S.B. NO. 1305

A Bill for an Act Relating to State Funds.

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

PART I

SECTION 1. The legislature finds that expenditures from the emergency and budget reserve fund established by section 328L-3, Hawaii Revised Statutes, are needed to meet the emergency economic situation currently facing the State. The legislature determines that the moneys are urgently needed to maintain levels of programs that are essential to the public health, safety, and welfare. The legislature further finds that the grants and subsidies under this Act are in the public interest and serve the public health, safety, and welfare.

PART II

SECTION 2. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$90,000, or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Hale Mahaolu for the personal care program for disabled or chronically ill frail adults and elders residing in Maui county.

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

SECTION 3. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000 0² or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, to provide treatment services for child victims of intrafamilial sexual abuse, including psychological treatment and case management services for child victims and their families who are not covered under the child protective services system of the department of human services.

The sum appropriated shall be expended by the judiciary via the children's justice center for the purposes of this Act.

SECTION 4. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$150,000 0², or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for forensic medical examinations of children in foster custody placements.

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

SECTION 5. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$100,000 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii Youth Services Network for its Transitional Living Program for Unserved Street Youth.

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

SECTION 6. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised

Statutes, for substance abuse services for youth and adolescents, including, but not limited to, preventive services, school education programs, counseling, evaluation, treatment, therapy, family services, case management, recovery services, and substance abuse treatment services, and the coordination of such services.

The sum appropriated shall be expended by the department of health, alcohol and drug abuse division, for the purposes of this Act.

SECTION 7. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 2003-2004, for the residential alternative community care program.

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

SECTION 8. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2003-2004, for the chore services program.

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

SECTION 9. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of ~~\$300,000~~ \$150,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the bridge to hope program, including one position for outreach; provided that if federal funds are made available to fund any portion of bridge to hope Temporary Assistance to Needy Families program participant costs, then the sum appropriated by this section shall be reduced by the amount of federal funds received, and the state funds that were replaced by federal funds shall lapse to the emergency and budget reserve fund.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 10. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of ~~\$200,000~~ 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant, pursuant to chapter 42F, Hawaii Revised Statutes, to Volunteer Legal Services Hawaii for its Na Keiki Law Center project focusing on protecting the legal rights of children.

The sum appropriated shall be expended by the office of community services, department of labor and industrial relations for the purposes of this Act.

SECTION 11. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of ~~\$100,000~~ \$50,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to fund the continuation of the Kaneohe Community Family Center's core services, particularly for families that are low income, unemployed, or underemployed and families of at-risk youths. Core services include information and referral, support and self-help, parenting education, family strengthening, job readiness and career development, and community leadership.

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

SECTION 12. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of ~~\$100,000~~ \$50,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter

42F, Hawaii Revised Statutes, to fund the continuation of the Kuhio Park Terrace Family Center's core services to low income individuals and families residing in Kuhio Park Terrace and Kuhio Homes. Core services include:

- (1) Family strengthening activities such as linking families to supportive services, offering parenting classes and parent/child activities, and providing emergency rental assistance;
- (2) Education and life skills support, such as computer and literacy classes and training of volunteers;
- (3) Pre-employment activities; and
- (4) Community improvement through community celebrations.

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

SECTION 13. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$300,000 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the operation of the Waipahu Community Adult Day Health Center and Youth Day Care Center pilot project.

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

SECTION 14. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$150,000 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Domestic Violence Clearinghouse and Legal Hotline for Maui program services.

The sum appropriated shall be expended by the judiciary, circuit court of the second circuit, for the purposes of this Act.

SECTION 15. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$421,000 or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Blueprint for Change for the delivery of diversion services and child protective services to target families, including the establishment of additional sites for neighborhood places.

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

SECTION 16. There is appropriated out of the emergency and budget reserve fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for costs related to homeless assistance.

The sum appropriated shall be expended by the housing and community development corporation of Hawaii for the purposes of this Act.

SECTION 17. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$500,000 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for existing Kalihi area youth service centers; provided that moneys not required by existing Kalihi area youth service centers may be used for other youth service centers in the State.

The sum appropriated shall be expended by the office of youth services for the purposes of this Act.

PART III

SECTION 18. There is appropriated out of the emergency and budget reserve fund the sum of \$750,000 \$700,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to Molokai General Hospital.

SECTION 19. There is appropriated out of the emergency and budget reserve fund the sum of \$50,000 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Molokai General Hospital for Lamalama Ka 'Ili Community Health Services programs and general operating costs.

SECTION 20. There is appropriated out of the emergency and budget reserve fund the sum of \$750,000 \$350,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to Kahuku hospital to fund the costs of emergency room operations, inpatient and outpatient care for the underinsured, medical malpractice insurance, and labor.

SECTION 21. There is appropriated out of the emergency and budget reserve fund the sum of \$750,000 \$675,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to the Waianae Coast Comprehensive Health and Hospital Board, Inc., to fund its operations and programs.

SECTION 22. There is appropriated out of the emergency and budget reserve fund the sum of \$500,000 \$250,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, for Wahiawa General Hospital to provide indigent care services.

SECTION 23. There is appropriated out of the emergency and budget reserve fund the sum of \$50,000 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to the St. Francis Medical Center for the operations of the bone marrow registry.

SECTION 24. There is appropriated out of the emergency and budget reserve fund the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, to enable the department of health to operate a hospital-based poison center twenty-four hours a day.

SECTION 25. There is appropriated out of the emergency and budget reserve fund the sum of \$75,000 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Maui AIDS Foundation for the case management program.

SECTION 26. There is appropriated out of the emergency and budget reserve fund the sum of \$700,000, or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to the Hana Community Health Clinic for its operations and care services for uninsured patients.

SECTION 27. There is appropriated out of the emergency and budget reserve fund the sum of ~~\$1,450,000~~ \$1,300,000², or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, to the department of health to provide resources to nonprofit, community-based health-care providers to care for the uninsured. This appropriation shall pay for providing direct care, which includes primary medical, dental, and mental health care, and may pay for the purchase of prescription drugs. The department of health may distribute moneys on a per-visit basis, taking into consideration need on all islands.

SECTION 28. There is appropriated out of the emergency and budget reserve fund the sum of ~~\$300,000~~ \$100,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, for the Kapiolani Medical Center for Women and Children Sex Abuse Treatment Center master contract.

SECTION 29. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for the establishment of an adolescent treatment center to treat poly-drug abuse on the island of Hawaii.

SECTION 30. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for community anti-drug efforts aimed at preventing crystal methamphetamine use on the island of Hawaii.

SECTION 31. There is appropriated out of the emergency and budget reserve fund the sum of ~~\$450,000~~ 0² or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for the department of health to contract with primary health care centers for comprehensive oral health services to underserved children.

SECTION 32. The sums appropriated in this part shall be expended by the department of health for their respective purposes; provided that the sums appropriated in sections 29 and 30 shall be expended by the county of Hawaii.

PART IV

SECTION 33. 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 2003-2004, to develop a plan to implement the Hawaii Rx program to carry out the purposes of chapter 346, part XIII, Hawaii Revised Statutes.

The sum shall be expended by the department of human services; provided that the department shall provide a quarterly progress report on the plan development to the legislature; and provided further that the department shall provide a progress report to the legislature no later than twenty days prior to the convening of the 2004 regular session.

PART V

SECTION 34. This Act shall take effect on July 1, 2003.

(Approved June 26, 2003.)

Notes

- 1. All of the item vetoes and replaced figures in this Act were overridden by Act 3 of the 2003 Special Session beginning on page 751 of this volume.
- 2. Item vetoed, replaced, and initialed "LL".

ACT 216

S.B. NO. 1134

A Bill for an Act Relating to Court Costs.

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

SECTION 1. Section 601-3.7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury a special fund to be known as the judiciary computer system special fund. Moneys collected from administrative fees pursuant to section 287-3(a) and fees pursuant to sections 607-4(b)(10) and 607-5(c)(32) shall be deposited into the fund.”

SECTION 2. Section 607-4, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The fees prescribed by subsection (b) shall be paid to the clerk of the district court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the district court; provided that nothing in subsection (b) shall apply to cases of adults charged with commission of a crime, or minors referred to the district court by the family court; provided further that for the purposes of subsection (b), “judgment” includes an order from which an appeal lies[-]; and provided further that the fees prescribed by subsection (b)(10) shall be deposited by the clerk of the district court into the judiciary computer system special fund pursuant to section 601-3.7.

(b) The fees referred to in subsection (a) are:

- (1) Except for petitions for temporary restraining order under section 604-10.5, the fee for which shall be the same as that provided in section 607-5(b)(19), for the institution of each action or proceeding, to include all charges except as provided by paragraphs (2) to (6) \$100
- (2) Intervention; answer containing one or more cross-claims or counterclaims; third-party complaint, for each such matter \$10
- (3) Demand for jury trial Fee prescribed by section 607-5
- (4) Filing of notice of appeal to the supreme court, to be paid in addition to the deposit of appellate court costs \$100
- (5) Making of a copy; comparing of copy with original Fees prescribed by section 92-21
- (6) Posting notice; service fees; garnishee fees; mileage charges; or other services actually performed Amounts necessary to cover actual costs or disbursements
- (7) Administrative costs associated with the processing of traffic citations that involve stopping (when prohibited), standing, or parking \$5 for each violation in addition

- to any fine imposed by
the court, and whether or
not such fine is suspended
- (8) Administrative costs associated with the processing of traffic citations which do not involve stopping, standing, or parking \$20 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended
- (9) Administrative costs associated with the processing of traffic citations issued for violations of a statute or ordinance relating to vehicles or their drivers, or owners, except those as provided by paragraphs (7) and (8) \$15 for each violation in addition to any fine imposed by the court, and whether or not such fine is suspended[-]
- (10) Administrative costs associated with the processing of all civil filings except those brought by the State or any of the various counties and political subdivisions of the State, those commenced by a petition for temporary restraining order under section 604-10.5, and those commenced and conducted in the small claims division of the district court \$20.

SECTION 3. Section 607-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The fees prescribed by the schedule in this section shall be paid to the clerk of the circuit court as costs of court by the person instituting the action or proceeding, or offering the paper for filing, or causing the document to be issued or the services to be performed in the circuit court; provided that nothing in the schedule shall apply to cases of adults charged with commission of a crime, or to proceedings under section 571-11(1) or (2), or to proceedings under chapter 333F or 334, or to small estates (including decedents’ estates and protection of property of minors and persons under disability) when the amount payable is fixed by another statute[-]; and provided further that the fees prescribed by subsection (c)(32) shall be deposited by the clerk of the circuit court into the judiciary computer system special fund pursuant to section 601-3.7.

For the purpose of this section, “judgment” includes a decree and any order from which an appeal lies.

SCHEDULE

In the application of this schedule, each case assigned a new number or filed under the number previously assigned to a probate, trust, guardianship, or conservatorship, shall carry a fee for the institution or transfer of the action or proceeding as prescribed by part I, and in addition the fees prescribed by part II unless otherwise provided.”

SECTION 4. Section 607-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) **PART II**

The fees prescribed by this part apply without exception.

Jury trial:

ACT 217

- (21) Demand for jury trial, including without limitation probate cases, appeals to the circuit court, and cases transferred to the circuit court from the district court, this fee to be paid to the court in which the demand is filed by the party first making the demand \$200
- (22) Remand to district court in cases transferred to circuit court from district court on demand for jury trial, where jury trial is waived and a remand of such cases to district court is allowed \$50

Miscellaneous:

- (23) Filing of notice of appeal to supreme court, to be paid in addition to the deposit of supreme court costs \$100
- (24) Search of records by the clerk \$2
- (25) Making of copy; comparing of copy with original; certification or authentication of notaries Fees prescribed by section 92-21
- (26) Certification under seal of copy of pleading or other paper subsequent to the initial filing of the pleading or paper, except record on appeal \$1
- (27) Exemplification, instead of item (26) \$2
- (28) Filing of copy of notice of completion of contract, with affidavit of publication \$3
- (29) Filing of initial paper under section 507-43 by person asserting mechanic's or materialman's lien (this fee to be additional to the fee prescribed by part I for bringing an action under section 507-47) ... \$15
- (30) Filing of any other paper not in a pending proceeding \$3
- (31) Printing, publishing, or posting notice; service fees; garnishee fees; mileage charges; or other services actually performed Amounts necessary to cover actual costs or disbursements[-]
- (32) For administrative costs associated with the processing of all civil filings except those brought by the State or any of the various counties or political subdivisions of the State \$50."

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

SECTION 6. This Act shall take effect on July 1, 2003.

(Approved July 1, 2003.)

ACT 217

S.B. NO. 1156

A Bill for an Act Relating to the Office of Hawaiian Affairs.

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

SECTION 1. Chapter 10, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§10- **Hawaiian registry.** The office shall establish and maintain a registry of all Hawaiians wherever such persons may reside. Inclusion of persons in the Hawaiian registry shall be based upon genealogical records sufficient to establish the person's descent from the aboriginal peoples inhabiting the Hawaiian islands in 1778.”

SECTION 2. New statutory material is underscored.¹

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

(Approved July 2, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 218

S.B. NO. 254

A Bill for an Act Relating to 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 legislature finds that the subdivision in the Puukapu Homesteads, Second Series, Puukapu, South Kohala, Island of Hawaii, is facing a serious safety problem. The subdivision is made up of fourteen two-acre lots. Seven lots are located on the north side of the Waimea irrigation system that runs through the subdivision. People residing on those lots use a wooden bridge to reach their property. The bridge was built on the Waimea irrigation system land and over the ditch decades ago by private individuals and is in serious disrepair. Because there is no other access for vehicular traffic, the residents continue using the bridge, creating a serious safety concern. Accordingly, the legislature finds that it is in the public interest to demolish the existing bridge and build a new bridge.

The purpose of this Act is to amend an existing appropriation of capital improvement funds to provide for the demolition of the bridge in the Puukapu Homesteads, Second Series, Puukapu, South Kohala, Island of Hawaii, and the construction of a new bridge.

SECTION 3. Act 259, Session Laws of Hawaii 2001, as amended by Act 3, Third Special Session Laws of Hawaii 2001, and by Act 177, Session Laws of Hawaii 2002, is amended by amending item A-4C of AGR 141 in section 91 to read as follows for fiscal year 2002-2003 (dollar amounts in thousands):

“4C. AGRICULTURAL WATER AND INFRASTRUCTURE DEVELOPMENT, STATEWIDE

PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF NEW WATER RESOURCES AND IMPROVEMENTS TO EXISTING AGRICULTURAL WATER INFRASTRUCTURE[.] AND APPURTENANT WORKS STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS				1
LAND				1
DESIGN				1
CONSTRUCTION				1,996
EQUIPMENT				1
TOTAL FUNDING	AGR		C	2,000C”

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

SECTION 5. This Act shall take effect on July 1, 2003.

(Approved July 2, 2003.)

ACT 219

S.B. NO. 773

A Bill for an Act Relating to Unemployment Insurance.

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

SECTION 1. Section 383-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Alternative base period” means the four completed calendar quarters immediately preceding the first day of an individual’s benefit year.”

SECTION 2. Section 383-29, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

- (1) [~~Claim.~~] The individual has made a claim for benefits with respect to that week in accordance with rules the department may prescribe[-];
- (2) [~~Registration.~~] The individual has registered for work at, and thereafter continued to report at, an employment office in accordance with rules the department may prescribe, except that the department, by rule, may waive or alter either or both of the requirements of this paragraph as to individuals attached to regular jobs and as to other types of cases or situations with respect to which it finds that compliance with those requirements would be oppressive, or would be inconsistent with the purpose of this chapter; provided that no such rule shall conflict with section 383-21[-];
- (3) [~~Availability.~~] The individual is able to work and is available for work; provided that no claimant shall be considered ineligible with respect to any week of unemployment for failure to comply with this paragraph if the failure is due to an illness or disability, as evidenced by a physician’s certificate, which occurs during an uninterrupted period of unemployment with respect to which benefits are claimed and no work which would have been suitable prior to the beginning of the illness and disability has been offered the claimant[-];
- (4) [~~Waiting period.~~] The individual has been unemployed for a waiting period of one week within the individual’s benefit year. No week shall be counted as a waiting period:
 - (A) If benefits have been paid with respect thereto;
 - (B) Unless the individual was eligible for benefits with respect thereto as provided in this section and section 383-30, except for the requirements of this paragraph[-];
- (5) [~~Wages for insured work; weeks of employment.~~]
 - (A) In the case of an individual whose benefit year begins [on];
 - (A) On or after January 2, 1966, but prior to October 1, 1989, the individual has had during the individual’s base period a total of fourteen or more weeks of employment as defined in section

383-1 and has been paid wages for insured work during the individual's base period in an amount equal to at least thirty times the individual's weekly benefit amount as determined under section 383-22(b). For the purposes of this subparagraph, wages for insured work shall include wages paid for services:

- (i) Which were not employment, as defined in section 383-2 or pursuant to an election under section 383-77 prior to January 1, 1978, at any time during the one-year period ending December 31, 1975; and
 - (ii) Which are agricultural labor as defined in section 383-9 except service excluded under section 383-7(1), or are domestic service except service excluded under section 383-7(2); except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of those services[-];
- (B) ~~[In the case of an individual whose benefit year begins on]~~ On and after October 1, 1989, to January 4, 1992, the individual has been employed as defined in section 383-2 and has been paid wages for insured work during the individual's base period in an amount equal to not less than thirty times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year[-]; and
- (C) ~~[In the case of an individual whose benefit year begins after]~~ After January 4, 1992, the individual has been employed as defined in section 383-2 and has been paid wages for such insured work during the individual's base period in an amount equal to not less than twenty-six times the individual's weekly benefit amount, as determined under section 383-22(b), and the individual has been paid wages for insured work during at least two quarters of the individual's base period; provided that no otherwise eligible individual who established a prior benefit year under this chapter or the unemployment compensation law of any other state, shall be eligible to receive benefits in a succeeding benefit year until, during the period following the beginning of the prior benefit year, that individual worked in covered employment for which wages were paid in an amount equal to at least five times the weekly benefit amount established for that individual in the succeeding benefit year.

~~[(D)]~~ For ~~[the]~~ purposes of this paragraph, wages and weeks of employment shall be counted for benefit purposes with respect to any benefit year only if the benefit year begins subsequent to the dates on which the employing unit by which the wages or other remuneration as provided in the definition of weeks of employment in section 383-1 were paid has satisfied the conditions of section 383-1 with respect to becoming an employer.

Effective for benefit years beginning January 1, 2004, and thereafter, if an individual fails to establish a valid claim for unemployment insurance benefits under this paragraph, the department shall make a redetermination of entitlement based upon the alternative base period as defined in section 383-1; provided further that the individual shall satisfy the conditions of section 383-29(a)(5) that apply to claims filed using the base period as defined in section 383-1 and the establishment of claims using the alternative base period shall be subject to the terms and conditions of sections 383-33 and 383-94; and

- (6) ~~[Worker profiling.]~~ Effective November 24, 1994, an individual who has been referred to reemployment services pursuant to the profiling system under section 383-92.5 participates in those services or in similar services. The individual may not be required to participate in reemployment services if the department determines the individual has completed those services, or there is justifiable cause for the claimant's failure to participate in those services.

For the purposes of this subsection, employment and wages used to establish a benefit year shall not thereafter be reused to establish another benefit year."

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

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

(Approved July 2, 2003.)

ACT 220

S.B. NO. 1326

A Bill for an Act Relating to Education.

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

SECTION 1. Act 309, Session Laws of Hawaii 1998, amended section 302A-1128, Hawaii Revised Statutes, by requiring that 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 intent of the legislation was to prepare Hawaii's public school students to earn a place in the global, electronic marketplace of the future.

The purpose of this Act is to further amend section 302A-1128, Hawaii Revised Statutes, to clarify specific requirements of the department of education and its schools.

SECTION 2. 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] provide opportunities for all students to [meet progressive standards of] develop competency in a language in addition to English.

The department shall develop statewide educational policies and guidelines 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. The board 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 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

(Approved July 2, 2003.)

ACT 221

H.B. NO. 857

A Bill for an Act Relating to Correctional Facilities.

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

SECTION 1. Section 353-16.35, Hawaii Revised Statutes, is amended to read as follows:

“[§353-16.35] Development or expansion of in-state correctional facilities. (a) Notwithstanding any other law to the contrary, the governor, with the assistance of the director, may negotiate with any person for the development or expansion of private in-state correctional facilities or public in-state turnkey correctional facilities_[-] to reduce prison overcrowding_[-]; provided that if an environmental assessment or environmental impact statement is required for a proposed site or for the expansion of an existing correctional facility under section 343-5, then notwithstanding the time periods specified for public review and comments under section 343-5, the governor shall accept public comments for a period of sixty days following public notification of either an environmental assessment or an environmental impact statement.

(b) Any development or expansion proposal shall address the construction of the facility separate from the operation of the facility and shall consider and include:

- (1) The percentage of low, medium, and high security inmates and the number of prison beds needed to incarcerate each of the foregoing classes of inmates;
- (2) The facility’s impact on existing infrastructure, and an assessment of improvements and additions that will be necessary;
- (3) The facility’s impact on available modes of transportation, including airports, roads, and highways; and
- (4) A useful life costs analysis.

(c) For the purposes of this section, “useful life costs” means an economic evaluation that compares alternate building and operating methods and provides information on the design, construction methods, and materials to be used with respect to efficiency in building maintenance and facilities operation.”

ACT 222

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

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

(Approved July 2, 2003.)

ACT 222

H.B. NO. 595

A Bill for an Act Relating to Check Cashing.

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

SECTION 1. Section 480F-4, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Each deferred deposit shall be made pursuant to a written agreement that has been signed by the customer and the check casher or an authorized representative of the check casher. The written agreement shall contain a statement of the total amount of any fees charged for the deferred deposit, expressed both in United States currency and as an annual percentage rate. The written agreement shall authorize the check casher to defer deposit of the personal check until a specific date not later than [~~thirty-one~~] thirty-two days from the date the written agreement was signed. The written agreement shall not permit the check casher to accept collateral.

(c) The face amount of the check shall not exceed [~~\$300~~] \$600 and the deposit of a personal check written by a customer pursuant to a deferred deposit transaction may be deferred for no more than [~~thirty-one~~] thirty-two days. A check casher may charge a fee for deferred deposit of a personal check in an amount not to exceed fifteen per cent of the face amount of the check. Any fees charged for deferred deposit of a personal check in compliance with this section shall be exempt from chapter 478.”

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

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

(Became law on July 8, 2003, without the Governor's signature, pursuant to Art III, §16, State Constitution.)

**Session Laws of Hawaii
Passed By The
Twenty-Second State Legislature
Special Session
2003**

ACT 1

S.B. NO. 317

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. In 1999, the governor, through Executive Order No. 99-07, honored 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. In 2000, the legislature passed Act 232, Session Laws of Hawaii 2000, appropriating \$70,000 to enable the commission to carry out its mission.

Executive Order No. 99-07 also provided that the fiftieth anniversary commemoration of the Korean War commission shall be terminated no later than the last day of the regular session of 2001, unless extended by concurrent resolution of the legislature. Through Act 181, Session Laws of Hawaii 2002, the legislature reestablished the commission until December 31, 2003, and appropriated \$20,000 so that the commission could continue its work.

The legislature finds, however, that the commission has not yet completed its work. Numerous events are planned in 2003 to commemorate the fiftieth anniversary of the end of the Korean War and to honor Korean War veterans, including a parade, banquet, educational activities, mobile public displays, veterans' tribute, veterans' reunion, dedication of the Waipahu Veteran Memorial, and a massing of colors. Therefore, a final appropriation of funds is necessary to plan, coordinate, and carry out these activities.

The purpose of this Act is to appropriate funds to allow the commission to complete its work and conduct an anniversary finale commemorating the fiftieth anniversary of the end of the Korean War.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$30,000 or so much thereof as may be necessary for fiscal year 2003-2004 to carry out the functions of the fiftieth anniversary commemoration of the Korean War commission.

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, 2003.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2003.)

ACT 2

S.B. NO. 745

A Bill for an Act Relating to Emergency Medical Services.

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

PART I

SECTION 1. Section 321-222, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Emergency aeromedical services” means a secondary response system that provides immediate critical care and transport by rotary-wing aircraft of a patient to a facility that provides specialized medical care.”

SECTION 2. Section 321-224, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In addition to other functions and duties assigned under this part, the department shall:

- (1) Regulate ambulances and ambulance services;
- (2) Establish emergency medical services throughout the State, including emergency aeromedical services, which shall meet the requirements of this part, subject to section 321-228;
- (3) Review and approve the curricula and syllabi of training courses offered to emergency medical services personnel who provide basic, intermediate, and advanced life support, consult and coordinate with the University of Hawaii, or any other accredited community college, college, or university, or any professional organization that provides emergency medical services training, regarding the training for basic, intermediate, and advanced life support personnel, as provided in section 321-229;
- (4) Collect and evaluate data for the continued evaluation of the state system, subject to section 321-230;
- (5) Coordinate emergency medical resources and the allocation of the state system’s services and facilities in the event of mass casualties, natural disasters, national emergencies, and other emergencies, ensuring linkage to local, state, and national disaster plans, and participation in exercises to test these plans;
- (6) Establish, administer, and maintain a communication system for the state system;
- (7) Assist each county in the development of a “911” emergency telephone system;
- (8) Secure technical assistance and other assistance and consultation necessary for the implementation of this part, subject to section 321-230;
- (9) Implement public information and education programs to inform the public of the state system and its use, and disseminate other emergency medical information, including appropriate methods of medical self-help and first-aid, and the availability of first-aid training programs in the State;

- (10) Establish standards and provide training for dispatchers in the state system, and maintain a program of quality assurance for dispatch equipment and operations;
- (11) Establish a program that will enable emergency service personnel to provide early defibrillation;
- (12) Establish within the department the emergency medical service system for children;
- (13) Consult with the advisory committee on matters relating to the implementation of this part; and
- (14) Establish and maintain standards for emergency medical services course instructor qualifications and requirements for emergency medical services training facilities.’’

SECTION 3. Section 321-228, Hawaii Revised Statutes, is amended to read as follows:

“**§321-228 Emergency medical services; counties.** The department [~~of health~~] shall determine, in consultation with the advisory committee under section 321-225, the levels of emergency medical services [~~which~~] that shall be implemented in each county. The department [~~of health~~] may contract to provide emergency medical services, including emergency aeromedical services, or any necessary component of a county emergency services system in conformance with the state system. In the event any county shall apply to the department to operate emergency medical ambulance services within the respective county, the department [~~of health~~] may contract with the county for the provision of [~~such~~] those services. The department shall operate emergency medical ambulance services or contract with a private agency in those counties which do not apply to it under this section. Any county or private agency contracting to provide emergency medical ambulance services under this section shall be required by the department to implement [~~such~~] those services in a manner and at a level consistent with the levels determined under this section.’’

SECTION 4. Section 321-230, Hawaii Revised Statutes, is amended to read as follows:

“**§321-230 Technical assistance, data collection, evaluation.** (a) The department [~~of health~~] may contract for technical assistance and consultation, including but not limited to categorization, data collection, and evaluation appropriate to the needs of the state system. The collection and analysis of statewide emergency medical services data, including pediatrics, trauma, cardiac, medical, and behavioral medical emergencies, [~~is~~] shall be for the purpose of improving the quality of services provided.

The department [~~of health~~] may implement and maintain a trauma registry for the collection of information concerning the treatment of critical trauma patients at state designated trauma centers, and carry out a system for the management of that information. The system may provide for the recording of information concerning treatment received before and after a trauma patient’s admission to a hospital or medical center. All state designated trauma centers shall submit to the department of health periodic reports of each patient treated for trauma in the state system in such manner as the department shall specify.

For the purposes of this [~~section,~~] subsection, “categorization” means systematic identification of the readiness and capabilities of hospitals and their staffs to adequately, expeditiously, and efficiently receive and treat emergency patients.

(b) The department shall establish, administer, and maintain an aeromedical emergency medical services system designed to collect and analyze data to measure

the efficiency and effectiveness of each phase of an emergency aeromedical program.

The aeromedical emergency medical services system shall serve the emergency health needs of the people of the State by identifying:

- (1) The system's strengths and weaknesses;
- (2) The allocation of resources; and
- (3) The development of rotary-wing emergency aeromedical services standards;

provided that emergency helicopter use, including triage protocols, shall be based on national aeromedical triage and transport guidelines established by the Association of Air Medical Services, the American College of Surgeons and the National Association of Emergency Medical Service Physicians. The department, in the implementation of this subsection, shall plan, coordinate, and provide assistance to all entities and agencies, public and private, involved in the system.

(c) The department shall use an emergency aeromedical services quality improvement committee comprised of representatives of trauma, emergency, and tertiary care physicians and providers to analyze information collected from the aeromedical quality improvement performance measures as established by the American College of Surgeons, and to recommend system standards and resources to maintain and improve the Hawaii emergency aeromedical services system."

PART II

SECTION 5. The legislature finds that Hawaii, an island state, is dependent upon the aeromedical transportation of patients from neighbor island medical facilities who require specialized care at tertiary hospitals in Honolulu. The rural nature of neighbor island communities also requires long ground transport times to medical facilities with the capability to stabilize and treat critical medical conditions. An emergency aeromedical system must assure timely transport of seriously ill and injured persons to definitive medical facilities based on national aeromedical standards meeting medical necessity criteria.

In particular, Maui county is in need of emergency aeromedical services provided by a helicopter aeromedical unit to complement and augment emergency ground ambulance and fixed-wing transport services. Residents of the islands of Maui, Molokai, and Lanai are without an adequate emergency aeromedical system to meet the American College of Surgeons performance measure of four hours from the time a serious head injury patient arrives at the initial receiving facility until arrival at a facility capable of providing appropriate medical care. In addition, there is not an adequate measure of the delay from the time of the trauma or serious illness to arrival at a facility capable of providing appropriate and potentially life-saving care.

The purpose of this part is to establish for the county of Maui a helicopter critical care emergency aeromedical service which operates twenty-four hours a day, and is staffed by medical personnel to provide rapid transport to appropriate medical care facilities. Establishment of the emergency helicopter unit is intended to respond to intra-county emergencies; integrate ground, rotor, and fixed-wing transport with the 911 response system; augment aeromedical services that fixed-wing transport cannot provide; and enhance critical emergency rapid transport options for seriously, critically ill patients especially those from remote areas such as Lanai, Molokai, and Hana. It is not the intent of this part to supplant existing ground or fixed-wing transport, especially for routine or non-time sensitive inter-facility transportation. The emergency helicopter unit shall utilize triage protocols to ensure the medically appropriate dispatch of the unit. Helicopter utilization shall be based on national aeromedical triage and transport guidelines as established by the Association of Air

Medical Services, the American College of Surgeons, and the National Association of Emergency Medical Services Physicians.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$611,500, or so much thereof as may be necessary for fiscal year 2004-2005, to fund the provision of emergency aeromedical helicopter services for the county of Maui; provided that no funds shall be made available under this part unless the county of Maui provides \$611,500 for the purpose for which this sum is appropriated; and provided further that emergency aeromedical helicopter services shall use triage protocols and be based on national aeromedical, triage, and transport guidelines established by the Association of Air Medical Services, the American College of Surgeons, and the National Association of Emergency Medical Services Physicians.

In establishing this service, the department of health is encouraged to partner with the county of Maui, health care providers, and the private sector, to ensure that this necessary service is provided in the most cost efficient manner, utilizing all available resources.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$388,500, or so much thereof as may be necessary for fiscal year 2004-2005, to integrate additional ground ambulance services with the emergency aeromedical helicopter services.

SECTION 8. The sums appropriated in section 6 and 7 of this Act shall be expended by the department of health through its emergency medical service system for the purposes of this Act.

PART III

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval; provided that sections 6 and 7 of this Act shall take effect on July 1, 2003.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2003.)

ACT 3¹

S.B. NO. 1305

A Bill for an Act Relating to State Funds.

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

PART I

SECTION 1. The legislature finds that expenditures from the emergency and budget reserve fund established by section 328L-3, Hawaii Revised Statutes, are needed to meet the emergency economic situation currently facing the State. The legislature determines that the moneys are urgently needed to maintain levels of programs that are essential to the public health, safety, and welfare. The legislature further finds that the grants and subsidies under this Act are in the public interest and serve the public health, safety, and welfare.

PART II

SECTION 2. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$90,000, or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Hale Mahaolu for the personal care program for disabled or chronically ill frail adults and elders residing in Maui county.

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

SECTION 3. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of ~~\$200,000~~ 0² or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, to provide treatment services for child victims of intrafamilial sexual abuse, including psychological treatment and case management services for child victims and their families who are not covered under the child protective services system of the department of human services.

The sum appropriated shall be expended by the judiciary via the children's justice center for the purposes of this Act.

SECTION 4. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$150,000 0², or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for forensic medical examinations of children in foster custody placements.

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

SECTION 5. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$100,000 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii Youth Services Network for its Transitional Living Program for Unserved Street Youth.

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

SECTION 6. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for substance abuse services for youth and adolescents, including, but not limited to, preventive services, school education programs, counseling, evaluation, treatment, therapy, family services, case management, recovery services, and substance abuse treatment services, and the coordination of such services.

The sum appropriated shall be expended by the department of health, alcohol and drug abuse division, for the purposes of this Act.

SECTION 7. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 2003-2004, for the residential alternative community care program.

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

SECTION 8. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2003-2004, for the chore services program.

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

SECTION 9. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of ~~\$300,000~~ \$150,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the bridge to hope program, including one position for outreach; provided that if federal funds are made available to fund any portion of bridge to hope Temporary Assistance to Needy Families program participant costs, then the sum appropriated by this section shall be reduced by the amount of federal funds received, and the state funds that were replaced by federal funds shall lapse to the emergency and budget reserve fund.

The sum appropriated shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 10. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of ~~\$200,000~~ 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant, pursuant to chapter 42F, Hawaii Revised Statutes, to Volunteer Legal Services Hawaii for its Na Keiki Law Center project focusing on protecting the legal rights of children.

The sum appropriated shall be expended by the office of community services, department of labor and industrial relations for the purposes of this Act.

SECTION 11. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of ~~\$100,000~~ \$50,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to fund the continuation of the Kaneohe Community Family Center's core services, particularly for families that are low income, unemployed, or underemployed and families of at-risk youths. Core services include information and referral, support and self-help, parenting education, family strengthening, job readiness and career development, and community leadership .

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

SECTION 12. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of ~~\$100,000~~ \$50,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to fund the continuation of the Kuhio Park Terrace Family Center's core services to low income individuals and families residing in Kuhio Park Terrace and Kuhio Homes. Core services include:

- (1) Family strengthening activities such as linking families to supportive services, offering parenting classes and parent/child activities, and providing emergency rental assistance;
- (2) Education and life skills support, such as computer and literacy classes and training of volunteers;
- (3) Pre-employment activities; and
- (4) Community improvement through community celebrations.

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

SECTION 13. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$300,000⁰², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the operation of the Waipahu Community Adult Day Health Center and Youth Day Care Center pilot project.

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

SECTION 14. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$150,000⁰², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for the Domestic Violence Clearinghouse and Legal Hotline for Maui program services.

The sum appropriated shall be expended by the judiciary, circuit court of the second circuit, for the purposes of this Act.

SECTION 15. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$421,000 or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Blueprint for Change for the delivery of diversion services and child protective services to target families, including the establishment of additional sites for neighborhood places.

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

SECTION 16. There is appropriated out of the emergency and budget reserve fund the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for costs related to homeless assistance.

The sum appropriated shall be expended by the housing and community development corporation of Hawaii for the purposes of this Act.

SECTION 17. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$500,000⁰², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for existing Kalihi area youth service centers; provided that moneys not required by existing Kalihi area youth service centers may be used for other youth service centers in the State.

The sum appropriated shall be expended by the office of youth services for the purposes of this Act.

PART III

SECTION 18. There is appropriated out of the emergency and budget reserve fund the sum of \$750,000⁰² \$700,000⁰², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to Molokai General Hospital.

SECTION 19. There is appropriated out of the emergency and budget reserve fund the sum of \$50,000⁰², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Molokai General Hospital for Lamalama Ka 'Ili Community Health Services programs and general operating costs.

SECTION 20. There is appropriated out of the emergency and budget reserve fund the sum of ~~\$750,000~~ \$350,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to Kahuku hospital to fund the costs of emergency room operations, inpatient and outpatient care for the underinsured, medical malpractice insurance, and labor.

SECTION 21. There is appropriated out of the emergency and budget reserve fund the sum of ~~\$750,000~~ \$675,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to the Waianae Coast Comprehensive Health and Hospital Board, Inc., to fund its operations and programs.

SECTION 22. There is appropriated out of the emergency and budget reserve fund the sum of ~~\$500,000~~ \$250,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, for Wahiawa General Hospital to provide indigent care services.

SECTION 23. There is appropriated out of the emergency and budget reserve fund the sum of ~~\$50,000~~ 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to the St. Francis Medical Center for the operations of the bone marrow registry.

SECTION 24. There is appropriated out of the emergency and budget reserve fund the sum of \$200,000, or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, to enable the department of health to operate a hospital-based poison center twenty-four hours a day.

SECTION 25. There is appropriated out of the emergency and budget reserve fund the sum of ~~\$75,000~~ 0², or so much thereof as may be necessary for fiscal year 2003-2004, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Maui AIDS Foundation for the case management program.

SECTION 26. There is appropriated out of the emergency and budget reserve fund the sum of \$700,000, or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised Statutes, to the Hana Community Health Clinic for its operations and care services for uninsured patients.

SECTION 27. There is appropriated out of the emergency and budget reserve fund the sum of ~~\$1,450,000~~ \$1,300,000², or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, to the department of health to provide resources to nonprofit, community-based health-care providers to care for the uninsured. This appropriation shall pay for providing direct care, which includes primary medical, dental, and mental health care, and may pay for the purchase of prescription drugs. The department of health may distribute moneys on a per-visit basis, taking into consideration need on all islands.

SECTION 28. There is appropriated out of the emergency and budget reserve fund the sum of ~~\$300,000~~ \$100,000², or so much thereof as may be necessary for fiscal year 2003-2004, as a subsidy pursuant to chapter 42F, Hawaii Revised

Statutes, for the Kapiolani Medical Center for Women and Children Sex Abuse Treatment Center master contract.

SECTION 29. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for the establishment of an adolescent treatment center to treat poly-drug abuse on the island of Hawaii.

SECTION 30. There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for community anti-drug efforts aimed at preventing crystal methamphetamine use on the island of Hawaii.

SECTION 31. There is appropriated out of the emergency and budget reserve fund the sum of \$450,000⁰² or so much thereof as may be necessary for fiscal year 2003-2004, pursuant to chapter 103F, Hawaii Revised Statutes, for the department of health to contract with primary health care centers for comprehensive oral health services to underserved children.

SECTION 32. The sums appropriated in this part shall be expended by the department of health for their respective purposes; provided that the sums appropriated in sections 29 and 30 shall be expended by the county of Hawaii.

PART IV

SECTION 33. 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 2003-2004, to develop a plan to implement the Hawaii Rx program to carry out the purposes of chapter 346, part XIII, Hawaii Revised Statutes.

The sum shall be expended by the department of human services; provided that the department shall provide a quarterly progress report on the plan development to the legislature; and provided further that the department shall provide a progress report to the legislature no later than twenty days prior to the convening of the 2004 regular session.

PART V

SECTION 34. This Act shall take effect on July 1, 2003.

(Item vetoed by Governor and item vetoes overridden by Legislature on July 8, 2003.)

Notes

- 1. This Act overrode all of the item vetoes and replaced figures in Act 215 of the 2003 Regular Session beginning on page 733 of this volume.
- 2. Item vetoed, replaced, and initialed "LL"; overridden and initialed "RB" and "CKYS".

ACT 4

H.B. NO. 282

A Bill for an Act Relating to the Auditor.

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

SECTION 1. Chapter 23, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§23- **Reimbursement moneys for financial audits.** When any part of the costs of financial audits conducted by or contracted for by the auditor are reimbursable by moneys appropriated to or generated by any department, office, or agency of the State or its political subdivisions, the affected department, office, or agency of the State or political subdivision shall transmit those cost reimbursements to the auditor. Moneys collected pursuant to this section shall be deposited in the audit revolving fund established by section 23-

§23- **Audit revolving fund.** (a) There is established the audit revolving fund to be administered by the office of the auditor, into which shall be deposited:

- (1) Reimbursement moneys received by any department, office, or agency of the State and its political subdivisions for financial audits;
- (2) Moneys received by the auditor from any department, office, or agency of the State and its political subdivisions for audit costs payable by special funds, revolving funds, capital improvement funds, or trust funds;
- (3) Legislative appropriations; and
- (4) All interest and investment earnings credited to the assets of the fund.

(b) Moneys in the audit revolving fund shall be expended by the auditor to conduct audits of the State’s departments, offices, agencies, and political subdivisions, audits of special, revolving, capital improvement, or trust funds, and for the services of certified public accountants contracted to conduct such audits.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2003.

(Vetoed by Governor and veto overridden by Legislature on July 8, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 5

S.B. NO. 255

A Bill for an Act Relating to Agriculture.

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

SECTION 1. Article XI, section 3, of the Hawaii State Constitution, mandates the State to “conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency and assure the availability of agriculturally suitable lands.” The constitution also mandates the legislature to provide standards and criteria to accomplish these objectives.

The State, recognizing the critical importance of agricultural lands, has established the agricultural district as one of the four major land classifications in

which all lands in Hawaii must be placed. Section 205-2, Hawaii Revised Statutes, sets forth the allowable activities in an agricultural district including "the cultivation of crops, orchards, forage, and forestry".

However, classification and protection of agricultural lands has been subverted and undermined by the development of "gentleman farming estates", whereby the primary purpose of activity upon these lands is not agricultural, but luxury residential. Moreover, these developments place restrictive covenants, including imposing height restriction on growing crops in agricultural subdivisions and other private agreements that restrict or even prohibit bona fide agricultural activities on agricultural lands. Such practices and covenants are repugnant to public policy as enunciated by Article XI, section 3, of the State Constitution.

Section 1-5, Hawaii Revised Statutes, grants individuals the ability to contract away any of their legal rights so long as the renouncement does not affect others' rights and "is not contrary to the public good." The legislature finds that restrictive covenants against agriculture uses are contrary to the public good because the intent of the State Constitution, and the intent of land use laws, as shown below by their history, demonstrate that these covenants dismantle the protections and conservation that are embodied in Hawaii's laws.

In 1961, the State of Hawaii was revolutionary in its approach to planning and growth when it passed the Land Use Law, chapter 205, Hawaii Revised Statutes. In passing the Land Use Law, the senate noted in Senate Standing Committee Report No. 580, on Senate Bill 937:

The purpose of this bill is to preserve and protect land best suited for cultivation, forestry and other agricultural purposes and to facilitate sound and economical urban development in order to promote the economy and general welfare of the state, and to insure the efficient expenditure of public funds . . .

The state's highly productive agricultural lands are jeopardized by normal economic laws which encourage land owners to place their own particular pieces of land to the most profitable current use for which they can find a market. Long term agricultural leases are expiring annually. Because of the pressure for urbanization the land owners are reluctant to continue long term renewals of such leases, and the lessee is therefor discouraged to develop the land to its maximum agricultural production. If exclusive agricultural zones are not established to preserve and protect prime agricultural land from infringement by none-agricultural [sic] uses, the possibility of land speculation through inflated or artificial land prices may jeopardize the existence of major agricultural companies or activities. The most effective protection for prime agricultural lands, preservation of open space and direction for urban growth, is through state zoning.

Also important to note is that chapter 205, Hawaii Revised Statutes, was specifically enacted in an effort to manage growth on islands of limited resources. Act 187, Session Laws of Hawaii 1961, reads:

Scattered subdivisions with expensive, yet reduced, public services; the shifting of prime agricultural lands into nonrevenue [sic] producing residential uses when other lands are available that could serve adequately the urban needs; . . . these are evidences of the need for public concern and action.

In 1976, the legislature noted, in Senate Standing Committee Report No. 662-76, on House Bill 3262-76, that the requirements of the Land Use Law had been skirted, and as such, it amended the Land Use Law to clarify that urban type residential subdivisions are not authorized on agricultural land.

The purpose of the agricultural district classification is to control the uses of the land for agricultural purposes. This purpose is being frustrated by the development of urban type residential communities in the guise of agricultural subdivisions. To discourage abuse of this purpose, the bill, as amended, more clearly defines the uses permitted within the agricultural district. Except for such uses permitted under special use permits in Section 205-6, and for nonconforming uses permitted in section 205-8, uses not permitted shall be prohibited.

Most revealing as to the efforts to curb against development upon agricultural lands is the procedural history for the enactment of Article XI, section 3, of the State Constitution. Fearing that urbanization and abuses would weaken the protections meant to be provided to agricultural lands, the committee deleted language referring to farm and home ownership, and instead focused on the need to protect and promote agricultural lands.

The State Constitutional Convention of 1978 noted in its proceedings:

Your Committee deleted the provision in Section 5 of Article X dealing with the use of public lands for farm and home ownership. It was generally understood, based on a letter opinion by the attorney general, that the phrase "farm and home ownership" meant both farm or home ownership. The inconsistency of this interpretation, with a renewed emphasis on preserving valuable and important agricultural lands, and the recommendation of the chairman of the board of agriculture convinced your Committee to delete the provision on farm and home ownership.

In response to increasing concerns regarding the future of agriculture in the State, your Committee has amended Section 5 of Article X, entitled "Farm and Home Ownership," by revising it to "Agricultural Lands" and by amending it to provide policy direction to the State. Moreover, the section has been amended to safeguard existing agricultural lands designated by the state Department of Agriculture as "prime," "unique" or "other important" and classified as agricultural by the state Land Use Commission. Thus the reclassification of these lands will now require, in addition to approval by the state Land Use Commission or other body assigned this function, the approval of the legislature by two thirds of each house.

Your Committee provided further protection for important agricultural lands by requiring that the lands be protected and maintained for bona fide or good faith agricultural use and that only support facilities necessary for agricultural use of such lands be permitted.

While Article XI, section 3, of the Hawaii State Constitution was adopted in 1978, and at that time the concern was over the large prime agricultural parcels of the sugar and pineapple industries, since that time, the focus of concern has shifted, for we have seen subdivisions and gentleman farmer estates, with golf courses, orchards, and gated communities proliferate upon agricultural lands. Thus, whereas previously the concern was over the promotion of the agricultural industry through its lands, we currently are dealing with a planning issue of urban-like uses occupying agricultural lands. It is for these reasons that the legislature finds that the courts of this State should not be availed upon to enforce these private agreements that contravene public policy.

SECTION 2. Chapter 205, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§205- Private restrictions on agricultural uses and activities; not allowed. Agricultural uses and activities as defined in sections 205-2(d) and 205-4.5(a) on lands classified as agricultural shall not be restricted by any private agreement contained in any deed, lease, agreement of sale, or other conveyance of land recorded in the bureau of conveyances after the effective date of this section, that subject such agricultural lands to any servitude, including but not limited to covenants, easements, or equitable and reciprocal negative servitudes. Any such private restriction limiting or prohibiting agricultural use or activity shall be voidable subject to special restrictions enacted by the county ordinance pursuant to section 46-4, except that restrictions taken to protect environmental or cultural resources shall not be void or voidable.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall not be applied so as to impair any contract existing as of the effective date of this Act in a manner violative of either the Hawaii Constitution or Article I, section 10, of the United States Constitution.

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

(Vetoed by Governor and veto overridden by Legislature on July 8, 2003.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 6

S.B. NO. 768

A Bill for an Act Relating to Collective Bargaining.

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

SECTION 1. Section 89-11, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

“(d) 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 (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions;~~] bargaining unit (5), teachers and other personnel of the department of education; [~~bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule;~~] or bargaining unit (7), faculty of the University of Hawaii and the community college system[; ~~bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty; or bargaining unit (13), professional and scientific employees~~], the board shall assist in the resolution of the impasse as follows:

- (1) 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;
- (2) Mediation. If the impasse continues more than twenty days, 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 board may compel the

parties to attend mediation, reasonable in time and frequency, until the fiftieth day of impasse. Thereafter, mediation shall be elective with the parties, subject to the approval of the board;

- (3) Report of the board. The board shall promptly report to the appropriate legislative body or bodies the following circumstances as each occurs:
 - (A) The date of a tentative agreement and whether the terms thereof are confidential between the parties;
 - (B) The ratification or failure or ratification of a tentative agreement;
 - (C) The signing of a tentative agreement;
 - (D) The terms of a tentative agreement; or
 - (E) On or about the fiftieth day of impasse, the failure of mediation.
- (4) After the fiftieth day of impasse, the parties may resort to such other remedies that are not prohibited by any agreement pending between them, other provisions of this chapter, or any other law.

(e) If an impasse exists between a public employer and the exclusive representative of bargaining unit (2), supervisory employees in blue collar positions; bargaining unit (3), nonsupervisory employees in white collar positions; bargaining unit (4), supervisory employees in white collar positions; bargaining unit (6), educational officers and other personnel of the department of education under the same salary schedule; bargaining unit (8), personnel of the University of Hawaii and the community college system, other than faculty, bargaining unit (9), registered professional nurses; bargaining unit (10), institutional, health, and correctional workers; bargaining unit (11), firefighters; [ø] bargaining unit (12), police officers[-]; or bargaining unit (13), professional and scientific employees, the board shall assist in the resolution of the impasse 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 the impasse continues twenty days after the date of impasse, the board shall immediately notify the employer and the exclusive representative that the impasse shall be submitted to a three-member arbitration panel who shall follow the arbitration procedure provided herein.
 - (A) Arbitration panel. 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 neutral third member of the arbitration panel, who shall chair the arbitration panel, shall be selected by mutual agreement of the parties. In the event that the parties fail to select the neutral third member of the arbitration panel within 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 neutral arbitrator shall be selected. Within five days after receipt of such list, the parties shall alternately strike names from the list until a single name is left, who shall be immediately appointed by the board as the 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 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 which each party is proposing for inclusion in the final agreement.

- (C) Arbitration hearing. Within one hundred twenty 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 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 days after the conclusion of the hearing, a majority of the arbitration panel shall 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.”

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

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

(Vetoed by Governor and veto overridden by Legislature on July 8, 2003.)

COMMITTEE REPORTS
ON BILLS WHICH BECAME ACTS

TABLES SHOWING EFFECT
OF ACTS

GENERAL INDEX

**COMMITTEE REPORTS ON BILLS WHICH BECAME ACTS
REGULAR AND SPECIAL SESSIONS OF 2003**

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
HB0001	001	3	5	
HB0010	147	1071, 1397	180, 729	16
HB0058	026	1085, 1271	3, 292, 657	
HB0075	131	1067, 1318	248, 741	
HB0078	036	1156, 1548	404, 780	
HB0083	027	1123, 1411	8, 658	
HB0123	201	1305	244, 625	
HB0127	105	1080, 1361	405, 683	
HB0130	182	1173, 1380	319, 847	44
HB0135	149	1157, 1265	710	11
HB0139	155	1399	614	
HB0192	073	1147, 1224	369, 626	2
HB0200	200	1429	862	142
HB0281	188	1163, 1342	32, 825	135
HB0282 ¹	Sp 4	1419	314, 777	30
HB0287	150	1097, 1266	291, 537, 767	13
HB0297	063	1064, 1423	402, 848	31
HB0317	119	1130, 1383	36, 323, 811	38
HB0320	186	1034, 1333	38, 385, 638	27
HB0324	145	1207	585	17
HB0373	194	1114, 1226	478, 731	12
HB0377	157	1044, 1352	510, 769	
HB0378	158	1045, 1668	528, 770	
HB0379	159	1046, 1669	511, 771	
HB0380	160	1047, 1670	512, 753	
HB0381	161	1048, 1671	513, 772	
HB0382	162	1049, 1672	514, 754	
HB0383	163	1050, 1673	515, 773	
HB0384	164	1051, 1353	516, 774	
HB0389	044	1014, 1547	185, 751	
HB0401	117	1203	586	
HB0422	198	1078, 1354	469, 800	26
HB0475	094	1069, 1674	138, 470, 651	
HB0485	166	1038, 1675	133, 632	
HB0488	167	1036, 1676	134, 633	
HB0507	199	1100, 1384	22, 540, 799	41
HB0512	204	1145, 1418	722	133 ²
HB0548	088	1079, 1355	52, 345, 628	
HB0562	062	1204	568	22
HB0564	070	1017	311	8
HB0595	222	1400	613	3
HB0638	193	1161, 1343	350, 664	136
HB0645	176	1052, 1677	448, 682	
HB0651	114	1121, 1228	520, 793	
HB0652	003	1018	569	
HB0659	028	1086, 1427	266, 652	
HB0662	102	1074, 1404	325, 749	
HB0730	097	1401	531, 623	
HB0731	171	1101, 1251	48, 624	
HB0736	133	1159, 1267	86, 795	20
HB0754	037	1188, 1551	293, 643	
HB0772	038	1087, 1549	690	

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
HB0773	039	1088, 1550	691	
HB0807	071	1185, 1268	330, 794	18
HB0808	120	1179, 1345	532, 863	143
HB0814	004	1058	198, 645	
HB0815	005	1059	199, 646	
HB0818	031	1089, 1552	298, 647	
HB0857	221	1028, 1371	504, 834	
HB0914	202	1119, 1229	338, 798	42
HB0939	168	1040, 1678	135, 634	
HB0980	146	1205	712	9
HB1010	072	1094, 1269	581	23
HB1022	006	1061	579	
HB1076	089	1206	687	
HB1077	002	1033, 1077	720	
HB1111	058	1019, 1373	434, 822	33
HB1116	065	1030, 1374	300, 809	
HB1152	178	1421	717	140 ³
HB1154	115	1020, 1375	702	25
HB1155	074	1056, 1367	260, 629	
HB1157	121	1111, 1396	320, 650	5
HB1160	129	1402	590	
HB1161	079	1233	577	
HB1163	128	1160, 1321	85, 630	
HB1164	212	1348	272, 662	49
HB1165	124	1307	88, 557, 674	15
HB1172	017	1234	576	
HB1175	187	1138, 1417	457, 776	138
HB1198	061	1112, 1230	316, 737	
HB1212	075	1341	90, 366, 812	
HB1214	082	1125, 1231	308, 788	14
HB1217	151	1128, 1232	589	10
HB1220	007	1062	355, 804	
HB1230	213	1198, 1407	278, 839	24
HB1255	195	1066, 1376	201, 648	34
HB1276	008	1073	263, 605	
HB1285	104	1126, 1315	222, 738	6
HB1300	183	1180, 1346	416, 864	144
HB1302	009	1031	161, 675	
HB1303	152	1057, 1377	63, 424, 676	29
HB1307	034	1215	108, 606	
HB1328	132	1306	227, 726	
HB1361	191	1200, 1322	497, 744	35
HB1362	169	1041, 1337	136, 635	47
HB1453	029	1116, 1272	498, 601	
HB1465	153	1167, 1324	229, 785	48
HB1509	059	1063, 1415	375, 857	39
HB1564	170	1037, 1679	381, 639	
HB1572	030	1189, 1270	103, 387, 746	
HB1594	081	1273	620	
HB1607	112	1209	130, 727	
SB0003	175	464, 807	1009, 1675	
SB0042	054	578	1029, 1328	
SB0051	018	642	969, 1338	
SB0058	214	168, 671	1046, 1506	121

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
SB0069	078	579	1265	
SB0078	196	208, 987	987, 1502	
SB0088	045	972	1055, 1428	
SB0205	108	28, 541, 719	1124, 1271	77
SB0254	218	623, 873	1418	93
SB0255 ⁴	Sp 5	576, 772	1088, 1332	71
SB0295	084	748	1182	51
SB0317 ⁴	Sp 1	253, 884	975, 1481	102
SB0337	189	320, 674	1118, 1282	
SB0345	067	285, 608	885, 1222	
SB0363	040	650	906, 1274	
SB0368	019	591	1257	
SB0373	053	609	972, 1501	
SB0377	100	2, 957	1059, 1492	118
SB0394	080	583	1162	
SB0402	181	479, 681	1111, 1335	122
SB0528	154	289, 891	980, 1449	91
SB0538	047	601	1087, 1440	
SB0550	020	162, 613	1048, 1284	
SB0552	086	246, 629	981, 1426	
SB0554	010	268	1158	
SB0562	021	104, 610	884, 1340	
SB0574	205	224, 795	950, 1431	116
SB0582	116	825	1375	83
SB0585	057	826	1022, 1341	108
SB0614	125	273, 796	1414	104
SB0616	033	593	1184	
SB0617	190	594	1673	
SB0637	192	345, 836	1036, 1442	
SB0665	206	788	1076, 1429	62
SB0685	023	595	1183	
SB0687	109	789	1163	145
SB0745 ⁴	Sp 2	385, 961	1073, 1443	109
SB0768 ⁴	Sp 6	329, 724	1085, 1273	146
SB0773	219	523, 725	1089, 1336	
SB0787	024	405, 726	1260	
SB0789	111	414, 727	1084, 1267	127
SB0830	095	596	907, 1122, 1505	68
SB0837	148	875	917, 1123, 1450	60
SB0843	035	444, 782	903, 1095, 1380	
SB0855	207	88, 922	916, 1151, 1498	105
SB0931	060	333, 993	1125, 1490	66
SB0933	068	25	1315	54
SB0946	099	12, 988	994, 1500	64
SB0975	144	877	923, 1119, 1451	72
SB1034	090	438, 925	1131, 1461	115
SB1040	113	207, 774	921, 1026, 1475	81
SB1050	101	260, 899	1057, 1482	103
SB1051	180	112, 783	997, 1504	59
SB1058	208	604	951	
SB1068	165	472, 812	989, 1444	
SB1075	076	977	1415	
SB1077	055	585	960, 1452	
SB1107	048	637	1316	

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
SB1134	216	40, 940	1378	85
SB1139	041	43, 700	1038, 1280	
SB1154	042	194, 943	1101, 1283	
SB1156	217	195, 944	910, 1139, 1473	
SB1163	106	135	1656	
SB1200	209	605	1185	52
SB1201	126	261, 745	1317	65
SB1234	069	462, 632	1411	
SB1241	107	66, 815	1074, 1465	
SB1255	049	204, 926	1050, 1276	
SB1256	011	269	1102, 1285	
SB1258	091	393, 716	1261	95
SB1260	012	871	1259	
SB1261	051	484, 902	973, 1433	
SB1262	052	876	962, 1457	92
SB1267	077	355	1002, 1427	55
SB1270	013	757	1188	
SB1274	064	978	1410	56
SB1275	066	979	1674	
SB1279	177	240, 817	1137, 1268	112
SB1281	093	872	915, 1453	
SB1286	092	433, 847	919, 1024, 1434	106
SB1305 ⁵	215, Sp 3	827	1424	119
SB1306	050	606	1004, 1277	
SB1309	118	417, 732	881, 1439	80
SB1311	179	912	1422	
SB1312	134	418, 733	882, 1333	67
SB1319	210	587	905, 1107, 1447	58
SB1321	197	71, 746	927, 1052, 1458	113
SB1324	211	980	959, 1330	69
SB1326	220	764	1417	
SB1332	122	491, 955	1082, 1477	100
SB1333	123	44, 703	1083, 1496	87
SB1334	110	573	1262	
SB1352	098	217, 849	948, 1040, 1437	75
SB1353	022	218, 850	1224	
SB1361	056	473, 747	1145, 1226	
SB1373	103	530, 734	883, 1471	
SB1393	083	55, 704	904, 1120, 1459	128
SB1394	172	577, 834	1376	
SB1395	135	829	1377	63
SB1396	014	830	1327	
SB1397	173	831	1021, 1435	
SB1400	136	913	1421	
SB1403	127	602	964, 1472	96
SB1405	046	647	1032, 1331	
SB1406	015	648	970, 1339	
SB1407	032	649	971, 1425	
SB1410	130	236, 705	890, 1445	
SB1413	043	198, 706	1263	
SB1415	016	155, 618	1027, 1286	
SB1423	156	219, 852	988, 1446	76
SB1438	137	419, 735	1318	129
SB1439	138	337, 736	1319	130

<u>Bill No.</u>	<u>Act No.</u>	<u>Senate Committee Report No.</u>	<u>House Committee Report No.</u>	<u>Conference Committee Report No.</u>
SB1440	139	338, 737	1320	98
SB1441	140	339, 738	1321	99
SB1442	141	340, 739	1322	131
SB1443	142	341, 740	1323	78
SB1444	143	451, 741	1324	79
SB1446	174	474, 963	1068, 1455	114
SB1469	025	539, 634	1258	
SB1492	185	768	952, 1430	70
SB1496	096	129, 930	1416	97
SB1505	085	641	1148, 1466	82
SB1594	184	132, 619	1028, 1503	
SB1630	087	590	1187	53
SB1700	203	503, 689	1129, 1464	124

Notes

1. Vetoed bill overridden in special session.
2. See also Senate Floor Amendment 12 and House Floor Amendment 15 (CD2).
3. See also Senate Floor Amendment 13 and House Floor Amendment 16 (CD2).
4. Vetoed bill overridden in special session.
5. Item vetoed; overridden in special session.

TABLES SHOWING EFFECT OF ACTS

Twenty-Second State Legislature
2003 Regular and Special Sessions

Key: Am = Amended _____ = Section number
N = New to be assigned in
R = Repealed HRS Supplement
Sp = Special Session

A. SECTIONS OF HAWAII REVISED STATUTES (HRS) AFFECTED

HRS Section No.	Effect	Affected By Act No.	HRS Section No.	Effect	Affected By Act No.
Volume 1			76-16	Am	187
1-28.5	Am	74	78-____	N	24
6E-____ (3 secs)	N	104	78-____	N	40
6E-____	N	59	78-____	N	95
(6 secs, pt ____)			78-____	N	108
6E-11, 13, 43.6	Am	104	78-____	N	150
10-____	N	42	78-____ (2 secs)	N	109
10-____	N	217	78-23	Am	109
10-17	Am	9	84-17	Am	187
11-____	N	37	87A-1	Am	152
11-1.5, 1.6	Am	117	87A-23, 33	Am	111
11-2	Am	8	88-____	N	134
11-2.5	Am	117	88-____	N	199
11-136	Am	23	88-3	Am	118
11-192	Am	117	88-21	Am	199
22-____	N	8	88-29	Am	118
23-____ (2 secs)	N	Sp 4	88-42.5, 43	Am	119
26-____	N	122	88-47	Am	121
26-14, 18	Am	92	88-73, 74, 81	Am	118
26-51, 52	Am	122	88-83	Am	182
26-53	Am	122	88-281	Am	199
		187	88-283	Am	182
26-54	Am	122	89-11	Am	Sp 6
26H-4	Am	97	89-13	Am	3
28-____	N	196	91-____	N	76
28-____	N	63	91-9, 10	Am	76
(1 sec, pt ____)			92-28	Am	210
28-14	R	177	93-15	Am	28
28-15	Am	177	103-8.5	Am	178
28-122 to 124	R	192			213
36-27	Am	3	103-10	Am	51
		177	103D-____	N	52
		178	103D-102	Am	9
		179	103D-104	Am	51
36-30	Am	198	103D-206, 303, 304,	Am	52
		198	310, 701		
		177	103D-1007	R	52
		179	103F-101	Am	9
		198	109-____	N	102
		213			
36-35, 36	Am	188	Volume 3		
41D-1	Am	212	125C-7	R	178
Volume 2			145-21 to 23, 25	Am	20
46-____	N	84	147-____	N	49
46-____	N	144	147-____	N	49
46-1.5	Am	84	(5 secs, pt ____)		
46-11	Am	3	147-____	N	49
47-7	Am	38	(7 secs, pt ____)		
49-4	Am	39	147-7.5	R	49

HRS Section No.	Effect	Affected By Act No.	HRS Section No.	Effect	Affected By Act No.
302A-412, 438	Am	187	383-7	Am	212
302A-604	Am	187	383-29	Am	219
302A-604.5	Am	188	386-1	Am	171
302A-621	Am	187	386-200	Am	212
302A-803	Am	3	390-1, 2, 5 to 7	Am	61
302A-807	Am	3	392-5	Am	212
		133	393-7	Am	206
302A-808	Am	3	397-5, 5.5	Am	178
302A-1128	Am	220	398-1	Am	44
302A-1130	Am	187			212
302A-1134	Am	187	398-4	Am	44
302A-1153	Am	187			
302A-1181, 1182, 1185 to 1188, 1191, 1302	Am	203			
			Volume 8		
302A-1308	Am	187	412:5-205.5, 205.6	Am	212
302A-1312	Am	188	412:6-200	Am	212
302A-1502.5	R	214	412:7-200	Am	212
302A-1505	Am	188	412:8-200	Am	212
304-___	N	186	412:9-400	Am	212
304-___	N	181	414-53	Am	210
(6 secs, pt ___)			414-273	R	124
304-20	Am	78	414-310, 311.6, 315, 401, 402, 404, 422, 433, 437, 440, 451, 461, 462, 472	Am	124
312-3.6	Am	193	414D-___	N	81
			414D-___	N	124
Volume 6			414D-3, 5, 6, 8, 11, 14, 32, 33, 61	Am	124
321-___	N	95	414D-63	R	124
321-15	Am	133	414D-64	Am	210
321-15.6	Am	202	414D-71, 74	Am	124
321-45	Am	107	414D-115	Am	87
321-222, 224	Am	Sp 2	414D-167	Am	81
321-226	Am	106	414D-184, 201.5, 203	Am	124
321-228, 230	Am	Sp 2	414D-209	R	124
327-___	Am	88	414D-248, 249, 251, 273, 274, 277, 280, 283, 284, 308	Am	124
328-1, 16, 17.6, 17.7, 91, 92	Am	56	415A-8.5	Am	210
328-93	R	56	415A-16.7	R	124
328-94, 96	Am	56	415A-22	Am	124
328L-2	Am	177	421-4, 22	Am	124
		178	421C-11, 11.5	Am	124
329-14, 16, 18, 20, 22, 32, 38, 61, 65	Am	151	421I-___	N	95
333F-1, 22	Am	95	425-1, 1.5, 9, 14, 21, 154, 156, 159, 163, 164	Am	124
334-5	Am	204	425-194	R	124
343-3	Am	73	425-196	Am	210
			425-201, 202, 204	Am	124
Volume 7			c 425D	R	210
346-16, 17	Am	95	425D-111, 203.6, 204, 206, 902, 906.5, 906.6	Am	124
346-19.6	R	95	425D-1112	R	124
346-19.7	Am	95	425D-1201, 1202, 1204	Am	124
346-59.8	Am	191	428-___	N	124
346-71	Am	105	428-105.5	Am	210
346-151, 154	Am	95	428-107, 109, 110, 206	Am	124
349-2	Am	204	428-901	Am	124
352-1, 5.5	Am	95			210
353-16.35	Am	221	428-901.5, 903, 905, 1002, 1006	Am	124
353-65	Am	7	428-1010	R	124
353C-5	Am	95			
363-___	N	101			
371-___	N	103			
378-___	N	60			
(4 secs, pt ___)					
378-2.5	Am	95			
383-1	Am	219			

HRS Section No.	Effect	Affected By Act No.	HRS Section No.	Effect	Affected By Act No.
Volume 9			431:19-110	Am	208
			431:19-111.5, 115	Am	209
431:1-209	Am	212	431:20-103	Am	212
431:2-201	Am	212	431:21-104, 106	Am	212
431:2-216	Am	3	431M-1	Am	197
		197	431M-2	Am	212
		212	431M-4, 5	Am	197
431:2-304 (heading)	Am	212	432:1-___	N	125
431:2-308	Am	212	432:1-102	Am	3
431:3-204, 205, 212, 301, 302, 306.5, 401 to 403, 406, 408	Am	212	432:1-404, 604	Am	212
431:3A-102, 201, 302	Am	212	432:2-609	Am	212
431:4-105, 232, 314, 403, 405	Am	212	432C-1	Am	212
431:5-203, 301, 307	Am	212	432D-___	N	125
431:7-201, 202	Am	212	432D-5, 7, 9	Am	212
431:8-201, 205, 208, 307, 313, 315 to 318	Am	212	432D-19	Am	3
c 431, Art 9 (heading)	Am	212	432E-4	Am	114
431:9-229	Am	212	432E-11	Am	212
431:9-235	Am	133	Volume 10		
431:9A-___	N	212	436B-15.5	Am	210
431:9A-___ (10 secs, pt ___)	N	55	436B-19.6	Am	133
431:9A-101	Am	212	436C-___ (2 secs)	N	133
431:9A-102	Am	55	436C-1, 2	Am	133
431:9A-103 to 108, 109	Am	212	437-___ (2 secs)	N	126
431:9A-112	Am	133	437-1	Am	126
431:9A-124, 126, 129, 142	Am	212	437-1.1	Am	67
431:9C-102, 103	Am	212	437-2, 6, 7, 23, 28, 29, 35, 35.5	Am	126
431:10A-___	N	125	437D-8.5	Am	155
431:10A-116.5	Am	212	444-23.5	Am	3
431:10A-116.6, 116.7	Am	201	445-112	Am	194
431:10A-118, 120, 206.5, 301, 404, 406, 602	Am	212	457-___	N	198
431:10B-104	Am	212	457-8.6	Am	3
431:10C-119, 215, 405	Am	212	457-9	Am	133
431:10D-104, 208, 305, 408, 409, 507, 508	Am	212	457G-1, 1.5, 2	Am	97
431:10H-112, 115, 117, 220, 221	Am	212	457G-2.5	R	97
431:11-103	Am	212	461-1	Am	201
431:11A-101	Am	212	463-9	Am	95
431:12-101, 102, 107, 109	Am	212	465-7, 7.6	Am	79
431:13-103	Am	212	466-5	Am	129
431:13-104	Am	3	466J-8	Am	133
431:13-108, 201, 203	Am	212	Volume 11		
431:15-308, 311, 324	Am	212	476-8	Am	212
431:16-103, 115, 203, 218	Am	212	476-26	Am	45
431:19-101	Am	209	480-14	Am	13
431:19-101.5	Am	205	480F-4	Am	222
431:19-102, 104 to 106	Am	209	482-___	N	124
431:19-106.5	Am	212	c 482 (heading)	Am	124
431:19-107	Am	209	c 482, pt I (heading)	Am	124
		212	482-1, 2	Am	124
		209	482-3	Am	124
431:19-109	Am	209	482-4 to 8	Am	210
			482-8.5	Am	124
			482-9	Am	124
			482-10 to 12	R	124
			482-21 to 25, 28, 29, 36	Am	124
			485-1	Am	17
			485-14.5	Am	212
			486P-___ (4 secs)	N	77

HRS Section No.	Effect	Affected By Act No.	HRS Section No.	Effect	Affected By Act No.
486P-1, 3	Am	77	663-____ (2 secs, pt ____)	N	69
Volume 12			663-____ (2 secs, pt ____)	N	82
501-33	Am	73	663-15.5	Am	146
502-8	Am	178	667-____	N	89
514A-82.1	Am	95	669-1	Am	73
514A-90	Am	53	671-____ (2 secs)	N	211
		80	671-3	Am	114
516-1	Am	29	671-16, 18	Am	211
c 520A	N	86	675-3	Am	177
521-52	Am	194			
523A-18	Am	74			
523A-23	R	115	Volume 14		
523A-23.5	Am	115	706-606.4	Am	3
571-2, 34	Am	95	706-662	Am	33
571-88	Am	6	707-____	N	66
Volume 13			707-702	Am	64
601-3	Am	123	707-712.5	Am	66
601-3.7	Am	216	707-730, 732	Am	62
601-17	Am	5	708-820, 821	Am	19
602-2, 52	Am	123	708-890	Am	3
603-5	Am	123	711-1100, 1101	Am	48
604-2.5	Am	123	711-1106.4, 1106.5	Am	68
605-1	Am	133	711-1110.9, 1111	Am	48
607-____	N	65	712-1249.6	Am	70
607-4	Am	216	712A-16	Am	63
607-5	Am	216	831-2	Am	150
607-5.6	Am	41	831-3, 3.1	Am	95
608-1.5	Am	123	846-____	N	95
662-____	N	144	846-41 to 45, pt III	R	95
662D-____	N	144	846-51	Am	33
			846E-1 to 4, 6	Am	62

B. SESSION LAWS OF HAWAII AFFECTED

S.L.H. No.	Effect	Affected By Act No.	S.L.H. No.	Effect	Affected By Act No.
Laws 1981 1st Sp			Act 181	Am	160
Act 1	Am	200	Act 279	Am	157
Laws 1982			Act 281	Am	161
Act 264	Am	200	Act 291	Am	162
Laws 1983			Act 292	Am	159
Act 301	Am	200	Act 293	Am	158
Laws 1984			Act 296	Am	165
Act 285	Am	200	Laws 2000		
Laws 1985			Act 39	Am	80
Act 300	Am	200	Act 188	Am	96
Laws 1986			Act 192	Am	11
Act 345	Am	200	Act 213	Am	131
Laws 1987			Act 243	Am	197
Act 216	Am	200	Act 281	Am	200
Laws 1988			Act 292	Am	110
Act 390	Am	200	Laws 2001		
Laws 1989			Act 132	Am	128
Act 316	Am	200	Act 144	Am	43
Laws 1990			Act 163	Am	3
Act 299	Am	200	Act 213	Am	91
Laws 1991			Act 259	Am	200
Act 296	Am	200			218
Laws 1992			Act 273	Am	95
Act 300	Am	200			98
Laws 1993			Act 309	Am	214
Act 289	Am	200	Laws 2001 2nd Sp		
Laws 1994			Act 1	Am	62
Act 252	Am	200	Laws 2001 3d Sp		
Laws 1995			Act 3	Am	200
Act 218	Am	200			218
Laws 1996			Laws 2002		
Act 287	Am	200	Act 39	Am	3
Laws 1997					178
Act 328	Am	200			212
Act 376	R	42	Act 72	Am	3
Laws 1998			Act 74	Am	3
Act 101	Am	11	Act 75	Am	191
Act 116	Am	200	Act 77	Am	3
Act 142	Am	178	Act 112	Am	43
Act 176	Am	91	Act 130	Am	3
Laws 1999			Act 160	Am	3
Act 88	Am	88	Act 176	Am	3
Act 91	Am	200	Act 177	Am	200
Act 117	Am	91			218
Act 121	Am	197	Act 192	Am	3
Act 163	Am	178	Act 219	Am	128
Act 179	Am	164	Act 224	Am	3
Act 180	Am	163	Act 226	Am	3

GENERAL INDEX
2003 Regular and Special Sessions

ACT

ABANDONED PROPERTY

Administrative and operational expenses of program	115
Publication of notice	74
Unclaimed property trust fund; deposits and expenditures	115

ACCOUNTANTS

Licensing examination; format and schedule	129
--	-----

ACCOUNTING AND GENERAL SERVICES

Campaign spending commission; transfer to department	117
Office of elections and elections appointment and review panel; transfer to department	117
Purchase of goods and services	
awarding contracts; amendments	52
payment by government procurement cards	51
School maintenance and repair	188; 214
Stadium special fund; appropriation from	178
State motor pool revolving fund; appropriation from	178
State parking revolving fund; appropriations from	34; 178

ACTIONS

Antitrust class actions; damages	13
Claims against the State	
appropriations	58
claims against the University of Hawaii; appropriation	130
duty to warn of dangerous natural conditions	82
skateboarding parks	144
Contested case hearings; use of mediation to settle disputes	76
Court fees for filings in civil actions; judiciary computer system surcharge	216
Dependent elder abuse; civil actions	196
Drinking by minors; liability of adult for injuries or damages	69
Foreclosure appeals	89
Health insurance fraud	125
Landowner's liability; immunity for invasive species control and eradication	86
Litigation settlement clearance account; appropriation from	178
Medical torts against health care providers; mediation; tolling statute of limitations	211
Nonprofit corporations; indemnification of directors	81
Public lands; dangers from outdoor recreation	82
Quiet title actions; accreted lands	73
Release of joint tortfeasors and co-obligors; amendments	146
Safe harbor agreements and habitat conservation plans; citizen suits	35
Skateboarding parks; state and county immunities for injuries and damages	144
Social host liability; underage drinking	69
University of Hawaii	
indemnification of third parties	186
risk management program	186

AGED PERSONS

Abuse, neglect, or economic exploitation of elderly persons	
adult residential care home investigations	202
civil suits	196

AGED PERSONS—cont'd

Adult residential care homes	
dependent elder abuse; civil actions	196
unannounced visits and inspections	202
Assisted living facilities in condominiums and cooperative housing projects	185
Community care foster family homes and case management agencies; licensing extended	98
Executive office on aging; transfer to department of health	204
Hale mahaolu; grant for personal care program for disabled and elderly	215; Sp 3
Honolulu neighborhood housing services retirement community; special purpose revenue bonds extended	165
Pacific Saging Center, Inc.; special purpose revenue bonds extended	159

AGRICULTURE

Agribusiness development corporation	
acquisition, use, and disposition of lands	47
board of directors made permanent	91
Waiahole water system revolving fund; appropriation from	178
Agricultural districts	
agribusiness development corporation powers	47
restrictive covenants and private agreements limiting agricultural uses	Sp 5
transfer of agricultural lands to agriculture department	90
Agricultural loan reserve and revolving funds; appropriation from	178
Agricultural park special fund; appropriation for public land trust proceeds	34
Agricultural products	
inspection and certification services; amendments	49
ownership certificates for sale and transportation of commodities	20
Animal quarantine special fund; appropriation from	178
Brown tree snakes; importing to train detector dogs	10
Cacao bean processing and chocolate production facilities; special purpose revenue bonds extended	96
Coffee inspection revolving fund; repealed, transfer of moneys	49
Irrigation	
east Kauai irrigation system; appropriation	200 §8
Waiahole water system revolving fund; appropriation from	178
Waimea irrigation system; replacement of Puukapu Homesteads bridge	218
water use and development plan; report extended	11
Marketing order revolving fund; renamed, uses	49
Microorganism importation and research; permit exemptions and transfers of microorganisms	12

AIRPORTS

Airport fees	178; 213
Helicopters used to transport medical emergency patients	Sp 2
Passenger facility charge revenue fund	178; 213
Repair and maintenance projects; appropriation and report	200 §12
Safety and security measures; appropriation	213

ALCOHOL

see INTOXICATING LIQUORS

ANIMALS

Animal quarantine special fund; appropriation from	178
Brown tree snakes; importing snakes to train detector dogs	10
Indigenous species; safe harbor agreements and habitat conservation plans	35
Invasive species control and eradication	85; 86

ANTITRUST

Class action for indirect purchasers; damages 13

APPROPRIATIONS

Accounting and general services
 school maintenance and repair 214

Agriculture
 Puukapu Homesteads bridge 218

Appropriations act of 2003 200

Attorney general
 cigarette tax stamp enforcement expenses 179
 criminal history record checks 98
 drug nuisance abatement unit 63
 tobacco enforcement expenses 177; 179

Business, economic development, and tourism
 film facility operations 178

Claims against the State 58; 130

Commerce and consumer affairs
 compliance resolution fund expenses 179
 condominium specialist and review of laws 131

Defense
 Korean War commemoration commission Sp 1

Elections office 195

Emergency appropriations
 airport and harbor security measures 213
 children's health insurance program 57
 governor and lieutenant governor 2
 medicaid program 22
 public land trust revenues 34
 Puukapu Homesteads bridge 218

Governor; operating expenses 2

Health
 adolescent substance abuse services 215; Sp 3
 crystal methamphetamine anti-drug efforts on Hawaii 215; Sp 3
 emergency aeromedical services for Maui Sp 2
 health care for uninsured persons 215; Sp 3
 hospital-based poison center 215; Sp 3
 hospital subsidies 215; Sp 3
 Waipahu adult and youth day health centers Sp 3
 youth and adolescents substance abuse services 215; Sp 3

Housing and community development corporation
 homeless assistance 215; Sp 3

Human services
 blueprint for change program 215; Sp 3
 children's health insurance program 57
 chore services 215; Sp 3
 community family center services 215; Sp 3
 hale mahaolu grant 215; Sp 3
 medicaid program 22; 215; Sp 3
 medical examinations for foster placements Sp 3
 residential alternative community care program 215; Sp 3
 spouse and child abuse account administrative expenses 179
 street youth services Sp 3

Judiciary
 budget 120
 collective bargaining agreements 143
 domestic violence clearinghouse and legal hotline Sp 3
 intrafamily sex abuse victims Sp 3

APPROPRIATIONS—cont'd

Legislative branch	1
Lieutenant governor; operating expenses	2
Office of community services	
na keiki law center	Sp 3
Office of Hawaiian affairs	
budget	183
public land trust revenues	34
Office of veterans services	
veterans burial grant program	101
Public employees	
collective bargaining agreements	137; 138; 139; 140; 141; 142; 143
retirement system; finalizing pensions	134
Taxation	
cigarette tax stamp administrative expenses	179
Transportation	
airport and harbor security measures	213
University of Hawaii	
bridge to hope program	215; Sp 3
center for nursing	198
claims against the university	130
medical education council	181

ARBITRATION AND MEDIATION

Contested cases before government agencies	76
Medical claim conciliation panels	211
Public employees' collective bargaining; binding arbitration	Sp 6

ASSAULT

Assault against law enforcement officers	66
--	----

ATTORNEY GENERAL

Age of consent for sexual conduct; report on task force recommendations	62
Antitrust class actions; damages	13
Cigarette and tobacco products	
enforcement special funds	177; 178; 179
registration of brand names and manufacturers, and enforcement of tax laws	77
tobacco settlement agreement; report on impact of diverting moneys	200 §70
Criminal history record checks working group; extended	95
Dependent elder abuse; civil actions	196
Drug nuisance abatement unit	63
Missing children's clearinghouse trust fund and advisory board; repealed, transfer of moneys	192
Sex offender registration; requirements and release of information	62
Special, trust, and revolving funds	
appropriations from	178
report	200 §69

ATTORNEYS

Native Hawaiian legal corporation; appropriation for Hawaiian rights and land title projects	183
Student loan default; license denial or suspension procedures	133
Volunteer legal services Hawaii; appropriation for na keiki law center	Sp 3

AUDITOR

Appropriation	1
Audit revolving fund	Sp 4
Charter schools funding allocation; determination by auditor repealed	203
Financial audits of state agencies and special funds; reimbursement for costs and expenses	Sp 4
Public utilities commission management audit	94

BEACHES

Accreted lands; declared public lands, claims by private landowners	73
Beach restoration special fund; appropriation for public land trust proceeds	34
Water safety officers	
emergency vehicles exempt from traffic laws	112
peer support counseling	25

BOARDS AND COMMISSIONS

Access Hawaii committee; extended	110
Agribusiness development corporation board of directors; made permanent	91
Campaign spending commission; transfer to department of accounting and general services	117
Commission on fatherhood	156
Condominium recodification advisory committee; extended, membership	131
Criminal charging procedures task force	190
Criminal history record checks working group; membership, extended	95
Elections appointment and review panel; transfer to department of accounting and general services	117
Emergency aeromedical services quality improvement committee	Sp 2
Executive salary commission	122
Hawaii 3R's school maintenance and repair advisory board	214
Home and community-based case management agency review board; extended	98
Hui Imi task force	42
Insurance licensees continuing education advisory committee	55
Invasive species council	85
Judicial salary commission; membership, duties	123
Medical claim conciliation panels; procedures	211
Medical education council	181
Missing children's clearinghouse advisory board; repealed	192
Nursing center advisory board	198
Prepaid health care advisory council; membership	206
Risk assessment working group	82
Simplified sales and use tax advisory council	173
Teacher education coordinating committee; membership	78
Water resource management commission; membership	184

BOATS AND VESSELS

Boating special fund; appropriation for public land trust proceeds	34
Claims against the State; appropriation from ocean recreation program funds	58
Emergency radio beacons or distress call equipment	54
Maritime-related industries; public land leases	127
Shipping motor vehicles	26; 45

BONDS

County bonds; insurance and banking arrangements	38; 39
General obligation bonds authorization	116
Special purpose revenue bonds	
Chaminade University	170

BONDS—cont'd

Special purpose revenue bonds—cont'd

Hanalei School	166
Hawaii Gold Cacao Tree, Inc.; extension of authorization	96
Hoala School	168
Honolulu Neighborhood Housing Services, Inc.; extension of authorization	165
Mid-Pacific Institute	167
North Hawaii Community Hospital, Inc.; reauthorization	175
Pacific Cardiac Institute, Inc.; extension of authorization	157
Pacific Community Health and Wellness, Inc.; extension of authorization	158
Pacific Saging Center, Inc.; extension of authorization	159
Pacific Sports Medicine and Research Center, Inc.; extension of authorization	160
Pacific Wellness Center, Inc.; extension of authorization	161
Pacific Women's Center, Inc.; extension of authorization	162
Queen's Health Systems	176
St. Patrick School	169
Wahiawa-Central Oahu Health Center, Inc.; extension of authorization	163
Wahiawa General Hospital, Inc.; extension of authorization	164

BUDGET AND FINANCE

Debt limit declaration and bond authorization	116
Emergency and budget reserve fund	
appropriations from	215; Sp 3
appropriations to	200 §20
Special funds; assessment of central services and administrative expenses	179
Unclaimed property	
administrative and operational expenses	115
publication of notice	74

BUREAU OF CONVEYANCES

Covenants and private agreements in deeds, leases, etc.; restrictions on agricultural uses prohibited	Sp 5
Registration of accreted lands	73
Special fund; appropriation from	178
Workflow study to improve procedures and streamline operations	200 §61

BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Cancer detection research and development fund	174
Claims against the State; appropriations from rental housing program funds	58
Foreign trade zones special fund; appropriations from	34
Hawaii community development authority revolving fund; appropriation for public land trust proceeds	34
Housing and community development corporation; transfer to department of human services	92
Job training programs; reports on effectiveness	148
Ko Olina resort and marina and Makaha resort development tax credit	100
Special and revolving funds; repeal of certain funds and transfers of moneys	178
Workforce development council; statewide planning program	148

CEMETERIES

Discovery of human remains during land development or alteration activities	104
Filipino World War II veterans; funeral, transportation, and burial expenses	101

CHILDREN

Age of consent for sexual conduct; temporary provisions made permanent	62
--	----

Child abuse	
blueprint for change; grant for diversion and child protective services	215; Sp 3
child pornographic performances	61
prevention special funds	
appropriation from	178
assessment of administrative expenses	179
Child care facilities	
criminal history record checks of operators and employees; amendments	95
federal funds transferred to A Plus after school program	200 §142
parent-caregiver conferences	108
Child custody	
caregiver consent to enroll in school and participate in activities	99
child placement, foster boarding homes, and adoption	
appropriation and report	200 §§33, 34
criminal history record checks; amendments	95
medical examinations	Sp 3
missing child center	192
Child welfare services	
eligibility determination unit	200 §32
multi-agency case coordination	200 §31
Crimes and juvenile delinquency	
driving under the influence of alcohol or drugs	71
expungement of juvenile arrest records	6
false driver's licenses	69
juvenile drug court program; appropriation and report	120
possession, distribution, or sale of drugs near parks	70
substance abuse services; appropriation	215; Sp 3
underage drinking	69
youth correctional facilities; criminal history record checks; amendments	95
Employment	
adult entertainment prohibitions	61
work hour restrictions	61
Father-child relationship; commission on fatherhood	156
Health care services	
foster custody children	Sp 3
healthy Hawaii initiative; reports	200 §21
intrafamily sex abuse victims	Sp 3
maternal and child health services; reports	200 §19
mental health programs	
criminal history record checks of service providers; amendments	95
Felix consent decree reports	200 §28
Health insurance program for uninsured children; appropriation	57; 200 §22
Missing children's clearinghouse trust fund and advisory board; repealed, transfer of moneys	192
Na keiki law center; appropriation to volunteer legal services Hawaii	Sp 3
Parent-teacher conferences; paid leave time for public employees	108
Skateboarding parks; state and county immunities for injuries and damages	144

CIRCUIT COURTS

Foreclosure appeals	89
Judges; compensation and retirement	118; 123
Judiciary computer system surcharge in civil actions	216

CIVIL DEFENSE

see DISASTERS; EMERGENCY RESPONSE

CIVIL IDENTIFICATION

Driver's licensing of resident aliens; identification documents	145
Social security identification numbers	
commercial driver's license use prohibited	15
election poll book use prohibited	23
State identification revolving fund; appropriation from	178

COMMERCE AND CONSUMER AFFAIRS

Business registration; amendments	124
Compliance resolution fund; appropriations from	178
Condominium specialist and review of laws; extended	131
Operating expenses and fee assessments; report	200 §60
Special funds; assessment of administrative expenses	179
Uniform limited partnerships act	210

CONDOMINIUMS

Assisted living facilities in condominiums and cooperative housing projects	185
Criminal history record checks of managers and security guard applicants;	
amendments	95
Foreclosures	
assessment of unpaid common expenses	53; 80
when title is acquired by subsequent purchaser	53
Review and recodification of laws; extended	131

CONSTITUTION, STATE

Proposed constitutional amendments; voter information and education function	
transferred to legislature	8

CONSUMER PROTECTION

Antitrust class actions; damages	13
Collision damage waivers for rental vehicles; commissions on sales	155
Prescription drugs; generic drug substitutions	56
Public utilities commission consumer advocate	94; 132

CORPORATIONS

Amendments	124
------------------	-----

CORRECTIONS

Collective bargaining agreements; appropriation for health fund contributions	141
Criminal history record checks of employees and applicants; amendments	95
Development or expansion of existing facilities	221
Halawa correctional facility inmate store fund; appropriation from	178
Incarceration in mainland prisons; appropriation and report	200 §§57, 58
Job development and mental health treatment programs; appropriation and reports	200 §56
Oahu community correctional facility inmate store fund; appropriation from	178
Public safety department divided into department of corrections and department of	
law enforcement; feasibility study	83
Substance abuse services; appropriation and report	200 §§27, 56
Waiawa correctional facility inmate store fund; appropriation from	178

COUNTIES

Boards of water supply; workforce modernization projects for personnel	40
Criminal conviction of public official or employee	150
General excise and use tax surcharge; repealed	135
Motor vehicle towing companies; ordinances regulating	84
Municipal bonds; insurance and banking arrangements	38; 39
Parks and recreation programs	
criminal history record checks of operators and employees; amendments	95
duty to warn of dangerous natural conditions	82
skateboarding parks; state and county immunities	144
Purchase of goods and services	
awarding contracts; amendments	52
payment by government procurement cards	51
School facilities and grounds, Island of Hawaii; transfer from county to state	154

CRIMES AND CRIMINAL JUSTICE

see also VICTIMS OF CRIMES

Child labor law violations	61
Cigarette and tobacco tax violations	77
Criminal charging procedures; task force and report	190
Criminal conviction of public official or employee; removal or termination of employment	150
Criminal history record checks	
amendments	95
home and community-based case management agencies and foster family homes	98
international matchmaking organizations	149
use for employment and licensing purposes; study extended	95
Drug nuisance abatement	63
Expungement of juvenile arrest records	6
Fines and bond forfeitures; payment by debit cards	5
Habitually operating vehicle under the influence of intoxicants	71
Hate crimes; crimes based on gender identity or expression	33
Health insurance fraud	125
Parking for disabled persons violations	30
Parole	
arrest warrants for violators	7
feasibility study on transfer to new department of law enforcement	83
parole officers; peer support counseling	25
Probation	
probation officers; peer support counseling	25
services special fund; assessment of administrative expenses	179
Sex offender registration; requirements and release of information	62

CULTURE AND THE ARTS

Bishop Museum; appropriation for subsidy	200 §64
Korean War commemoration commission; appropriation	Sp 1
South Kona wilderness area; designation and preservation	59
Sports hall of fame; state museum of sports history	102
Works of art special fund; exemption from assessment	178; 213

DEATH

Abuse, neglect, or economic exploitation of elderly persons; civil suits	196
Anatomical gifts; organ and tissue education fee and special fund made permanent	88
Filipino World War II veterans; funeral, transportation, and burial expenses	101

DEATH—cont'd

Murder and attempted murder; extreme mental or emotional disturbance defense to crime	64
Public employees; payment of death benefits	118

DEBTORS AND CREDITORS

Check cashing businesses; time period and face value of check for deferred deposit (payday loans)	222
Delinquent taxes; investigation and compromise on debt and penalties	136
Foreclosures	
appeal procedures	89
condominium unpaid common expenses	53; 80
Student loan default; professional license denial or suspension	133; 212

DEFENSE

Filipino World War II veterans; funeral, transportation, and burial expenses	101
Korean War commemoration commission; appropriation	Sp 1

DENTISTRY

Dental service plans; extension of regulations and examination waivers	128
Health care for uninsured persons; appropriation for community-based health care providers	215; Sp 3
Oral health services to children; appropriation	Sp 3

DISABLED PERSONS

Chore services program	
appropriation	215; Sp 3
reports	200 §35
Developmental disabilities	
claims against the State; appropriation from health department program	58
criminal history record checks of care home operators	95
Education; Felix consent decree reports	200 §§28, 30, 47, 48, 141, 144
Hale mahaolu; grant for personal care program for disabled and elderly	215; Sp 3
Housing alteration loan program and fund; repealed	178
Parking for disabled; amendments	30
Public assistance; failure to pursue medical treatment	105
Telecommunications relay services for persons with hearing or speech disabilities; program implementation and surcharges to fund services	50

DISASTERS

American Red Cross; volunteer services by government employees	24
Disaster relief services; leaves of absence for public employees	24
Kalapana lava flow displaced families; Kikala-Keokea infrastructure improvements	43
State disaster revolving fund; appropriation from	178

DISCRIMINATION

Hate crimes; crimes based on gender identity or expression	33
Motor vehicle manufacturer or distributor franchise agreements	126
Restrictions on political signs and advertisements on rental property	194

DISEASES

Cancer
 early detection research and development fund 174
 hospital examinations of female patients repealed 107
 statewide plan for screening, early diagnosis, and treatment 107
 Diabetes; insulin-dependent commercial drivers 18
 Maui AIDS foundation; appropriation for case management program Sp 3
 Microorganism importation and research; permit exemptions 12

DISTRICT COURTS

Judges; compensation and retirement 118; 123
 Judiciary computer system surcharge in civil actions 216
 Traffic infractions; notice and answer 4

DOMESTIC ABUSE

Blueprint for change; grant for diversion and child protective services 215; Sp 3
 Domestic violence clearinghouse and legal hotline, Maui; appropriation Sp 3
 Harassment by stalking; amendments 68
 Leaves of absence for victims of domestic or sexual violence or stalking 60
 Protective orders; waiver of court costs and fees 65
 Special funds
 appropriation from 178
 assessment of administrative expenses 179

DRUGS

Ambulance drivers and emergency medical personnel; substance abuse policy 106
 Controlled substances
 amendments to schedules 151
 registration revolving fund; appropriation from 178
 Crystal methamphetamine use; appropriation for community anti-drug efforts on
 Hawaii 215; Sp 3
 Dispensing prescription drugs
 amendments 56
 emergency contraceptives 201
 generic drugs formulary 56
 Medicaid prescription drugs program
 appropriation and report 200 §36; 215;
 Sp 3
 income eligibility; sunset 191
 Minors
 juvenile drug court program; appropriation and report 120
 substance abuse services; appropriation 215; Sp 3
 Nuisance abatement unit 63
 Operating vehicle under the influence of intoxicants, see MOTOR VEHICLES
 Possession, distribution, or sale near parks 70
 Prison population
 services programs; appropriation and report 200 §§27, 56

EDUCATION

Administration
 charter schools 203
 deputy superintendents; salary 187
 district superintendents; changed to complex area superintendents; duties; salaries 187
 weighted pupil allocation system; feasibility study 200 §45
 A Plus after school program; transfer of federal child care funds 200 §142
 Business assistants; conversion to permanent positions 189

EDUCATION—cont'd

Chaminade University; special purpose revenue bonds	170
Charter schools	
administrative office and executive director	203
funding	200 §44; 203
per pupil allocations for 2003-2004 school year	203
Claims against the State; appropriation from school-based budgeting funds	58
De Silva elementary school, Hawaii; transfer from county to state	154
Driver education and training fund; transfer of moneys	178
Felix consent decree; reports	200 §§28, 30, 48, 141, 144
Foreign languages; curriculum priorities	220
Haaheo school, Hawaii; transfer from county to state	154
Halaula elementary school, Hawaii; transfer from county to state	154
Hanahauoli School; special purpose revenue bonds	166
Hilo intermediate and high schools, Hawaii; transfer from county to state	154
Hilo union school, Hawaii; transfer from county to state	154
Hoala School; special purpose revenue bonds	168
Holualoa elementary school, Hawaii; transfer from county to state	154
Honounau elementary school, Hawaii; transfer from county to state	154
Honokaa elementary, intermediate, and high schools, Hawaii; transfer from county to state	154
Hookena school, Hawaii; transfer from county to state	154
Job training programs	
federally-funded programs; staffing	103
hotel service training facility at Ko Olina resort; tax credit	100
reports on effectiveness	148
Kalaniana'ole elementary and intermediate school, Hawaii; transfer from county to state	154
Kalaoa school, Hawaii; transfer from county to state	154
Kapiolani school, Hawaii; transfer from county to state	154
Kau elementary and high schools, Hawaii; transfer from county to state	154
Kaumana school, Hawaii; transfer from county to state	154
Keaau elementary and middle schools, Hawaii; transfer from county to state	154
Keaukaha school, Hawaii; transfer from county to state	154
Kohala high and intermediate school, Hawaii; transfer from county to state	154
Konawaena middle and high schools, Hawaii; transfer from county to state	154
Laupahoehoe high and elementary school, Hawaii; transfer from county to state	154
Mental health services; reports	200 §§28, 30, 47
Mid-Pacific Institute; special purpose revenue bonds	167
Mt. View elementary school, Hawaii; transfer from county to state	154
Naalehu elementary and intermediate schools, Hawaii; transfer from county to state	154
Napoopoo school, Hawaii; transfer from county to state	154
No Child Left Behind Act; compliance report	200 §43
Paaui elementary and intermediate school, Hawaii; transfer from county to state	154
Pahala elementary school, Hawaii; transfer from county to state	154
Pahoa elementary, intermediate, and high schools, Hawaii; transfer from county to state	154
Private schools	
criminal history record checks of teachers and teacher trainees; amendments	95
parent-teacher conferences; paid leave time for public employees	108
special purpose revenue bonds	166; 167; 168; 169; 170
Professional and vocational education	
insurance licensees	55
medical education programs	181
student loan default	133; 212

School facilities maintenance and repair	
business assistant positions	189
priorities set by education department	188
public-private partnerships	214
special funds	
appropriation for public land trust proceeds	34
public-private partnerships	214
status reports on projects	188
School lunch program; quarterly reports	200 \$46
St. Patrick School; special purpose revenue bonds	169
Students	
autistic children's services	200 \$49
caregiver consent to enroll in school and participate in activities	99
parent-teacher conferences; paid leave time for public employees	108
Teachers	
collective bargaining agreements; appropriation	139
criminal history record checks of teachers and teacher trainees; amendments	95
student loan default	133
teacher education coordinating committee membership	78
teachers' housing revolving fund; appropriation from	178
Waiakea elementary and intermediate schools, Hawaii; transfer from county	
to state	154
Waiakeawaena school, Hawaii; transfer from county to state	154
Waimea elementary and intermediate school, Hawaii; transfer from county	
to state	154

ELECTIONS

Appropriation	195
Campaign spending commission; transfer to department of accounting and general services	117
Chief election officer; removal for good cause	117
Criminal conviction of public official; removal from office	150
Office of elections and elections appointment and review panel; transfer to department of accounting and general services	117
Political signs and advertisements	
restrictions on rental property use	194
time limits for posting eliminated	194
Proposed constitutional amendments; voter information and education function transferred to legislature	8
Special elections; mail-in ballots	37
Voter identification; social security numbers in poll books prohibited	23

EMERGENCY RESPONSE

American Red Cross; volunteer services by government employees	24
Disaster relief services; leaves of absence for public employees	24
Emergency medical services	
alcohol and drug abuse policy for employees	106
helicopter transport of patients	Sp 2
Honolulu emergency medical technicians' retirement	199
peer support counseling for personnel	25
Emergency vehicles	112
Gasoline shortage; petroleum products control fund repealed, transfer of moneys	178
Lifeguard and water rescue operations	
emergency radio beacons or distress call equipment for vessels	54
vehicles exempt from traffic laws	112
Microorganism importation for research and biohazard response	12
State disaster revolving fund; appropriation from	178

EMPLOYMENT

see also WORKERS' COMPENSATION

Boiler and elevator safety revolving fund; repeal date changed	178
Criminal history record checks; amendments	95
Family leave; employee's sick leave used to care for family members	44
Job training programs	
federally-funded programs; staffing	103
hotel service training facility at Ko Olina resort; tax credit	100
reports on effectiveness	148
Leaves of absence for victims of domestic or sexual violence or stalking	60
Minors	
adult entertainment prohibitions	61
work hour restrictions	61
Occupational safety and health training assistance fund; appropriation from	178
Prepaid health care plans	
advisory council membership	206
public contracts requirements	52
serious mental illnesses coverage made permanent	197
Prison population services programs; reports	200 §56
Public contracts; compliance of contractor with state labor laws	52
Unemployment compensation eligibility	219
Workforce development council; statewide planning program	148

EMPLOYMENT SECURITY

Eligibility for benefits	219
Insufficient qualifying weeks or wages; alternative base period	219
Public contracts; compliance of contractor with state labor laws	52

ENERGY

Alternate energy	
consumer advocate's duties	132
solar, wind, and photovoltaic energy tax credit	207
use as fuel to produce electricity; information to customers	147
Electric personal transportation devices (Segways)	180
Natural energy laboratory special fund; appropriation for public land trust	
proceeds	34
Public utilities commission; effectiveness and enforcement analysis	94

ENVIRONMENT

Alternate energy	
consumer advocate's duties	132
solar, wind, and photovoltaic energy tax credit	207
use as fuel to produce electricity; information to customers	147
Brown tree snakes; importing snakes to train detector dogs	10
Clean Hawaii fund; repealed, transfer of moneys	178
Conservation districts	
notice and penalties for violations	16
South Kona wilderness area	59
Ecotourism; funding trails and access program	113
Environmental assessment or impact statements for correctional facilities	221
Environmental response revolving fund; expenditure reports	200 §18
Invasive species control and eradication	
entry onto public or private property	85
invasive species council	85
landowner immunity for access	86
multi-departmental coordination to control entry of species	85

Safe harbor agreements and habitat conservation plans enforcement and revocation of permits	35
public lands eligibility	35
ETHICS COMMISSION	
Appropriation	1
EVIDENCE	
Agricultural certifications and audits	49
Law enforcement or emergency services personnel peer support counseling; privileged information	25
Mediation in contested cases; confidentiality of proceedings and records	76
Medical torts; alternative dispute resolution proceedings	211
FAMILY COURTS	
Expungement of juvenile arrest records	6
Separation, divorce, or parentage actions; parent education surcharge	41
FINANCIAL INSTITUTIONS	
Credit cards; state and county purchase of goods and services	51
Debit cards; payment of court costs and fees	5
Ko Olina resort and marina and Makaha resort development; tax credit	100
Mortgage foreclosures	
appeal procedures	89
condominiums	53; 80
Municipal bonds; insurance and banking arrangements	38; 39
Securities sales; exemption from registration	17
FIREFIGHTERS	
Collective bargaining agreements; appropriation	142
Ocean search and rescue operations; emergency radio beacons or distress call equipment for vessels	54
Peer support counseling	25
FISH AND FISHING	
Commercial marine licenses; denial or suspension for student loan default	133
FOOD	
Agriculture department inspection and grading; amendments	49
Chocolate production facilities; special purpose revenue bonds extended	96
Native Hawaiian diet program; appropriation	183
School lunch program; quarterly reports	200 §46
FOREIGN COUNTRIES AND GOVERNMENTS	
Cigarette and tobacco products; sale of export or foreign cigarettes	77
Driver's licensing of resident aliens; identification documents	145
Filipino World War II veterans; funeral, transportation, and burial expenses	101
Foreign language curriculum in public schools; priorities in education	220
International matchmaking organizations; disclosure of prior criminal and marital history information	149
Public employment of nonresident aliens; retirement system classification	121

FORESTS AND FORESTRY

Silvicultural products; ownership certifications for sale and resale of commodities 20

FRAUD

Health insurance fraud 125
 Parking for disabled persons; violations and enforcement 30

FUNDS

Agricultural loan reserve and revolving funds; transfer of moneys 178
 Agricultural park special fund; transfer of moneys 34
 Airport special fund; appropriation from 213
 Aloha Tower fund; transfer of moneys 178
 Animal quarantine special fund; transfer of moneys 178
 Attorney general's special, trust, and revolving funds; report 200 §69
 Audit revolving fund Sp 4
 Beach restoration special fund; transfer of moneys 34
 Boating special fund; transfer of moneys 34
 Boiler and elevator safety revolving fund; repeal date changed 178
 Bureau of conveyances special fund; transfer of moneys 178
 Cancer detection development revolving fund 174
 Capital loan revolving fund; repealed, transfer of moneys 178
 Center for nursing special fund 198
 Cigarette tax stamp special funds
 assessment of administrative expenses 179
 transfer of moneys 178
 Clean Hawaii fund; repealed 178
 Coffee inspection revolving fund; repealed, transfer of moneys 49
 Commerce and consumer affairs department special funds; assessment of
 administrative expenses 179
 Community development revolving fund; transfer of moneys 34
 Compliance resolution fund
 assessment of administrative expenses 179
 transfer of moneys 178
 Controlled substance registration revolving fund; transfer of moneys 178
 Criminal forfeiture fund; uses 63
 Domestic violence prevention special fund; assessment of administrative expenses 179
 Driver education and training fund; transfer of moneys 178
 Dwelling unit revolving fund; transfer of moneys 178
 Educational facilities improvement special fund; transfer of moneys 34
 Emergency and budget reserve fund; appropriations from 215; Sp 3
 Federal housing programs special funds 36
 Film facility special fund; repealed 178
 Foreign trade zones special fund; transfer of moneys 34; 178
 Halawa correctional facility inmate store fund; transfer of moneys 178
 Harbor special fund; appropriations from 34; 213
 Hawaii 3R's school repair and maintenance fund 214
 Health planning and development agency fund; transfer of moneys 178
 High technology special fund; assessment of administrative expenses 179
 Homes revolving fund; repealed 178
 Housing alteration revolving loan fund; repealed 178
 Housing finance revolving fund; transfer of moneys 178
 Innovation development fund; repealed 178
 Insurance commissioner's education training fund; transfer of moneys 178
 Libraries special fund; donation of state income tax refunds 193
 Litigation settlement clearance account; transfer of moneys 178
 Marketing order revolving fund; renamed, uses 49
 Medicaid investigations recovery fund; transfer of moneys 178

Medicaid prescription drug rebate special fund; sunset	191
Medical education special fund	181
Missing children's clearinghouse trust fund; repealed	192
Natural energy laboratory of Hawaii special fund; transfer of moneys	34
Oahu community correctional facility inmate store fund; transfer of moneys	178
Occupational safety and health training assistance fund; transfer of moneys	178
Organ and tissue education special fund; made permanent	88
Passenger facility charge revenue fund	178; 213
Petroleum products control fund; repealed	178
Probation services special fund; assessment of administrative expenses	179
Public utilities commission special fund; transfer of moneys	178
Real estate education fund; transfer of moneys	178
School repair and maintenance fund; repealed, transfer of moneys	214
Special land and development fund; transfer of moneys	34; 178
Spouse and child abuse special accounts	
assessment of administrative expenses	179
transfer of moneys	178
Stadium special fund; transfer of moneys	178
State disaster revolving fund; transfer of moneys	178
State identification revolving fund; transfer of moneys	178
State motor pool revolving fund; transfer of moneys	178
State parking revolving fund; transfer of moneys	34; 178
State parks special fund; transfer of moneys	34
Statewide planning and geographic information system special fund; repealed	178
Strategic development corporation revolving fund; repealed, transfer of moneys	178
Tax reserve fund; changed from special fund to trust fund	135
Teachers' housing revolving fund; transfer of moneys	178
Tobacco enforcement special funds	
assessment of administrative expenses	179
consolidation	177
Tobacco settlement special fund	
appropriations from	57; 178
assessment of administrative expenses	179
deposits and uses	177
impact of diverting moneys	200 §70
Unclaimed property trust fund; uses	115
University of Hawaii risk management special fund	186
University special funds and accounts; reports	200 §55
Waiahole water system revolving fund; transfer of moneys	178
Waialua loan and subsidy account; transfer of moneys	178
Waiawa correctional facility inmate store fund; transfer of moneys	178
Water resource management fund; transfer of moneys	34
Works of art special fund; exemption from assessment	178; 213

GASOLINE AND PETROLEUM PRODUCTS

Alternate energy, see ENERGY

Petroleum products control fund; repealed, transfer of moneys	178
---	-----

GENERAL EXCISE TAX

Amendments	135
County excise and use tax surcharge; repealed	135
Delinquent taxes; investigation and collection	136
Internet sales and e-commerce	173
Ko Olina resort and marina and Makaha resort development; tax credit	100
Multi-state sales and use tax enforcement agreements	173
Public contracts; compliance of contractor with state tax laws	52
Television and motion picture production; exemption repealed	135

GEOGRAPHIC INFORMATION SYSTEM

Statewide planning and geographic information system special fund; repealed,
transfer of moneys 178

GOVERNOR

Access Hawaii committee; extended 110
 Executive office on aging; transfer to department of health 204
 Housing and community development corporation transfer to department of human
services; modification of provisions 92
 Invasive species council 85
 Petroleum products control fund; repealed 178
 Salary set by executive salary commission 122
 Staffing expenses of office; emergency appropriation 2

GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE

Bishop Museum; appropriation for subsidy 200 §64
 Blueprint for change; grant for diversion and child protective services 215; Sp 3
 Bridge to hope program; grant 215; Sp 3
 Budget appropriations for grants 200 §77
 Community hospitals and health clinics; appropriations for subsidies 215; Sp 3
 Domestic violence clearinghouse and legal hotline; grant Sp 3
 Hale mahaolu; grant for personal care program for disabled and elderly 215; Sp 3
 Helping Hands Hawaii; school facilities maintenance and repair 214
 Kaneohe community family center; grant for services 215; Sp 3
 Kuhio Park Terrace family center; grant for services 215; Sp 3
 Office of Hawaiian affairs grants; amendments 9
 Substance abuse services for youth and adolescents; appropriation 215; Sp 3
 Volunteer legal services Hawaii; appropriation for na keiki law center Sp 3
 Waipahu community adult day health and youth day care centers; appropriation Sp 3
 Youth services network; grant for transitional living program for street youth Sp 3

GROUP HOMES

Adult residential care homes; unannounced visits and inspections 202
 Community care foster family homes; licensing extended 98
 Criminal history record checks of operators and employees; amendments 95
 Dependent elder abuse
adult residential care home investigations 202
 civil actions 196
 Residential alternative community care program
appropriation 215; Sp 3
 report 200 §37
 Transitional living program for street youth; appropriation Sp 3

HARASSMENT

Harassment by stalking; amendments 68
 Leaves of absence for victims of domestic or sexual violence or stalking 60
 Protection or restraining orders; waiver of court costs and fees 65

HARBORS

Aloha Tower fund; appropriation from 178
 Foreign trade zones special fund; appropriations from 34; 178
 Harbor facility leases for maritime-related industries 127
 Harbor special fund; appropriations from 34; 213
 Repair and maintenance projects; appropriation and report 200 §14
 Safety and security measures; appropriation 213

Shipping motor vehicles	26; 45
-------------------------------	--------

HAWAIIAN PEOPLE

Ceded lands	
appropriation to native Hawaiian legal corporation	183
public land trust revenues; appropriation	34
Gifted and talented native Hawaiian children program; appropriation	183
Historic property or burial sites; failure to obtain approvals before development of property	104
Hui Imi advisory council	42
Kikala-Keokea infrastructure improvements; lapse of appropriation extended	43
Native Hawaiian diet program; appropriation	183
Office of Hawaiian affairs grants; amendments	9
Pacific Wellness Center, Inc.; special purpose revenue bonds extended	161
Registry of Hawaiian persons	217
Social services to native Hawaiians; action plan	42
Water resource management commission; membership	184

HAWAII (ISLAND)

Adolescent substance abuse services; appropriation	215; Sp 3
Crystal methamphetamine use; appropriation for community anti-drug efforts	215; Sp 3
Hawaii Gold Cacao Tree; special purpose revenue bonds extended	96
Honokaia land exchange with Boy Scouts of America	27
Honomalino, Okoe, Kapua, Kaulanamauna, and Manuka lands; designation as South Kona wilderness area	59
Kikala-Keokea infrastructure improvements; lapse of appropriation extended	43
North Hawaii community hospital; special purpose revenue bonds	175
Puukapu Homesteads bridge, South Kohala; appropriation for demolition and replacement	218
School facilities and grounds; transfer from county to state	154

HEALTH

Anatomical gifts; organ and tissue education fee and special fund made permanent	88
Assisted living facilities in condominiums and cooperative housing projects	185
Cancer screening, early diagnosis, and treatment	107; 174
Child and adolescent mental health program; criminal history record checks of service providers; amendments	95
Claims against the State; appropriation from developmental disabilities program funds	58
Domestic violence prevention special fund; assessment of administrative expenses	179
Executive office on aging; transfer to department	204
Graduate medical education program	181
Health care workforce shortages and training programs	181
Microorganism importation and research; permit exemptions and transfers between laboratories	12
Professional licenses; denial or suspension for student loan default	133
State health planning and development agency fund; appropriation from	178
Tobacco settlement	
appropriation for children's health insurance program	57
impact of diverting moneys; report	200 §70
special funds	
assessment of administrative expenses	179
deposits and uses	177
transfer of moneys	178

HIGH TECHNOLOGY

Biotechnology
 cancer detection research and development 174
 microorganism importation and research 12
 Geographic information system special fund; repealed 178
 High technology development corporation
 acquisition, use, and disposition of lands 93
 special fund; assessment of administrative expenses 179
 Pacific international center for high technology research; appropriation for research
 commercialization 200 §4
 State Internet portal and access Hawaii committee; extended 110
 Strategic development corporation
 cancer detection research and development fund 174
 revolving fund; repealed, transfer of moneys 178

HIGHWAYS

Fixed rail or monorail transit system for Oahu; county excise and use tax surcharge
 repealed 135
 Highway fund; appropriation for claims against the State 58
 Puukapu Homesteads bridge, South Kohala; appropriation for demolition and
 replacement 218
 Repair and maintenance projects; appropriation and report 200 §16

HISTORIC PRESERVATION

Failure to obtain approvals before development of property 104
 Hearing and penalties for violations 104
 South Kona wilderness area; designation and preservation 59
 Sports hall of fame; state museum of sports history 102

HOLIDAYS AND CELEBRATIONS

Korean War commemoration commission; appropriation Sp 1

HONOLULU

Emergency medical technicians; pension and retirement 199
 Fixed rail or monorail transit system for Oahu; county excise and use tax surcharge
 repealed 135
 Ko Olina resort and marina and Makaha resort development; tax credit 100
 Pupukea and Waikele land exchange with Boy Scouts of America 27

HOSPITALS

Anatomical gifts; organ and tissue education fee and special fund made
 permanent 88
 Cervical cancer examinations; repealed 107
 Collective bargaining agreements
 appropriation for health fund contributions 141; 143
 nurses 143
 Driving under the influence of alcohol or drugs; testing drivers involved in
 accidents 72
 Emergency medical services
 aeromedical emergency system Sp 2
 alcohol and drug abuse policy for employees 106
 pension and retirement system 199
 Graduate medical education program 181
 Hana community health clinic; appropriation for services 215; Sp 3
 Hawaii state hospital; report on community plan implementation 200 §§26, 29

Health care for uninsured persons; appropriation for community-based health care providers	215; Sp 3
Health insurance fraud	125
Indigent patients; transfer of funds for care and treatment	200 §§138 to 140
Informed consent to medical treatment; information to be provided to patients	114
Kahuku hospital; appropriation for emergency room, patient care for underinsured, medical malpractice insurance, and labor	215; Sp 3
Kapiolani medical center; appropriation for sex abuse treatment center	215; Sp 3
Medical torts against health care providers	
alternative dispute resolution and filing actions	211
physician consultation on merits of claim	211
Mental health treatment and services	
insurance coverage for serious mental illnesses; made permanent	197
release of information for insurance billing purposes	204
Molokai general hospital; appropriation for subsidy	215; Sp 3
North Hawaii community hospital; special purpose revenue bonds	175
Pacific Cardiac Institute, Inc.; special purpose revenue bonds extended	157
Pacific Community Health and Wellness, Inc.; special purpose revenue bonds extended	158
Pacific Saging Center, Inc.; special purpose revenue bonds extended	159
Pacific Sports Medicine and Research Center, Inc.; special purpose revenue bonds extended	160
Pacific Wellness Center, Inc.; special purpose revenue bonds extended	161
Pacific Women's Center, Inc.; special purpose revenue bonds extended	162
Poison center; appropriation for operation	215; Sp 3
Queen's Health Systems; special purpose revenue bonds	176
State health planning and development agency fund; appropriation from	178
St. Francis medical center; appropriation for bone marrow registry	Sp 3
Tripler army medical center; microorganism importation and research	12
Wahiawa-Central Oahu Health Center, Inc.; special purpose revenue bonds extended	163
Wahiawa general hospital	
appropriation for indigent care services	215; Sp 3
special purpose revenue bonds extended	164
Waianae coast comprehensive health center; appropriation for operations and programs	215; Sp 3

HOTELS

Hotel service training facility at Ko Olina resort	100
Ko Olina resort and marina and Makaha resort development; tax credit	100

HOUSING

Assisted living facilities in condominiums and cooperative housing projects	185
Cooperative housing corporations; criminal history record checks of managers and security guard applicants; amendments	95
Federal housing programs; special funds	36
Foreclosures	
appeal procedures	89
condominiums	53; 80
Honolulu neighborhood housing services retirement community; special purpose revenue bonds extended	165
Housing and community development corporation	
claims against the State; appropriations from rental housing program funds	58
homeless assistance; appropriation	215; Sp 3
special and revolving funds; repeal of certain funds and transfers of moneys	178
special funds for federal housing programs	36

HOUSING—cont'd

Housing and community development corporation—cont'd	
transfer to department of human services	92
Planned communities; election of directors and officers by mail	87
Residential leasehold conversions; lots to be zoned for residential use	29
Restrictions on political signs and advertisements on rental property	194
Solar, wind, and photovoltaic energy tax credit	207
Transitional living program for street youth; appropriation	Sp 3

HUMAN RESOURCES DEVELOPMENT

see also PUBLIC EMPLOYMENT

Criminal history record checks working group	95
Executive salary commission	122

HUMAN SERVICES

see also PUBLIC ASSISTANCE

Home and community-based case management agencies and foster family homes;	
licensing extended	98
Housing and community development corporation transfer to department	92
Job training programs	
federally-funded programs; staffing	103
reports on effectiveness	148
Residential alternative community care program; appropriation	200 §37; 215;
	Sp 3
Spouse and child abuse special account; assessment of administrative expenses	179

IMPORTS AND EXPORTS

Agricultural products; inspections and certifications	49
Brown tree snakes; importing snakes to train detector dogs	10
Cigarette and tobacco products; sale of export or foreign cigarettes	77
Foreign trade zones special fund; appropriations from	34; 178
Invasive species control and eradication	85; 86
Microorganism importation and research	12
Wine imported for personal use; reciprocal agreements	153

INCOME TAX

Amendments	135
Attractions and educational facilities tax credit	100
Conformance to Internal Revenue Code	172
County general excise and use tax surcharge; repealed	135
Delinquent taxes; investigation and collection	136
Estimated tax payments; amendments	14
Extension of time to file tax returns	14
Ko Olina resort and marina and Makaha resort development; tax credit	100
Refunds donated to libraries special fund	193
Renewable energy technologies tax credit	207

INFORMATION

Cigarette and tobacco products; registration of brand names and manufacturers	77
Commission on fatherhood; clearinghouse for promoting healthy family	
relationships	156
Criminal history record checks; amendments	95
Driving under the influence of alcohol or drugs; use of juvenile records	71
Electricity companies; fuel mix and retail price disclosures	147
Expungement of juvenile arrest records	6
Geographic information system special fund; repealed, transfer of moneys	178

Informed consent to medical treatment; information to be provided to patients	114
International matchmaking organizations; disclosure of prior criminal and marital history information	149
Internet and e-commerce; tax administration registry	173
Law enforcement or emergency services personnel peer support counseling; privileged information	25
Legislative journals; sale and distribution function transferred to legislature	28
Mental health treatment and services; release of information for insurance billing purposes	204
Missing children's clearinghouse trust fund and advisory board; repealed, transfer of moneys	192
Parks, trails, and public recreational areas; signs warning of dangerous natural conditions	82
Privacy violations; criminal offenses and destruction of recordings	48
Proposed constitutional amendments; voter information and education function transferred to legislature	8
Registry of Hawaiian persons	217
Sex offender registration; requirements and release of information	62
Skateboarding injuries at public skateboarding parks	144
Social security identification numbers	15; 23
State Internet portal and access Hawaii committee; extended	110
Tax delinquencies; compromise of debt posted on Internet	136
Unclaimed property; publication of notice	74
Victim leave; confidentiality of information	60

INSURANCE

Agents, brokers, and solicitors	
child support default	212
continuing education	
course provider licensing	55
credit hours	212
student loan default	133; 212
Amendments	212
Captive insurance companies	
amendments	209
insurance division branch; supervision	205
permitted investments	208
Dental service plans; extension of regulations and examination waivers	128
Health insurance	
children's health insurance program; appropriation	57; 200 §22
emergency contraceptives	201
employee health benefits; prepaid health care plans	206
fraud	125
Insurance commissioner's education training fund; appropriation from	178
Liability insurance; university risk management program	186
Mental health treatment and services	
insurance coverage for serious mental illnesses; made permanent	197
release of information for insurance billing purposes	204
Release of joint tortfeasors from liability; amendments	146

INTEREST

Delinquent taxes; waiver of penalties and interest	136
Municipal bonds; insurance and banking arrangements	38; 39
Public employee pensions	134

INTERMEDIATE APPELLATE COURT

Foreclosure appeals	89
---------------------------	----

INTERMEDIATE APPELLATE COURT—cont'd

Judges; compensation and retirement 118; 123

INTOXICATING LIQUORS

Ambulance drivers and emergency medical personnel; alcohol screening policy 106
 Liquor licensees; criminal history record checks of applicants; amendments 95
 Minors
 driving under the influence of alcohol or drugs 71
 liability of adult for injuries or damages caused by underage drinking 69
 Operating vehicle under the influence of intoxicants, see **MOTOR VEHICLES**
 Prison population; appropriation for alcohol and substance abuse services 200 §27
 Reciprocal shipment of wine; amount allowed and permit exemptions 153
 Social host liability; underage drinking 69

JUDICIARY

Administrative director of the courts; salary 123
 Appropriations act of 2003 120
 Collective bargaining agreements; appropriation 143
 Computer system
 funding through special assessments 216
 report 120
 Court costs and fees
 administrative revocation of driver's license hearings 31
 domestic abuse protective orders 65
 judiciary computer system surcharges 216
 parent education surcharge 41
 parking for disabled persons violations 30
 payment by debit cards 5
 Criminal charging procedures; task force and report 190
 Judges
 retirement date 118
 salaries set by judicial salary commission 123
 Judicial salary commission; membership, duties 123
 Parent education special fund; assessment and uses 41
 Probation services special fund; assessment of administrative expenses 179
 Re-description of personnel positions; report 120
 Spouse and child abuse special account
 appropriation from 178
 assessment of administrative expenses 179

KAUAI

Camp Alan Faye, Waimea; land exchange with Boy Scouts of America 27
 East Kauai irrigation system; appropriation 200 §8

LABOR AND INDUSTRIAL RELATIONS

see also WORKERS' COMPENSATION
 Boiler and elevator safety revolving fund; repeal date changed 178
 Child labor; amendments 61
 Job training programs
 federally-funded programs; staffing 103
 reports on effectiveness 148
 Occupational safety and health training assistance fund; appropriation from 178

LABORATORIES

Laboratory technicians; license denial or suspension for student loan default 133

Microorganism importation and research; permit exemptions and transfers between laboratories	12
LAND AND NATURAL RESOURCES	
Agricultural lands and facilities; transfer to agriculture department	90
Claims against the State; appropriations from ocean recreation and park development programs funds	58
Conservation districts; notice and penalties for violations	16
Dangerous natural conditions on public lands; risk assessment	82
Kikala-Keokea infrastructure improvements; lapse of appropriation extended	43
Land exchanges; legislative disapproval process	75
LAND COURT	
Registration of accreted lands	73
LAND USE	
<i>see REAL PROPERTY</i>	
LANGUAGES	
Foreign languages; curriculum priorities	220
LEASES OF GOODS	
Motor vehicle fleet leasing contracts; terminable rental adjustment clauses	21
LEGISLATIVE REFERENCE BUREAU	
Appropriation	1
Criminal history record checks working group; extended	95
Proposed constitutional amendments; voter education function repealed	8
LEGISLATURE	
Appropriations	1
Broadcast program; appropriation	1
Charter schools budget requests	203
Executive branch salaries; disapproval process	122
Judicial branch salaries; disapproval process	123
Land exchanges; legislative disapproval process	75
Legislative journals; sale and distribution function transferred to legislature	28
Publication of proposed constitutional amendments	8
Safe harbor agreements and habitat conservation plans; approval	35
LIBRARIES	
Criminal history record checks of employees and applicants; amendments	95
Donated moneys; use for staff salaries and operating expenses	193
Income tax refunds donated to libraries special fund	193
Procurement institute library	52
State Internet portal and access Hawaii committee; extended	110
Supreme court law library; appropriation and report	120
LIEUTENANT GOVERNOR	
Campaign spending commission, office of elections, and elections appointment and review panel; transfer to department of accounting and general services	117
Commission on fatherhood	156
Legislative journals; sale and distribution function transferred to legislature	28

LIEUTENANT GOVERNOR—cont'd

Salary set by executive salary commission	122
Staffing expenses of office; emergency appropriation	2

LIMITED LIABILITY COMPANIES

Amendments	124
Partnerships; amendments	124; 210

LONG TERM CARE

Adult residential care homes; unannounced visits and inspections	202
Assisted living facilities in condominiums and cooperative housing projects	185
Criminal history record checks of operators and employees; amendments	95
Dependent elder abuse	
adult residential care home investigations	202
civil actions	196
Home and community-based case management agencies and foster family homes; licensing extended	98
Honolulu neighborhood housing services retirement community; special purpose revenue bonds extended	165
Indigent patients; transfer of funds for care and treatment	200 §§138, 139, 140
Nursing homes without walls program; appropriation and report	200 §37

MARRIAGE

Family leave to care for spouse; use of employee's sick leave	44
International matchmaking organizations; disclosure of prior criminal and marital history information	149
Public employees' retirement system; notice of selection of pension option	182
Separation, divorce, or parentage actions; parent education surcharge	41

MAUI

Domestic violence clearinghouse and legal hotline, Maui; appropriation	Sp 3
Emergency aeromedical helicopter services	Sp 2
Hale mahaolu; grant for personal care program for disabled and elderly	215; Sp 3
Hana community health clinic; appropriation for services for uninsured patients	215; Sp 3
Maui AIDS foundation; appropriation for case management program	Sp 3
Molokai general hospital; appropriation for subsidy	215; Sp 3

MEDICAL RECORDS

Informed consent to medical treatment; information to be provided to patients	114
Mental health treatment and services; release of information for insurance billing purposes	204

MENTAL HEALTH

Anti-psychotic medications; medicaid prescription drugs program	200 §36
Child and adolescent mental health program	
criminal history record checks of service providers; amendments	95
Felix consent decree reports	200 §28
Child intrafamily sex abuse victims; appropriation for treatment services	Sp 3
Developmental disabilities	
claims against the State; appropriation from health department program	58
criminal history record checks of domiciliary home operators; amendments	95
Extreme mental or emotional disturbance; affirmative defense to murder and attempted murder	64

Felix consent decree reports	200 §§28, 30, 47
Hawaii state hospital; report on community plan implementation	200 §§26, 29
Health care for uninsured persons; appropriation for community-based health care providers	215; Sp 3
Law enforcement or emergency services personnel peer support counseling; privileged information	25
Prison population; report on programs	200 §56
Public assistance; failure to pursue medical treatment	105
Release of information for insurance billing purposes	204
Serious mental illnesses; insurance coverage for treatment and services made permanent	197

MILITARY

Filipino World War II veterans; funeral, transportation, and burial expenses	101
Korean War commemoration commission; appropriation	Sp 1
Motor vehicles; shipping vehicles out of state	45
National guard and military reserves; leaves of absence for public employees	109
Tripler army medical center; microorganism importation and research	12

MOTOR VEHICLES

Commercial drivers	
insulin-dependent diabetics	18
proof of domicile	46
social security number on license prohibited	15
waiver of written and driving skills tests	32
Commercial fleet leases; terminable rental adjustment clauses	21
Dealers	
franchise or distributorship agreements	126
out of state purchase by military personnel	45
terminable rental adjustment clauses	21
when license required	67
Driver education and training fund; transfer of moneys	178
Drivers' licenses	
administrative revocation hearings	31
false or fraudulent licenses used by minors; penalty	69
identification documents for non-citizens	145
Driving under the influence of alcohol or drugs	
administrative hearing costs and fees	31
habitual offenders	71
juvenile records	71
testing drivers involved in accidents	72
underage drinking; liability of adult for injuries	69
Electric personal transportation devices (Segways)	180
Emergency vehicles	112
Fixed rail or monorail transit system for Oahu; county excise and use tax surcharge repealed	135
Manufacturers and distributors; licensing and regulation	126
Parking for disabled persons; amendments	30
Registration; anatomical gifts special fee made permanent	88
Rental vehicles	
collision damage waivers; rental agent's commissions on sales	155
fleet leases of vehicles or trailers	21
shipping of vehicles	26
Shipping vehicles	
military personnel	45
rental vehicles	26

MOTOR VEHICLES—cont'd

Towing companies	
county regulation	84
storage charges increased	84
Traffic violations	
notice of traffic infraction	4
police vehicle exemptions	112
water safety emergency vehicle exemptions	112

MURDER

Extreme mental or emotional disturbance; affirmative defense to murder and attempted murder	64
---	----

NONPROFIT CORPORATIONS

Amendments	124
Hawaii 3R's; school maintenance and repair funding	214
Indemnification of directors	81
Planned communities; election of directors and officers by mail	87
Shares of stock, dividends, and distributions prohibited	124
Termination or cancellation of membership classes	81

NURSES

Center for nursing	198
Collective bargaining agreements; appropriation	143
Licensing fees; additional surcharges	198
Student loan default; license denial or suspension procedures	133

OCCUPATIONAL SAFETY AND HEALTH

Appropriations and reports on programs	200 §§10, 11
Boiler and elevator safety revolving fund; repeal date changed	178
Training assistance fund; appropriation from	178

OCCUPATIONAL THERAPISTS

Assistants and support personnel	97
Regulation made permanent; temporary permits repealed	97
Workers' compensation coverage for services	171

OCEAN AND MARINE RESOURCES

Aquarium and marine science research facility at Ko Olina resort; tax credit	100
Claims against the State; appropriation from ocean recreation program funds	58
Emergency radio beacons or distress call equipment for ocean recreation vessels	54
Salvinia molesta or minima, and pistia stratiotes; import and sale prohibited	85
Water safety officers	
emergency vehicles exempt from traffic laws	112
peer support counseling	25

OFFICE OF HAWAIIAN AFFAIRS

Appropriations act of 2003	183
Ceded lands	
appropriation to native Hawaiian legal corporation	183
public land trust revenues; appropriation	34
Employee health benefits plans	152
Grants; amendments	9
Hui Imi advisory council	42

Kikala-Keokea infrastructure improvements; lapse of appropriation extended	43
Registry of Hawaiian persons	217
Social services to native Hawaiians; action plan	42

OMBUDSMAN

Appropriation	1
---------------------	---

PARENT AND CHILD

Adoptive parents; criminal history record checks; amendments	95
Caregiver consent to enroll in school and participate in activities	99
Child intrafamily sex abuse victims; appropriation for treatment services	Sp 3
Community family centers; grants for services	215; Sp 3
Family leave; employee's sick leave used to care for family members	44
Father-child relationship; commission on fatherhood	156
Liability for underage drinking	69
Parent-teacher conferences; paid leave time for public employees	108
Separation, divorce, or parentage actions; parent education surcharge	41

PARKS

Boy Scouts camp grounds on Oahu, Kauai, and Hawaii; land exchange	27
Claims against the State; appropriation from park development program funds	58
Criminal history record checks of operators and employees; amendments	95
Dangerous natural conditions; state and county duty to warn and immunities to liability	82
Drug possession, distribution, or sale near parks	70
Skateboarding parks; state and county immunities for injuries and damages	144
State parks special fund; appropriation for public land trust proceeds	34
Trails and access program; deposits from transient accommodations tax	113

PARTNERSHIPS

Amendments	124
Uniform limited partnerships act	210

PENAL CODE

Assault against law enforcement officers	66
Criminal property damage; knowingly damaging property	19
Disorderly conduct; offense defined	48
Drug offenses	
nuisance abatement unit	63
promoting controlled substances near public parks	70
Harassment by stalking; amendments	68
Hate crimes; crimes based on gender identity or expression	33
Murder and attempted murder; affirmative defense	64
Privacy violations; criminal offenses and destruction of recordings	48
Sexual assault; age of consent for sexual conduct	62

PHARMACISTS

Controlled substances schedules; amendments	151
Dispensing prescription drugs; amendments	56
Emergency contraceptives	201
Generic drug substitutions; formulary of approved substitutions	56
Medicaid prescription drugs program	
appropriation and report	200 §36; 215; Sp 3
income eligibility; sunset	191

PHYSICIANS AND SURGEONS

Graduate medical education program and advisory council	181
Health care for uninsured persons; appropriation for community-based health care providers	215; Sp 3
Health insurance fraud	125
Informed consent to medical treatment; information to be provided to patients	114
Medical torts against health care providers	
alternative dispute resolution and filing actions	211
physician consultation on merits of claim	211

PLANTS

Agricultural inspections and certifications; amendments	49
Indigenous species; safe harbor agreements and habitat conservation plans	35
Invasive species control and eradication	85; 86
Salvinia molesta or minima, and pistia stratiotes; import and sale prohibited	85

POLICE

Assault against law enforcement officers	66
Counsel and release of juvenile offenders; expungement of arrest records	6
Mileage fees for court appearances	31
Motor vehicles and motorcycles; exemptions from traffic laws	112
Peer support counseling	25
Sex offender registration; requirements and release of information	62

PRISONS AND PRISONERS

see CORRECTIONS

PRIVACY

see INFORMATION

PRIVATE DETECTIVES AND GUARDS

Criminal history record checks of employees and applicants; amendments	95
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PROFESSIONS AND OCCUPATIONS

Criminal history record checks; amendments	95
Health care workforce shortages and training programs	181
Insurance licensees continuing education course providers	55
Public contracts; awarding contracts and filing protests	52
Student loan default; professional license denial or suspension	133; 212

PROPERTY DAMAGE

Criminal property damage; knowingly damaging property	19
Historic property or burial sites; failure to obtain approvals before development of property	104

PSYCHOLOGISTS

Insurance coverage for serious mental illnesses; made permanent	197
Qualifications for licensing	79
Release of information for insurance billing purposes	204
State-employed clinical psychologists	79

PUBLIC ASSISTANCE

Bridge to hope program; appropriation	215; Sp 3
Child welfare services	
adoption assistance and difficulty of care payments	200 §§33, 34
eligibility determination unit	200 §32
multi-agency case coordination	200 §31
Chore services program	
appropriation	215; Sp 3
reports	200 §35
General assistance to physically or mentally disabled persons; good cause failure to pursue medical treatment	105
Health insurance program for uninsured children; appropriation	57; 200 §22
Medicaid	
appropriation	22
health insurance portability and accountability	200 §38
investigations recovery fund; appropriation from	178
prescription drugs program	
appropriation and report	200 §36; 215; Sp 3
income eligibility	191
sunset of program	191

PUBLIC CONTRACTS

Airport passenger facility charge revenue fund; exemption from works of art fund assessment	178; 213
Correctional facilities development or expansion	221
Hawaii contractor preference repealed	52
Office of Hawaiian affairs grants; amendments	9
Purchase of goods and services	
awarding contracts, protests, and compliance of contractor with state tax and labor laws	52
payment by government procurement cards	51
procurement education and training institute	52
School facilities maintenance and repair	214

PUBLIC EMPLOYMENT

Civil service	
federally-funded job training programs exemption	103
waivers and exemptions from requirements	40
Collective bargaining	
appropriations for agreements	
unit 1 health plan employer contributions	137
unit 5 health plan employer contributions	139
unit 7 health plan employer contributions	140
unit 9 settlement agreement	143
unit 10 health plan employer contributions	141
unit 11 settlement agreement	142
units 2, 3, 4, 6, 8, and 13 health plan employer contributions	138
binding arbitration	Sp 6
Criminal conviction of public employee; termination of employment	150
Criminal history record checks; amendments	95
Employee assistance programs; peer support counseling sessions	25
Health benefits plans	
collective bargaining agreements	137; 138; 139; 140; 141; 142; 143
office of Hawaiian affairs employees	152

PUBLIC EMPLOYMENT—cont'd

Health benefits plans—cont'd	
retirees and surviving spouses; state and county contributions	111
serious mental illnesses coverage made permanent	197
Leaves of absence	
family leave	44
military leave	109
parent-teacher conferences	108
Red Cross disaster relief services	24
sick leave	
accumulation; reports to retirement system	134
used for family leave purposes	44
vacation allowance	
lump sum payment prohibitions	109
reports to retirement system	134
tax deferred compensation plans	109
Pension and retirement systems	
accumulated vacation allowance; tax deferred compensation plans	109
administrator's salary	118
average final compensation calculation	118
class B members	121
emergency medical technicians	199
finalizing pensions	134
health plans; state and county contributions for retirees	111
information from departments and agencies	134
nonresident aliens	121
payment of benefits	118
selection of retirement benefit option; notice to spouse or reciprocal beneficiary	182
university faculty	119
Salaries and compensation	
governor, lieutenant governor, and department heads and deputies	122
justices, judges, and judicial officers	123
library staff; private funding	193
retirement system administrator	118
school deputy and complex area superintendents	187
vacation allowance lump sum payment; when prohibited	109
School business assistants; conversion to permanent status	189
State-employed clinical psychologists; licensing	79
State parking revolving fund; appropriations from	34; 178
Workers' compensation claims; reports	200 §72
Workforce modernization projects; boards of water supply	40

PUBLIC LANDS

Accreted lands; declared public lands, claims by private landowners	73
Agricultural lands and facilities	
agribusiness development corporation lands	47
transfer to agriculture department	90
Ceded lands	
appropriation to native Hawaiian legal corporation	183
public land trust revenues; appropriation	34
High technology development corporation; acquisition and disposition of lands	93
Invasive species control and eradication	85
Land exchange	
Aloha Council Boy Scouts of America lands in Waikele, Oahu	27
legislative disapproval process	75
South Kona wilderness area	59
Leases	
agricultural lands	90

maritime-related uses	127
Parks, trails, and public recreational areas; dangerous natural conditions	82
Public land trust	
appropriation to native Hawaiian legal corporation	183
proceeds for use of lands; appropriation	34
Safe harbor agreements and habitat conservation plans; eligibility and enforcement	35
School facilities and grounds, Island of Hawaii; transfer from county to state	154
Skateboarding parks; state and county immunities	144
Special land and development fund; appropriations from	34; 178

PUBLIC RECORDS

see INFORMATION

PUBLIC SAFETY

Arrest warrants for parole violators; issuance	7
Controlled substance registration revolving fund; appropriation from	178
Criminal history record checks of employees and applicants; amendments	95
Division of department into separate entities; feasibility study	83
Inmate store funds; appropriations from	178
In-state correctional facilities; development or expansion of existing facilities	221
Job training programs; reports on effectiveness	148
Peer support counseling for employees	25

PUBLIC UTILITIES

Consumer advocate	
long-term benefits of renewable energy	132
management audit of division	94
Electricity production	
fuel mix and retail price disclosures	147
solar, wind, and photovoltaic energy tax credit	207
Ko Olina resort and marina and Makaha resort development; tax credit	100
Public utilities commission	
management audit	94
special fund; appropriation from	178
Telecommunications relay services for persons with hearing or speech disabilities; program implementation and surcharges to fund services	50

QUARANTINE

Animal quarantine special fund; appropriation from	178
Brown tree snakes; importing snakes to train detector dogs	10
Invasive species control and eradication	85; 86
Microorganism importation and research; permit exemptions and transfers of microorganisms	12
Salvinia molesta or minima, and pistia stratiotes; import and sale prohibited	85

REAL PROPERTY

Accreted lands; declared public lands, claims by private landowners	73
Agricultural lands	
public lands leases and regulation transferred to agriculture department	90
restrictive covenants and private agreements limiting agricultural uses	Sp 5
Conservation districts; notice and penalties for violations	16
Cooperative housing projects	
assisted living facilities	185
criminal history record checks of managers and security guard applicants; amendments	95

REAL PROPERTY—cont'd

Covenants in leases, etc.	
protection of political speech	194
restrictions on agricultural uses prohibited	Sp 5
Criminal property damage; knowingly damaging property	19
Foreclosures	
appeal procedures	89
condominium unpaid common expenses	53; 80
Historic property or burial sites; failure to obtain approvals before development of property	104
Invasive species control and eradication	85; 86
Ko Olina resort and marina and Makaha resort development; tax credit	100
Land exchanges; legislative disapproval process	75
Landlord and tenant; prohibiting campaign signs on rental property	194
Landowner's liability; immunity for invasive species control and eradication	86
Leasehold conversions; lots to be zoned for residential use	29
Planned communities; election of directors and officers by mail	87
Quiet title actions; accreted lands	73
Real estate commission	
assisted living facilities in condominiums and cooperatives	185
condominium law review and recodification extended	131
real estate education fund; appropriation from	178
Safe harbor agreements and habitat conservation plans; amendments	35
Solar, wind, and photovoltaic energy tax credit	207
South Kona wilderness area	59

RECIPROCAL BENEFICIARIES

Family leave to care for partner; use of employee's sick leave	44
Public employees' retirement system; notice of selection of pension option	182

REPORTS OR STUDIES

Access Hawaii committee; reports extended	110
Accounting and general services	
school maintenance and repair	188; 214
Agriculture	
agricultural water use and development plan, report extended	11
transfer of agricultural lands to agriculture department	90
Attorney general	
age of consent for sexual conduct	62
special, trust, and revolving funds	200 §69
tobacco settlement agreement funds	200 §70
Budget reports	200 §§109 to 113, 117, 128, 129, 133, 134, 138 to 141
Bureau of conveyances	
workflow study	200 §61
Business, economic development, and tourism	
capital loan revolving fund; repealed	178
innovation development fund; repealed	178
renewable energy technologies tax credit	207
Commerce and consumer affairs	
operating expenses and fee assessments	200 §60
Condominium law review and recodification; extended	131
Criminal charging procedures	190
Criminal history record checks working group; extended	95
Education	
autistic children's services	200 §49

federal child care funds used for A Plus after school program	200 §142
Felix consent decree	200 §§48, 144
food service program	200 §46
mental health services	200 §47
No Child Left Behind Act compliance	200 §43
school maintenance and repair	188; 214
weighted pupil allocation system	200 §45
Executive salary commission	122
Health	
assisted living facilities in condominiums and cooperative housing projects	185
environmental response revolving fund	200 §18
Felix mental health services	200 §§28, 30
Hawaii state hospital community plan	200 §§26, 29
healthy Hawaii initiative	200 §21
maternal and child health services	200 §19
substance abuse services	200 §27
Housing and community development corporation transfer to department of human services; modification of provisions	92
Human resources development	
workers' compensation claims	200 §72
Human services	
adoption assistance and placement services	200 §§33, 34
child welfare services	200 §§31, 32
chore services	200 §35
health insurance portability and accountability	200 §38
home and community based services	200 §37
licensing of home and community-based case management agencies and foster family homes	98
medicaid prescription drugs program	200 §36; 215; Sp 3
Invasive species control	85
Judiciary	
computer system special fund	120
judicial salary commission	123
juvenile drug court program	120
law library dues and subscriptions	120
personnel position descriptions	120
Labor and industrial relations	
boiler and elevator safety	200 §11
occupational safety and health	200 §10
Land and natural resources	
dangerous natural conditions on public lands; risk assessment plan	82
transfer of agricultural lands to agriculture department	90
Office of Hawaiian affairs	
budget reports	183
Hui Imi task force	42
Public safety	
division of department into separate entities	83
incarceration in mainland prisons	200 §§57, 58
substance abuse, job development, and mental health treatment programs	200 §56
Public utilities commission management audit	94
Skateboarding injuries at public skateboarding parks	144
Taxation	
multi-state sales and use tax agreements	173
Tourism authority	
expenditures	200 §5
Transportation	
airport and harbor security measures	213

REPORTS OR STUDIES—cont'd

Transportation—cont'd

- repair and maintenance projects 200 §§12, 14, 16
- special funds excess expenditures 213
- University of Hawaii

 - budget reports 200 §54
 - center for nursing 198
 - medical education council 181
 - risk management special fund 186
 - special and revolving funds 200 §55

- Workforce development programs 148

SALES

- Agricultural products

 - inspections and certifications; amendments 49
 - proof of ownership for sale and resale of commodities 20

- Alcohol sales to minors; liability for injuries or damages 69
- Antitrust class actions; damages 13
- Cigarette and tobacco products; enforcement of tax laws 77
- Collision damage waivers for rental vehicles; commissions on sales 155
- Electric personal transportation devices (Segways) 180
- Internet sales and e-commerce; multi-state sales and use tax enforcement agreements 173
- Legislative journals; sale and distribution function transferred to legislature 28
- Motor vehicles

 - dealer's license exemptions 67
 - fleet leasing contracts; terminable rental adjustment clauses 21
 - manufacturer or distributor franchise operations; licensing 126
 - out of state purchase by military personnel 45

- Prescription drugs; generic drug substitutions 56
- Salvinia molesta or minima, and pistia stratiotes; import and sale prohibited 85
- Wine imported for personal use; reciprocal agreements 153

SCHOOLS

see EDUCATION

SECURITIES

- Banks, savings institutions, and trust companies selling securities; exemption from registration 17

SEXUAL OFFENSES

- Age of consent for sexual conduct; temporary provisions made permanent 62
- Child intrafamily sex abuse victims; appropriation for treatment services Sp 3
- Exotic or nude dancing or pornographic performances by minors 61
- Hate crimes; crimes based on gender identity or expression 33
- Kapiolani medical center; appropriation for sex abuse treatment center 215; Sp 3
- Leaves of absence for victims of domestic or sexual violence or stalking 60
- Privacy violations; video voyeurism in public places and destruction of recordings 48
- Protection or restraining orders; waiver of court costs and fees 65
- Sex offender registration; requirements and release of information 62

SEXUAL ORIENTATION

- Hate crimes; crimes based on gender identity or expression 33

SHERIFFS

Assault against law enforcement officers	66
Feasibility study on transfer to new department of law enforcement	83
Peer support counseling	25

SHIPS AND SHIPPING

see HARBORS

SMOKING

Cigarette and tobacco taxes	
enforcement special funds	
appropriations from	178; 179
assessment of administrative expenses	179
consolidation	177
export or foreign cigarettes	77
registration of brand names and manufacturers, and enforcement of tax laws	77
Tobacco settlement	
appropriations from	57; 178
impact of diverting moneys; report	200 §70
manufacturers' compliance	77
special funds	
assessment of administrative expenses	179
deposits and uses	177

SPORTS

Caregiver consent for student to participate in activities	99
International sports training complex at Ko Olina resort; tax credit for development	100
Kayaks, sailboats, and other ocean recreation vessels; emergency radio beacons or distress call equipment	54
Outdoor recreation; state and county duty to warn and immunity for dangerous natural conditions	82
Pacific Sports Medicine and Research Center, Inc.; special purpose revenue bonds extended	160
Skateboarding parks; state and county immunities for injuries and damages	144
Sports hall of fame; state museum of sports history	102
Stadium special fund; appropriation from	178

STATE DEPARTMENTS

Contested case hearings; use of mediation to settle disputes	76
Criminal conviction of public official or employee	150
Department directors and deputies; salaries set by executive salary commission	122
Father-friendly programs and activities; commission on fatherhood duties	156
Financial audits of state agencies and special funds; reimbursement for costs and expenses	Sp 4
Purchase of goods and services	
awarding contracts, protests, and compliance of contractor with state tax and labor laws	52
payment by government procurement cards	51
procurement education and training institute	52
State Internet portal and access Hawaii committee; extended	110

STATUTES

General technical revisions	3
Obsolete tax laws; repealed	135

SUNSET AND REPEAL

Extension of sunset or repeal	
access Hawaii committee	110
condominium law review and recodification	131
condominium unpaid common expenses	80
criminal history record checks working group	95
dental service plan regulation	128
Kikala-Keokea infrastructure improvements appropriation	43
licensing of home and community-based case management agencies and foster family homes	98
special purpose revenue bonds	96; 157; 158; 159; 160; 161; 162; 163; 164; 165
Temporary programs and provisions	
boiler and elevator safety revolving fund; repeal date changed	178
center for nursing fee	198
commission on fatherhood	156
dangerous public recreational areas	82
invasive species council	85
Ko Olina resort and marina and Makaha resort development tax credit	100
land exchange with Boy Scouts of America	27
medicaid prescription drugs program	191
renewable energy technologies tax credit	207
South Kona wilderness area	59
Temporary provisions made permanent (sunset repealed)	
age of consent for sexual conduct	62
agribusiness development corporation board of directors	91
Hui Imi advisory council	42
occupational therapist regulation	97
organ and tissue education fee and special fund	88
serious mental illness insurance coverage	197

SUPREME COURT

Foreclosure appeals	89
Justices; compensation and retirement	118; 123

TAXATION*see also specific tax*

Delinquent taxes; investigation and compromise on debt and penalties	136
Simplified sales and use tax administration	173
Tax reserve fund; changed from special fund to trust fund	135

TEACHERS*see EDUCATION***TELECOMMUNICATIONS**

Internet	
e-commerce sales and use tax enforcement agreements	173
state Internet portal and access Hawaii committee; extended	110
tax delinquencies posted on state website	136
unclaimed property notices on state website	74
Legislative broadcast program; appropriation	1
Public utilities commission; effectiveness and enforcement analysis	94
Telecommunications relay services for persons with hearing or speech disabilities; program implementation and surcharges to fund services	50

TELEVISION AND FILM INDUSTRY

Film facility; special fund repealed; transfer of moneys; and appropriation for operation	178
General excise tax exemption repealed	135

THEFT

Agricultural products; proof of ownership for sale or transportation of commodities ...	20
---	----

TOURISM

Airport passenger facility charge revenue fund	178; 213
Cruise ship industry; harbor facility leases	127
Ecotourism; funding trails and access program	113
Ko Olina resort and marina and Makaha resort development; tax credit	100
Rental vehicles	
collision damage waivers; rental agent's commissions on sales	155
shipping of vehicles	26
Sports hall of fame; state museum of sports history	102
Tourism authority; expenditure reports	200 §5

TRADE REGULATIONS

Agricultural products grading and standards; amendments	49
Antitrust class actions; damages	13
Check cashing businesses; time period and face value of check for deferred deposit (payday loans)	222
Cigarette and tobacco products; registration of brand names and manufacturers	77
Electric personal transportation devices (Segways)	180
Insurance licensees continuing education course providers	55
International matchmaking organizations	149
Motor vehicles	
manufacturer or distributor franchise agreements	126
towing companies; county regulation	84
when dealer's license required	67
Trademarks and trade names	
amendments	124
registration of prints and labels repealed	124

TRANSIENT ACCOMMODATIONS TAX

Ko Olina resort and marina and Makaha resort development; tax credit	100
Trails and access program funding	113

TRANSPORTATION

Claims against the State; appropriation from highway fund	58
Fixed rail or monorail transit system for Oahu; county excise and use tax surcharge repealed	135
Harbor facility leases for maritime-related industries	127
Special funds; authorization to expend funds above legislative appropriation; report ...	213

TRUSTS AND TRUSTEES

Securities sales by trust companies; exemption from registration	17
--	----

UNCLAIMED PROPERTY

see ABANDONED PROPERTY

UNITED STATES

Agricultural inspections and certifications; cooperative agreements	49
Elections; appropriation for state matching funds	195
Housing programs special funds	36
Job training programs; staffing	103
Medicaid expansion programs; prescription drugs income eligibility limits	191
No Child Left Behind Act; compliance report	200 §43

UNIVERSITIES AND COLLEGES

Chaminade University; special purpose revenue bonds	170
---	-----

UNIVERSITY OF HAWAII

Bridge to hope program; appropriation	215; Sp 3
Center for nursing	198
Claims against the university; appropriation	130
Faculty	
collective bargaining agreements; appropriation	140
multiple part-time positions; retirement system eligibility	119
Graduate medical education program and council	181
High technology research and development; appropriation for commercialization	200 §4
Job training programs; reports on effectiveness	148
Public procurement institute	52
Risk management program and special fund	186
Special funds and accounts; reports	200 §55
Teacher education coordinating committee; membership	78

USE TAX

Amendments	135
County excise and use tax surcharge; repealed	135
Internet sales and e-commerce	173
Ko Olina resort and marina and Makaha resort development; tax credit	100
Multi-state sales and use tax enforcement agreements	173

VICTIMS OF CRIMES

Child intrafamily sex abuse victims; appropriation for treatment services	Sp 3
Crime victim compensation; feasibility study on transfer to new department of law enforcement	83
Dependent elder abuse; civil actions	196
Domestic violence, stalking, or sexual assault victims	
leaves of absence from employment	60
waiver of court costs and fees for protective orders	65
Harassment by stalking; amendments	68
Hate crimes; crimes based on gender identity or expression	33

VOLUNTEERS

Disaster relief services; leaves of absence for public employees	24
Parking for disabled persons; enforcement officers	30
School maintenance and repair; public-private partnerships	214
Skateboarding park development and maintenance; immunity for injuries to users ...	144

WATER RESOURCES

Boards of water supply; workforce modernization projects for personnel	40
Irrigation	
agricultural water use and development plan; report extended	11
east Kauai irrigation system; appropriation	200 §8
Waiahole water system revolving fund; appropriation from	178
Waimea irrigation system; replacement of Puukapu Homesteads bridge	218
Water resource management commission	
membership	184
special fund; appropriation for public land trust proceeds	34

WOMEN

Cervical cancer	
early detection research and development	174
examinations by hospitals; repealed	107
Domestic violence, stalking, or sexual assault victims	
leaves of absence from employment	60
waiver of court costs and fees for protective orders	65
Emergency contraceptives; pharmacists may dispense	201
Harassment by stalking; amendments	68
International matchmaking organizations; disclosure of prior criminal and marital history information	149
Maternal and child health services; reports	200 §19
Pacific Women's Center, Inc.; special purpose revenue bonds extended	162

WORKERS' COMPENSATION

Occupational therapists and assistants; insurance coverage for services	171
Public contracts; compliance of contractor with state labor laws	52
Public employees; report on claims	200 §72