

SESSION LAWS

OF

HAWAII

PASSED BY THE

TWENTY-THIRD STATE LEGISLATURE

STATE OF HAWAII

REGULAR SESSION

2006

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PREFACE

This volume contains all of the laws enacted by the Hawaii State Legislature during the Regular Session of 2006.

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Statutory material that is being repealed is either bracketed or bracketed and stricken.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by Section 23G-16.5, Hawaii Revised Statutes, the text is edited to omit the bracketed material for HRS sections being repealed in their entirety, and to omit the underscoring for new HRS sections.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 14, 2006

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2006**

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D - Democrats	20
R - Republicans	5

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¹Appointed to seat vacated by Galen Fox

²Appointed to seat vacated by Kenneth T. Hiraki

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D - Democrats	41
R - Republicans.....	10

TABLE OF CONTENTS

	PAGE
List of Acts, 2006 Regular Session	x
Text of Acts, 2006 Regular Session	1
Proposed Constitutional Amendments	1267
Committee Reports on Bills Enacted	1276
Tables Showing Effect of Acts	1283
A. Sections of Hawaii Revised Statutes (HRS) Affected	1283
B. Acts of Session Laws of Hawaii Affected	1290
C. Sections of Hawaiian Homes Commission Act of 1920 (HHCA) Affected	1290
D. Sections of State Constitution Affected	1291
General Index	1293

LIST OF ACTS
2006 REGULAR SESSION

ACT NO.	BILL NO.	SUBJECT	PAGE
1	H.B. 1949	Appropriations—legislative branch	1
2	S.B. 2424	Office of Hawaiian affairs strategic planning	3
3	S.B. 2591	Family court appeals	4
4	S.B. 2604	Intermediate appellate court panels	5
5	H.B. 2900	Electronic voting systems	6
6	S.B. 2333	Appropriation—general assistance program	6
7	S.B. 2489	Forfeiture of property	7
8	S.B. 2601	Privacy of probate documents	8
9	S.B. 2018	Public utility rates and charges	9
10	S.B. 2224	Credit sales contracts	10
11	H.B. 3250	Supersedeas bonds	10
12	H.B. 2057	Release of human placenta to birth mother	11
13	S.B. 2295	Private detectives and guards	12
14	S.B. 2297	Mental health counselors	13
15	H.B. 2400	Appropriation—Waimea Valley purchase	16
16	S.B. 2337	Appropriation—adult mental health services	17
17	S.B. 2338	Appropriation—developmental disabilities services	18
18	S.B. 2340	Appropriation—early intervention services	18
19	S.B. 2347	Appropriation—healthy start programs	19
20	S.B. 2593	Court filing fee waivers	20
21	S.B. 2598	Electronic court records	21
22	S.B. 2050	Neighborhood electric vehicles	22
23	S.B. 2051	Commercial driver’s licensing—hazardous materials endorsement	22
24	S.B. 2332	Eviction from federal housing projects	23
25	S.B. 2506	Sterilization of developmentally disabled persons	26
26	H.B. 2275	Appropriation—electricity payments	27
27	S.B. 2263	Firearms ownership and registration	28
28	S.B. 2581	Unserved arrest warrants	30
29	S.B. 2608	Guardianship and protective proceedings	30
30	S.B. 2296	Nurses	31
31	S.B. 2226	Community service dental licenses	32
32	H.B. 2885	Adult entertainment products	34
33	H.B. 2347	Appropriation—student transportation	35
34	H.B. 2303	Child support enforcement—income withholding	35
35	H.B. 1242	Abortion services	38
36	S.B. 2602	Adult probation records	39
37	H.B. 2215	Concession on public property	41
38	H.B. 2476	Statutory revision	42
39	H.B. 2309	Public employees’ medicare supplement plans	60
40	H.B. 2311	Refund of public employees’ retirement contributions	61
41	H.B. 2317	Trade association health insurance plans	63
42	H.B. 2286	Child support enforcement—disclosure of information	63
43	H.B. 2287	Child support enforcement—licensing suspensions	64
44	H.B. 1819	Liquor licenses	67
45	H.B. 2857	Damage to historic sites	68
46	H.B. 3126	Medical care directives	69
47	H.B. 1920	Financial literacy month	70
48	H.B. 3254	Oaths of office	71
49	H.B. 2331	Inactive professional licenses	75
50	H.B. 2901	Garnishment	76
51	H.B. 2346	Appropriation—school electricity use	77
52	H.B. 2273	Appropriation—risk management revolving fund	77
53	H.B. 2210	Appropriation—Pearlridge elementary school cafeteria	78

ACT NO.	BILL NO.	SUBJECT	PAGE
54	H.B. 1833	Fireworks permits	78
55	H.B. 2443	Emergency management assistance compact	79
56	H.B. 3194	Commission for national and community service	85
57	H.B. 3018	Trust administration of employees' health benefits plans	86
58	H.B. 2780	Expungement of drug conviction record	88
59	H.B. 1983	Civil defense emergency periods	88
60	H.B. 2207	Continuous sexual assault of minor	89
61	H.B. 2747	Driver's licensing for disabled persons	93
62	H.B. 2508	Abandoned vehicles	95
63	H.B. 1899	Safety helmets for moped drivers	95
64	H.B. 3257	Driving under the influence of intoxicants	96
65	H.B. 2457	Federal military presence in state	102
66	H.B. 877	Firearms and ammunition offenses	105
67	H.B. 1982	State fish	110
68	H.B. 1984	Internet access to criminal conviction data	111
69	H.B. 2192	Prescription drugs	111
70	H.B. 1947	Flexibility in highway design	123
71	H.B. 2434	Sale of annuities	124
72	H.B. 2898	Arbitration of small claims	128
73	H.B. 3253	Rules of evidence	129
74	H.B. 2050	International matchmaking organizations	129
75	H.B. 1	Recodification of higher education laws	131
76	H.B. 1233	Discrimination in public accommodations	214
77	S.B. 2737	Lobster and crab harvesting	215
78	H.B. 3115	Gasoline price regulation	216
79	H.B. 2278	Appropriation—DNA registry; victim services	233
80	S.B. 2265	Electronic enticement of a child	234
81	S.B. 2260	Habitually violent felons	238
82	S.B. 1512	Domestic violence fatality reviews	240
83	S.B. 695	Crime prevention and privacy compact	242
84	S.B. 2348	Appropriation—flu pandemic preparedness	251
85	S.B. 2339	Appropriation—emergency medical services	252
86	S.B. 2334	Appropriation—youth correctional facility	253
87	S.B. 2606	Unclaimed bail money	254
88	S.B. 2570	Television, film, and digital media production tax credit	255
89	H.B. 2133	Kaena Point natural area reserve	259
90	S.B. 2357	Safe harbor agreements and habitat conservation plans	260
91	S.B. 2599	Intermediate appellate court jurisdiction	261
92	S.B. 3111	Congresswoman Patsy T. Mink commission	263
93	S.B. 2607	Transfer of appeals	267
94	H.B. 2897	Appellate jurisdiction	268
95	S.B. 3065	One call center	268
96	H.B. 2175	Energy efficiency in state facilities and vehicles	269
97	H.B. 3235	Appropriation—Honolulu symphony endowment fund	280
98	H.B. 2277	Appropriation—claims against the state	280
99	S.B. 2255	Statutes of limitation	285
100	H.B. 2176	Housing and homeless assistance programs	286
101	H.B. 2964	Affordable housing development	292
102	H.B. 2991	Special purpose revenue bonds for affordable housing projects	292
103	S.B. 2065	Unpaid parking fines	303
104	S.B. 2259	Criminal charging procedures	304
105	H.B. 3037	Provisional driver licensing for minors	306
106	H.B. 2282	Sex offender registration	308
107	H.B. 2737	Honopou road and bridge	311
108	S.B. 3076	Environmental pest species	312
109	S.B. 2486	Invasive species council	313
110	H.B. 957	Income tax standard deductions and tax tables	315

ACT NO.	BILL NO.	SUBJECT	PAGE
111	S.B. 2213	Motorsports facilities	323
112	H.B. 237	Highway design and maintenance liability	325
113	H.B. 2987	Saint Louis School	326
114	H.B. 2713	Kawaihāo School	327
115	S.B. 2214	Disaster preparedness	328
116	H.B. 2343	Crimes committed during disaster or emergency period	330
117	H.B. 3121	Pet animals at emergency shelters	333
118	H.B. 970	Appropriations—disaster relief	334
119	S.B. 3051	County fiscal year	339
120	H.B. 2500	Judiciary supplemental appropriations act of 2006	340
121	H.B. 1879	Appropriation—veterans' newsletter	344
122	H.B. 3217	Kupuna recognition day	345
123	H.B. 2399	Maui county ferry service	345
124	H.B. 2412	Conformance to Internal Revenue Code	346
125	H.B. 2423	County road systems	350
126	H.B. 1861	Superintendent of education's reports	352
127	S.B. 2879	Appropriation—civil air patrol	352
128	H.B. 2637	Airport concessions	353
129	H.B. 862	Excessive speeding	355
130	S.B. 845	Commercial driver's licensing—amendments	359
131	H.B. 2367	At-risk youth services providers	367
132	S.B. 696	Criminal record check fees	369
133	S.B. 1317	Court-appointed attorneys	370
134	S.B. 2360	Removal of grounded vessels	371
135	S.B. 2290	Security breach involving personal information	372
136	S.B. 2292	Destruction of personal records	376
137	S.B. 2293	Social security number protection	378
138	H.B. 1871	Credit reporting agencies	381
139	S.B. 2159	Possession of confidential personal information	384
140	H.B. 3244	Identity theft task force and data collection	387
141	H.B. 2535	Use of computer to commit property crime	390
142	H.B. 2214	Rental vehicle surcharge tax exemption	390
143	H.B. 1021	Public utilities commission staffing	391
144	S.B. 2243	DNA testing and identification of felons	392
145	S.B. 2597	Intermediate appellate court writs	393
146	H.B. 1977	Structured settlements	394
147	H.B. 2503	Derelict vehicles	398
148	S.B. 2485	Special purpose revenue bonds for agricultural enterprises	399
149	S.B. 2609	Appeal to Hawaii supreme court	409
150	S.B. 3192	Sister-state relationships	409
151	H.B. 1865	Chief financial officer for education department	410
152	S.B. 785	Videoconference meetings	412
153	S.B. 2143	Money transmitters	412
154	H.B. 2319	Insurance—amendments	427
155	H.B. 2899	Judgment liens	447
156	H.B. 2772	Agricultural theft and vandalism	448
157	H.B. 2271	Agricultural leases	451
158	H.B. 1955	Littering	456
159	S.B. 826	Child abuse or neglect reports	457
160	H.B. 1900	Supplemental appropriations act of 2006	458
161	H.B. 1866	Fiscal autonomy for education department and university of Hawaii	637
162	S.B. 3185	Energy efficiency by utility companies	640
163	H.B. 2848	Energy policy forum	649
164	H.B. 1878	Investment advisers	650
165	H.B. 1880	Honolulu Harbor maritime uses	653
166	H.B. 2075	Bikeways	655
167	S.B. 2021	Health benefits plans for retirees	656

ACT NO.	BILL NO.	SUBJECT	PAGE
168	S.B. 2248	Professional fundraisers for charitable organizations	657
169	S.B. 2273	Public employees' retirement system—amendments	661
170	H.B. 2039	Decontamination of drug manufacturing sites	690
171	H.B. 2410	Controlled substances	691
172	H.B. 1889	Office of international affairs	694
173	S.B. 2237	Risk management revolving fund	695
174	S.B. 2358	Forest reserves	696
175	S.B. 427	Child passenger restraint systems	698
176	H.B. 2211	Workers' compensation—computation of time	700
177	S.B. 3119	Hawaiian home lands trust fund	701
178	S.B. 2948	Public land trust revenues	702
179	S.B. 2958	Affordable housing development	704
180	H.B. 2966	Housing development agencies	707
181	S.B. 951	Arson	793
182	S.B. 2941	Brush fire property damage	795
183	S.B. 2667	Fireworks regulations	796
184	S.B. 744	Business registration	804
185	H.B. 2678	Disability retirement for public employees	819
186	S.B. 2298	Electricians and plumbers	821
187	H.B. 1280	Watershed management plans	822
188	S.B. 1648	National guard and reserves tuition assistance	823
189	S.B. 2283	Insurance—amendments	824
190	H.B. 2947	Workforce development programs	827
191	S.B. 3090	Workers' compensation claim forms	830
192	S.B. 2328	Notice of family court hearings	832
193	S.B. 2327	Child abuse or neglect reports	834
194	S.B. 2323	Federal reimbursement for judiciary services	835
195	S.B. 2603	Uninsured drivers	837
196	S.B. 2984	Appropriation—Kikala-Keokea housing loans	838
197	S.B. 2901	Highway impact fees	839
198	S.B. 3072	Motor vehicle insurance billing adjustments	840
199	H.B. 3259	Appropriation—dental health clinics	841
200	S.B. 965	Wiretapping and electronic surveillance	842
201	H.B. 2639	Highly intoxicated drivers	865
202	H.B. 3242	Alcohol consumption by minor	870
203	S.B. 706	Liquor violations involving minors	871
204	H.B. 2109	Fetal alcohol spectrum disorder	874
205	S.B. 3273	Student substance abuse assessments	876
206	S.B. 1223	Dishonored checks	878
207	S.B. 439	Ethics code violations	879
208	H.B. 2540	Appropriation—election precinct officials	880
209	H.B. 2669	Convention center enterprise special fund	880
210	H.B. 2805	Hawaii 2050 sustainability plan	881
211	H.B. 2806	Appropriation—Hawaii 2050 task force	882
212	S.B. 2753	Appropriation—East Kauai irrigation system	883
213	S.B. 2484	Appropriation—vog monitoring stations	884
214	S.B. 819	Historic preservation special fund	885
215	H.B. 2974	South Kona wilderness area	886
216	S.B. 1899	Appropriation—papaya exports	886
217	S.B. 3000	Affordable housing development	887
218	S.B. 2502	Appropriation—donated dental services	890
219	S.B. 2227	Telehealth services insurance coverage	891
220	S.B. 2343	Elderly and disabled care facilities	893
221	H.B. 1809	Driver's license renewals	901
222	H.B. 2708	Advertising on motor vehicles	902
223	S.B. 2480	Kapoho Vacationland Estates	905
224	S.B. 1294	Appropriation—Mauna Ala royal mausoleum	906
225	S.B. 2720	Education department functions	906

ACT NO.	BILL NO.	SUBJECT	PAGE
226	S.B. 2887	Technical and vocational education teachers	908
227	H.B. 1968	Direct shipment of wines	910
228	H.B. 2315	Financial institutions	911
229	S.B. 743	Uniform securities act	938
230	H.B. 3256	Hawaii penal code	996
231	S.B. 3105	Deposit beverage container recycling	1025
232	S.B. 2188	Commission on fatherhood	1027
233	H.B. 2179	Diversified agriculture development	1029
234	S.B. 2980	Construction academy	1032
235	H.B. 2313	Business registration	1034
236	S.B. 3254	Home and community care licensing	1048
237	S.B. 2774	Plantation community subdivisions	1048
238	S.B. 2930	Cruelty to animals—costs of care	1054
239	S.B. 2924	Cruelty to animals—impoundment and forfeiture	1055
240	S.B. 2957	Renewable energy development and use	1057
241	S.B. 2501	Fishing restrictions	1063
242	H.B. 2153	Appropriation—West Maui medical care and services	1065
243	S.B. 2461	Appropriation—health and human services programs	1066
244	H.B. 2961	Federal revenue maximization revolving fund	1069
245	S.B. 2704	School-level minor repairs and maintenance account	1070
246	S.B. 2956	Appropriation—school repair and maintenance	1071
247	H.B. 2626	General obligation bonds authorization	1073
248	H.B. 2045	Pilot perinatal clinic	1078
249	H.B. 1995	Endangering welfare of a minor	1081
250	H.B. 2145	Agricultural tourism	1081
251	S.B. 2090	Community development authority—public hearings	1085
252	S.B. 2487	Community development authority—board members	1086
253	S.B. 2430	Persons ineligible to vote	1087
254	S.B. 3077	Acquisition of resource value lands	1088
255	S.B. 2036	Appropriation—international business and technology incubator	1091
256	S.B. 3215	Children of incarcerated parents task force	1092
257	S.B. 3120	University scholarship programs	1094
258	S.B. 467	Female offender programs in correctional facilities	1097
259	S.B. 3101	Early childhood education	1102
260	H.B. 2051	Human trafficking task force	1107
261	S.B. 2630	Appropriation—developmental disabilities domiciliary homes	1109
262	S.B. 3252	Family caregiver support and services	1109
263	S.B. 3197	Substitute teachers	1111
264	S.B. 3003	Pharmacy assistance program	1113
265	H.B. 1821	Adult residential care homes	1114
266	S.B. 218	Appropriation—emergency medical services	1117
267	S.B. 3078	Hawaii agribusiness plan	1118
268	S.B. 2505	Appropriation—substance abuse treatment programs	1119
269	S.B. 2504	Parking for disabled persons	1120
270	S.B. 3247	Adult residential care homes	1122
271	H.B. 2146	Subdividing agricultural lands	1124
272	S.B. 3195	Appropriation—teacher training and support	1127
273	H.B. 3225	Condominiums	1128
274	S.B. 2913	Electricians and plumbers	1145
275	H.B. 3100	Mortgage foreclosures	1146
276	H.B. 1935	Real property sales disclosures	1147
277	S.B. 2545	Condominium dispute resolution	1147
278	S.B. 2454	Foreign time share plans	1149
279	H.B. 1706	Environmental covenants	1150
280	S.B. 2909	County permit applications	1155
281	S.B. 486	Appropriation—child and youth programs	1156

ACT NO.	BILL NO.	SUBJECT	PAGE
282	H.B. 3060	High technology research and development	1158
283	S.B. 2898	Procurement code	1162
284	S.B. 2600	Electronic court records	1163
285	S.B. 3253	Family caregiving joint legislative committee	1163
286	H.B. 1862	Re-employment of retired teachers	1165
287	S.B. 475	Standard of need for public assistance	1166
288	H.B. 2239	Kukui Gardens affordable rental housing project	1167
289	S.B. 2162	Driver's licensing for foster children	1169
290	H.B. 2778	Language access	1173
291	H.B. 3036	Payment of subcontractors	1177
292	S.B. 2897	Procurement code exemptions	1181
293	S.B. 895	Limu management area	1189
294	S.B. 2145	Environmental justice activities	1189
295	S.B. 3262	Smoking restrictions	1191
296	S.B. 2929	Land use commission	1198
297	S.B. 3270	Community health centers and rural clinics	1199
298	S.B. 2719	Charter schools	1200
299	H.B. 1918	Commission on salaries	1222
300	S.B. 3009	Civil service exempt positions	1227
301	S.B. 3059	Standards-based school curriculum	1236
302	H.B. 2258	Temporary assistance to needy families	1238
303	H.B. 2098	Residential options for developmentally disabled	1239
304	H.B. 1891	School repair and maintenance projects funding	1241
305	H.B. 3142	Trauma system special fund	1242
306	H.B. 1923	Tourism authority	1246
307	S.B. 3066	Credit card service fees and charges	1247
308	H.B. 3016	Traffic warrants	1249
309	S.B. 2274	County council services directors	1250
310	S.B. 3180	Hawaiian architectural practices	1252
311	H.B. 3105	Psychotropic medications	1253
312	S.B. 2193	Planned community associations	1254
313	H.B. 386	Jury service exemptions	1256
314	S.B. 2575	Appropriation—Waianae coast ocean recreation management area	1257
315	S.B. 2708	School impact fees	1258
316	S.B. 2961	Tobacco taxes	1259
317	H.B. 2555	Kakaako community development district	1264
318	H.B. 2595	Family visits at correctional facilities	1265

**PROPOSED CONSTITUTIONAL AMENDMENT
2006 REGULAR SESSION**

BILL NO.	SUBJECT	PAGE
S.B. 995	Retirement of justices and judges	1267
S.B. 2246	Continuous sexual assault of minor	1268
S.B. 2479	Special purpose revenue bonds for agricultural enterprises	1269
H.B. 1917	Commission on salaries	1272

**Session Laws of Hawaii
Passed By The
Twenty-Third State Legislature
Regular Session
2006**

ACT 1

H.B. NO. 1949

A Bill for an Act Making Appropriations to Provide for the Expenses of the Legislature, the 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 \$6,876,979 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, 2007, including the 2006 regular session, Twenty-third Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2006 and 2007 regular sessions.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,429,100 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, 2007, including the 2006 regular session, Twenty-third Legislature of the State of Hawaii, and pre-session expenses and the expenses of any committee or committees established during the interim between the 2006 and 2007 regular sessions.

SECTION 3. Payment of expenses of the Senate during the interim between the 2006 and 2007 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 2006 and 2007 regular sessions shall be made only with the approval of the Speaker of the House of Representatives.

SECTION 4. Before January 17, 2007, the Senate and the House of Representatives shall each have their accounts audited, and a full report of the respective audits shall be presented to the Senate and to the House of Representatives convening on January 17, 2007.

SECTION 5. Unless otherwise prescribed by law, the expenses of any member of the Legislature while traveling abroad on official business of the

ACT 1

Legislature shall be \$130 a day as authorized by the President of the Senate and the Speaker of the House of Representatives, respectively.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,617,330 or so much thereof as may be necessary to the office of the auditor for the following expenses:

- (1) The sum of \$2,675,055 for defraying the expenses of the office of the auditor during fiscal year 2006-2007;
- (2) The sum of \$792,275 for defraying the expenses of the office of the state ethics commission during fiscal year 2006-2007; and
- (3) The sum of \$150,000 during fiscal year 2006-2007 for:
 - (A) Performing special studies;
 - (B) Improving capabilities for planning, programming, and budgeting;
 - (C) Fulfilling other special requests made of the 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 \$1,500,000 or so much thereof as may be necessary to the office of the auditor during fiscal year 2006-2007 to be deposited into the audit revolving fund established pursuant to section 23-3.6, Hawaii Revised Statutes.

SECTION 8. There is appropriated out of the audit revolving fund the sum of \$3,013,125 or so much thereof as may be necessary to the office of the auditor during fiscal year 2006-2007 for the following expenses:

- (1) The comprehensive annual financial report of the State; and
- (2) The financial statement and single audits of:
 - (A) The department of human services, excluding the Hawaii public housing administration;
 - (B) The department of health;
 - (C) The department of education; and
 - (D) The department of transportation, specifically:
 - (i) The administration of the department;
 - (ii) The Oahu metropolitan planning organization; and
 - (iii) The airports, harbors, and highways divisions.

SECTION 9. 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 to the office of the auditor to conduct a financial and operational audit of the Hawaii youth correctional facility.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,002,393 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 2006-2007, including equipment relating to computer systems programming and operations.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$953,370 or so much thereof as may be necessary to the office

of the ombudsman for defraying the expenses of the office during fiscal year 2006-2007.

SECTION 12. 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 to the office of the ombudsman to replace the case management system in the office of the ombudsman.

SECTION 13. 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, consultants, installation, material, supply, and other related costs associated with the legislative information system that have been or will be incurred.

SECTION 14. 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 be expended by the Legislature for the purposes of this section.

SECTION 15. Except for moneys in the audit revolving fund, as of the close of business on June 30, 2007, the unexpended or unencumbered balance of any appropriation made by this Act shall lapse into the general fund.

SECTION 16. Each section of this Act is declared to be severable from the remainder of this Act.

SECTION 17. This Act shall take effect upon its approval.

(Approved February 4, 2006.)

ACT 2

S.B. NO. 2424

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

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

SECTION 1. Section 10-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The general duties of the board shall be:

- (1) To develop~~[-implement,]~~ and continually update a ~~[comprehensive master]~~ strategic plan for ~~[native Hawaiians and Hawaiians which]~~ the office that shall include, but not be limited to, the following:
 - (A) Compilation of basic demographic data on native Hawaiians and Hawaiians;
 - (B) Identification of the physical, sociological, psychological, and economic needs of native Hawaiians and Hawaiians;

ACT 3

- (C) Establishment of ~~[immediate and]~~ long-range goals ~~[pursuant to]~~ for the office's programs and services for native Hawaiians and Hawaiians;
 - (D) Establishment of priorities and alternatives for the office's program and service implementation ~~[and of alternatives for program implementation]~~; and
 - (E) Organization of the office's administrative and program structure, including the use of facilities and personnel;
- (2) To assist in the development of state and county agency plans for native Hawaiian and Hawaiian programs and services;
 - (3) To maintain an inventory of federal, state, county, and private programs and services for Hawaiians and native Hawaiians and act as a clearinghouse and referral agency;
 - (4) To advise and inform federal, state, and county officials about native Hawaiian and Hawaiian programs, and coordinate federal, state, and county activities relating to native Hawaiians and Hawaiians;
 - (5) To conduct, encourage, and maintain research relating to native Hawaiians and Hawaiians;
 - (6) To develop and review models for comprehensive native Hawaiian and Hawaiian programs;
 - (7) To act as a clearinghouse for applications for federal or state assistance to carry out native Hawaiian or Hawaiian programs or projects;
 - (8) To apply for, accept and administer any federal funds made available or allotted under any federal act for native Hawaiians or Hawaiians; and
 - (9) To promote and assist the establishment of agencies to serve native Hawaiians and Hawaiians."

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, 2006.)

ACT 3

S.B. NO. 2591

A Bill for an Act Relating to Appeals.

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

SECTION 1. Section 571-54, Hawaii Revised Statutes, is amended to read as follows:

"§571-54 Appeal. An interested party, aggrieved by any order or decree of the court, may appeal to the intermediate appellate court for review of questions of law and fact upon the same terms and conditions as in other cases in the circuit court, and review shall be governed by chapter 602, except as hereinafter provided. Where the decree or order affects the custody of a child or minor, the appeal shall be heard at the earliest practicable time. In cases under section 571-11, the record on appeal shall be given a fictitious title, to safeguard against publication of the names of the children or minors involved.

The stay of enforcement of an order or decree, or the pendency of an appeal, shall not suspend the order or decree of the court regarding a child or minor, or

discharge the child or minor from the custody of the court or of the person, institution, or agency to whose care the child or minor has been committed, unless otherwise ordered by the family court or by the appellate court after an appeal is taken. Pending final disposition of the case, the family court or the appellate court, after the appeal is taken, may make such order for temporary custody as is appropriate in the circumstances. If the appellate court does not dismiss the proceedings and discharge the child or minor, it shall affirm or modify the order of the family court and remand the child or minor to the jurisdiction of the court for disposition not inconsistent with the appellate court's finding on the appeal.

An order or decree entered in a proceeding based upon section 571-11(1), (2), or (6) [~~or (9)~~] shall be subject to appeal only as follows:

Within twenty days from the date of the entry of any such order or decree, any party directly affected thereby may file a motion for a reconsideration of the facts involved. The motion and any supporting affidavit shall set forth the grounds on which a reconsideration is requested and shall be sworn to by the movant or the movant's representative. The judge shall hold a hearing on the motion, affording to all parties concerned the full right of representation by counsel and presentation of relevant evidence. The findings of the judge upon the hearing of the motion and the judge's determination and disposition of the case thereafter, and any decision, judgment, order, or decree affecting the child and entered as a result of the hearing on the motion, shall be set forth in writing and signed by the judge. Any party aggrieved by any such findings, judgment, order, or decree shall have the right to appeal therefrom to the intermediate appellate court, upon the same terms and conditions as in other cases in the circuit court, and review shall be governed by chapter 602; provided that no such motion for reconsideration shall operate as a stay of any such findings, judgment, order, or decree unless the judge of the family court so orders; and provided further that no informality or technical irregularity in the proceedings prior to the hearing on the motion for reconsideration shall constitute grounds for the reversal of any such findings, judgment, order, or decree by the appellate court."

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, 2006.

(Approved April 13, 2006.)

ACT 4

S.B. NO. 2604

A Bill for an Act Relating to Intermediate Appellate Court Panels.

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

SECTION 1. Section 602-55, Hawaii Revised Statutes, is amended to read as follows:

"§602-55 Panels; substitute judge. Parties shall be entitled to a hearing before a panel of not less than three intermediate appellate judges. In the event the number of available intermediate appellate judges is insufficient to make up a panel because of vacancy or disqualification, the chief justice of the supreme court may designate circuit judges or retired intermediate appellate judges or retired supreme court justices to temporarily fill such need. [~~The assignment to a panel shall rest in~~

ACT 5

~~the discretion of the chief judge.] A judge serving temporarily shall not be actively engaged in the practice of law. Substitute judges shall be compensated per diem at a rate of pay equivalent to that of associate intermediate appellate judges.”~~

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved April 13, 2006.)

ACT 5

H.B. NO. 2900

A Bill for an Act Relating to Electronic Voting.

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

SECTION 1. Section 16-41, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Voter verifiable paper audit trail” means the paper record that constitutes a complete record of ballot selections that is verified by the voter. The record may also be used to assess the accuracy of the voting machine’s electronic record and to verify the election results.”

SECTION 2. Section 16-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) When used at primary or special primary elections, the automatic tabulating equipment of the electronic voting system shall count only votes for the candidates of one party, or nonpartisans. In all elections, the equipment shall reject all votes for an office when the number of votes therefor exceeds the number that the voter is entitled to cast.

No electronic voting system shall be used in any election unless it generates a paper ballot or voter verifiable paper audit trail that may be inspected and corrected by the voter before the vote is cast, and unless every paper ballot or voter verifiable paper audit trail is retained as the definitive record of the vote cast.”

SECTION 3. New statutory material is underscored.

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

(Approved April 13, 2006.)

ACT 6

S.B. NO. 2333

A Bill for an Act Making an Emergency Appropriation for General Assistance.

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 178, Session Laws of Hawaii 2005, appropriated a certain designated sum to the department of human services to provide funds for the general assistance program under the benefit, employment, and support services division for the fiscal period beginning July 1, 2005, and ending June 30, 2006.

A critical funding emergency exists. Pursuant to section 346-53(b), Hawaii Revised Statutes, the general assistance program is a block grant program. The maximum allowance a general assistance recipient may receive is determined by dividing the amount of the appropriation by the number of general assistance recipients. The general assistance program will expend all appropriated funds before the end of the current fiscal year and the department will be unable to maintain the current maximum \$418 per month general assistance payment benefit to approximately three thousand eight hundred fifty disabled recipients. The current assistance grant for disabled individuals is based on 62.5 per cent of the 1993 federal poverty level. This amount is barely enough to cover living expenses for individuals on a fixed income who have no other viable means of support. Stopping the grant payment or reducing the amount of the grant payment for these individuals poses a real threat to these individuals' health and safety. To prevent the reduction of general assistance payments in the fourth quarter of fiscal year 2005-2006, additional funds are urgently needed.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii, the sum of \$416,718, or so much thereof as may be necessary for fiscal year 2005-2006 to be used for general assistance payments.

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

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

(Approved April 13, 2006.)

ACT 7

S.B. NO. 2489

A Bill for an Act Relating to Forfeiture of Property.

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

SECTION 1. Section 712A-4, Hawaii Revised Statutes, is amended to read as follows:

“§712A-4 Covered offenses. Offenses for which property is subject to forfeiture under this chapter are:

- (a) All offenses which specifically authorize forfeiture;
- (b) Murder, kidnapping, gambling, criminal property damage, robbery, bribery, extortion, theft, unauthorized entry into motor vehicle, burglary, money laundering, trademark counterfeiting, insurance fraud, promoting a dangerous, harmful, or detrimental drug, commercial promotion of marijuana, unlawful methamphetamine trafficking, manufacturing of a controlled substance with a child present, promoting child abuse, or electronic enticement of a child which is chargeable as a felony offense under state law;
- (c) The manufacture, sale, or distribution of a controlled substance in violation of chapter 329, promoting detrimental drugs or intoxicating

ACT 8

compounds, promoting pornography, promoting pornography for minors, or promoting prostitution, which is chargeable as a felony or misdemeanor offense, but not as a petty misdemeanor, under state law; and

- (d) The attempt, conspiracy, solicitation, coercion, or intimidation of another to commit any offense for which property is subject to forfeiture.”

SECTION 2. New statutory material is underscored.

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. This Act shall take effect upon its approval.

(Approved April 13, 2006.)

ACT 8

S.B. NO. 2601

A Bill for an Act Relating to Documents Sealed Upon Filing.

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

SECTION 1. Chapter 560, Hawaii Revised Statutes, is amended by adding a new section to article 1 to be appropriately designated and to read as follows:

“**§560:1- Documents sealed upon filing.** In any action or proceeding under this chapter in the circuit court having jurisdiction in matters relating to the affairs of decedents, the following documents shall be sealed upon filing:

- (1) Birth certificate;
- (2) Marriage certificate;
- (3) Death certificate;
- (4) Tax return;
- (5) Kokua kanawai’s report;
- (6) Court-ordered professional evaluation; and
- (7) Responses and objections to a kokua kanawai’s report or a professional evaluation.

The foregoing documents shall remain sealed unless otherwise ordered by the court; provided that the clerk, without further court order, may unseal and provide a copy of a report or evaluation pursuant to section 560:5-307 or 560:5-407.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on January 1, 2007.

(Approved April 17, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. Section 269-7.5, Hawaii Revised Statutes, is amended to read as follows:

“§269-7.5 Certificates of public convenience and necessity. (a) No public utility, as defined in section 269-1, shall commence its business without first having obtained from the commission a certificate of public convenience and necessity. Applications for certificates shall be made in writing to the commission and shall comply with the requirements prescribed in the commission’s rules. The application shall include the type of service to be performed, the geographical scope of the operation, the type of equipment to be employed in the service, the name of competing utilities for the proposed service, a statement of its financial ability to render the proposed service, a current financial statement of the applicant, and the rates or charges proposed to be charged including the rules ~~[and regulations]~~ governing the proposed service.

(b) If the applicant for a certificate of public convenience and necessity has any known consumers or patrons at the time of the filing of the application, the applicant shall notify these consumers or patrons of the rates and charges proposed to be established by the application; provided that:

- (1) The notice shall be mailed to the last known address of the consumer or patron on file with the applicant or the applicant’s affiliates; and
- (2) The manner and the fact of the notification shall be reported to the commission,

within seven days from the filing of the application.

~~[(b)]~~ (c) A certificate shall be issued to any qualified applicant, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing, and able properly to perform the service proposed and to conform to the terms, conditions, and rules adopted by the commission, and that the proposed service is, or will be, required by the present or future public convenience and necessity; otherwise the application shall be denied. Any certificate issued shall specify the service to be rendered and there shall be attached to the exercise of the privileges granted by the certificate at the time of issuance and from time to time thereafter, such reasonable conditions and limitations as a public convenience and necessity may require. The reasonableness of the rates, charges, and tariff rules ~~[and regulations]~~ proposed by the applicant shall be determined by the commission during the same proceeding examining the present and future conveniences and needs of the public and qualifications of the applicant, in accordance with the standards set forth in section 269-16.

~~[(e)]~~ (d) No public utility ~~[which]~~ that holds a franchise or charter enacted or granted by the legislative or executive authority of the State or its predecessor governments, or ~~[which]~~ that has a bona fide operation as a public utility heretofore recognized by the commission, shall be required to obtain a certificate of public convenience and necessity under this section.

~~[(d)]~~ (e) Any certificate ~~[may]~~, upon application of the holder and at the discretion of the public utilities commission, may be amended, suspended, or revoked, in whole or in part. The commission after notice and hearing may suspend, amend, or revoke any certificate in part or in whole, if the holder is found to be in wilful violation of any of the provisions of this chapter or with any lawful order or

ACT 10

rule of the commission adopted thereunder, or with any term, condition, or limitation of the certificate.”

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, 2006, and shall apply to applications for certificates of public convenience and necessity filed after June 30, 2006.

(Approved April 19, 2006.)

ACT 10

S.B. NO. 2224

A Bill for an Act Relating to Credit Sales.

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

SECTION 1. Section 476-1, Hawaii Revised Statutes, is amended by amending the definition of “principal balance” to read as follows:

““Principal balance” means the sum of the cash price less the amount of the buyer’s down payment, plus any other amounts, including any amounts actually to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest, lien, or lease interest on property traded in, that are financed by the seller and are not part of the finance charge.”

SECTION 2. New statutory material is underscored.

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

(Approved April 21, 2006.)

ACT 11

H.B. NO. 3250

A Bill for an Act Relating to Supersedeas Bonds.

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- Limit on supersedeas bond. (a) In any civil action brought under any legal theory, the amount of a supersedeas bond or other form of security necessary to stay execution of a judgment granting legal, equitable, or any other form of relief during the entire course of all appeals or discretionary review of that judgment by all appellate courts shall be set in accordance with applicable law, except that:

- (1) The total amount of the supersedeas bond or other form of security that is required of any party shall not exceed \$25,000,000, regardless of the amount or any other provision of the judgment that is appealed;

- (2) If the party posting the supersedeas bond is a “small business concern” as defined by section 210-1, the supersedeas bond shall not exceed \$1,000,000; and
- (3) If a party in whose favor the judgment has been entered proves to a court by a preponderance of the evidence that an appellant who has posted a supersedeas bond is intentionally dissipating assets outside the ordinary course of its business for the purpose of avoiding payment of the judgment, a court may require the appellant to post a supersedeas bond in an amount up to the total amount of the judgment appealed. Dissipation of assets shall not include expenditures, including payments to the owners of a business, of the kind that the appellant made in the regular course of business prior to entry of the judgment being appealed.

(b) This section shall not apply to the limitation on bonds for tobacco master settlement agreement signatories and their successors and affiliates under section 328L-7.

(c) For purposes of this section:

“Civil action” includes, without limitation, cases involving individual, aggregated, class action, or otherwise joined claims.

“Legal, equitable, or any other form of relief” means all forms of relief, including without limitation, compensatory, special, punitive, exemplary or other damages, injunctive relief, or any other form of relief.”

SECTION 2. This Act shall apply to all judgments entered on or after its effective date, regardless of the date the civil action was filed.

SECTION 3. New statutory material is underscored.¹

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

(Approved April 21, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 12

H.B. NO. 2057

A Bill for an Act Relating to Health.

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

SECTION 1. The legislature recognizes the rich ethnic and cultural diversity of our island State. As such, there should be an opportunity to honor religious and cultural practices associated with childbirth. There must, at the same time, be due consideration for proper assurances of public health and safety.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§321- Human placenta.** Upon negative findings of infection or hazard after appropriate testing of the mother, the human placenta may be released by the hospital to the woman from whom it originated or to the woman’s designee. The department shall establish a release form which shall stipulate appropriate measures for the safe release of human placenta.”

ACT 13

SECTION 3. New statutory material is underscored.¹

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

(Approved April 21, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 13

S.B. NO. 2295

A Bill for an Act Relating to Principal Private Detectives and Guards.

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

SECTION 1. Section 463-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No firm shall engage in the business of private detective, represent itself to be, hold itself out as, list itself as, or advertise as a private detective agency or as furnishing detective or investigating services without first obtaining a license as a private detective agency from the board and paying the application and license fees. A detective agency shall have in its employ [a] at least one principal detective who shall be [a resident of the State.] fully responsible for the direct management and control of the detective agency and the agency’s employees when detective services are being provided.”

SECTION 2. Section 463-7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No firm shall engage in the business of guard for the purpose of protecting persons or property or to prevent theft or unlawful taking of goods, wares, merchandise, money, bonds, documents, or other articles of value for hire or reward or represent itself to be, hold itself out as, list itself as, or advertise as a guard agency without first obtaining a license as a guard agency from the board and paying the application and license fees. A guard agency shall have in its employ [a] at least one principal guard who shall be [a resident of the State.] fully responsible for the direct management and control of the guard agency and the agency’s employees when guard services are being provided.”

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 24, 2006.)

A Bill for an Act Relating to Mental Health Counselors.

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

SECTION 1. Section 453D-1, Hawaii Revised Statutes, is amended by amending the definition of “practice of mental health counseling” to read as follows:

““Practice of mental health counseling” means the rendering of professional counseling services based on specialized education, training, and experience to individuals, families, or groups for compensation, monetary or otherwise. These professional counseling services include applying the respective principles, methods, and theories of counseling, human development, learning theory, group and family dynamics, rehabilitation, and the etiology of mental illness and dysfunctional behavior [~~to define~~], and defining goals and [~~develop~~] developing a treatment plan of action aimed toward the prevention, treatment, and resolution of mental and emotional dysfunction and intra or interpersonal disorders to all persons irrespective of diagnosis. “Practice of mental health counseling” includes but is not limited to:

- (1) The assessment, diagnosis, and treatment of, and counseling for, mental and emotional disorders;
- (2) The assessment, diagnosis, and treatment of, and counseling for, substance abuse and conduct disorders defined in the approved diagnostic and statistical manual for mental disorders;
- (3) The application of educational techniques aimed at the prevention of these disorders; and
- (4) The provision of consultative services to individuals, couples, families, groups, organizations, and communities.”

SECTION 2. Section 453D-6, Hawaii Revised Statutes, is amended to read as follows:

“~~[(a)]~~ **§453D-6 Exemptions.** (a) This chapter shall not apply to:

- (1) A person doing work within the duties of the person’s profession that overlaps with the practice of mental health counseling; provided that no such person shall use a title stating or implying that the person is a “licensed mental health counselor” or “mental health [~~counselor~~],” counselor,” or describe or refer to the person’s services as mental health counseling;
- (2) Any person who is a duly recognized member of the clergy; provided that the person functions only within the person’s capacity as a member of the clergy; and provided further that the person does not represent the person to be a “licensed mental health counselor” or “mental health [~~counselor~~],” counselor,” or describe or refer to the person’s services as mental health counseling;
- (3) Any student enrolled in an accredited educational institution in a recognized program of study leading [~~toward~~] towards attainment of a graduate degree in mental health counseling or other professional field; provided that the student’s activities and services are part of a prescribed course of study supervised by the accredited educational institution and the student is identified by an appropriate title, including but not limited to “mental health counseling student” or “trainee”, “clinical psychology student” or [~~“trainee”~~], “trainee,” “social work

student” or [~~“trainee”~~], “trainee,” “marriage and family counseling student” or [~~“trainee”~~], “trainee,” or any title that clearly indicates training status;

- (4) Any individual who uses the title of “mental health counselor intern” for the purpose of obtaining clinical experience in accordance with section 453D-7(a)(3);
- (5) Any person employed by a federal, state, or county government agency in a counseling position, but only at those times when the employee is carrying out the duties and responsibilities as a counselor in governmental employment; or
- (6) Any person who is obtaining supervised clinical experience for licensure as a psychologist, social worker, marriage and family therapist, or as another licensed professional; provided that the person’s title indicates a trainee or intern status; and provided further that the person does not purport to be a “licensed mental health counselor” or “mental health counselor”.

(b) Nothing in this chapter shall be construed to prevent qualified members of other licensed professions as defined by any law or rule of the department, including but not limited to social workers, registered nurses, psychologists, marriage and family therapists, or physicians, from providing mental health counseling or advertising that they provide mental health counseling to individuals, couples, or families consistent with the accepted standards of their respective licensed professions; provided that no such persons shall use a title stating or implying that they are licensed mental health counselors unless the persons are licensed pursuant to this chapter.

(c) Nothing in this chapter shall be construed to supersede the regulation of registered rehabilitation specialists from the department of labor and industrial relations. Further, no registered rehabilitation specialist shall use a title stating or implying that the registered rehabilitation specialist is a licensed mental health counselor unless the person is licensed pursuant to this chapter.”

SECTION 3. Section 453D-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person who applies to the department after July 1, 2005, shall be issued a license by the department if the applicant provides satisfactory evidence to the department that the applicant is qualified for licensure pursuant to the requirements of this chapter and meets the following qualifications:

- (1) A master’s degree or doctoral degree from an accredited educational institution in counseling or in an allied field related to the practice of mental health counseling that includes or is supplemented by graduate level course work in counseling comprising a minimum of forty-eight semester hours or seventy-two quarter hours in the following course areas, with a minimum of three semester hours in each course area as indicated below:
 - (A) Human growth and development, including but not limited to the study of life span development, strategies to facilitate that development and transitions, theories of learning and personality development, and human behavior to include crisis, disabilities, addictive behavior, and environmental factors;
 - (B) Social and cultural foundations, including but not limited to the study of issues and trends in a multicultural and diverse society, including characteristics of diverse groups that may include but are not limited to age, race, religious or sexual preference, physi-

- cal disability, ethnicity and culture, gender, socioeconomics, intellectual ability, and individual, family, and group strategies with diverse populations;
- (C) Counseling theories and applications, including but not limited to counseling and consultation, including both individual and systems perspectives, interviewing, assessment, and counseling skills, as well as applying principles, methods, and theories of counseling, treatment and counseling of mental and emotional disorders, and educational techniques aimed at preventing such disorders with individuals and families;
 - (D) Group theory and practice, including but not limited to principles of group dynamics, group process, group leadership styles, theories and methods of group counseling, and the application of theory to the group processes;
 - (E) Career and lifestyle development, including but not limited to the study of vocational development theories and decisionmaking models, assessment instruments, and techniques, types, sources, and uses of occupational and educational information systems, career development applications, and career counseling processes, techniques, and resources;
 - (F) Appraisal of human behavior, including but not limited to assessment and diagnosis [ø] of disorders with an emphasis on DSM-IV categories, and an understanding of these disorders relative to the counseling context;
 - (G) Tests and measurements, including but not limited to theoretical and historical bases for assessment techniques, assessment methods, including analysis of various types of tests in order to select, administer, interpret, and use assessment and evaluation instruments and techniques in counseling;
 - (H) Research and program evaluation, including but not limited to research design and methods, statistical analysis, principles, practices, and application of needs assessment, and program evaluation; and
 - (I) Professional orientation and ethics, including but not limited to the history of the helping profession, professional roles and functions, ethical standards, confidentiality, professional organizations, and the public policy process, including advocacy on behalf of the profession and its clientele;
- (2) At least two academic terms of supervised mental health practicum intern experience for graduate credit of at least three semester hours or five quarter hours per academic term in a mental health counseling setting with three hundred hours of supervised client contact; the practicum experience shall be completed under the clinical supervision of a person who is licensed as a mental health counselor, psychologist, clinical social worker, advanced practice registered nurse with a specialty in mental health, marriage and family therapist, or physician with a specialty in psychiatry;
- (3) Completion [H]of[H] three thousand hours of post-graduate [~~direct counseling work~~] experience in the practice of mental health counseling with one hundred hours of face-to-face clinical supervision [within a two-year period; and] which shall be completed in no less than two years and in no more than four years, under the clinical supervision of a person who is a licensed mental health counselor, psychologist, clinical social worker, advanced practice registered nurse with a specialty in

- mental health, marriage and family therapist, or physician with a specialty in psychiatry; and
- (4) Passed the National Counselor Examination for Licensure and Certification.”

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 24, 2006.)

ACT 15

H.B. NO. 2400

A Bill for an Act Making an Emergency Appropriation for Acquisition of Waimea Valley, Oahu.

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 make an emergency appropriation of \$1,600,000 to assist in the purchase and preservation of Waimea Valley, Oahu.

SECTION 3. The legislature finds that it is in the best interests of the public for the consortium of government agencies and nonprofit organizations to purchase Waimea Valley for the purpose of preserving one of the most treasured ahupua‘a for future generations. Waimea Valley has been designated as conservation land due to its rich cultural sites, and abundance of native plants, stream animals and wildlife. The valley is considered an archaeological landscape because of the high frequency and density of archaeological and cultural sites.

Given the State’s limited resources, the legislature acknowledges that financing the purchase of lands rich in natural and cultural resources for the benefit of the public is best achieved through collaborative arrangements with and¹ other government agencies and nonprofit organizations. The State recently participated in negotiations that resulted in an agreement to purchase the valley for \$14,000,000. The respective shares of the consortium participants are: United States Army - \$3,500,000, Office of Hawaiian Affairs - \$2,900,000, State Department of Land and Natural Resources - \$1,600,000, City and County of Honolulu - \$5,000,000, and National Audubon Society - \$1,000,000.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,600,000, or so much thereof as may be necessary, for fiscal year 2005-2006 for the purpose of purchasing Waimea Valley, Oahu. The sum appropriated shall be expended by the department of land and natural resources.

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

(Approved April 24, 2006.)

Note

1. So in original.

ACT 16

S.B. NO. 2337

A Bill for an Act Making an Emergency Appropriation to the Department of Health for the Adult Mental Health Division.

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

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

SECTION 2. Although funds were appropriated to the department of health for adult mental health services for the fiscal period beginning July 1, 2005, and ending June 30, 2006, a critical funding emergency now exists. The program will expend all appropriated funds before the end of the current fiscal year, and the department will be unable to meet its obligation to provide services to certain adults with severe mental illness. The primary reason for this financial situation is the need to continue existing services and implement additional services and activities to comply with the requirements of the settlement agreement and subsequent orders in *United States v. State of Hawaii*, Civil Number 91-00137 (DAE KSC).

The purpose of this Act is to appropriate or authorize moneys to address expenses related to the ongoing operations at the Hawaii state hospital, to provide community-based services necessary to reduce the census at the Hawaii state hospital, and to address expenses relating to those individuals who have already been placed in community-based services.

SECTION 3. There is appropriated out of the mental health and substance abuse special fund the sum of \$6,148,944, or so much thereof as may be necessary, for fiscal year 2005-2006. This amount is to be used to sustain ongoing operations, services, and activities for patients of the Hawaii state hospital, to provide community-based services necessary to reduce the census at the Hawaii state hospital, and to address expenses relating to those individuals who have already been placed in community-based services.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,724,703, or so much thereof as may be necessary for fiscal year 2005-2006 to be used to sustain ongoing operations, services, and activities for patients of the Hawaii state hospital, to provide community-based services necessary to reduce the census at the Hawaii state hospital, and to address expenses relating to those individuals who have already been placed in community-based services.

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

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

(Approved April 24, 2006.)

A Bill for an Act Making an Emergency Appropriation to the Department of Health for the Developmental Disabilities Division.

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

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

SECTION 2. The purpose of this Act is to appropriate additional funds for the State’s Medicaid home and community-based services for the developmentally disabled or mentally retarded program, also known as the title XIX waiver program, within the department of health to meet an existing critical funding emergency. The additional funds are necessary to support current clients and to reasonably admit individuals into the program to fulfill the settlement agreement in HDRC v. State of Hawaii, U.S. Dist. Ct., Civil No. 03-00524 HG-KSC, and comply with the United State’s Supreme Court decision in Olmstead v. L.C. ex rel Zimring, 527 U.S. 581, 119 S. Ct. 2176 (1999) and the requirements of chapter 333F, Hawaii Revised Statutes, to support people to live in the community.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,807,562, or so much thereof as may be necessary, for fiscal year 2005-2006, to carry out the purposes of this Act.

SECTION 4. The sum appropriated shall be expended by the department of health.

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

(Approved April 24, 2006.)

A Bill for an Act Making an Emergency Appropriation to the Department of Health for Early Intervention Services.

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

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

SECTION 2. Although funds were appropriated to the department of health for early intervention services for the period beginning July 1, 2005 and ending June 30, 2006, the department of health has a critical need for additional funds.

On May 31, 2005, the State of Hawaii was deemed in compliance with the Felix Consent Decree, marking the end of federal court oversight for services, including early intervention services. The department of health must continue to carry out its obligations to provide early intervention services for children age zero to three years with a developmental delay or biological or environmental risk, as mandated by part C of the Individuals with Disabilities Education Improvement Act

of 2004 (P.L. 108-446), sections 321-351 to 321-357, Hawaii Revised Statutes, and the Hawaii early intervention state plan. The department must ensure that eligible children and their families receive the services mandated by part C of the Individuals with Disabilities Education Improvement Act of 2004 that are identified on their individual family support plans.

Existing funds will be expended before the end of this fiscal year, due to increased costs for early intervention purchase-of-service programs to evaluate additional children and serve them in 'natural environments' as required by the Individuals with Disabilities Education Improvement Act of 2004. These purchase-of-service programs are providing an increased number of multi-disciplinary comprehensive developmental evaluations of a child's cognitive, physical, communication, social or emotional, and adaptive development, as required by part C of the Individuals with Disabilities Education Improvement Act of 2004, P.L. 108-446, due to an increased number of children referred by public health nurses and healthy start programs. To serve more children, current programs have expanded and three new purchase-of-service programs in windward, central, and leeward Oahu have been added. These programs serve additional children who previously received therapy services from fee-for-service providers and care coordination from early intervention section, early childhood services programs, public health nurses, or healthy start; and additional children under age three years who are confirmed victims of child abuse or neglect, as required by the Child Abuse Prevention and Treatment Act and the Individuals with Disabilities Education Improvement Act of 2004. The Individuals with Disabilities Education Improvement Act of 2004 also requires a family-centered but more costly approach of providing services in 'natural environments' or community-based settings, such as at families' homes, community pre-schools, and parks which increases travel time for service providers to reach the 'natural environment', and necessitates a smaller caseload, an increased number of providers, and results in increased costs per child.

The purpose of this Act is to increase the authorized general fund appropriation by \$3,200,928, for early intervention services in the department of health for fiscal year 2005-2006.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$3,200,928, or so much thereof as may be necessary, for fiscal year 2005-2006 to carry out the purposes of this Act.

SECTION 4. The sum appropriated shall be expended by the department of health.

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

(Approved April 24, 2006.)

ACT 19

S.B. NO. 2347

A Bill for an Act Making an Emergency Appropriation to the Department of Health for the Family Health Services Division.

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

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

SECTION 2. Although funds were appropriated to the department of health for healthy start services for the period beginning July 1, 2005 and ending June 30, 2006, the department of health has a critical need for additional funds.

On May 31, 2005, the State of Hawaii was deemed in compliance with the Felix Consent Decree, marking the end of federal court oversight for services including early intervention services. The department of health must continue to carry out its obligations to provide early intervention services for children age zero to three years with developmental delays or biological or environmental risks, as mandated by Part C of the federal Individuals with Disabilities Education Improvement Act of 2004 (P.L. 108-446), sections 321-351 to 321-357, Hawaii Revised Statutes, and the Hawaii early intervention state plan. The department must ensure that eligible children and their families receive the services mandated by the Individuals with Disabilities Education Improvement Act Part C that are identified on their individual family support plans.

Appropriated funds will be expended before the end of this fiscal year, due to a decrease in funding for healthy start purchase-of-service programs for home visiting services. These purchase-of-service programs provide support services to families at risk, to assure healthy and safe child development. To continue services at the present level, an additional \$1,000,000 from the early intervention special fund is needed. The current ceiling for the early intervention special fund is \$4,203,974 for fiscal year 2005-2006. This measure will increase the ceiling by \$1,000,000 to \$5,203,974.

SECTION 3. There is appropriated out of the early intervention special fund the sum of \$1,000,000, or so much thereof as may be necessary, for fiscal year 2005-2006, to be used for healthy start purchase-of-service programs for home visiting services.

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

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

(Approved April 24, 2006.)

ACT 20

S.B. NO. 2593

A Bill for an Act Relating to Court Fees.

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

SECTION 1. Section 571-83, Hawaii Revised Statutes, is amended to read as follows:

“**§571-83 Court and witness fees.** In proceedings under section 571-11(1) [and], (2), or (9), no court fees shall be charged against, and no witness fees shall be allowed to, any party to a petition. No officer of the State or of any political subdivision thereof shall be entitled to receive any fee for the service of process or for attendance in court in any such proceedings except as otherwise provided in this chapter. All other persons acting under orders of the court may be paid for service of process and attendance or service as witnesses, the fees provided by law to be paid from the proper appropriation when the allowances are certified to by the judge.”

SECTION 2. 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) [ØF], (2), or (9), 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 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 25, 2006.)

ACT 21

S.B. NO. 2598

A Bill for an Act Relating to Fees for Electronic Filing, Signing, Serving, Certification, and Verification of Court Documents.

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

SECTION 1. Act 230, Session Laws of Hawaii 2004, is amended by amending section 6 to read as follows:

“SECTION 6. This Act shall take effect on July 1, 2004; provided that on ~~June 30, 2007,~~ December 31, 2008, sections 2, 3, and 4 of this Act shall be repealed and sections 601-3.7, 607-1, and 607-2, Hawaii Revised Statutes, are reenacted in the same form in which they read on June 30, 2004.”

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 25, 2006.)

A Bill for an Act Relating to Definition of Neighborhood Electric Vehicle.

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

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

““Neighborhood electric vehicle” means a self-propelled electrically powered motor vehicle to which all of the following apply:

- (1) The vehicle is emission free;
- ~~[(2) The vehicle is designed to carry four or fewer persons;~~
- ~~(3)~~ (2) The vehicle is designed to be and is operated at speeds of twenty-five miles per hour or less;
- ~~[(4)]~~ (3) The vehicle has ~~[at least]~~ four wheels in contact with the ground;
- ~~[(5)]~~ (4) The vehicle has ~~[an unladen weight]~~ a gross vehicle weight rating of less than [one thousand eight hundred] two thousand five hundred pounds; and
- ~~[(6)]~~ (5) The vehicle conforms to the minimum safety equipment requirements as adopted in the Federal Motor Vehicle Safety Standard No. 500, Low Speed Vehicles (49 C.F.R. 571.500).”

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 25, 2006.)

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 (g) to read as follows:

“(g) An initial or renewed commercial driver’s license with a hazardous materials endorsement shall expire no later than five years from its date of issuance, except if the licensee is seventy-two years of age or older. The expiration date of a commercial driver’s license with a hazardous materials endorsement shall be the same expiration date as the hazardous materials endorsement. If the licensee is seventy-two years of age or older, the initial or renewed commercial driver’s license with a hazardous materials endorsement shall not exceed two years. All other initial commercial driver’s [license] licenses shall be valid for not less than a two- or six-year period, beginning on the driver’s birthday. [Renewal] All other renewed licenses shall be valid for not more than a two- or six-year period from the expiration date of the previous valid license. [The] With the exception of a commercial driver’s license with a hazardous materials endorsement, the commercial driver’s license shall expire on the next birthday of the licensee occurring six years after the date of issuance of the license unless sooner revoked, suspended, or canceled; provided that, unless sooner revoked, the license shall expire on the second birthday of the licensee

following the issuance of the license if at that time the licensee is seventy-two years of age or older.”

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 25, 2006.)

ACT 24

S.B. NO. 2332

A Bill for an Act Relating to Housing.

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

SECTION 1. Section 201G-51, Hawaii Revised Statutes, is amended by amending the definitions of “public housing project” and “tenant” to read as follows:

““Public housing project” or “complex” means a low-income federally assisted housing project [directly] as established by the United States Housing Act of 1937, as amended, and controlled, owned, developed, or managed by the administration pursuant to [part II, except for subparts F and G.] the federal low rent public housing program.

“Tenant” means any person occupying a [~~room,~~] dwelling accommodation[;] or living quarters[; ~~or space~~] in any public housing project, under or by virtue of any tenancy lease[; ~~license, or permit~~] or rental agreement under or from the administration.”

SECTION 2. Section 201G-52, Hawaii Revised Statutes, is amended by amending subsections (e) and (f) to read as follows:

“(e) If the tenant fails to attend or reschedule the meeting provided for in subsection (c), the administration shall provide the tenant with a second written notice. The notice shall inform the tenant that:

- (1) The administration shall proceed to terminate the tenant’s tenancy because of the tenant’s outstanding rent delinquency and the tenant’s failure to respond to the administration’s written notice issued pursuant to subsection (b);
- (2) The tenant has [~~thirty days~~] ten business days from receipt of the second written notice to request a grievance hearing; and
- (3) If the tenant fails to request a grievance hearing within [~~thirty days,~~] ten business days, the administration has the right to proceed with the eviction hearing pursuant to section 201G-53.

(f) If the tenant meets with the administration as provided for in subsection (c), the administration shall decide, based upon the facts discussed at the meeting, what action is appropriate to address the tenant’s case. The administration shall notify the tenant of such decision in writing. If the administration decides to proceed with an action to terminate the tenancy, the administration shall further inform the tenant in the same written notice that:

- (1) The tenant has [~~thirty days~~] ten business days from receipt of this notice to request a grievance hearing; and

- (2) If the tenant fails to request a grievance hearing within ~~[thirty days,]~~ ten business days, the administration has the right to proceed with the eviction hearing pursuant to section 201G-53.”

SECTION 3. Section 201G-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Where the administration proposes to terminate a lease[;] or rental agreement[; ~~permit, or license,~~] and evict a tenant[; ~~licensee, or other occupant~~] under section 201G-52, a hearing shall be held to determine whether cause exists for the action. The administration shall give written notice to the person concerned specifying the reason for which the eviction is proposed and fixing the date and place of hearing. The written notice shall further inform the tenant[; ~~licensee, or other occupant~~] of the right to inspect and copy the tenant file at the tenant’s expense before the hearing is held. The notice shall be given at least five days before the date set for the hearing. At the hearing, before final action is taken, the person concerned shall be entitled to be heard in person or through counsel, and shall be accorded a full and fair hearing in accordance with the requirements of a contested case hearing provided for under sections 91-9 and 91-10 to 91-13. This full and fair hearing shall be deemed to be a contested case hearing before the agency that is required pursuant to chapter 91.”

SECTION 4. Section 201G-55, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If it is proven to the satisfaction of the eviction board that there is cause to terminate a lease[;] or rental agreement[; ~~permit, or license~~] and evict the tenant[; ~~licensee, or other occupant,~~] the administration shall provide the tenant with a written notice of the administration’s decision to terminate the lease. The notice shall inform the tenant that a writ of possession may be issued by the administration within ten days. The notice shall also inform the tenant [of] whether the grounds for eviction are considered curable, and if so, what the tenant must do to remedy the grounds, by when it must be done, and what the tenant must do to document for the administration that the grounds have been remedied.

(b) When the grounds for termination of the lease may be cured by the [~~occupant, licensee, or other occupant,~~] tenant, the tenant shall have ten business days from receipt of the notice provided for in subsection (a) to cure such grounds. If the grounds are cured within the ten-day period, no writ of possession may be issued. If the condition is not cured within the ten-day period, the administration may issue a writ of possession forthwith.”

SECTION 5. Section 201G-56, Hawaii Revised Statutes, is amended to read as follows:

“**§201G-56 Ex parte motion.** If a tenant [or licensee] cannot be served with an order of eviction or writ of possession, and the facts shall appear by affidavit to the administration, service to the tenant [or licensee] may be made according to the special order of the administration. The order shall require the officer to affix a certified copy of the order of eviction or writ of possession in a conspicuous place upon the premises such as the door or wall of the dwelling unit.”

SECTION 6. Section 521-7, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) Residence at an institution, whether public or private, where residence is merely incidental to detention or the provision of medical, geriatric, educational, religious, or similar services;
- (2) Residence in a structure directly controlled and managed by the University of Hawaii for housing students or faculty of the University of Hawaii or residence in a structure erected on land leased from the University of Hawaii by a nonprofit corporation for the exclusive purpose of housing students or faculty of the University of Hawaii;
- (3) Occupancy under a bona fide contract of sale of the dwelling unit or the property of which it is a part where the tenant is, or succeeds to the interest of, the purchaser;
- (4) Residence by a member of a fraternal organization in a structure operated without profit for the benefit of the organization;
- (5) Transient occupancy on a day-to-day basis in a hotel or motel;
- (6) Occupancy by an employee of the owner or landlord whose right to occupancy is conditional upon such employment or by a pensioner of the owner or landlord or occupancy for a period of up to four years subsequent thereto, pursuant to a plan for the transfer of the dwelling unit or the property of which it is a part to the occupant;
- (7) A lease of improved residential land for a term of fifteen years or more, measured from the date of the commencement of the lease;
- (8) Occupancy by the prospective purchaser after an accepted offer to purchase and prior to the actual transfer of the owner's rights;
- (9) Occupancy in a homeless facility, or any other program for the homeless authorized under chapter 201G, part IV;
- (10) Residence or occupancy in a public housing project or complex [~~or shelter~~] directly controlled, owned, or managed by the [~~Hawaii housing finance and development administration;~~] Hawaii public housing administration pursuant to the federal low rent public housing program; or
- (11) Residence or occupancy in a transitional facility for abused family or household members.”

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 on July 1, 2006.

(Approved April 25, 2006.)

Note

1. Period should be stricken.

A Bill for an Act Relating to the Reproductive Rights Protection Committee.

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

SECTION 1. The legislature finds that the reproductive rights protection (RRP) committee was created in 1986 to assist the family court by providing a recommendation, based on a multidisciplinary assessment, on whether to sterilize an adult with a developmental disability who has a guardian. The purpose of the committee is to ensure that the interests of the ward are adequately taken into consideration and that unnecessary sterilization does not occur, especially if other alternatives are available. The input from the committee is advisory only and the family court may make its own determination regardless of the recommendation provided by the committee.

The RRP committee is currently placed for administrative purposes in the department of health and has no budget or staff. A staff member of the department of health coordinates administrative matters and any budgetary needs come from the disability and communication access board. There have been no expenditures in the past eight years because, from 1995 through 2004, only one case was reviewed. It is unknown why no cases were referred to the committee. The legislature finds that the RRP committee has not served its intended purpose by virtue of being inactive for nearly eight years.

The purpose of this Act is to abolish the RRP committee and to provide for a resource list of advisors willing to assist the family court as an ad hoc panel when needed.

SECTION 2. Chapter 560, Hawaii Revised Statutes, is amended by adding a new section to part 6 of article V to be appropriately designated and to read as follows:

“§560:5- Reproductive rights advisory list. The family court may maintain a resource list of advisors in the disciplines of law, medicine, theological or philosophical ethics, social work, and psychology or psychiatry with knowledge regarding the reproductive rights of incapacitated adults with disabilities. The court may seek advice and recommendations from one or more of the advisors on any petition for sterilization. The recommendations shall consider whether the ward is capable of giving informed assent and, if not, whether sterilization is in the best interest of the ward, consistent with the criteria set forth in section 560:5-608.”

SECTION 3. Section 560:5-607, Hawaii Revised Statutes, is amended to read as follows:

“[§560:5-607] Hearing. (a) The court shall set a hearing on the petition ~~[upon receipt of the recommendations of the reproductive rights [protection] committee]~~ and shall order that notice of the time and place of hearing be provided to the ward, the guardian, and the guardian ad litem for the ward and ~~[such]~~ any other persons ~~[as]~~ that the court may designate.

(b) The ward ~~[is]~~ shall be entitled to be present at the hearing~~;~~ and to see and hear all evidence bearing on the petition. The ward ~~[is]~~ shall be entitled to be represented by an attorney, in addition to the court-appointed guardian ad litem, to present evidence, and to cross examine witnesses, including any person submitting a report~~;~~ and members of the reproductive rights [protection] committee. The ward may be absent from the hearing if the ward is unwilling or is unable to participate.”

SECTION 4. Section 560:5-612, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§560:5-612]]~~ **No liability arising from sterilization; exception.** No physician~~[,] or hospital, [members of the reproductive rights [protection] committee,]~~ nor the State or its agents, ~~[nor]~~ or any other person acting in accordance with this ~~[Part]~~ part shall be liable to anyone, either civilly or criminally, for having performed or authorized the performance of the individual sterilization, except for liability of the hospital or physician caused by the negligent performance of the sterilization, in accordance with laws covering such negligence.”

SECTION 5. Section 560:5-606, Hawaii Revised Statutes, is repealed.

SECTION 6. Section 560:5-610, Hawaii Revised Statutes, is repealed.

SECTION 7. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the reproductive rights protection committee or the department of health relating to the functions of the reproductive rights protection committee shall be transferred to the judiciary with the functions to which they relate.

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 25, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 26

H.B. NO. 2275

A Bill for an Act Making an Emergency Appropriation for Electricity Payments Statewide.

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 make emergency appropriations to address a \$1,276,000 deficit in electricity payments for department of accounting and general services managed facilities statewide and a \$6,400,000 deficit in electricity payments for facilities in the University of Hawaii system. Since local utility companies are dependent upon oil as the primary source of fuel, the steady rise in world oil prices has directly contributed to this shortfall. Although kilowatt

ACT 27

per hour consumption has remained flat or decreased, increased worldwide demand and natural disasters like Hurricane Katrina have increased oil prices.

Based on a combination of actual bills paid and projected cost, the shortfall for fiscal year 2005-2006 is as follows:

- (1) Department of accounting and general services facilities on:
 - (A) Oahu \$1,000,000
 - (B) Hawaii \$ 91,000
 - (C) Maui \$ 85,000
 - (D) Kauai \$ 100,000
 - Total \$1,276,000
- (2) University of Hawaii facilities:
 - (A) UOH – 100 UH – Manoa \$3,300,000
 - (B) UOH – 21 UH – Hilo 600,000
 - (C) UOH – 800 UH – Community Colleges 2,500,000
 - Total \$6,400,000

Without an emergency appropriation, these programs must defer payment on upcoming 2006 bills.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,276,000, or so much thereof as may be necessary, for fiscal year 2005-2006 for the purpose of paying electricity bills.

The sum appropriated shall be expended by the department of accounting and general services.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,400,000, or so much thereof as may be necessary for fiscal year 2005-2006, for the purpose of paying electricity bills for the University of Hawaii system.

The sum appropriated shall be expended by the University of Hawaii.

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

(Approved April 25, 2006.)

ACT 27

S.B. NO. 2263

A Bill for an Act Relating to Chapter 134.

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

SECTION 1. Section 134-2, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) The permit application form shall include the applicant’s name, address, sex, height, weight, date of birth, place of birth, country of citizenship, social security number, alien or admission number, and information regarding the applicant’s mental health history and shall require the fingerprinting and photographing of the applicant by the police department of the county of registration; provided that where fingerprints and photograph are already on file with the department, these may be waived.”

2. By amending subsection (e) to read:

“(e) The permit application form shall be signed by the applicant and by the issuing authority. One copy of the permit shall be retained by the issuing authority as a permanent official record. Except for sales to dealers licensed under section 134-31, or dealers licensed by the United States Department of [~~the Treasury,~~] Justice, or law enforcement officers, or where a license is granted under section 134-9, or where any firearm is registered pursuant to section 134-3(a), no permit shall be issued to an applicant earlier than fourteen calendar days after the date of the application; provided that a permit shall be issued or the application denied before the twentieth day from the date of application. Permits issued to acquire any pistol or revolver shall be void unless used within ten days after the date of issue. Permits to acquire a pistol or revolver shall require a separate application and permit for each transaction. Permits issued to acquire any rifle or shotgun shall entitle the permittee to make subsequent purchases of rifles or shotguns for a period of one year from the date of issue without a separate application and permit for each acquisition, subject to the disqualifications under section 134-7 and subject to revocation under section 134-13; provided that if a permittee is arrested for committing a felony or any crime of violence or for the illegal sale of any drug, the permit shall be impounded and shall be surrendered to the issuing authority. The issuing authority shall perform an inquiry on an applicant who is a citizen of the United States by using the National Instant Criminal Background Check System before any determination to issue a permit or to deny an application is made. If the applicant is not a citizen of the United States and may be eligible to acquire a firearm under this chapter, the issuing authority shall perform an inquiry on the applicant, by using the National Instant Criminal Background Check System, to include a check of the Immigration and Customs Enforcement databases, where the applicant is not a citizen of the United States, before any determination to issue a permit or to deny an application is made.”

SECTION 2. Section 134-7, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person who is a fugitive from justice or is a person prohibited from possessing firearms or ammunition under federal law shall own, possess, or control any firearm or ammunition therefor.”

SECTION 3. Section 134-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In an exceptional case, when an applicant shows reason to fear injury to the applicant’s person or property, the chief of police of the appropriate county may grant a license to an applicant who is a citizen of the United States of the age of twenty-one years or more or to a duly accredited official representative of a foreign nation of the age of twenty-one years or more to carry a pistol or revolver and ammunition therefor concealed on the person within the county where the license is granted. Where the urgency or the need has been sufficiently indicated, the respective chief of police may grant to an applicant of good moral character who is a citizen of the United States of the age of twenty-one years or more, is engaged in the protection of life and property, and is not prohibited under section 134-7 from the ownership or possession of a firearm, a license to carry a pistol or revolver and ammunition therefor unconcealed on the person within the county where the license is granted. The chief of police of the appropriate county, or the chief’s designated representative, shall perform an inquiry on an applicant by using the National Instant Criminal Background Check System, to include a check of the Immigration and Customs Enforcement databases, where the applicant is not a citizen of the United

ACT 28

States, before any determination to grant a license is made. Unless renewed, the license shall expire one year from the date of issue.’’

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.

(Approved April 25, 2006.)

ACT 28

S.B. NO. 2581

A Bill for an Act Relating to the Backlog in Unserved Arrest Warrants.

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

SECTION 1. Section 803-1, Hawaii Revised Statutes, is amended to read as follows:

“§803-1 Arrest; by warrant. (a) No arrest of any person shall be made without first obtaining a warrant or other process therefor from some magistrate, except in the cases provided in this chapter or otherwise provided by law.

(b) Arrest warrants may be served by any county police officer or public safety officer with police powers appointed pursuant to section 353C-4.

(c) The attorney general shall adopt rules pursuant to chapter 91 by which persons retired from a position described in subsection (b) may be authorized to serve arrest warrants issued due to the defendant’s nonappearance, noncompliance with the terms and conditions of sentencing, or for violation of any order entered in a case arising from an offense that is a violation or for which no imprisonment is otherwise authorized.’’

SECTION 2. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval; provided that it shall be repealed on July 1, 2011; provided section 803-1 shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Became law on April 25, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

ACT 29

S.B. NO. 2608

A Bill for an Act Relating to Guardian and Protective Proceedings.

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

SECTION 1. Chapter 560, Hawaii Revised Statutes, is amended by adding a new part to article VIII to be appropriately designated and to read as follows:

“PART . EFFECT OF ACT 161, SESSION LAWS OF HAWAII 2004

§560:8- Effect. Act 161, Session Laws of Hawaii 2004, shall not affect any action commenced, proceeding brought, or right accrued prior to January 1, 2005.”

SECTION 2. This Act, upon its approval, shall take effect retroactive to January 1, 2005.

(Approved April 26, 2006.)

ACT 30

S.B. NO. 2296

A Bill for an Act Relating to Nurses.

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

SECTION 1. Section 457-9, Hawaii Revised Statutes, is amended to read as follows:

“§457-9 Renewal of license; denial, suspension, or revocation of license for default of student loan, student loan repayment contract, or scholarship contract[.]; inactivation and reactivation of license; restoration of forfeited license. (a) The license of every person licensed, recognized, or granted prescriptive authority shall expire on June 30 of every odd-numbered year and shall be renewed biennially, except as provided in this section. Biennially in each odd-numbered year, the board shall make available an application for renewal of license before the deadline set forth by the board to every person to whom a license was issued or renewed during the biennium. The applicant shall complete the application and submit it to the board with a renewal fee and all required documents on or before the deadline set by the board. The applicant shall provide documents from proper agencies or parties of any criminal conviction or any disciplinary action taken or pending in this State or any other state in the United States or any territory or possession under the jurisdiction of the United States within the two years prior to application for renewal of license. Upon receipt of the application and fee, the board shall verify the accuracy of the application and issue to the applicant a certificate of renewal for the biennium expiring two years hence on the deadline set by the board. The renewal shall render the holder thereof a legal practitioner of nursing for the period stated on the renewal form.

(b) Any licensee who fails to renew a license as provided in subsection (a) but continues to practice shall be considered an illegal practitioner and shall be subject to the penalties provided for violations of this chapter[;]. The failure to timely renew a license, the failure to pay all applicable fees, the dishonoring of any check upon first deposit, or the failure to comply with any other requirement provided by law shall cause the license to be automatically forfeited; provided that the person’s license may be restored by the board [on satisfactory explanation of the failure to renew and on payment of the renewal fee and a penalty fee.] within two years after the date of forfeiture upon compliance with the licensing renewal fees, penalty fees, and compliance resolution fund fees.

A nurse who does not intend to practice nursing in the State and elects to be placed on inactive status shall so indicate in writing during the license renewal period or by so indicating on the license renewal application, and paying inactivation and all appropriate fees. Should the nurse wish to resume nursing at some future

time, the nurse shall notify the board in writing and remit the reactivation and renewal [fee] fees and application form as provided in subsection (a). A nurse who has not actively practiced in this State or any other state in the United States or any territory or possession under the jurisdiction of the United States for more than five years may be required by the board to submit proof of continued competency by retaking and passing the licensing examination~~[-]~~ or successfully completing appropriate continuing education recognized by the board.

(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.

The board, in receipt of a certification pursuant to chapter 436C, as applicable, and without further review or hearing, shall:

- (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 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 section 1, to the extent that it relates to continuing education as alternative proof of continuing competency of nurses, shall not take effect until the board of nursing adopts rules in accordance with chapters 91 and 457, Hawaii Revised Statutes.

(Approved April 26, 2006.)

ACT 31

S.B. NO. 2226

A Bill for an Act Relating to Dentists.

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

SECTION 1. Act 166, Session Laws of Hawaii 2004, is amended by amending section 3 to read as follows:

“SECTION 3. Chapter 448, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§448- Community service license.** (a) The board of dental examiners may issue, without examination, a community service license to practice dentistry in the employment of a federally qualified health center, Native Hawaiian health systems center, or post-secondary dental auxiliary training program accredited by the American Dental Association Commission on Dental Accreditation. Community service licensees under this section shall abide by the requirements and conditions placed upon those fully licensed under this chapter.

Eligible candidates shall:

- (1) Provide copies of documentation and credentials that include but are not limited to:
 - (A) A diploma or certificate of graduation from a dental college accredited by the American Dental Association Commission on Dental Accreditation, recognized and approved by the board; and
 - (B) Either of the following:
 - (i) A certificate or other evidence satisfactory to the board of having passed part II of the National Board Dental Examination within five years of the date of request; or
 - (ii) Evidence of active practice of clinical dentistry of not less than one thousand hours per year for the three years immediately prior to the date of request;
- (2) Provide a copy of an active, unrestricted dental practice license from another state;
- (3) Disclose to the board of dental examiners all previous and pending legal or regulatory action relating to claims of malpractice, or personal or professional misconduct; and
- (4) Pay applicable registration fees, which shall be one half of the prevailing biennial registration fee for dentistry.

No person who after the effective date of this Act has failed to pass the license examination administered under this chapter shall have the benefit of a community service dental license.

(b) Community service licensees shall actively participate in a formal and ongoing program of clinical quality assurance.

(c) A license may be renewed [~~annually~~] biennially, pending review and reauthorization of the board of dental examiners.

(d) A community service license authorizes the licensee to practice dentistry only within the employment of an eligible organization and shall be in force until the earliest of the following occurs:

- (1) The date the person leaves the employment authorized under the community service license;
- (2) The date on which the results of the license examination taken by the person under this chapter are posted by the board;
- (3) The date the community service license expires; or
- (4) The date on which the board revokes the community service license; provided that the board may revoke the community service license at any time for cause.

(e) Commissioned officers of the United States Army, the United States Navy, the United States Air Force, the United States Public Health Service, or the United States Veterans Administration practicing in a federally qualified health center or Native Hawaiian health systems center shall qualify for a community service license to practice dentistry, which may be issued for the term of the officer's federal duty assignment. Officers shall provide to the board of dental examiners:

- (1) A copy of an active, unrestricted dental practice license from another state; and
- (2) A copy of documentation reflecting official duty assignment to a qualifying community service dental license site.””

SECTION 2. Act 166, Session Laws of Hawaii 2004, 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 July 1, 2009; provided that sections 448-9 and 448-9.5, Hawaii Revised~~]

ACT 32

~~Statutes, shall be reenacted in the form in which they 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 April 26, 2006.)

ACT 32

H.B. NO. 2885

A Bill for an Act Relating to Adult Entertainment Products.

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:

“§ - Sale of adult entertainment products; view. (a) Any person or business selling adult entertainment products on premises open to the general public shall:

- (1) Obscure the adult entertainment products from view from any location off the premises;
- (2) Segregate the adult entertainment products from other products sold on the premises, if any; and
- (3) Obscure the adult entertainment products from view from any location on the premises where other products are sold by use of a curtain, screen, or other device.

(b) For the purposes of this section:

“Adult entertainment product” means any merchandise that is pornographic as defined in section 712-1210.

“Premises” means any building, structure, or place, or any separate part or portion thereof.

(c) Any person who violates this section shall be fined \$100 for each violation.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on October 1, 2006.

(Approved April 26, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 33

H.B. NO. 2347

A Bill for an Act Making an Emergency Appropriation for Department of Education Student Transportation.

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 for the continued operation of the department of education student transportation program. Contract services for bus services and the necessity to use fiscal year 2005-2006 funds to make payment for fiscal year 2004-2005 invoices have created a critical funding emergency for fiscal year 2005-2006. The department of education will not have sufficient funds to pay for transportation services with the current appropriation amount. An emergency appropriation is needed to fund the program for the first year of the biennium.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,785,448, or so much thereof as may be necessary for fiscal year 2005-2006, for the continued operation of the department of education student transportation program.

The sum appropriated shall be expended by the department of education.

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

(Approved April 26, 2006.)

ACT 34

H.B. NO. 2303

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The order for automatic assignment shall operate as an assignment by the obligor to the child support enforcement agency and shall be binding upon any person who is or shall become obligated to the obligor for payment of income and who has been served with a copy of the assignment order. The order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency.

The assignment shall continue after the obligor’s requirement to pay future child support has ended if the obligor owes past due support, and any amount received pursuant to the assignment shall be applied to satisfy all past due support owed. The assignment shall be terminated when appropriate by the court, the clerk of the court, or the child support enforcement agency; provided that payment of all overdue support shall not be the sole basis for terminating the assignment. An employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding. In the event that the obligee retains

private counsel or proceeds pro se, the obligee shall have primary responsibility for terminating the assignment.

If the obligee fails to terminate the assignment when appropriate, the obligee shall reimburse the obligor to the extent of any overpayment. If the assignment is not terminated when appropriate, the obligor may seek reimbursement for any overpayment from the obligee or from the child support enforcement agency, to the extent the overpayment was disbursed to the department of human services.

The child support enforcement agency shall establish procedures by rule in accordance with chapter 91 for the prompt reimbursement for any overpayment to the obligor.”

SECTION 2. Section 576D-14, Hawaii Revised Statutes, is amended to read as follows:

“**§576D-14 Implementation of income withholding.** (a) For cases being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the income of an obligor who receives income on a periodic basis and who has a support obligation imposed by a support order issued or modified in the State before January 1, 1994, and issued or modified thereafter, if not otherwise subject to withholding, shall become subject to withholding as provided in subsection (b) if arrearages or delinquency occur, without the need for a judicial or administrative hearing. The income of an obligor shall become subject to withholding without regard to whether there are arrearages or delinquency upon the agency receiving a request for income withholding from the obligee and a determination made by the agency that income withholding is appropriate, or upon the agency receiving a request for income withholding from the obligor. The agency shall implement such withholding without the necessity of any application in the case of a child with respect to whom services are already being provided under Title IV-D and shall implement withholding on the basis of an application for services under Title IV-D in the case of any other child on whose behalf a support order has been issued or modified. In either case, [~~such~~] the withholding shall occur without the need for any amendment to the support order involved or for any further action by the court or other entity [~~which~~] that issued [~~such~~] the order.

(b) If the obligor who receives income on a periodic basis becomes delinquent in making payments under a support order in an amount at least equal to the support payable for one month, the agency shall issue an income withholding order that shall include an amount to be paid towards the delinquency. The income withholding order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency. The order shall be served upon the employer by regular mail, by personal delivery, or by transmission to the employer through electronic means.

(c) Upon the agency’s receipt of an interstate income withholding request from another jurisdiction, the agency may issue an income withholding order to collect the support imposed upon the obligor by a support order issued or modified by the other state. The order shall include an amount adequate to ensure that past due payments and payments that will become due in the future under the terms of the support order will be paid.

(d) A copy of the order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued.

(e) Upon sending the order of income withholding to the employer, the agency shall send a notice of the withholding by regular mail to each obligor to whom subsections (b) and (c) apply. The notice shall inform the obligor:

- (1) That the withholding has commenced;

- (2) That the obligor may request a hearing in writing within fourteen days of the date of the notice;
 - (3) That, unless the obligor files a written request for a hearing within fourteen days of the date of the notice, the money received from the income withholding will be distributed to the custodial parent or, in an interstate case, the obligee in the other jurisdiction, or in the case where the children are receiving public assistance, to the State;
 - (4) That the only defense to income withholding is a mistake of fact; and
 - (5) Of the information that was provided to the employer with respect to the employer's duties pursuant to section 576E-16.
- (f) The agency may delay the distribution of collections toward arrearages or delinquency until the resolution of any requested hearing regarding the arrearages or delinquency.
- (g) Upon timely receipt of a request for a hearing from the obligor pursuant to the notice provided under subsection (e), the agency shall refer the matter to the office and a hearing shall be conducted pursuant to chapters 91 and 576E.
- (h) Upon receiving an order of income withholding from the agency, the employer is subject to the requirements of section 576E-16(b) through (h).
- (i) In a case being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the agency may enforce the existing order of support by sending to the employer by regular mail, by personal delivery, or by transmission through electronic means, a notice to withhold child support issued by the agency that reflects the terms and conditions specified in the order for support or income withholding order. Upon receiving a notice to withhold child support, the employer is subject to the requirements of section 576E-16(b) to (h).
- (j) The agency may terminate income withholding by sending a notice to the employer by regular mail, by personal delivery, or by transmission through electronic means. The notice shall be issued upon determination by the agency that the obligor no longer owes the child support or that the obligation is being satisfied through withholding by another employer.
- (k) The agency may adopt rules in accordance with chapter 91 as may be necessary to implement and administer income withholding under this section and sections 571-52, 571-52.2, 571-52.3, and 576E-16."

SECTION 3. Section 576E-16, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) An income withholding order or a notice to withhold child support shall remain in effect after the obligor's requirement to pay future child support has ended if the obligor owes past due support and any amount received pursuant to the order or notice shall be applied to satisfy all past due support owed. An income withholding order or a notice to withhold child support shall ~~remain in effect until~~ be terminated when appropriate by court or administrative order, except that an employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding. Payment by the responsible parent of any delinquency shall not in and of itself warrant termination of the income withholding order or the notice to withhold child support. The agency shall promptly refund any amount withheld in error to the responsible parent."

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 26, 2006.)

ACT 35

H.B. NO. 1242

A Bill for an Act Relating to Section 453-16, Hawaii Revised Statutes.

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

SECTION 1. The legislature finds that Hawaii has a long tradition of protecting the right of reproductive choice independently of, and more broadly than, the federal constitution. In 1970, three years before the United States Supreme Court’s decision in *Roe v. Wade*, 410 U.S. 113 (1973), Hawaii became one of the first states to repeal its law criminalizing abortion. In addition, article I, section 6 of the Hawaii State Constitution includes an explicit right to privacy:

The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

To make clear that the right to reproductive choice is protected as a fundamental right under the Hawaii State Constitution, the committee of the whole explained during the 1978 constitutional convention that:

“By amending the Constitution to include a separate and distinct privacy right, it is the intent of your Committee to insure that privacy is treated as a fundamental right for purposes of constitutional analysis . . . [T]his privacy concept encompasses the notion that in certain highly personal and intimate matters, the individual should be afforded freedom of choice absent a compelling state interest.” (Committee of the Whole Rep. No. 15, in 1 *Proceedings of the Constitutional Convention of Hawaii of 1978*, at 1024 (1980)).

To date, however, the legislature has not taken “affirmative steps” to amend outdated language in the abortion statutes to ensure full access to abortion services. The legislature finds that the existing residency requirement violates the United States Constitution’s privileges and immunities clause and is, therefore, unconstitutional and invalid. The legislature further finds that the hospital requirement is unenforceable during the first trimester under *Roe v. Wade*, according to Attorney General Opinion number 74-17.

The purpose of this Act is to clarify or eliminate outdated statutory language while not expanding those rights that are currently protected under state and federal law.

SECTION 2. Section 453-16, Hawaii Revised Statutes, is amended to read as follows:

“~~[(H)§453-16(H)]~~ **Intentional termination of pregnancy; penalties; refusal to perform.** (a) No abortion shall be performed in this [State] state unless:

- (1) ~~[Such]~~ The abortion is performed by a licensed physician or surgeon, or by a licensed osteopathic physician and surgeon; and
- (2) ~~[Such]~~ The abortion is performed in a hospital licensed by the department of health or operated by the federal government or an agency thereof~~]; and~~
- (3) ~~The woman upon whom such abortion is to be performed is domiciled in this State or has been physically present in this State for at least~~

~~ninety days immediately preceding such abortion. The affidavit of such a woman shall be prima facie evidence of compliance with this requirement, or in a clinic or physician's office.~~

(b) Abortion shall mean an operation to intentionally terminate the pregnancy of a nonviable fetus. The termination of a pregnancy of a viable fetus is not included in this section.

(c) The State shall not deny or interfere with a female's right to choose or obtain an abortion of a nonviable fetus or an abortion that is necessary to protect the life or health of the female.

~~[(e)]~~ (d) Any person who knowingly violates ~~[this section]~~ subsection (a) shall be fined not more than \$1,000 or imprisoned not more than five years, or both.

~~[(d)]~~ (e) Nothing in this section shall require any hospital or any person to participate in ~~[such]~~ an abortion nor shall any hospital or any person be liable for ~~[such]~~ a refusal."

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 26, 2006.)

ACT 36

S.B. NO. 2602

A Bill for an Act Relating to Adult Probation Records.

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

SECTION 1. Section 806-73, Hawaii Revised Statutes is amended by amending subsection (b) to read as follows:

~~“(b) All adult probation records [of the Hawaii state adult probation divisions] shall be confidential and shall not be deemed to be public records. As used in this section, the term “records” includes, but is not limited to, all records made by any adult probation officer in the course of performing the probation officer’s official duties[; provided that the]. The records, or the content of the records, shall be divulged only as follows:~~

- (1) A copy of any adult probation ~~[division]~~ case record or of a portion of it, or the case record itself, upon request, may be provided to ~~[an]~~:
 - (A) An adult probation officer, court officer, social worker of a Hawaii state adult probation ~~[division,]~~ unit, or a family court officer who is preparing a report for the courts~~[,]~~; or [a]
 - (B) A state or federal criminal justice agency, or state or federal court program that:
 - ~~[(A)]~~ [(i)] Is providing supervision of a defendant or offender convicted and sentenced by the courts of Hawaii; or
 - ~~[(B)]~~ [(ii)] Is responsible for the preparation of a report for a court;
- (2) The ~~[contents of any adult probation division case record relating to the]~~ residence address, work address, home telephone number, or work telephone number of a ~~[probationer]~~ current or former defendant shall be provided only to [a]:
 - (A) A law enforcement officer as defined in section 710-1000(13) to locate the probationer for the purpose of serving a summons or

- bench warrant in a civil, criminal, or deportation hearing, or for the purpose of a criminal investigation; [and] or
- (B) A collection agency or licensed attorney contracted by the judiciary to collect any delinquent court-ordered penalties, fines, restitution, sanctions, and court costs pursuant to section 601-17.5.
- (3) A copy of a presentence report or investigative report shall be provided only to:
- (A) The persons or entities named in section 706-604;
 - (B) The Hawaii paroling authority;
 - (C) Any psychiatrist, psychologist, or other treatment practitioner who is treating the defendant pursuant to a court order or parole order for that treatment;
 - (D) The intake service centers;
 - (E) In accordance with applicable law, persons or entities doing research; and
 - (F) Any Hawaii state adult probation officer or adult probation officer of another state or federal jurisdiction who:
 - (i) Is engaged in the supervision of a defendant or offender convicted and sentenced in the courts of Hawaii; or
 - (ii) Is engaged in the preparation of a report for a court regarding a defendant or offender convicted and sentenced in the courts of Hawaii[-];
- (4) Access to adult probation records by a victim, as defined in section 706-646 to enforce an order filed pursuant to section 706-647, shall be limited to the name and contact information of the defendant's adult probation officer.
- (5) Notwithstanding subsection (b)(3), upon notice to the defendant, records and information relating to the defendant's risk assessment and need for treatment services or information related to the defendant's past treatment and assessments may be provided to:
- (A) A case management, assessment or treatment service provider assigned by adult probation to service the defendant; provided that such information shall be given only upon the acceptance or admittance of the defendant into a treatment program;
 - (B) Correctional case manager, correctional unit manager, and parole officers involved with the defendant's treatment or supervision; and
 - (C) In accordance with applicable law, persons or entities doing research.
- (6) Any person, agency, or entity receiving records, or contents of records, pursuant to this subsection shall be subject to the same restrictions on disclosure of the records as Hawaii state adult probation offices.
- (7) Any person who uses the information covered by this subsection for purposes inconsistent with the intent of this subsection or outside of the scope of their official duties shall be fined no more than \$500."

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 April 26, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 37

H.B. NO. 2215

A Bill for an Act Relating to Concessions on Public Property.

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

SECTION 1. Currently, according to state law, concessionaires are required to post a bond as security for performance under a concession contract with the State. However, it has become increasingly difficult and costly for smaller concessionaires at airports to obtain performance bonds.

The legislature finds that smaller concessionaires that must provide security in an amount less than four months' rental and other charges, would carry a lesser burden if they could post security other than a performance bond for their concession contracts.

The purpose of this Act is to assist these smaller concessionaires by giving the State the flexibility to accept as security for the performance of their concession contracts, legal tender and financial instruments other than performance bonds.

SECTION 2. Section 102-11, Hawaii Revised Statutes, is amended to read as follows:

“§102-11 [Bond;] Security for performance; conditions. (a) Before any contract is entered into, the party with whom the contract is proposed to be made shall give security for the performance thereof [~~by a good and sufficient bond~~] as follows:

- (1) For a concession required to provide security under the contract in an amount less than four months' rental and other charges, if any:
 - (A) A good and sufficient bond;
 - (B) A deposit of legal tender; or
 - (C) A certificate of deposit, share certificate, cashier's check, treasurer's check, teller's check, or official check drawn by, or a certified check accepted by, a bank, savings institution, or credit union insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration; and
- (2) For a concession required to provide security under the contract in an amount equal to or greater than four months' rental and other charges, if any: a good and sufficient bond.
- (b) All security provided under this section shall:
 - (1) Be conditioned [~~for~~] on the full and faithful performance of the contract in accordance with the terms and intent thereof[, which bond shall be];
 - (2) Be in an amount not less than two months' rental and other charges, if any, required under the contract; provided that any contract for the sale and delivery of in bond merchandise at Honolulu International Airport shall require a bond in an amount not less than four months of the highest minimum annual rental guaranty required under the contract[. The bond shall also be]; and
 - (3) By its terms inure to the benefit of the State or of the county, as the case may be.”

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 27, 2006.)

ACT 38

H.B. NO. 2476

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 6E-11, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) It shall be a civil and administrative violation for any person to knowingly glue together any human skeletal remains, label any human skeletal remains with any type of marking pen, or conduct any tests that destroy human skeletal remains, as defined in [~~chapter 6E,~~] section 6E-2, except as permitted by the department.”

SECTION 2. Section 40-82, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The judiciary, from time to time, may prepare lists of all delinquent receivables that in its judgment are uncollectible. The delinquent receivables that the judiciary finds to be uncollectible shall be entered in a special record and be deleted from the other books kept by the judiciary, and the judiciary shall thereupon be released from any further accountability for their collection; provided that no [~~account~~] shall be so deleted until it has been delinquent for at least two years. Any delinquent receivables so written off may be transferred back to the judiciary’s accounts receivable if the judiciary finds that the facts as alleged and previously presented to it were not true, or that the delinquent receivables are in fact collectible, or that the delinquent receivables have become collectible. Nothing in this subsection shall preclude a person to whom restitution is owed from pursuing collection of the debt.

As used in this section, “delinquent receivables” means fines, restitution, monetary assessments, fees, surcharges, penalties, sanctions, court costs, and other payment that is past due.”

SECTION 3. Section 87D-6, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In addition to any liability that a fiduciary may have under this chapter, a fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of another fiduciary with respect to the same plan in the following circumstances:

- (1) If the fiduciary participates knowingly in, or knowingly undertakes to conceal, an act or omission of the other fiduciary, knowing that act or omission is a breach;
- (2) If, by the fiduciary’s failure to comply with subsection (a) or (b), the fiduciary [~~has enabled~~] such other fiduciary to commit breach; or

- (3) If the fiduciary has knowledge of the breach by such other fiduciary, unless the fiduciary makes reasonable efforts under the circumstances to remedy the breach.

If the assets of the plan are held by two or more trustees, each shall use reasonable care to prevent a co-trustee from committing a breach, and each shall be responsible for jointly managing and controlling the assets of the plan.”

SECTION 4. Section 201G-441, Hawaii Revised Statutes, is amended to read as follows:

“§201G-441 Expenditures of revolving funds under the administration exempt from appropriation and allotment. Except as to administrative expenditures, and except as otherwise provided by law, expenditures from these revolving funds administered by the administration under subpart [I, N,] O[, P,] or Q or section 201G-170, 201G-223, [~~201G-401,~~] 201G-411, [~~201G-421,~~] or 516-44 may be made by the administration without appropriation or allotment of the legislature; provided that no expenditure shall be made from and no obligation shall be incurred against any revolving fund in excess of the amount standing to the credit of the fund or for any purpose for which the fund may not lawfully be expended. Nothing in sections 37-31 to 37-41 shall require the proceeds of the revolving funds identified in subpart [I, N,] O[, P,] or Q or section 201G-170, 201G-223, [~~201G-401,~~] 201G-411, [~~201G-421,~~] or 516-44 to be reappropriated annually.”

SECTION 5. Section 302A-1133.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The failure of a student to meet the requirements for regular attendance and punctuality shall subject the student’s parent, parents, or guardian to the penalties provided in section 302A-1135. Destruction of school property by a student, in addition to all other legal action that may be taken, shall subject the student’s parent, parents, or guardian to proceedings under section [~~302A-1130~~] 302A-1130.5 or 302A-1153, as appropriate.”

SECTION 6. Section 302A-1186, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board shall adopt guidelines for multi-year evaluations of charter schools that have been chartered for four or more years, or for special evaluations at any time, including a schedule of such evaluations.

- (1) Based upon the findings of an evaluation, the board may place a new century charter school on probationary status. The board shall adopt guidelines for placing new century charter schools on probation, provided that:
- [1] (A) The new century charter school and the charter school administrative office are involved in substantive discussions with the board regarding the evaluation;
- [2] (B) The notice of probation is delivered to the new century charter school and specifies the deficiencies requiring corrections, the probation period, and monitoring and reporting requirements; and
- [3] (C) For deficiencies related to student performance, a new century charter school shall be allowed two years to improve student performance; and

- [(4)] (D) For deficiencies related to financial plans, a new century charter school shall be allowed one year to develop a sound financial plan.
- (2) The new century charter school shall remain on probationary status until the board votes to either remove the new century charter school from probationary status or revoke the charter. If a new century charter school fails to resolve deficiencies by the end of the probation period, the board may, by two-thirds vote, revoke the charter. The board may revoke the charter for serious student or employee health or safety deficiencies in accordance with guidelines adopted by the board, provided that:
 - [(1)] (A) The new century charter school is given notice of specific health or safety deficiencies and is afforded an opportunity to present its case to the board;
 - [(2)] (B) The chairperson of the board appoints a task group to visit the new century charter school and conduct meetings with its local school board and its school community to gather input;
 - [(3)] (C) Two-thirds of the board vote to revoke the charter;
 - [(4)] (D) The best interest of the school's students guide all decisions; and
 - [(5)] (E) After a decision to revoke a charter, the new century charter school shall be allowed to remain open until a plan for an orderly shut-down or transfer of students and assets is developed and executed.
- (3) If there is an immediate concern for student or employee health or safety at a new century charter school, the board, in consultation with the charter school administrative office, may adopt an interim restructuring plan that may include appointment of an interim local school board, and interim local school board chairperson, or a principal to temporarily assume operations of the school.
- (4) For the purposes of this subsection, "organizational viability" means that a new century charter school:
 - [(1)] (A) Has been duly constituted in accordance with its charter;
 - [(2)] (B) Has a local school board established in accordance with law and its charter;
 - [(3)] (C) Employs sufficient faculty and staff to provide the necessary educational program and support services and to operate the facility in accordance with its charter;
 - [(4)] (D) Maintains accurate and comprehensive records regarding students and employees as determined by the charter school administrative office;
 - [(5)] (E) Meets appropriate standards of student achievement;
 - [(6)] (F) Cooperates with board requirements in conducting its function as charter authorizer;
 - [(7)] (G) Complies with applicable federal, state, and county laws and requirements;
 - [(8)] (H) In accordance with the charter school administrative office guidelines and procedures, is financially sound and fiscally responsible in its use of public funds, maintains accurate and comprehensive financial records, operates in accordance with generally accepted accounting practices, and maintains a sound financial plan;
 - [(9)] (I) Operates within the scope of its charter and fulfills obligations and commitments of its charter;
 - [(10)] (J) Complies with all health and safety laws and requirements; and

- [(44)] (K) Complies with all charter school administrative office directives, policies, and procedures.”

SECTION 7. Section 302A-1312, Hawaii Revised Statutes, is reenacted as follows:

“§302A-1312 Six-year program and financial plan for school repair and maintenance. (a) The department of education shall prepare a six-year program and financial plan for school repair and maintenance that 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 514B-148; 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 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 superintendent of education 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 education shall submit an annual report to the legislature that shall include:

- (1) The priority listing established by section 302A-1505;
- (2) List of projects initiated by the department of education; and
- (3) List of projects completed with associated actual cost.”

SECTION 8. Section 325-9, Hawaii Revised Statutes, is amended to read as follows:

“§325-9 Quarantine without removal; duty of police officers to assist in removals and enforcement of quarantine. If the department of health or its agent determines that the removal of the person infected or suspected of being infected would directly and seriously aggravate the disease so as to endanger the person’s life, the department, or its agent may make provision for the person, as directed in section 325-8, in the house in which the person may be; and, in such case, the department or its agent may cause the persons in the neighborhood to be removed, and may take such other measures as it judges necessary for the public health and safety. The department or its agent, in effecting any removal or quarantine under this [F]section[F] or section 325-8, may require any sheriff, deputy sheriff, chief of police, or police officer to aid and assist it, and such force as is reasonably necessary to effect any such removal or quarantine may be used.

Every sheriff, deputy sheriff, chief of police, or police officer who is so required to aid and assist the department or its agent shall immediately aid and assist it.”

SECTION 9. Section 353-61, Hawaii Revised Statutes, is amended to read as follows:

“**§353-61 Hawaii paroling authority; appointment; tenure; qualifications.** Members of the paroling authority shall be nominated by a panel composed of the chief justice of the Hawaii supreme court, the director, the president of the Hawaii Criminal Justice Association, the president of the bar association of Hawaii, a representative designated by the head of the Interfaith Alliance Hawaii, a member from the general public to be appointed by the governor, and the president of the Hawaii chapter of the ~~[national association of social workers.]~~ National Association of Social Workers. The panel shall submit to the governor the names of not less than three persons, designated as the nominees, for chairperson or as a member, for each vacancy. The governor shall appoint, in the manner prescribed by section 26-34, a paroling authority to be known as the Hawaii paroling authority, to consist of three members one of whom shall be designated chairperson. ~~[Of the members first appointed after May 13, 1976, the member designated as chairperson shall be appointed for a term of four years, one member shall be appointed for a term of three years, and one member shall be appointed for a term of two years; thereafter all appointments]~~ Appointments shall be made for terms of four years, commencing from the date of expiration of the last preceding term. Any vacancy in an unexpired term shall be filled by appointment for the remainder of the unexpired term. Nominees to the authority shall be selected on the basis of their qualifications to make decisions that will be compatible with the welfare of the community and of individual offenders, including their background and ability for appraisal of offenders and the circumstances under which offenses were committed.”

SECTION 10. Section 501-6, Hawaii Revised Statutes, is amended by amending its title to read as follows:

“**§501-6 Registrar and assistants[;]; appointment, tenure, powers, and duties.**”

SECTION 11. Section 501-23, Hawaii Revised Statutes, is amended to read as follows:

“**§501-23 Application, form, and contents.** The application shall be in writing, signed, and sworn to by the applicant or by some person duly authorized in the applicant’s behalf. If there is more than one applicant, the application shall be signed and sworn to by, or in behalf of, each. It shall contain a description of the land, with a statement of the estate or interest of the applicant in the land. It shall state whether the applicant is married, and if married, the name in full of the wife or husband, the time and place of marriage, and the name and office of the officer performing the marriage ceremony; and if unmarried, whether ~~[he or she]~~ the applicant has been married, and if so, when and how the marriage relation terminated; and if by divorce, when, where, and by what court the divorce was granted. It shall also state the name in full and the address of the applicant and also the names and addresses of the adjoining owners and occupants, if known; and if not known, it shall state what search has been made to find them. If the applicant has been known by more than one name, the applicant shall state all the applicant’s names in full. It may be in form as follows:

State of Hawaii.

To the Honorable Judge of the Land Court:

I (or we), the undersigned, hereby apply to have the land herein described brought under the operation and provisions of chapter 501 of the Hawaii Revised Statutes and to have my (or our) title therein registered and confirmed as an absolute (qualified or possessory) title. And I (or we) declare:

- (1) That I am (or we are) the owner (or owners) in fee simple of a certain parcel of land, with the buildings (if any, and if not, strike out the clause), situate in (here insert accurate description).
- (2) That the land at the last assessment for taxation was assessed at.....dollars; and the buildings (if any) at.....dollars.
- (3) That I (or we) do not know of any mortgage or ~~in~~encumbrance affecting the land, or that any other person has any estate or interest therein, legal or equitable, in possession, remainder, reversion, or expectancy. (If any, add "other than as follows," and set forth each clearly.)
- (4) That I (or we) obtained title (if by deed, state name of grantor, date, and place of record, and file the deed, or state reason for not filing. If in any other way, state it).
- (5) That the land is.....occupied (state name in full, residence and post office address of occupant and the nature of ~~his~~ the occupancy. If unoccupied, insert "not").
- (6) That the names in full and addresses as far as known to me (or us) of the occupants of all lands adjoining the land are as follows: (give post office address, street, and number wherever possible. If names not known, state whether inquiry has been made, and what inquiry.)
- (7) That the names and addresses so far as known to me (or us) of the owners of all lands adjoining above land are as follows: (same directions as above.)
- (8) That I am (or we are) married (follow literally the directions given in section 501-23.)
- (9) That my (or our) full name (or names), residence and post office address are as follows:

Dated [this.....day of.....in the year 19.....] : (Schedule of documents.)

.....
(Signature).

State of Hawaii } ss.

Dated:[19.....]

Then personally appeared the above named..... known to me to be the signer (or signers) of the foregoing application, and made oath before me, that the statements made therein, so far as made of ~~his (or their)~~ the signer (or signers) own knowledge are true, and so far as made upon information and belief, that ~~he (or they)~~ the signer (or signers) believes them to be true.

....., Notary Public."

SECTION 12. Section 501-41, Hawaii Revised Statutes, is amended to read as follows:

"§501-41 Notice of application. If, in the opinion of the examiner, the applicant has a good title as alleged, and proper for registration, or, if the applicant after an adverse opinion of the examiner, elects to proceed further, the registrar shall,

immediately upon the filing of the examiner's opinion, or the applicant's election, cause notice of the filing of the application to be published in some newspaper of general circulation. The notice shall be issued by the order of the court, attested by the registrar, and shall be in form substantially as follows:

Registration of Title. Land Court. No.....
State of Hawaii.

To (insert and classify the names of all persons known to have an adverse interest, and the adjoining owners and occupants, so far as known), and to all whom it may concern:

Whereas, an application has been presented to the court by (name or names and address in full) to register and confirm [his-(or-their)] title in the following described land (insert description):

You are hereby cited to appear at the land court to be held at.....in the Island of.....on the.....day of.....A.D..... at.....o'clock.....M., to show cause, if any you have, why the prayer of the application should not be granted. And unless you appear at the court at the time and place aforesaid your default will be recorded, and the application will be taken as confessed, and you will be forever barred from contesting the application or any decree entered thereon.

Witness, the Presiding Judge of the court[~~- this.....day of~~]. Dated:
.....[19.....]

Attest:

.....
Registrar.

The description included in the notice in addition to the number of award, patent, and grant and name of awardee or original grantee need not be by metes and bounds, but may be a brief general description of the land sufficient to identify the same. The notice shall contain a statement that the map of the land and the description thereof by metes and bounds are on file in the land court and are open to inspection."

SECTION 13. Section 501-71, Hawaii Revised Statutes, is amended to read as follows:

“§501-71 Decree of registration; conditional when; quieting title, exceptions; reopened when. If the court after hearing finds that the applicant, at the time of filing [his] an application, or subsequently, had title, as stated in [his] the application, that [his] the title is proper for registration, and that since filing [his] the application the title of the applicant has not been encumbered in any manner, then a decree of confirmation and registration as prayed for shall be entered.

If the court finds that the applicant, at the time of filing [his] an application, or subsequently, had title, as stated in [his] the application, that [his] the title is proper for registration, and that subsequent to the filing of [his] the application, the title has been encumbered, then the title shall be registered subject to the encumbrances so found.

If the court finds that the applicant, at the time of filing an application, or subsequently, had title, as stated in [his] the application, that [his] the title is proper for registration, and that subsequent to filing [his] the application, the applicant has conveyed away all or any portion or portions of the premises or interest therein sought to be registered, then a decree of confirmation and registration shall be entered, covering the entire premises, confirming title in the applicant and the person or persons deriving their title through the applicant, to the premises or interest in accordance with [his-~~or~~] their respective true ownership of the whole or any portion

or portions thereof or interest therein at the time of filing the decree, and subject to all encumbrances affecting all or any portion thereof.

Every decree of registration of absolute title shall bind the land, and quiet the title thereto, subject only to the exceptions stated in section 501-82. It shall be conclusive upon and against all persons, including the State, whether mentioned by name in the application, notice, or citation, or included in the general description “to all whom it may concern.” The decree shall not be opened by reason of the absence, infancy, or other disability of any person affected thereby, nor by any proceeding for reversing judgments or decrees; subject, to the right of any person deprived of land or of any estate or interest therein by a decree of registration obtained by fraud to file a petition for review within one year after the entry of the decree; provided no innocent purchaser for value has acquired an interest. If there is any such purchaser the decree of registration shall not be opened but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided. Any person aggrieved by the decree in any case may pursue [his] remedy by action of tort against the applicant or any other person for fraud, in procuring the decree.”

SECTION 14. Section 501-139, Hawaii Revised Statutes, is amended to read as follows:

“**§501-139 Assistant registrar as official recorder.** All the provisions of law relating to attachments of real estate and leasehold estates on mesne process apply to registered land, except that the duties required to be performed by the registrar of conveyances shall be performed [by him] as the assistant registrar, who shall register the facts required to be recorded, and for that purpose shall keep books similar to those required to be kept for attachments [by him] as the registrar of conveyances, if any, and the fees for registering attachments shall be the same as are provided for recording.”

SECTION 15. Section 501-186, Hawaii Revised Statutes, is amended to read as follows:

“**§501-186 Registration of adverse claims; notice; hearing; costs.** Whoever claims any right or interest in registered land adverse to the registered owner arising subsequent to the date of original registration may, if no other provision is made in this chapter for registering the same, make a statement in writing setting forth fully [his] the alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed. The statements shall be signed and sworn to, and shall state the adverse claimant’s residence, and designate a place at which all notices may be served upon [him:] the adverse claimant. This statement is entitled to registration as an adverse claim, and the court, upon the petition of any party in interest, may require an approved bond to be filed for the payment of double costs if so taxed, and shall grant a speedy hearing upon the question of the validity of the adverse claim, and shall enter such decree thereon as justice and equity may require. If the claim is adjudged to be invalid or the bond is not filed, the registration shall be canceled. If in any case the court, after notice and hearing, finds that the claim thus registered was frivolous or vexatious, it may tax the adverse claimant double costs.”

SECTION 16. Section 501-217, Hawaii Revised Statutes, is amended to read as follows:

“§501-217 Limitation of actions. All actions on contract claims for compensation under this chapter by reason of any loss or damage or deprivation of land, or any estate or interest therein, shall be begun within the period of six years from the time when the cause of action accrued, and not afterwards; provided that the plaintiff in an action for the recovery of the land or estate or interest therein in accordance with section 501-213, may bring the action on the contract claim within one year after the termination of that action. The contract claim herein provided shall survive to the personal representatives of the registered owner, unless barred in his the registered owner’s lifetime, but the proceeds thereof shall be treated as real estate.”

SECTION 17. Section 502-16, Hawaii Revised Statutes, is amended to read as follows:

“§502-16 Decennial indexes. The registrar shall cause a reclassification and consolidation of the yearly indexes [~~referred to in section 502-15~~] to be made at least once in every ten years as the convenience of the registrar may permit, in the same manner as set forth in [~~the section.~~] section 502-15. The registrar may cause copies of the indexes or new indexes to the records existing in the registrar’s office, to be made by some competent person in the same manner as set forth in [~~the section.~~] section 502-15.”

SECTION 18. Section 502-41, Hawaii Revised Statutes, is amended to read as follows:

“§502-41 Certificate of acknowledgment; natural persons, corporations. Except as otherwise provided by sections 502-50 to 502-52, to entitle any conveyance or other instrument to be recorded there shall be endorsed, subjoined, or attached thereto an acknowledgment in the form provided or authorized in any of sections 502-42, 502-43, or 502-45, or in substantially the following form:

(Begin in all cases by a caption specifying the state or territory and the place where the acknowledgment is taken.)

1. In the case of natural persons acting in their own right:

[On this.....day of....., 19.....,] On(insert date), before me personally appeared A.B. (or A.B. and C.D.), to me known to be the person [(or persons)] described in and who executed the foregoing instrument, and acknowledged that [~~he (or she) (or they)~~] the person or persons executed the same as [~~his (or her) (or their)~~] the person’s or persons’ free act and deed.

2. In the case of natural persons acting by attorney:

[On this.....day of....., 19.....,] On(insert date), before me personally appeared A.B., to me known to be the person who executed the foregoing instrument in behalf of C.D. and acknowledged that [~~he (or she)~~] the person executed the same as the free act and deed of said C.D.

3. In the case of corporations or partnerships:

[On this.....day of....., 19.....,] On(insert date), before me appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that [~~he (or she)~~] the person is the president (or other officer, partner, or agent of the corporation, or partnership) of (describing the corporation or partnership), and that the instrument was signed in behalf of the corporation (or partnership) by authority of its board of directors (partners or trustees), and A.B. acknowledged the instrument to be the free act and deed of the corporation (or partnership).

4. In the case of a corporation acknowledging by an individual as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

[On this.....day of....., 19.....,] On(insert date), before me personally appeared A.B., to me personally known, who being by me duly sworn (or affirmed), did say that [he-(or-she)] the person is the attorney-in-fact of C.D. (here name the corporation) duly appointed under power of attorney dated [the.....day of....., 19.....,] recorded in book....., at page...../as document no.; and that the foregoing instrument was executed in the name and behalf of said C.D. by A.B. as its attorney-in-fact; and A.B. acknowledged the instrument to be the free act and deed of C.D.

In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words “which power of attorney is now in full force and effect[.‘’]”.

5. In the case of a corporation acknowledging by another corporation as its attorney, where the enabling power of attorney has previously been recorded, the acknowledgment of the instrument executed under the power of attorney shall be substantially in the following form:

[On this.....day of....., 19.....,] On(insert date), before me personally appeared A.B., to me personally known, who, being by me duly sworn (or affirmed), did say that [he-(or-she)] the person is the president (or other officer or agent of the corporation acting as attorney) of C.D. (here name the corporation acting as attorney) and that C.D. is the attorney-in-fact of E.F. (here name the corporation in whose behalf the attorney is acting) duly appointed under power of attorney dated [the.....day of....., 19.....,] recorded in book....., at page...../as document no.; that the foregoing instrument was executed in the name and behalf of E.F. by C.D. as its attorney-in-fact; that the instrument was so executed by C.D. by authority of its board of directors; and A.B. acknowledged the instrument to be the free act and deed of E.F.

In case the enabling power of attorney has not previously been recorded, omit the reference to its place of record and insert in lieu thereof the words “which power of attorney is now in full force and effect[.‘’]”.

6. The following form may be used in lieu of any of the foregoing forms:

[On this.....day of....., 19.....,] On(insert date), before me personally appeared A.B. (or A.B. and C.D.), to me personally known, who, being by me duly sworn [or affirmed,] (or affirmed), did say that such [person(s)] person executed the foregoing instrument as the free act and deed of such [person(s),] person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

In all cases add signature and title of the officer taking the acknowledgment.”

SECTION 19. Section 502-43, Hawaii Revised Statutes, is amended to read as follows:

“§502-43 Form when person unknown. When the person offering the acknowledgment is unknown to the officer taking the acknowledgment, the certificate may be substantially in the following form, to-wit:

State of Hawaii) ss.
County of

[On this.....day of....., 19.....,] On(insert date), personally appeared before me A.B., satisfactorily proved to me to be the person described in and who executed the within instrument, by the oath of C.D., a credible witness for that purpose, to me known and by me duly sworn, and [~~he (or she),~~] the person, A.B., acknowledged that [~~he (or she)~~] the person executed the same freely and voluntarily for the uses and purposes therein set forth.”

SECTION 20. Section 502-85, Hawaii Revised Statutes, is amended to read as follows:

“§502-85 Agreements of sale; priority. (a) The rights of a buyer under an agreement of sale which has been duly recorded in accordance with this chapter shall be entitled to priority over the claim of any other person with respect to the real estate covered by the agreement of sale where such claim results:

- (1) From a conveyance made to the claimant by the seller of the real estate covered by the agreement of sale if such conveyance was recorded after the recordation of the agreement of sale; or
- (2) From a judgment in favor of the claimant against the seller affecting the real estate covered by the agreement of sale if the judgment or a notice of the action out of which the judgment arises was not recorded prior to the recordation of the agreement of sale.

(b) Upon the buyer’s satisfaction of the agreement of sale, the claim or lien upon the real estate covered by the agreement of sale of any person who shall have such a claim resulting from a conveyance or a judgment referred to in subsection (a), shall be extinguished as to such real estate upon the recording of a transfer of title to such real estate from the seller to the buyer.

(c) For the purposes of this section, the following definitions apply:

“Agreement of sale” means an executory contract for the sale and purchase of real estate which binds one party to sell and the other party to buy real estate which is the subject matter of the transaction, and in which the seller retains legal title to the real estate. As used in this section, an agreement of sale includes a subagreement of sale or other subsequent subagreement of sale.

“Buyer” means the party who has agreed to purchase, and “seller” means the party who has agreed to sell the real estate pursuant to an agreement of sale, and includes each of their respective assignees and successors in interest in the agreement of sale.

“Conveyance” means every written instrument by which any estate or interest in real estate is voluntarily created, alienated, mortgaged, or encumbered, or by which title to any real estate may be voluntarily affected, other than wills.

“Real estate covered by the agreement of sale” means the real estate which the seller has agreed to sell and the buyer has agreed to buy pursuant to the agreement of sale, including any portion of or any interest in such real estate.

“Recorded” or “recording” means recorded in accordance with this chapter.

“Satisfaction of agreement of sale” means the full performance of the buyer’s obligations under the agreement of sale, and:

- (1) The buyer’s compliance or tender of compliance with all of the buyer’s recorded written agreements and recorded written consents, if any, with claimants whose claims are superior or subject to the rights of the buyer, and with all recorded written directions, if any, of the seller to

the buyer to make payments under the agreement of sale to a claimant or claimants;

- (2) The buyer's compliance or tender of compliance with all orders, which have been recorded, of any court of competent jurisdiction relating to the agreement of sale or to payments under or proceeds of the agreement of sale; and
- (3) The buyer's payment of all periodic, interim, prepaid, and final payments under the agreement of sale.

(d) If a claimant's claim or lien upon the real estate covered by the agreement of sale is extinguished according to this section before the claimant actually receives satisfaction of the claim or lien, the claim or lien shall be automatically transferred to the proceeds from satisfaction of the agreement of sale, in the same priority with respect to other transferred claims or liens on such real estate and with respect to other claims or liens on such proceeds, as the transferred claim or lien had immediately before such extinguishment."

SECTION 21. Section 507-49, Hawaii Revised Statutes, is amended to read as follows:

"§507-49 Exceptions. (a) Anything contained in this part to the contrary notwithstanding, in connection with any repairs or improvements made or performed on property which before the repairs or improvements was used primarily for dwelling purposes, no lien shall exist either for the furnishing of materials to a general contractor as defined in this chapter or [his] the general contractor's subcontractor either of whom was required to be licensed but was not licensed pursuant to chapter 444 or if unreasonable advancement of credit was given by the furnisher of materials to the general contractor or subcontractor whether such person is licensed, unlicensed or exempted under chapter 444.

The issue of reasonable advancement of credit shall be decided by the circuit judge at the return day hearing provided for in section [507-43(e);] 507-43(a); provided that if a party affected by the lien does not appear at the return day hearing, [he] the party may raise the issue of unreasonable advancement of credit at any time prior to the entry of a final or interlocutory decree of foreclosure in the proceeding brought to enforce the lien under section 507-47. For the purposes of this section, if the furnisher of materials has secured a credit application form from the general contractor or the subcontractor to whom the materials were furnished or has reasonably inquired into the credit status of the general contractor or subcontractor, the advancement of credit by the furnisher of materials shall be prima facie reasonable.

The credit application referred to herein shall be current and shall include at least the following information:

- A. For all persons:
 - 1. Name
 - 2. Address
 - 3. Type of business (Example - plumbing subcontractor)
 - 4. Date business started
 - 5. Contractor's license number
 - 6. Bonding companies generally used
 - 7. Banks used
 - 8. List of current creditors
 - 9. Balance sheet
 - 10. Total of all outstanding construction contracts \$.....
 - 11. Incompleted portion of all contracts \$.....
- B. In addition, for corporate accounts:
 - 1. Names of officers

2. Authorized capital

3. Paid in capital

C. In addition, for noncorporate accounts:

1. Names of partners, co-venturers, etc.

(b) Anything contained in this chapter to the contrary notwithstanding, no general contractor as defined in this chapter or [his] the general contractor's subcontractor or the subcontractor's subcontractor who is required to be licensed pursuant to chapter 444[,] shall have lien rights unless [~~such~~] the contractor was licensed pursuant to chapter 444 when the improvements to the real property were made or performed, and no subcontractor or subcontractor's subcontractor so licensed shall have lien rights if [his] the work was subcontracted to [him] them by a general contractor as defined in this chapter or [his] the general contractor's subcontractor who was required to be licensed but was not licensed pursuant to chapter 444."

SECTION 22. Section 514B-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A declaration shall describe or include the following:

- (1) The land submitted to the condominium property regime;
- (2) The number of the condominium property regime map filed concurrently with the declaration;
- (3) The number of units in the condominium property regime;
- (4) The unit number of each unit and common interest appurtenant to each unit;
- (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
- (6) The permitted and prohibited uses of each unit;
- (7) To the extent not shown on the condominium property regime map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical structures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;
- (8) The condominium property regime's common elements;
- (9) The condominium property regime's limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
- (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
- (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph (12), the approval of the owners of at least sixty-seven per cent of the common interest shall be required for all amendments to the declaration;
- (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium property regime map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and
- (13) A declaration, subject to the penalties set forth in section 514B-69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting require-

ments pursuant to section 514B-5, and specifying in the case of a property that includes one or more existing structures being converted to condominium property regime status:

- (A) Any variances that have been granted to achieve the compliance; and
- (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures;

except that a property that is registered pursuant to section 514B-51 shall instead provide this declaration pursuant to section 514B-54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and the developer intends to use purchaser's funds pursuant to the requirements of section 514B-92 or 514B-93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain."

SECTION 23. Section 514B-91, Hawaii Revised Statutes, is amended to read as follows:

“[§514B-91] Escrow of deposits. All moneys paid by purchasers shall be deposited in trust under a written escrow agreement with an escrow depository licensed pursuant to chapter 449. An escrow depository shall not disburse purchaser deposits to or on behalf of the developer prior to closing except:

- (1) As provided in sections 514B-92 and 514B-93; or
- (2) As provided in the purchaser's sales contract in the event the sales contract is canceled.

An escrow depository shall not disburse a purchaser's deposits at closing unless the escrow depository has received satisfactory assurances that all blanket mortgages and liens have been released from the purchaser's unit in accordance with section 514B-45. Satisfactory assurances shall include a commitment by a title insurer licensed under chapter 431 to issue the purchaser a title insurance policy ensuring the purchaser that the unit has been conveyed free and clear of the liens."

SECTION 24. Section 514B-140, Hawaii Revised Statutes, is amended to read as follows:

“[§514B-140] Additions to and alterations of condominium. (a) No unit owner shall do any work that may jeopardize the soundness or safety of the property, reduce the value thereof, or impair any easement, as reasonably determined by the board.

(b) Subject to the provisions of the declaration, no unit owner may make or allow any material addition or alteration, or excavate an additional basement or cellar, without first obtaining the written consent of sixty-seven per cent of the unit owners, the consent of all unit owners whose units or appurtenant limited common elements are directly affected, and the approval of the board, which shall not unreasonably withhold such approval. The declaration may limit the board's ability to approve or condition a proposed addition or alteration; provided that the board shall always have the right to disapprove a proposed addition or alteration that the board reasonably determines could jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of the property.

(c) Subject to the provisions of the declaration, nonmaterial additions to or alterations of the common elements or units, including, without limitation, additions to or alterations of a unit made within the unit or within a limited common element appurtenant to and for the exclusive use of the unit, shall require approval only by the board, which shall not unreasonably withhold the approval, and such percentage, number, or group of unit owners as may be required by the declaration or bylaws; provided that the installation of solar energy devices shall be allowed on single-family residential dwellings or townhouses pursuant to the provisions in section 196-7.

As used in this subsection:

“Nonmaterial additions and alterations” [5] means an addition to or alteration of the common elements or a unit that does not jeopardize the soundness or safety of the property, reduce the value thereof, impair any easement, detract from the appearance of the project, interfere with or deprive any nonconsenting owner of the use or enjoyment of any part of property, or directly affect any nonconsenting owner.

“Solar energy device” means any new identifiable facility, equipment, apparatus, or the like which makes use of solar energy for heating, cooling, or reducing the use of other types of energy dependent upon fossil fuel for its generation; provided that if the equipment sold cannot be used as a solar device without its incorporation with other equipment, it shall be installed in place and be ready to be made operational in order to qualify as a “solar energy device”; provided further that “solar energy device” shall not include skylights or windows.

“Townhouse” means a series of individual houses, having architectural unity and a common wall between each unit, provided that each unit extends from the ground to the roof.

(d) Notwithstanding any other provisions to the contrary in this chapter or in any declaration or bylaws:

(1) Regarding the installment of telecommunications equipment:

(A) The board shall have the authority to install or cause the installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements of the project; provided that the same shall not be installed upon any limited common element without the consent of the owner or owners of the unit or units for the use of which the limited common element is reserved; and

(B) The installation of antennas, conduits, chases, cables, wires, and other television signal distribution and telecommunications equipment upon the common elements by the board shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit, or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B-33 and 514B-34; provided that no such installation shall directly affect any nonconsenting unit owner; and

(2) Regarding the abandonment of telecommunications equipment:

(A) The board shall be authorized to abandon or change the use of any television signal distribution and telecommunications equipment due to technological or economic obsolescence or to provide an equivalent function by different means or methods; and

(B) The abandonment or change of use of any television signal distribution or telecommunications equipment by the board due to technological or economic obsolescence or to provide an equivalent

lent function by different means or methods shall not be deemed to alter, impair, or diminish the common interest, common elements, and easements appurtenant to each unit or to be a structural alteration or addition to any building constituting a material change in the plans of the project filed in accordance with sections 514B-33 and 514B-34.

As used in this subsection:

“Directly affect” means the installation of television signal distribution and telecommunications equipment in a manner which would specially, personally, and adversely affect a unit owner in a manner not common to the unit owners as a whole.

“Television signal distribution” and “telecommunications equipment” shall be construed in their broadest possible senses in order to encompass all present and future forms of communications technology.”

SECTION 25. Section 514B-149, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) (1) All funds collected by an association, or by a managing agent for any association, shall be:

[~~(1)~~] (A) Deposited in a financial institution, including a federal or community credit union, located in the State, pursuant to a resolution adopted by the board, and whose deposits are insured by an agency of the United States government;

[~~(2)~~] (B) Held by a corporation authorized to do business under article 8 of chapter 412;

[~~(3)~~] (C) Held by the United States Treasury; or

[~~(4)~~] (D) Purchased in the name of and held for the benefit of the association through a securities broker that is registered with the Securities and Exchange Commission, that has an office in the State, and the accounts of which are held by member firms of the New York Stock Exchange or National Association of Securities Dealers and insured by the Securities Insurance Protection Corporation.

(2) All funds collected by an association, or by a managing agent for any association, shall be invested only in:

[~~(1)~~] (A) Deposits, investment certificates, savings accounts, and certificates of deposit;

[~~(2)~~] (B) Obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners; or

[~~(3)~~] (C) Mutual funds comprised solely of investments in the obligations of the United States government, the State of Hawaii, or their respective agencies; provided that those obligations shall have stated maturity dates no more than ten years after the purchase date unless approved otherwise by a majority vote of the unit owners at an annual or special meeting of the association or by written consent of a majority of the unit owners;

provided that before any investment longer than one year is made by an association, the board must approve the action; and provided further that the board must clearly disclose to owners all investments longer than one year at each year’s association annual meeting.

Records of the deposits and disbursements shall be disclosed to the commission upon request. All funds collected by an association shall only be disbursed by employees of the association under the supervision of the association's board. All funds collected by a managing agent from an association shall be held in a client trust fund account and shall be disbursed only by the managing agent or the managing agent's employees under the supervision of the association's board."

SECTION 26. Section 514E-1, Hawaii Revised Statutes, is amended by reenacting the definition of "blanket lien" as follows:

"Blanket lien" means any mortgage, deed of trust, option to purchase, master lease, vendor's lien or interest under a contract or agreement of sale, or any other lien or encumbrance that (i) affects more than one time share interest either directly or by reason of affecting an entire time share unit or the property upon which the time share unit to be used by the purchasers is located, and (ii) secures or evidences the obligation to pay money or to sell or convey the property and that authorizes, permits, or requires the foreclosure and sale or other defeasance of the property affected; provided that for the purpose of this chapter, the following shall not be considered blanket liens:

- (1) The lien of current real property taxes;
- (2) Taxes and assessments levied by public authority and that are not yet due and payable;
- (3) A lien for common expenses under chapter 514B or a lien on an individual time share unit for similar expenses in favor of a homeowners or community association;
- (4) An apartment lease or condominium conveyance document conveying or demising a single condominium apartment or a lease of a single cooperative apartment; and
- (5) Any lien for costs or trustee's fees charged by a trustee holding title to time share units pursuant to a trust created under section 514E-19; provided that the costs or trustee's fees are not yet due and payable."

SECTION 27. Section 516-28, Hawaii Revised Statutes, is amended to read as follows:

"§516-28 Disposition, generally. It shall be the policy of the Hawaii housing finance and development administration to encourage the widespread fee simple ownership of residential lots situated within a development tract. Where necessary or desirable, the administration may lease the residential lots. Not more than one lot shall be sold in fee simple or leased to a purchaser or lessee. A husband and [his] wife together, unless separated and living apart under a decree of separation issued by a court of competent jurisdiction, shall be entitled to only one lot."

SECTION 28. Section 523A-22, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Unless the director considers it to be in the best interest of the State to do otherwise, all securities presumed abandoned under section 523A-10 and delivered to the director shall be held for at least three years before the director may sell them. If the director sells any securities delivered pursuant to section 523A-10 before the expiration of the three-year period, any person making a claim pursuant to this part before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to section [523A-23(b).] 523A-23.5(b). A person making a claim under this part after the

expiration of this period is entitled to receive either the securities delivered to the director by the holder, if they still remain in the hands of the director, or the proceeds received from sale, less any amounts deducted pursuant to section ~~[523A-23(b),]~~ 523A-23.5(b), but no person has any claim under this part against the State, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the director.”

SECTION 29. Section 46-16.7, Hawaii Revised Statutes, is repealed.

SECTION 30. Act 33, Session Laws of Hawaii 2005, is amended by amending the prefatory language in section 1 to read as follows:

“SECTION 1. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:”

SECTION 31. Act 129, Session Laws of Hawaii 2005, is amended by amending the prefatory language in section 2 to read as follows:

“SECTION 2. Act 261, Session Laws of Hawaii 2000, as amended by Act 68, Session Laws of Hawaii 2002, section 2~~[, as amended by]~~ and Act 103, Session Laws of Hawaii 2002, section 1, is amended by amending section 5 to read as follows:”

SECTION 32. Act 202, Session Laws of Hawaii 2005, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval~~[-];~~ provided that the amendments made to section 89-6, Hawaii Revised Statutes, by this Act, shall not be repealed when section 89-6, Hawaii Revised Statutes, is reenacted on July 1, 2008, pursuant to Act 245, Session Laws of Hawaii 2005.”

SECTION 33. Act 236, Session Laws of Hawaii 2005, is amended by amending section 27 to read as follows:

“SECTION 27. This Act shall take effect on July 1, 2005; provided that ~~[section 2]~~ sections 2, 20, and 24 of this Act shall take effect on June 30, 2005.”

SECTION 34. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 35. This Act shall take effect on July 1, 2006; provided that:

- (1) Section 30 shall take effect retroactive to April 27, 2005;
- (2) Section 31 shall take effect retroactive to June 29, 2005;
- (3) Section 32 shall take effect retroactive to July 6, 2005; and
- (4) Section 33 shall take effect retroactive to June 30, 2005.

(Approved April 27, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Hawaii Employer-Union Health Benefits Trust Fund.

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:

“§87A-23 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 an amount not less than the medicare part B premium, for ~~[voluntary medical insurance coverage under medicare for]~~ each of the following who are enrolled in the medicare part B medical insurance plan: (A) an employee-beneficiary who is a retired employee, (B) an employee-beneficiary's spouse while the employee-beneficiary is living, and (C) an employee-beneficiary's spouse, after the death of the employee-beneficiary, if the spouse qualifies as an employee-beneficiary. For purposes of this section, a “retired employee” means 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]. ~~If the amount reimbursed by the fund [to the retiree] under this section 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] each employee beneficiary and employee-beneficiary's spouse 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;]~~

Each employee-beneficiary and employee-beneficiary's spouse who becomes entitled to reimbursement from the fund for medicare part B premiums after July 1, 2006, shall designate a financial institution account into which the fund shall be authorized to deposit reimbursements. This method of payment may be waived by the fund if another method is determined to be more appropriate;

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved April 27, 2006.)

ACT 40

H.B. NO. 2311

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

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

SECTION 1. The employees' retirement system of the State of Hawaii is intended to be a tax-qualified retirement plan under section 401(a) of the Internal Revenue Code of 1986, as amended (Code). Section 414(h)(2) of the Code provides for favorable tax treatment for employee contributions "picked up" (made by the employer on behalf of the employee) to a tax-qualified retirement plan established by a state or county or by an agency or instrumentality of a state or county. However, the tax-qualified status of a government retirement plan may be jeopardized:

- (1) If the plan allows members to receive a refund of the contributions made under section 414(h)(2) of the Code while the member is employed by the government; or
- (2) If a member who received a refund of contributions made under section 414(h)(2) of the Code while the member was still employed by the government is allowed to have additional contributions made on behalf of the member under section 414(h)(2).

The purpose of this Act is to repeal the portions of chapter 88, Hawaii Revised Statutes, that allow members of the employees' retirement system:

- (1) To receive a refund of contributions made under section 414(h)(2) of the Code while the member is still employed by the State or a county; or
- (2) Who received a refund of contributions made under section 414(h)(2) of the Code while still employed by the State or a county to have additional contributions made on behalf of the member under section 414(h)(2).

ACT 40

SECTION 2. Section 88-271, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

~~“(d) [Any class A or class H member who elects and is approved to withdraw the member’s contributions may become a class C member in accordance with section 88-46.5. Upon approval of the election:~~

- ~~(1) All rights as a class A or class H member shall be extinguished;~~
- ~~(2) The member’s accumulated contributions shall be refunded; and~~
- ~~(3) The member shall not be required to make further contributions to the system.~~

This election shall be irrevocable.] The election by any class A or class B member to become a class C member pursuant to section 88-46.5 in the form in which it existed at any time prior to July 1, 2006, shall be irrevocable upon refund of the member’s accumulated contributions.

(e) The system shall provide information explaining the effects of any election made under subsection (a)[,] or (c)[, or (d)].”

SECTION 3. Section 88-321, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

~~“(c) The following members may not elect to become a class H member under subsection (a):~~

- ~~(1) Judges, elected officials, and legislative officers;~~
- ~~(2) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, prosecuting attorney investigators not making the election under section 88-271, corrections officers not making the election under section 88-271, and public safety investigations staff investigators;~~
- ~~(3) Police officers and firefighters;~~
- ~~(4) All employees who were members on July 1, 1957, who elected not to be covered by the Social Security Act; [and]~~
- ~~(5) Former class A, B, or C retirees[-]; and~~
- (6) Any former class A or class B member who received a refund of contributions picked up and paid by the member’s employer pursuant to section 88-46(b), unless the refund was made pursuant to section 88-96 or 88-271(b), including any class C member whose contributions were refunded to the member pursuant to section 88-46.5 in the form in which it existed at any time prior to July 1, 2006.”

SECTION 4. Section 88-46.5, Hawaii Revised Statutes, is repealed.

SECTION 5. Statutory material to be repealed is bracketed and stricken.¹ New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2006, except that sections 2 and 3 shall take effect retroactive to July 1, 2004.

(Approved April 27, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 41

H.B. NO. 2317

A Bill for an Act Relating to Health Insurance.

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

SECTION 1. The purpose of this Act is to make permanent Act 118, Session Laws of Hawaii 2004, that requires health insurers to treat a bona fide trade association and its members as a single group at the option of the trade association for the purpose of issuing a health insurance policy.

SECTION 2. Act 118, Session Laws of Hawaii 2004, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect upon its approval [~~and shall be repealed on December 31, 2006~~].”

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

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

(Approved April 27, 2006.)

ACT 42

H.B. NO. 2286

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Section 576D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The agency and its agents shall keep records that may be necessary or proper in accordance with this chapter. All applications and records concerning any individual or case shall be confidential. The use or disclosure of information concerning any individual or case shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when their official duties are directly concerned with the administration and implementation of any child support enforcement plan or of a program approved by Title IV-A through [D-] E, or under Title II, X, XIV, XVI, XIX, or XX of the Social Security Act, including but not limited to any legal counsel working on behalf of the agency;
- (2) Disclosure to the extent necessary to provide information to family support payors or payees or their authorized representatives regarding payments received by the agency and the status of their support accounts; provided that the information shall be disclosed to an authorized representative only if the request is accompanied by a written waiver of the payor or payee concerned;
- (3) Disclosure to consumer reporting agencies as provided in section 576D-6(a)(6);
- (4) Other agencies or persons connected with the administration of any other federal or federally assisted program that provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;

- (5) Employees acting within the scope and course of their employment with the department as may be approved by the agency;
- (6) Purposes directly connected with any investigation, enforcement, prosecution, or criminal, civil, or administrative proceeding conducted in connection with the administration of any plan or program in paragraph (1); and
- (7) Disclosure to the family court as may be deemed necessary by the family court for any case pending before a court or for purposes of implementation of section 571-51.5.’’

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 27, 2006.)

ACT 43

H.B. NO. 2287

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Section 576D-1, Hawaii Revised Statutes, is amended by amending the definition of ‘‘compliance with an order of support’’ to read as follows:

- ‘‘‘Compliance with an order of support’’ means that an obligor:
- (1) Is not delinquent in payments in an amount equal to or greater than the sum of payments for child support for a three-month period with regard to driver’s licenses and recreational licenses and a six-month period with regard to professional and vocational licenses;
 - ~~[(2) Is not delinquent in making periodic payments on a support arrearage pursuant to a written agreement with the child support enforcement agency under section 576D-13(d);]~~ or
 - ~~[(3)]~~ (2) Has obtained or maintained health insurance coverage as required by a child support order.’’

SECTION 2. Section 576D-13, Hawaii Revised Statutes, is amended to read as follows:

‘‘§576D-13 Suspension or denial of licenses. (a) Upon a determination that an obligor is not in compliance with an order of support as defined in section 576D-1 or that an individual failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, and that the obligor or individual is the holder of or an applicant for a license issued by a licensing authority in this State, the agency shall serve notice upon the obligor or individual of the agency’s intent to certify the obligor or individual as noncompliant with an order of support or a subpoena or warrant relating to a paternity or child support proceeding, which shall direct the appropriate licensing authority to deny or suspend the license, or to deny the application for renewal, reinstatement, or restoration of such license.

(b) The notice shall be sent by regular mail to both the last known address of record of the obligor or individual as shown in the records of the licensing authority

and the address of record of the obligor or individual as shown in the agency's child support record. For purposes of this section, the date of service means two days following the date of mailing. The notice shall contain the following information:

- (1) Identification of the license, certificate, permit, or registration subject to suspension, nonrenewal, nonreinstatement, nonrestoration, or denial;
- (2) The name, social security number, if available, date of birth, if known, and each applicable child support case number or numbers of the obligor or individual;
- (3) The amount of the arrears, the amount of the monthly child support obligation, and reference to the support order upon which the support amount and arrears are based or the subpoena or warrant that the individual has failed to comply with;
- (4) A statement that the obligor or individual may contest the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of a license by requesting a hearing in writing within thirty days of the date of service of the notice of intent to suspend, not renew, not reinstate, not restore, or deny the license;
- (5) A statement that the obligor may contact the agency in writing within thirty days of the date of service of the notice and enter into a monthly payment agreement for the arrears owed, and if an agreement is entered into within thirty days of making contact with the agency, the agency shall not pursue the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of the license;
- (6) A statement that an individual not in compliance with a subpoena or warrant relating to a paternity or child support proceeding may contact the agency in writing within thirty days of the date of service of the notice and enter into an agreement to provide the information or appear at the proceedings, and if so, the agency shall not pursue the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of the license; and
- (7) A statement that if the obligor or individual makes a timely request as specified in paragraph (4), the agency shall stay the action until a decision is made.

(c) [~~If the obligor or individual:~~] The agency shall certify in writing to the licensing authority that the obligor is not in compliance with an order of support, or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, and shall authorize the immediate suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of any license held or applied for by the obligor or individual if the obligor or individual:

- (1) Fails to contact the agency in writing within thirty days of the date of service of the notice;
- (2) Is not in compliance with an order of support, or failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, and does not timely enter into an agreement under subsection (d); or
- (3) [~~If the office issues a decision that the obligor or an individual is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, the agency shall certify in writing to the licensing authority that the obligor is not in compliance with an order of support or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, and shall authorize the immediate suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of any license held or applied for by the obligor or individual.] Is delinquent in making periodic payments on a support arrearage pursu-~~

ant to a written agreement with the child support enforcement agency under subsection (d).

The agency shall provide a copy of the certification to the obligor or individual. Upon receipt of the certification, the licensing authority shall suspend any license that the obligor or individual holds or deny any license for which the obligor or individual applies without further review or hearing concerning the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial. Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal, reinstatement, or restoration of a license, a certification issued by the agency suspending, not renewing, not reinstating, not restoring, or denying a license shall be implemented by the licensing authority and continue in effect until the licensing authority receives a written release of suspension or denial from the agency, the office of child support hearings, or the family court.

(d) The obligor may enter into a payment agreement with the agency if the obligor makes contact with the agency within thirty days of the date of service of the notice, or the individual may either enter into an agreement to provide the information requested in the subpoena or appear at the proceeding required by the warrant.

(e) If the obligor or the individual requests an administrative hearing in writing within thirty days of the date of service of the notice as provided in subsection (b), the office shall schedule a hearing to determine whether the obligor is not in compliance with a support order or whether the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding. The hearing shall be conducted in accordance with chapters 91 and 576E. The issues before the hearings officer shall be limited to whether the obligor is in compliance with an order of support or whether the individual is in compliance with a subpoena or warrant relating to a paternity or child support proceeding. The hearings officer shall issue a written decision within ten days of the hearing. If the hearings officer decides that the obligor is not in compliance with a support order or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, the license held or applied for by the obligor or individual shall be denied or suspended and shall not be renewed, reinstated, or restored.

(f) The decision of the hearings officer shall be final and shall be subject to judicial review as provided in chapter 91. Any suspension or denial under this section shall not be stayed pending judicial review.

(g) Upon receipt of the decision of the hearings officer that the obligor is not in compliance with a support order or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, the agency shall certify in writing to the licensing authority that the obligor is not in compliance with an order of support, or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, and shall authorize the immediate suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of any license held or applied for by the obligor or individual. The agency shall provide a copy of the certification to the obligor or individual. Upon receipt of the certification, the licensing authority shall suspend any license that the obligor or individual holds or deny any license for which the obligor or individual applies without further review or hearing concerning the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial. Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal, reinstatement, or restoration of a license, a certification issued by the agency suspending, not renewing, not reinstating, not restoring, or denying a license shall be implemented by the licensing authority and continue in effect until the licensing authority receives a written release of suspension or denial from the agency, the office of child support hearings, or the family court.

[(g)] (h) When the conditions [which] that resulted in the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial no longer exist, the agency shall provide the obligor or individual with written confirmation that the obligor is in compliance with the order of support or that the individual is in compliance with the subpoena or warrant relating to a paternity or child support proceeding, and the agency, office, or the family court shall issue an authorization canceling the certification in writing to the licensing authority.

[(h)] (i) If a license is suspended or denied under this section, any funds paid by the obligor or individual to the licensing authority shall not be refunded by the licensing authority, and the licensing authority may charge a fee for reinstating or restoring a license. The licensing authority may also charge the obligor or individual a reasonable fee to cover the administrative costs incurred by the licensing authority in complying with this section.

[(i)] (j) The agency shall adopt rules necessary for the implementation and administration of this section. The licensing authority shall adopt rules necessary for the implementation and administration of this section. The appropriate licensing authority shall require that the social security number of any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application for those licenses. The social security number shall be used solely for purposes of this chapter for child support enforcement and identification."

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 27, 2006.)

ACT 44

H.B. NO. 1819

A Bill for an Act Relating to Chapter 281, Hawaii Revised Statutes.

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

SECTION 1. Section 281-35, Hawaii Revised Statutes, is amended to read as follows:

“§281-35 Special conditions, club licenses. No liquor shall be sold under a club license to any person not a member of the club nor a guest thereof enjoying the privilege of membership, but a member or a guest enjoying the privileges of membership may purchase liquor for consumption on the premises by the person's own guests. ~~[No guest of a member or of a guest enjoying the privileges of membership shall purchase or be permitted to purchase liquor on the premises.]~~

The liquor commission may by regulations require the keeping and posting of lists of the members of a club, and the keeping and production of records as to membership and the registration of guests enjoying the privileges of membership.

No liquor shall be sold or kept for sale at any club except by the club itself pursuant to its license. If any liquor is sold or kept on the club premises for sale or barter by any member, employee, or person other than the club itself, the club shall be deemed to be selling without a license whether it holds its own license or not.”

ACT 45

SECTION 2. Section 281-41, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A county may increase the requirements for transfers of class 5, category [(2)] (B) and [(4);] (D), and class 11 licenses by ordinance designating one or more areas within the county as special liquor districts and specifying the requirements applicable to transfers of any of these licenses within each district.”

SECTION 3. Section 281-94, Hawaii Revised Statutes, is amended to read as follows:

“**§281-94 Forfeiture of fee paid.** If any license is revoked [and] or canceled by the liquor commission or liquor control adjudication board, the fee paid for the license or any unexpended portion thereof shall be forfeited to the county [as respects the unexpired portion of the fee paid for the license].”

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 27, 2006.)

ACT 45

H.B. NO. 2857

A Bill for an Act Relating to Historic Preservation.

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

SECTION 1. Section 6E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Mitigation plan” means a plan, approved by the department, for the care and disposition of historic properties, aviation artifacts, and burial sites or the contents thereof, that includes monitoring, protection, restoration, and interpretation plans.”

SECTION 2. Section 6E-11, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) It shall be a civil and administrative violation for any person 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 a civil and administrative violation for any person to take, appropriate, excavate, injure, destroy, or alter any historic property or aviation artifact located upon lands owned or¹ except as permitted by the department[-], or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.

(b) It shall be a civil and administrative violation for any person 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, [or] to knowingly fail to re-inter human remains discovered on the lands in a reasonable period of time as determined by the department[-], or to knowingly violate the conditions set forth in an approved mitigation plan that includes monitoring and preservation plans.”

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 April 27, 2006.)

Note

1. Prior to amendment “controlled by the State or any of its political subdivisions,” appeared here.

ACT 46

H.B. NO. 3126

A Bill for an Act Relating to Rapid Identification Documents.

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

SECTION 1. Section 321-23.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§321-23.6~~ **Rapid identification documents.** (a) The department shall adopt rules for emergency medical services ~~[which]~~ that shall include:

- (1) Uniform methods of rapidly identifying an adult person who:
 - (A) ~~Has been certified in a written “comfort care only” document by the person’s physician to be a terminally ill patient of that physician; and~~
 - (B) Has ~~has~~ certified, or for whom has been certified, in ~~[the same]~~ a written “comfort care only” document that the person or, consistent with chapter 327E, the person’s guardian, agent, or surrogate directs emergency medical services personnel, first responder personnel, and health care providers not to administer chest compressions, rescue breathing, electric shocks, or medication, or all of these, given to restart the heart if the person’s breathing or heart stops, and directs that the person is to receive care for comfort only, including oxygen, airway suctioning, splinting of fractures, pain medicine, and other measures required for comfort; ~~[and~~
 - (C) ~~Has been prescribed by a physician a “comfort care only” identifying bracelet or necklace;~~
- (2) The written document containing ~~[both certifications must]~~ the certification shall be signed by the patient ~~[with the terminal condition, by the patient’s physician,] or, consistent with chapter 327E, the person’s guardian, agent, or surrogate and by any [one] two other adult [person]~~ persons who personally [knows] know the patient; and
- (3) The original document containing ~~[both certifications]~~ the certification and all three signatures shall be ~~[on file with]~~ maintained by the patient, the patient’s [physician,]:
 - (A) Physician;
 - (B) Attorney;
 - (C) Guardian;

(D) Surrogate; or

(E) Any other person who may lawfully act on the patient’s behalf. Two copies of [this] the document shall be given to the patient, [one of which shall be used to order the patient’s identifying necklace or bracelet.] or the patient’s guardian, agent, or surrogate.

(b) The rules shall provide for the following:

- (1) The patient, or the patient’s guardian, agent, or surrogate, may verbally revoke the “comfort care only” document at any time, including during the emergency situation[~~-, either verbally or by removing the patient’s identifying bracelet or necklace;~~];
- (2) An anonymous tracking system shall be developed to assess the success or failure of the procedures and to ensure that abuse is not occurring; and
- (3) If an emergency medical services person, first responder, or any other health care provider believes in good faith that the provider’s safety, the safety of the family or immediate bystanders, or the provider’s own conscience requires the patient be resuscitated despite the presence of a “comfort care only” [~~bracelet or necklace;~~] document, then that provider may attempt to resuscitate that patient, and neither the provider, the ambulance service, nor any other person or entity shall be liable for attempting to resuscitate the patient against the patient’s will.’’

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 27, 2006.)

ACT 47

H.B. NO. 1920

A Bill for an Act Relating to Financial Literacy Month.

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

SECTION 1. The legislature finds that the percentage of income used nationally for household debt payments, including mortgages, credit cards, and student loans, rose to the highest level in more than a decade in 2001 and remained at fourteen per cent in 2002. In 2001, consumer bankruptcy filings in the United States increased by nineteen per cent over the previous year. Personal savings as a percentage of the gross domestic product decreased from 7.5 per cent in the early 1980s to 2.4 per cent in 2002. Approximately forty million Americans, the “unbanked”, are not using mainstream, insured financial institutions.

The legislature finds that fifty-five per cent of college students acquire their first credit card during their first year in college and that eighty-three per cent of college students have at least one credit card. However, forty-five per cent of college students are in credit card debt, with an average debt of more than \$3,000. Only twenty-six per cent of young adults from thirteen to twenty-one years of age report that their parents actively taught them how to manage money. A 2002 study found that high school seniors know even less about credit cards, retirement funds, insurance, and other personal finance basics than seniors knew five years earlier. A 2002 study by the National Council on Economic Education found a decreasing

number of states include personal finance in their education standards for students in grades K-12.

The legislature finds that a greater understanding and familiarity with financial markets and institutions will lead to increased economic activity and growth. Financial literacy empowers all individuals to make wise financial decisions and reduces the confusion of an increasingly complex economy. Personal financial education is essential to ensure that our citizens are prepared to manage money, credit, and debt and become responsible workers, heads of households, investors, entrepreneurs, business leaders, and citizens.

The purpose of this Act is to expand the focus of Financial Literacy Month in Hawaii to include all citizens of the State.

SECTION 2. Section 8-14, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§8-14]]~~ **Financial Literacy [for Youth] Month.** The [entire] month of April shall be known and designated as ‘Financial Literacy [for Youth] Month’. This month is not and shall not be construed to be a state holiday.”

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

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

(Approved April 27, 2006.)

ACT 48

H.B. NO. 3254

A Bill for an Act Relating to Oaths of Office.

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

SECTION 1. Article XVI, section 4, of the Hawaii constitution, mandating that public officers take and subscribe to an oath of office, was amended in 1992 to reserve that requirement to the specific offices of the governor, lieutenant governor, members of the legislature, members of the board of education, members of the national guard, state and county employees possessing police powers, district court judges, and office holders whose appointment requires the advice and consent of the state senate.

After ratification of the constitutional amendment, the legislature further clarified its position to restrict the loyalty oath requirement by repealing part II of chapter 85, Hawaii Revised Statutes, that set forth the statutory requirements and administrative procedures related to the loyalty oath as a general requirement for public employment.

The purpose of this Act is to amend various provisions of the Hawaii Revised Statutes that predated the constitutional amendment and that still contain a loyalty oath requirement for appointment or employment of public officers and employees who are not part of the constitutionally required class of employees.

SECTION 2. Section 28-8, Hawaii Revised Statutes, is amended to read as follows:

“**§28-8 First deputy attorney general; other deputies.** (a) The attorney general shall appoint, and at the attorney general’s pleasure remove, a first deputy

attorney general and other deputies and law clerks as the exigencies of the public service may require, and shall be responsible for all of the acts of the first deputy attorney general, other deputies, and law clerks. They shall act under the direction of the attorney general and shall perform duties as the attorney general may require regardless of the source of funding for their compensation and notwithstanding any law to the contrary, except that the attorney general shall not require the performance of duties that would violate the terms of an applicable funding source or that would be in contravention of a federal requirement, restriction, or condition. The first deputy attorney general and other deputies, subject to the attorney general's directions, may perform or exercise any and all duties or powers by law required of or conferred upon the attorney general.

(b) The attorney general may appoint and, by contract, retain the services of special deputies to perform such duties and exercise such powers as the attorney general may specify in their several appointments. The special deputies shall serve at the pleasure of the attorney general. At the option of the attorney general, special deputies may be compensated on a fixed-price basis, an hourly rate basis, with or without a fixed cap, or, if a special deputy has been appointed to represent the State in an action by the State pursuant to section 661-10, through a contingent fee arrangement to be specified in the contract and payable out of all sums the special deputy recovers for the State by judgment, order, or settlement.

~~[(e) The first deputy attorney general and all of the other deputies shall take the oath required of other public officers.]~~

SECTION 3. Section 128-16, Hawaii Revised Statutes, is amended to read as follows:

“§128-16 Status of personnel other than regular officers and employees. All persons, including volunteers whose services have been accepted by authorized persons, ~~[shall,]~~ while engaged in the performance of duty pursuant to this chapter, including duty performed during periods of training, shall be deemed state employees or employees of a political subdivision, as the case may be, and shall have the powers, duties, rights, and privileges of such in the performance of their duties, except as, pursuant to this chapter, may be prescribed by or under the authority of the governor or the political subdivision; ~~provided that volunteers serving without compensation shall be subject to chapter 35, part II only if and to the extent that the governor shall so provide.]~~”

SECTION 4. Section 128-21, Hawaii Revised Statutes, is amended to read as follows:

“§128-21 Civil defense personnel’s oath. ~~[In order to]~~ To comply with the Federal Civil Defense Act of 1950 each person appointed to serve in an organization for civil defense who is so required by the Federal Civil Defense Act of 1950, ~~[shall,]~~ before entering upon the person’s duties, shall take ~~[an]~~ such oath ~~[in writing before a person authorized to administer oaths, substantially as follows:~~

~~“I,....., do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties upon which I am about to enter.~~

~~And I do further swear (or affirm) that I do not advocate, nor am I a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence; and that during such time as I am a member of the (name of civil defense organization), I will~~

~~not advocate nor become a member or an affiliate of any organization, group, or combination of persons that advocates the overthrow of the Government of the United States by force or violence.”~~

~~Provided that to the extent permitted by the Federal Civil Defense Act of 1950 the governor by rule may provide for additional time for the taking of the oath, where compliance with the requirement before the person so required enters upon the person’s duties is or may be impracticable; for like reasons the governor similarly may provide as to the oath required by part II of chapter 85.~~

~~The governor by rule may relieve persons, or classes of persons, subject to the requirements imposed by this section, from compliance with part II of chapter 85.] as may be required by federal law.”~~

SECTION 5. Section 281-11, Hawaii Revised Statutes, is amended to read as follows:

“§281-11 County liquor commissions and liquor control adjudication boards; qualifications; compensation. (a) A liquor commission or liquor control adjudication board, consisting of not less than five members, no more than the minimum required for a quorum of whom shall belong to the same political party at the time of appointment, may be created for each of the counties. The elected executive head of each county may nominate, and by and with the advice and consent of the legislative body of the county, shall appoint the members of the commissions and boards. The elected executive head of each county, by and with the advice and consent of the legislative body of the county, may remove from office any of the members. The commission or board shall designate one of its members as chairperson. Each member shall be a citizen of the United States and shall have resided in the county for which appointed for at least three years immediately preceding the date of the member’s appointment.

(b) Upon the expiration of the term of each commissioner or board member, the commissioner’s or board member’s successor shall be appointed for a term to expire five years from the date of the expiration of the preceding term.

The tenure in office of every commissioner or board member shall be for the terms provided and until their successors are duly appointed and qualified.

Any vacancy shall be filled by appointment for the remainder of the unexpired term. No person shall be a member of any commission or board who is or becomes engaged, or is directly or indirectly interested in any business for the manufacture or sale of liquor or who advocates or is or becomes a member of, or is identified or connected with, any organization or association which advocates prohibition, or who is an elected officer of the state or county government or who presents oneself as a candidate for election to any public office during the term of the person’s appointment hereunder. This provision shall be enforced by the elected executive head of the county by the removal of the disqualified member whenever such disqualifications shall appear.

(c) The amount of compensation and reasonable expenses for travel and other costs necessarily incident to the discharge of the members’ duties shall be established by each county.

~~[(d) Each member of the commission or board, before entering upon the duties of the member’s office, shall take and subscribe to an oath that the member will faithfully perform such duties according to law, which written oath shall be filed with the elected executive head of each county.]”~~

SECTION 6. Section 382-4, Hawaii Revised Statutes, is amended to read as follows:

“§382-4 Employees under government operation. In operating the plant and facilities of each company the governor, so far as possible and to the extent employees are needed, shall employ the personnel employed by the company upon the seizure and taking of possession thereof or immediately prior to the disruption of service by the company, including employees on strike or locked out, if the disruption is due to a strike or lockout. Persons so employed by the governor or otherwise employed by the governor shall not by reason of such employment be or become entitled to civil service, retirement, vacation, or other benefits provided by law for other employees of the State, nor shall they be required to possess the qualifications of other government employees, and no person shall be ineligible for employment by reason of the fact that the person is not a citizen of the United States or a resident of the State; provided that if it is necessary to employ persons who were not theretofore employed by the company, [~~sueh~~] those persons shall possess the residence qualifications prescribed by section 78-1[; ~~provided further that all citizens employed or engaged by the governor under the provisions of this chapter shall subscribe to the oath or affirmation prescribed by sections 85-31 to 85-48 and all noncitizens shall subscribe to the following oath or affirmation:~~

~~“I.....do solemnly swear and declare, on oath, that I do not hold membership in, pay assessments, dues, or make contributions to any organization or any political party which advocates the overthrow of the constitutional form of government of the United States of America or any change in the government of the United States of America, except as provided by its Constitution; that I take this obligation freely, without any mental reservation or purpose of evasion; So help me God.”~~

~~Upon a showing as to the sincerity of anyone claiming that one is unwilling to take the above prescribed oath only because of religious beliefs one is unwilling to be sworn, one may be permitted, in lieu of the oath, to make one’s solemn affirmation which shall be in the same form as the oath except that the words “sincerely and truly affirm” shall be substituted for the word “swear” and the phrases “on oath” and “So help me God” shall be omitted].~~

The salaries and wage rates of the persons employed by the State shall be the same as those which existed in the industry immediately prior to the disruption of service occasioning the emergency. There shall be no deductions from such salaries and wages except as authorized by law in the case of other state employees. The hours of employment shall be the same as existed in the industry immediately prior to the disruption of service and insofar as possible the other conditions of employment shall be the same as then existed, and neither the governor nor the designated agency shall have authority to enter into negotiations with any such company or with any labor organization for a collective bargaining contract with respect to wages, hours, and other terms and conditions of employment in the industry. All services performed in the employ of the State in government operations under this chapter shall constitute employment for the purposes of chapters 383 and 386 and to the extent of the services the State shall be deemed an employer within the meaning of such chapters and shall make the contributions required of a new employer as prescribed by chapter 383.”

SECTION 7. Section 431:2-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) There shall be a chief deputy commissioner, who shall be subject to chapter 76. The chief deputy commissioner shall have the power to perform any act or duty assigned by the commissioner[, and shall take and subscribe the same oath of office as the commissioner, which oath shall be endorsed upon the].~~ The certificate

of the chief deputy commissioner's appointment [~~and~~] shall be filed in the office of the lieutenant governor."

SECTION 8. Section 485-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The commissioner of securities shall employ from time to time such other officers, attorneys, clerks, and employees[,] as are necessary for the administration of this chapter. They shall perform such duties as the commissioner assigns to them and their compensation, and the compensation of the deputies herein provided for, shall be fixed by the commissioner with the approval of the governor, subject to chapter 76. [~~The commissioner and deputies and each of the employees shall take and subscribe and file the oath of office prescribed by law.~~]

The commissioner, deputies, or any person appointed or employed by the commissioner under this subsection shall be paid, in addition to their salary or compensation when required to travel on official duties, the transportation cost, board, lodging, and other traveling expenses necessary and actually incurred by each of them in the performance of the duties required by this chapter or performed by the direction of the commissioner."

SECTION 9. Section 502-2, Hawaii Revised Statutes, is repealed.

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

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

(Approved April 27, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 49

H.B. NO. 2331

A Bill for an Act Relating to an Inactive Status for Professional and Vocational Licenses.

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

SECTION 1. Chapter 436B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§436B- Inactive license; reactivation of inactive license. (a) Unless otherwise provided by law, each licensing authority may allow a licensee to place its license on inactive status and provide conditions for the reactivation of the license.

(b) If a licensing authority desires to authorize an inactive license status, the licensing authority may decide to accept in total the provisions in subsection (c) to immediately effectuate an inactive license status. If a licensing authority desires to establish provisions for an inactive license status that differ from the provisions in subsection (c), the licensing authority may establish those alternative provisions by rules adopted pursuant to chapter 91.

(c) The following general provisions shall be applied by the licensing authority:

- (1) Upon written request by a licensee during the licensure period or at renewal, and upon payment of an inactive license fee, the licensing authority shall place that licensee's active license on an inactive status;
- (2) A licensee may continue on inactive status for the biennial or triennial period, whichever is applicable;
- (3) A licensee on inactive status shall be considered as unlicensed and shall not engage in the practice of the licensed profession or vocation. Any person who violates this prohibition shall be subject to discipline under this chapter and the laws and rules of the licensing authority for that license;
- (4) It shall be the responsibility of each licensee on inactive status to maintain knowledge of current licensing and renewal requirements; and
- (5) A licensee may request to reactivate the license at any time during the licensure period or at renewal by completing an application for reactivation and fulfilling all requirements in effect at the time of application to return the license to active status, including the payment of an activation fee and other fees that may be required. The licensing authority may require information from the applicant to ensure the applicant is fit to engage in the profession, including but not limited to reporting license sanctions, pending disciplinary actions, or conviction of a crime in which the conviction has not been annulled or expunged.

(d) The licensing authority may deny an application for reactivation if the applicant does not fulfill all requirements or for the bases set forth in section 436B-19 or in the laws and rules of the licensing authority for that license. If the licensing authority denies the application, written notice of the denial shall state specifically the reason for denying the reactivation and shall inform the applicant of the right to a hearing under chapter 91. The applicant shall be required to reapply for licensure and comply with the licensing requirements in effect at the time of reapplication.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on January 1, 2007.

(Approved April 27, 2006.)

Note

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

ACT 50

H.B. NO. 2901

A Bill for an Act Relating to Garnishment.

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

SECTION 1. Section 652-14, Hawaii Revised Statutes, is repealed.

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

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

(Approved April 27, 2006.)

Note

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

ACT 51

H.B. NO. 2346

A Bill for an Act Making an Emergency Appropriation for Department of Education Electricity.

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 fund the cost of the department of education's electricity usage. Increasing usage and cost of electricity has created a critical funding emergency for fiscal year 2005-2006. The department of education will not have sufficient funds to pay for electricity with the current appropriation amount. An emergency appropriation is needed to fund the program for the first year of the biennium.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,908,748, or so much thereof as may be necessary for fiscal year 2005-2006, for the purposes of this Act.

The sum appropriated shall be expended by the department of education.

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

(Approved April 28, 2006.)

ACT 52

H.B. NO. 2273

A Bill for an Act Making Emergency Appropriations for Risk Management.

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

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

SECTION 2. The purposes of this Act are to make an emergency appropriation and to increase the spending ceiling of the state risk management revolving fund to provide for anticipated expenditures resulting from the May 7, 2005, fire at Kalaheo Elementary School, including the repair and replacement of damaged or destroyed state facilities, and an increase in the cost of property insurance premiums.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000, or so much thereof as may be necessary for fiscal year 2005-2006, to be deposited into the state risk management revolving fund. 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 state risk management revolving fund the sum of \$6,500,000, or so much thereof as may be necessary for fiscal year 2005-2006. The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

ACT 53

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

(Approved April 28, 2006.)

ACT 53

H.B. NO. 2210

A Bill for an Act Relating to Pearlridge Elementary School.

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

SECTION 1. Act 200, section 77, Session Laws of Hawaii 2003, as amended by Act 41, section 5, Session Laws of Hawaii 2004, is amended by amending item G-48 to read as follows:

“48. P30042 PEARLRIDGE ELEMENTARY SCHOOL, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR THE
EXPANSION AND RENOVATION OF THE
CAFETERIA; GROUND AND SITE IMPROVEMENTS;
EQUIPMENT AND APPURTENANCES.

PLANS		1	
DESIGN		150	
CONSTRUCTION		799	
TOTAL FUNDING	AGS	950B	B”

SECTION 2. New statutory material is underscored.

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

(Approved May 1, 2006.)

ACT 54

H.B. NO. 1833

A Bill for an Act Relating to Fireworks.

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

SECTION 1. The legislature finds that the respective counties should be allowed to establish and implement policies, procedures, and rules regarding the processing and sale of fireworks permits. This includes but is not limited to the delegation or authorization for non-county individuals, agencies, or entities to issue fireworks permits.

The purpose of this Act is to authorize the respective counties to allow a county’s authorized designee to issue fireworks permits, in addition to the county itself.

SECTION 2. Section 132D-9, Hawaii Revised Statutes, is amended to read as follows:

“§132D-9 **Application for permit.** The permit required under section 132D-10 or 132D-16 shall be issued by the county or its authorized designees and be nontransferable. The county or its authorized designees shall issue all permits for which complete applications have been submitted and which contain only correct information. The permit shall specify the date of issuance or effect and the date of

expiration but in no case for a period to exceed one year. The permit for the purchase of non-aerial common fireworks for the purposes of section 132D-3 shall not allow purchase for more than one event as set forth in section 132D-3. The application shall be made on a form setting forth the dates for which the permit shall be valid, the location where the permitted activity is to occur, and the name of the proprietor or, if a partnership, the name of the partnership and the names of all partners or, if a corporation, the name of the corporation and the names of its officers. The permit application may be denied if the proposed use of fireworks presents a substantial inconvenience to the public or presents an unreasonable fire or safety hazard. Any permit issued pursuant to this chapter shall be prominently displayed in public view at the site.’’

SECTION 3. New statutory material is underscored.

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

(Approved May 1, 2006.)

ACT 55

H.B. NO. 2443

A Bill for an Act Relating to the Emergency Management Assistance Compact.

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

SECTION 1. The legislature finds that the Emergency Management Assistance Compact was ratified during the 2nd session of the 104th Congress and became Public Law 104-321 in October 1996. Since that time, forty-nine states, the District of Columbia, Puerto Rico, and the Virgin Islands have enacted legislation to become members.

While states are capable of managing most emergencies, there are times when disasters exceed state and local resources and therefore require outside assistance. This is crucial especially for a geographically isolated state such as Hawaii. Normally, assistance comes from federal sources. However, not all disasters are eligible for federal disaster assistance. The Emergency Management Assistance Compact provides another way for states to receive interstate aid in a disaster. Even when federal assistance is merited, assistance from the Emergency Management Assistance Compact may be more readily available or cheaper. This assistance may supplement federal assistance when the latter is available or replace federal assistance when it is unavailable. Most importantly, the Emergency Management Assistance Compact allows for a quick response to disasters using the unique resources and expertise possessed by member states.

Member states are guaranteed reimbursement for all eligible assistance provided through the Emergency Management Assistance Compact. Under the compact, it is the responsibility of states requesting assistance to pay back the states that provide it. This legal standard also helps to speed the process and reduce the paperwork required. In addition, under the compact, requesting states are responsible for the actions of workers from assisting states. Without the Emergency Management Assistance Compact, emergency workers from assisting states might be sued in the courts of requesting states, incurring substantial state costs. Under the compact, however, requesting states assume tort responsibility for out-of-state emergency workers.

The legislature also finds that the Emergency Management Assistance Compact also offers the following benefits:

- (1) Assistance may be more readily available than other resources;
- (2) The compact allows for a quick response to disasters using the unique human resources and expertise possessed by member states;
- (3) The compact offers state-to-state assistance during governor-declared states of emergency. The compact offers a responsive and straightforward system for states to send personnel and equipment to help disaster relief efforts in other states. When resources are overwhelmed, the compact helps to fill the shortfalls;
- (4) The compact establishes a firm legal foundation. Once the conditions for providing assistance to a requesting state have been set, the terms constitute a legally binding contractual agreement that make affected states responsible for reimbursement. Responding states can rest assured that sending aid will not be a financial or legal burden and personnel sent are protected under workers' compensation and liability provisions. The compact solves the problems of liability and responsibility for costs and allows for credentials to be honored across state lines;
- (5) The compact provides fast and flexible assistance. It allows states to ask for whatever assistance they need for any type of emergency, from earthquakes to acts of terrorism. The compact's simple procedures help states dispense with bureaucratic wrangling; and
- (6) The compact can move resources such as medical resources, that other compacts cannot.

Membership in the Emergency Management Assistance Compact is free and the only requirement to become a member is for a state's legislature to enact legislation to approve the compact.

The purpose of this Act is to approve the Emergency Management Assistance Compact and to become a member of the Emergency Management Assistance Compact.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
EMERGENCY MANAGEMENT ASSISTANCE COMPACT**

§ -1 **Name.** This chapter may be cited as the Emergency Management Assistance Compact.

§ -2 **Terms and provisions of compact.** The legislature of the State of Hawaii hereby authorizes the governor of the State of Hawaii to enter into a compact on behalf of the State of Hawaii with any other state legally joining therein, in the form substantially as follows:

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

Article I. Purpose and Authorities

This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this compact, the term “states” is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all United States territorial possessions.

The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency or disaster that is duly declared by the governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states' National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

Article II. General Implementation

Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

On behalf of the governor of each state participating in the compact, the legally designated state official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.

Article III. Party State Responsibilities

A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

- (1) Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resource shortages, civil disorders, insurgency, or enemy attack;
- (2) Review party states' individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;
- (3) Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;
- (4) Assist in warning communities adjacent to or crossing the state boundaries;

- (5) Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;
- (6) Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and
- (7) Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the responsibilities enumerated above.

B. The authorized representative of a party state may request assistance of another party state by contacting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

- (1) A description of the emergency service function for which assistance is needed, including but not limited to fire services, law enforcement, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue;
- (2) The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and
- (3) The specific place and time for staging of the assisting party's response and a point of contact at that location.

C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States government, with free exchange of information, plans, and resource records relating to emergency capabilities.

Article IV. Limitations

Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers (except that of arrest unless specifically authorized by the receiving state), duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state of emergency or disaster by the governor of the party state that is to receive assistance or upon commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect or loaned resources remain in the receiving states, whichever is longer.

Article V. Licenses and Permits

Whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the governor of the requesting state may prescribe by executive order or otherwise.

Article VI. Liability

Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting state for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.

Article VII. Supplementary Agreements

Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing contained in this compact shall preclude any state from entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

Article VIII. Compensation

Each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.

Article IX. Reimbursement

Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this article.

Article X. Evacuation

Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

Article XI. Implementation

A. This compact shall become operative immediately upon its enactment into law by any two states; thereafter, this compact shall become effective as to any other state upon its enactment by such state.

B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the governor of the withdrawing state has given notice in writing of such withdrawal to the governors of all other party states. Such action shall not relieve the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States government.

Article XII. Validity

This compact shall be construed to effectuate the purposes stated in Article I hereof. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected thereby.

Article XIII. Additional Provisions

Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under Section 1385 of Title 18, United States Code.”

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

(Approved May 1, 2006.)

ACT 56

H.B. NO. 3194

A Bill for an Act Relating to the Commission for National and Community Service.

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

SECTION 1. Section 90D-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Members of the commission shall be appointed by the governor on a bipartisan basis subject to section 26-34. The commission shall consist of not fewer than fifteen and not more than twenty-five members. Not more than fifty per cent of the commission plus one member may be from the same political party. To the extent possible, the commission shall be balanced according to race, ethnicity, age, disability, and gender characteristics. All appointments shall be for [~~four-year~~] three-year terms. Members shall not serve more than two consecutive terms. The commission shall include:

- (1) An individual with expertise in the educational, training, and developmental needs of youths, particularly disadvantaged youths;
- (2) An individual with experience in promoting the involvement of older adults in service and volunteerism;
- (3) A representative of community-based agencies or community-based organizations within the State;
- (4) The superintendent of education, or a designee;
- (5) A representative of county governments;
- (6) A representative of local labor organizations in the State;
- (7) A representative of business;
- (8) An individual between the ages of sixteen and twenty-five who is a participant or supervisor in a volunteer or service program; and
- (9) A representative of a national service program described in Title 42 United States Code section 12572(a), as amended, as a nonvoting, ex officio member.”

2. By amending subsection (f) to read:

“(f) Members currently serving under Executive Order 94-01 may be reappointed to a new [~~four-year~~] three-year term and may serve two consecutive terms.”

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, 2006.

(Approved May 1, 2006.)

A Bill for an Act Relating to Government Employees.

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

SECTION 1. In 2004, the Government Accounting Standards Board issued statement numbers 43 and 45. These new statements establish uniform financial reporting standards for the reporting of retiree health and other post-employment benefits by state and local governments. Statement number 43 (plan for reporting) is effective for the fiscal year ending June 30, 2007. Statement number 45 (for employers) is effective for the fiscal year ending June 30, 2008. Statement numbers 43 and 45 will require, among other things, that the State's financial statements show:

- (1) The actuarial present value of the total future cost of providing retiree health benefits to the State's employees, retirees, and their beneficiaries under the terms of the State's retiree health benefits plans;
- (2) The annual contributions that would be required for the State to amortize that total future cost over a thirty-year period; and
- (3) The State's status and progress in funding or amortizing that total future cost.

One of the underlying purposes of statement numbers 43 and 45 is to have public employers report their liability for retiree health benefits and other post-employment benefits on an accrual rather than pay-as-you-go basis.

Under statement numbers 43 and 45, a retiree health benefits or other post-employment benefits plan that is administered as a trust or equivalent arrangement may perform most of the work that these new statements require with respect to a public employer's reporting of retiree health and other post-employment benefits. In addition, statement numbers 43 and 45 provide that a public employer's contributions to a retiree health benefits plan or other post-employment benefits plan will reduce its total liability for retiree health benefits or other post-employment benefits only if those contributions are made to a plan that is administered as a trust or equivalent arrangement.

The purpose of this Act is to amend chapter 87A, Hawaii Revised Statutes, to clarify that the Hawaii employer-union health benefits trust fund is administered as a trust or equivalent arrangement as that term is used in statement numbers 43 and 45. This will simplify the burdens placed on the State and counties regarding compliance with the financial reporting standards of statement numbers 43 and 45. In addition, it will ensure that all contributions made by the State and counties to the Hawaii employer-union health benefits trust fund for retiree health benefits plans will be credited against the State's and counties' liabilities for the cost of such plans in their financial statements.

One of the conditions that other post-employment benefits plans must meet in order to be administered as a trust or equivalent arrangement is that the employer's contributions to the plan are irrevocable. This Act clarifies that the State's and counties' contributions to the Hawaii employer-union health benefits trust fund, as well as all resulting assets therein, are irrevocably dedicated to the purposes stated in section 87A-31, Hawaii Revised Statutes, and shall not be subject to future appropriation for other purposes. This Act is not meant to bind or require the State or counties to make any particular level of contributions to the Hawaii employer-union health benefits trust fund now or in the future, but only to ensure that contributions actually made are irrevocable.

SECTION 2. Chapter 87A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§87A- Employer contributions irrevocable. Notwithstanding any law to the contrary, all of the monthly contributions that the State and counties make to the fund under sections 87A-32, 87A-33, 87A-34, 87A-35, 87A-36, and 87A-37, and all other contributions that the State and counties may make to the fund, shall be irrevocable; provided that this shall not preclude the fund from returning contributions or payments made by the State or any county under a mistake of fact within one year after the payment of the contributions or payments.”

SECTION 3. Section 87A-30, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~87A-30[~~]~~] Hawaii employer-union health benefits trust fund; establishment. There is established outside the state treasury, a trust fund to be known as the “Hawaii Employer-Union Health Benefits Trust Fund.”¹ The fund shall consist of contributions, interest, income, dividends, refunds, rate credits, and other returns. It is hereby declared that any and all sums contributed or paid from any source to the fund created by this part, and all assets of the fund including any and all interest and earnings on the same, are and shall be held in trust by the board for the exclusive use and benefit of the employee-beneficiaries and dependent-beneficiaries and shall not be subject to appropriation for any other purpose whatsoever. The fund shall be under the control of the board and placed under the department of budget and finance for administrative purposes.”

SECTION 4. Section 87A-31, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~87A-31[~~]~~] Trust fund; purpose. (a) The fund shall be used to provide employee-beneficiaries and dependent-beneficiaries with health and other benefit plans, and to pay administrative and other expenses of the fund. All assets of the fund are and shall be dedicated to providing health and other benefits plans to the employee-beneficiaries and dependent-beneficiaries in accordance with the terms of those plans and to pay administrative and other expenses of the fund, and shall be used for no other purposes except for those set forth in this section.

(b) The fund, including any earnings on investments, and rate credits or reimbursements from any carrier or self-insured plan and any earning or interest derived therefrom, may be used to stabilize health and other benefit plan rates; provided that the approval of the governor and the legislature shall be necessary to fund administrative and other expenses necessary to effectuate these purposes.

(c) The fund may be used to provide group life insurance benefits to employees to the extent that contributions are provided for group life insurance benefits in sections 87A-32 and 87A-37.

(d) The fund may assist the State and the counties to implement and administer cafeteria plans authorized under Title 26 United States Code section 125, the Internal Revenue Code of 1986, as amended, and part II of chapter 78.

(e) At the discretion of the board, some or all of the fund may be used as a reserve against or to pay the fund’s future costs of providing health and other benefits plans established under sections 87A-23 and 87A-37 and any other benefits plans the board establishes for retired employees and their beneficiaries. The board may create separate funds within the fund for this purpose. Each separate fund shall be subject to all of the provisions of this chapter.”

ACT 58

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 6. This Act shall take effect on July 1, 2006.

(Approved May 1, 2006.)

Notes

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

ACT 58

H.B. NO. 2780

A Bill for an Act Relating to the Disposition of Convicted Defendants.

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

SECTION 1. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§706- First-time drug offender prior to 2004; probation; expungement. A person sentenced prior to July 1, 2004, for a first-time drug offense, pursuant to section 706-622.5, and who otherwise meets all the requirements of section 706-622.5, may apply to the court for expungement of the record of conviction for the drug offense. The court shall issue a court order to expunge the record of conviction for the drug offense; provided the person has successfully completed a substance abuse treatment program and has complied with the other terms and conditions set by the court. A person granted an expungement of conviction under this section or section 706-622.5(4) shall not be eligible for another expungement of conviction under this section or section 706-622.5.”

SECTION 2. New statutory material is underscored.¹

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

(Approved May 1, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 59

H.B. NO. 1983

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. Chapter 601, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§601- Civil defense emergency period; suspension of deadlines. (a) During a period of civil defense emergency proclaimed by the governor under section 128-7, the chief justice shall be authorized to order the suspension, tolling, extension, or granting of relief from deadlines, time schedules, or filing requirements imposed by otherwise applicable statutes, rules, or court orders, in civil or

criminal cases or administrative matters, in any judicial circuit affected by the governor's proclamation. The chief justice shall determine the judicial circuits so affected.

(b) The order shall be limited to an initial duration of not more than thirty days; provided that the order may be modified or extended for such period of time as the chief justice deems necessary due to an ongoing civil defense emergency.

(c) The chief justice shall give notice of the order to all affected parties, counsel for the affected parties, and the public. Notice shall be provided by whatever means are reasonably calculated, in the chief justice's sole discretion, to reach the affected parties, counsel for the affected parties, and the public.

(d) Any person whose rights or interests are adversely affected by the chief justice's order shall be entitled to an appeal. The notice of appeal shall be filed not later than forty-five days after the expiration of the chief justice's order or any modification or extension of that order. The notice shall be filed with the clerk of the circuit court having jurisdiction over the person."

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved May 1, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 60

H.B. NO. 2207

A Bill for an Act Relating to Sexual Assault.

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- Continuous sexual assault of a minor under the age of fourteen years. (1) A person commits the offense of continuous sexual assault of a minor under the age of fourteen years if the person:

- (a) Either resides in the same home with a minor under the age of fourteen years or has recurring access to the minor; and
- (b) Engages in three or more acts of sexual penetration or sexual contact with the minor over a period of time, while the minor is under the age of fourteen years.

(2) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts have occurred; the jury need not agree on which acts constitute the requisite number.

(3) No other felony sex offense involving the same victim may be charged in the same proceeding with a charge under this section, unless the other charged offense occurred outside the period of the offense charged under this section, or the other offense is charged in the alternative. A defendant may be charged with only one count under this section, unless more than one victim is involved, in which case a separate count may be charged for each victim.

(4) Continuous sexual assault of a minor under the age of fourteen years is a class A felony.”

SECTION 2. Section 325-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Consent to testing is not required for any of the following:
- (1) A health care provider or organ donor center that procures, processes, distributes, or uses human body parts donated for scientific purposes, without obtaining consent, may test for the presence of HIV in order to assure medical acceptability of the gift for the purpose intended;
 - (2) The department, laboratories and research facilities, health care providers, blood banks, plasma centers, and educational institutions may subject any body fluids or tissue to be used in research to a test for HIV infection if the test is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher;
 - (3) Anonymous testing carried out at HIV test sites established by the department; provided that informed oral consent is obtained;
 - (4) Testing of body fluids or tissue ordered by a third party, so long as that third party, including but not limited to an insurance company, employer, or school, obtains the informed written consent of the person to be tested authorizing the release of the test results to the third party, and transmits a signed copy of the written informed consent to the health provider prior to any release of the requested test results to the third party;
 - (5) Informed consent is not required where the patient is unable to give consent and it is determined by the patient’s treating physician that the patient’s HIV status is necessary to make a diagnosis or determine an appropriate course of treatment for the patient. The patient shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to this paragraph, and the patient shall be provided the opportunity to obtain the test results and appropriate counseling;
 - (6) A treating physician may order an HIV test without the patient’s informed consent if the physician has determined that the patient is incapable of giving consent prior to the rendering of treatment and when there is reason to believe that the safety of a health care worker may be affected due to exposure to the blood or bodily fluids of a patient suspected of possible HIV infection. The availability and quality of health care services shall not be compromised based on the findings and testing performed pursuant to this paragraph. The costs of any testing performed shall be borne by the health care provider and may not be claimed against the patient or the patient’s health care insurer. The patient and the health care worker shall be informed in a timely manner that a test for the presence of HIV has been performed pursuant to the provisions of this paragraph, and the patient and the health care worker shall be provided the opportunity to obtain the test results and appropriate counseling;
 - (7) A person who has been charged, or a juvenile who has been charged, pursuant to section 707-730, 707-731, 707-732(1)(a), [707-733.5,] 707-___, or 707-741 shall be tested to determine the person’s HIV status upon court order issued pursuant to section 325-16.5. The test shall be performed according to the protocols set forth in section 325-17; and
 - (8) A person who has been convicted, or a juvenile who has been adjudicated, pursuant to section 707-730, 707-731, 707-732(1)(a), [707-733.5,] 707-___, or 707-741 shall be tested to determine the person’s HIV status upon court order issued pursuant to section

325-16.5. The test shall be performed according to the protocols set forth in section 325-17.”

SECTION 3. Section 325-16.5, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

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

“Charged person” means a person who has been charged with an offense under section 707-730, 707-731, 707-732(1)(a), [~~707-733.5;~~] ~~707-~~, or 707-741, including a juvenile charged of such an offense. A person is charged when a formal complaint, information, or indictment has been accepted by the court.

“Convicted person” means a person who has been convicted of an offense under section 707-730, 707-731, 707-732(1)(a), [~~707-733.5;~~] ~~707-~~, or 707-741, including a juvenile adjudicated of such an offense. A person is convicted when a verdict or adjudication has been rendered by a judge or jury, or a plea of guilty or nolo contendere has been accepted by the court.

“HIV counseling” means HIV counseling which conforms to the guidelines of the department of health or the Centers for Disease Control and Prevention, and includes referral for appropriate health care and support services.

“HIV counselor” means any person who has been trained and certified in HIV counseling by the department of health or the Centers for Disease Control and Prevention and who is not a victim counselor employed by or a volunteer with any law enforcement agency.”

SECTION 4. Section 706-606.6, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~706-606.6] **Repeat violent and sexual offender; enhanced sentence.** (1) Notwithstanding any other provision of law to the contrary, any person who is convicted of an offense under section 707-701.5, 707-702, 707-730, 707-731, 707-732, [~~707-733.5;~~] ~~707-~~, 707-750, or 708-840, after having been convicted on at least three prior and separate occasions of an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, [~~707-733.5;~~] ~~707-~~, 707-750, or 708-840, or of an offense under federal law or the laws of another state that is comparable to an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, [~~707-733.5;~~] ~~707-~~, 707-750, or 708-840, shall be sentenced to an extended term of imprisonment as provided in section 706-661.

(2) A conviction shall not be considered a prior offense unless the conviction occurred within the following time periods:

- (a) For an offense under section 707-701.5, 707-702, 707-730, [~~707-733.5;~~] ~~707-~~, 707-750, or 708-840, within the past twenty years from the date of the instant offense;
- (b) For an offense under section 707-710 or 707-731, within the past ten years from the date of the instant offense;
- (c) For an offense under section 707-711 or 707-732, within the past five years from the date of the instant offense; or
- (d) For an offense under federal law or the laws of another state that is comparable to an offense under section 707-701.5, 707-702, 707-710, 707-711, 707-730, 707-731, 707-732, [~~707-733.5;~~] ~~707-~~, 707-750, or 708-840, within the maximum term of imprisonment possible under the appropriate jurisdiction.”

SECTION 5. Section 846E-1, Hawaii Revised Statutes, is amended by amending the definitions of “aggravated sexual offense” and “sexual offense” to read as follows:

““Aggravated sexual offense” means:

- (1) A criminal offense described in section 707-730(1)(a), 707-730(1)(b), 707-731(1)(b), 707-732(1)(b), 707-732(1)(f), and ~~[707-733.5.] 707-~~ but excludes conduct that is criminal only because of the age of the victim, if the perpetrator is under the age of eighteen;
- (2) A criminal offense that is comparable to one of the offenses designated in paragraph (1) or any federal, military, or out-of-state offense that, under the laws of this State would be an aggravated sexual offense as designated in paragraph (1); or
- (3) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) or (2).

“Sexual offense” means an offense that is:

- (1) Set forth in section 707-730(1)(a), 707-730(1)(b), 707-730(1)(c), 707-731(1)(a), 707-731(1)(b), 707-731(1)(c), 707-732(1)(a), 707-732(1)(b), 707-732(1)(c), 707-732(1)(d), 707-732(1)(e), 707-732(1)(f), 707-733(1)(a), ~~[707-733.5.] 707-~~ or ~~[712-1202(1)(b)[]]~~, but excludes conduct that is criminal only because of the age of the victim, as provided in section 707-730(1)(b), or section 707-732(1)(b) if the perpetrator is under the age of eighteen;
- (2) An act defined in section 707-720 if the charging document for the offense for which there has been a conviction alleged intent to subject the victim to a sexual offense;
- (3) An act that consists of:
 - (A) Criminal sexual conduct toward a minor;
 - (B) Solicitation of a minor who is less than fourteen years old to engage in sexual conduct;
 - (C) Use of a minor in a sexual performance;
 - (D) Production, distribution, or possession of child pornography chargeable as a felony under section 707-750, 707-751, or 707-752;
 - (E) Electronic enticement of a child chargeable as a felony under section 707-756 or 707-757, if the act involves:
 - (i) Sexual conduct;
 - (ii) Attempted sexual conduct; or
 - (iii) A proposal to engage in sexual conduct; or
 - (F) Solicitation of a minor to practice prostitution;
- (4) A criminal offense that is comparable to or that exceeds a sexual offense as defined in paragraphs (1) through (3) or any federal, military, or out-of-state conviction for any offense that under the laws of this State would be a sexual offense as defined in paragraphs (1) through (3); or
- (5) An act, as described in chapter 705, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the offenses designated in paragraphs (1) through (4).”

SECTION 6. Section 707-733.5, Hawaii Revised Statutes, is repealed.

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.¹

SECTION 9. This Act shall take effect upon ratification of constitutional amendments authorizing the legislature to define what behavior constitutes a continuing course of conduct in sexual assault crimes committed against minors under the age of fourteen.

(Approved May 1, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 61

H.B. NO. 2747

A Bill for an Act Relating to Driver Licensing.

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

SECTION 1. The legislature finds that the examiner of drivers requires a road test for most driver's license applicants that measures an applicant's functional ability to safely operate a motor vehicle. Applicants with disabilities whose driving privilege is under review may not have a valid license or instruction permit after failing this road test on their first attempt.

The purpose of this Act is to allow the examiner of drivers to issue an instruction permit to an applicant with a disability who completed a medical review with this State, and as a condition to licensure, must pass a road test, but has failed on the applicant's first attempt.

SECTION 2. Section 286-110, Hawaii Revised Statutes, is amended to read as follows:

“§286-110 Instruction permits. (a) Any person aged fifteen years and six months or more who, except for the person's lack of instruction in operating a motor vehicle, would be qualified to obtain a driver's license issued under this part may apply for a temporary instruction permit at the office of the examiner of drivers in the county in which the applicant resides; provided that the applicant complies with section 286-102.5.

(b) The examiner of drivers shall examine every applicant for an instruction permit. The examination shall include tests of the applicant's:

- (1) Eyesight and other physical or mental capabilities to determine if the applicant is capable of operating a motor vehicle;
- (2) Understanding of highway signs regulating, warning, and directing traffic; and
- (3) Knowledge of the traffic laws, ordinances, or regulations of the State and the county where the applicant resides or intends to operate a motor vehicle.

(c) If the examiner of drivers is satisfied that the applicant is qualified to receive an instruction permit, the examiner of drivers shall issue the permit entitling the applicant, while having the permit in the applicant's immediate possession, to

drive a motor vehicle upon the highways for a period of one year; provided that an applicant who is registered in a driver training course shall be issued a temporary instruction permit for the duration of the course and the termination date of the course shall be entered on the permit. A person who is not licensed to operate the category of motor vehicles to which the driving training course applies shall not operate a motor vehicle in connection with the driving training course without a valid temporary instruction permit.

(d) Except when operating a motor scooter or motorcycle, the holder of an instruction permit shall be accompanied by a person who is twenty-one years of age or older and licensed to operate the category of motor vehicles in which the motor vehicle that is being operated belongs. The licensed person shall occupy a passenger seat beside the permit holder while the motor vehicle is being operated; provided that if the holder of the instruction permit is under the age of eighteen years and is driving between the hours of 11:00 p.m. and 5:00 a.m.:

- (1) A licensed driver who is the permit holder's parent or guardian shall occupy a passenger seat beside the driver while the motor vehicle is operated, unless the permit holder is an emancipated minor;
- (2) The licensed driver shall be licensed to operate the same category of motor vehicles as the motor vehicle being operated by the holder of the instruction permit; and
- (3) All occupants of the motor vehicle shall be restrained by a seat belt assembly or a child passenger safety restraint system as required under sections 291-11.5 and 291-11.6, notwithstanding any other law to the contrary.

(e) No holder of a temporary instruction permit shall operate a motorcycle or a motor scooter during hours of darkness or carry any passengers.

(f) No holder of a category 1 or 2 temporary instruction permit shall have the permit renewed, nor shall the holder be issued another temporary instruction permit for the same purpose, unless the holder has taken the examination for a category 1 or 2 license at least once prior to the expiration of the temporary instruction permit. If the holder of a temporary instruction permit fails to meet the requirements of this section, the holder shall not be permitted to apply for another category 1 or 2 temporary instruction permit for a period of three months. Nothing in this subsection shall affect the right and privilege of any holder of a category 1 or 2 temporary instruction permit to obtain a temporary instruction permit or driver's license for the operation of any other type of motor vehicle.

(g) The examiner of drivers may accept an application for renewal of an instruction permit no more than thirty days prior to or ninety days after the expiration date of the instruction permit, whereupon the applicant for renewal of an instruction permit shall be exempt from subsection (b)(2) and [(b)](3). If an application for renewal of an instruction permit is not made within ninety days after the expiration date of the permit, the applicant shall be treated as applying for a new instruction permit and examined in accordance with subsection (b).

(h) Notwithstanding any other law to the contrary, the examiner of drivers may issue an instruction permit to an applicant with a disability who has completed a medical review with this State, and as a condition to licensure is required to pass a road test, but has failed the road test on the applicant's first attempt. The instruction permit issued under this subsection may be renewed no more than thirty days prior to or ninety days after the expiration date of the instruction permit upon receiving an updated medical report. Subsections (b)(2) and (3) shall not apply to the issuance or renewal of an instruction permit issued under this subsection.

For the purposes of this subsection, "applicant with a disability" means an applicant who the examiner of drivers has reasonable cause to believe may have a mental or physical infirmity or disability that would make it unsafe to operate a

motor vehicle pursuant to section 286-119 and has been medically evaluated by the medical advisory board established pursuant to section 286-4.1.’’

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 May 2, 2006.)

ACT 62

H.B. NO. 2508

A Bill for an Act Relating to Waiver of Abandoned Vehicle Public Auction Requirements.

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

SECTION 1. Section 290-5, Hawaii Revised Statutes, is amended to read as follows:

“**§290-5 Waiver of public auction requirements.** The requirements of public auction may be waived when the [appraised] value of any vehicle is less than [~~\$250~~] \$1,000 as determined by the director of finance or authorized representative. In that event the vehicle, after public advertisement has been made [~~once in a newspaper of general circulation,~~] pursuant to section 1-28.5, may be disposed of in the same manner as when a vehicle is put up for public auction and for which no bid is received.’’

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, 2006.

(Approved May 2, 2006.)

ACT 63

H.B. NO. 1899

A Bill for an Act Relating to the use of Safety Helmets by Minors.

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

SECTION 1. Section 291C-195, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person less than fifteen years of age shall drive a moped[.] on a highway, street, roadway, or any other public property in the state. No person less than eighteen years of age shall drive a moped unless the person wears a safety helmet securely fastened with a chin strap. The safety helmet shall meet the specifications and requirements established by rules adopted 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 upon its approval.

(Approved May 2, 2006.)

ACT 64

H.B. NO. 3257

A Bill for an Act Relating to Use of Intoxicants.

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

SECTION 1. Section 291E-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The test or tests shall be administered at the request of a law enforcement officer having probable cause to believe the person operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State is under the influence of an intoxicant or is under the age of twenty-one and has consumed a measurable amount of alcohol, only after:

- (1) A lawful arrest; and
- (2) The person has been informed by a law enforcement officer ~~[of the sanctions under section 291E-41 or 291E-65, as applicable to the offense.]~~ that the person may refuse to submit to testing under this chapter.”

SECTION 2. Section 291E-15, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§291E-15]]~~ **Refusal to submit to breath, blood, or urine test; subject to administrative revocation proceedings.** If a person under arrest refuses to submit to a breath, blood, or urine test, none shall be given, except as provided in section 291E-21~~[-, but the person shall be subject].~~ Upon the law enforcement officer’s determination that the person under arrest has refused to submit to a breath, blood, or urine test, if applicable, then a law enforcement officer shall:

- (1) Inform the person under arrest of the sanctions under section 291E-41 or 291E-65; and
- (2) Ask the person if the person still refuses to submit to a breath, blood, or urine test, thereby subjecting the person to the procedures and sanctions under part III or section 291E-65, as applicable[-];
provided that if the law enforcement officer fails to comply with paragraphs (1) and (2), the person shall not be subject to the refusal sanctions under part III or section 291E-65.”

SECTION 3. Section 291E-33, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever a person is arrested for a violation of section 291E-61 or 291E-61.5 on a determination by the arresting law enforcement officer that:

- (1) There was reasonable suspicion to stop the vehicle or the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20; and
- (2) There was probable cause to believe that the person was operating the vehicle while under the influence of an intoxicant;

the law enforcement officer immediately shall take possession of any license held by the person and request the person to take a test for alcohol concentration, in the case

of an alcohol related offense, or a test for drug content in the blood or urine, in the case of a drug related offense. The law enforcement officer shall inform the person that, in the case of an alcohol related offense, the person shall elect to take a breath test, a blood test, or both, pursuant to section 291E-11[-], but that the person may refuse to submit to testing under this chapter. In the case of a drug related offense, the person shall elect to take a blood test, a urine test, or both, pursuant to section 291E-11[-The], after being informed that the person may refuse to submit to testing under this chapter. When applicable under section 291E-15, the law enforcement officer also shall [inform]:

- (1) Inform the person of the sanctions under section 291E-41, including the sanction for refusing to take a breath, blood, or urine test[-], if applicable; and
- (2) Ask the person if the person still refuses to submit to a breath, blood, or urine test, upon the law enforcement officer's determination that, after the person has been informed by a law enforcement officer that the person may refuse to submit to testing, the person under arrest has refused to submit to a breath, blood, or urine test.

Thereafter, the law enforcement officer shall complete and issue to the person a notice of administrative revocation and shall indicate thereon whether the notice shall serve as a temporary permit. The notice shall serve as a temporary permit, unless, at the time of arrest: the person was unlicensed; the person's license or privilege to operate a vehicle was revoked or suspended; or the person had no license in the person's possession."

SECTION 4. Section 291E-34, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The notice, when completed by the law enforcement officer and issued to the respondent, shall contain at a minimum the following information relating to the incident that gives rise to the issuance of the notice of administrative revocation:

- (1) Information identifying the respondent;
- (2) The specific violation for which the respondent was arrested;
- (3) The date issued and the date the administrative revocation is scheduled to go into effect;
- ~~(4) That the respondent was informed of the sanctions of this part and of the consequences of refusing to be tested for alcohol concentration or drug content in the blood or urine and whether the respondent consented to be tested;~~
- (4) The expiration date of the temporary permit, and the temporary motor vehicle registration and temporary number plates if applicable; and
- ~~(5) That the issuance of the notice of administrative revocation will be administratively reviewed."~~

SECTION 5. Section 291E-36, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Whenever a respondent has been arrested for a violation of section 291E-61 or 291E-61.5 and submits to a test that establishes: the respondent's alcohol concentration was .08 or more; the presence, in the respondent's blood or urine, of any drug that is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner; or whenever a respondent has been involved in a collision resulting in injury or death and a blood or urine test performed pursuant to section 291E-21 establishes that the respondent's alcohol concentration was .08 or more or establishes the presence in the respondent's blood or urine of any drug that

is capable of impairing the respondent's ability to operate a vehicle in a careful and prudent manner, the following shall be forwarded immediately to the director:

- (1) A copy of the arrest report or the report of the law enforcement officer who issued the notice of administrative revocation to the person involved in a collision resulting in injury or death and the sworn statement of the arresting law enforcement officer or the officer who issued the notice of administrative revocation, stating facts that establish that:
 - (A) There was reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the respondent was tested pursuant to section 291E-21;
 - (B) There was probable cause to believe that the respondent had been operating the vehicle while under the influence of an intoxicant;
 - ~~[(C) The respondent was informed of:

 - (i) The sanctions of section 291E-41;
 - (ii) The possibility that criminal charges may be filed; and
 - (iii) The probable consequences of refusing to be tested for alcohol concentration or drug content;] and~~
 - ~~[(D)]~~ (C) The respondent agreed to be tested or the person was tested pursuant to section 291E-21;
- (2) In a case involving an alcohol related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use as an alcohol testing device in this State;
 - (B) The person had been trained and at the time the test was conducted was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;
- (3) In a case involving an alcohol related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The person was trained and at the time the test was conducted was certified and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated that the respondent's alcohol concentration was at, or above, the prohibited level; and
 - (D) The person whose breath or blood was tested is the respondent;
- (4) In a case involving a drug related offense, the sworn statement of the person responsible for maintenance of the testing equipment, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) The equipment used to conduct the test was approved for use in drug testing;
 - (B) The person conducting the test had been trained and, at the time of the test, was certified and capable of maintaining the testing equipment; and
 - (C) The testing equipment used had been properly maintained and was in good working condition when the test was conducted;

- (5) In a case involving a drug related offense, the sworn statement of the person who conducted the test, stating facts that establish that, pursuant to section 321-161 and rules adopted thereunder:
 - (A) At the time the test was conducted, the person was trained and capable of operating the testing equipment;
 - (B) The person followed the procedures established for conducting the test;
 - (C) The equipment used to conduct the test functioned in accordance with operating procedures and indicated the presence of one or more drugs or their metabolites in the respondent's blood or urine; and
 - (D) The person whose blood or urine was tested is the respondent;
- (6) A copy of the notice of administrative revocation issued by the law enforcement officer to the respondent;
- (7) Any license, and motor vehicle registration and number plates, if applicable, taken into possession by the law enforcement officer; and
- (8) A listing of any prior alcohol or drug enforcement contacts involving the respondent."

SECTION 6. Section 291E-37, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

"(d) The director shall administratively revoke the respondent's license and privilege to operate a vehicle if the director determines that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed [øf]:
 - (i) That the person may refuse to submit to testing in compliance with section 291E-11; and
 - (ii) Of the sanctions of this part[-] and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15.

(e) The director shall administratively revoke the registration of any vehicle owned or registered to the respondent and take custody of any number plates issued to the respondent if the director determines that the respondent is a repeat intoxicated driver and that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or

- (B) The respondent operated the vehicle and refused to submit to a breath, blood, or urine test after being informed [øf]:
 - (i) That the person may refuse to submit to testing in compliance with section 291E-11; and
 - (ii) Of the sanctions of this part[-] and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15.”

SECTION 7. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The director shall affirm the administrative revocation only if the director determines that:

- (1) There existed reasonable suspicion to stop the vehicle, the vehicle was stopped at an intoxicant control roadblock established and operated in compliance with sections 291E-19 and 291E-20, or the person was tested pursuant to section 291E-21;
- (2) There existed probable cause to believe that the respondent operated the vehicle while under the influence of an intoxicant; and
- (3) The evidence proves by a preponderance that:
 - (A) The respondent operated the vehicle while under the influence of an intoxicant; or
 - (B) The respondent operated the vehicle [and,] and refused to submit to a breath, blood, or urine test after being informed [øf]:
 - (i) That the person may refuse to submit to testing in compliance with section 291E-11; and
 - (ii) Of the sanctions of this part[-, refused] and then asked if the person still refuses to submit to a breath, blood, or urine test[-] in compliance with the requirements of section 291E-15.”

SECTION 8. Section 291E-41, Hawaii Revised Statutes, is amended by amending subsections (d) and (e) to read as follows:

- “(d) If a respondent has refused to be tested after being informed [øf]:
- (1) That the person may refuse to submit to testing in compliance with section 291E-11; and
 - (2) Of the sanctions of this part[-] and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15,

the revocation imposed under subsection (b)(1), (2), (3), and (4) shall be for a period of one year, two years, four years, and a lifetime, respectively.

(e) In addition to subsection (d), any motor vehicle registration of a respondent who is a repeat intoxicated driver and who refused to be tested after being informed [øf]:

- (1) That the person may refuse to submit to testing in compliance with section 291E-11; and
- (2) Of the sanctions of this part and then asked if the person still refuses to submit to a breath, blood, or urine test, in compliance with the requirements of section 291E-15,

shall be revoked for the periods specified in subsection (d), and the respondent shall be prohibited from subsequently registering any motor vehicle for the applicable revocation period.”

SECTION 9. Section 291E-65, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If a person under arrest for operating a vehicle after consuming a measurable amount of alcohol, pursuant to section 291E-64, refuses to submit to a breath or blood test, none shall be given, except as provided in section 291E-21, but the arresting law enforcement officer, as soon as practicable, shall submit an affidavit to a district judge of the circuit in which the arrest was made, stating:

- (1) That at the time of the arrest, the arresting officer had probable cause to believe the arrested person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol;
- ~~(2) That the arrested person had been informed of the sanctions of this section; and~~
- ~~(3)] (2) That the arrested person was informed that the person may refuse to submit to a breath or blood test, in compliance with section 291E-11;~~
- (3) That the person had refused to submit to a breath or blood test[-];
- (4) That the arrested person was:
 - (A) Informed of the sanctions of this section; and then
 - (B) Asked if the person still refuses to submit to a breath or blood test, in compliance with the requirements of section 291E-15; and
- (5) That the arrested person continued to refuse to submit to a breath or blood test.

(b) Upon receipt of the affidavit, the district judge shall hold a hearing within twenty days. The district judge shall hear and determine:

- (1) Whether the arresting law enforcement officer had probable cause to believe that the person was under the age of twenty-one and had been operating a vehicle upon a public way, street, road, or highway or on or in the waters of the State with a measurable amount of alcohol;
- (2) Whether the person was lawfully arrested;
- ~~[(3) Whether the arresting officer had informed the person of the sanctions of this section; and]~~
- (3) Whether the person was informed that the person may refuse to submit to a breath or blood test, in compliance with section 291E-11;
- (4) Whether the person refused to submit to a test of the person’s breath or blood[-];
- (5) Whether the person was:
 - (A) Informed of the sanctions of this section; and then
 - (B) Asked if the person still refuses to submit to a breath or blood test, in compliance with the requirements of section 291E-15; and
- (6) Whether the person continued to refuse to submit to a breath or blood test.”

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. New statutory material is underscored.

SECTION 12. This Act shall take effect on January 1, 2007.

(Approved May 2, 2006.)

A Bill for an Act Relating to the State Plan.

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

SECTION 1. The legislature finds that the United States military has always had a significant presence in Hawaii. Federal expenditures for the maintenance of military facilities and personnel have always been a large part of our local economy. Today, we are seeing massive increased investment into our economy with improvements to Hickam Air Force Base to accommodate eight new C-17 transport planes, the proposed improvements throughout the state to accommodate the enhanced Stryker Brigade at Schofield Barracks, and the massive military housing projects that are about to begin throughout Hawaii. Hawaii is also under consideration as a home port for a multi-ship aircraft carrier group and air wing.

The military is with us in every way and contributing every day. Whether through the military performing volunteer work in Hawaii's schools, or the infusion of construction dollars, purchases and expenditures by military personnel and their family members in the civilian economy, or the hiring of thousands of civilian employees in a variety of capacities, Hawaii's military has long played and continues to play an essential role in the State's economy. The legislature recognizes that the military's need to not only train appropriately, but to build, maintain, expand, and upgrade facilities, living quarters, and communications, as well as equipment, and the myriad of other components required to sustain major, sophisticated operations, positively impacts our State's economy.

This nation is now undergoing another round of painful military base realignments and closings. More closures are sure to follow. The loss of any of Hawaii's military facilities is detrimental to our economy in a number of ways. Nevertheless, the legislature is under no illusion that the enactment of any state law will, of itself, influence, much less control, any action of the federal government. More significantly, however, the legislature sincerely believes that the military facilities in this state play a critical role in the defensive posture of this nation and deserve retention on their merits alone. The legislature, for its part, seeks to ensure that Hawaii's military facilities can continue to operate in an optimum manner and thereby ensure their survival.

The purpose of this Act is to emphasize that another objective and policy of the state plan is to promote the well-being of federal military installations and investment in the state and to fully support the continual operations of existing installations.

SECTION 2. Section 225M-2, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The office of planning shall gather, analyze, and provide information to the governor to assist in the overall analysis and formulation of state policies and strategies to provide central direction and cohesion in the allocation of resources and effectuation of state activities and programs[;] and effectively address current or emerging issues and opportunities. More specifically, the office shall engage in the following activities:

- (1) State comprehensive planning and program coordination. Formulating and articulating comprehensive statewide goals, objectives, policies, and priorities, and coordinating their implementation through the statewide planning system established in part II of chapter 226;

- (2) Strategic planning. Identifying and analyzing significant issues, problems, and opportunities confronting the State, and formulating strategies and alternative courses of action in response to identified problems and opportunities by:
 - (A) Providing in-depth policy research, analysis, and recommendations on existing or potential areas of critical state concern;
 - (B) Examining and evaluating the effectiveness of state programs in implementing state policies and priorities;
 - (C) Monitoring through surveys, environmental scanning, and other techniques—current social, economic, and physical conditions and trends; and
 - (D) Developing, in collaboration with affected public or private agencies and organizations, implementation plans and schedules and, where appropriate, assisting in the mobilization of resources to meet identified needs;
- (3) Planning coordination and cooperation. Facilitating coordinated and cooperative planning and policy development and implementation activities among state agencies[,] and between the state, county, and federal governments, by:
 - (A) Reviewing, assessing, and coordinating, as necessary, major plans, programs, projects, and regulatory activities existing or proposed by state and county agencies; [and]
 - (B) Formulating mechanisms to simplify, streamline, or coordinate interagency development and regulatory processes; and
 - (C) Recognizing the presence of federal defense and security forces and agencies in the State as important state concerns;
- (4) Planning information system. Collecting, analyzing, maintaining, and disseminating data and information to further effective state planning, policy analysis and development, and delivery of government services by:
 - (A) Assembling, organizing, evaluating, and classifying existing data and performing necessary basic research in order to provide a common data base for governmental planning;
 - (B) Planning, developing, implementing, and coordinating a statewide planning and geographic information system. The office shall be the lead agency responsible for planning and coordinating the establishment of a multi-agency, statewide geographic information system and the development of planning applications, including spatial data analyses to enhance decision making; and
 - (C) Maintaining a centralized depository of state and national planning references;
- (5) Land use planning. Developing and presenting the position of the State in all boundary change petitions and proceedings before the land use commission, assisting state agencies in the development and submittal of petitions for land use district boundary amendments, and conducting periodic reviews of the classification and districting of all lands in the State, as specified in chapter 205;
- (6) Coastal and ocean policy management. Carrying out the lead agency responsibilities for the Hawaii coastal zone management program, as specified in chapter 205A. Also, developing and maintaining an ocean and coastal resources information, planning, and management system further developing and coordinating implementation of the ocean resources management plan, and formulating ocean policies with respect

to the exclusive economic zone, coral reefs, and national marine sanctuaries;

- (7) Regional planning and studies. Conducting plans and studies to determine:
 - (A) The capability of various regions within the State to support projected increases in both resident populations and visitors;
 - (B) The potential physical, social, economic, and environmental impact on these regions resulting from increases in both resident populations and visitors;
 - (C) The maximum annual visitor carrying capacity for the State by region, county, and island; and
 - (D) The appropriate guidance and management of selected regions and areas of statewide critical concern.

The studies in subparagraphs (A) to (C) shall be conducted at appropriate intervals, but not less than once every five years; and

- (8) Regional, national, and international planning. Participating in and ~~[assuring]~~ ensuring that state plans, policies, and objectives are consistent, to the extent practicable, with regional, national, and international planning efforts.’’

SECTION 3. Section 226-9, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) To achieve the federal expenditures objective, it shall be the policy of this State to:

- (1) Encourage the sustained flow of federal expenditures in Hawaii that generates long-term government civilian employment[-];
- (2) Promote Hawaii’s supportive role in national defense[-], while remaining consistent with Hawaii’s social, environmental, and cultural goals;
- (3) Promote the development of federally supported activities in Hawaii that respect ~~[state-wide]~~ statewide economic concerns, are sensitive to community needs, and minimize adverse impacts on Hawaii’s environment[-];
- (4) Increase opportunities for entry and advancement of Hawaii’s people into federal government service[-];
- (5) Promote federal use of local commodities, services, and facilities available in Hawaii[-];
- (6) Strengthen federal-state-county communication and coordination in all federal activities that affect Hawaii[-]; and
- (7) Pursue the return of federally controlled lands in Hawaii that are not required for either the defense of the nation or for other purposes of national importance, and promote the mutually beneficial exchanges of land between federal agencies, the State, and the counties.’’

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, 2006.

(Approved May 2, 2006.)

ACT 66

H.B. NO. 877

A Bill for an Act Relating to Crime.

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

SECTION 1. Chapter 134, Hawaii Revised Statutes, is amended by adding seven new sections to be appropriately designated and to read as follows:

“§134-A Carrying or use of firearm in the commission of a separate felony; penalty. (a) It shall be unlawful for a person to knowingly carry on the person or have within the person’s immediate control or intentionally use or threaten to use a firearm while engaged in the commission of a separate felony, whether the firearm was loaded or not, and whether operable or not; provided that a person shall not be prosecuted under this subsection when the separate felony is:

- (1) A felony offense otherwise defined by this chapter;
- (2) The felony offense of reckless endangering in the first degree under section 707-713;
- (3) The felony offense of terroristic threatening in the first degree under section 707-716(1)(a), 707-716(1)(b), or 707-716(1)(d); or
- (4) The felony offenses of criminal property damage in the first degree under section 708-820 or criminal property damage in the second degree under section 708-821 and the firearm is the instrument or means by which the property damage is caused.

(b) A conviction and sentence under this section shall be in addition to and not in lieu of any conviction and sentence for the separate felony; provided that the sentence imposed under this section may run concurrently or consecutively with the sentence for the separate felony.

(c) Any person violating this section shall be guilty of a class A felony.

§134-B Possession of a firearm with intent to facilitate the commission of a felony drug offense; penalty. (a) It shall be unlawful for a person to knowingly possess a firearm with the intent to facilitate the commission of a felony offense involving the distribution of a controlled substance, whether the firearm was loaded or not, and whether operable or not.

(b) For the purposes of this section:

“Controlled substance” shall have the same meaning as defined in section 329-1.

“Distribution” means the selling, transferring, prescribing, giving or delivering to another, or the leaving, bartering, or exchanging with another, or the offering or agreeing to do the same.

(c) A conviction and sentence under this section shall be in addition to and not in lieu of any conviction and sentence for the separate felony; provided that the sentence imposed under this section may run concurrently or consecutively with the sentence for the separate felony.

(d) Any person violating this section shall be guilty of a class A felony.

§134-C Place to keep loaded firearms other than pistols and revolvers; penalty. (a) Except as provided in section 134-5, all firearms shall be confined to the possessor’s place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms in an enclosed container from the place of purchase to the purchaser’s place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following:

- (1) A place of repair;

- (2) A target range;
- (3) A licensed dealer's place of business;
- (4) An organized, scheduled firearms show or exhibit;
- (5) A place of formal hunter or firearm use training or instruction; or
- (6) A police station.

"Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the firearm.

(b) Any person violating this section by carrying or possessing a loaded firearm other than a pistol or revolver shall be guilty of a class B felony.

§134-D Place to keep unloaded firearms other than pistols and revolvers; penalty. (a) Except as provided in section 134-5, all firearms shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following:

- (1) A place of repair;
- (2) A target range;
- (3) A licensed dealer's place of business;
- (4) An organized, scheduled firearms show or exhibit;
- (5) A place of formal hunter or firearm use training or instruction; or
- (6) A police station.

"Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the firearm.

(b) Any person violating this section by carrying or possessing an unloaded firearm other than a pistol or revolver shall be guilty of a class C felony.

§134-E Place to keep pistol or revolver; penalty. (a) Except as provided in sections 134-5 and 134-9, all firearms shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry unloaded firearms in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following:

- (1) A place of repair;
- (2) A target range;
- (3) A licensed dealer's place of business;
- (4) An organized, scheduled firearms show or exhibit;
- (5) A place of formal hunter or firearm use training or instruction; or
- (6) A police station.

"Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the firearm.

(b) Any person violating this section by carrying or possessing a loaded or unloaded pistol or revolver shall be guilty of a class B felony.

§134-F Carrying or possessing a loaded firearm on a public highway; penalty. (a) It shall be unlawful for any person on any public highway to carry on the person, or to have in the person's possession, or to carry in a vehicle any firearm loaded with ammunition; provided that this section shall not apply to any person who has in the person's possession or carries a pistol or revolver in accordance with a license issued as provided in section 134-9.

(b) Any vehicle used in the commission of an offense under this section shall be forfeited to the State, subject to the notice and hearing requirements of chapter 712A.

(c) Any person violating this section shall be guilty of a class B felony.

§134-G Place to keep ammunition; penalty. (a) Except as provided in sections 134-5 and 134-9, all ammunition shall be confined to the possessor's place of business, residence, or sojourn; provided that it shall be lawful to carry ammunition in an enclosed container from the place of purchase to the purchaser's place of business, residence, or sojourn, or between these places upon change of place of business, residence, or sojourn, or between these places and the following:

- (1) A place of repair;
- (2) A target range;
- (3) A licensed dealer's place of business;
- (4) An organized, scheduled firearms show or exhibit;
- (5) A place of formal hunter or firearm use training or instruction; or
- (6) A police station.

"Enclosed container" means a rigidly constructed receptacle, or a commercially manufactured gun case, or the equivalent thereof that completely encloses the ammunition.

(b) Any person violating this section shall be guilty of a misdemeanor."

SECTION 2. Section 134-5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) A person may carry unconcealed and use a lawfully acquired pistol or revolver while actually engaged in hunting game mammals, if that pistol or revolver and its suitable ammunition are acceptable for hunting by rules adopted pursuant to section 183D-3 and if that person is licensed pursuant to part II of chapter 183D. The pistol or revolver may be transported in an enclosed container, as defined in section [134-6(e);] 134-E in the course of going to and from the place of the hunt, notwithstanding section [134-6(d);] 134-F."

SECTION 3. Section 134-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) No person shall carry concealed or unconcealed on the person a pistol or revolver without being licensed to do so under this section or in compliance with sections 134-5(c) or [134-6;] 134-E."

SECTION 4. Section 134-11, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) Sections [134-6] 134-A to 134-G and 134-7 to 134-9, except section 134-7(f), shall not apply:

- (1) To state and county law enforcement officers; provided that such persons are not convicted of an offense involving abuse of a family [H]or[F] household member under section 709-906;
- (2) To members of the armed forces of the State and of the United States and mail carriers while in the performance of their respective duties if those duties require them to be armed;
- (3) To regularly enrolled members of any organization duly authorized to purchase or receive the weapons from the United States or from the

State[;]; provided the members are either at, or going to or from, their places of assembly or target practice;

- (4) To persons employed by the State, or subdivisions thereof, or the United States while in the performance of their respective duties or while going to and from their respective places of duty if those duties require them to be armed;
- (5) To aliens employed by the State, or subdivisions thereof, or the United States while in the performance of their respective duties or while going to and from their respective places of duty if those duties require them to be armed; and
- (6) To police officers on official assignment in Hawaii from any state which by compact permits police officers from Hawaii while on official assignment in that state to carry firearms without registration. The governor of the State or the governor's duly authorized representative may enter into compacts with other states to carry out this paragraph."

2. By amending subsection (c) to read:

"(c) Sections [134-6,] 134-A to 134-G, 134-8, and 134-9 shall not apply to the possession, transportation, or use, with blank cartridges, of any firearm or explosive solely as props for motion picture film or television program production when authorized by the chief of police of the appropriate county pursuant to section 134-2.5 and not in violation of federal law."

SECTION 5. Section 806-83, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Criminal charges may be instituted by written information for a felony when the charge is a class C felony under section 19-3.5 (voter fraud); section 128D-10 (knowing releases); [H]¹section 132D-14(a)(1), (2)(A), and (3)[H],² (penalties for failure to comply with requirements of sections 132D-7, 132D-10 and 132D-16); section [134-6 (~~carrying or use of firearm in the commission of a separate felony~~);] 134-D (place to keep unloaded firearms other than pistols and revolvers); section 134-7(a) and (b) (ownership or possession prohibited); section 134-8 (prohibited ownership); section 134-9 (licenses to carry); section 134-17(a) (relating to false information or evidence concerning psychiatric or criminal history); section 134-51 (deadly weapons); section 134-52 (switchblade knives); section 134-53 (butterfly knives); section 188-23 (possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited); section 231-34 (attempt to evade or defeat tax); section 231-36 (false and fraudulent statements); section 245-37 (sale or purchase of packages of cigarettes without stamps); section 245-38 (vending unstamped cigarettes); section 245-51 (sale of export cigarettes prohibited); section 245-52 (alteration of packaging prohibited); section 291C-12.5 (accidents involving substantial bodily injury); section 291E-61.5 (habitually operating a vehicle under the influence of an intoxicant); section 329-41 (prohibited acts B); section 329-42 (prohibited acts C); section 329-43.5 (prohibited acts related to drug paraphernalia); section 329C-2 (manufacture, distribution, or possession with intent to distribute an imitation controlled substance to a person under eighteen years of age); section 346-34(d)(2) and (e) (fraud involving food stamps or coupons with a value exceeding \$300); section 346-43.5 (medical assistance fraud); section 383-141 (falsely obtaining benefits); section 431:10C-307.7 (insurance fraud); section 482D-7 (violation of fitness standards and stamping requirements); section 485-8 (registration of securities); section 485-14 (registration of dealers, investment advisers, salespersons, and investment adviser representatives); section 485-25 (fraudulent and other prohibited practices); section 707-703 (negligent homicide in the second degree); section 707-705 (negligent injury

in the first degree); section 707-711 (assault in the second degree); section 707-713 (reckless endangering in the first degree); section 707-721 (unlawful imprisonment in the first degree); section 707-726 (custodial interference in the first degree); section 707-757 (electronic enticement of a child in the second degree); section 707-766 (extortion in the second degree); section 708-811 (burglary in the second degree); section 708-821 (criminal property damage in the second degree); section 708-831 (theft in the second degree); section 708-833.5 (shoplifting); section 708-835.5 (theft of livestock); section 708-836 (unauthorized control of propelled vehicle); section 708-836.5 (unauthorized entry into motor vehicle); section 708-839.5 (theft of utility services); section 708-839.8 (identity theft in the third degree); section 708-852 (forgery in the second degree); section 708-854 (criminal possession of a forgery device); section 708-858 (suppressing a testamentary or recordable instrument); section 708-875 (trademark counterfeiting); section 708-891.5 (computer fraud in the second degree); section 708-892.5 (computer damage in the second degree); section 708-895.6 (unauthorized computer access in the second degree); section 708-8100 (fraudulent use of a credit card); section 708-8102 (theft/forgery of credit cards); section 708-8103 (credit card fraud by a provider of goods or services); section 708-8104 (possession of unauthorized credit card machinery or incomplete cards); section 708-8200 (cable television service fraud in the first degree); section 708-8202 (telecommunication service fraud in the first degree); section 709-903.5 (endangering the welfare of a minor in the first degree); [§] 709-906 (abuse of family or household members); section 710-1016.3 (obtaining a government-issued identification document under false pretenses in the first degree); section 710-1016.6 (impersonating a law enforcement officer in the first degree); section 710-1017.5 (sale or manufacture of deceptive identification document); section 710-1018 (securing the proceeds of an offense); section 710-1021 (escape in the second degree); section 710-1023 (promoting prison contraband in the second degree); section 710-1024 (bail jumping in the first degree); section 710-1029 (hindering prosecution in the first degree); section 710-1060 (perjury); section 710-1072.5 (obstruction of justice); section 711-1103 (riot); section 711-1109.3 (cruelty to animals/fighting dogs); section 711-1110.9 (violation of privacy in the first degree); section 711-1112 (interference with the operator of a public transit vehicle); section 712-1221 (promoting gambling in the first degree); section 712-1222.5 (promoting gambling aboard ships); section 712-1224 (possession of gambling records in the first degree); section 712-1243 (promoting a dangerous drug in the third degree); section 712-1246 (promoting a harmful drug in the third degree); section 712-1247 (promoting a detrimental drug in the first degree); section 712-1249.6 (promoting a controlled substance in, on, or near schools or school vehicles); section 803-42 (interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited); or section 846E-9(a)(2) (penalty for failure to comply with requirements of chapter 846E).

(b) Criminal charges may be instituted by written information for a felony when the charge is a class B felony under section 134-C (place to keep loaded firearms other than pistols and revolvers); section 134-E (place to keep pistol or revolver); section 134-F (carrying or possessing a loaded firearm on a public highway); section 134-7(b) (ownership or possession prohibited); section 329-43.5 (prohibited acts related to drug paraphernalia); section 708-810 (burglary in the first degree); section 708-830 (theft in the first degree); [§] 708-839.7 (identity theft in the second degree); section 708-851 (forgery in the first degree); section 708-891 (computer fraud in the first degree); section 708-892 (computer damage in the first degree); section 712-1242 (promoting a dangerous drug in the second degree); section 712-1245 (promoting a harmful drug in the second degree); or section 712-1249.5 (commercial promotion of marijuana in the second degree).”

ACT 67

SECTION 6. Section 134-6, Hawaii Revised Statutes, is repealed.

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

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

(Approved May 2, 2006.)

Notes

1. Should be after "section".
2. Comma should be underscored.
3. Edited pursuant to HRS §23G-16.5.

ACT 67

H.B. NO. 1982

A Bill for an Act Relating to the State Fish.

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

SECTION 1. The humuhumunukunukuapua'a (Rhinecanthus rectangulus), also known as the rectangular triggerfish, was designated as the official fish of the State in 1985. However, the enabling legislation was automatically repealed by operation of law in 1990, five years after the date of approval. Many among the general public, however, mistakenly assume that the humuhumunukunukuapua'a is still the state fish. The legislature finds that Hawaii does not currently have a fish designated as the official fish of the State.

The purpose of this Act is to permanently establish the humuhumunukunukuapua'a as the official fish of the State.

SECTION 2. Chapter 5, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§5- State fish. The humuhumunukunukuapua'a (Rhinecanthus rectangulus), also known as the rectangular triggerfish, is established and designated as the official fish of the State."

SECTION 3. New statutory material is underscored.¹

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

(Approved May 2, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 68

H.B. NO. 1984

A Bill for an Act Relating to Conviction Data.

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

SECTION 1. The judicial council, established pursuant to section 601-4, Hawaii Revised Statutes, through a review committee shall investigate the current status of internet access to state criminal conviction data and recommend to the legislature action necessary to protect offenders balanced against the public interest in access to criminal conviction data. The review committee shall include representatives from:

- (1) The judiciary;
- (2) The attorney general;
- (3) The office of the public defender; and
- (4) The American Civil Liberties Union.

The review committee shall investigate the current status of:

- (1) Methods and sources for collecting criminal conviction data made available over the internet;
- (2) The extent to which the public is granted internet access to criminal conviction data, and whether further limitations on internet access to this data is necessary to ensure proper uses of the data, such as promoting public safety;
- (3) The methods by which the public may conduct internet searches for criminal conviction data, including search engines and other means of sorting data by category; and
- (4) Any other relevant issues concerning internet access to criminal conviction data.

The investigation of the review committee shall not include a review of the sex offender registry pursuant to chapter 846E.

The review committee shall submit a final report of its findings and recommendations, together with any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2007.

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

(Approved May 2, 2006.)

ACT 69

H.B. NO. 2192

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. The purpose of this Act is to amend chapter 329, Hawaii Revised Statutes, by:

- (1) Adding and amending definitions to section 329-1, Hawaii Revised Statutes, to be consistent with federal law;
- (2) Defining "central fill pharmacy";
- (3) Clarifying the circumstances under which narcotics may be used;
- (4) Clarifying the requirements of a controlled substance prescription;
- (5) Clarifying the conditions for the transmittal of prescriptions by facsimile equipment;

- (6) Adding new violations of prohibited acts; and
- (7) Allowing the sharing of controlled substances prescription information with other governmental agencies.

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

1. By adding eight new definitions to be appropriately inserted and to read:

““Address” means, with respect to prescriptions, the physical location where an individual resides such as:

- (1) Street address, city, and state;
- (2) Tax map key number; or
- (3) The description of a physical location.

“Central fill pharmacy” means a pharmacy located in the State that is registered pursuant to section 329-32 to prepare controlled substance orders for dispensing to the ultimate user pursuant to a valid prescription transmitted to it by a registered pharmacy.

“Detoxification treatment” means the dispensing, for a specific period of time, of a narcotic drug or narcotic drugs in decreasing doses to an individual to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within a specified period of time. There are two types of detoxification treatments: short-term detoxification treatment and long-term detoxification treatment;

- (1) Short-term detoxification treatment is for a period not in excess of thirty days; and
- (2) Long-term detoxification treatment is for a period more than thirty days but not in excess of one hundred eighty days.

“Maintenance treatment” means the dispensing of a narcotic drug in the treatment of an individual for dependence upon heroin or other morphine-like drug, for a period in excess of twenty-one days.

“Pharmacist” means a person who is licensed or holds a permit under chapter 461 to practice pharmacy, including a pharmacy intern who is under the immediate and direct supervision of a licensed pharmacist.

“Prescribe” means to direct, designate, or order the use of a formula for the preparation of a medicine for a disease or illness and the manner of using them.

“Prescriber” means one who is authorized to issue a prescription.

“Prescription” means an order for medication, which is dispensed to or for an ultimate user. “Prescription” shall not include an order for medication that is dispensed for immediate administration to the ultimate user, such as a chart order to dispense a drug to a bed patient for immediate administration in a hospital.”

2. By amending the definitions of “identification number” and “practitioner” to read:

““Identification number” means, with respect to a patient:

- (1) The patient’s unique[,] valid driver’s license number [of the patient,] or state identification card number, followed by [the two-digit United States Postal Service code for] the abbreviation of the state issuing the driver’s license [or, if the patient is a foreign patient, the patient’s passport number. If the patient does not have a driver’s license, the “identification number” means the patient’s social security number, followed by the patient’s state of residency code. If the patient is less than eighteen years old and has no such identification, the identification number means the unique number contained on the valid driver’s

- license of the patient's parent or guardian; or] or state identification card, or the patient's military identification number;
- (2) If the patient is a foreign patient, the patient's passport number;
- (3) If the patient does not have a valid driver's license, state identification card, or military identification, the patient's social security number;
- (4) If the patient is less than eighteen years of age and has none of the identification referred to in paragraph (1), (2), or (3), the unique number on the valid driver's license, state identification card, military identification, or passport of the patient's parent or guardian; or
- [(2)] (5) If the controlled substance is obtained for an animal, the unique number of the animal's owner as described in paragraph (1), (2), or (3) [of the animal's owner].

“Practitioner” means:

- (1) A physician, dentist, veterinarian, scientific investigator, or other person licensed and registered under section 329-32 to distribute, dispense, or conduct research with respect to a controlled substance in the course of professional practice or research in this State[-]; and
- (2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this State.
- [(3)] ~~Prescribe means: to direct, designate or order the use of a formula for the preparation of a drug and medicine for a disease or illness and the manner of using them.~~
- (4) ~~Prescriber means: one who is authorized to issue a prescription.~~
- (5) ~~Prescription means: an order or formula issued by a licensed practitioner of medicine, osteopathy, podiatry, dentistry, or veterinary medicine, for the compounding or dispensing of drugs.]’~~

SECTION 3. Section 329-38, Hawaii Revised Statutes, is amended to read as follows:

“§329-38 Prescriptions. (a) No controlled substance in schedule II may be dispensed without a written prescription of a practitioner, except:

- (1) In the case of an emergency situation, a pharmacist may dispense a controlled substance listed in schedule II upon receiving oral authorization from a prescribing practitioner; provided that:
- (A) The quantity prescribed and dispensed is limited to the amount adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written prescription signed by the prescribing practitioner);
- (B) If the prescribing practitioner is not known to the pharmacist, the pharmacist shall make a reasonable effort to determine that the oral authorization came from a registered practitioner, which may include a callback to the prescribing practitioner using the phone number in the telephone directory or other good faith efforts to identify the prescriber; and
- [(B)] (C) Within [seventy-two hours] seven days after authorizing an emergency oral prescription, the prescribing practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of this subsection, the prescription shall have written on its face “Authorization for Emergency Dispensing”. The written prescription may be delivered to

the pharmacist in person or by mail, and if by mail, the prescription ~~[must]~~ shall be postmarked within the ~~[seventy-two hour]~~ seven-day period. Upon receipt, the dispensing pharmacist shall attach this prescription to the oral emergency prescription, which had earlier been reduced to writing. The pharmacist shall notify the administrator if the prescribing practitioner fails to deliver a written prescription to the pharmacy within the allotted time. Failure of the pharmacist to do so shall void the authority conferred by this paragraph to dispense without a written prescription of a prescribing individual practitioner. Any ~~[physician]~~ practitioner who fails to deliver a written prescription within the ~~[seventy-two hour]~~ seven-day period shall be in violation of section 329-41(a)(1); or

- (2) When dispensed directly by a practitioner, other than a pharmacist, to the ultimate user. The practitioner in dispensing a controlled substance in schedule II shall affix to the package a label showing:
 - (A) The date of dispensing;
 - (B) The name, strength, and quantity ~~[issued]~~ of the drug~~;~~ dispensed;
 - (C) The dispensing practitioner's name and address;
 - (D) The name of the patient;
 - ~~[(E) The date the potency of the drug expires if that date is available from the manufacturer or principal labeler; and]~~
 - (E) The "use by" date for the drug, which shall be:
 - (i) The expiration date on the manufacture's¹ or principal labeler's container; or
 - (ii) One year from the date the drug is dispensed, whichever is earlier; and
 - (F) Directions for use, and cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all schedule II controlled substances ordered, administered, prescribed, and dispensed shall be maintained for five years. Prescriptions and records of dispensing shall otherwise be retained in conformance with the requirements of section 329-36. No prescription for a controlled substance in schedule II may be refilled.

(b) A schedule II controlled substance prescription shall:

- (1) Be filled within three days following the date the prescription was issued to the patient; and
- (2) Be supplied to a patient only if the prescription has been filled and held by the pharmacy for not more than seven days.

~~[(b)]~~ (c) The transfer of original prescription information for a controlled substance listed in schedule III, IV, or V for the purpose of refill dispensing is permissible between pharmacies on a one time basis, subject to the following requirements:

- (1) The transfer shall be communicated directly between two licensed pharmacists, and the transferring pharmacist shall:
 - (A) Write or otherwise place the word "VOID" on the face of the invalidated prescription;
 - (B) Record on the reverse of the invalidated prescription the name, address, and DEA registration number of the pharmacy to which it was transferred and the name of the pharmacist receiving the prescription information; and

- (C) Record the date of the transfer and the name of the pharmacist transferring the information;
- (2) The pharmacist receiving the transferred prescription information shall:
- (A) Write or otherwise place the word “transfer” on the face of the transferred prescription;
- (B) Record all information required to be on a prescription, including:
- (i) The date of issuance of original prescription;
- (ii) The original number of refills authorized on original prescription;
- (iii) The date of original dispensing;
- (iv) The number of valid refills remaining and date of last refill;
- (v) The pharmacy’s name, address, DEA registration number, and original prescription number from which the prescription information was transferred; and
- (vi) The name of transferor pharmacist;
- (3) Both the original and transferred prescription ~~[must]~~ shall be maintained for a period of five years from the date of last refill; ~~[and]~~
- (4) The procedure allowing the transfer of prescription information for refill purposes is permissible only between pharmacies located on the same island in this State~~[-]~~; and
- (5) Any pharmacy electronically accessing a prescription record shall satisfy all information requirements of a manual mode prescription transferal.

Failure to comply with this subsection shall void the authority of the pharmacy to transfer prescriptions or receive a transferred prescription to or from another pharmacy.

(d) A pharmacy and an authorized central fill pharmacy may share information for initial and refill prescriptions of schedule III, IV, or V controlled substances. The following requirements shall apply:

- (1) A pharmacy may electronically transmit, including by facsimile, prescriptions for controlled substances listed in schedule III, IV, or V to a central fill pharmacy. The pharmacy transmitting the prescription information shall:
- (A) Ensure that all information required to be on a prescription pursuant to subsection (g) is transmitted to the central fill pharmacy either on the face of the prescription or electronically; and
- (B) Keep a record of receipt of the filled prescription, including the date of receipt, the method of delivery (private, common, or contract carrier) and the identity of the pharmacy employee accepting delivery; and
- (2) The central fill pharmacy receiving the transmitted prescription shall:
- (A) Keep for five years a copy of a prescription received by facsimile or an electronic record of all the information transmitted by the pharmacy, including the name, address, and DEA registration number of the pharmacy transmitting the prescription;
- (B) Keep a record of the date of receipt of the transmitted prescription, the name of the licensed pharmacists filling the prescription, and the dates the prescription was filled or is refilled; and
- (C) Keep a record of the date the filled prescription was shipped to the pharmacy.

~~[(e)]~~ (e) No controlled substance in schedule III, IV, or V may be dispensed without a written, facsimile of a written, or oral prescription of a practitioner, except when a controlled substance is dispensed directly by a practitioner, other than a

pharmacist, to an ultimate user. The practitioner, in dispensing a controlled substance in schedule III, IV, or V, shall affix to the package a label showing:

- (1) The date of dispensing;
- (2) The name, strength, and quantity issued of the drug;
- (3) The dispensing practitioner's name and business address;
- (4) The name of the patient;
- [5] ~~The date the potency of the drug expires, if that date is available from the manufacturer or the principal labeler;~~
- (5) The "use by" date for the drug, which shall be:
 - (A) The expiration date on the manufacturer's or principal labeler's container; or
 - (B) One year from the date the drug is dispensed, whichever is earlier;
- (6) Directions for use; and
- (7) Cautionary statements, if any, contained in the prescription or as required by law.

A complete and accurate record of all schedule III, IV, and V controlled substances administered, prescribed, and dispensed shall be maintained for five years. Prescriptions and records of dispensing shall be retained in conformance with the requirements of section 329-36 unless otherwise provided by law. Prescriptions may not be filled or refilled more than three months after the date of the prescription or be refilled more than two times after the date of the prescription, unless the prescription is renewed by the practitioner.

~~[(d)]~~ (f) The effectiveness of a prescription for the purposes of this section shall be determined as follows:

- (1) A prescription for a controlled substance shall be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of the practitioner's professional practice. The responsibility for the proper prescribing and dispensing of controlled substances shall be upon the prescribing practitioner, but a corresponding responsibility shall rest with the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or for legitimate and authorized research shall not be deemed a prescription within the meaning and intent of this section, and the person who knowingly fills such a purported prescription, as well as the person who issues the prescription, shall be subject to the penalties provided for violations of this chapter;
- (2) A prescription may not be issued to allow an individual practitioner to obtain controlled substances for supplying the individual practitioner for the purpose of general dispensing to patients;
- (3) A prescription may not be issued for the dispensing of narcotic drugs listed in any schedule for the purpose of "detoxification treatment" or "maintenance treatment" ~~[-Nothing in this section shall prohibit a physician or authorized hospital staff from administering or dispensing narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction; and]~~ except as follows:
 - (A) The administering or dispensing directly (but not prescribing) of narcotic drugs listed in any schedule to a narcotic drug-dependent person for "detoxification treatment" or "maintenance treatment" shall be deemed to be "in the course of a practitioner's professional practice or research" so long as the practitioner is registered separately with the department and the federal Drug Enforcement Agency as required by section 329-32(e) and com-

plies with Title 21 Code of Federal Regulations Section 823(g) and any other federal or state regulatory standards relating to treatment qualification, security, records, and unsupervised use of drugs; and

(B) Nothing in this section shall prohibit a physician or authorized hospital staff from administering or dispensing, but not prescribing, narcotic drugs in a hospital to maintain or detoxify a person as an incidental adjunct to medical or surgical treatment of conditions other than addiction;

(4) An individual practitioner ~~[may]~~ shall not prescribe or dispense a substance included in schedule II, III, IV, or V for that individual practitioner's personal use, except in a medical emergency~~[-]; and~~

(5) A pharmacist shall not dispense a substance included in schedule II, III, IV, or V for the pharmacist's personal use.

~~[(e)]~~ (g) Prescriptions for controlled substances shall be issued only as follows:

(1) All prescriptions for controlled substances shall originate from within the State and be dated as of, and signed on, the day when the prescriptions were issued and shall [bear:] contain:

(A) The ~~[full]~~ first and last name and address of the patient; and

~~[(B) The name, address, telephone number, and registration number of the practitioner.]~~

(B) The drug name, strength, dosage form, quantity prescribed, and directions for use. Where a prescription is for gamma hydroxybutyric acid, methadone, or buprenorphine, the practitioner shall record as part of the directions for use, the medical need of the patient for the prescription.

The controlled substance prescriptions shall be no larger than ~~[four]~~ eight and one-half inches by ~~[six and one-half]~~ eleven inches and no smaller than ~~[four]~~ three inches by ~~[five]~~ four inches.

A practitioner may sign a prescription in the same manner as the practitioner would sign a check or legal document (e.g., J.H. Smith or John H. Smith) and shall use both words and figures (e.g., alphabetically and numerically as indications of quantity, such as five (5)), to indicate the amount of controlled substance to be dispensed. Where an oral order is not permitted, prescriptions shall be written with ink or indelible pencil or ~~[by typewriter and]~~ typed, shall be manually signed by the practitioner~~[-]~~, and shall include the name, address, telephone number, and registration number of the practitioner. The prescriptions may be prepared by a secretary or agent for the signature of the practitioner, but the prescribing practitioner shall be responsible in case the prescription does not conform in all essential respects to this chapter and any rules adopted pursuant to this chapter. A corresponding liability shall rest upon a pharmacist who fills a prescription not prepared in the form prescribed by this section~~[;]~~. A pharmacist may add a patient's missing address or change a patient's address on all controlled substance prescriptions after verifying the patient's identification and noting the identification number on the back of the prescription. The pharmacist shall not make changes to the patient's name, the controlled substance being prescribed, the quantity of the prescription, the practitioner's DEA number, or the practitioner's signature;

(2) An intern, resident, or foreign-trained physician, or a physician on the staff of a Department of Veterans Affairs facility or other facility

serving veterans, exempted from registration under this chapter, shall include on all prescriptions issued by the physician:

- (A) The registration number of the hospital or other institution; and
- (B) The special internal code number assigned to the physician by the hospital or other institution in lieu of the registration number of the practitioner required by this section.

The hospital or other institution shall forward a copy of this special internal code number list to the department as often as necessary to update the department with any additions or deletions. Failure to comply with this paragraph shall result in the suspension of that facility's privilege to fill controlled substance prescriptions at pharmacies outside of the hospital or other institution. Each written prescription shall have the name of the physician stamped, typed, or hand-printed on it, as well as the signature of the physician;

- (3) An official exempted from registration shall include on all prescriptions issued by the official:
 - (A) The official's branch of service or agency (e.g., "U.S. Army" or "Public Health Service"); and
 - (B) The official's service identification number, in lieu of the registration number of the practitioner required by this section. The service identification number for a Public Health Service employee shall be the employee's social security identification number.

Each prescription shall have the name of the officer stamped, typed, or handprinted on it, as well as the signature of the officer; and

- (4) A physician assistant registered to prescribe controlled substances under the authorization of a supervising physician shall include on all controlled substance prescriptions issued:
 - (A) The DEA registration number of the supervising physician; and
 - (B) The DEA registration number of the physician assistant.

Each written controlled substance prescription issued shall include the printed, stamped, typed, or hand-printed name, address, and phone number of both the supervising physician and physician assistant, and shall be signed by the physician assistant. The medical record of each written controlled substance prescription issued by a physician assistant shall be reviewed and initialed by the physician assistant's supervising physician within seven working days.

~~[(f)]~~ (h) A prescription for controlled substances may only be filled by a pharmacist acting in the usual course of the pharmacist's professional practice and either registered individually or employed in a registered pharmacy, central fill pharmacy, or registered institutional practitioner. A central fill pharmacy authorized to fill prescriptions on behalf of a pharmacy shall have a contractual relationship with the pharmacy that provides for this activity or shall share a common owner with the pharmacy. A central fill pharmacy shall not prepare prescriptions for any controlled substance listed in schedule II.

~~[(g)]~~ (i) 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 remain-

ing 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~~ shall 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~~ shall 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~~ shall 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 thirty days from the issue date unless sooner terminated by the discontinuance of medication.

~~[(h)]~~ (j) A prescription for a schedule II controlled substance may be transmitted by the practitioner or the practitioner’s agent to a pharmacy ~~[via]~~ by facsimile equipment; provided that the original written, signed prescription is presented to the pharmacist for review prior to the actual dispensing of the controlled substance, except as noted in subsection ~~[(i), (j), or (k)]~~ (k), (l), or (m). The original prescription shall be maintained in accordance with section 329-36. A prescription for a schedule III, IV, or V controlled substance may be transmitted by the practitioner or the practitioner’s agent to a pharmacy by facsimile; provided that:

- (1) The information shall be communicated only between the prescribing practitioner or the prescriber’s authorized agent and the pharmacy of the patient’s choice;

- (2) The information shall be communicated in a retrievable, recognizable format acceptable to the intended recipient and shall include the physician's oral code designation and the name of the recipient pharmacy;
- (3) No electronic system, software, or other intervening mechanism or party shall alter the practitioner's prescription, order entry, selection, or intended selection without the practitioner's approval on a per prescription per order basis. Facsimile prescription information shall not be altered by any system, software, or other intervening mechanism or party prior to receipt by the intended pharmacy;
- (4) The prescription information processing system shall provide for confidentiality safeguards required by federal or state law; and
- (5) Prescribing practitioners and pharmacists shall exercise prudent and professional judgment regarding the accuracy, validity, and authenticity of any facsimile prescription information. The facsimile shall serve as the original written prescription for purposes of this section and shall be maintained in accordance with section 329-36.

[(+)] (k) A prescription prepared in accordance with subsection [(e)] (g) written for a narcotic listed in schedule II to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion, but does not extend to the dispensing of oral dosage units of controlled substances, may be transmitted by the practitioner or the practitioner's agent to the pharmacy by facsimile. The pharmacist shall note on the face of the facsimile prescription in red ink "Home Infusion/IV" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36.

[(j)] (l) A prescription prepared in accordance with subsection [(e)] (g) written for a schedule II[, III, IV, or V] substance for a patient enrolled in a hospice care program certified or paid for by medicare under Title XVIII or a hospice program that is licensed by the State may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The practitioner or practitioner's agent shall note on the prescription that the patient is a hospice patient. The pharmacist shall note on the face of the facsimile prescription in red ink "HOSPICE" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36.

[(k)] (m) A prescription prepared in accordance with subsection [(e)] (g) written for a schedule II[, III, IV, or V] controlled substance for a resident of a state-licensed long-term care facility may be transmitted by the practitioner or the practitioner's agent to the dispensing pharmacy by facsimile. The pharmacist shall note on the face of the facsimile prescription in red ink "LTCF" and this facsimile shall serve as the original written prescription for purposes of this section and it shall be maintained in accordance with section 329-36."

SECTION 4. Section 329-41, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) It is unlawful for any person:
 - (1) Who is subject to part III to distribute, administer, prescribe, or dispense a controlled substance in violation of section 329-38; however, a licensed manufacturer or wholesaler may sell or dispense a controlled substance to a master of a transpacific ship or a person in charge of a transpacific aircraft upon which no physician is regularly employed, for the actual medical needs of persons on board such ship or aircraft when not in port; provided schedule I or II controlled substances shall be sold

- to the master of such ship or person in charge of such aircraft only in accordance with the provisions set forth in 21 Code of Federal Regulations, [sections] Sections 1301, 1305, and 1307, adopted pursuant to Title 21, United States Code, [section] Section 821;
- (2) Who is a registrant to manufacture a controlled substance not authorized by the registrant's registration or to distribute or dispense a controlled substance not authorized by the registrant's registration to another registrant or another authorized person;
 - (3) To refuse or fail to make available, keep, or furnish any record, notification, order form, prescription, statement, invoice, or information in patient charts relating to the administration, dispensing, or prescribing of controlled substances;
 - (4) To refuse any lawful entry into any premises for any inspection authorized by this chapter;
 - (5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place for the purpose of using these substances or which is used for keeping or selling them in violation of this chapter or chapter 712, part IV; or
 - (6) Who is a practitioner or pharmacist to dispense a controlled substance to any individual not known to the practitioner or pharmacist, without first obtaining proper identification and documenting, by signature on a log book kept by the practitioner or pharmacist, the identity of and the type of identification presented by the individual obtaining the controlled substance. If the individual does not have any form of proper identification, the pharmacist shall verify the validity of the prescription and identity of the patient with the prescriber, or their authorized agent, before dispensing the controlled substance. For the purpose of this section, "proper identification" means government-issued identification containing the photograph, printed name, and signature of the individual obtaining the controlled substance."

SECTION 5. Section 329-42, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- "(a) It is unlawful for any person knowingly or intentionally:
- (1) To distribute as a registrant a controlled substance classified in schedule I or II, except pursuant to an order form as required by section 329-37;
 - (2) To use in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;
 - (3) To obtain or attempt to obtain any controlled substance or procure or attempt to procure the administration of any controlled substance:
 - (A) By fraud, deceit, misrepresentation, embezzlement, theft;
 - (B) By the forgery or alteration of a prescription or of any written order;
 - (C) By furnishing fraudulent medical information or the concealment of a material fact; [or]
 - (D) By the use of a false name, patient identification number, or the giving of false address;
 - (E) By the unauthorized use of a physician's oral call-in number; or
 - (F) By the alteration of a prescription by the addition of future refills;
 - (4) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document

required to be kept or filed under this chapter, or any record required to be kept by this chapter;

- (5) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;
- (6) To misapply or divert to the person’s own use or other unauthorized or illegal use or to take, make away with, or secrete, with intent to misapply or divert to the person’s own use or other unauthorized or illegal use, any controlled substance that shall have come into the person’s possession or under the person’s care as a registrant or as an employee of a registrant who is authorized to possess controlled substances or has access to controlled substances by virtue of the person’s employment; or
- (7) To make, distribute, possess, or sell any prescription form, whether blank, faxed, computer generated, photocopied, or reproduced in any other manner without the authorization of the licensed practitioner.”

SECTION 6. Section 329-104, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) This section shall not prevent the disclosure, at the discretion of the administrator, of investigative information to:

- (1) Law enforcement officers, investigative agents of federal, state, or county law enforcement agencies, prosecuting attorneys, or the attorney general; provided that the administrator has reasonable grounds to believe that the disclosure of any information collected under this part is in furtherance of an ongoing criminal investigation or prosecution;
- (2) Registrants authorized under chapters 448, 453, 460, and 463E who are registered to administer, prescribe, or dispense controlled substances; provided that the information disclosed relates only to the registrant’s own patient; [ø]
- (3) Pharmacists, employed by a pharmacy registered under section 329-32, who request prescription information about a customer relating to a violation or possible violation of this chapter[-]; or
- (4) Other state-authorized governmental prescription-monitoring programs.

Information disclosed to a registrant, [ø] pharmacist, or authorized government agency under this section shall be transmitted [~~by certified mail or a similar means requiring the registrant’s or pharmacist’s signature, respectively, for delivery of the information.~~] by a secure means determined by the designated agency.”

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 2, 2006.)

Note

- 1. So in original.

ACT 70

H.B. NO. 1947

A Bill for an Act Relating to Liability.

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

SECTION 1. Section 264-20, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§264-20]]~~ **Flexibility in highway design; liability of State, counties, and public utilities.** (a) If a highway, including any bridge, principal and minor arterial road, collector and local road, or street, requires new construction, reconstruction, preservation, resurfacing (except for maintenance surfacing), restoration, or rehabilitation, the department of transportation with regard to a state highway, or a county with regard to a county highway, may select or apply flexible highway design guidelines consistent with practices used by the Federal Highway Administration and the American Association of State Highway and Transportation Officials. Flexibility in highway design shall consider, among other factors:

- (1) Safety, durability, and economy of maintenance;
- (2) The constructed and natural environment of the area;
- (3) Community development plans and relevant county ordinances;
- (4) Sites listed on the State or National Register of Historic Places;
- (5) The environmental, scenic, aesthetic, historic, community, and preservation impacts of the activity;
- (6) Access for other modes of transportation, including but not limited to bicycle and pedestrian transportation;
- (7) Access to and integration of sites deemed culturally and historically significant to the communities affected;
- (8) Acceptable engineering practices and standards; and
- (9) Safety studies and other pertinent research.

(b) ~~Any other law to the contrary notwithstanding, [the following parties shall be immune from liability for personal injury, death, or property damage in any accident arising out of the decision to elect] any decision by the State, the department of transportation, a county, or any officers, employees, or agents of the State, the department of transportation, or a county to select or apply flexibility in highway design pursuant to this section and consistent with the practices used by the Federal Highway Administration and the American Association of State Highway and Transportation Officials[;] shall not give rise to a cause of action or claim against:~~

- (1) The State;
- (2) The department of transportation;
- (3) The counties;
- (4) Any public utility regulated under chapter 269 that places its facilities within the highway right of way; or
- (5) Any officer, employee, or agent of an entity listed in paragraphs (1) to (4).

(c) ~~The [immunity from] exception to liability provided in subsection (b) applies only to the decision to select or apply flexibility in highway design pursuant to this section and does not extend to design, construction, repair, correction, or maintenance inconsistent with subsection (a).”~~

SECTION 2. Act 185, Session Laws of Hawaii 2005, is amended by amending section 3 to read as follows:

ACT 71

“SECTION 3. (a) Before [~~June 30, 2006,~~] December 31, 2006, the director of transportation shall establish flexible highway design guidelines to govern new construction, reconstruction, preservation, resurfacing (except for maintenance surfacing), restoration, or rehabilitation of bridges, principal and minor arterial roads, collector and local roads, and streets. The guidelines shall include and address the considerations set forth in section 2 of this Act.

The guidelines shall also provide for documentation of the facts, circumstances, and considerations involved in the flexible design decision, including an explanation of the process and the reasoning that led to the decision.

(b) The director shall establish a process to allow flexible highway design to be considered when designing improvements on the following highways:

- (1) Hana highway, east Maui;
- (2) Hanalei road, north Kauai;
- (3) Hamakua-Honokaa heritage corridor, island of Hawaii;
- (4) Upper Kona road, island of Hawaii; and
- (5) Ka Iwi coastal highway, eastern Oahu.

(c) In establishing the guidelines described under this section, the director shall solicit and consider the views of organizations and elected officials, including but not limited to:

- (1) Those with expertise in:
 - (A) Environmental protection;
 - (B) Historic preservation;
 - (C) Scenic conservation; and
 - (D) Bicycle and pedestrian transportation;
- (2) Community planning organizations;
- (3) The State historic preservation office of the department of land and natural resources; and
- (4) The Federal Highway Administration.”

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 1, 2006.

(Approved May 2, 2006.)

ACT 71

H.B. NO. 2434

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431:10D, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . ANNUITY DISCLOSURE

§431:10D-A **Definitions.** Whenever used in this part, unless a different meaning clearly appears from the context:

“Buyer’s guide” means:

- (1) A buyer’s guide to fixed deferred annuities approved by the commissioner; or

- (2) The National Association of Insurance Commissioners Buyer's Guide to Fixed Deferred Annuities.

"Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

"Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include:

- (1) Premiums;
- (2) Credited interest rates, including any bonus;
- (3) Benefits;
- (4) Values;
- (5) Non-interest-based credits;
- (6) Charges; or
- (7) Elements of formulas used to determine any of the above.

These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

"Disclosure document" means a document provided by an insurer to applicants or prospective applicants for an annuity contract that explains the terms of the contract and contains the information required in section 431:10D-C(d).

"Funding agreement" means an agreement for an insurer to:

- (1) Accept and accumulate funds; and
- (2) Make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

"Generic name" means a short title descriptive of the annuity contract being applied for or illustrated, such as "single premium deferred annuity".

"Guaranteed elements" means:

- (1) Premiums;
- (2) Credited interest rates, including any bonus;
- (3) Benefits;
- (4) Values;
- (5) Non-interest-based credits;
- (6) Charges; or
- (7) Elements of formulas used to determine any of the above,

which are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements used in its calculation are guaranteed.

"Non-guaranteed elements" means:

- (1) Premiums;
- (2) Credited interest rates, including any bonus;
- (3) Benefits;
- (4) Values;
- (5) Non-interest-based credits;
- (6) Charges; or
- (7) Elements of formulas used to determine any of the above,

which are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

"Structured settlement annuity" means:

- (1) A "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code; or
- (2) An annuity that would be a "qualified funding asset" but for the fact that it is not owned by an assignee under a qualified assignment.

§431:10D-B Applicability of standards for disclosure. (a)¹ This part shall apply to all group and individual annuity contracts and certificates, except:

- (1) Registered or non-registered variable annuities or other registered products;
- (2) Immediate and deferred annuities that contain no non-guaranteed elements;
- (3) Annuities used to fund:
 - (A) An employee pension plan that is covered by the Employee Retirement Income Security Act;
 - (B) A plan under section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of the Employee Retirement Income Security Act, is established or maintained by an employer;
 - (C) A governmental or church plan defined in section 414 of the Internal Revenue Code;
 - (D) A deferred compensation plan of a state or any of its political subdivisions under section 457 of the Internal Revenue Code;
 - (E) A tax-exempt organization under section 457 of the Internal Revenue Code; or
 - (F) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

provided that this part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions that an employee elects to make on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract.

For the purposes of this paragraph, “direct solicitation” does not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

- (4) Structured settlement annuities;
- (5) Funding agreements; and
- (6) Charitable gift annuities issued pursuant to paragraphs (1) to (4) of section 431:1-204(c).

§431:10D-C Standards for the disclosure document and buyer’s guide.

(a) Where the application for an annuity contract is taken:

- (1) In a personal meeting, both the buyer’s guide and disclosure document shall be given to the applicant at or before the time of application;
- (2) By means other than in a personal meeting, both the buyer’s guide and disclosure document shall be sent to the applicant no later than five business days after the completed application is received by the insurer;
- (3) By means of a direct solicitation through the mail, providing both the buyer’s guide and disclosure document in the mailing inviting the prospective applicant to apply for the annuity contract shall be deemed to satisfy the requirement that the buyer’s guide and disclosure statement be provided no later than five business days after receipt of the application; and
- (4) By means of the insurer’s internet website, the insurer’s reasonable steps to make the buyer’s guide available for viewing and printing on the insurer’s website shall be deemed to satisfy the requirement that the buyer’s guide and disclosure statement be provided no later than five business days after receipt of the application; and²

(b) A solicitation for an annuity contract provided in other than a personal meeting shall include a statement that the prospective applicant may contact the insurance division for a free buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free buyer's guide.

(c) If the buyer's guide and disclosure document are not provided at or before the time of application, a free-look period of no less than fifteen days shall be provided for the applicant to return the annuity contract without penalty, which period shall run concurrently with any other free-look period provided by law.

(d) The disclosure document shall include at least the following information:

- (1) The generic name of the contract;
- (2) The company product name, if different from the generic name;
- (3) The form number;
- (4) The fact that the product is an annuity;
- (5) The insurer's name and address;
- (6) A description of the contract and its benefits, which shall emphasize its long-term nature and include examples, where appropriate, such as:
 - (A) The guaranteed, non-guaranteed, and determinable elements of the contract, their limitations, if any, and an explanation of how they operate; and
 - (B) An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed;
- (7) Periodic income options on both a guaranteed and non-guaranteed basis;
- (8) Any value reductions caused by withdrawals from or surrender of the contract;
- (9) How values in the contract can be accessed;
- (10) The death benefit, if available, and how it will be calculated;
- (11) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract;
- (12) The effect of any rider, such as a long-term-care rider;
- (13) A listing of specific dollar-amount or percentage charges and fees and an explanation of how they apply; and
- (14) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(e) Insurers shall define terms used in the disclosure statement in language that facilitates comprehension by the average person within the segment of the public to which the disclosure statement is directed.

§431:10D-D Report to contract owners. (a)¹ For annuities in the payout period with changes in non-guaranteed elements, and for the accumulation period of a deferred annuity, the insurer shall at least annually provide each contract owner with a report of the status of the contract that contains at least the following information:

- (1) The beginning and ending dates of the current report period;
- (2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
- (3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period; and
- (4) The amount of outstanding loans, if any, as of the end of the current report period.

ACT 72

§431:10D-E Penalties. In addition to any other penalties provided by law, violation of any requirement of this part is an unfair method of competition or unfair or deceptive act or practice under section 431:13-102.”

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

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

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

SECTION 5. This Act shall take effect on January 1, 2007.

(Approved May 2, 2006.)

Notes

1. No subsection (b).
2. So in original.

ACT 72

H.B. NO. 2898

A Bill for an Act Relating to Arbitration.

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

SECTION 1. Under the existing laws, the district courts have exclusive jurisdiction over civil claims in which the disputed amount is \$10,000 or less. However the circuit courts have exclusive jurisdiction over disputes subject to arbitration regardless of the amount in dispute. Many disputes subject to arbitration are well below the \$10,000 limit at which the district courts would normally have jurisdiction. The legislature finds that this is not an economical or efficient use of judicial resources and it discourages the use of arbitration in the area of small disputes. Therefore, the mere existence of an arbitration agreement should not impact which court has jurisdiction over civil claims.

The purpose of this Act is to give the district courts jurisdiction over civil actions subject to arbitration agreements where the amount in dispute is less than \$10,000, unless the arbitration is subject to chapter 89, chapter 377, or the National Labor Relations Act.

SECTION 2. Section 658A-1, Hawaii Revised Statutes, is amended by amending the definition of “court” to read as follows:

““Court” means [the] any district or circuit court [of the appropriate judicial circuit] of competent jurisdiction in this State, unless otherwise indicated. In cases involving arbitration subject to chapter 89, chapter 377, or the National Labor Relations Act, “court” means the circuit court of the appropriate judicial circuit.”

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 2, 2006.)

ACT 73

H.B. NO. 3253

A Bill for an Act Relating to the Hawaii Rules of Evidence.

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

SECTION 1. Section 626-1, Hawaii Revised Statutes, is amended by amending rule 103, subsection (a), to read as follows:

“(a) Effect of erroneous ruling. Error may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and:

- (1) Objection. In case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection, if the specific ground was not apparent from the context; or
- (2) Offer of proof. In case the ruling is one excluding evidence, the substance of the evidence was made known to the court by offer or was apparent from the context within which questions were asked.

Once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, a party need not renew an objection or offer of proof to preserve a claim of error for appeal.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.

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

(Approved May 2, 2006.)

ACT 74

H.B. NO. 2050

A Bill for an Act Relating to International Matchmaking.

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

SECTION 1. Section 489N-1, Hawaii Revised Statutes, is amended by amending the definition of “marital history information” to read as follows:

““Marital history information” means a declaration of [~~the person’s~~] a Hawaii resident’s current marital status, the number of times the [~~person~~] Hawaii resident has previously been married, the number of domestic abuse orders of protection issued against the Hawaii resident, and whether any previous marriages by the Hawaii resident occurred as a result of receiving services from an international matchmaking organization.”

SECTION 2. Section 489N-2, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§489N-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~~[-]~~;
- (4) Require a Hawaii resident requesting the services of an international matchmaking organization to submit or authorize the international matchmaking organization access to the resident's complete criminal history and marital history information; and
- (5) Submit an annual report on its business activities to the department of commerce and consumer affairs.

(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 of the Hawaii resident 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 the Hawaii resident's marriages, annulments, ~~[and]~~ dissolutions, and the number of domestic abuse orders of protection issued against the Hawaii resident that occurred in this State or in any other ~~[states]~~ state or ~~[countries]~~ country.”

SECTION 3. Section 489N-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§489N-3**~~]]~~ **Jurisdiction.** (a) 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.

(b) Notwithstanding any other law to the contrary, Hawaii residents using the services of an international matchmaking organization shall be subject to the laws of this State.”

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 2, 2006.)

ACT 75

H.B. NO. 1

A Bill for an Act Relating to Higher Education.

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

SECTION 1. The legislature finds that Act 226, Session Laws of Hawaii 2004, established the higher education statutory analysis interim study group and required the study group to suggest an improved organizational framework for statutes relating to higher education and the University of Hawaii, recommending statutes for consolidation, amendment, or repeal. The Act further required the study group to submit its findings and recommendations, including proposed legislation, to the legislature no later than twenty days before the convening of the regular session of 2005.

The study group was co-chaired by:

- (1) Representative K. Mark Takai, chair of the house committee on higher education; and
- (2) Senator Norman Sakamoto, chair of the senate committee on education.

The study group was composed of the following persons, who were jointly appointed by the speaker of the house of representatives and the president of the senate:

- (1) Patricia Lee, chair, board of regents of the University of Hawaii;
- (2) David McClain, acting president, University of Hawaii;
- (3) Professor Floyd McCoy, faculty member, all campus council of faculty senate chairs, University of Hawaii;
- (4) Professor Robert Bley-Vroman, faculty member, University of Hawaii at Manoa faculty senate;
- (5) Kristopher Kaupalolo, student, University of Hawaii student caucus and graduate student organization;
- (6) Andrew Ogata, student, University of Hawaii student caucus;
- (7) Walter Kirimitsu, general counsel, University of Hawaii;
- (8) David Morihara, director of government relations, University of Hawaii;
- (9) Mark Rosen, director, senate majority research office; and
- (10) Linda Oamilda, director, house majority staff office.

The legislature further finds that, upon its formation, the study group met over the interim to review and analyze statutes that the group identified as being relevant to the recodification process. The study group found that several sections and chapters of the Hawaii Revised Statutes relating to higher education and the University of Hawaii were in need of reorganization and recodification.

The purpose of this Act is to implement the study group's legislative proposals for improving the organizational framework of the relevant statutes. Specifically, this Act updates and clarifies those statutory provisions through the processes of consolidation, amendment, and repeal, to provide consistency and clarity.

The two tables below outline the improved organizational framework of the relevant statutes. The first table is a table of contents of the University of Hawaii statutes, as recodified. The first column shows the new, recodified section numbers in consecutive numerical order. The second column shows the statutory sources

from which the new sections were derived, specifically, the original section numbers. The second table, the table of derivation, switches the approach of the first table. The first column shows the original section numbers in consecutive numerical order. The second column shows the new, recodified section numbers. The table of derivation also indicates areas in the original sections where language was originally added, amended, or repealed by the study group in its proposed recodification, aside from grammatical or stylistic changes.

The tables, as well as the text of this Act, have been updated to reflect the acts from the regular session of 2005.

Table 1.

**CHAPTER
UNIVERSITY OF HAWAII**

Part I. System Structure

A. General and Administrative

Recodified §	Codified §	Subject Matter
-101	304-1	Establishment
-102	304-5	Purposes of the university
-103	304-2	Public corporation; powers
-104	304-3	Regents
-105	304-4 (a), (d) to (f)	Powers of regents
-106	304-7	Gifts
-107	304-10	Loans; advances
-108	304-6	Suits
-109	304-6.3	Service of process
-110	304-6.2 (d) to (f)	Indemnity
-111	304-6.5	Indemnity: institutions
-112	304-10.5	RCUH contracts
-113	304-8.41 (a)	Commercial enterprises
-114	304-23	Hawaii history
-115	304-24	War records depository
-116	304-8.911	Child care programs
-117	304-111	Western Governors Univ

B. Agriculture

Recodified §	Codified §	Subject Matter
-121	304-73	Soil conservation policy
-122	304-74	BOR as State designee
-123	304-75	Agency powers and duties
-124	304-72	Specialist in cooperatives
-125	304-76	UH Hilo agriculture

C. Career and Technical Education Under Federal Aid

Recodified §	Codified §	Subject Matter
-131	305A-2	BOR as State designee
-132	305A-3	Board power and authority
-133	305A-4	Advisory council

Part II. Students

A. Tuition and Fees

Recodified §	Codified §	Subject Matter
-141	304-4 (b): ¶¶ 1, 2	Tuition fees
-142	304-4 (c)	Residence for tuition purposes
-143	304-4.4	Public meetings exemption

B. Scholarship and Assistance Programs

Recodified §	Codified §	Subject Matter
-151	304-16.6 (c): 1 st sentence	Scholarship/assistance
-152	304-16.5 (b): 1 st sentence	Tuition waivers
	304-4 (b): ¶3	
-153	304-8.95	HOPE

C. State Higher Education Loans

Recodified §	Codified §	Subject Matter
-161	304-92	Loan eligibility; amounts
-162	304-93	Repayment; collection
-163	304-94	Capacity of minors
-164	304-95	Rules

D. Hawaii Educator Loans

Recodified §	Codified §	Subject Matter
-171	304-20.6 (a)	Loan eligibility; amounts
-172	304-20.6 (b) to (e): exc. part of (b)	Repayment; waiver; collection
-173	NEW	Capacity of minors
-174	304-20.6 (b): last ¶	Rules

E. Educational Opportunities

Recodified §	Codified §	Subject Matter
-181 (a)	304-63	Equal education
-181 (b)	304-63.1	Coordinating office
-182 (a)	305E-1	College-credit equivalency
-182 (b)	305E-2	Policies and procedures

ACT 75

Recodified §	Codified §	Subject Matter
-182 (c)	305E-3	Eligibility
-183	304-67.5	Running start program

F. Continuing Education

Recodified §	Codified §	Subject Matter
-191	304-28	Tuberculosis clearance

Part III. Personnel**A. Positions and Compensation**

Recodified §	Codified §	Subject Matter
-201	304-11	Exempt personnel
-202	304-13	Classification schedule
-203	304-12	Faculty exchange privileges
-204	304-13.5	Annual report
-205	304-4.3	University general counsel
-206	304-25	Education lab school cafeteria

Part IV. Divisions, Departments, and Programs**A. Community Colleges**

Recodified §	Codified §	Subject Matter
-211	305-1	System of colleges
-212	305-2	Powers of the board

B. Teacher Education: College; Institute

Recodified §	Codified §	Subject Matter
-221	304-20 (a)	College of education
-222	304-20 (b)	Teacher ed coordinating cmtee
-223	304-20.5	Educational partnerships

C. Hawaiian Language College

Recodified §	Codified §	Subject Matter
-231	304-69: except last 2 sentences	Establishment
-232	304-70	Functions

D. School of Law

Recodified §	Codified §	Subject Matter
-241	304-62	Law school establishment
-242	304-62.5	Procurement institute, established

E. Nursing and Dental Hygiene: School; Center

Recodified §	Codified §	Subject Matter
-251	304-39	School of nursing/dental hygiene
-252	304-40	Functions of school
-253	304-41	Power to contract
-254	304D-1	Center for nursing
-255	304D-2	Advisory board powers
-256	304D-3	Center functions
-257	304D-4	Collaboration

F. Geophysics and Planetology Institute

Recodified §	Codified §	Subject Matter
-261	304-42	Geophysics and planetology institute
-262	304-43	State geophysicists
-263	304-44	Federal assistance encouraged

G. Environmental Center

Recodified §	Codified §	Subject Matter
-271 (a)	341-3 (b)	Environmental center
-271 (b)	341-5 (a)	Structure and functions
-271 (c)	341-5 (b)	Structure and functions

H. Center for Labor Education and Research

Recodified §	Codified §	Subject Matter
-281	304-34	Center; established
-282	304-35	Functions and programs
-283	304-36	Advisory council

I. Aquarium and Marine Laboratory

Recodified §	Codified §	Subject Matter
-291	304-30	State aquarium
-292	304-31	Site
-293	304-32	Admission and user fees

J. Medical Education Council

Recodified §	Codified §	Subject Matter
-301	304-116	Definitions
-302	304-117	Graduate medical education program
-303	304-118	Medical education council
-304	304-119	Council duties
-305	304-120	Council powers

ACT 75**K. Special Medical Residency Program**

Recodified §	Codified §	Subject Matter
-311	304-66.1	Findings and purpose
-312	304-66.2	Qualifications for residency
-313	304-66.3	Contract to fill a position
-314	304-66.4	Penalty for breach
-315	304-66.5	Residency program; defined

L. [Reserved]**M. Other Special Medical or Nursing Programs**

Recodified §	Codified §	Subject Matter
-331	304-67	Family practice residency
-332	304-68	Health-related tourism

N. Other Special Programs

Recodified §	Codified §	Subject Matter
-336	304-55	Food and beverage

Part V. Financial Structure**A. Budget Preparation and Administration**

Recodified §	Codified §	Subject Matter
-341	304-4.5	Benchmarks; budget request
-342	304-19	Budget request computation
-343	304-8 (a)	App; accounts; depositories
-344	304-7.8: exc last clause	S/R funds appropriations
-345	304-7.9	S/R funds management
-346	304-4.6	S/R funds public hearing exemption
-347 (a)	304-8 (b)	S/R funds annual report
-347 (b)	304-7.8: last clause	S/R annual report; excess expenditures
-347 (c)	NEW	S/R annual report; other items

B. General Funds

Recodified §	Codified §	Subject Matter
-351	304-7.5	General fund budget appropriations

C. Special Funds

Recodified §	Codified §	Subject Matter
-361	304-6.2 (a) to (c), (g)	UH risk management
-362	304-8.8	UHM malpractice
-363	304-16.5 (a), (c), (d)	UH tuition and fees
-364	304-8.9	Systemwide info tech
-365	304-8.93	Library
-366	304-8.955	UH community services
-367	304-8.956	UH aux enterprises
-368	304-112	Western Governors Univ
-369	304-16.6: except pt. of (c)	Scholarship/assistance
-369 (c)	304-16.6(c): 3 rd sentence	Waiver/scholar rpt
	304-16.5(b): 3 rd sentence	HOPE rpt
	304-16.5(b): 2 nd sentence	Waiver recommendations
-370	304-91	State higher ed loan
-371	304-20.6 (b): part of ¶1	Hawaii educator loan
-372	305-4	Community colleges
-373	304D-5	Center for nursing
-374	304-121	Medical education
-375	304-33	State aquarium
-376	304-1.5	UH West Oahu
-377	306-10	UH revenue-undertakings

D. Revolving Funds

Recodified §	Codified §	Subject Matter
-381	304-8.41 (b)	Commercial enterprises
-382	304-8.91	Child care programs
-383	304-8.1: except (b), 1 st sentence	Research/training
-384	304-8.92 (a)	Discoveries/inventions
-385	304-8.2	Student health center
-386	304-8.3	Transcript and diploma
-387	304-8.6	UH student activities
-388	304-8.96 (a)	UH housing assistance
-389	304-8.97	UH alumni
-390	304-8.98	UH graduate application
-391	304-8.7	UHM/UHH athletics
-392	304-8.5	CTAHR animal research
-393	304-77	CTAHR seed distribution
-394	304-8.94	UHM CCECS conf center
-395	304-68.5 (a), (c)	Med/Nurs hth/care tourism
-396	304-27	Ed lab school summer
-397	304-37	UHWO CLEAR
-398	304-8.4: 1 st ¶	CC/UHH voc/tech train
-399	304-101	CC/UHH bookstore
-400	304-69: last 2 sentences	UHH Haw lang college
-401	304-8.946	UHH theatre
-402	304-8.945 (a)	UHH CCECS conf center
-403	305-5	CC conf center

Recodified §	Codified §	Subject Matter
-404	304-8.957	UH real prop/facilities
-405	308-2	UH parking

E. Trust Funds

Recodified §	Codified §	Subject Matter
-411	304-18.5	GEAR UP trust fund
-412	304-8.86	UH workers' compensation

F. Federal Funds

Recodified §	Codified §	Subject Matter
-421	304-9	Land-grant college aid
-422	304-71	Agricultural extension service
-423	305A-1	Career and technical education

Part VI. Facilities

A. University Projects

Recodified §	Codified §	Subject Matter
-431	306-1	Definitions
-432	306-2	Powers of the board
-433	306-3	Authorization
-434	306-3.1	Anticipation notes
-435	306-4	Revenue bonds
-436	306-4.1	CUSIP numbers
-437	306-5	Covenants
-438	306-6	Validity of bonds
-439	306-7	Bonds
-440	306-7.5	Support facility
-441	306-8	Payment and security
-442	306-9	Self-supporting
-443	306-11	Exempt from taxation
-444	306-12	Powers herein
-445	306-13	Funding bonds; authorization
-446	306-14	Funding bonds; principal
-447	306-15	Fiscal agents
-448	306-16	Limitation of authority

B. University Parking

Recodified §	Codified §	Subject Matter
-451	308-1	Parking; control by board
-452	308-3	Fines and other penalties
-453	308-4	Revenue bonds

C. University of Hawaii Equipment

Recodified §	Codified §	Subject Matter
-461	304-7.6	UH equipment

Part VII. Administratively Attached Entities

A. Research Corporation of the University of Hawaii

Recodified §	Codified §	Subject Matter
-471	307-1	RCUH as part of UH
-472	307-2	RCUH board
-473	307-3	RCUH powers
-474	307-3.5	RCUH research vessel
-475	307-4	RCUH exceptions
-476	307-5	RCUH officers/employees
-477	307-6	RCUH annual report
-478	307-7	RCUH dissolution
-479	307-8	RCUH patents, copyrights
-480	307-9	RCUH special account
-481	307-10	RCUH state contracts

B. Pacific International Center for High Technology Research

Recodified §	Codified §	Subject Matter
-491	304-65	PICHTR

C. State Post-secondary Education Commission

Recodified §	Codified §	Subject Matter
-501	305H-1	Commission within UH
-502	305H-2	SPEC power/auth.
-503	305H-15	SPEC complaints
-504	305H-16	Cooperation with state agencies

D. Western Regional Education Compact

Recodified §	Codified §	Subject Matter
-511	310-1	WICHE approval
-512	310-2	WICHE terms
-513	310-3	WICHE execution
-514	310-4	WICHE commissioners
-515	310-5	WICHE reports
-516	310-6	WICHE student placement
-517	310-7	WICHE cost payment
-518	310-8	WICHE obligations

E. Hawaii Research Center for Futures Study

Recodified §	Codified §	Subject Matter
-521	222-1	Center assigned to UH
-522	222-2	Futures study duties
-523	222-3	Futures study director

F. Nursing Scholars Program

Recodified §	Codified §	Subject Matter
-531	304E-1	Definitions
-532	304E-2	Nursing scholars program
-533	304E-3	Scholarships; nursing degree programs
-534	304E-4	Program admin
-535	304E-5	Renewal report

Table 2.

TABLE OF DERIVATION

Key: Am = Amended
 N = New
 R = Repealed

Codified §	Recodified §	Subject Matter	Effect
222-1	-521	Futures study center	
222-2	-522	Futures study duties	
222-3	-523	Futures study director	
304-1	-101	UH established	
304-1.5	-376	UH West Oahu	
304-2	-103	Public corporation; powers	
304-3	-104	Regents	
304-3: end of 5 th sentence		Election cert	R
304-4(a),(d)-(f)	-105	Powers of regents	
304-4(b): ¶¶ 1,2	-141	Tuition fees	
304-4(b): ¶ 3	-152	Tuition waivers	
304-4(c)	-142	Residence	
304-4.3	-205	General counsel	
304-4.4	-143	Pub mtgs exempt	
304-4.5	-341	Benchmarks; budget request	
304-4.6	-346	Spec/rev fund fees	
304-5	-102	Purposes of UH	
304-6	-108	Suits	
304-6.2(a)-(c),(g)	-361	Risk mgmt spec fund	
304-6.2(d)-(f)	-110	Indemnity	
304-6.2(h)		Risk mgmt ann rpt	R
304-6.3	-109	Service of process	
304-6.5	-111	Indemnity: inst	

Codified §	Recodified §	Subject Matter	Effect
304-7	-106	Gifts	
304-7.5	-351	General funds	
304-7.6	-461	Equipment	
304-7.8: exc last cl	-344	S/R funds approp	
304-7.8: last cl	-347(b)	S/R expend-appr rpt	
304-7.9	-345	S/R funds mgmt	
304-8(a)	-343	Approp/accts/dep	
304-8(b)	-347(a)	S/R fund ann rpt	
	-347(c)	S/R rpt extra items	N
304-8.1: exc (b), 1 st sentence	-383	Research/train rev fund	
304-8.1(b): 1 st sentence		Research/train ann rpt	R
304-8.2	-385	Stud hth center rev fund	
304-8.3	-386	Transc/dip rev fund	
304-8.4: ¶ 1	-398	CC/UHH voc rev fund	
304-8.4: ¶ 2		CC/UHH voc ann rpt	R
304-8.41(a)	-113	Coml ent auth	
304-8.41(b)	-381	Coml ent rev fund	
304-8.41(c)		Coml ent 7/01-6/04	R
304-8.41(d)		Coml ent ann rpt	R
304-8.5	-392	CTAHR animal rev fund	
304-8.6	-387	Stud activ rev fund	Am
304-8.7	-391	UHM/UHH athl rev fund	
304-8.8	-362	UHM mal spec fund	
304-8.86	-412	Work comp trust fund	
304-8.9	-364	Info tech spec fund	
304-8.91	-382	Child care rev fund	
304-8.911	-116	Child care prog	
304-8.92(a)	-384	Disc/invent rev fund	
304-8.92(b)		Disc/invent ann rpt	R
304-8.93	-365	Library spec fund	
304-8.94	-394	UHM conf ctr rev fund	
304-8.945(a)	-402	UHH conf ctr rev fund	
304-8.945(b)		UHH conf ctr ann rpt	R
304-8.946	-401	UHH theatre rev fund	
304-8.95	-153	HOPE	
304-8.955	-366	Community serv spec fund	
304-8.956	-367	Aux enter spec fund	
304-8.957	-404	Real prop/fac rev fund	
304-8.96(a)	-388	Hous assist rev fund	
304-8.96(b)		Hous assist ann rpt	R
304-8.97	-389	Alumni rev fund	
304-8.98	-390	Grad app rev fund	
304-9	-421	Land-grant coll aid	
304-10	-107	Loans; advances	
304-10.5	-112	RCUH contracts	Am
304-11	-201	Exempt personnel	

Codified §	Recodified §	Subject Matter	Effect
304-12	-203	Faculty exchanges	
304-12.5		Grad assist scholar	R
304-13	-202	Classification sched	
304-13.5	-204	Personnel ann rpt	
304-16.5(a),(c),(d)	-363	Tuition/fees spec fund	
304-16.5(b): 1 st sentence	-152	Tuition waivers	
304-16.5(b): 2 nd sentence	-369(c)	Waiver recommend	
304-16.5(b): 3 rd sentence	-369(c)	HOPE waiv/scholar rpt	Am
304-16.6(a)	-369(a)	Scholar/asst spec fund	Am
304-16.6(b)	-369(b)	Scholar/asst spec fund	
304-16.6(c): 1 st sentence	-151	Scholar/asst prog	Am
304-16.6(c): 2 nd sentence		Scholar/asst ann rpt	R
304-16.6(c): 3 rd sentence	-369(c)	Waiver/scholar rpt	
304-18.5	-411	GEAR UP trust fund	
304-19	-342	Budget computation	
304-20(a)	-221	Coll of education	
304-20(b)	-222	Teacher ed coord cmtee	
304-20.5	-223	Ed partnerships	Am
304-20.6(a)	-171	Educator loan elig	
304-20.6(b)-(e): exc pt of (b)	-172	Ed loan oblig	
304-20.6(b): pt of ¶ 1	-371	Ed loan spec fund	
304-20.6(b): last ¶	-174	Ed loan rules	
	-173	Ed loan minors	N
304-23	-114	Hawaii history	
304-24	-115	War records depository	
304-25	-206	Lab sch caf persons	Am
304-26		Lab sch lunch	R
304-27	-396	Lab sch sumr rev fund	Am
304-28	-191	TB clearance	
304-30	-291	State aquarium	
304-31	-292	Aquarium site	
304-32	-293	Aquarium fees	Am
304-33	-375	Aquarium spec fund	Am
304-34	-281	CLEAR established	
304-35	-282	CLEAR functions	
304-36	-283	CLEAR adv council	
304-37	-397	UHWO CLEAR rev fund	
304-39	-251	Nurs/dent hygiene	Am
304-40	-252	Functions	Am
304-41	-253	Power to contract	Am
304-42	-261	Geo and planet inst	Am
304-43	-262	State geophysicists	Am
304-44	-263	Federal assistance	Am
304-55	-336	Food and beverage	
304-62	-241	Law school	
304-62.5	-242	Procurement inst	

Codified §	Recodified §	Subject Matter	Effect
304-63	-181(a)	Equal education	
304-63.1	-181(b)	Equal ed coord off	
304-65	-491	PICHTR	
304-66.1	-311	Spec med resid	
304-66.2	-312	Qualifications	
304-66.3	-313	Contract	
304-66.4	-314	Penalty for breach	
304-66.5	-315	Residency prog	
304-67	-331	Fam prac resid	
304-67.5	-183(a)-(e)	Running start prog	
	-183(f)	Running start fees	N
304-68	-332	Hth-rel tourism	Am
304-68.5(a),(c)	-395	Hth care tour rev fund	Am
304-68.5(b)		Hth care tour ann rpt	R
304-69: exc last 2 sentences	-231	Haw lang coll	Am
304-69: last 2 sentences	-400	Haw lang coll rev fund	Am
304-70	-232	Haw lang coll functions	
304-71	-422	Ag extension	
304-72	-124	Specialist in coop	
304-73	-121	Soil conserv policy	
304-74	-122	BOR as State designee	
304-75	-123	Agency powers/duties	
304-76	-125	UHH agriculture	
304-77	-393	CTAHR seed rev fund	
304-91	-370	High/ed loan spec fund	Am
304-92	-161	Higher/ed loan elig	Am
304-93	-162	Higher/ed loan oblig	Am
304-94	-163	Higher/ed loan minor	
304-95	-164	Higher/ed loan rules	
304-101	-399	CC/UHH book rev fund	
304-111	-117	Western Governors Univ	
304-112	-368	West Gov spec fund	
304-116	-301	Med ed definitions	
304-117	-302	Grad med ed	
304-118	-303	Med ed council	
304-119	-304	Med ed council duties	
304-120	-305	Med ed council powers	
304-121	-374	Med ed spec fund	Am
304D-1	-254	Center for nursing	Am
304D-2	-255	Ctr nursing adv board powers	
304D-3	-256	Ctr nursing functions	
304D-4	-257	Collab with ctr	Am
304D-5	-373	Ctr nursing spec fund	Am
304E-1	-531	Definitions	
304E-2	-532	Nursing scholars prog	
304E-3	-533	Scholarships; nursing degree programs	
304E-4	-534	Program admin	
304E-5	-535	Renewal report	

Codified §	Recodified §	Subject Matter	Effect
305-1	-211	Community colleges	
305-2	-212	Powers of the board	
305-4	-372	CC spec fund	Am
305-5	-403	CC conf ctr rev fund	Am
305A-1	-423	Tech ed federal aid	Am
305A-2	-131	BOR as designee	
305A-3	-132	BOR power/authority	
305A-4	-133	Tech ed adv council	
305E-1	-182(a)	Coll-credit equiv	
305E-2	-182(b)	Policies/procedures	
305E-3	-182(c)	Eligibility	
305H-1	-501	SPEC	
305H-2	-502	SPEC power/auth	
305H-11		Post/sec review prog	R
305H-12		Post/sec review prog	R
305H-13		Post/sec review prog	R
305H-14		Post/sec review prog	R
305H-15	-503	SPEC complaints	
305H-16	-504	Cooperation with state agencies	
306-1	-431	UH projects definition	
306-2	-432	Powers of the board	
306-3	-433	Authorization	
306-3.1	-434	Anticipation notes	
306-4	-435	Revenue bonds	
306-4.1	-436	CUSIP numbers	
306-5	-437	Covenants	
306-6	-438	Validity of bonds	
306-7	-439	Bonds	
306-7.5	-440	Support facility	
306-8	-441	Payment and security	
306-9	-442	Self-supporting	Am
306-10	-377	Rev-under S/R fund	Am
306-11	-443	Exempt from taxation	
306-12	-444	Powers herein	
306-13	-445	Funding bonds; auth	
306-14	-446	Funding bonds; prin	
306-15	-447	Fiscal agents	
306-16	-448	Limit of authority	
307-1	-471	RCUH as part of UH	
307-2	-472	RCUH board	
307-3	-473	RCUH powers	
307-3.5	-474	RCUH research vessel	
307-4	-475	RCUH exceptions	
307-5	-476	RCUH officers/ employees	
307-6	-477	RCUH annual report	
307-7	-478	RCUH dissolution	
307-8	-479	RCUH patents, copyrights	
307-9	-480	RCUH special account	

Codified §	Recodified §	Subject Matter	Effect
307-10	-481	RCUH state contracts	
308-1	-451	Parking	Am
308-2	-405	UH parking rev fund	
308-3	-452	Parking fines	
308-4	-453	Revenue bonds	
310-1	-511	WICHE approval	
310-2	-512	WICHE terms	
310-3	-513	WICHE execution	
310-4	-514	WICHE commissioners	
310-5	-515	WICHE reports	
310-6	-516	WICHE student placement	
310-7	-517	WICHE cost payment	
310-8	-518	WICHE obligations	
341-3(b)	-271(a)	Environmental ctr	Am
341-5(a)	-271(b)	Structure/functions	
341-5(b)	-271(c)	Structure/functions	

PART I. THE RECODIFICATION

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER UNIVERSITY OF HAWAII SYSTEM

PART I. SYSTEM STRUCTURE

A. General and Administrative Provisions

§ -101 **Establishment; available to all.** There shall be a University of Hawaii that shall consist of such colleges and departments as may from time to time be established. As used in this chapter, “university” refers to the University of Hawaii, unless otherwise required by the context.

No person, because of race, color, religion, sex, national origin, or physical disability, shall be deprived of the privileges of the university. As used in this section, “physical disability” means a physical impairment that substantially limits one or more of a person’s major life activities.

§ -102 **Purposes of the university.** The purposes of the university are to give thorough instruction and conduct research in, and disseminate knowledge of, agriculture, mechanic arts, mathematical, physical, natural, economic, political, and social sciences, languages, literature, history, philosophy, and such other branches of advanced learning as the board of regents from time to time may prescribe and to give such military instruction as the board of regents may prescribe and that the federal government requires. The standard of instruction shall be equal to that given and required in similar universities on the mainland United States. Upon the successful completion of prescribed courses, the board of regents may confer a corresponding degree upon every student who becomes entitled thereto.

§ -103 **University to be public corporation; general powers.** The University of Hawaii is established as the state university and is constituted as a body corporate. The university, under the direction of the board of regents, shall have the following general powers:

- (1) To adopt, amend, and repeal bylaws governing the conduct of its business and the performance of the powers and duties granted to or imposed upon it by law;
- (2) To acquire in any lawful manner any property, real, personal, or mixed, tangible or intangible, or any interest therein; to hold, maintain, use, and operate that property; and to sell, lease, or otherwise dispose of that property at such time, in such manner, and to the extent deemed necessary or appropriate to carry out its purposes;
- (3) To enter into and perform contracts, leases, cooperative agreements, or other transactions as may be necessary in the conduct of its business and on terms it may deem appropriate, with any agency or instrumentality of the United States, with any state, territory, or possession, or with any political subdivision thereof, or with any person, firm, association, or corporation;
- (4) To determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed, and paid, subject to provisions of law specifically applicable to the university;
- (5) To execute, in accordance with its bylaws, all instruments necessary or appropriate in the exercise of any of its powers; and
- (6) To take such actions as may be necessary or appropriate to carry out the powers conferred upon it by law.

§ -104 **Regents; appointment; tenure; qualifications; meetings.** (a) The affairs of the university shall be under the general management and control of the board of regents consisting of twelve members who shall be appointed and may be removed by the governor. The term of each member shall be for four years; provided that the term of the student member shall be for two years. Except as otherwise provided by statute, state officers shall be eligible to appointment and membership. Every member may serve beyond the expiration date of the member's term of appointment until the member's successor has been appointed and has qualified.

(b) At its first meeting after June 30, the board of regents shall elect a chairperson and vice-chairperson, who shall serve until adjournment of its first meeting after June 30 of the next year or thereafter until their successors are appointed. The board shall appoint a secretary, who shall not be a member of the board. The president of the university shall act as executive officer of the board. The board shall meet not less often than ten times annually and, from time to time, may meet in each of the counties of Hawaii, Maui, and Kauai.

(c) The members of the board of regents shall serve without pay but shall be entitled to their travel expenses within the State when attending meetings of the board or when actually engaged in business relating to the work of the board.

§ -105 **Powers of regents; official name.** (a) The board of regents shall have management and control of the general affairs, and exclusive jurisdiction over the internal structure, management, and operation of the university. The board may appoint a treasurer and other officers as it deems necessary. The board may authorize any officer, elected or appointed by it, to approve and sign on its behalf any voucher or other document that the board may approve and sign. The board may delegate to the president or the president's designee the authority to render the final decision in contested case proceedings subject to chapter 91, as it deems appropriate. The board

may purchase or otherwise acquire lands, buildings, appliances, and other property for the purposes of the university and expend such sums of money as, from time to time, may be placed at the disposal of the university from whatever source. All lands, buildings, appliances, and other property so purchased or acquired shall be and remain the property of the university to be used in perpetuity for the benefit of the university. The board, in accordance with law, shall manage the inventory, equipment, surplus property, and expenditures of the university and, subject to chapter 91, may adopt rules, further controlling and regulating the same.

(b) The board of regents shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices, subject to chapter 103D.

(c) The board of regents may enter into concession agreements without regard to chapter 102.

(d) The official name of the board shall be the board of regents, University of Hawaii. The board shall adopt and use a common seal by which all official acts shall be authenticated.

§ -106 Gifts; investment authority. (a) The board of regents may receive, manage, and invest moneys or other property, real, personal, or mixed, which may be given, bequeathed, devised, or in any manner received from sources other than the legislature or any federal appropriation for the purpose of the university, its improvement or adornment, or the aid or advantage of students or faculty, and in general act as trustee on behalf of the university for any of such purposes or objects.

(b) Any law to the contrary notwithstanding, land-grant college aid moneys obtained under section -421 may be received, managed, and invested pursuant to this section.

(c) The board of regents shall cause to be kept suitable books of account wherein shall be recorded each gift, the essential facts of the management thereof, and the expenditure of the income. A statement of all trust funds shall be included in the annual report to the governor and the legislature.

§ -107 Loans; advances. The university may borrow, from time to time from the state treasury, sums that in the aggregate shall not exceed \$100,000, and the director of finance may make the loans to the university, without interest; provided that the loans shall be repaid within the same fiscal year unless extended by the director. In addition to the foregoing, the director of finance may advance funds to the university when required to meet reimbursable costs incurred in connection with federally financed research and training projects; provided that the advances shall not amount in the aggregate to more than \$100,000 at any time.

§ -108 Suits. (a) The university may sue and be sued in its corporate name. Notwithstanding any other law to the contrary, all claims arising out of the acts or omissions of the university or the members of its board of regents, its officers, or its employees, including claims permitted against the State under chapter 661, part I, and claims for torts permitted against the State under chapter 662, may be brought only pursuant to this section and only against the university. However, the university shall be subject to suit only in the manner provided for suits against the State, including section 661-11, and any liability incurred by the university in such a suit shall be solely the liability of the university, shall be payable solely from the moneys and property of the university, and shall not constitute a general obligation of the State or be secured directly or indirectly by the full faith and credit of the State or the general credit of the State or by any revenue or taxes of the State. All defenses available to the State, as well as all limitations on actions against the State, shall be applicable to the university.

(b) The board of regents, upon the advice of its attorney, may arbitrate, compromise, or settle any claim, action, or suit brought against the university pursuant to this section. Any claim compromised or settled under this subsection shall be payable solely from the moneys and property of the university and shall not constitute a general obligation of the State or be secured directly or indirectly by the full faith and credit of the State or the general credit of the State or by any revenue or taxes of the State. Nothing in this subsection precludes the board of regents from requesting and securing legislative appropriations to fund the settlement of any such claim or judgment against the university or its regents, officers, employees, or agents.

(c) Rights and remedies conferred by this section shall be exclusive and shall not be construed to authorize any other claim, suit, or action against the State. In addition, a judgment, compromise, or settlement in an action brought against the university under this section shall constitute a complete bar to any action brought by the claimant, by reason of the same subject matter, against the State or an officer or employee of the university.

(d) The university may purchase insurance to cover any claims anticipated under this section.

§ -109 Service of process. (a) Service of process upon the university shall be made by serving a filed and certified copy of the summons and of the complaint on the university general counsel in accordance with applicable court rules and chapter 634 or on any attorney in the office of the university general counsel.

(b) Service of process upon an officer or employee of the university being sued in the officer's or employee's official capacity shall be made by serving the university and by delivering a copy of the summons and of the complaint to that officer or employee in accordance with applicable court rules and chapter 634.

§ -110 Indemnification. (a) Notwithstanding any other law to the contrary, the board of regents may agree in writing to an indemnity provision by which the university 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) The person, corporation, or entity requires an indemnity in writing as a condition for providing 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 -108, 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.

(b) 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.

(c) 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 this chapter or chapter 661 or otherwise waive the university's sovereign immunity.

§ -111 Indemnification of collaborating institutions. (a) The board of regents may indemnify collaborating institutions from claims arising against them

for the gross negligence or wilful misconduct of the university's officers, employees, and agents in the course of their employment, in connection with the university's use, storage, or disposal of materials owned or licensed by a collaborating institution that are purchased by the university from or transferred to the university by the collaborating institution for research or training purposes.

(b) The university shall use the materials transfer agreements recommended and approved by the Association of University Technology Managers to confer the indemnification authorized by this section.

(c) Indemnification claims authorized by this section shall be payable solely from the moneys and property of the university and shall not constitute a general obligation of the State or be secured directly or indirectly by the full faith and credit of the State or the general credit of the State or by any revenues or taxes of the State. The board of regents may obtain loss insurance to cover the liability of the university that may arise under this section; provided that loss insurance for the university shall be at the university's expense.

§ -112 Contracts for services provided by the research corporation of the University of Hawaii. (a) Notwithstanding any law to the contrary, when the university determines that neither the university nor another state agency can more effectively or efficiently accomplish the purposes of the sponsored research and training activities, the university shall contract with the research corporation of the University of Hawaii established under section -471 to provide management and other services as described in subsection (b) to support the university's research and training activities. Contracts by the university with the research corporation pursuant to this section shall be limited to sponsored research and training projects; except that university projects supported by funds appropriated by the legislature may also be contracted to the research corporation pursuant to rules adopted by the board of regents.

(b) Management and other support services provided by the research corporation pursuant to this section may include:

- (1) The procurement of goods and services;
- (2) Employment of personnel; and
- (3) The provision of advance funding for research and training contracts and grants.

These services may be provided by the corporation to the university without regard to chapter 76, 78, 89, or 103D.

§ -113 Commercial enterprises. Any law to the contrary notwithstanding, the university may engage in commercial enterprises that are related and incidental to the primary purposes of the university as set forth in this chapter, including but not limited to sponsorship of private, cultural, and athletic performances and sale of goods produced by university programs or goods bearing the university logo.

§ -114 Hawaii history. The board of regents shall secure the compilation from all available sources and the publication of a revised history of the Hawaiian people; which history, however, shall not be published until after it has been approved either by the legislature or by the trustees of the Hawaiian Historical Society. The board may employ such competent persons as are necessary for the compilation of the volume, purchase the necessary documents, records, and materials for use in the compilation, and make contracts on a royalty basis with publishing firms for the publication of the history. All documents, records, and materials so secured shall be deposited in the state archives after their use by the board.

§ -115 **Depository of war records.** The university is designated as the official depository of material, documents, photographs, and other data relating to Hawaii's part in the war between the United States and Germany, Japan, and Italy.

The university shall secure, collect, and preserve the necessary information, documents, pictures, and other data relating to Hawaii's part in the war.

§ -116 **Child care programs.** (a) The university may establish child care programs through which one or more child care programs for each campus of the university system may be established. The university may operate each child care program with appointed personnel, who are not subject to chapter 76, or by contract with private persons or agencies.

(b) The provision of child care services may be supported with proceeds from the child care programs revolving fund established under section -382, public funds, and private grants and gifts to pay for the expenses of operation, including payment of principal and interest on any obligations incurred.

§ -117 **Participation and membership in the Western Governors University and other educational consortia.** The board of regents may participate in and perform any act related to membership in an educational consortium involving other institutions or jurisdictions that advances the instruction, research, or service mission of the university, including the Western Governors University.

B. Agriculture

§ -121 **Soil conservation; policy.** The State adopts the policy of cooperating with the federal, state, and other territorial governments and agencies of the United States in carrying out the policy and purposes specified in section 7(a) of the Act of Congress known as the "Soil Conservation and Domestic Allotment Act" (Public Law No. 46, 74th Congress, approved by the President of the United States, April 27, 1935, as amended by Public Law No. 461, 74th Congress, approved February 29, 1936).

§ -122 **Board to act as agency.** The board of regents is designated and authorized to serve as the agency of this State to formulate, submit to the Secretary of Agriculture of the United States, and administer plans, hereinafter referred to as "agricultural plans", pursuant to section 7 of the Soil Conservation and Domestic Allotment Act.

- § -123 **Powers and duties of agency.** (a) The board of regents may:
- (1) Formulate, pursuant to the standards therefor set forth in section 7(a) of the Soil Conservation and Domestic Allotment Act, agricultural plans for this State for each calendar year and, from time to time, make revisions in the agricultural plans as may be necessary to conform to the standards;
 - (2) Using, in formulating and revising the agricultural plans, the assistance of the agricultural extension service and the agricultural experiment station;
 - (3) Designate in the agricultural plans the board of regents as the agency of this State to administer the agricultural plans;
 - (4) Submit the agricultural plans to the Secretary of Agriculture of the United States, prior to such time and in such manner and form as the Secretary of Agriculture may prescribe;
 - (5) Receive on behalf of the State any grants made pursuant to section 7 of the Soil Conservation and Domestic Allotment Act and utilize and

- expend the grants in accordance with such agricultural plans as may have been approved by the Secretary of Agriculture;
- (6) Make provision for the establishment of state, county, and community committees or associations of agricultural producers, organized for such purpose, and for participation by them in the administration of the agricultural plans;
 - (7) Employ such personal services and incur such other expenses as it finds necessary for the efficient exercise of its powers and duties under this section;
 - (8) Use in the administration of the provisions hereof available services and assistance of other agencies of this State and of the agricultural extension service and the agricultural experiment station of the University of Hawaii;
 - (9) Delegate to committees, associations, individuals, corporations, or other agencies of this State such functions in carrying out sections -121 to -122 and this section as it deems suitable, and exercise all other powers and authorities and do any and all other things that it may deem necessary or proper to the performance of its duties and functions hereunder;
 - (10) Provide for the submission of reports to the Secretary of Agriculture as may be deemed requisite, including such reports as may be required to ascertain whether the agricultural plans are being carried out according to their terms;
 - (11) Prescribe rules as may be necessary or expedient for the effective administration of the agricultural plans and ensure the correctness of and make possible the verification of reports as may be required by the terms of the agricultural plans; and
 - (12) Submit to the governor an annual report for each year covering the administration and operation of the program.

(b) The board of regents shall perform its duties and functions as such agency under sections -121 and -122 and this section separately and distinctly from the performance of its duties and functions under any other act or in any other capacity, except that the board may use the services and the assistance of the personnel and faculties normally used by it in the performance of such other functions if it finds that the utilization of the services and assistance is necessary to, or is calculated to assist substantially in, the effective administration of sections -121 to -122 and this section and that the personnel or faculties may be used without interference with the effective performance of such other duties and functions.

§ -124 **Specialist in cooperative organizations.** The university may appoint a specialist in cooperative organizations and may extend the present agriculture extension service work to cooperatives. The specialist shall assist cooperatives in legal, accounting, business, and marketing practices and instruct them in fundamentals of cooperative principles.

§ -125 **Agriculture, forestry, and natural resource management program, University of Hawaii at Hilo.** The board of regents shall establish a program of agriculture, forestry, and natural resource management at the University of Hawaii at Hilo and offer a baccalaureate program.

C. Career and Technical Education under Federal Aid

§ -131 **State board for career and technical education; designation.** The board of regents is designated as the state board for career and technical education. The chairperson of the board of regents is designated as the chairperson of the state board for career and technical education and the president of the university is designated as the administrative officer of the state board for career and technical education.

§ -132 **Board's power and authority.** The board may cooperate with the United States Department of Education in the administration of the provisions of the Acts of Congress mentioned in section -423, and may do all things necessary to entitle the State to receive the benefits of each of the respective funds appropriated by the Acts including:

- (1) Represent the State in any and all matters arising out of or connected with the administration of the Acts of Congress insofar as the same shall apply to the State;
- (2) Represent the State in any or all matters in reference to the expenditure, distribution, and disbursements of moneys received from the Acts of Congress;
- (3) Designate such colleges, schools, departments, or classes as may be entitled to participate in the benefits of moneys received from the appropriations made in the Acts of Congress as in its judgment and discretion will best subserve the interests of career and technical education in the State and carry out the spirit, purposes, and provisions of the Acts;
- (4) Establish and determine, by general rule, the qualifications to be possessed by persons teaching agricultural, trade, industrial, and home economics subjects in the colleges or schools coming under the provisions of the Acts of Congress in the State; and
- (5) Enforce rules and regulations concerning the granting of certificates and licenses to such teachers and to certificate such teachers.

The board may delegate some of its responsibilities relating to the establishment of qualifications for and certification or licensing of career and technical teachers. The board shall make an annual report to the governor describing the conditions and progress of career and technical education during the year and include therein an itemized statement showing the receipts and expenditures of all moneys used in connection with career and technical education.

§ -133 **Career and technical education coordinating advisory council.** (a) There is established a career and technical education coordinating advisory council which shall serve in an advisory capacity to the board of regents. The council shall consist of eleven members, nine appointed and two ex officio voting members. Of the nine appointed members:

- (1) Three shall be appointed from the board of regents by the chairperson of that body;
- (2) Three shall be appointed from the board of education by the chairperson of that body; and
- (3) Three shall be appointed from the workforce development council by that council.

Of the three members appointed from the workforce development council, one member shall represent management, one member shall represent labor, and the third shall represent the public. Of the two ex officio members, one shall be the president of the university and the other shall be the superintendent of education.

(b) Of the three members first appointed by each appointing authority, other than the chairperson of the board of education, one shall be appointed for two years, one shall be appointed for three years, and one shall be appointed for four years. In the case of the members appointed from the board of education, the terms of such members shall be for their remaining terms as members of the board of education. Upon the expiration of the terms of the first members, their successors shall serve for a term of four years. Vacancies shall be filled by the appropriate appointing authority for the unexpired term.

(c) The council shall elect a chairperson and such other officers as it deems necessary. Section 92-15 shall apply. The members of the council shall serve without compensation but shall be entitled to their travel expenses within the State when attending meetings of the council or when actually engaged in business relating to the work of the council.

PART II. STUDENTS

A. Tuition and Fees

§ -141 **Tuition fees; resident, nonresident; other fees.** (a) The board of regents may charge resident and nonresident tuition fees for regular courses of instruction at any University of Hawaii campus, including any community college.

(b) The board may also charge other fees for special programs of instruction, as well as laboratory fees, course fees, fees for student activities, and an information technology user fee. The board may charge other fees for summer session or evening courses, including differential fees for nonresident students.

§ -142 **Residence for tuition purposes; basic rule.** The board of regents shall adopt the necessary rules defining residence for tuition purposes herein; provided that the basic rule shall be that a student shall qualify for the resident tuition fee only if the following criteria are met:

- (1) The adult student, or in the case of a minor student, the student's parents or guardians, has or have been a bona fide resident of this State for at least twelve consecutive months next preceding the student's first day of officially scheduled instruction for any semester or term in which the student is enrolling at the particular college or campus; and
- (2) The adult or minor student has not been claimed as a dependent for tax purposes for at least twelve months next preceding the student's first day of officially scheduled instruction for any semester or term in which the student is enrolling at the particular college or campus by the student's parents or guardians who are nonresidents of the State; provided that this provision shall not apply in cases where the parent claiming the student as a dependent is entitled to do so under a child support order or agreement issued or entered into in conjunction with a divorce proceeding or legal separation agreement and the other parent and the student meet the criteria set forth in paragraph (1).

§ -143 **Public meetings exemption.** In establishing the resident tuition fees and the differential fees for nonresident students, the board of regents shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91. The fees shall be established at an open public meeting subject to the requirements of chapter 92; provided that:

- (1) The open public meeting is held during or prior to the semester preceding the semester to which the fees apply; and

- (2) A copy of the schedule of resident tuition fees and the differential fees for nonresident students is filed in the office of the lieutenant governor prior to taking effect.

B. Scholarship and Assistance Programs

§ -151 **University of Hawaii scholarship and assistance program; power of regents to grant scholarship and assistance.** The board of regents, or its designated representatives, is authorized to grant, modify, or suspend scholarship and assistance. The board may exercise this authority through the University of Hawaii scholarship and assistance special fund established under section -369.

§ -152 **Power of regents to grant tuition waivers.** The board of regents, or its designated representatives, is authorized to grant, modify, or suspend tuition waivers. The board may waive entirely or reduce the tuition fee or any of the other fees for graduate teaching and research assistants. The board may enter into agreements with government and university officials of any other state or foreign country to provide for reciprocal waiver of the nonresident tuition and fee differential. The board may waive the nonresident tuition and fee differential for selected students from Pacific and Asian jurisdictions when their presence would be beneficial to the university or the State. The board may waive entirely or reduce the tuition fee or any of the other fees for students, resident or nonresident. The board shall determine the percentage of allowable tuition and fee waivers for financial need and other university priorities. These tuition waivers and waivers of the nonresident tuition and fee differential shall be awarded in accordance with guidelines established by the board.

§ -153 **Hawaii opportunity program in education.** There is established the Hawaii opportunity program in education (HOPE) to be placed within the University of Hawaii for administrative purposes to support financially needy students, with priority given to students from ethnic groups that are underrepresented in the student population of the university. The university is encouraged to provide tuition waivers and seek private donations for scholarship support for HOPE students.

C. State Higher Education Loans

§ -161 **State higher education loans; eligibility; amounts.** Eligibility for loans from the state higher education loan fund established under section -370 shall be limited to students at the University of Hawaii or the community colleges of the State who have been residents of the State for at least one year and are enrolled at least half-time in a program that culminates in the award of a degree. The amount to be loaned to a student shall be determined by the board of regents based on need for financial aid, academic promise, and deportment. The maximum amount of loans that a student may receive under the state higher education loan fund shall be an aggregate amount equivalent to those amounts established for the Perkins Loan Program (formerly known as the "National Direct Student Loan Program") authorized under Title IV, Part E, of the Higher Education Act of 1965, as amended.

§ -162 **Repayment of state higher education loans; collection.** (a) All loans made under the state higher education loan fund shall bear interest at five per cent simple interest. Repayment of principal and interest charges shall commence nine months after graduation or after a borrower ceases to be enrolled at least half-time in a degree program and shall be paid in periodic installments within a ten-year period. The university may charge late fees and all other reasonable costs for the

collection of delinquent loans. The board of regents, upon application by the student and upon a showing of good cause, may defer repayment of the loan and commencement of interest. Liability for repayment of a loan shall be canceled upon the death or permanent total disability of the borrower.

(b) The university may spend out of the state higher education loan fund up to two per cent of the total amount of loans outstanding for collection and administrative expenses. In accordance with chapter 103D, the university may enter into written contracts with collection agencies for the purpose of collecting delinquent student loans. All payments collected, exclusive of a collection agency's commissions, shall revert, and be credited, to the state higher education loan fund.

(c) A collection agency that enters into a written contract with the university for the collection of delinquent student loans, pursuant to this section, may collect a commission from the debtor in accordance with the terms of, and up to the amounts authorized in, the written contract.

§ -163 Capacity of minors in qualifying for state higher education loans. Any student otherwise qualifying for a loan under the state higher education loan fund shall not be disqualified because the student is under the age of eighteen years, and for the purpose of applying for, receiving, and repaying the loan, any such person shall be deemed to have full legal capacity to act and shall have all rights, powers, privileges, and obligations of an adult with respect thereto.

§ -164 Rules governing state higher education loan fund. The board of regents shall have the power, in accordance with chapter 91, to adopt rules necessary for the administration of the state higher education loan fund.

D. Hawaii Educator Loans

§ -171 Hawaii educator loans; eligibility; amounts. There is created the Hawaii educator loan program to be administered by the University of Hawaii, to provide financial support to students who complete a state-approved teacher education program and who agree to teach in the Hawaii public school system. Eligibility shall be awarded by the university to students on a competitive basis. The amount to be loaned to a student shall be determined by the board of regents based on need for financial aid and proof of acceptance into a state-approved teacher education program at the university. The maximum amount of loans that a student may receive under this program shall be an aggregate amount equivalent to tuition payments and costs of textbooks and other instructional materials necessary to complete a state-approved teacher education program.

§ -172 Repayment of loans; waiver; collection. (a) All loans made under this subpart shall bear interest at five per cent simple interest. Repayment of principal and interest charges shall commence one year after graduation or three months after a loan recipient ceases to be enrolled in a state-approved teacher education program and shall be paid in periodic installments within a six-year period. The university may charge late fees and all other reasonable costs for the collection of delinquent loans.

(b) Upon a showing of proof that the loan recipient has completed a state-approved teacher education program and is employed as a full-time teacher in the Hawaii public school system, one-tenth of the total amount of the loan and interest shall be waived for every year of the first five years, and the remaining balance shall be waived after the sixth year that a loan recipient teaches in a Hawaii public school in a hard-to-fill position as determined by the superintendent of education, including

special education, regular education shortage categories, or Title 1 schools, and in one of the following capacities:

- (1) As an elementary school teacher teaching in the field of elementary education who has met standards as set forth by the Hawaii teacher standards board; or
- (2) As a secondary school teacher teaching in the subject area that is relevant to the loan recipient's academic major as certified by the department of education who has met standards as set forth by the Hawaii teacher standards board.

(c) Liability for repayment of a loan shall be canceled upon the death or permanent total disability of the loan recipient.

(d) If a loan recipient subject to this section fails to teach in the Hawaii public school system for a minimum of ten consecutive years from the loan recipient's original date of employment with the department of education, excluding sabbatical and other forms of temporary leaves of absence, then the loan recipient shall repay any remaining loan balance at the rate of ten per cent simple interest.

(e) In accordance with chapter 103D, the university may enter into written contracts with collection agencies for the purpose of collecting delinquent student loans. All payments collected, exclusive of a collection agency's commissions, shall revert, and be credited, to the special fund established for the Hawaii educator loan program. A collection agency that enters into a written contract with the university for the collection of delinquent student loans, pursuant to this section, may collect a commission from the debtor in accordance with the terms of, and up to the amounts authorized in, the written contract.

§ -173 Capacity of minors in qualifying for Hawaii educator loans.

Any student otherwise qualifying for a loan under the Hawaii educator loan program special fund shall not be disqualified because the student is under the age of eighteen years, and for the purpose of applying for, receiving, and repaying the loan, any such person shall be deemed to have full legal capacity to act and shall have all rights, powers, privileges, and obligations of an adult with respect thereto.

§ -174 Rules governing Hawaii educator loan program special fund.

The university may adopt rules to implement the Hawaii educator loan program. The rules shall be adopted pursuant to chapter 91 but shall be exempt from the public notice and public hearing requirements.

E. Educational Opportunities

§ -181 Program of equal educational opportunity; coordinating office of educational services for the disadvantaged. (a) There is established a program of equal educational opportunity as an integral and major program of the university. The university shall provide monetary and human resources toward developing and planning an equal educational opportunity program.

(b) There is created a coordinating office of educational services for the disadvantaged at the university which shall have the responsibility and authority to coordinate, develop, and evaluate programs of equal educational opportunity.

§ -182 College-credit equivalency program established; purpose; policies and procedures; eligibility. (a) There is established at the university and the community colleges a college-credit equivalency program. The purpose of this program is to award college credits to students who are enrolled in a degree or certificate program at the university or at a community college and who have successfully completed, at a high school, business school, trade school, adult

education school, or military training program, courses that are equivalent to courses offered for credit in the University of Hawaii system. Credits may also be awarded for work or other experiences at the discretion of the university.

(b) The university shall be responsible for the establishment of policies and procedures to administer the program. In this regard, the university, among other things, shall prepare and make public the following:

- (1) The list of the high school, business school, trade school, and adult education school courses for which college credits may be earned;
- (2) The number of credits that may be earned for each course; and
- (3) The minimum standards or grades necessary to earn college credits.

(c) All students enrolled in a degree or certificate program at the university or at a community college and who meet the requirements established under subsection (b) shall be eligible and awarded college-credit equivalents.

§ -183 Running start program. (a) There is established within the department of education the running start program, to allow eligible students to enroll in any qualified course offered by the University of Hawaii system.

(b) For the purposes of this section:

“Eligible student” means a high school student in the eleventh or twelfth grade who:

- (1) Has passed a standardized test administered by the college that demonstrates the student’s ability to succeed at the college level;
- (2) Is under the age of twenty-one as of September 1 of the school year in which the college course is taken; and
- (3) Has other qualifications deemed appropriate by the department of education or the university; provided that subsequent qualifications do not restrict any student from taking the standardized test.

“Qualified course” means any career and technical education or academic course offered by the University of Hawaii system that also applies to the department of education’s graduation requirements or is otherwise permitted by department of education rule or policy.

(c) All course credits successfully completed pursuant to this section that would otherwise be transferable but for a student’s grade level, shall be transferable to any University of Hawaii system degree granting institution; provided that the student is admitted to the campus where the credit is transferred.

(d) College courses successfully completed under this section shall also satisfy the department of education’s graduation requirements as determined by the department of education pursuant to rule.

(e) This section shall not preclude the department of education and the university from establishing programs by mutual agreement that permit high school students to enroll in college courses.

(f) Every student enrolled in a college course pursuant to this section shall remit appropriate tuition and fees to the university.

F. Continuing Education

§ -191 Tuberculosis clearance certification; exemption. Notwithstanding any law to the contrary, a person wishing to enroll at a campus within the University of Hawaii system solely to participate in a noncredit, short-term course, lasting less than fifteen days, shall not be required to present, as a condition to enrollment or otherwise, a tuberculosis clearance certification.

PART III. UNIVERSITY PERSONNEL

A. Positions and Compensation

§ -201 **Exempt personnel.** Personnel of the university not subject to chapter 76 shall be under the direction of the president of the University of Hawaii. The board of regents shall appoint deans, directors, members of the faculty, and other employees as may be required to carry out the purposes of the institution, prescribe their salaries and terms of service when the salaries and terms of service are not specifically fixed by legislative enactment, and make and enforce rules governing sabbatical and professional improvement leaves with or without pay, consistent with the practice of similar institutions in the United States and notwithstanding the laws of the State relating to leaves of absence of the officers and employees of the State.

§ -202 **Faculty; classification schedule.** The board of regents shall classify all members of the faculty of the university including research workers, extension agents, and all personnel engaged in instructional work as referenced in section 76-16, and adopt a classification schedule and compensation plan for these employees.

Annual increases of compensation shall be allowable for efficient service, and the board of regents shall adopt a fair and reasonable plan for rating the efficiency of individual employees affected by this section.

§ -203 **Faculty members; exchange privileges; conditions.** (a) The board of regents may contract for the exchange of members of the faculty of the university with members of the faculties of colleges or universities located without the State or the United States. Local members of the faculty so exchanged shall be paid their regular salaries out of the funds appropriated for the pay of members of the faculty of the university. The qualifications of all members of the faculties of the colleges or universities located without the State or the United States so exchanged shall be equal to those of local members of the faculty exchanged. Any provision of law to the contrary notwithstanding, the requirements of citizenship and residence shall not apply to any member of the faculty coming to the State from any foreign state, country, or territory under any such contract of exchange.

All members of the faculty so exchanged by the State shall furnish their own transportation to and from the state, country, or territory with which exchanged.

(b) No compensation shall be paid by the State to members of the faculties exchanged from colleges or universities located without the State or the United States; provided that in any case where the local exchanged member of the faculty becomes incapacitated or, for any reason, leaves the exchange position permanently, the board may pay the visiting member of the faculty an amount not to exceed the salary rating of the local exchanged member of the faculty, such an arrangement to continue until the end of the period of exchange or until such time as some adjustment satisfactory to the board has been made.

§ -204 **Annual report; executive, managerial, and faculty salaries.** The board of regents shall submit an annual report to the legislature containing the salaries paid to all executive, managerial, and faculty members of the university, including that paid to the president of the university, not fewer than twenty days prior to the convening of each regular session.

§ -205 University general counsel. (a) The board of regents may appoint or retain by contract one or more attorneys who are independent of the attorney general, to provide legal services for the university, including:

- (1) Representation of the university in civil actions to which the university is a party, either directly or through the acts or omissions of its officers or employees;
- (2) Advice and assistance to ensure the lawful and efficient administration and operation of the university;
- (3) Review and approval of documents relating to the acquisition of land or interest in land by the university; and
- (4) Any other legal service specified by the board of regents.

The board of regents may fix the compensation of the attorneys appointed pursuant to this section. Attorneys appointed or retained by contract shall be exempt from chapters 76 and 89.

(b) Nothing in this section precludes the board of regents from requesting and securing legal services from the department of the attorney general, for the university, the board of regents or its members, or the university's officers and employees, upon mutual agreement.

§ -206 Compensation of education laboratory school cafeteria personnel. The compensation of all cafeteria workers and the cafeteria manager at the education laboratory school cafeteria, or any successor organization or unit, shall be paid out of the general fund of the State. The university shall include, in its budgetary request for each upcoming fiscal period, the amounts necessary to carry out the purposes of this section.

PART IV. DIVISIONS, DEPARTMENTS, AND PROGRAMS

A. Community Colleges

§ -211 System of community colleges; purpose. (a) The board of regents shall develop and administer a system of community colleges.

(b) The purposes of community colleges shall be to provide:

- (1) Two-year college transfer and general education programs;
- (2) Two- and four-year career and technical education programs;
- (3) Semiprofessional, career and technical, and continuing education programs; and
- (4) Such other educational programs and services as may be appropriate to such institutions.

(c) The board may confer a corresponding degree or certificate upon the successful completion of any educational program described in subsection (b) to all students who are entitled thereto.

§ -212 Powers of board. The board of regents shall have authority to establish and govern community colleges. The board shall have the same powers with respect to the community colleges that it has as to the university in general.

B. Teacher Education: College; Institute

§ -221 College of education. The college of education shall be affiliated with the university and shall be under the jurisdiction and management of the board of regents. The board may grant appropriate degrees to properly qualified graduates of the college of education. In establishing the curriculum for the college of

education, the university authorities may obtain the approval of the Hawaii teacher standards board. The mission of the college of education is to:

- (1) Prepare and provide ongoing professional development of teachers, administrators, counselors, and related professionals at undergraduate and graduate levels primarily to meet the needs of Hawaii schools;
- (2) Generate, synthesize, and apply knowledge in education and related fields through teaching, research, and other scholarly activities; and
- (3) Provide service and support to the local, national, and global educational and related communities.

§ -222 **Teacher education coordinating committee.** (a) 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, a representative 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 may each appoint other members to the committee; provided that the dean of the college of education shall appoint at least two members of the committee from the university who are not within the college of education.

- (b) The committee shall meet at least six times within 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.
- (c) The committee shall submit an annual report on its activities to the legislature and may include recommendations for legislative consideration.

§ -223 **Hawaii institute for educational partnerships.** (a) Reforms to the public school system cannot succeed without concomitant reforms to the manner in which teachers are educated. The purpose of this section is to create a link between the public schools and university teacher education programs to ensure that teacher education is focused on the needs of the diverse student populations found within the public school system.

(b) There is established a Hawaii institute for educational partnerships. The institute, in collaboration with the department of education, shall:

- (1) Continually review the system of educating teachers for the purpose of redesigning the teacher education program of the college of education so that it is responsive to the needs of the public school system in Hawaii;
- (2) Develop innovative strategies to effectuate the changes in the teacher education program at the school level; and
- (3) Where appropriate, establish university-school partnerships as the mechanisms by which to implement the innovative strategies developed by the center.

The institute shall submit, prior to the convening of each regular session of the legislature, a report to the board of regents, the board of education, and the legislature outlining its progress in redesigning the teacher education program and the initiation of any university-school partnerships.

C. Hawaiian Language College

§ -231 **Hawaiian language college; establishment.** There shall be a Hawaiian language college at the University of Hawaii at Hilo. The college shall provide a Hawaiian liberal education program providing education primarily through the Hawaiian language.

§ -232 **Functions.** In addition to providing a quality education primarily through the medium of the Hawaiian language, the Hawaiian language college shall:

- (1) Provide an indigenous language outreach program to involve indigenous language scholars and to maintain and develop the program's Polynesian language database;
- (2) Provide a Hawaiian medium teacher training program incorporating Nawahiokalani'opu'u school and other schools, as appropriate, as laboratory schools; and
- (3) Maintain a Hawaiian language support center with educational specialists in the areas of research, curriculum development, language development, archival work, and educational technology.

D. School of Law

§ -241 **Law school; establishment.** There shall be a school of law at the University of Hawaii, to be under the direction of a dean or director who shall be appointed by the president with the approval of the board of regents. Subject to the availability of funds, faculty, and facilities, the school shall offer such courses of study as may be deemed appropriate and confer such degrees as may be authorized by the board of regents.

§ -242 **Procurement institute; established.** There is established the procurement institute at the William S. Richardson School of Law, University of Hawaii, to be under the direction of a director who shall be appointed by the dean of the school of law, with the approval of the board of regents. Subject to the availability of funds, faculty, and facilities, the institute shall offer such courses of study as may be deemed appropriate and authorized by the board of regents. The institute shall cooperate with other public and private entities and persons to promote and develop a professional acquisition workforce and to improve and enhance the State's contractor industrial base through education and training. The procurement institute may:

- (1) Conduct and participate in procurement education and training for entry-level and higher-qualified state employees and others, including persons not employed by the State;
- (2) Conduct and promote research, conferences, and studies to improve the procurement process, laws, policies, methods, rules, procedures, and forms relating to state and local government procurement;
- (3) Report on and make recommendations regarding goals, guidelines, innovations, and evaluation of state and local government procurement initiatives; and
- (4) Establish and maintain a procurement library within the State.

E. Nursing and Dental Hygiene: School; Center

§ -251 **School of nursing and dental hygiene; establishment.** There shall be a school of nursing and dental hygiene as a department of the university, with

such management, faculty, and other personnel as the board of regents may designate.

§ -252 **School of nursing and dental hygiene; functions.** The school of nursing and dental hygiene shall conduct a complete course in nursing leading to the conferring of an appropriate bachelor's degree upon graduation therefrom and sufficient to qualify its graduates as registered nurses. The curriculum of the school of nursing and dental hygiene shall be such as the board of regents may approve and may include subjects outside of the field of nursing as may be deemed consonant with the requirements of a university education and clinical training and practice in hospitals and similar institutions.

§ -253 **Clinical training and practice; board of regents; power to contract.** The board of regents may enter into contracts with any hospital or similar institution, in the State, for the purpose of arranging for clinical training and practice therein for students of the school of nursing and dental hygiene.

§ -254 **Center for nursing; establishment; advisory board.** (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 composed 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.

§ -255 **Advisory board for the center for nursing; powers and duties.** The advisory board for the center for nursing shall have the powers and duty to:

- (1) Employ an executive director and no more than two other staff members, 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.

§ -256 Center for nursing; functions. 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.

§ -257 Collaboration with the center for nursing. 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.

F. Hawaii Geophysics and Planetology Institute

§ -261 Hawaii geophysics and planetology institute; director and staff.

There shall be a Hawaii geophysics and planetology institute at the university. The institute shall be administered by a director to be appointed by the board of regents upon recommendation by the president. The director of the institute shall appoint the professional members of the staff and other employees. The president and the board of regents shall have the same powers over the institute and its staff as over the university and its faculties.

The institute:

- (1) Shall undertake basic research and training in geophysics and planetology;
- (2) Shall disseminate knowledge of geophysics and planetology affecting Hawaii; and
- (3) To the extent its facilities permit, may serve to apply the results of its research to geophysical problems in the State.

§ -262 State geophysicists. The staff of the geophysics and planetology institute shall include a specialist qualified in geology and a specialist qualified in volcanology, or a specialist qualified in both fields (to be designated as state geologist and state volcanologist or state geologist and volcanologist, as appropriate), whose duties shall include consultation with state officials, departments, and agencies concerning possible applications of these fields and research desirable to facilitate such applications. Other state geophysicists may be designated as appropriate in the opinion of the director and the board of regents.

The state geophysicists may undertake applied research required in their respective fields by state officials, departments, and agencies, but their personal conduct of the applied research may be limited by the director, to such an extent as, in the director's opinion, is necessary to ensure the conduct of fundamental research and training required by the long-range interests of the State.

§ -263 Encouragement of federal assistance. The governor, the president, and the board of regents are authorized and requested to take any appropriate

action to secure federal assistance in strengthening the geophysics and planetology institute.

G. Environmental Center

§ -271 **Environmental center; structure and functions.** (a) There is created within the university an environmental center. The center shall assist the director of environmental quality control as provided for under section 341-4.

(b) The center shall be so constituted as to make most effective the contribution of the university to the problems of determining and maintaining optimum environmental quality. Its membership shall be comprised of those members of the university community actively concerned with ecological and environmental problems.

(c) The functions of the center shall be to stimulate, expand, and coordinate education, research, and service efforts of the university related to ecological relationships, natural resources, and environmental quality, with special relation to human needs and social institutions, particularly with regard to the State.

H. Center for Labor Education and Research

§ -281 **Center for labor education and research; establishment.** (a) There is established at the University of Hawaii, West Oahu campus, the center for labor education and research. The center for labor education and research shall:

- (1) Provide credit and noncredit labor studies courses and labor-related research and educational services for workers and their organizations;
- (2) Provide labor-related education to the public;
- (3) Advise and assist in the development and implementation of labor-related instructional programs, courses, and activities for use within the department of education, including teacher preparation therefor;
- (4) Develop and implement a labor studies degree program or programs in the University of Hawaii system; and
- (5) Serve as the clearinghouse for labor education matters in the State.

(b) The center for labor education and research shall be located in and shall be a part of the University of Hawaii, West Oahu campus. The affairs and operations of the center for labor education and research shall be administered by a director appointed by and responsible to the chancellor of the University of Hawaii, West Oahu campus. The center for labor education and research shall draw on existing personnel within the state government insofar as possible for necessary supplementation. Where bona fide demand for programs and services exceeds the capabilities of the permanent staff as supplemented, additional personnel resources may be acquired on a contract basis without regard to chapter 76. Permanent staff shall be covered by chapter 76 or section -202, as may be appropriate.

(c) The center for labor education and research shall receive the full cooperation of all state agencies in the use of staff members, facilities, and other resources necessary to accomplish the purposes of this subpart.

§ -282 **Center for labor education and research; functions and programs.** (a) In consultation with the labor education advisory council, the center for labor education and research shall:

- (1) Coordinate, arrange for, or conduct evaluation of existing center programs of instruction for refinement, develop new courses of instruction, and plan their implementation on a continuing basis;
- (2) Coordinate, arrange for, or conduct instructional programs, including classes, courses, workshops, seminars, and research studies or projects;

- (3) Coordinate, arrange for, or provide technical assistance to trade unions to improve or implement labor education programs within their organizations;
- (4) Prepare and disseminate educational information and publications on various subjects of concern and interest to workers and their organizations;
- (5) Develop or acquire the means necessary to offer credit and noncredit labor studies programs via distance education throughout the State;
- (6) Develop or acquire and promote the dissemination of labor-related information and programs through the various public media (such as radio, television, newspapers, public and private organizations, and clubs); and
- (7) Coordinate, arrange for, or conduct credit and noncredit teacher preparation classes to enable relevant and reliable department of education instruction in labor-related educational courses, programs, and activities.

(b) Notwithstanding chapters 42F, 103, and 103D, the director of the center for labor education and research may limit the center's contracts for any publication and stationery work that may be necessary to accomplish the aims described in subsection (a) to contractors whose employees are represented by a representative duly elected under applicable federal or state labor laws for collective bargaining purposes.

§ -283 **Labor education advisory council.** There is established a labor education advisory council, consisting of not more than fifteen members, broadly representative of the trade union movement in the State, who shall be appointed by the president of the University of Hawaii. The council shall be advisory to the chancellor of the University of Hawaii, West Oahu campus, on all activities and programs of the center for labor education and research and shall assist the chancellor in the assessment and evaluation of program needs for implementation. Members of the council shall designate its chairperson and shall serve without compensation; provided that actual travel and other expenses incurred in the performance of their duties shall be advanced or reimbursed.

I. Aquarium and Marine Laboratory

§ -291 **State aquarium.** (a) The Waikiki aquarium is established and designated as the official state aquarium.

(b) The university may contract with a private nonprofit entity for the operation and management of the state aquarium; provided that the entity is a private nonprofit corporation established solely to:

- (1) Manage and improve the exhibits and facilities;
- (2) Conduct education, research, volunteer, fund-raising, and membership programs; and
- (3) Operate concessions of the state aquarium.

(c) The status conferred by subsections (a) and (b) shall not impinge on the ownership of land and improvements which shall remain with the university. All board of regents' policies regarding the use of university facilities shall apply to the state aquarium.

§ -292 **State aquarium; site.** All those certain pieces or parcels of land situated at Waikiki, city and county of Honolulu, used as an aquarium and more fully described in copy survey furnished number 11528 as all of lots 114 to 118 inclusive and portions of lots 113 and 119 of the Kapiolani park lots as described in Executive

Order No. 1817, are set aside for public purposes, to wit: for the purposes of the state aquarium under the direction of the board of regents of the University of Hawaii. The board of regents shall establish and at all times maintain upon such lands the state aquarium for public programs, education, research, and the exhibition to the public of the aquatic life of Hawaii and other regions. The board shall also establish and at all times maintain at the aquarium a marine biological laboratory.

§ -293 **State aquarium admission and user fees.** The board of regents may charge the public a fee for admission to the aquarium and for the use of aquarium facilities and programs. In establishing the fees, the board of regents shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91. The fees may be established at an open public meeting subject to the requirements of chapter 92. The fees shall be deposited into the state aquarium special fund established under section -375.

J. Medical Education Council

§ -301 **Definitions.** As used in this subpart:

“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 -303.

“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.

“Healthcare training program” means a healthcare training program that is accredited by a nationally-recognized accrediting body.

§ -302 **Graduate 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 -374.

(c) All funding for the graduate medical education program shall be nonlapsing.

(d) Program moneys shall only be expended if:

(1) Approved by the medical education council; and

(2) Used for graduate medical education in accordance with sections -304 and -305.

§ -303 **Medical education council.** (a) There is established 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 whom represent the health professions community;
 - (C) One person who represents the federal healthcare 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 the school of nursing and dental hygiene, vice dean for 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 nonpermanent 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 nonpermanent 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 Council duties. The medical education council shall:

- (1) Conduct a comprehensive analysis of the healthcare 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 healthcare training programs, focusing in particular on graduate medical education programs and their role in and ability to meet the healthcare workforce requirements identified by the council;

- (3) Recommend to the legislature and the board of regents changes in or additions to the healthcare training programs in the State identified by the council's assessment;
- (4) Work with other entities and state agencies as necessary, develop a plan to ensure the adequate funding of healthcare 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 healthcare training programs and establish the methodology for funding disbursement. Funds shall be expended for the types of costs normally associated with healthcare 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 required in paragraph (4);
- (6) Monitor the implementation and effectiveness of the plan required in paragraph (4), 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 subpart.

§ -305 **Council powers.** The medical education 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 subpart; 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 subpart; and
- (6) Adopt rules in accordance with chapter 91, necessary to carry out the purposes of this subpart.

K. Special Medical Residency Program

§ -311 **Findings and purpose.** The legislature finds that the limited supply of physicians and the attractiveness of private practice inhibit the efforts of the department of health to provide primary medical care in certain rural communities of the State and lessen the ability of the department of public safety to recruit physicians to serve in correctional facilities. The legislature further finds that an opportunity should be made available to attract physicians to fill positions in the department of health and the department of public safety.

The purpose of this subpart is to establish an innovative program that seeks to provide an opportunity for physicians to serve with the State and, consequently,

ease the difficulty of the department of health and the department of public safety in recruiting physicians. This subpart does not change the standards of any medical residency program or affect the existing relationship between the school of medicine of the University of Hawaii and the various hospitals that take part in any residency program.

§ -312 **Qualifications for residency program.** The school of medicine of the University of Hawaii shall recommend that two positions within the University of Hawaii medical residency program be filled each year, in accordance with this subpart, by persons who have the necessary qualifications, other than the qualification of residency training, to take the examination for licensure as physicians under chapter 453 or osteopathic physicians under chapter 460 and who volunteer to enter into contracts under section -313, regardless of whether they are graduates of the school of medicine of the University of Hawaii. The department of public safety and the department of health shall notify the school of medicine of the type of physicians or osteopathic physicians needed by the correctional facilities and by rural communities. The school of medicine shall establish procedures to provide for applications by, and selection of, persons who are qualified and interested to fill the positions.

§ -313 **Contract necessary for filling of positions.** In order to fill a position under this subpart, a person shall enter into a contract with the school of medicine of the University of Hawaii stating that the person:

- (1) Agrees to participate in the residency program for the minimum period required to qualify for the licensure examination under chapter 453 or 460;
- (2) Agrees to obtain a permanent license to practice medicine and surgery under chapter 453 or osteopathy under chapter 460, as soon as possible following termination of participation in the residency program;
- (3) Agrees to serve for two years as:
 - (A) An officer or employee of the department of public safety who is based in a correctional facility and whose normal course of duty requires medical treatment of inmates of the facility, another correctional facility, or both; or
 - (B) An officer or employee of the department of health who is employed to provide primary medical care to residents of and to be based in a rural community with a shortage of physicians; and
- (4) Agrees to commence fulfilling the requirement under paragraph (3) immediately following the termination of participation in the residency program and licensure.

§ -314 **Penalty for breach of contract.** A person who is placed in the residency program under this subpart, but who breaches any term of the contract under section -313, shall pay to the State damages of \$10,000; provided that a contract shall not be deemed breached if the person has obtained a permanent license to practice medicine and surgery under chapter 453 or osteopathy under chapter 460, but could not fulfill the requirements of section -313(3) and (4) because no employment vacancy existed in the correctional facilities of the department of public safety or no shortage of physicians or osteopathic physicians existed in any rural community and the department of public safety or the department of health, as applicable, certifies that no employment vacancy or shortage existed.

§ -315 **Residency program; defined.** For the purpose of this subpart, "residency program" means a graduate medical education program in a hospital in this State that is accredited as a medical school residency program by the school of

medicine of the University of Hawaii. The school of medicine may develop a special residency program for the purpose of this subpart; provided that the program, upon completion by the person, qualifies the person to take the licensure examination under chapter 453 or 460.

L. [Reserved]

M. Other Special Medical or Nursing Programs

§ -331 **Family practice residency program; established.** (a) The school of medicine of the University of Hawaii shall develop an accredited family practice residency program with a curriculum that includes opportunities for residents to participate in residency training at designated accredited training sites in rural and medically under-served communities in the State. In developing the program, the following shall be considered:

- (1) The use of compensated and volunteer faculty, including physicians residing in the training community, to instruct and supervise participants in the program;
- (2) The provision of faculty development training for community physicians assisting in a voluntary capacity;
- (3) The provision of inpatient, outpatient, and emergency room training;
- (4) The coordination of patient care with ancillary care services, such as occupational therapy, physical therapy, respiratory therapy, and social services; and
- (5) The provision of housing accommodations for participants in close proximity to the training site.

(b) The residency program and the training component incorporated therein shall meet the requirements necessary to achieve and maintain accreditation with the accreditation committee for graduate medical education and the residency review committee for family practice. The program curriculum shall be developed to provide participants with the knowledge, training, and skills they require to be eligible to take the board certification examination offered by the American Board of Family Practice.

§ -332 **International exchange program for health-related tourism.** There is established an international exchange program for medical and nursing students within the school of medicine of the University of Hawaii and the University of Hawaii school of nursing and dental hygiene that shall focus on Hawaii's role in international medical and nursing education, training, research, and information sharing. The school of medicine and the school of nursing and dental hygiene, in cooperation with the school of public health and the school of travel industry management, shall develop a plan for the development and promotion of Hawaii's healthcare expertise to be coordinated with the State's initiative to promote health-related tourism.

N. Other Special Programs

§ -336 **Food and beverage; courses of instruction.** Chapter 281 or any other law to the contrary notwithstanding, the university may offer and conduct courses of instruction in food and beverage control, club management, and classical food and beverage management, which include wine tasting, through any campus of the university including the community colleges, and shall admit qualified students to the courses even if the students are below the age of eighteen.

PART V. FINANCIAL STRUCTURE

A. Budget Preparation and Administration

§ -341 **Benchmarks; annual budget requests; biennial reports.** (a) The board of regents shall adopt benchmarks to expand and develop the university to become a statewide campus that provides Hawaii with a higher education system designed to meet the future needs and demands of the citizens of the State and capitalize on the university's unique resources and location to become an international educational, research, and service center known both in the United States and throughout the Pacific and Asian countries. The benchmarks shall include but not be limited to:

- (1) Expanding access to educational opportunity throughout the State;
- (2) Striving for excellence in undergraduate education;
- (3) Requiring the university to continue to gain prominence in research and distance learning;
- (4) Revitalizing services to the State;
- (5) Enhancing the international role of the university; and
- (6) Maintaining diversity by clarifying campus missions and coordinating campus plans.

(b) The board of regents shall apply these benchmarks in the development of their annual budget request to the legislature and adoption of tuition schedules.

(c) The university shall conduct a periodic review of all instruction, organized research, public service, academic support, student services, and institutional support programs at each campus to determine whether the programs are operating for the purposes originally established and not inconsistent with the benchmarks adopted pursuant to subsection (a). The university shall submit a report of its findings to the legislature no later than twenty days prior to the convening of the legislature in the second year of each fiscal biennium.

§ -342 **Budget request computation; reporting of exempt fees of scholarship holders.** In computing its budget requests, the board of regents shall not show amounts of tuition and registration fees from which holders of scholarships are exempted. These amounts shall be reported for information purposes to the department of budget and finance but shall not be included in the statement of university income.

§ -343 **Appropriations; accounts; depositories.** Moneys appropriated by the legislature for the university shall be payable by the director of finance, upon vouchers approved by the board of regents or by any officer elected or appointed by the board under section -105 and authorized by the board to approve such vouchers on behalf of the board. All moneys received by or on behalf of the board or the university shall be deposited with the director of finance; except that any moneys received from the federal government or from private contributions shall be deposited and accounted for in accordance with conditions established by the agencies or persons from whom the moneys are received and except that, with the concurrence of the director of finance, moneys received from the federal government for research, training, and other related purposes of a transitory nature and moneys in trust, special, or revolving funds administered by the university may be deposited in depositories other than the state treasury; provided that the university informs the director of finance of the depositories in which moneys from the funds have been deposited and submits copies of annual statements from each of the depositories in which the moneys from the funds are deposited. All income from tuition and fees charged for regular courses of instruction and tuition related course and fee charges

against students shall be deposited to the credit of the University of Hawaii tuition and fees special fund pursuant to section -363. Income from university projects as defined and described in section -377 and sections -431 to -444, may be credited to special or other funds.

§ -344 **Special and revolving funds; expenditures in excess of appropriations.** In any fiscal year if the amount of revenues deposited into a special or revolving fund of the university exceeds the amount appropriated from that fund for that year, the president may approve expenditures in excess of the amount appropriated, up to the amount by which revenues for that fund exceed the appropriations from that fund for a fiscal year.

§ -345 **Special and revolving funds; management.** In managing special and revolving funds under its control, the board of regents shall ensure that:

- (1) The purposes for which special and revolving funds are expended, encumbered, or transferred benefit those upon whom fees and charges are imposed through these funds; and
- (2) Fees and charges are fair and equitable with respect to the level and quality of services provided to those upon whom fees and charges are imposed.

§ -346 **Special and revolving funds; fees and charges; public meetings exemption.** In establishing or amending fees or charges that generate receipts for deposit into any University of Hawaii special or revolving fund, the board of regents shall be exempted from the public notice, public hearing, and gubernatorial approval requirements of chapter 91. The fees and charges may be established at an open meeting subject to the requirements of chapter 92. These fees and charges may include laboratory fees, special instructional fees, fees for admission to events, rental rates for facilities, equipment, or real property, and services provided to other government agencies and to the public.

§ -347 **Special and revolving funds; annual report; expenditures in excess of appropriations.** (a) The university shall annually provide to the legislature, at least twenty days prior to the convening of the regular session, an itemized account of the income to and the expenditure from each university special and revolving fund during the previous fiscal year.

(b) The report shall also include all expenditures in excess of each fund's appropriation for each fiscal year.

(c) The itemized account of income and expenditures required under this section shall be in addition to any other item for reporting that the legislature may specifically require under the law establishing the special or revolving fund.

B. General Funds

§ -351 **General fund budget appropriations; formulation.** (a) The general fund budget appropriations for the university shall be an amount not less than three times and not greater than five times the amount of regular tuition and related fee revenues estimated for that fiscal year.

(b) Any general fund budget appropriation for the university for operating purposes for any fiscal year shall include the consideration of:

- (1) The fiscal condition of the State;
- (2) Enrollment;
- (3) Access to educational opportunity;
- (4) The mix of resident and nonresident students; and

(5) Community service and noninstruction programs.

(c) No revenue received by the university pursuant to the University of Hawaii tuition and fees special fund established under section -363 may be used by the governor or the director of finance as a justification for reducing any budget request or allotment to the university unless the university requests such a reduction.

C. Special Funds

§ -361 **University of Hawaii risk management special fund.** (a) There is established 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) The board of regents shall develop internal policies and procedures for the management of risk at the university that are consistent with the goals of public accountability.

§ -362 **University of Hawaii at Manoa malpractice special fund.** (a) There is established the University of Hawaii at Manoa malpractice special fund, which shall be used for costs arising from the defense and settlement of claims against the university, its students, or its faculty for professional malpractice in programs that provide professional services, including but not limited to clinical medicine, nursing, and law; provided that this fund shall not be used to fund settlements funded through professional liability insurance or through special appropriations of the legislature.

(b) The university may establish appropriate charges and fees to individuals who are provided professional liability coverage under this section, the proceeds of which shall be deposited in accounts and credited to the University of Hawaii at Manoa malpractice special fund.

§ -363 **University of Hawaii tuition and fees special fund.** (a) There is established the University of Hawaii tuition and fees special fund into which shall be deposited all revenue collected by the university for regular, summer, and continuing education credit tuition, tuition-related course and fee charges, and any other charges to students, except as provided by law. Moneys deposited into the fund shall be expended to maintain or improve the university's programs and operations and shall not be:

- (1) Used as a justification for reducing any budget request or allotment to the university unless the university requests such a reduction;
- (2) Transferred unless otherwise authorized by the legislature; and

- (3) Restricted by the governor or the director of finance without the prior approval of the legislature.

Any rule, policy, or action of any agency or individual in contravention of this subsection shall be void as against public policy.

(b) Any law to the contrary notwithstanding, the board of regents may authorize expenditures of up to \$3,000,000 annually, excluding in-kind services, from this fund for the purposes of promoting alumni relations and generating private donations for deposit into the University of Hawaii Foundation for the purposes of the university. Any expenditure authorized pursuant to this subsection shall be for a public purpose and shall not be subject to chapters 42F, 103, 103D, and 103F. The university shall submit a comprehensive report to the legislature detailing the use of any funds authorized by the board under this subsection no later than twenty days prior to the convening of each regular session.

The report shall:

- (1) Identify each department of the University of Hawaii Foundation supported by moneys from the fund;
- (2) Describe the purposes and activities of each department identified in paragraph (1) and how it participates in fundraising activities and benefits the university;
- (3) Provide the total expenditures of each department identified in paragraph (1) by primary expense categories;
- (4) Identify all moneys from the fund transferred to any fund of the university and provide a justification of how these moneys are used to benefit the university;
- (5) Provide a financial summary of the operating activities of the University of Hawaii Foundation, including revenues and expenditures by major reporting categories; and
- (6) Identify amounts and purposes of all expenditures from the University of Hawaii support fund.

(c) Any law to the contrary notwithstanding, the university may transfer funds from the University of Hawaii tuition and fees special fund into the scholarship and assistance special fund established pursuant to section -369.

§ -364 Systemwide information technology and services special fund.

There is established the systemwide information technology and services special fund, from which all moneys shall be used in support of systemwide information technology and services including personnel, equipment costs, and other expenses, as well as planning, design, and implementation of information technology infrastructure within the university. All moneys for the fund shall be provided from revenues collected from users of information technology and services and any information technology user fee established pursuant to section -141.

§ -365 Library special fund. There is established a library special fund for the libraries of the University of Hawaii into which shall be deposited all fines, fees, and other revenue derived from the libraries' operations. Moneys deposited in this fund may be expended to replace or repair lost, damaged, stolen, or outdated books, serials, and periodicals or to support and improve the services provided by the libraries. The amounts allocated to each campus library from the special fund shall be proportionate to the amount of revenues generated by each library.

§ -366 University of Hawaii community services special fund. (a) There is established the University of Hawaii community services special fund. Except as otherwise provided by law, all revenues, including interest, derived and collected from the university's provision of public service programs shall be deposited into the

University of Hawaii community services special fund. The university may establish and collect fees and charges for public service programs. All revenues deposited into the University of Hawaii community services special fund shall be used exclusively for the costs of providing public service programs. The university may establish accounts under the community services special fund to facilitate the administration of this fund among the various campuses and operating units of the University of Hawaii system. All expenditures from this fund shall be subject to legislative appropriation.

(b) As used in this section, "public service programs" means:

- (1) Noncredit educational programs in professional development and training, personal growth, and cultural enrichment; and
- (2) Cooperative extension and consultative services.

§ -367 University of Hawaii auxiliary enterprises special fund. (a) There is established the University of Hawaii auxiliary enterprises special fund. Except as otherwise provided by law, all revenues, including interest, derived and collected from the university's provision of auxiliary services shall be deposited into the University of Hawaii auxiliary enterprises special fund and shall be expended solely for the costs of providing these services. The university may establish and collect fees and charges for the costs of providing these services. The university also may transfer other funds into the University of Hawaii auxiliary enterprises special fund to offset the cost of these services. The university may establish accounts under the University of Hawaii auxiliary enterprises special fund to facilitate the administration of this fund among the various campuses and operating units of the University of Hawaii system. All expenditures from this fund shall be subject to legislative appropriation.

(b) As used in this section, "auxiliary services" means those services provided by the university to students, faculty, staff, and others that are ancillary to, but facilitate the instruction, research, and public service missions of the university and may include food services, transportation services, counseling and guidance, and laboratory animal services.

§ -368 Western Governors University special fund. There is established a Western Governors University special fund into which shall be deposited all revenues derived from the State's participation in the Western Governors University, except University of Hawaii income from tuition and fees charged for regular courses of instruction and tuition-related course and fee charges to students. The fund shall be administered by the board of regents of the University of Hawaii and shall be used for the State's membership and participation in the Western Governors University.

§ -369 University of Hawaii scholarship and assistance special fund. (a) There is established the University of Hawaii scholarship and assistance special fund to be administered by the University of Hawaii. The special fund shall be administered pursuant to the authority of the board of regents to grant, modify, or suspend the scholarship and assistance under section -151. This fund shall be used to provide financial assistance to qualified students enrolled at any campus of the University of Hawaii.

(b) Revenues deposited into this fund shall include but not be limited to state, federal, and private funds and funds transferred by the university from the University of Hawaii tuition and fees special fund pursuant to section -363.

(c) The annual report for the special fund shall include but not be limited to the number of tuition waivers, scholarships, and stipends. The report shall also include but not be limited to the number of tuition waivers granted under section

-153 through the Hawaii opportunity program in education. The report shall also include recommendations as appropriate to the legislature on all tuition waivers.

(d) This fund is not intended to provide loans or keep track of payback provisions.

§ -370 **State higher education loan fund.** There is established a special fund to be known as the state higher education loan fund. The fund shall be a revolving fund and all interest and payments received on account of principal shall be credited to the fund. The fund shall be administered by the board of regents and shall be disbursed to needy students that meet eligibility requirements under section -161 pursuant to rules adopted by the board.

§ -371 **Hawaii educator loan program special fund.** There is established the Hawaii educator loan program special fund, for the purpose of providing loans pursuant to section -171. The following may be deposited into the special fund: appropriations made by the legislature, private contributions, repayment of loans, including interest and payments received on account of principal, and moneys from other sources; provided that:

- (1) Moneys on balance in the special fund at the close of each fiscal year shall remain in that fund and shall not lapse to the credit of the general fund; and
- (2) An amount from the special fund not exceeding five per cent of the total amount of outstanding loans may be set by the university to be used for administrative expenses incurred in administering the special fund.

§ -372 **Community colleges special fund.** (a) Section -343 notwithstanding, there is established a community colleges special fund to receive, disburse, and account for funds of programs and activities of the community colleges, including but not limited to off-campus programs, summer session programs, overseas programs, evening sessions, study abroad, exchange programs, cultural enrichment programs, and consultative services that help make available the resources of the community colleges to the communities they serve.

(b) The special fund may include deposits from:

- (1) The University of Hawaii tuition and fees special fund established in section -363;
- (2) Tuition, fees, and charges for affiliated instructional, training, and public service courses and programs; and
- (3) Fees, fines, and other money collected for:
 - (A) Student health;
 - (B) Transcript and diploma;
 - (C) Library;
 - (D) Facility use;
 - (E) Child care;
 - (F) Auxiliary enterprises;
 - (G) Alumni; and
 - (H) Other related activities.

§ -373 **Center for nursing special fund.** There is established 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 the center for nursing established under section -254. The fund shall be administered by the university, and moneys in the fund shall be expended to support the center's activities.

§ -374 **Hawaii medical education special fund.** There is established a Hawaii medical education special fund, into which shall be deposited all funds received by the 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 university. Moneys deposited in the fund shall be expended by the university for the purposes of the graduate medical education program established under section -302.

§ -375 **State aquarium special fund.** There is established the state aquarium special fund into which shall be deposited all revenues derived from all fees for admission and all fees for the use of aquarium facilities and programs collected in conjunction with the operation of the state aquarium. The special fund may be deposited in depositories other than the state treasury; provided that the university:

- (1) Informs the director of finance of the depositories in which moneys from the special fund have been deposited; and
- (2) Submits copies of annual statements from each of the depositories in which the moneys from the special fund are deposited.

Moneys deposited in this fund shall be expended for the operation of the state aquarium.

§ -376 **University of Hawaii-West Oahu special fund.** (a) There is established the University of Hawaii-West Oahu special fund. The proceeds of the special fund shall be used for the following purposes:

- (1) Planning, land acquisition, design, construction, and equipment necessary for the development of the permanent campus of the University of Hawaii-West Oahu in Kapolei; and
- (2) Planning, land acquisition, design, improvement, and construction of infrastructure and other public or common facilities necessary for the development of the permanent campus of the University of Hawaii-West Oahu in Kapolei.

(b) The following shall be deposited into the special fund:

- (1) Appropriations by the legislature to the special fund;
- (2) All net proceeds from the sale of public lands, all net rents from leases, licenses, and permits, or all net proceeds derived from development rights for public lands:
 - (A) Proposed for large lot subdivision as a five hundred acre parcel and designated as Lot 10077 in Land Court Application 1069; and
 - (B) Obtained from the Campbell Estate in the land exchange described in section 2 of Act 294, Session Laws of Hawaii 1996, located mauka of the H-1 Freeway and consisting of nine hundred forty-one acres, more or less; and
- (3) Interest earned or accrued on moneys in the special fund.

(c) The fund shall be managed by the university, which shall also make expenditures from the fund.

(d) Notwithstanding any other law to the contrary, no moneys from the special fund may be expended for any purposes other than the purposes set forth herein unless otherwise approved by the legislature.

§ -377 **University revenue-undertakings fund.** (a) There is hereby created a special fund to be administered by the university and shall be known as the

university revenue-undertakings fund, into which all revenue derived from a university project or university system under subpart A of part VI shall be deposited. The university may deposit other revenue of the university into the fund. At the direction of the board, there may be established such accounts in the university revenue-undertakings fund as required by the resolution or resolutions authorizing revenue bonds. In the event that revenue bonds are issued under subpart A of part VI payable from the revenues of a university parking unit or the revenues of a university system that includes a university parking unit, the board in the resolution or resolutions authorizing such revenue bonds may direct that all or any part of the moneys required by sections -405 and -452 to be paid into the university parking revolving fund created by section -405 shall be deposited in the university revenue-undertakings fund in lieu of being deposited in the university parking revolving fund, and thereafter all such moneys or such part thereof as the board has directed shall be deposited in the university revenue-undertakings fund in lieu of being deposited in the university parking revolving fund. All moneys in the university revenue-undertakings fund are appropriated and shall be applied in accordance with the provisions of the resolution or resolutions of the board authorizing the issuance of revenue bonds under subpart A of part VI:

- (1) To provide for all costs of construction, operation, repair, and maintenance of university projects or university systems, including reserves therefor;
- (2) To pay when due all revenue bonds and interest thereon, for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves therefor;
- (3) To reimburse the university for all moneys advanced to pay the expenses incurred in making the preparation for the initial issuance of revenue bonds under subpart A of part VI;
- (4) To reimburse the general fund of the State for all bond requirements for general obligation bonds that are or shall have been issued for a university project or university system, or to refund any of those general obligation bonds, except insofar as the obligation of reimbursement has been or shall be canceled by the legislature, the bond requirements being the interest on term and serial bonds, sinking fund for term bonds, and principal of serial bonds maturing the following year;
- (5) To provide a reserve for betterments and improvements to, and renewals and replacements of, university projects or university systems. If adequate provision has been made for all the foregoing purposes, and if permitted by the covenants in the resolution or resolutions authorizing the issuance of revenue bonds under subpart A of part VI, any surplus moneys remaining in the university revenue-undertakings fund at the end of any fiscal year may be expended by the board in subsequent years in furtherance of any or all of the purposes of the university.

(b) The following terms used in this section shall be as defined in section -431: "board", "cost of construction", "maintenance", "reserves", "revenue bonds", "revenue of the university project or university system", "university", "university parking unit", "university project", and "university system".

D. Revolving Funds

§ -381 University of Hawaii commercial enterprises revolving fund.

There is established the University of Hawaii commercial enterprises revolving fund into which shall be deposited all revenues derived from the operation of commercial enterprises by university programs. Revenues deposited into this account may be

expended by the university for all costs and expenses associated with the operation of the enterprises, including hiring personnel, renovating commercial space, and purchasing merchandise, supplies, and equipment, without regard to chapters 76, 78, 89, 103, and 103D. Revenues not expended as provided in this section may be transferred to other university funds to be expended for the general benefit of the university.

§ -382 **Child care programs revolving fund.** There is established a child care programs revolving fund for the operation of child care programs established under section -116 and the construction and renovation of child care centers established by the University of Hawaii. Fees charged for child care at child care programs, proceeds from donations to the university for child care programs, and proceeds from loans or other instruments of indebtedness for the construction or renovation of child care centers shall be deposited into the revolving fund. Expenditures from the revolving fund shall be made for the operation of child care programs and payment of principal and interest on obligations incurred for the construction or renovation of child care centers.

§ -383 **Research and training revolving fund.** (a) There is established a University of Hawaii research and training revolving fund into which shall be deposited one hundred per cent of the total amount of indirect overhead revenues generated by the university from research and training programs. The board of regents is authorized to expend one hundred per cent of the revenues deposited in the fund for:

- (1) Research and training purposes that may result in additional research and training grants and contracts;
- (2) Facilitating research and training at the university; and
- (3) Further deposit into the discoveries and inventions revolving fund and the University of Hawaii housing assistance revolving fund.

(b) The annual report required to be made for this revolving fund shall include but not be limited to a breakdown of travel expenses.

(c) Notwithstanding sections -107, -384, and -388 to the contrary, the board of regents or its designee, may establish a separate account within the research and training revolving fund for the purpose of providing advance funding to meet reimbursable costs incurred in connection with federally financed research and training projects. Any reimbursement received as a result of providing advance funding shall be deposited into the research and training revolving fund to be used for the purpose of meeting reimbursable costs incurred in connection with federally financed projects.

(d) Revenues deposited into the fund shall not be used as a basis for reducing any current or future budget request or allotment to the university unless the university requests such a reduction.

§ -384 **Discoveries and inventions revolving fund.** There is established a discoveries and inventions revolving fund into which shall be deposited a portion of the total indirect overhead funds generated by the university for research and training purposes in the prior fiscal year, as determined by the board of regents. Appropriations by the legislature subject to the approval of the governor, proceeds from the commercial exploitation of inventions and intellectual property developed at the university, gifts, donations, fees collected, and grants from public agencies and private persons may also be deposited into the fund for the purposes of supporting innovation and research commercialization and the patenting, copyrighting, licensing, and marketing of discoveries, inventions, and technologies developed at the university. The fund shall be used to develop technologies that have potential

commercial value, support the administration of technology transfer activities, and facilitate economic development through education and research undertaken at the university.

§ -385 **Student health center revolving fund.** There is established the student health center revolving fund for the student health center from which shall be paid the cost of operations of the student health center services and that shall be replenished through charges made for medical services and other related goods and services or through transfers from other accounts or funds.

§ -386 **Transcript and diploma revolving fund.** There is established the transcript and diploma revolving fund that shall be used to defray the cost of transcripts and diplomas and that shall be replenished through charges made for transcripts and diplomas or through transfers from other accounts or funds.

§ -387 **University of Hawaii student activities revolving fund.** (a) There is established the University of Hawaii student activities revolving fund into which shall be deposited all funds assessed as compulsory student activity fees and collected by the University of Hawaii on behalf of chartered student organizations and student activity programs of the several campuses of the University of Hawaii system. All revenues received by chartered student organizations and student activity programs from student activities and programs, except those revenues to which other special funds have prior claim, shall also be deposited into the revolving fund.

(b) Separate accounts shall be maintained for each chartered student organization and student activity program. Funds from the accounts may be withdrawn and expended by each respective chartered student organization or student activity program for any purpose that it deems necessary and proper to carry out and achieve its educational responsibilities, programs, and related activities; provided that approval for the expenditure is first obtained from the board of regents or its designated representative, except that approval is not required for expenditures for the purchase of flowers, leis, food, refreshments, and prizes if the purchases do not exceed an amount determined by policies adopted by the board of regents; and provided further that the amount shall not exceed the funds available to any chartered student organization or student activity program annually.

(c) Other laws to the contrary notwithstanding, any chartered student organization may be permitted to withdraw and expend funds from the special accounts to employ or retain, by contract or otherwise, an attorney or attorneys only for the purpose of defending such organization in any litigation. Any chartered student organization specifically organized to provide student publications or broadcast communications may also be permitted to withdraw and expend funds from the special accounts to employ or retain, by contract or otherwise, an attorney for the purpose of rendering legal advice to avoid lawsuits. The expenditures in this subsection shall be approved by, and in accordance with policies adopted by, the board of regents. No funds expended under this subsection may be used to defend chartered student organizations for any wilful or malicious act or to pay for any claim for loss or damage arising from the activities of the chartered student organizations, including costs, expenses, and liabilities incurred in connection with any claim or proceeding brought against a chartered student organization for damages resulting from the act or omission of a chartered student organization or any member thereof. All moneys received for the University of Hawaii student activities revolving fund shall be deposited in a depository maintained by the university in accordance with policies that shall be adopted by the board of regents.

§ -388 **University of Hawaii housing assistance revolving fund.** There is established the University of Hawaii housing assistance revolving fund into which shall be deposited a portion of the total indirect overhead funds generated by the university for research and training purposes in the prior fiscal year as determined by the board of regents. The fund shall be used to:

- (1) Implement the university housing assistance master plan, in accordance with policies adopted by the board of regents; and
- (2) Account for all transactions of the university housing assistance program, including but not limited to revenues, expenditures, loans, and transfers.

§ -389 **University of Hawaii alumni revolving fund.** There is established the University of Hawaii alumni revolving fund into which shall be deposited funds and proceeds received by the university from alumni activities and donations from alumni. Funds deposited into this revolving fund may be expended by the university for all costs associated with conducting alumni affairs, activities, and programs for the university system, including but not limited to expenses for honoraria, hotel and room rentals, food and refreshment, printing and mailing, banners and signs, plaques and awards, airfare and per diem, leis, rental of audiovisual, musical, and stage equipment, and activity supplies and materials, without regard to statutory competitive bidding requirements.

§ -390 **University of Hawaii graduate application revolving fund.** There is established the University of Hawaii graduate application revolving fund for graduate program application processing. The board of regents may establish appropriate charges for application processing. The revenues from the charges shall be deposited into this revolving fund and shall be used to pay the costs of processing applications to all graduate programs.

§ -391 **University of Hawaii at Manoa intercollegiate athletics revolving fund and University of Hawaii at Hilo intercollegiate athletics revolving fund.** Notwithstanding any other law to the contrary, there are established the University of Hawaii at Manoa intercollegiate athletics revolving fund and the University of Hawaii at Hilo intercollegiate athletics revolving fund for the intercollegiate athletic programs of the University of Hawaii at Manoa and the University of Hawaii at Hilo, which shall be used to receive, deposit, disburse, and account for funds from the activities of the intercollegiate athletic programs. The university may establish appropriate charges for activities related to its athletic programs and the use of its athletic facilities, the proceeds from which shall be deposited into these revolving funds.

The university shall maintain the financial integrity and viability of these revolving funds, including the maintenance of an adequate reserve to cope with the various factors that impact the revenue structure of an intercollegiate athletic program.

§ -392 **Animal research farm, Waialeale, Oahu revolving fund.** There is established the animal research farm, Waialeale, Oahu revolving fund for the animal research farm, Waialeale, Oahu, operated by the college of tropical agriculture and human resources of the University of Hawaii, into which shall be deposited the receipts from fees realized from the sale of livestock, services, and supplies. Funds deposited into this revolving fund shall be expended for animal research, and services and supplies related thereto.

§ -393 **Seed distribution program; revolving fund.** There is established the seed distribution program revolving fund, the purpose of which shall be to enable the seed distribution program to operate at a level that will adequately meet the demand for seeds. The fund shall be used for the cultivation and production of seeds and for research and developmental purposes directly related to cultivation and production. The fund shall be administered by the college of tropical agriculture and human resources of the University of Hawaii. All sums withdrawn from the fund shall be reimbursed or restored from the proceeds realized through the sale of seeds.

§ -394 **Conference center revolving fund; University of Hawaii at Manoa.** There is established the conference center revolving fund for the conference center program in the college of continuing education and community service of the University of Hawaii at Manoa. All fees, charges, and other moneys collected in conjunction with the conference center program shall be deposited in the revolving fund. The dean of the college of continuing education and community service is authorized to expend funds from the revolving fund for all costs associated with conducting conferences, seminars, and courses by the conference center program, including but not limited to expenses for honoraria, hotel and room rentals, food and refreshment, printing and mailing, airfare and per diem, leis, rental of audiovisual equipment, and conference supplies and materials.

§ -395 **International exchange healthcare tourism revolving fund.** (a) There is established the international exchange healthcare tourism revolving fund for the international exchange of healthcare tourism program into which shall be deposited all donations, gifts, contributions, legislative appropriations, and moneys generated by the program through education, training, and research contracts and grants. Moneys deposited into this fund for the school of medicine and the school of nursing and dental hygiene shall be divided into separate accounts for each school, provided that moneys not designated for use by a particular school shall be divided equally. Moneys shall be expended from each account by the school of medicine and the school of nursing and dental hygiene, for student aid, training projects, teaching, supplies, services, and activities related to the development and promotion of the health-related tourism education program.

(b) All unexpended and unencumbered moneys appropriated by the legislature remaining in the fund at the close of each fiscal year that are deemed, by the director of finance, to be in excess of the moneys necessary to carry out the purposes of this section over the next following fiscal year shall lapse to the credit of the state general fund.

§ -396 **Education laboratory school summer programs revolving fund.** There is established the education laboratory school summer programs revolving fund, from which shall be paid the cost of operations of the education laboratory school summer programs. The education laboratory school may establish appropriate charges for activities related to its summer programs, the proceeds from which shall be deposited into this revolving fund.

§ -397 **Center for labor education and research revolving fund.** There is established the center for labor education and research revolving fund, for use by the director of the center for labor education and research with the approval of the chancellor or vice chancellor of the University of Hawaii, West Oahu campus, in carrying out the purposes of the center. All fees, charges, and other moneys collected in conjunction with the operations of the center for labor education and research shall be deposited in the revolving fund. Such amounts shall be expended from the fund by the director of the center for labor education and research as may be

necessary to defray the cost of operating the center for labor education and research, excluding compensation of the permanent staff, but including contractual obligation, rentals, and such other program costs as approved by the chancellor or vice chancellor, West Oahu campus.

§ -398 **Career and technical training projects revolving fund; University of Hawaii at Hilo.** There is established the career and technical training projects revolving fund for the career and technical training projects of the community colleges and the University of Hawaii at Hilo into which shall be deposited the receipts from fees for services, supplies, and use of equipment provided by or in connection with these projects. Funds deposited in this account shall be expended for vocational and technical training projects, and supplies, equipment, and services related thereto.

§ -399 **Community college and University of Hawaii at Hilo bookstore revolving fund.** There is established the community college and University of Hawaii at Hilo bookstore revolving fund for the community college and University of Hawaii at Hilo bookstores, from which shall be paid the cost of goods or services rendered or furnished to the bookstores and which shall be replenished through charges made for goods and services or through transfers from other accounts or funds.

§ -400 **Hawaiian language college revolving fund.** There is established the Hawaiian language college revolving fund into which revenues from the sale of Hawaiian language materials shall be deposited. Moneys deposited into this fund shall be expended to support the Hawaiian language college at the University of Hawaii at Hilo established under section -231.

§ -401 **University of Hawaii-Hilo theatre revolving fund.** There is established the University of Hawaii-Hilo theatre revolving fund, which shall consist of admissions, advertising sales, corporate sponsorships, marketing, merchandising, donations, fund-raising, fees, charges, and other moneys collected in conjunction with the University of Hawaii-Hilo theatre program. The revolving fund shall be administered by the office of administrative affairs of the University of Hawaii at Hilo. Funds may be expended for all costs associated with the theatre program, including artists' fees, production costs, personnel costs, honoraria, per diem, hotel and room rentals, food and refreshments, printing and mailing, advertising, airfare, leis, rental or purchase of equipment, and theater supplies and materials.

§ -402 **Conference center revolving fund; University of Hawaii at Hilo.** There is established the conference center revolving fund for the conference center program in the college of continuing education and community service of the University of Hawaii at Hilo. All fees, charges, and other moneys collected in conjunction with the conference center program shall be deposited in the revolving fund. The dean of the college of continuing education and community service is authorized to expend funds from the revolving fund for all costs associated with conducting conferences, seminars, and courses by the conference center program, including but not limited to expenses for honoraria, hotel and room rentals, food and refreshment, printing and mailing, airfare and per diem, leis, rental of audiovisual equipment, and conference supplies and materials.

§ -403 **Community college conference center revolving fund.** (a) There is established the community college conference center revolving fund for conference center programs conducted by the various community colleges. All fees,

charges, and other moneys collected in conjunction with the conference center program of each community college shall be deposited in separate accounts within the revolving fund. The chancellor of each community college or a designee is authorized to expend funds from the appropriate account in the revolving fund for all costs associated with conducting conferences, seminars, and courses by the conference center program, including but not limited to expenses for honoraria, hotel and room rentals, food and refreshment, printing and mailing, airfare and per diem, leis, rental of audiovisual equipment, and conference supplies and materials, without regard to section 103D-1002 and any competitive bidding requirements pursuant to state procurement requirements.

(b) The chancellors of the community colleges shall prepare an annual report to the legislature accounting for all income and expenditures of each separate account within the revolving fund.

§ -404 University of Hawaii real property and facilities use revolving fund. (a) There is established the University of Hawaii real property and facilities use revolving fund into which shall be deposited all revenues collected by the university for the use of university real property and facilities, except as otherwise provided by law. The board of regents may establish prices, fees, and charges, including those for the sale, lease, or use of university real property and facilities, which include land, buildings, grounds, furnishings, and equipment; provided that the university shall comply with all statutory and common law requirements in the disposition of ceded lands. The board of regents shall be exempt from the public notice and public hearing requirements of chapter 91 in establishing and amending the fees and charges. The university may establish separate accounts within the revolving fund for major program activities. Funds deposited into the revolving fund accounts shall be expended to pay the costs of operating university facilities, including maintenance, administrative expenses, salaries, wages, and benefits of employees, contractor services, supplies, security, furnishings, equipment, janitorial services, insurance, utilities, and other operational expenses. Revenues not expended as provided in this section may be transferred to other university funds to be invested or expended for the administrative or overhead costs of the university. All expenditures from this revolving fund shall be subject to legislative appropriation.

(b) As used in this section, "maintenance" includes repairs, replacement, renewals, operation, and administration.

§ -405 University parking revolving fund. There is established the university parking revolving fund. All fees, fines, or other moneys collected under subpart B of part VI shall be deposited into this fund. All moneys in the fund are hereby appropriated for the purposes of, and shall be expended by the board of regents in the manner specified by, section -377.

E. Trust Funds

§ -411 GEAR UP Hawaii scholarship trust fund. (a) The University of Hawaii, in its sole discretion, may establish a charitable trust, recognized as tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, to be known as the "GEAR UP Hawaii scholarship trust fund" and appoint one or more trustees thereof. The purpose of the trust is to establish and maintain a financial assistance program to award scholarships to eligible students in accordance with the requirements of funds received from the United States Department of Education under the program entitled Gaining Early Awareness and Readiness for Undergraduate Programs ("GEAR UP"), established pursuant to P.L. 105-244, the 1998 Amendments to the Higher Education Act of 1985, codified at 20 U.S.C. §1070a-21

et seq. The university shall transfer to the trust all funds received under GEAR UP upon such terms and conditions consistent with the requirements of GEAR UP, as it may be amended, and as the university, as settlor of the trust, may determine in its discretion.

(b) The establishment of the trust described in subsection (a), including but not limited to the specification by the university, as its settlor, of any specific criteria or other eligibility requirements for scholarship awards, shall not be deemed to be "rules" or "rulemaking" subject to chapter 91 or otherwise be subject to chapter 91.

(c) Neither the trust established by the university pursuant to subsection (a), nor any trustee thereof, shall be a department, office, agency, board, commission, bureau, instrumentality, committee, authority, or office of the State or any of its political subdivisions, or otherwise deemed a public or quasi-public entity, nor shall the initial funding of, or a transfer to, the trust constitute a state grant or subsidy. The trust shall not be subject to laws or rules governing state and other public or quasi-public entities, including but not limited to chapters 23, 36, 37, 38, 40, 42F, 76, 78, 84, 89, 91, 92, 92F, 103, and 103D.

(d) This section shall be liberally construed so as not to hinder or impede the university in its participation in GEAR UP including, but not limited to, the establishment of the trust and its operation.

§ -412 University of Hawaii workers' compensation and unemployment insurance compensation trust fund. There is established the University of Hawaii workers' compensation and unemployment insurance compensation trust fund into which shall be deposited all revenues derived from assessments for workers' compensation costs and unemployment insurance compensation costs against the payroll of university employees. Revenues deposited into this account may be expended by the university for all costs and expenses associated with the administration of the university's workers' compensation and unemployment insurance compensation programs, including benefits payments, claims administration, settlements, insurance premiums, and legal fees.

F. Federal Funds

§ -421 Land-grant college aid. The State hereby accepts and assents to the terms and provisions of paragraph 14(e) of the Act of Congress, approved July 12, 1960, entitled: "to amend certain laws of the United States in light of the admission of the State of Hawaii into the Union, and for other purposes" (Public Law 86-624), and hereby consents to receive the benefits thereof in the manner and form and for the purpose in the Act intended and provided.

Until otherwise provided by law, the university shall be the beneficiary of the income from the funds in the Act mentioned and shall use and disburse the income from the funds only for the purposes and in the manner provided in the Act. The board of regents shall be the custodian of the funds. The board shall invest the funds in the manner provided by the Act. All income earned by the funds shall be credited to the university and used only for the purposes provided in the Act. The funds and all income earned therefrom shall be deemed to be trust money.

§ -422 Agricultural extension service; experiment station. The grants of moneys and the purposes of the grants authorized by the Act of Congress approved August 30, 1890, known as the Second Morrill Act, providing for the endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts, and by the Acts of Congress approved March 2, 1887, March 16, 1906, and February 24, 1925, providing for agricultural experiment stations in connection with

colleges of agriculture and mechanic arts, and by any other acts of Congress for similar purposes, heretofore assented to on behalf of the college of Hawaii, are hereby reassented to on behalf of the college of agriculture as an integral part of the University of Hawaii.

The assent of the legislature hereby is given to the provisions and requirements of the Acts of Congress of May 8, 1914, as supplemented by the Act of May 16, 1928, and to the provisions and requirements of the Act of Congress of May 22, 1928, and the board of regents may receive the grants of money appropriated under the Acts and organize and conduct agricultural extension work, which shall be carried on in connection with the college of agriculture of the university, in accordance with the terms and conditions expressed in the aforesaid Acts.

§ -423 **Acceptance of federal aid; career and technical education.** (a) The State accepts, together with the benefits of all respective funds appropriated thereby, all of the provisions of the Act of Congress approved February 23, 1917, entitled: "An Act to provide for the promotion of vocational education; to provide for cooperation with the states in the promotion of such education in agriculture, trade and industries; to provide for the cooperation of the States in the preparation of teachers of vocational subject; and to appropriate money and regulate its expenditure" and any Acts that amend or supplement the Act.

(b) The state board for career and technical education shall be the board of regents as designated under section -131.

PART VI. FACILITIES

A. University Projects

§ -431 **Definitions.** Whenever used in this subpart:

"Board" or "board of regents" means the board of regents of the University of Hawaii, which is hereby declared to be a public corporation.

"Construction" includes acquisition, purchase, construction, reconstruction, remodeling, renovation, improvement, betterment, and extension; "construct" includes acquire, purchase, construct, reconstruct, remodel, renovate, improve, better, and extend.

"Cost of construction" includes all costs and estimated costs of the preparation and issuance of revenue bonds and the obtaining of a loan, and all costs and estimated costs of construction of a university project, and without limiting the foregoing, includes engineering, architectural, supervisory, inspectional, fiscal, and legal expenses; interest which it is estimated will accrue during the construction period and for six months thereafter on money obtained by loan or through the issuance of revenue bonds, or both; amounts necessary to establish or increase reserves; costs of utilities, equipment, fixtures, and apparatus necessary or convenient for the use and occupancy of the university project and, if so determined by the board, the initial furnishings of the university project.

"Cost of maintenance" includes all costs and estimated costs of the maintenance of a university project or university system, and without limiting the foregoing, includes all salaries, wages, and fees of officers, employees, and contractors of the board engaged in the maintenance of a university project or university system, the cost of all supplies and equipment, and all operational and administrative expenses.

"Maintain" includes repair, upkeep, replace, renew, maintain, operate, and administer.

"Maintenance" includes repairs, upkeep, replacement, renewals, maintenance, operation, and administration.

“Reserves” means reserves required or permitted in the covenants in the resolution or resolutions of the board authorizing the obtaining of loans or issuance of revenue bonds under this subpart.

“Revenue bonds” means revenue bonds, interim certificates, notes, debentures, or other evidence of indebtedness of the board authorized by or issued under this subpart.

“Revenue of the university” means all income, receipts, and revenues of whatever nature received by the university, or which it is entitled to receive as an owner, operator, and manager of the university, including legislative appropriations of special and revolving funds, other than general appropriations and gifts the terms of which preclude their being used for payment of the cost of construction, cost of maintenance, or both, of a university project or university system.

“Revenue of the university project or university system” means all revenues derived from the rentals, fees, and charges imposed for the use or enjoyment of or the services furnished by a particular university project or university system, as the case may be.

“University” means the University of Hawaii, each community college established and governed by the board, and any and every other educational institution now or hereafter under the control of or governed by the board.

“University athletic unit” means athletic facilities of every nature devoted either exclusively to use by the university, including its students, faculty, guests, employees, and their families including reciprocal beneficiaries, or both to university and non-university uses, for the enjoyment or utilization of, or for the privilege of observance of, athletic contests or exhibitions conducted in or by means of which facilities a fee is imposed or a charge made. A university athletic unit includes but is not limited to gymnasium, field house, stadium, playing field, baseball diamond, courts suitable for tennis, volleyball, and basketball, and swimming and diving pools.

“University dining unit” means a structure or facility suitable for the feeding and boarding of students enrolled in the university, members of the faculty of the university, guests, employees of the university, and members of the families including reciprocal beneficiaries of any such persons, for the use and services of which a fee is imposed or charge made. A university dining unit may be a separate structure or structures or included in another university project.

“University health unit” means a facility for the treatment, diagnosing, or prevention of illness of students enrolled in the university, members of the faculty of the university, persons temporarily visiting the university, employees of the university, and members of the families including reciprocal beneficiaries of any such persons, for the use and services of which a fee is imposed or charge made. A university health unit includes but is not limited to health centers, infirmaries, and clinics and may be a separate structure or structures or included in another university project.

“University housing unit” means a structure or structures suitable for the housing of, and use and occupancy as a dwelling by, students enrolled in the university, members of the faculty of the university, persons temporarily visiting the university at the invitation or request of the board, employees of the university, and members of the families, including reciprocal beneficiaries of any such persons, for the use and occupancy of which a fee or rent is charged. A university housing unit includes but is not limited to dormitories, apartments, and other multiple unit buildings, houses, and other single unit buildings.

“University parking unit” means a facility for the parking or storage, or both, of vehicles owned or used by students enrolled in the university, members of the faculty of the university, persons temporarily visiting the university, employees of the university, and members of the families including reciprocal beneficiaries of

any such person, for the use, services, or occupancy of which a fee is imposed or charge made. A university parking unit includes but is not limited to parking spaces on streets, alleys, drives, and other roadways under the jurisdiction of the board, paved or unpaved surface areas or lots, and subsurface, surface, or above surface structure or structures, and may be a separate structure or structures or included in another university project.

“University project” means a university athletic unit, university dining unit, university health unit, university housing unit, university parking unit, university student center, and any other undertaking or improvement capable of producing a revenue constructed, maintained, or both, by the board, in furtherance of the purposes of the university, and for the use and services of which fees are imposed or charges made. A university project shall include but not be limited to all land, fixtures, appurtenances, improvements, utilities, equipment, and furnishings necessary or convenient for the use and occupancy of a university project for the purposes for which it was constructed or is used. A university project shall be a public improvement or public undertaking within the meaning of section 562(d) of Title 48 of the United States Code.

“University student center” means a structure or structures suitable for student activities or endeavors, such as, but not limited to, meetings, organizations, publications, and recreation, for the use and services of which a fee is imposed or a charge made. A university student center includes but is not limited to student unions, bookstores, and snack bars and may be a separate structure or structures or included in another university project.

“University system” means two or more university projects operated and maintained jointly as a system. A university system may include various university projects on any one or more of the areas under the jurisdiction of the board and may include university projects of any one or more of the educational institutions under the control of or governed by the board, including the University of Hawaii.

§ -432 **Powers of the board.** In addition to the powers that it now possesses, the board of regents shall have the power to:

- (1) Construct and maintain university projects, including a university project included or to be in a university system;
- (2) Combine two or more university projects, now or hereafter existing on any one or more of the areas of any one or more of the educational institutions under the control of or governed by the board, into a university system or systems, and to maintain such system or systems;
- (3) Prescribe and collect rents, fees, and charges for the use of or services furnished by any university project or the facilities thereof;
- (4) With the approval of the governor, issue revenue bonds, to finance, in whole or in part the cost of construction, or maintenance, or both, of any university project, including a university project included or to be included in a university system, and reserves;
- (5) Pledge to the punctual payment of any revenue bonds and interest thereon, the revenue of the university project or projects for the construction or maintenance of which the bonds have been issued, or the revenue of the university system in which a university project is to be included, and the revenue of other or all university projects or university systems, in an amount sufficient to pay such bonds and interest as the same become due and to create and maintain reasonable reserves therefor; and
- (6) Advance such moneys of the university, not otherwise required, as are necessary to pay the expenses incurred in making the preparations for the initial issuance of revenue bonds under this chapter, and to take any

other action necessary or proper for carrying into execution and administering this subpart, including providing for the full utilization of university projects and university systems in every way conducive to the furtherance of any or all of the purposes of the university.

§ -433 Authorization of university projects, university systems, and revenue bonds. Authorization of construction, maintenance, or both of a university project or projects or university system or systems and authorization for issuance of revenue bonds under this subpart shall be by resolution or resolutions of the board of regents. The resolution may be adopted at the same meeting at which it is introduced by a majority of all the members of the board then in office and shall take effect immediately upon adoption.

§ -434 Revenue bond anticipation notes. In anticipation of the issuance under this subpart of revenue bonds previously authorized by the legislature and of the receipt of the proceeds of sale of the bonds, the board shall have the power, with the approval of the governor, to issue and sell bond anticipation notes for the purposes for which the bonds have been authorized, the maximum principal amount of which notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of the sale of the bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which would be secured the bonds; provided that to the extent the principal of the notes is paid from moneys other than the proceeds of sale of the bonds, the maximum amount of bonds in anticipation of which the notes are issued that has been authorized shall be reduced by the amount of the notes paid in such manner. The issuance of the notes and the details thereof shall be governed by the provisions of this subpart with respect to bonds insofar as the same may be applicable; provided that:

- (1) Each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note; and
- (2) The notes may be sold at public or private sale, as the board, with the approval of the governor, may determine.

§ -435 Revenue bonds. (a) Revenue bonds shall be issued in the name of the board of regents, may be in one or more series, may be in a denomination or denominations, may bear a date or dates, may mature at a time or times not exceeding fifty years from their respective dates, may be payable at a place or places within or without the State, may carry registration privileges, may be subject to terms and conditions of redemption or to tenders for purchase or to purchase prior to the stated maturity at the option of the board, the holder, or both, may be executed in a manner, and may contain terms, covenants, and conditions, and may be in a form and printed in the manner, including typewritten, that the resolution authorizing the issuance of the bonds or subsequent resolutions may provide.

(b) The board may acquire insurance policies and enter into banking arrangements upon terms and conditions that the board deems necessary or desirable, at the time of delivery of an issue of revenue bonds or a later date as the board deems in the best interests of the university, including but not limited to contracting for support facility or facilities as permitted in section -440, and contracting for interest rate swaps, swap options, interest rate floors, 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 revenue bonds issued pursuant to this subpart.

(c) The board may make arrangements necessary for the sale of each issue of revenue bonds or part that are issued pursuant to this subpart, including but not limited to arranging for the preparation and printing of the revenue bonds, the official statement, and any other documents or instruments required for the issuance and sale of revenue bonds and retaining financial, accounting, and legal consultants all upon terms and conditions as the board deems advisable and in the best interests of the State and the university. The board may offer the revenue bonds at competitive sale or may negotiate the sale of the revenue bonds to any person or group of persons, to the federal government or any board, agency, instrumentality, or corporation thereof, to the employees' retirement system of the State, to any political subdivision of the State or any board, agency, instrumentality, public corporation, or other governmental organization of the State or any political subdivision thereof.

The sale of the revenue bonds by the board by negotiation shall be at the price or prices, and upon the terms and conditions, and the revenue bonds shall bear interest at such rate or rates, or varying rates, determined from time to time in the manner as the board shall approve.

The sale of the revenue bonds by the board at competitive sale shall be at the price or prices, and upon the terms and conditions, and the revenue bonds shall bear interest at the rate or rates, or such varying rates, determined from time to time in the manner as specified by the successful bidder. The revenue bonds shall be sold in the manner provided in section 39-55.

(d) The board may delegate the responsibility for the sale and the fixing of the terms and details of revenue bonds, and any other determinations or actions as may be provided by resolution of the board, to the chairperson, the president, or other designated officer.

(e) All public officers and bodies of the State, all political subdivisions, all insurance companies and associations, all banks, savings banks, and savings institutions, including building or savings and loan associations, all credit unions, all trust companies, all personal representatives, guardians, trustees, and all other persons and fiduciaries in the State who are regulated by law as to the character of their investment may legally invest funds within their control and available for investment in revenue bonds issued under this subpart. The purpose of this subsection is to authorize any person, firm, corporation, association, political subdivision, body, or officer, public or private, to use any funds owned or controlled by them, including (without prejudice to the generality of the foregoing) sinking, insurance, investment, retirement, compensation, pension, trust funds, and funds held on deposit, for the purchase of any revenue bonds issued under this subpart.

§ -436 CUSIP numbers. The board of regents in its discretion may provide that CUSIP identification numbers shall be imprinted on revenue bonds issued under this subpart. In the event the numbers are imprinted on any such bonds:

- (1) No such number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted; and
- (2) No liability shall attach to the board of regents or any officer or agent thereof or the State or any officer thereof, including any fiscal agent, paying agent, or registrar, for the bonds, by reason of the numbers or any use made thereof, including any use thereof made by the board of regents, the State, any such officer or any such agent, or by reason of any inaccuracy, error, or omission with respect thereto or in such use.

The board of regents in its discretion may require that all costs of obtaining and imprinting CUSIP identification numbers shall be paid by the purchaser of the bonds. For the purposes of this section, the term "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

§ -437 Covenants in resolution authorizing revenue bonds. (a) Any resolution or resolutions authorizing the issuance of revenue bonds under this subpart may contain covenants as to:

- (1) The purpose or purposes to which the proceeds of the sale of the revenue bonds may be applied; the use and disposition of the proceeds; the investment thereof pending the use and disposition; and the use and disposition of the income from the investment;
- (2) The use and disposition of the revenue of the university project or projects for the construction or maintenance of which the revenue bonds are issued or of the university system or systems in which the project or projects are to be included; the use and disposition of the revenue of all university projects and university systems and of the revenues of the university, including the creation and maintenance of reserves; the investment of the revenues and of the moneys in the reserves; and the use and disposition of the income from the investments;
- (3) The minimum amount of revenues to be produced by the university projects or university systems, over and above the amount required to be produced by the first sentence and paragraphs (1) through (3) of section -442(a);
- (4) The use and disposition of the proceeds of the sale of any university project or university system, or part of either thereof;
- (5) The construction and maintenance of any university project or university system other than the university project or projects for the construction or maintenance of which revenue bonds are issued or the university system or systems in which such latter project or projects are to be included;
- (6) The issuance of other or additional revenue bonds payable either from the revenue of the university project or projects for the construction or maintenance of which the revenue bonds are issued or the revenue of the university system or systems in which such project or projects are to be included, or payable from the revenue of other university projects or university systems;
- (7) The maintenance of the university project or university system, including the creation by the board of regents of such supervisory positions, which shall not be subject to chapter 76, as are necessary to facilitate the issuance of revenue bonds by ensuring the adequacy of revenues;
- (8) The insurance to be carried on university projects and university systems and the use and disposition of insurance moneys;
- (9) Books of account and inspection and audit thereof;
- (10) A procedure by which the terms and conditions of the bond resolution or indenture may be subsequently amended or modified with the consent of the board, the vote or written assent of the holders of bonds or any proportion of the holder, or any trustee thereof; and
- (11) The terms and conditions upon which the holders of bonds evidencing the obligation to repay loans, or any proportion of the holders, or any trustee thereof, shall be entitled to the appointment of a receiver by any court of competent jurisdiction, which court shall have jurisdiction in such proceedings, and which receiver may enter and take possession of the university project or projects, or university system or systems, maintain them, prescribe rents, fees, and charges and collect, receive, and apply all revenue thereafter arising therefrom in the same manner as the board itself might do, but the receiver shall have no power, nor be granted any power, to utilize, or permit the utilization of, any university

project or university system other than in a manner consistent with and in furtherance of the purposes of the university; provided that all such covenants shall be subject to review by the governor.

(b) This subpart and any resolution or resolutions shall be a contract with the holders of bonds issued under this subpart, and the duties of the board and any resolution or resolutions shall be enforceable by any bondholder by mandamus or other appropriate suit, action, or proceeding in any court of competent jurisdiction.

§ -438 **Validity of bonds.** Revenue bonds bearing the signature of officers in office at the date of the signing thereof shall be valid and binding obligations, notwithstanding that, before the delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to be officers. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings relating to the construction or maintenance of the university project or projects or university system or systems for which the bonds were issued. The resolution authorizing the issuance of revenue bonds may provide that the bonds shall contain a recital that they are issued pursuant to this chapter, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

§ -439 **Bonds.** The resolution or resolutions authorizing the issuance of revenue bonds may pledge to the payment thereof all or any part of the revenue of a university project or projects or university system or systems, and the pledge shall constitute a lien on the revenue of the project or projects or system or systems to the extent and in the manner in the resolution or resolutions provided prior and paramount to any claim or other obligation of any nature against the revenue so pledged subsequently arising or subsequently incurred. The board of regents may provide in the resolution or resolutions that all revenue bonds of the same issue shall be equally and ratably secured without priority by reason of number, date, or maturity of the bonds, date of sale, execution, or delivery thereof. Any pledge of revenues contained in any resolution or resolutions adopted under this subpart shall be valid and binding from and after the adoption of the resolution or resolutions without physical delivery of the revenues therein pledged or the necessity of any further action by the State or the board, or any officer or agent of either the State or board.

§ -440 **Support facility for variable rate revenue bonds.** If revenue bonds issued pursuant to this subpart are issued bearing interest at a rate or rates that vary from time to time and with a right of holders to tender the revenue bonds for purchase, the board may contract for a support facility or facilities and remarketing arrangements that are required to market the revenue bonds to the greatest advantage of the board and the university, upon terms and conditions as the board deems necessary and proper.

The board may enter into contracts or agreements with an entity or entities providing a support facility; provided that any contract or agreement shall provide, in essence, that any amount due and owing by the board under the contract or agreement on an annual basis shall be payable from the revenue of the university; provided further that any obligation issued or arising pursuant to the terms of the contract or agreement in the form of revenue bonds, notes, or other evidences of indebtedness shall only arise if:

- (1) Moneys or securities have been irrevocably set aside for the full payment of a like principal amount of revenue bonds issued pursuant to this subpart; or

- (2) A like principal amount of the issue or series of revenue bonds to which the support facility relates are held in escrow by the entity or entities providing the support facility.

§ -441 Payment and security of revenue bonds; revenue bonds not a debt of the State. Revenue bonds issued under this subpart shall be payable from and secured by the revenues of the university pledged to the payment thereof, and those revenues shall be applied to the payment in accordance with this subpart and the resolution or resolutions authorizing the issuance of the revenue bonds. No holder or holders of any revenue bonds issued under this subpart shall ever have the right to compel any exercise of the taxing power of the State to pay the bonds or interest thereon. Each revenue bond shall recite in substance that the bond, including interest thereon, is payable from and secured by the revenues pledged to the payment thereof, and that the bond does not constitute a general or moral obligation or charge upon the general fund of the State and the full faith and credit of the State are not pledged to the payment of the principal and interest.

§ -442 University projects and university systems to be self-supporting.

(a) The board of regents shall impose and collect rates, rents, fees, and charges for the use or enjoyment and services of the facilities of each university project and shall revise the rates, rents, fees, and charges from time to time whenever necessary, so that all university projects and university systems shall be and always remain self-supporting. The rates, rents, fees, and charges prescribed shall be deposited into the university revenue-undertakings fund established under section -377 and shall be such as will produce revenue at least sufficient:

- (1) To pay the cost of maintenance of the university project or projects or university system or systems, including reserves therefor;
- (2) To pay when due all bonds and interest thereon, for the payment of which the revenue is or has been pledged, charged, or otherwise encumbered, including reserves therefor;
- (3) To reimburse the general fund of the State for any bond requirements on general obligation bonds issued for university project or projects or university system or systems to the extent required by law; and
- (4) To carry out all covenants and provisions of the resolution or resolutions authorizing the issuance of revenue bonds.

(b) Neither this section, nor any other section of this subpart shall preclude the making of appropriations to the board, the acceptance of gifts by the board or the use of funds derived from the sale of stocks, bonds, or other assets in the possession of the board to pay all or part of the costs of construction, of maintenance, or both, of any or all university projects or university systems.

§ -443 University project, university system, bonds exempt from taxation. The property and revenue of any university project or university system shall be exempt from all taxation and assessments. Revenue bonds issued under this subpart and all income therefrom shall be exempt from all taxation by the State, any county, or other political subdivision, except inheritance, transfer, and estate taxes.

§ -444 Powers herein, additional to other powers. The powers conferred by this subpart shall be in addition and supplemental to the powers conferred by any other law concerning any university project, university system, or any combination, or the issuance of revenue bonds. Revenue bonds may be issued pursuant to this subpart for those purposes notwithstanding any other law to the contrary that provides for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of a similar undertaking or the establishment,

maintenance, or extension of a similar university project, university system, or any combination thereof, or the issuance of revenue bonds, without regard to the requirements, restrictions, limitations, or other law. Except as expressly provided in this subpart, insofar as this subpart is inconsistent with any other law, this subpart shall be controlling.

§ -445 Funding and refunding bonds; authorization and purpose. (a)

The board of regents, with the approval of the governor, may provide for the issuance of revenue bonds, referred to in this subpart as "refunding bonds", for the purpose of refunding, redeeming, or retiring at or at any time before maturity or at any time before the first date upon which the outstanding bonds to be refunded may be called for redemption, any bonds issued under this subpart, including any bonds that the holders may consent to be paid or refunded even though the bonds are not matured or are not callable or redeemable, and for the purpose of funding indebtedness not evidenced by revenue bonds but which was incurred for purposes for which revenue bonds may be issued pursuant to this subpart. The rate or rates of interest borne by the refunding bonds shall not be affected or limited by the rate or rates of interest borne by the bonds to be refunded or the indebtedness to be funded.

(b) All provisions of this subpart applicable to the issuance of revenue bonds shall be complied with in the issuance of refunding bonds. Refunding bonds shall be sold as provided in section -435, or the board may, in its discretion, provide for the exchange of refunding bonds for a like principal amount of outstanding bonds for the refunding of which the issuance of such refunding bonds has been authorized, whether or not the interest rate on the refunding bonds is higher than the interest rate on the bonds refunded thereby.

§ -446 Funding and refunding bonds; principal amount. Refunding bonds may be issued in a principal amount sufficient to provide funds for the payment of all bonds or indebtedness to be funded or refunded thereby, and expenses paid or incurred in connection with the calling, redeeming, retiring, or paying of such indebtedness or outstanding bonds and the issuance of such refunding bonds. The expenses may include the amount necessary for the payment of interest upon the indebtedness to be funded or the bonds to be refunded to the maturity or redemption date thereof, the amount necessary for the payment of interest upon the refunding bonds from the date of delivery thereof to the date upon which the principal of the outstanding bonds to be refunded will be paid, whether at maturity or pursuant to a call for redemption thereof or pursuant to agreement with the holders thereof, plus in any case the amount of the premium, if any, required to be paid in order to call or retire the bonds to be required.

§ -447 Fiscal agents. (a) The director of finance of the State, when requested by the board of regents, shall render full and complete assistance to the board in the preparation and sale of revenue bonds issued pursuant to this subpart. The director of finance shall be the fiscal agent of the board for the payment of all principal and interest, and for the transfer, of revenue bonds. The provisions of sections 36-3 and 39-12, relating to the appointment by the director of finance of other fiscal agents, paying agents, transfer agents, and registrars, and to the status of funds held by these fiscal agents, to the extent that they may appropriately be applied, shall be deemed incorporated in this subpart.

(b) The director of finance shall cause to be set up in the treasury of the State suitable accounts for:

- (1) The deposit of all revenues of university projects or university systems and the payment of all revenue bonds and the interest thereon;

- (2) All other payments provided or required by this subpart or any resolution or resolutions of the board; and
- (3) The holding of all reserves created under this subpart or any resolution or resolutions of the board.

§ -448 **Limitation of authority.** Notwithstanding any other provision to the contrary, nothing in this subpart shall be construed to authorize the board of regents to incur any indebtedness contrary to article VII, sections 12 and 13, of the state constitution or to incur any indebtedness that would not qualify for exclusion from the total indebtedness of the State under article VII, section 13(2) of the state constitution.

B. University Parking

§ -451 **Parking; control by board of regents.** (a) The board of regents may make rules governing the traffic and parking conditions on the roadways and other areas under the jurisdiction of the university.

(b) The board may:

- (1) Assess fees for parking on roadways and in the parking areas under the jurisdiction of the university;
- (2) Install parking meters on roadways and in parking areas; and
- (3) Make rules relating to the assessments of fees for parking and the installation of parking meters. The rules shall be adopted pursuant to chapter 91.

The fees shall be deposited in the university parking revolving fund established under section -405.

(c) For the purposes of this subpart, parking facilities shall be considered university projects, and the board shall possess all powers conferred by subpart A.

§ -452 **Fines and other penalties.** The board of regents may enforce its rules by imposing fines not to exceed \$100 per violation, or by removing the vehicle of the offender from the area within the university's jurisdiction, or both; provided that a person violating any provision of part III of chapter 291, or any rule adopted thereunder, shall be guilty of a traffic infraction under chapter 291D and shall be fined or otherwise penalized in accordance with part III of chapter 291. The owner of any vehicle so towed away shall be responsible for and pay all costs incurred in the towing and storage. Any vehicle towed away and unclaimed thirty days thereafter shall be sold at public auction by the university. The university shall pay all costs of towing and storage and other costs connected with the sale out of the university parking revolving fund established under section -405. The fund shall be reimbursed for the costs from the proceeds of the sale, and the remaining balance, if any, shall be paid to the owner of the vehicle; provided that if the proceeds of the sale are not claimed by the owner of the vehicle within sixty days after notice, the proceeds shall be deposited in the university parking revolving fund.

§ -453 **Revenue bonds.** The board of regents is authorized to issue sufficient amounts of revenue bonds pursuant to subpart A for the purpose of providing adequate parking structures or other facilities.

C. University Equipment

§ -461 **University of Hawaii equipment.** The board of regents may define or establish the value, useful life, and any other characteristic of the university's nonexpendable, tangible personal property, for all purposes for which these charac-

teristics must be defined or established, including inventory and surplus property control and the preparation of financial statements, but excluding the determination of cost elements related to the issuance of general obligation bonds.

PART VII. ADMINISTRATIVELY ATTACHED ENTITIES

A. Research Corporation of the University of Hawaii

§ -471 **Establishment of the research corporation; purpose.** (a) There is established as a body corporate, the research corporation of the University of Hawaii. The research corporation shall be a public instrumentality and shall be a part of the University of Hawaii for administrative purposes pursuant to section 26-35.

(b) The purposes of the research corporation shall include, but not be limited to, the promotion of all educational, scientific, and literary pursuits by:

- (1) Encouraging, initiating, aiding, developing, and conducting training, research, and study in the physical, biological, and social sciences, humanities, and all other branches of learning;
- (2) Encouraging and aiding in the education and training of persons for the conduct of the training, investigations, research, and study;
- (3) Furnishing of means, methods, and agencies by which the training, investigation, research, and study may be conducted;
- (4) Assisting in the dissemination of knowledge by establishing, aiding, and maintaining professorships or other staff positions, fellowships, scholarships, publications, and lectures;
- (5) Engaging in other means of making the benefits of training, investigations, research, and study available to the public; and
- (6) Taking any and all other actions reasonably designed to promote these purposes in the interest of promoting the general welfare of the people of the State.

§ -472 **Board of directors; composition.** The affairs of the research corporation shall be under the general management and control of the board of directors. The board of directors shall consist of ten members. Five members of the board of regents of the University of Hawaii, selected by the board of regents, shall be members of the board of directors for terms to be determined by the board of regents; provided that no term shall extend beyond the term as a member of the board of regents. The remaining five members shall be appointed by the governor pursuant to section 26-34. All the members appointed by the governor shall serve for a term of four years, except that the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year, each term commencing on July 1 and expiring on June 30. All members of the board of directors shall serve without pay, but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of duties and responsibilities.

The members of the board of directors shall elect the chairperson of the board.

§ -473 **Powers of the research corporation.** The research corporation, under the direction of the board of directors, shall have the following general powers:

- (1) To adopt, amend, and repeal bylaws governing the conduct of its business and the exercise of the powers and performance of duties granted to or imposed upon it by law;

- (2) To sell, lease, rent, hold, maintain, use, and operate any property, real, personal, or mixed, tangible or intangible, in accordance with the conditions under which it was received;
- (3) To enter into and perform such contracts, leases, cooperative agreements, or other transactions with the university or any other agency or political subdivision of the State, any private person, firm, partnership, association, company, or corporation, only as it may be necessary in the conduct of its business and on such terms as it may deem appropriate; provided that the research corporation shall not obligate any funds of the State except those that have been appropriated to it. Notwithstanding the foregoing, the research corporation may enter into and perform such contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, a foreign nation, a state, a territory, or a possession, or with any political subdivision thereof, whenever the donating or granting agency or instrumentality determines that the university or any other agency of the State cannot as effectively and efficiently accomplish the purposes for which such contracts, leases, cooperative agreements, or other transactions are being entered into; provided that the research corporation shall not obligate any funds of the State except those that have been appropriated to it;
- (4) To receive by gifts, grants, devises, bequests, or otherwise from private sources only, any property, real, personal, or mixed, intangible or tangible, absolutely or in trust, to be used and disposed of, either the principal or the income therefrom, in accordance with the conditions under which it was received; except that no gift to the research corporation shall be accepted unless approved or confirmed by the board of directors. Notwithstanding the foregoing, the research corporation may receive gifts, grants, or awards from any agency or instrumentality of the United States, a foreign nation, a state, a territory, or a possession, or from any political subdivision thereof, whenever the donating or granting agency or instrumentality determines that the university or any other agency of the State cannot as effectively and efficiently accomplish the purposes for which the gifts, grants, or awards are being made, except that no gift to the research corporation shall be accepted unless approved or confirmed by the board of directors;
- (5) To have a corporate seal;
- (6) To sue and be sued in its own name;
- (7) To serve as trustee or beneficiary under terms of any gift, indenture, or will;
- (8) To apply for, take out, receive by purchase or gift, hold, administer, and dispose of copyrights, patent rights, licenses, assignments of inventions, discoveries, processes, and other property, rights or interests therein, and the income thereof, absolutely or subject to such conditions or trusts as may be attached thereto or be imposed thereon, and to obligate itself to perform and execute any and all such conditions or trusts;
- (9) To conduct research, studies, experiments, investigations, and tests in all fields of knowledge; to promote and develop the scientific and commercial value of inventions, discoveries, and processes; and to make, publish, and distribute the results thereof;
- (10) To coordinate and correlate activities and projects of the research corporation with the work of state agencies for the purpose of relating

research work to the economic development of the State whenever practical or desirable;

- (11) To stimulate and promote cooperative research projects and activities;
- (12) To establish and maintain, or to assist in establishing and maintaining, scholarships, fellowships, and professorships, and other staff positions for the purpose of aiding in the acquisition and dissemination of knowledge and to enter into agreements or contracts with other corporations, organizations, institutions, or persons for this purpose and to pay the necessary and appropriate expenses therefor;
- (13) To prepare, print, or publish any manuscript, research article, report, study, discussion, reference, collection, or any pictorial or schematic representation or group or collection thereof, whether it belongs to or is the work of any state agency or its employees, or the university or one of its faculty members or employees, or the research corporation or its employees, or a contractor of the research corporation. The printing or publication may be accomplished through whatever person, company, or agency is deemed most appropriate by the board of directors; and
- (14) To do any or all other acts reasonably necessary to carry out the objects and purposes of the research corporation and the university.

§ -474 **Research vessel safety requirements.** Notwithstanding any law to the contrary, prior to the charter or use of any research or other oceangoing vessel by the research corporation or any agent thereof, the research corporation shall ensure that the vessel meets the research vessel standards recommended by the guidelines of the university national oceanographic laboratory systems.

§ -475 **Research corporation excepted from certain state laws.** To carry out the purposes and objectives of the research corporation, including the conduct of research and training projects, the research corporation shall be granted flexibility in hiring its personnel and in handling and disbursing moneys by being excepted from the following state laws:

- (1) Sections 36-27 and 36-30, relating to special fund reimbursements to the state general fund;
- (2) Chapter 103D, relating to advertising for bids and purchases to be made in Hawaii whenever public moneys are expended;
- (3) Chapter 76, relating to civil service; and
- (4) Section 78-1, relating to public employment.

§ -476 **Officers and employees of the research corporation.** The president of the university shall be the president of the research corporation. The board of directors may also appoint such other officers and employees as may be necessary in administering the affairs of the research corporation. The board of directors shall set the employees' duties, responsibilities, salaries, holidays, vacations, leaves, hours of work, and working conditions. The board of directors may grant such other benefits to its employees as it deems necessary. Employees of the research corporation shall not be entitled to any benefits conferred under chapter 76 relating to civil service, chapter 78 relating to public service, chapter 88 relating to pension and retirement systems, and the appropriate collective bargaining agreement, executive order, executive directive, or rule.

§ -477 **Annual report.** The research corporation shall submit an annual report to the governor, the president of the senate, and the speaker of the house of representatives. The report shall include but not be limited to the corporation's

audited financial statement, total amount of payroll and other disbursements made, and progress and accomplishments made during the year.

§ **-478 Dissolution.** In the event of the dissolution of the research corporation, all of its property, real, personal, and mixed and wheresoever situated, shall vest immediately and absolutely in the university, and none of its property shall inure to the benefit of any officer, director, or member of the research corporation.

§ **-479 Patents, copyrights, and other rights.** Any patents, copyrights, inventions, discoveries, or other rights arising from research corporation activities shall belong to the research corporation and shall be subject to such policies or rules as the board of directors may adopt.

§ **-480 Special account.** Notwithstanding any other law to the contrary, the research corporation shall be authorized to set up a special account for depositing moneys received from either public or private contracts, or from private or public grants, awards, or gifts. The provisions of section -343 and other laws to the contrary notwithstanding, this special account may be used to receive, disburse, and account for funds of research and training projects of the University of Hawaii, other state agencies, and political subdivisions of the State. All disbursements shall be drawn on the special account upon checks prepared and signed, as approved by the executive director and some other person authorized by the board of directors.

§ **-481 Contracts with state agencies.** Any contract between the research corporation and any agency, office, department, or other administrative subdivision of the executive branch of the State shall include the following:

- (1) Its termination date;
- (2) Its intent and purpose;
- (3) A statement establishing the full permissible extent of its applicability; and
- (4) A description of the circumstances under which it may be amended or extended.

B. Pacific International Center for High Technology Research

§ **-491 Pacific international center for high technology research; establishment.** (a) There is established, as an educational and research institution, the Pacific international center for high technology research. The center shall be placed within the university for administrative purposes, as provided for in section 26-35, but the center may later incorporate as a nonprofit corporation if this proves desirable to further its objectives.

(b) The center shall assist the State's high technology development corporation in its efforts, shall promote educational, scientific, technological, and literary pursuits in the area of high technology, and shall provide support for the high technology industry in Hawaii in the following manner:

- (1) By fostering scientific and technological interchange between students and scholars of the United States and other nations;
- (2) By encouraging, initiating, aiding, developing, and conducting scientific investigations and research in high technology;
- (3) By encouraging and aiding in the education and training of persons from the United States and other nations for the conduct of such investigations, research, and study;

- (4) By assisting in the dissemination of knowledge by establishing, aiding, and maintaining professorships or other staff positions, fellowships, scholarships, publications, and lectures;
- (5) By other means to make the benefits of investigations, research, and study available to the public; and
- (6) By any and all other acts reasonably designed to further the above purposes in the interest of promoting the general welfare of the people of the State and the mutual understanding between the United States and other nations.

(c) The center shall seek, receive, and accept from public and private sources, whether located within or without the United States, grants, gifts, devises, bequests, or any other money or property, real, personal, or mixed, tangible or intangible, absolutely or in trust, to be used in carrying out the purposes of the center.

C. State Post-Secondary Education Commission

§ -501 **Establishment of the state post-secondary education commission; membership, administration.** There is established a state post-secondary education commission. The commission shall consist of the members of the board of regents of the university, the provisions of section 78-4 notwithstanding, and four other members who shall be broadly and equitably representative of the general public and public and private nonprofit and proprietary institutions of post-secondary education in the State and who shall be appointed in accordance with section 26-34. The commission shall be placed within the university for administrative purposes, and its administrative officer shall be the president of the university. The commission may appoint necessary staff members in accordance with applicable policies and procedures of the university.

§ -502 **Commission's powers and authority.** (a) The commission may cooperate with the federal government to qualify the State to receive funds made available under the Higher Education Act of 1965, Public Law 89-329, as amended from time to time, and in addition may serve as the state agency for the receipt of federal funds when federal legislation dealing with higher education or post-secondary education requires, as a condition of state receipt of such funds, the designation of a state agency that is broadly representative of the general public and of post-secondary education in the State and when agencies other than the commission created by this subpart may not qualify. The commission shall adopt appropriate rules not inconsistent with this subpart as may be required to administer this subpart. The rules shall be adopted in accordance with chapter 91.

(b) No funds appropriated by the legislature may be used to aid a person attending an institution not owned or exclusively controlled by the State or a department of the State or to pay for any staff work distributing federal or private funds to students attending such schools. The maximum amount of any grant awarded under the Hawaii state incentive grant program shall be equal to the maximum allowed by federal law.

§ -503 **Procedures for complaints concerning institutions of higher education.** In consultation with institutions of higher education in the State, the commission is authorized to establish and administer procedures for receiving and responding to complaints from students, faculty, staff, and others concerning institutions of higher education in the State.

§ -504 **Cooperation with other state agencies.** The commission may be assisted by other state agencies, including but not limited to the university, the department of education, and the department of commerce and consumer affairs.

D. Western Regional Education Compact

§ -511 **Approval of compact.** The Western Regional Education Compact, recommended by the Western Governors' Conference on November 10, 1950, for adoption by the states of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming, the then Territory of Alaska and the Territory of Hawaii, is hereby certified and approved and the adherence of the State of Hawaii to this compact is hereby declared by the legislature of the State of Hawaii.

§ -512 **Terms and provisions of compact.** The terms and provisions of the Compact referred to in section -511 are as follows:

WESTERN REGIONAL EDUCATION COMPACT

The contracting states do hereby agree as follows:

ARTICLE I

WHEREAS, the future of this Nation and of the Western States is dependent upon the quality of the education of its youth; and

WHEREAS, many of the Western States individually do not have sufficient numbers of potential students to warrant the establishment and maintenance within their borders of adequate facilities in all of the essential fields of technical, professional, and graduate training, nor do all the states have the financial ability to furnish within their borders institutions capable of providing acceptable standards of training in all of the fields mentioned above; and

WHEREAS, it is believed that the Western States, or groups of such states within the Region, cooperatively can provide acceptable and efficient educational facilities to meet the needs of the Region and of the students thereof;

Now, therefore, the states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming, and the Territory do hereby covenant and agree as follows:

ARTICLE II

Each of the compacting states and the Territory of Hawaii pledges to each of the other compacting states and territory faithful cooperation in carrying out all the purposes of this compact.

ARTICLE III

The compacting states and territory hereby create the Western Interstate Commission for Higher Education, hereinafter called the commission. Said commission shall be a body corporate of each compacting state and territory and an agency thereof. The commission shall have all the powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states and territories.

ARTICLE IV

The commission shall consist of three resident members from each compacting state or territory. At all times one commissioner from each compacting state or territory shall be an educator engaged in the field of higher education in the state or territory from which he is appointed.

The commissioners from each state and territory shall be appointed by the governor thereof as provided by law in such state or territory. Any commissioner may be removed or suspended from office as provided by the law of the state or territory from which he shall have been appointed.

The terms of each commissioner shall be four years: Provided, however, that the first three commissioners shall be appointed as follows: one for two years, one for three years, and one for four years. Each commissioner shall hold office until his successor shall be appointed and qualified. If any office becomes vacant for any reason, the governor shall appoint a commissioner to fill the office for the remainder of the unexpired term.

ARTICLE V

Any business transacted at any meeting of the commission must be by affirmative vote of a majority of the whole number of compacting states and the Territory of Hawaii.

One or more commissioners from a majority of the compacting states and territory shall constitute a quorum for the transaction of business.

Each compacting state and territory represented at any meeting of the commission is entitled to one vote.

ARTICLE VI

The commission shall elect from its number a chairman and a vice chairman, and may appoint and at its pleasure dismiss or remove, such officers, agents, and employees as may be required to carry out the purpose of this compact; and shall fix and determine their duties, qualifications and compensation, having due regard for the importance of the responsibilities involved.

The commissioners shall serve without compensation, but shall be reimbursed for their actual and necessary expenses from the funds of the commission.

ARTICLE VII

The commission shall adopt a seal and bylaws and shall adopt and promulgate rules and regulations for its management and control.

The commission may elect such committees as it deems necessary for the carrying out of its functions.

The commission shall establish and maintain an office within one of the compacting states for the transaction of its business and may meet at any time, but in any event must meet at least once a year. The chairman may call such additional meetings and upon the request of a majority of the commissioners of three or more compacting states or the Territory of Hawaii shall call additional meetings.

The commission shall submit a budget to the Governor of each compacting state and territory at such time and for such period as may be required.

The commission shall, after negotiations with interested institutions, determine the cost of providing the facilities for graduate and professional education for use in its contractual agreements throughout the Region.

On or before the fifteenth day of January of each year, the commission shall submit to the Governors and Legislatures of the compacting states and territory a report of its activities for the preceding calendar year.

The commission shall keep accurate books of account, showing in full its receipts and disbursements, and said books of account shall be open at any reasonable time for inspection by the Governor of any compacting state or territory or the governor's designated representative. The commission shall not be subject to the audit and accounting procedure of any of the compacting states or territory. The commission shall provide for an independent annual audit.

ARTICLE VIII

It shall be the duty of the commission to enter into such contractual agreements with any institution in the region offering graduate or professional education and with any of the compacting states or territory as may be required in the judgment of the commission to provide adequate services and facilities of graduate and professional education for the citizens of the respective compacting states or territories. The commission shall first endeavor to provide adequate services and facilities in the fields of dentistry, medicine, public health and veterinary medicine, and may undertake similar activities in other professional and graduate fields.

For this purpose the commission may enter into contractual agreements.

(a) With the governing authority of any educational institution in the region, or with any compacting state or territory, to provide such graduate or professional educational services upon terms and conditions to be agreed upon between contracting parties, and

(b) With the governing authority of any educational institution in the region or with any compacting state or territory to assist in the placement of graduate or professional students in educational institutions in the region providing the desired services and facilities, upon such terms and conditions as the commission may prescribe.

It shall be the duty of the commission to undertake studies of needs for professional and graduate educational facilities in the region, the resources for meeting such needs, and the long-range effects of the compact on higher education; and from time to time to prepare comprehensive reports on such research for presentation to the Western Governors' Conference and to the legislatures of the compacting states and territory. In conducting such studies, the commission may confer with any national or regional planning body which may be established. The commission shall draft and recommend to the governors of the various compacting states and territory, uniform legislation dealing with problems of higher education in the region.

For the purposes of this compact the word "region" shall be construed to mean the geographical limits of the several compacting states and the Territory of Hawaii.

ARTICLE IX

The operating costs of the commission shall be apportioned equally among the compacting states and the Territory of Hawaii.

ARTICLE X

This compact shall become operative and binding immediately as to those states and territories adopting it whenever five or more of the states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, Wyoming and the Territory of Hawaii have duly adopted it prior to July 1, 1953. This compact shall become effective as to any additional states or territories adopting thereafter at the time of such adoption.

ARTICLE XI

This compact may be terminated at any time by consent of a majority of the compacting states and territory. Consent shall be manifested by passage and signature in the usual manner of legislation expressing such consent by the legislature and governor of such terminating state. Any state or territory may at any time withdraw from this compact by means of appropriate legislation to that end. Such withdrawal shall not become effective until two years after written notice thereof by the governor of the withdrawing state or territory accompanied by a certified copy of the requisite legislative action is received by the commission. Such withdrawal shall not relieve the withdrawing state or territory from its obligations hereunder accruing prior to the effective date of withdrawal. The withdrawing state or territory may rescind its action of withdrawal at any time within the two-year period. Thereafter, the withdrawing state or territory may be reinstated by application to and the approval by a majority vote of the commission.

ARTICLE XII

If any compacting state or territory shall at any time default in the performance of any of its obligations assumed or imposed in accordance with the provisions of this compact, all rights, privileges and benefits conferred by this compact or agreements hereunder shall be suspended from the effective date of such default as fixed by the commission.

Unless such default shall be remedied within a period of two years following the effective date of such default, this compact may be terminated with respect to such defaulting state or territory by affirmative vote of three-fourths of the other member states or territories.

Any such defaulting state may be reinstated by: (a) performing all acts and obligations upon which it has heretofore defaulted, and (b) application to and the approval by a majority vote of the commission.

§ -513 **Execution.** The governor shall execute the compact on behalf of this State and perform any other acts that may be deemed requisite to its formal ratification and promulgation.

§ -514 **State commissioners.** (a) The governor, with the advice and consent of the senate, shall appoint the members of the commission for this State of the Western Interstate Commission for Higher Education that is created under the provisions of Article III of the Western Regional Education Compact. The positions of commissioners shall be placed within the University of Hawaii for administrative purposes.

(b) The qualifications and terms of office of the members of the commission for this State shall conform with Article IV of the compact.

(c) The commissioners shall serve without compensation, but they shall be reimbursed for their actual and necessary expenses by the Western Interstate Commission for Higher Education.

(d) The commissioners for this State, with the help of an advisory committee selected by them, shall certify those students from the State of Hawaii who may receive special assistance in their professional education from the State, under contracts provided for in the Western Regional Education Compact.

§ -515 **Expenditures; reports.** Expenditures by the commission, including the amounts fixed annually as the equal contribution of each member to the compact, shall be made upon warrants issued by the state comptroller based upon vouchers approved by any one of the commissioners. A report of the activities and expenses of

the commissioners and a proposed program for the State's continuing participation in the activities of the Western Interstate Commission for Higher Education, including a budget request, shall be submitted by the commissioners to the legislature for each regular legislative session.

§ **-516 Placement of students.** The Western Interstate Commission for Higher Education is authorized to act on behalf of this State in making arrangements for the placement of students in institutions and programs of higher learning outside the states which are parties to the compact establishing the commission. For that purpose, the commission may negotiate and enter into arrangements and contracts with this State or any appropriate agency thereof, with public and private educational institutions and agencies, and with states and other governmental entities. Such arrangements and contracts may provide for:

- (1) The obtaining of one or more places for students on either a special or continuing basis;
- (2) The payment of partial or full tuition and other charges; and
- (3) The furnishing of reciprocal, compensating, or other advantages and benefits in support of the educational program involved.

§ **-517 Payment of costs.** The authority conferred by section -516 shall be exercised only pursuant to written agreement between the commission and an agency of the State having responsibility for or duties with respect to programs for assisting residents of the State to obtain higher education. Any such agreement shall include provisions for the payment of tuition and any other costs, and no such agreement shall be made that commits the State or any agency or officer thereof to any obligation for which funds have not been appropriated or otherwise made available in accordance with law.

§ **-518 Obligations under compact not impaired.** Nothing contained in sections -516 and -517 shall be construed to alter any of the obligations or restrict or impair any of the rights that the State may have under the compact establishing the commission.

E. Hawaii Research Center for Futures Study

§ **-521 Center established.** There is hereby established a Hawaii research center for futures study. The center is assigned to the university for administrative purposes.

§ **-522 Duties of the center.** The center shall:

- (1) Serve as a research arm of the workforce development council and such other public agencies as may properly require its services and assistance in locating research experts for particular studies and in working out the dimensions and contractual arrangements for such studies, the costs and final decisions of which shall be the responsibility of the requesting agencies;
- (2) Encourage and promote invention and experimentation in futures study, planning, and design;
- (3) Maintain an inventory of studies, research, and other information, including groups or persons concerned with futures study, planning, and design applicable to the State; and
- (4) Engage in the development and acquisition of models, techniques, and other tools, and capability for the effective monitoring, measuring, and forecasting of crucial aspects of Hawaii's socio-economic-environment.

tal system over the immediate, intermediate, and long-range future, including the design of systems to assist and stabilize the State's construction industry.

§ -523 **Director; duties.** The center shall be headed by a director, who need not be full-time, depending upon the extent of the requests for research assistance and for carrying out the other specified functions of the center. The director shall not be subject to chapter 76.

The director shall:

- (1) Administer funds allocated for the center;
- (2) Be authorized to accept, disburse, and allocate funds that become available from other governmental and private sources; and
- (3) Submit an annual report of the center's operations, including recommendations, to the governor and legislature prior to January 1 of each year.

F. Nursing Scholars Program

§ -531 **Definitions.** As used in this subpart, unless the context otherwise requires:

"Approved course of study" means a course of study that leads to enrollment in a graduate nursing program approved by the state board of nursing or a course of study in a graduate nursing program approved by the state board of nursing.

"Approved educational institution" means a public post-secondary educational institution located in this State that has been accredited by a nationally recognized accrediting agency that is listed by the United States Secretary of Education.

"Program" means the nursing scholars program.

"Student" means any individual domiciled in this State who attends or is about to attend a post-secondary educational institution located in this State leading to a master's or doctoral degree in nursing and who intends to teach in a nursing program in Hawaii designed to prepare students for licensure as registered nurses.

"Work requirement" means teaching at a school of nursing located in Hawaii after receiving a master's degree or doctoral degree in nursing.

§ -532 **Nursing scholars program; establishment, administration.** (a) There is established a program to be known as the nursing scholars program to be placed administratively within the University of Hawaii.

(b) The University of Hawaii may provide scholarship grants under the scholarship program to an eligible student who is a resident in this State upon confirmation from an approved educational institution that the student has been accepted for enrollment in an approved graduate course of study. Awarding preference shall be given to Hawaii residents. Scholarship grants shall only be for the amounts set forth in section -533(a) and shall only be used for tuition, books, laboratory fees, and any other required educational fees and costs.

(c) The University of Hawaii shall establish lists of approved graduate courses of study for the various types of approved educational institutions falling within the program.

(d) To receive a scholarship grant under this chapter, a student shall:

- (1) Have graduated from a recognized nursing program with a bachelor of science in nursing;
- (2) Maintain domicile in Hawaii during the term of the scholarship grants;

- (3) Comply with any conditions placed on the scholarship grant by the University of Hawaii;
- (4) Maintain a grade point average of 3.0 or higher, on a scale of 4.0 or its equivalent; and
- (5) Enter into a written agreement with the University of Hawaii to:
 - (A) Satisfy all degree requirements and other requirements under this program;
 - (B) Commence nursing instruction in this State within one year after completion of an approved graduate degree in nursing for a period of one year for each academic year the student received a master's or doctoral degree, for a period of one year for each academic year the student receives a scholarship grant under this program, unless the University of Hawaii determines that there are extenuating circumstances; and
 - (C) Reimburse the State for all amounts received under this program and interest thereon, as determined by the University of Hawaii, if the student fails to comply with this subsection.

(e) A student applying for the scholarship shall apply to the University of Hawaii and include all information and documentation required by the University of Hawaii. The application shall include a verified statement of grade point average from the appropriate approved educational institution.

(f) The teaching requirement under subsection (d)(5)(B) shall begin after the receipt of the master's or doctoral degree. If a student terminates enrollment in the approved educational institution during the academic year or prior to completion of the approved graduate course of study and is eligible to have all or a portion of the tuition payments refunded under the refund policies of the institution, the approved educational institution shall notify the University of Hawaii in writing and shall return all unused portions of the scholarship grant. Returned amounts shall be used to fund other scholarship grants under this program.

(g) A scholarship grant under this program is only transferable to another approved educational institution if approved by the University of Hawaii.

(h) Scholarship grants awarded under the program shall be limited to funds appropriated for the purpose of awarding grants or funds otherwise matched by external entities. First priority for scholarship grant awards shall be given to renewal applicants.

§ -533 Scholarships; nursing degree programs. (a) The University of Hawaii shall award a scholarship grant in an amount up to \$10,000 per academic year to a student enrolled full-time in an approved educational institution pursuing a graduate degree in nursing through an approved course of study.

(b) The grant shall be for a maximum of three academic years if the student is enrolled in a master's degree program, or a maximum of four academic years if the student is enrolled in a doctoral program. To qualify for renewals beyond three years, the student shall comply with the requirements of section -532(d), and the University of Hawaii shall determine that the student is making satisfactory progress toward completing a master's or doctoral degree.

§ -534 Program administration. (a) The University of Hawaii shall monitor and verify a student's fulfillment of all requirements for a scholarship grant under this program.

(b) The University of Hawaii may enter into a contract with a private or public entity to administer the program.

(c) The University of Hawaii shall enforce repayment of all scholarship grants if a student does not comply with the requirements of the scholarship grant.

Enforcement shall include the use of all lawful collection procedures, including private collection agencies.

(d) Scholarship grants received by a student under the program shall not be considered taxable income under chapter 235.

(e) Scholarship grants received by a student under the program shall not be considered financial assistance or appropriations to the approved educational institution.

(f) Any person who knowingly or intentionally procures, obtains, or aids another to procure or obtain a scholarship grant under the program through fraudulent means shall be disqualified from participation in the program and shall be liable to the University of Hawaii for an amount equal to three times the amount obtained.

§ -535 **Annual report.** The University of Hawaii shall publish a report by September 1, 2006, and every year thereafter. The report shall include information regarding the operation of the program, including:

- (1) The total number of students receiving nursing scholarship grants;
- (2) The total amount of scholarship grants awarded;
- (3) The number of full-time and part-time graduate students receiving scholarship grants, reported according to institution of enrollment;
- (4) The amount of scholarship grants awarded to graduate students, reported according to institution of enrollment; and
- (5) The total number of graduate students who withdraw from the program.

(b)¹ The annual report shall be submitted to the governor and the legislature no later than twenty days prior to the convening of each regular session.”

PART II. AMENDMENTS TO OTHER STATUTES

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special 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) Funds of the employees’ retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Hawaii health systems corporation special funds;
- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under chapter 269;
- (16) Integrated tax information management systems special fund under section 231-3.2;
- (17) Emergency and budget reserve fund under section 328L-3;

- (18) Public schools special fees and charges fund under section 302A-1130(f);
- (19) Sport fish special fund under section 187A-9.5;
- (20) Neurotrauma special fund under section 321H-4;
- (21) Deposit beverage container deposit special fund under section 342G-104;
- (22) Glass advance disposal fee special fund established by section 342G-82;
- (23) Center for nursing special fund under section [304D-5;] ___-373;
- (24) Passenger facility charge special fund established by section 261-5.5;
- (25) Solicitation of funds for charitable purposes special fund established by section 467B-15;
- (26) Land conservation fund established by section 173A-5; [and]

[(27)] Court interpreting services revolving fund under [section 607-1.5], 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 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Each special fund, except the:
- (1) Transportation use special fund established by section 261D-1;
 - (2) Special 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) Funds of the employees’ retirement system created by section 88-109;
 - (9) Unemployment compensation fund established under section 383-121;
 - (10) Hawaii hurricane relief fund established under chapter 431P;
 - (11) Convention center enterprise special fund established under section 201B-8;
 - (12) Hawaii health systems corporation special funds;
 - (13) Tourism special fund established under section 201B-11;
 - (14) Universal service fund established under chapter 269;
 - (15) Integrated tax information management systems special fund under section 231-3.2;
 - (16) Emergency and budget reserve fund under section 328L-3;
 - (17) Public schools special fees and charges fund under section 302A-1130(f);
 - (18) Sport fish special fund under section 187A-9.5;
 - (19) Neurotrauma special fund under section 321H-4;
 - (20) Center for nursing special fund under section [304D-5;] ___-373;
 - (21) Passenger facility charge special fund established by section 261-5.5;
- and

(22) Court interpreting services revolving fund under [F]section 607-1.5[F]; shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 5. Section 78-1, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) This section shall not apply to persons recruited by the University of Hawaii under the authority of section [~~304-11.~~] -201.”

SECTION 6. 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, 415A, 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431, 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 482E, 485, 501, 502, 505, 572, 574, and 846 (part II);
- (2) The authority to increase or decrease fees or nontax revenues under the chapters listed in paragraph (1) that are established by the department of commerce and consumer affairs shall apply to fees or nontax revenues established by statute or rule;
- (3) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under [~~chapters 304, 305, 306, and 308]~~ chapter _____ 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;
- (4) This section shall not apply to judicial fees as may be set by any chapter cited in this section;
- (5) 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
- (6) 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 7. Section 121-45, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The adjutant general, subject to the availability of funds, may award tuition assistance to qualified enlisted persons, warrant officers, and company grade officers (0-1 through 0-3) in the Hawaii national guard who are:

- (1) Residents of the State, as defined by the board of regents pursuant to section [304-4;] ___-142; and
- (2) Undergraduate students working toward a degree on any campus of the University of Hawaii[; provided that any Hawaii national guard member who has been continuously receiving tuition assistance from the University of Hawaii since July 1, 1995, under the administrative continuation of tuition waivers previously authorized under section 304-14.6, and who has been enrolled in a graduate or professional degree program up to and including January 1, 1996, may continue to receive tuition assistance under this section until the member no longer meets the requirements of this section or obtains the degree the member is presently seeking, whichever occurs first].”

SECTION 8. Section 302A-704, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The superintendent, subject to the availability of funds, may award tuition assistance to exemplary teachers who want to become vice-principals in Hawaii’s public schools, and who are:

- (1) Residents of the State, as defined by the board of regents pursuant to section [304-4;] ___-142; and
- (2) Taking courses that will lead to certification as a public school principal, on any campus of the University of Hawaii.”

SECTION 9. Section 302A-801, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the Hawaii teacher standards board, which shall be placed within the department for administrative purposes only. The board shall consist of thirteen members, including not less than six licensed teachers regularly engaged in teaching, three educational officers, the chairperson of the board of education or the chairperson’s designee, the superintendent or the superintendent’s designee, a representative of independent schools, and the dean of the University of Hawaii college of education or the dean’s designee; provided that the dean’s designee shall be chosen from the member institutions of the teacher education coordinating committee established under section [304-20.] ___-222.”

SECTION 10. Section 319-1, Hawaii Revised Statutes, is amended by amending the definition of “WICHE” to read as follows:

““WICHE” means the Western Interstate Commission [en] for Higher Education as described in chapter [310.] ___, part VII, subpart D.”

SECTION 11. 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;] ___-377, 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 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.”

SECTION 12. Section 341-2, Hawaii Revised Statutes, is amended by amending the definition of “center” to read as follows:

““Center” means the University of Hawaii ecology or environmental center established in section [341-3(b)]. -271.”

SECTION 13. Section 341-3, Hawaii Revised Statutes, is amended to read as follows:

“**§341-3 Office of environmental quality control; [~~ecology or~~] environmental center; environmental council.** (a) There is created an office of environmental quality control [~~which~~] that shall be headed by a single executive to be known as the director of environmental quality control who shall be appointed by the governor as provided in section 26-34. This office shall implement this chapter and shall be placed within the department of health for administrative purposes. The office shall perform its duties under chapter 343 and shall serve the governor in an advisory capacity on all matters relating to environmental quality control.

(b) [~~There is created within the university an ecology or environmental center.~~] The environmental center within the University of Hawaii shall be as established under section -271.

(c) There is created an environmental council not to exceed fifteen members. Except for the director, members of the environmental council shall be appointed by the governor as provided in section 26-34. The council shall be attached to the department of health for administrative purposes. Except for the director, the term of each member shall be four years; provided that, of the members initially appointed, five members shall serve for four years, five members shall serve for three years, and the remaining four members shall serve for two years. Vacancies shall be filled for the remainder of any unexpired term in the same manner as original appointments. The director shall be an ex officio voting member of the council. The council chairperson shall be elected by the council from among the appointed members of the council.

Members shall be appointed to assure a broad and balanced representation of educational, business, and environmentally pertinent disciplines and professions, such as the natural and social sciences, the humanities, architecture, engineering, environmental consulting, public health, and planning; educational and research institutions with environmental competence; agriculture, real estate, visitor industry, construction, media, and voluntary community and environmental groups. The members of the council shall serve without compensation but shall be reimbursed for expenses, including travel expenses, incurred in the discharge of their duties.”

SECTION 14. Section 446E-1.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§446E-1.5]]~~ **Advisory board.** The state post-secondary education commission, as established by chapter ~~[305H,]~~ _____, part VII, subpart C, shall serve as a resource to the director as needed regarding the requirements of this chapter.”

SECTION 15. Section 446E-1.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§446E-1.6]]~~ **Exceptions.** This chapter shall not apply to the types of schools and courses of instruction that include:

- (1) Schools and educational programs conducted by firms, corporations, or persons for the training of their own employees;
- (2) Apprentice or other training programs provided by labor unions to union members or union applicants for membership;
- (3) Courses of instruction that do not lead to the conferring of a degree;
- (4) Seminars, refresher courses, and programs of instruction sponsored by professional, business, or farming organizations or associations for their members or employees of their members;
- (5) Courses of instruction conducted by a public school district or a combination of public school districts;
- (6) Colleges and universities that grant degrees pursuant to ~~[chapters 304 and 305;]~~ chapter _____;
- (7) Entities that are established under the jurisdiction of the board of regents of the University of Hawaii;
- (8) Schools, courses of instruction, or courses of training that are offered by a vendor to the purchaser or prospective purchaser of the vendor's product when the objective of the school or course is to enable the purchaser or the purchaser's employees to gain skills and knowledge which enable the purchaser to use the product;
- (9) Schools and educational programs conducted by religious organizations solely for the religious instruction of their members;
- (10) Nondegree granting post-secondary educational institutions licensed by the department of education or the real estate commission; and
- (11) Schools that are accredited by an agency or organization approved or recognized by the United States Department of Education or a successor agency, except as provided for in section 446E-5(b) and (c).”

PART III. REPEALED CHAPTERS AND SECTIONS

SECTION 16. Chapters 222, 304, 304D, 304E, 305, 305A, 305E, 305H, 306, 307, 308, and 310, Hawaii Revised Statutes, are repealed.

SECTION 17. Section 341-5, Hawaii Revised Statutes, is repealed.

PART IV.

SECTION 18. This Act shall be amended to conform to all other acts passed by the legislature during the regular session of 2006, whether enacted before or after the effective date of this Act, unless the other acts specifically provide otherwise; provided that the numbering, structure, and organization of the new chapter in section 2 of this Act shall control.

SECTION 19. The University of Hawaii may cite the section numbers of statutes repealed by this Act in financial reports to the legislature for the fiscal year ending June 30, 2006.

ACT 76

SECTION 20. 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 this end the provisions of this Act are severable.

SECTION 21. It is the intent of this Act that the recodification of chapter 310, Hawaii Revised Statutes, entitled "Western Regional Education Compact", under article XI of the new chapter in section 2 of this Act, shall not be deemed to constitute the "appropriate legislation" or the "requisite legislative action" to initiate a withdrawal by this State from the Compact.

SECTION 22. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 23. This Act shall take effect on July 1, 2006.

(Approved May 2, 2006.)

Notes

1. No subsection (a).
2. Edited pursuant to HRS §23G-16.5.

ACT 76

H.B. NO. 1233

A Bill for an Act Relating to Civil Rights.

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

SECTION 1. The purpose of this Act is to make state civil rights laws uniform by prohibiting discriminatory practices in public accommodations on the basis of sexual orientation. Presently, the employment and housing laws prohibit discrimination because of sexual orientation. Just as a person should not be denied a job or a home because of the person's sexual orientation (heterosexual, homosexual, or bisexual), a person should not be denied service at a restaurant or store because of the person's sexual orientation.

This Act also clarifies that discrimination in public accommodations on the basis of gender identity or expression is prohibited sex discrimination. This is consistent with the purpose and intent expressed in Act 214, Session Laws of Hawaii 2005, in which the legislature amended chapter 515, discrimination in real property transactions, to clarify that sex discrimination includes gender identity or expression. The legislature is aware that a growing number of state and federal courts have held that discrimination on the basis of gender identity or expression is a form of sex discrimination. Under existing state civil rights laws, prohibited discrimination on the basis of sex includes discrimination based on gender identity or expression. This is not a new protection, and this clarification should not be interpreted to imply that such protection did not exist prior to this Act.

SECTION 2. Section 489-2, Hawaii Revised Statutes, is amended by adding a new definition¹ 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.

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

SECTION 3. Section 489-3, Hawaii Revised Statutes, is amended to read as follows:

“§489-3 Discriminatory practices prohibition. Unfair discriminatory practices [which] that deny, or attempt to deny, a person the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of a place of public accommodation on the basis of race, sex, including gender identity or expression, sexual orientation, color, religion, ancestry, or disability are prohibited.”

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.

(Became law on May 2, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Two definitions added.

ACT 77

S.B. NO. 2737

A Bill for an Act Relating to Marine Invertebrates.

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

SECTION 1. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§188- Female ula (spiny lobsters), Kona crabs, and Samoan crabs; taking or killing prohibited. (a) Unless otherwise exempted by law, it shall be unlawful for any person to take or kill any female ula (spiny lobster or *Panulirus*), Kona crab (*Ranina ranina*), or Samoan crab (*Scylla serrata*).

(b) This section shall not prohibit the taking or killing of female marine invertebrates identified in subsection (a) if they are the product of commercial aquaculture and not removed from their natural environment.”

SECTION 2. New statutory material is underscored.¹

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

(Approved May 4, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to the Petroleum Industry.

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

SECTION 1. The legislature finds that the oil industry has in the past, and if unchecked, will likely in the future, use oligopolistic powers to set artificially high prices in Hawaii for motor fuel and other petroleum products. Disadvantaged by the secrecy in the industry, elected officials and the public are denied accurate assessments of the true causes of higher prices. True and effective transparency would be an effective tool to prevent the use of price maintenance schemes or other illegal behavior that artificially raises consumer prices.

While true transparency should provide benefits for Hawaii consumers, the legislature further finds that the combination of the State's geographical isolation and the market control exercised by the oil companies necessitate additional measures to safeguard the public. While the effectiveness of the increased transparency is tested, the current maximum wholesale price of gasoline should be suspended but the governor should have the ability to reinstate it in the event transparency does not provide the relief needed and the oil industry maintains excessively high prices. The governor should have the authority to reinstate the maximum wholesale price upon publication of a finding that its reinstatement is beneficial to the economic well-being, health, and safety of the people of the State.

The legislature further finds that the method for calculating the maximum wholesale price should be refined to maximize savings to consumers in the event that the governor reinstates the maximum price. As was more than evident during the aftermath of hurricanes Katrina and Rita and the refinery fires in Texas, natural and man-caused disasters halfway around the world can cause volatility and instability in the wholesale gasoline prices in Hawaii. The State must prevent disasters in other far-away locations from unreasonably influencing its wholesale gasoline prices. To reduce instability, an additional geographic market needs to be added to provide more flexibility in establishing the baseline gasoline price.

In setting a maximum pre-tax wholesale price of gasoline, the legislature inserted a location adjustment factor to take into account the added costs of doing business in Hawaii. However, in the implementation of the gasoline price control program, the public utilities commission established zone price adjustments for the eight geographic zones established in the State, including a zone price adjustment for zone one, the Honolulu base zone. These zone price adjustments, adopted by the public utilities commission, were determined by using the highest actual costs of doing business by wholesaler distributors in the various zones. Accordingly, the location adjustment factor became redundant.

A sustained review of the spot daily price for conventional regular unleaded gasoline in a number of mainland markets and a review of wholesale prices in those markets published by the United States Department of Energy indicates that the marketing margin factor may have been set too high.

Further, with regard to the zone price adjustments, some distributors were taking more than an equitable share of the zone price adjustment to the detriment of other distributors in the chain of distribution. To ensure that there is an equitable sharing of the zone price adjustment, the zone price adjustments must be divided by wholesale distributors based upon the functions that each provides in the chain of distribution.

It cannot be overemphasized that the entire reason for this Act, amending Act 242, Session Laws of Hawaii 2004, as codified, which amended Act 77, Session Laws of Hawaii 2002, is the need to protect the gasoline consumers in this State

from the predatory practices of an oligopolistic petroleum industry. The various courts have found, and the parties themselves acknowledge, that the wholesale gasoline industry in this State is an uncompetitive oligopoly with the industry parties enjoying exorbitant profit margins in their wholesale transactions, all to the detriment of the Hawaii consumer. Therefore, the legislature reiterates that the objective of Act 242 is to enhance the consumer welfare by fostering the opportunity for prices to reflect and correlate with competitive market conditions.

The legislature further finds that the establishment and allocation of adequate resources for a vigorous state watchdog system to monitor and oversee the petroleum industry and gasoline market is a prerequisite to ensure an efficient market. The public disclosure, collection, aggregation, and analyses of current data relating to Hawaii petroleum fuel prices, volumes, costs, and profits, and the subsequent reporting of this information to planning and enforcement agencies, such as the departments of the attorney general, business, economic development, and tourism, and taxation, for review and assessment, is critical in ensuring compliance with the letter and spirit of the laws and regulations designed to promote fair and competitive gasoline prices for Hawaii's consumers.

To ensure that oil companies do not further raise prices artificially high, the suspension of the maximum wholesale gasoline price will not suspend or affect the duty of the public utilities commission to calculate and publish what the maximum wholesale price would be under the statutory formula. Publication of this fair price indicator will ensure that the governor has the information necessary to determine whether reinstatement of the maximum wholesale price would benefit the people of the State. Further, the public utilities commission is directed to proactively enforce the petroleum industry monitoring, analysis, and reporting program and the provisions of the unfair trade practices to enable the consumers of Hawaii to enjoy the lowest possible prices for gasoline, while allowing the refiners, jobbers, and wholesalers to make a reasonable return on their investments.

The purposes of this Act are to:

- (1) Require true transparency by the oil industry to increase competition and provide the public and elected officials with the necessary monitoring capability to discourage the industry from using price maintenance schemes or other anti-competitive practices that artificially raise consumer prices;
- (2) Suspend the maximum gasoline wholesale price while leaving the governor the ability to reinstate it if oil companies maintain excessively high prices that are detrimental to the economic well-being, health, and safety of the people of the State;
- (3) Refine the method for calculating the maximum wholesale gasoline price to increase consumer savings if the governor reinstates the maximum price, by:
 - (A) Adding the Singapore spot price weekly average price of conventional regular unleaded gasoline to the baseline price determination, with the three lowest weekly averages being averaged, to determine the baseline price for regular unleaded gasoline;
 - (B) In the event of a holiday or holidays in the prior week, requiring the public utilities commission to average the prices of the days that were not holidays;
 - (C) Eliminating the location adjustment factor;
 - (D) Reducing the marketing margin factor to 14 cents;
 - (E) Allocating percentages of zone price adjustment in zones 2 through 8 to distributors based upon different functions; and
 - (F) Providing for adjustments of zone price adjustments and allocations of zone price adjustments on a zone by zone basis;

- (4) Establish the petroleum industry monitoring, analysis, and reporting special fund;
- (5) Require the public utilities commission to develop and maintain the petroleum industry monitoring, analysis, and reporting program, including an automated petroleum industry information reporting system;
- (6) Redelineate the types of information that the petroleum industry must submit to the public utilities commission;
- (7) Make an appropriation into and an appropriation from the petroleum industry monitoring, analysis, and reporting special fund to be expended by the public utilities commission to establish and maintain the petroleum industry monitoring, analysis, and reporting program; and
- (8) Prohibit unfair trade practices by the petroleum industry.

PART I

SECTION 2. Chapter 486J, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§486J-A Informational cost reports. (a) Each refiner, on a semi-annual basis, at reporting dates as the commission may establish, shall file with the commission, on forms prescribed, prepared, and furnished by the commission, a certified statement of operating and overhead costs for the refiner’s Hawaii operations that shall include but not be limited to the following:

- (1) Crude oil costs and sources;
- (2) Other feedstock costs and sources;
- (3) Refinery operating expenses;
- (4) Marketing operating expenses by petroleum product;
- (5) Distribution expenses by petroleum product;
- (6) Corporate overhead expenses; and
- (7) The percentage of the total number of wholesale gallons of unleaded regular and premium unleaded gasoline sold during the reporting period at wholesale prices per gallon that exceed the maximum pre-tax wholesale price calculated by the commission under section 486H-13.

(b) In addition to the reporting required under subsection (a), each distributor shall file with the commission all Securities and Exchange Commission Forms 10-K, 10-Q, annual reports, quarterly reports, and earnings supplements published by the distributor.

(c) Each distributor, except a distributor who is so defined solely by criteria in paragraph (4) of that definition in section 486J-1, who sells liquid fuel only at retail and is not a refiner, shall file with the commission, on a semi-annual basis at reporting dates as the commission may establish, on forms prescribed, prepared, and furnished by the commission, a certified statement of operating and overhead costs that shall include the following:

- (1) Gasoline purchases and exchanges and sources;
- (2) Diesel purchases and exchanges and sources;
- (3) Marketing expenses; and
- (4) Distribution expenses.

§486J-B Petroleum industry monitoring, analysis, and reporting program. The commission shall establish the petroleum industry monitoring, analysis, and reporting program that includes development and maintenance of an automated petroleum industry information reporting system that meets the requirements of government, industry, and the public while promoting sound policy making and consumer information and protection. The purpose of the petroleum industry moni-

toring, analysis, and reporting program is to conduct and facilitate the efficient analysis and reporting of all information and data provided by the petroleum industry pursuant to this chapter. The commission shall develop the petroleum industry monitoring, analysis, and reporting program in a manner that will result in greater market transparency and provide useful information to the general public and those agencies that are authorized to conduct oversight of the petroleum industry and ensure compliance with all relevant laws.

§486J-C Petroleum industry monitoring, analysis, and reporting special fund. (a) There is established a petroleum industry monitoring, analysis, and reporting special fund to be administered by the commission.

(b) The legislature may make appropriations from the general revenues of the State of Hawaii, not to exceed \$2,000,000 in any fiscal year, for the petroleum industry monitoring, analysis, and reporting special fund.

(c) Moneys in the special fund shall be used to:

- (1) Administer the petroleum industry monitoring, analysis, and reporting program pursuant to this chapter; and
- (2) Establish full-time staff positions in the commission to implement and maintain the petroleum industry monitoring, analysis, and reporting program, including the automated petroleum industry information reporting system established by section 486J-B."

SECTION 3. Section 486J-1, Hawaii Revised Statutes, is amended as follows:

1. By adding eight new definitions to be appropriately inserted and to read:

"Classes of retail trade" means the separate subdivisions, or "classes," of outlets or methods of retail sales of liquid fuels, typically but not always limited to gasoline and diesel for motor vehicles, and includes any:

- (1) Company-operated station that is a retail service station owned and operated by a refiner or wholesale distributor and where retail prices are set by that refiner or wholesale distributor;
- (2) Lessee dealer-operated station that is a retail service station owned by a refiner or wholesale distributor and operated by a qualified gasoline dealer other than a refiner or wholesale distributor under a franchise; or
- (3) Owner-operated station that is a retail service station not owned by a refiner or wholesale distributor and operated by a qualified gasoline dealer.

"Commission" means the public utilities commission.

"Corporate overhead expenses" means the expenses or costs allocated by the refiners that reflect their Hawaii business units' share of corporate staff costs, such as legal, finance, accounting, information technology, and similar costs.

"Dealer tank wagon price" means the wholesale price at which liquid fuel is sold to any retail outlet by any distributor priced on a delivered basis to a retail outlet.

"Liquid fuel" means fuels in liquid form, commercially usable for energy needs, power generation, and fuels that may be manufactured, produced, or imported into the State or that may be exported therefrom, including petroleum and petroleum products and all fuel alcohols.

"Nonrefiner wholesale price" means the wholesale price at which liquid fuel is sold by any distributor, not a refiner, to any other distributor, not a refiner, for resale at any subsequent wholesale or retail transaction.

“Refiner wholesale price” means the wholesale price at which liquid fuel is sold by a refiner to any distributor, not a refiner, for resale at any subsequent wholesale or retail transaction.

“Wholesale liquid fuel prices” means the prices at which liquid fuel is sold at wholesale for resale at wholesale or retail, typically but not limited to gasoline and diesel for motor vehicles, and include “dealer tank wagon price,” “nonrefiner wholesale price,” and “refiner wholesale price.””

2. By amending the definitions of “distributor,” “fuel,” “person,” and “refiner” to read:

““Distributor” means [and includes]:

- (1) Every person who refines, manufactures, produces, or compounds fuel in the State[,] and sells it at wholesale or at retail[,] or who [utilizes] uses it directly in the manufacture of products or for the generation of power;
- (2) Every person who imports or causes to be imported into the State, or exports or causes to be exported from the State, any fuel; [and]
- (3) Every person who acquires fuel through exchanges with another distributor[-]; or
- (4) Every person who purchases fuel for resale at wholesale or retail from any person described in paragraph (1), (2), or (3); provided that “distributor” shall not include a marina, lessee dealer-operated station, owner-operated station, or other retailer that retails fuel only to end users or the public.

“Fuel” means [and includes] fuels, whether liquid, solid, or gaseous, commercially usable for energy needs, power generation, and fuels manufacture, that may be manufactured, grown, produced, or imported into the State or that may be exported therefrom[;], including petroleum and petroleum products and gases, coal, coal tar, vegetable ferments, and all fuel alcohols.

“Person”[;] means any person, firm, association, organization, partnership, business trust, corporation, or company. “Person” also includes any city, county, public district or agency, the State, or any department or agency thereof, and the United States to the extent authorized by federal law.

“Refiner” means any person who owns, operates, or controls the operations of one or more refineries[-] in Hawaii.”

3. By deleting the definition of “petroleum commissioner.”

[~~““Petroleum commissioner” or “commissioner” means the administrator of the energy, resources, and technology division of the department of business, economic development, and tourism.”~~]

SECTION 4. Section 486J-2, Hawaii Revised Statutes, is amended to read as follows:

“§486J-2 Distributors to register. Every distributor, and any person before becoming a distributor, shall register as such with the [commissioner] commission on forms to be prescribed, prepared, and furnished by the [commissioner] commission.”

SECTION 5. Section 486J-3, Hawaii Revised Statutes, is amended to read as follows:

“§486J-3 Statements. (a) Each week every distributor [shall, at such], on the reporting dates as the [commissioner] commission may establish, shall file with

the ~~[commissioner,]~~ commission, on forms prescribed, prepared, and furnished by the ~~[commissioner,]~~ commission, a certified statement showing separately for each county and for the islands of Lanai and Molokai within which and whereon fuel is sold or used during the last preceding reporting ~~[period,]~~ week, the following:

- (1) The total number of gallons or units of fuel, by type or grade, refined, manufactured, or compounded by the distributor within the State ~~[and sold or used by the distributor,]~~ and, if for ultimate ~~[use]~~ sale or consumption in another county or on another island, ~~[the name of that county or island,]~~ the number of gallons or units of fuel, by type or grade, sold, exchanged, or otherwise transferred or used by the distributor in each county or island;
- (2) The total number of gallons or units of fuel, by type or grade, imported or exported by the distributor ~~[or sold,]~~ the total volumes of fuel, by type or grade, sold, exchanged, or otherwise transferred or used by the distributor~~;~~; and if for ultimate ~~[use]~~ sale or consumption in another county or on another island, ~~[the name of that]~~ the number of gallons or units of fuel, by type or grade, sold, exchanged, or otherwise transferred or used by the distributor in each county or island;
- (3) The total number of gallons or units of fuel sold as liquid fuel, aviation fuel, diesel fuel, and other types of fuel as required by the ~~[commissioner,]~~ commission;
- (4) The total number of gallons or units of fuel ~~[and the types thereof,]~~ by type or grade, and their respective sales prices for all fuel sold to~~;~~ federal, state, and county agencies, ships stores, or base exchanges, commercial agricultural accounts, commercial nonagricultural accounts, retail dealers, and other customers as required by the ~~[commissioner,]~~ Monthly Hawaii] commission;
- ~~(5)~~ Weekly weighted average acquisition cost per barrel and volumes of foreign or domestic crude oil or other liquid fuels, finished or unfinished, imported to Hawaii, including information identifying the source of the crude oil or other liquid fuels;
- (6) The effective date and time, and the amount of change in cents per gallon, of any increase or decrease in wholesale price occurring during the week and the weekly weighted average wholesale prices and sales volumes of finished ~~[leaded regular,]~~ unleaded regular~~;~~ and premium motor gasoline, and of each other grade of gasoline sold ~~[through company-operated,]~~ by island, to retail outlets, ~~[to other end-users,]~~ by classes of retail trade, and to wholesale ~~[customers,]~~ Monthly Hawaii] distributors;
- (7) Weekly weighted average retail prices, and sales volumes of finished unleaded regular and premium motor gasoline, and of each other grade of gasoline sold, by island, by retail distributor outlets of all classes of retail trade and by any distributor to other end-users; provided that the commission may purchase retail price data from data service companies that the commission may use to substitute some or all data to meet the reporting requirement for retail price data under this paragraph;
- (8) The effective date and time, and the amount of change in cents per gallon, of any increase or decrease in wholesale price occurring during the week and the weekly weighted average wholesale prices, and sales volumes ~~[for residential sales, commercial and institutional sales, industrial sales, sales through company-operated retail outlets, sales to other end-users, and wholesale sales of No. 2 diesel fuel and No. 2 fuel oil; and~~ Monthly Hawaii] of No. 2 diesel fuel and No. 2 fuel oil, by island, to retail distributor outlets, by classes of retail trade, and to all other

- wholesale distributors. Weighted average wholesale prices and sales volumes shall be reported by type of wholesale liquid fuel price;
- (9) Weekly weighted average retail prices, and sales volumes of No. 2 diesel fuel and No. 2 fuel oil sold, by island, by retail distributor outlets of all classes of retail trade and by any distributor to other end-users. The commission may purchase retail price data from data service companies that the commission may use to substitute some or all data to meet the reporting requirement for retail price data under this paragraph;
 - (10) Weekly weighted average prices, and sales volumes for retail sales and wholesale sales, by island, of No. 1 distillate, kerosene, finished aviation gasoline, kerosene-type jet fuel, No. 4 fuel oil, residual fuel oil, and consumer grade propane[-];
 - (11) For each distributor that is a refiner, the gross margins or spreads between a refiner's average weighted acquisition price for each gallon of crude oil and blendstock refined within the State and the average weighted prices for each gallon or unit of fuel sold, by county or island, to another distributor, a retail dealer, end-user, and consumer; and
 - (12) For each distributor that is not a refiner, the gross margins or spreads between the distributor's average weighted price for each gallon or unit of fuel acquired by the distributor and the average weighted prices for each gallon or unit of fuel sold, by county or island, to another distributor, a retail dealer, end-user, or consumer.

The [commissioner] commission shall prescribe [by rule when the first report shall be submitted.

(b) ~~In addition to the above reporting, each distributor shall file with the commissioner, Federal Form FEO-1000 or an equivalent state form to be prescribed, prepared, and furnished by the commissioner, showing the expected supply of fuel products for the coming month, and their intended distribution as categorized by Form FEO-1000 or the equivalent state form. The state form shall be supplied in the event that the Federal Mandatory Petroleum Allocation Regulations should expire, be revoked, or be amended to delete or substantially change the reporting requirements provided therein.~~

(e) applicable standards and practices for reporting to facilitate uniformity, consistency, and comparability of the data to be submitted.

(b) Each major marketer shall submit to the [commissioner,] commission, at a time and in a form as the [commissioner] commission shall prescribe, information, including petroleum and petroleum product receipts, exchanges, inventories, and distributions. [~~The commissioner shall prescribe by rule when the first report shall be submitted.~~

(d) (c) The [commissioner] commission may request additional information as and when [~~the commissioner~~] the commission deems necessary to perform [~~the commissioner's~~] the commission's responsibilities under this chapter.

(d) Information in the statements filed pursuant to this section shall be collected and maintained for the purpose of facilitating the analysis required by section 486J-5; provided that the commission shall make available to the public the information contained in the statements but not the statements themselves, as provided in sections 486J-6 and 486J-8."

SECTION 6. Section 486J-4, Hawaii Revised Statutes, is amended to read as follows:

"§486J-4 Informational reports. (a) Each major oil producer, refiner, marketer, oil transporter, and oil storer shall submit to the [commissioner,]

commission, in [such] a form as the [commissioner] commission shall prescribe, information [which] that includes the following:

- (1) Major oil transporters shall report on petroleum by reporting the capacities of each major transportation system, the amount transported by each system, and inventories thereof. The provision of the information shall not be construed to increase and decrease any authority the [commissioner] commission may otherwise have;
- (2) Major oil storers shall report on storage capacity, inventories, receipts and distributions, and methods of transportation of receipts and distributions;
- (3) Refiners shall report on facility capacity and utilization and method of transportation of refinery receipts and distributions; and
- (4) Major oil marketers shall report on facility capacity and methods of transportation of receipts and distributions.

~~[The commissioner shall prescribe by rule when the first report shall be submitted.]~~

(b) The [commissioner] commission may request additional information as and when [[the commissioner] the commission deems it necessary to perform [[the commissioner's]] the commission's responsibilities under this chapter."

SECTION 7. Section 486J-5, Hawaii Revised Statutes, is amended to read as follows:

“§486J-5 Analysis of information; [audits and inspections] summary reports. (a) The [petroleum commissioner,] commission, with the [commissioner's] commission's own staff and other support staff with expertise and experience in, or with, the petroleum industry, shall gather, analyze, and interpret the information submitted to it pursuant to sections 486J-3 [and], 486J-4, and 486J-A and other information relating to the supply [and price], prices, margins, and profits of petroleum products, with particular emphasis on motor vehicle fuels, including[;] but not limited to[;] all of the following:

- (1) The nature, cause, and extent of any petroleum or petroleum [~~products shortage~~] product situation or condition affecting supply[;], price, margins, or profits;
- [2] ~~The economic and environmental impacts of any petroleum and petroleum product shortage or condition affecting supply;~~
- (3) ~~Petroleum or petroleum product demand and supply forecasting methodologies utilized by the petroleum industry in Hawaii;~~
- (4) (2) The prices, with particular emphasis on wholesale and retail motor vehicle fuel prices, and any significant changes in prices charged by the petroleum industry for petroleum or petroleum products sold in Hawaii and the reasons for [such] the changes;
- [5] (3) The income, expenses, margins, and profits[;] in Hawaii, both before and after taxes, [~~of the industry as a whole and of major firms within it, including a comparison with other major industry groups and major firms within them as to profits, return on equity and capital, and price earnings ratio;~~] of each distributor and the income, expenses, margins, and profits, both before and after taxes, of major oil companies in other regions of the United States and other countries; and
- [6] (4) The emerging trends relating to supply, demand, [~~and conservation of petroleum and petroleum products;~~
- (7) ~~The nature and extent of efforts of the petroleum industry to expand refinery capacity and to make acquisitions of additional supplies of petroleum and petroleum products; and~~

(8) ~~The development of a petroleum and petroleum products information system in a manner which will enable the State to take action to meet and mitigate any petroleum or petroleum products shortage or condition affecting supply.~~

~~(b) The commissioner shall conduct random or periodic audits and inspections of any supplier or suppliers of oil or petroleum products to determine whether they are unnecessarily withholding supplies from the market or are violating applicable policies, laws, or rules. The commissioner may solicit assistance of the department of taxation in any such audit. The commissioner shall cooperate with other state and federal agencies to ensure that any audit or inspection conducted by the commissioner is not duplicative of the data received by any of their audits or inspections which is available to the commissioner.] price, margins, and profits.~~

~~[(e) (b) The [commissioner] commission shall analyze the [impacts] effects of state and federal policies, rules, and regulations upon the supply and pricing of petroleum products.~~

~~[(d) (c) The [commissioner] commission shall publish annually and submit to the governor and the legislature twenty days prior to the first day of [the current] each regular legislative session a summary, including any analysis and interpretation of the information submitted to it pursuant to this chapter, and any other activities taken by the [commissioner,] commission, including civil penalties imposed and referrals of violations to the attorney general under section 486J-9. Any person may submit comments in writing regarding the accuracy or sufficiency of the information submitted. [At the option of the director, this report may be combined with reporting required by section 196-4(11), in the director's role as state energy resources coordinator.]”~~

SECTION 8. Section 486J-6, Hawaii Revised Statutes, is amended to read as follows:

“§486J-6 Confidential information. (a) Confidential commercial information ~~[presented] provided~~ to the ~~[commissioner] commission~~ pursuant to this chapter ~~that is exempt from public disclosure under section 92F-13(4)~~ shall be held in confidence by the ~~[commissioner] commission~~ or aggregated to the extent necessary to ~~[assure] ensure~~ confidentiality as ~~[governed] required~~ by chapter 92F[, including its penalty provisions].

(b) No data or information submitted to the commissioner shall be deemed confidential if the person submitting the information or data has made it public.

(c) Unless otherwise provided by law, with respect to data ~~that the commission obtains or is provided pursuant to [sections] section~~ 486J-3 ~~[and], 486J-4, 486J-5, or 486J-A,~~ neither the ~~[commissioner,] commission~~ nor any employee of the ~~[department,] commission~~ may do any of the following:

- (1) Use the information furnished or obtained ~~[under sections 486J-3 and 486J-4]~~ for any purpose other than the ~~[statistical] purposes~~ for which it is supplied;
- (2) Make any publication whereby the data furnished by any ~~[particular establishment or individual under sections 486J-3 and 486J-4] person~~ can be identified; or
- (3) Permit ~~[anyone] any person other than the commission, the department of taxation, the attorney general, the consumer advocate, the department of business, economic development and tourism, and the authorized representatives and employees of each~~ to examine the individual reports or statements provided ~~[under sections 486J-3 and 486J-4 other than the public utilities commission, the attorney general, and the consumer advocate, and the authorized representatives and employees of each].”~~

SECTION 9. Section 486J-7, Hawaii Revised Statutes, is amended to read as follows:

“§486J-7 Confidential information obtained by another state agency. Any confidential information pertinent to the responsibilities of the [~~commissioner~~] commission specified in this chapter that is obtained by another state agency, including the department of taxation, [~~the public utilities commission,~~] the attorney general, and the consumer advocate, shall be available only to the attorney general, the attorney general’s authorized representatives, the department of business, economic development and tourism, and the [~~commissioner~~] commission and shall be treated in a confidential manner.’”

SECTION 10. Section 486J-8, Hawaii Revised Statutes, is amended to read as follows:

“§486J-8 Sharing of information obtained by the [~~commissioner~~] commission. [~~The commissioner~~] (a) Except as provided in subsections (b) and (c), the commission shall make [all] any information obtained by the [~~commissioner~~] commission under this chapter, including confidential information, available only to the attorney general, the department of taxation, [~~the public utilities commission,~~] the consumer advocate, the department of business, economic development and tourism, an appropriate legislative committee, and the authorized representative of each, who shall safeguard the confidentiality of all confidential information received.

(b) Notwithstanding any law to the contrary, including any other section of this chapter, no later than fourteen days after the reporting date established by the commission under section 486J-3, the commission shall disclose to the public, using the best readily available technology, the information contained in the statements, but not the statements themselves, that are filed pursuant to section 486J-3.

(c) Nothing in this section shall be construed to prohibit the implementation of the petroleum industry monitoring, analysis, and reporting program under section 486J-B or the public disclosure of the analysis of information and reports described in section 486J-5.’”

SECTION 11. Section 486J-9, Hawaii Revised Statutes, is amended to read as follows:

“§486J-9 Failure to timely provide information; failure to make and file statements; false statements; penalties; referral to the attorney general. (a) The [~~petroleum commissioner~~] commission shall notify those persons who have failed to timely provide the information specified in section 486J-3 [~~or~~], 486J-4, or 486J-A or requested by the [~~commissioner~~] commission under section 486J-3 [~~or~~], 486J-4[~~], or 486J-A~~. If, within five business days after being notified of the failure to provide the specified or requested information, the person fails to supply the specified or requested information, the person shall be subject to a civil penalty of not less than \$50,000 per day nor more than \$100,000 per day for each day the submission of information is refused or delayed[~~, unless the person has timely filed objections with the commissioner regarding the information and the commissioner has held a hearing and, following a ruling by the commissioner, the person has properly submitted the issue to a court of competent jurisdiction for review~~].

(b) Any person, or any employee of any person, who wilfully makes any false statement, representation, or certification in any record, report, plan, or other document filed with the [~~commissioner~~] commission shall be subject to a civil penalty not to exceed \$500,000[~~]~~ and shall be deemed to have committed an unfair

or deceptive act or practice in the conduct of a trade or commerce and subject to the penalties specified in chapter 480.

(c) The [commissioner] commission shall refer any matter under [this] subsection (a) or (b) to the attorney general, who may exercise any appropriate legal or equitable remedies that may be available to the State.

[(e)] (d) For the purposes of this section, "person" means, in addition to the definition contained in section 486J-1, any responsible corporate officer."

SECTION 12. Section 486J-10, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The [commissioner] director shall adopt rules in accordance with chapter 91 to require that gasoline sold in the State for use in motor vehicles contain ten per cent ethanol by volume. The amounts of gasoline sold in the State containing ten per cent ethanol shall be in accordance with rules as the [commissioner] director may deem appropriate. The [commissioner] director may authorize the sale of gasoline that does not meet these requirements as provided in subsection (d).”

2. By amending subsections (d), (e), and (f) to read:

“(d) The [commissioner] director may authorize the sale of gasoline that does not meet the provisions of this section:

- (1) To the extent that sufficient quantities of competitively-priced ethanol are not available to meet the minimum requirements of this section; or
- (2) In the event of any other circumstances for which the [commissioner] director determines compliance with this section would cause undue hardship.

(e) Each distributor, at [such] reporting dates as the [commissioner] director may establish, shall file with the [commissioner] director, on forms prescribed, prepared, and furnished by the [commissioner] director, a certified statement showing:

- (1) The price and amount of ethanol available;
- (2) The amount of ethanol-blended fuel sold by the distributor;
- (3) The amount of non-ethanol-blended gasoline sold by the distributor; and
- (4) Any other information the [commissioner] director shall require for the purposes of compliance with this section.

(f) Provisions with respect to confidentiality of information shall be the same as provided in section [486J-7.] 486J-6.”

3. By amending subsection (h) to read:

“(h) The [commissioner] director, in accordance with chapter 91, shall adopt rules for the administration and enforcement of this section.”

SECTION 13. Section 486J-12, Hawaii Revised Statutes, is repealed.

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1, or so much thereof as may be necessary for fiscal year 2006-2007, to be deposited into the petroleum industry monitoring, analysis, and reporting special fund.

The sum appropriated shall be expended by the public utilities commission for the purposes of this part.

SECTION 15. There is appropriated out of the petroleum industry monitoring, analysis, and reporting special fund the sum of \$1, or so much thereof as may be necessary for fiscal year 2006-2007, to establish the petroleum industry monitoring, analysis, and reporting program established under chapter 486J, Hawaii Revised Statutes.

The sum appropriated shall be expended by the public utilities commission for the purposes of this part.

Part II

SECTION 16. Section 486H-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Conventional gasoline’ means a gasoline formulation with properties having the closest similarities to the gasoline then sold in the State.’”

SECTION 17. Section 486H-13, Hawaii Revised Statutes, is amended to read as follows:

“§486H-13 Maximum pre-tax wholesale price for the sale of gasoline; civil actions. (a) Notwithstanding any law to the contrary, no manufacturer, wholesaler, or jobber may sell regular unleaded, mid-grade, or premium gasoline to a dealer retail station, an independent retail station, or to another jobber or wholesaler at a price above the maximum pre-tax wholesale prices established pursuant to subsection (b). The Commission shall publish the maximum pre-tax wholesale prices by means that shall include the Internet website for the State of Hawaii.

(b) On a weekly basis, the commission shall determine the maximum pre-tax wholesale price of regular unleaded, mid-grade, and premium gasoline as follows: the maximum pre-tax wholesale price of regular unleaded gasoline shall consist of the baseline price for regular unleaded gasoline, plus ~~[the location adjustment factor,]~~ the marketing margin factor~~;~~ and the zone price adjustment, and for mid-grade and premium gasoline, the applicable mid-grade and premium adjustment factor, such that the maximum pre-tax wholesale gasoline prices reflect and correlate with competitive market conditions.

(c) The baseline price for regular unleaded gasoline referred to in subsection (b) shall be determined on a weekly basis and shall be equal to the average of~~;~~ the three lowest of the four weekly averages of the spot daily price for conventional regular unleaded gasoline or its equivalent standard:

- (1) The weekly average of the spot daily price for conventional regular unleaded gasoline for Los Angeles;
- (2) The weekly average of the spot daily price for conventional regular unleaded gasoline for New York Harbor; ~~[and]~~
- (3) The weekly average of the spot daily price for conventional regular unleaded gasoline for the United States Gulf Coast; and
- (4) The weekly average of the spot daily price for conventional regular unleaded gasoline for Singapore,

as reported and published by the Oil Price Information Service for the five business days of the preceding week; provided that if the preceding week contains a holiday or holidays, then the average of the remaining business days of the preceding week shall be used; and provided further that the commission, in its discretion, may determine a more appropriate baseline or a more appropriate price information reporting service~~[-~~.

~~(d) The location adjustment factor referred to in subsection (b) shall be \$.04 per gallon or as otherwise determined by the commission and shall thereafter be~~

~~subject to adjustment pursuant to section 486H-16(a).]~~ or use multiple price information reporting services.

~~[(e)]~~ (d) The marketing margin factor referred to in subsection (b) shall be ~~[\$.18]~~ 14 cents per gallon or as otherwise determined by the commission and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

~~[(f)]~~ (e) The mid-grade adjustment factor shall be ~~[\$.05]~~ 5 cents per gallon or as otherwise determined by the commission and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

~~[(g)]~~ (f) The premium adjustment factor shall be ~~[\$.09]~~ 9 cents per gallon or as otherwise determined by the commission and shall thereafter be subject to adjustment pursuant to section 486H-16(a).

~~[(h)]~~ (g) For purposes of this chapter, the State shall be divided into the following zones:

- (1) Zone 1 shall include the island of Oahu;
- (2) Zone 2 shall include the island of Kauai;
- (3) Zone 3 shall include the island of Maui, except the district of Hana;
- (4) Zone 4 shall include the district of Hana on the island of Maui;
- (5) Zone 5 shall include the island of Molokai;
- (6) Zone 6 shall include the island of Lanai;
- (7) Zone 7 shall include the districts of Puna, south Hilo, north Hilo, and Hamakua on the island of Hawaii; and
- (8) Zone 8 shall include the districts of north Kohala, south Kohala, north Kona, south Kona, and Kau on the island of Hawaii.

~~[(i)]~~ (h) The commission shall establish zone price adjustments to the maximum pre-tax wholesale regular unleaded, mid-grade, and premium gasoline prices on a zone by zone basis.

~~[(j)]~~ (i) The zone price adjustments for zones 2 through 8, set forth in subsection (g), shall be divided as follows:

- (1) Thirty per cent of the zone price adjustment shall be allocated to the shipper of the gasoline from zone to zone;
- (2) Twenty per cent of the zone price adjustment shall be allocated to the terminal holding the gasoline in zones 2 through 8; and
- (3) Fifty per cent of the zone price adjustments shall be allocated to the person or entity that delivers the gasoline to the retail station in zones 2 through 8.

(j)¹ Every manufacturer, wholesaler, or jobber, upon the request of the commission, shall furnish to the commission, in the form requested, all documents, data, and information the commission may require to make its determination on zone price adjustments. Any person who refuses or fails to comply with a request for information by the commission shall be subject to a fine of up to \$50,000 per day. Each day a violation continues shall constitute a separate offense.

(k) The maximum pre-tax wholesale gasoline price imposed by this section shall take effect on September 1, 2005, notwithstanding the lack of the adoption of rules pursuant to this section[-]; provided that notwithstanding any law to the contrary, the maximum pre-tax wholesale price under this section shall be suspended indefinitely upon the effective date of Act _____,² Session Laws of Hawaii 2006, and shall not thereafter become effective until and unless the governor publishes a notice statewide in accordance with section 1-28.5 that the reinstatement of the maximum pre-tax wholesale price under this section is beneficial to the economic well-being, health, and safety of the people of the State. The maximum pre-tax wholesale price shall become effective five days after the publication of the notice by the governor unless otherwise specified by the governor, and shall remain in effect for thirty days, after which time it shall be automatically suspended. Thereafter, the governor may reinstate the maximum pre-tax wholesale price for thirty-day periods on the same

conditions as set forth above. Upon a finding that the maximum pre-tax wholesale price would impose a financial hardship upon a distributor within a zone, the governor, in the governor's discretion, may increase the maximum pre-tax wholesale price for the zone in an amount determined necessary to eliminate the financial hardship on any affected distributor who does not operate a refinery within the State. Any increase in the maximum pre-tax wholesale price shall be included in the notice published by the Governor.

(l) The suspension of the maximum pre-tax wholesale gasoline price shall suspend the commission's duty to calculate and publish the maximum pre-tax wholesale gasoline price that would have been in effect but for the suspension, but shall not suspend or affect:

- (1) Any duty to register, timely provide information, make a report, or file a statement under chapter 486J; or
- (2) Any duty of the commission to:
 - (A) Timely obtain, analyze, or publicly disclose or report information under chapter 486J; and
 - (C)³ Enforce chapter _____.

~~[(4)]~~ (m) Any manufacturer, wholesaler, or jobber who knowingly violates any requirement imposed or rule adopted under this section, except for subsection (j), shall be subject to a civil penalty, for each violation, equal to three times the amount of the overcharge or \$250,000, whichever is greater, and shall be liable for the costs of the action and reasonable attorney's fees as determined by the court. Within two years from the date the commission obtains actual knowledge of the violation, the commission may institute a civil action in a court of competent jurisdiction to collect the civil penalty, the costs, and attorney's fees. In the case of ongoing violation, the two-year period shall start from the date of the last violation. The commission may refer any such action to the attorney general as it deems appropriate. As used in this subsection, "overcharge" means the number of gallons of gasoline sold, times the wholesale price at which the manufacturer or jobber sold regular unleaded, mid-grade, or premium gasoline to a dealer retail station, an independent retail station, or another jobber or wholesaler, less taxes assessed, less the maximum pre-tax wholesale gasoline price established pursuant to subsection (b).

~~[(m)]~~ (n) The commission shall have the power to determine the extent to which a manufacturer, wholesaler, or jobber is complying with any requirement imposed or rule adopted under this section, including the power to compel a manufacturer, wholesaler, or jobber to submit documents, data, and information necessary and appropriate for the commission to determine such compliance. The commission may use data collected ~~[by the department of business, economic development, and tourism]~~ pursuant to chapter 486J ~~[, as well as obtain the assistance of that department]~~ in determining such compliance.

~~[(n)]~~ (o) The commission shall report to the governor and the legislature, in a timely manner, on any significant aberrations, trends, or conditions that may adversely impact the gasoline consumers in the State.

~~[(o)]~~ (p) The commission ~~[shall]~~ may adopt rules pursuant to chapter 91 as may be necessary to implement this section and section 486H-16."

SECTION 18. Section 486H-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) A manufacturer, wholesaler, or jobber may petition the commission to adjust the maximum pre-tax wholesale price of regular unleaded, mid-grade, or premium gasoline in the event of a change in the value of the baseline price for regular unleaded gasoline, ~~[the location adjustment factor,]~~ the marketing margin factor, the mid-grade adjustment factor, the premium adjustment factor, ~~[or]~~ a zone

price adjustment[.] on a zone by zone basis, or an allocation of a zone price adjustment on a zone by zone basis. The petitioner shall bear the burden of proof to establish by clear and convincing evidence the need for and the amount of any adjustment. The adjustments shall be determined as follows:

- (1) The value of the baseline price shall be equal to the average of [:] the three lowest of the four weekly averages of the spot daily price for conventional regular unleaded gasoline or its equivalent standard:
 - (A) The weekly average of the spot daily price for conventional regular unleaded gasoline for Los Angeles;
 - (B) The weekly average of the spot daily price for conventional regular unleaded gasoline for New York Harbor; [and]
 - (C) The weekly average of the spot daily price for conventional regular unleaded gasoline for the United States Gulf Coast[;]; and
 - (D) The weekly average of the spot daily price for conventional regular unleaded gasoline for Singapore,

as reported and published by the Oil Price Information Service for the five business days of the preceding week; provided that if the preceding week contains a holiday or holidays, the average of the remaining business days of the preceding week shall be used; and provided further that the commission, in its discretion, may determine a more appropriate baseline or a more appropriate price information reporting service[;]

- (2) ~~The value of the location adjustment factor in effect at the time the petition is filed shall be adjusted to reflect the average of the actual acquisition cost to non-refiner marketers to obtain gasoline from refiners or importers for sale on the island of Oahu over the prior twelve-month period, which cost shall be taken from arm's length transactions between non-refiner marketers, and refiners or importers, such as exchange agreements, sales agreements, or other similar agreements; provided that the location adjustment factor shall not exceed the reasonable cost of importing gasoline to the island of Oahu. As used in this paragraph, "actual acquisition cost" means the amount over the base price of regular unleaded gasoline that a non-refiner marketer pays to a third party for delivery of such gasoline into a terminal located on the island of Oahu;~~

~~(3)]~~ or use multiple price information reporting services;

- (2) The value of the marketing margin factor in effect at the time the petition is filed shall be adjusted by adding to [such] the value the difference between:

- (A) The average of the difference over the prior twelve-month period between:
 - (i) The dealer tank wagon price for sales for resale for "regular" gasoline; and
 - (ii) The bulk price for sales for resale for "regular" gasoline, for Petroleum Administration for Defense (PAD) District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information; less
- (B) The average of the difference over the period from 1994 until the most current year between:
 - (i) The dealer tank wagon price for sales for resale for "regular" gasoline; and
 - (ii) The bulk price for sales for resale for "regular" gasoline,

for Petroleum Administration for Defense (PAD) District V, as reported and published by the Energy Information Administration or its successor in Table 31 - "Motor Gasoline Prices by Grade, Sales Type, PAD District, and State" or other source containing the same information;

- [(4)] (3) The value of the mid-grade and premium adjustment factors in effect at the time the petition is filed shall be adjusted by any material change in the mid-grade and premium adjustment factor as published by an appropriate price information reporting service; and
- [(5)] (4) The value of any zone price adjustment on a zone by zone basis or zone price adjustment allocation, pursuant to section 486H-13(i), on a zone by zone basis, in effect at the time the petition is filed, shall be adjusted based upon material changes in the operating costs for a zone, such as terminaling, storage, or distribution costs, and other empirical data the commission deems appropriate."

SECTION 19. Section 486H-15, Hawaii Revised Statutes, is repealed.

SECTION 20. If section 486H-13, Hawaii Revised Statutes, is not reinstated by the governor within one hundred eighty days of September 1, 2006, the governor shall submit a report to the legislature no later than twenty days prior to the convening of the next regular session explaining:

- (1) The reasons, along with all relevant facts and statistics, why the governor did not believe that the operation of section 486H-13 during the previous fiscal year would have been beneficial to the economic well-being, health, and safety of the people of the State; and
- (2) All efforts the administration has undertaken during the prior fiscal year to:
 - (A) Increase competition in the gasoline wholesale market in the State;
 - (B) Reduced the pre-tax wholesale price of gasoline in the State; and
 - (C) Otherwise improve the market for gasoline in the State.

PART III

SECTION 21. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER UNFAIR TRADE PRACTICES BY PETROLEUM INDUSTRY

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

“Advertising” includes the use of any banner, sign, placard, poster, streamer, card, or any publication in the media.

“Gasoline” means a volatile mixture of liquid hydrocarbons, generally containing small amounts of additives, suitable for use as a fuel in spark-ignition internal combustion engines.

“Person” means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

“Petroleum product” means gasoline, diesel fuel, liquefied petroleum gas only when used as a motor fuel, kerosene, thinner, solvent, liquefied natural gas,

pressure appliance fuel, white gasoline, or any motor fuel, or any oil represented as engine lubricant, engine oil, lubricating or motor oil, or any oil used to lubricate transmissions, gears, or axles.

“Sell” or any of its variants means attempt to sell, offer for sale or assist in the sale of, permit to be sold or offered for sale or delivery, offer for delivery, trade, barter, or expose for sale.

§ -2 **Misrepresentations.** (a) It is unlawful for any person to make any deceptive, false, or misleading statement by any means whatsoever regarding quality, quantity, performance, price, discount, profit, or savings used in the sale or selling of any petroleum product regulated pursuant to this chapter or chapters 486H and 486J.

(b) The following deceptive, false, or misleading acts or practices committed or permitted by any person offering to sell any petroleum product that is regulated by this chapter or chapters 486H and 486J are also a violation of this section:

- (1) Misrepresenting the brand, grade, quality, or price of a petroleum product;
- (2) Using false or deceptive representations or designations in connection with the pricing, profits, or sale of a petroleum product;
- (3) Advertising petroleum products or services and not selling them as advertised;
- (4) Advertising petroleum products of a designated brand, grade, trademark, or trade name not actually sold or available for sale;
- (5) Making false, deceptive, or misleading statements concerning conditions of sale, price reductions, costs of operations, profits, or failing to disclose business relationships within the petroleum industry that affect the wholesale pricing of petroleum products;
- (6) Representing that the consumer will receive a rebate, discount, or other economic benefit and then failing to give that rebate, discount, or other economic benefit; and
- (7) Forging or falsifying any records or documents required by this chapter or chapter 486H or 486J or knowingly keeping, using, or displaying the false or forged records or documents.

§ -3 **Unlawful profiteering.** Any person who sells petroleum products and who, with intent to enhance the price or restrict the supply of petroleum products:

- (1) Wilfully causes or permits preventable waste in the production, manufacture, storage, or distribution of petroleum products;
- (2) Prevents, limits, lessens, or restricts the manufacture, production, supply, or distribution of petroleum products;
- (3) Enters into any contract, combination, or conspiracy in restraint of trade or commerce;
- (4) Exacts or demands any unjust or unreasonable profit in the sale, exchange, or handling of petroleum products; or
- (5) In any way aids or abets the doing of any act prohibited in paragraphs (1) to (4),

commits an unlawful trade practice.

§ -4 **Penalty.** Any person who violates this chapter shall be fined not more than \$10,000 for each violation or imprisoned for not more than five years, or both.

§ **-5 Injunctions.** Any person who violates this chapter may be enjoined by the circuit court by a mandatory injunction or temporary restraining order necessary or proper to effectuate the purposes of this chapter in a suit brought by the attorney general in the name of the State or by any private person in the person's own name.

§ **-6 Remedies cumulative.** The remedies prescribed in this chapter are cumulative and in addition to any other remedies provided by law.”

SECTION 22. 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 23. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁴

SECTION 24. This Act shall take effect upon approval.

(Approved May 5, 2006.)

Notes

1. “(j)” should be underscored.
2. “Act _____” is Act 78.
3. No subparagraph (2)(B).
4. Edited pursuant to HRS §23G-16.5.

ACT 79

H.B. NO. 2278

A Bill for an Act Making Emergency Appropriations for the Department of the Attorney General.

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

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

SECTION 2. The purposes of this Act are to make an appropriation out of the general revenues of the State of Hawaii to be deposited into the DNA registry special fund, to make an appropriation out of the DNA registry special fund to pay for costs associated with the implementation of Act 112, Session Laws of Hawaii 2005, and to make an appropriation out of the general revenues of the State of Hawaii to pay for costs associated with the implementation of Act 133, Session Laws of Hawaii 2005.

Act 112 requires that any person, except for any juvenile, who is convicted of, or pleads guilty or no contest to, any felony offense, even if the plea is deferred, or is found not guilty by reason of physical or mental disease, disorder, or defect of any felony offense shall provide buccal swab samples. The Act also provides for the analysis of the samples collected. Act 112 requires that testing begin immediately for all persons who have been convicted of murder in any degree or any felony offense defined in chapter 846E, Hawaii Revised Statutes, and for other persons thirty days after statewide publication of notice, which may be provided in stages, by the attorney general. Act 112 provides no funding for these purposes.

Act 133 provides that the department of the attorney general may administer programs for the prevention of sexual violence and the protection and treatment of victims of sexual violence. Act 133 provides no funding for this purpose.

These emergency appropriations are necessary to implement Act 112 and Act 133. Included in these emergency appropriations are:

- (1) The sum of \$186,620 for the purchase of buccal swab collection kits and for mailing costs;
- (2) The sum of \$289,492 for costs related to collecting buccal swab samples;
- (3) The sum of \$836,247 for costs related to analyzing the samples collected; and
- (4) The sum of \$1,076,217 for programs for the prevention of sexual violence and the protection and treatment of victims of sexual violence.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,312,359, or so much thereof as may be necessary for fiscal year 2005-2006, to be deposited into the DNA registry special fund.

The sum appropriated shall be expended by the department of the attorney general to carry out the purposes of this Act.

SECTION 4. There is appropriated out of the DNA registry special fund, established by section 706-603, Hawaii Revised Statutes, the sum of \$1,312,359, or so much thereof as may be necessary for fiscal year 2005-2006, to carry out the purposes of the special fund, including reimbursement to the county police departments and to the judiciary for costs incurred in carrying out the purposes of Act 112, Session Laws of Hawaii 2005.

The sum appropriated shall be expended by the department of the attorney general.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,076,217, or so much thereof as may be necessary for fiscal year 2005-2006, to carry out the purposes of Act 133, Session Laws of Hawaii 2005.

The sum appropriated shall be expended by the department of the attorney general.

SECTION 6. Any provision of this Act to the contrary notwithstanding, the appropriations authorized under this Act shall not lapse at the end of the fiscal year for which the appropriations are made. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2007, shall lapse.

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

(Approved May 8, 2006.)

ACT 80

S.B. NO. 2265

A Bill for an Act Relating to Crimes Against Minors.

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

SECTION 1. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B

felony, or any of the following class C felonies: section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters; section 707-703 relating to negligent homicide in the [first] second degree; section 707-711 relating to assault in the second degree; section 707-713 relating to reckless endangering in the first degree; section 707-716 relating to terrorist threatening in the first degree; section 707-721 relating to unlawful imprisonment in the first degree; section 707-732 relating to sexual assault or rape in the third degree; ~~[707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in the first degree;]~~ ~~[707-751]~~ section 707-752 relating to promoting child abuse in the [second] third degree; section 707-757 relating to electronic enticement of a child in the second degree; section 707-766 relating to extortion in the second degree; section 708-811 relating to burglary in the second degree; section 708-821 relating to criminal property damage in the second degree; section 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; section 708-831 relating to theft in the second degree; section 708-835.5 relating to theft of livestock; section 708-836 relating to unauthorized control of propelled vehicle; section 708-852 relating to forgery in the second degree; section 708-854 relating to criminal possession of a forgery device; section 708-875 relating to trademark counterfeiting; section 710-1071 relating to intimidating a witness; section 711-1103 relating to riot; section 712-1203 relating to promoting prostitution in the second degree; section 712-1221 relating to gambling in the first degree; section 712-1224 relating to possession of gambling records in the first degree; section 712-1243 relating to promoting a dangerous drug in the third degree; section 712-1247 relating to promoting a detrimental drug in the first degree; section 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; section 134-8 relating to ownership, etc., of prohibited weapons; section 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
 - (ii) Where the instant conviction is for a class A felony—six years, eight months;
 - (iii) Where the instant conviction is for a class B felony—three years, four months;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
 - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
 - (iii) Where the instant conviction is for a class B felony—six years, eight months;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:

- (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
- (ii) Where the instant conviction is for a class A felony—twenty years;
- (iii) Where the instant conviction is for a class B felony—ten years;
- (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.”

SECTION 2. Section 707-756, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Electronic enticement of a child in the first degree is a class B felony. Notwithstanding any law to the contrary, if a person sentenced under this section is sentenced to probation rather than an indeterminate term of imprisonment, the terms and conditions of probation shall include, but not be limited to, a term of imprisonment of one year.”

SECTION 3. Section 707-757, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Electronic enticement of a child in the second degree is a class C felony. Notwithstanding any law to the contrary, if a person sentenced under this section is sentenced to probation rather than an indeterminate term of imprisonment, the terms and conditions of probation shall include, but not be limited to, a term of imprisonment of one year.”

SECTION 4. Section 853-4, Hawaii Revised Statutes, is amended to read as follows:

“§853-4 Chapter not applicable; when. This chapter shall not apply when:

- (1) The offense charged involves the intentional, knowing, reckless, or negligent killing of another person;
- (2) The offense charged is:
 - (A) A felony that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person; or
 - (B) A misdemeanor or petty misdemeanor that carries a mandatory minimum sentence and that involves the intentional, knowing, or reckless bodily injury, substantial bodily injury, or serious bodily injury of another person;
- (3) The offense charged involves a conspiracy or solicitation to intentionally, knowingly, or recklessly kill another person or to cause serious bodily injury to another person;
- (4) The offense charged is a class A felony;
- (5) The offense charged is nonprobationable;
- (6) The defendant has been convicted of any offense defined as a felony by the Hawaii Penal Code or has been convicted for any conduct that if perpetrated in this State would be punishable as a felony;
- (7) The defendant is found to be a law violator or delinquent child for the commission of any offense defined as a felony by the Hawaii Penal Code or for any conduct that if perpetrated in this State would constitute a felony;
- (8) The defendant has a prior conviction for a felony committed in any state, federal, or foreign jurisdiction;
- (9) A firearm was used in the commission of the offense charged;

- (10) The defendant is charged with the distribution of a dangerous, harmful, or detrimental drug to a minor;
 - (11) The defendant has been charged with a felony offense and has been previously granted deferred acceptance of guilty plea status for a prior offense, regardless of whether the period of deferral has already expired;
 - (12) The defendant has been charged with a misdemeanor offense and has been previously granted deferred acceptance of guilty plea status for a prior felony, misdemeanor, or petty misdemeanor for which the period of deferral has not yet expired;
 - (13) The offense charged is:
 - (A) Escape in the first degree;
 - (B) Escape in the second degree;
 - (C) Promoting prison contraband in the first degree;
 - (D) Promoting prison contraband in the second degree;
 - (E) Bail jumping in the first degree;
 - (F) Bail jumping in the second degree;
 - (G) Bribery;
 - (H) Bribery of a witness;
 - (I) Intimidating a witness;
 - (J) Bribery of or by a juror;
 - (K) Intimidating a juror;
 - (L) Jury tampering;
 - (M) Promoting prostitution in the first degree;
 - (N) Promoting prostitution in the second degree;
 - (O) Promoting prostitution in the third degree;
 - (P) Abuse of family or household members;
 - (Q) Sexual assault in the second degree;
 - (R) Sexual assault in the third degree; [ø]
 - (S) A violation of an order issued pursuant to chapter 586; [ø]
 - (T) Promoting child abuse in the second degree;
 - (U) Promoting child abuse in the third degree;
 - (V) Electronic enticement of a child in the first degree;
 - (W) Electronic enticement of a child in the second degree; or
 - (14) The defendant has been charged with:
 - (A) Knowingly or intentionally falsifying any report required under chapter 11, subpart B of part XII, with the intent to circumvent the law or deceive the campaign spending commission; or
 - (B) Violating section 11-201 or 11-202.
- The court may adopt by rule other criteria in this area.”

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.

SECTION 7. This Act shall take effect upon approval.

(Approved May 8, 2006.)

A Bill for an Act Relating to Sentencing.

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

SECTION 1. Chapter 706, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§706- Special sentencing of habitual violent felons. (1) Notwithstanding any other provision of law to the contrary, a habitual violent felon shall be sentenced to both:

- (a) A mandatory minimum term of imprisonment of not less than thirty years; and
 - (b) A mandatory indeterminate term of life imprisonment.
- (2) A habitual violent felon shall not be eligible for parole before serving the mandatory minimum term under subsection (1) or (2), as applicable.
- (3) Except for work furlough programs in the final year of a sentence that require incarceration during the time the inmate is not working or traveling to or from work, a habitual violent felon shall not be eligible for pre-release, furlough, or other modified terms of imprisonment without the written authorization of the governor, which authorization shall not be delegable.

(4) A defendant is a “habitual violent felon” if:

- (a) The defendant is at least eighteen years old at the time the defendant committed the current offense;
- (b) The current conviction is for murder in the second degree or any class A or class B felony that is a crime of violence;
- (c) The defendant has at least two prior and separate felony convictions for:
 - (i) Murder in any degree;
 - (ii) Any class A felony or class B felony that is a crime of violence; or
 - (iii) Any federal offense that is comparable to a crime of violence as defined in subsection (8), or any federal or out-of-state offense that under the laws of this State would be a crime of violence as defined in subsection (6); and
- (d) Either the current conviction or at least one of the prior and separate convictions is for an offense other than burglary in the first degree.

(5) This section shall apply only if the prosecuting attorney brings before the court a motion to sentence under this section that allows the court to advise the defendant of the defendant’s eligibility for sentencing under this section prior to the entry of a verdict of guilty, whether by trial, plea of guilty, or plea of no contest. The motion shall set forth the date and jurisdiction of occurrence of each prior conviction required under subsection (4)(c) and shall specify whether the defendant is subject to the following:

- (a) Sentencing of repeat offenders under section 706-606.5;
 - (b) Repeat violent and sexual offender; enhanced sentence under section 706-606.6;
 - (c) Enhanced sentence for second degree murder under section 706-657; or
 - (d) Sentence of imprisonment for felony; extended terms under section 706-661.
- (6) For the purposes of this section, “crime of violence” means:
- (a) Murder in any degree;
 - (b) Manslaughter;

- (c) Assault in the first degree;
- (d) Kidnapping;
- (e) Sexual assault in the first degree;
- (f) Sexual assault in the second degree;
- (g) Continuous sexual assault of a minor under the age of fourteen years old;
- (h) Robbery in the first degree;
- (i) Robbery in the second degree; and
- (j) Burglary in the first degree.”

SECTION 2. The judiciary shall submit a report to the legislature on the implementation of this Act. The report shall include:

- (1) Data on the number of defendants sentenced under this Act; and
- (2) Data on the number of defendants sentenced under this Act who were also subject to:
 - (a) Sentencing of repeat offenders under section 706-606.5;
 - (b) Repeat violent and sexual offender; enhanced sentence under section 706-606.6;
 - (c) Enhanced sentence for second degree murder under section 706-657; and
 - (d) Sentence of imprisonment for felony; extended terms under section 706-661.

The judiciary shall submit its findings to the legislature no later than twenty days prior to the convening of the regular session of 2011.

SECTION 3. The department of public safety shall submit a report to the legislature on the implementation and effect of this Act. The report shall include:

- (1) If available, data from sentencing simulation models, such as the one established by Act 267 of 2000, to assess the impact of this Act on prison inmate population;
- (2) Data showing the effect of this Act on the inmate population in terms of number of inmates committed to the department of public safety’s custody, and the anticipated financial impact on the department of public safety; and
- (3) Data on the department of public safety’s ability to house and care for inmates committed under this Act.

The department of public safety shall submit its findings to the legislature no later than twenty days prior to the convening of the regular session of 2011.

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

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect upon approval, and shall be repealed on July 1, 2011.

(Approved May 8, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Domestic Violence Fatality Review.

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

SECTION 1. Chapter 321, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . DOMESTIC VIOLENCE FATALITY REVIEW

§321- Definitions. As used in this part:

“Dating relationship” as used in this section has the same meaning prescribed in section 586-1.

“Department” means the department of health.

“Director” means the director of health or the director’s designated representative.

“Domestic violence” means physical harm, bodily injury, assault, or the threat of imminent physical harm, bodily injury, or assault, extreme psychological abuse or malicious property damage between family or household members.

“Domestic violence fatality review information” means information regarding a victim, including but not limited to:

- (1) Social, medical, and legal history;
- (2) Death and birth certificates;
- (3) Law enforcement investigative information and data;
- (4) Medical examiner or coroner investigative information and data;
- (5) Parole and probation information and records;
- (6) Information and records of social services agencies;
- (7) Educational records; and
- (8) Health care institution information.

“Domestic violence fatality review team” means those individuals appointed by the director to review domestic violence fatalities.

“Extreme psychological abuse” as used in this section has the same meaning prescribed in section 586-1.

“Family or household members” as used in this section means:

- (1) Each legal parent;
- (2) The natural mother;
- (3) The natural father;
- (4) Each natural or adopted child;
- (5) Each sibling or person related by consanguinity;
- (6) Spouses or former spouses;
- (7) Reciprocal beneficiaries or former reciprocal beneficiaries;
- (8) Each person who has or has had a dating relationship;
- (9) Each person jointly residing or formerly residing in the same dwelling unit; and
- (10) Any other person who, or legal entity that, is a victim’s legal or physical custodian or guardian, or who is otherwise responsible for the victim’s care, other than an authorized agency that assumes such a legal status or relationship with the victim under chapter 587.

“Malicious property damage” as used in this section has the same meaning prescribed in section 586-1.

“Preventable death” means a death that reasonable medical, social, legal, psychological, or educational intervention may have prevented.

“Provider of medical care” means any health care practitioner who provides, or a facility through which is provided, any medical evaluation or treatment, including dental and mental health evaluation or treatment.

“Suspect” means a person suspected of having caused a victim’s death.

“Victim” means an adult whose death is suspected of having been caused by domestic violence or domestic violence-related suicide.

§321- Multidisciplinary and multiagency reviews. The department may conduct multidisciplinary and multiagency reviews of domestic violence fatalities to reduce the incidence of preventable deaths. The director may form domestic violence fatality review teams, as necessary, by appointing individuals to review domestic violence fatalities. A domestic violence fatality review team shall not be subject to part I, chapter 92.

§321- Access to information. (a) Upon request of the director or a domestic violence fatality review team, all medical examiners, physicians acting under the direction of a coroner, providers of medical care, state agencies, and county agencies shall disclose to the department and the domestic violence fatality review team all information and records regarding the circumstances of a victim’s death so that the department may conduct a multidisciplinary and multiagency review of domestic violence fatalities pursuant to this part.

(b) To the extent that this section conflicts with other state confidentiality laws, the provisions of this section shall require disclosure, notwithstanding the existence of a specific confidentiality statute.

(c) An entity represented on a domestic violence fatality review team and any entity cooperating with an entity represented on a domestic violence fatality review team may share with other members of the team:

- (1) Information in its possession concerning the victim;
- (2) Information in its possession concerning any person who was in contact with the victim; and
- (3) Any other information in its possession deemed by the entity to be pertinent to the domestic violence fatality review.

(d) Any information shared by an entity with other members of a domestic violence fatality review team is subject to the same restrictions on disclosure of the information or the records as the originating entity.

§321- Exception. Information regarding an ongoing civil or criminal investigation shall be disclosed at the discretion of the applicable state or county law enforcement agency.

§321- Use of domestic violence fatality review information and records. (a) Except as otherwise provided in this part, all information and records acquired by the department during its review of domestic violence fatalities pursuant to this part are confidential and shall only be disclosed as necessary to carry out the purposes of this part.

(b) Domestic violence fatality review information and statistical compilations of data that do not contain any information not previously publicly disclosed that would permit the identification of any person, shall be public records.

(c) An individual participating in the domestic violence fatality review of a victim’s death shall not be questioned in any civil or criminal proceeding regarding information presented in or an opinion formed as a result of a domestic violence fatality review meeting. Nothing in this section shall be construed to prevent an individual from testifying to information obtained independently of the domestic

violence fatality review of a victim’s death, or which is public information, or where law or court order requires disclosure.

(d) Domestic violence fatality review information held by the department as a result of domestic violence fatality reviews conducted under this part shall not be subject to subpoena, discovery, or introduction into evidence in any civil or criminal proceeding, except that domestic violence fatality review information otherwise available from other sources shall not be immune from subpoena, discovery, or introduction into evidence through those sources solely because it was provided as required by this part.

§321- Immunity from liability. A domestic violence fatality review team, its members, and any entity, agency, or individual participating in, or cooperating in, the review of a domestic violence fatality pursuant to this part shall not be civilly or criminally liable for providing the information required under this part.”

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

(Approved May 8, 2006.)

ACT 83

S.B. NO. 695

A Bill for an Act Relating to the National Crime Prevention and Privacy Compact.

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

SECTION 1. The purpose of this Act is to facilitate the interstate exchange of criminal history information for noncriminal justice purposes, including but not limited to background checks for the licensing and screening of employees and volunteers and to adopt provisions from the National Crime Prevention and Privacy Compact, as enacted by section 217 of Public Law No. 105-251 (42 U.S.C. section 14616).

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
NATIONAL CRIME PREVENTION AND PRIVACY COMPACT**

The National Crime Prevention and Privacy Compact as contained herein is hereby enacted into law and entered into on behalf of the State of Hawaii with the United States Federal government and other party states in the form as follows:

OVERVIEW

(a) **In general.** This Compact organizes an electronic information sharing system among the Federal Government and the states to exchange criminal history records for noncriminal justice purposes authorized by Federal or state law, such as background checks for governmental licensing and employment.

(b) **Obligations of parties.** Under this Compact, the FBI and the party states agree to maintain detailed databases of their respective criminal history records, including arrests and dispositions, and to make them available to the Federal Government and to party states for authorized purposes. The FBI shall also manage the

Federal data facilities that provide a significant part of the infrastructure for the system.

ARTICLE I DEFINITIONS

“Attorney General” means the Attorney General of the United States.

“Compact officer” means:

(a) For the Federal Government, an official so designated by the Director of the FBI; and

(b) For the party state, the chief administrator of the state’s criminal history record repository or a designee of the chief administrator who is a regular full-time employee of the repository.

“Council” means the Compact Council established under Article VI.

“Criminal history records” means:

(a) Information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release; and

(b) Does not include identification information such as fingerprint records if such information does not indicate involvement of the individual with the criminal justice system.

“Criminal history record repository” means the state agency designated by the governor or other appropriate executive official or the legislature of a state to perform centralized recordkeeping functions for criminal history records and services in the state.

“Criminal justice” includes activities relating to the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice includes criminal identification activities and the collection, storage, and dissemination of criminal history records.

“Criminal justice agency” means:

(a) Courts; and

(b) A governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order and allocates a substantial part of its annual budget to the administration of criminal justice and includes federal and state inspectors general offices.

“Criminal justice services” means services provided by the FBI to criminal justice agencies in response to a request for information about a particular individual or as an update to information previously provided for criminal justice purposes.

“Criterion offense” means any felony or misdemeanor offense not included on the list of nonserious offenses published periodically by the FBI.

“Direct access” means access to the National Identification Index by computer terminal or other automated means not requiring the assistance of or intervention by any other party or agency.

“Executive order” means an order of the President of the United States or the chief executive officer of a state that has the force of law and that is promulgated in accordance with applicable law.

“FBI” means the Federal Bureau of Investigation.

“III System” has the same meaning as “Interstate Identification Index System” and means:

(a) The cooperative Federal-State system for the exchange of criminal history records; and includes

(b) The National Identification Index, the National Fingerprint File and, to the extent of their participation in such system, the criminal history record repositories of the States and the FBI.

“National Fingerprint File” means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

“National Identification Index” means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

“National indices” means the National Identification Index and the National Fingerprint File.

“Nonparty state” means a state that has not ratified this Compact.

“Noncriminal justice purposes” means uses of criminal history records for purposes authorized by Federal or state law other than purposes relating to criminal justice activities, including employment suitability, licensing determinations, immigration and naturalization matters, and national security clearances.

“Party state” means a state that has ratified this Compact.

“Positive identification” means a determination, based upon a comparison of fingerprints or other equally reliable biometric identification techniques, that the subject of a record search is the same person as the subject of a criminal history record or records indexed in the III System. Identifications based solely upon a comparison of subjects’ names or other nonunique identification characteristics or numbers, or combinations thereof, shall not constitute positive identification.

“Sealed record information” means:

(a) With respect to adults, that portion of the record that is:

- (1) Not available for criminal justice uses;
- (2) Not supported by fingerprints or other accepted means of positive identification; or
- (3) Subject to restrictions on dissemination for noncriminal justice purposes pursuant to a court order related to a particular subject or pursuant to a Federal or State statute that requires action on a sealing petition filed by a particular record subject; and

(b) With respect to juveniles, whatever each State determines is a sealed record under its own law and procedure.

“State” means any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE II PURPOSE

The purpose of this Compact is to:

(a) Provide a legal framework for the establishment of a cooperative Federal-State system for the interstate and Federal-State exchange of criminal history records for noncriminal justice uses;

(b) Require the FBI to permit use of the National Identification Index and the National Fingerprint File by each party state, and to provide, in a timely fashion, Federal and State criminal history records to requesting States, in accordance with the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(c) Require party states to provide information and records for the National Identification Index and the National Fingerprint File and to provide criminal history records, in a timely fashion, to criminal history record repositories of other States and the Federal Government for noncriminal justice purposes, in accordance with

the terms of this Compact and with rules, procedures, and standards established by the Council under Article VI;

(d) Provide for the establishment of a Council to monitor III System operations and to prescribe system rules and procedures for the effective and proper operation of the III System for noncriminal justice purposes; and

(e) Require the FBI and each party state to adhere to III System standards concerning record dissemination and use, response times, system security, data quality, and other duly established standards, including those that enhance the accuracy and privacy of such records.

ARTICLE III RESPONSIBILITIES OF COMPACT PARTIES

(a) **FBI responsibilities.** The Director of the FBI shall:

- (1) Appoint an FBI Compact officer who shall:
 - (A) Administer this Compact within the Department of Justice and among Federal agencies and other agencies and organizations that submit search requests to the FBI pursuant to Article V(c);
 - (B) Ensure that Compact provisions and rules, procedures, and standards prescribed by the Council under Article VI are complied with by the Department of Justice and the Federal agencies and other agencies and organizations referred to in Article III(1)(A); and
 - (C) Regulate the use of records received by means of the III System from party states when such records are supplied by the FBI directly to other Federal agencies;
- (2) Provide to Federal agencies and to State criminal history record repositories, criminal history records maintained in its database for the noncriminal justice purposes described in Article IV, including:
 - (A) Information from nonparty states; and
 - (B) Information from party states that is available from the FBI through the III System, but is not available from the party state through the III System;
- (3) Provide a telecommunications network and maintain centralized facilities for the exchange of criminal history records for both criminal justice purposes and the noncriminal justice purposes described in Article IV, and ensure that the exchange of such records for criminal justice purposes has priority over exchange for noncriminal justice purposes; and
- (4) Modify or enter into user agreements with nonparty state criminal history record repositories to require them to establish record request procedures conforming to those prescribed in Article V.

(b) **State responsibilities.** Each party state shall:

- (1) Appoint a Compact officer who shall:
 - (A) Administer this Compact within that state;
 - (B) Ensure that Compact provisions and rules, procedures, and standards established by the Council under Article VI are complied with in the state; and
 - (C) Regulate the in-state use of records received by means of the III System from the FBI or from other party states;
- (2) Establish and maintain a criminal history record repository, which shall provide:
 - (A) Information and records for the National Identification Index and the National Fingerprint File; and

- (B) The state's III System-indexed criminal history records for non-criminal justice purposes described in Article IV;
- (3) Participate in the National Fingerprint File; and
- (4) Provide and maintain telecommunications links and related equipment necessary to support the services set forth in this Compact.
- (c) **Compliance with III System standards.** In carrying out their responsibilities under this Compact, the FBI and each party state shall comply with III System rules, procedures, and standards duly established by the Council concerning record dissemination and use, response times, data quality, system security, accuracy, privacy protection, and other aspects of III System operation.
 - (d) Maintenance of record services.
 - (1) Use of the III System for noncriminal justice purposes authorized in this Compact shall be managed so as not to diminish the level of services provided in support of criminal justice purposes.
 - (2) Administration of Compact provisions shall not reduce the level of service available to authorized noncriminal justice users on the effective date of this Compact.

ARTICLE IV AUTHORIZED RECORD DISCLOSURES

(a) **State criminal history record repositories.** To the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), the FBI shall provide on request criminal history records (excluding sealed records) to State criminal history record repositories for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a state statute that has been approved by the Attorney General and that authorizes national indices checks.

(b) **Criminal justice agencies and other governmental or nongovernmental agencies.** The FBI, to the extent authorized by section 552a of title 5, United States Code (commonly known as the "Privacy Act of 1974"), and state criminal history record repositories shall provide criminal history records (excluding sealed records) to criminal justice agencies and other governmental or nongovernmental agencies for noncriminal justice purposes allowed by Federal statute, Federal Executive order, or a state statute that has been approved by the Attorney General, that authorizes national indices checks.

(c) **Procedures.** Any record obtained under this Compact may be used only for the official purposes for which the record was requested. Each Compact officer shall establish procedures, consistent with this Compact, and with rules, procedures, and standards established by the Council under Article VI, which procedures shall protect the accuracy and privacy of the records, and shall:

- (1) Ensure that records obtained under this Compact are used only by authorized officials for authorized purposes;
- (2) Require that subsequent record checks are requested to obtain current information whenever a new need arises; and
- (3) Ensure that record entries that may not legally be used for a particular noncriminal justice purpose are deleted from the response and, if no information authorized for release remains, an appropriate "no record" response is communicated to the requesting official.

ARTICLE V RECORD REQUEST PROCEDURES

(a) **Positive identification.** Subject fingerprints or other approved forms of positive identification shall be submitted with all requests for criminal history record checks for noncriminal justice purposes.

(b) **Submission of state requests.** Each request for a criminal history record check utilizing the national indices made under any approved state statute shall be submitted through that state's criminal history record repository.

A state criminal history record repository shall process an interstate request for noncriminal justice purposes through the national indices only if such request is transmitted through another state criminal history record repository or the FBI.

(c) **Submission of Federal requests.** Each request for criminal history record checks utilizing the national indices made under Federal authority shall be submitted through the FBI or, if the state criminal history record repository consents to process fingerprint submissions, through the criminal history record repository in the State in which such request originated. Direct access to the National Identification Index by entities other than the FBI and state criminal history records repositories shall not be permitted for noncriminal justice purposes.

(d) **Fees.** A state criminal history record repository or the FBI:

- (1) May charge a fee, in accordance with applicable law, for handling a request involving fingerprint processing for noncriminal justice purposes; and
- (2) May not charge a fee for providing criminal history records in response to an electronic request for a record that does not involve a request to process fingerprints.

(e) **Additional search.**

- (1) If a state criminal history record repository cannot positively identify the subject of a record request made for noncriminal justice purposes, the request, together with fingerprints or other approved identifying information, shall be forwarded to the FBI for a search of the national indices.
- (2) If, with respect to a request forwarded by a State criminal history record repository under paragraph (1), the FBI positively identifies the subject as having a III System-indexed record or records:
 - (A) The FBI shall so advise the state criminal history record repository; and
 - (B) The state criminal history record repository shall be entitled to obtain the additional criminal history record information from the FBI or other State criminal history record repositories.

ARTICLE VI ESTABLISHMENT OF COMPACT COUNCIL

(a) **Establishment.**

- (1) **In general.** There is established a council to be known as the "Compact Council", which shall have the authority to promulgate rules and procedures governing the use of the III System for noncriminal justice purposes, not to conflict with FBI administration of the III System for criminal justice purposes.

(2) **Organization.** The Council shall:

- (A) Continue in existence as long as this Compact remains in effect;
- (B) Be located, for administrative purposes, within the FBI; and
- (C) Be organized and hold its first meeting as soon as practicable after the effective date of this Compact.

(b) **Membership.** The Council shall be composed of 15 members, each of whom shall be appointed by the Attorney General, as follows:

- (1) Nine members, each of whom shall serve a 2-year term, who shall be selected from among the Compact officers of Party States based on the recommendation of the Compact officers of all Party States, except that, in the absence of the requisite number of Compact officers available to

serve, the chief administrators of the criminal history record repositories of Nonparty States shall be eligible to serve on an interim basis.

- (2) Two at-large members, nominated by the Director of the FBI, each of whom shall serve a 3-year term, of whom:
 - (A) One shall be a representative of the criminal justice agencies of the Federal Government and may not be an employee of the FBI; and
 - (B) One shall be a representative of the noncriminal justice agencies of the Federal Government.
- (3) Two at-large members, nominated by the Chairman of the Council, once the Chairman is elected pursuant to Article VI(c), each of whom shall serve a 3-year term, of whom:
 - (A) One shall be a representative of State or local criminal justice agencies; and
 - (B) One shall be a representative of state or local noncriminal justice agencies.
- (4) One member, who shall serve a 3-year term, and who shall simultaneously be a member of the FBI's advisory policy board on criminal justice information services, nominated by the membership of that policy board.
- (5) One member, nominated by the Director of the FBI, who shall serve a 3-year term, and who shall be an employee of the FBI.

(c) Chairman and Vice Chairman.

- (1) **In general.** From its membership, the Council shall elect a Chairman and a Vice Chairman of the Council, respectively. Both the Chairman and Vice Chairman of the Council:
 - (A) Shall be a Compact officer, unless there is no Compact officer on the Council who is willing to serve, in which case the Chairman may be an at-large member; and
 - (B) Shall serve a 2-year term and may be reelected to only one additional two-year term.
- (2) **Duties of Vice Chairman.** The Vice Chairman of the Council shall serve as the Chairman of the Council in the absence of the Chairman.

(d) Meetings.

- (1) **In general.** The Council shall meet at least once each year at the call of the Chairman. Each meeting of the Council shall be open to the public. The Council shall provide prior public notice in the Federal Register of each meeting of the Council, including the matters to be addressed at such meeting.
- (2) **Quorum.** A majority of the Council or any committee of the Council shall constitute a quorum of the Council or of such committee, respectively, for the conduct of business. A lesser number may meet to hold hearings, take testimony, or conduct any business not requiring a vote.

(e) Rules, procedures, and standards. The Council shall make available for public inspection and copying at the Council office within the FBI, and shall publish in the Federal Register, any rules, procedures, or standards established by the Council.

(f) Assistance from FBI. The Council may request from the FBI such reports, studies, statistics, or other information or materials as the Council determines to be necessary to enable the Council to perform its duties under this Compact. The FBI, to the extent authorized by law, may provide such assistance or information upon such a request.

(g) Committees. The Chairman may establish committees as necessary to carry out this Compact and may prescribe their membership, responsibilities, and duration.

ARTICLE VII RATIFICATION OF COMPACT

This Compact shall take effect upon being entered into by 2 or more States as between those States and the Federal Government.

Upon subsequent entering into this Compact by additional states, it shall become effective among those states and the Federal Government and each Party State that has previously ratified it.

When ratified, this Compact shall have the full force and effect of law within the ratifying jurisdictions. The form of ratification shall be in accordance with the laws of the executing state.

ARTICLE VIII MISCELLANEOUS PROVISIONS

(a) **Relation of Compact to certain FBI activities.** Administration of this Compact shall not interfere with the management and control of the Director of the FBI over the FBI's collection and dissemination of criminal history records and the advisory function of the FBI's advisory policy board chartered under the Federal Advisory Committee Act (5 U.S.C. App.) for all purposes other than noncriminal justice.

(b) **No authority for nonappropriated expenditures.** Nothing in this Compact shall require the FBI to obligate or expend funds beyond those appropriated to the FBI.

(c) **Relating to Public Law 92-544.** Nothing in this Compact shall diminish or lessen the obligations, responsibilities, and authorities of any state, whether a Party State or a Nonparty State, or of any criminal history record repository or other subdivision or component thereof, under the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 (Public Law 92-544), or regulations and guidelines promulgated thereunder, including the rules and procedures promulgated by the Council under Article VI(a), regarding the use and dissemination of criminal history records and information.

ARTICLE IX RENUNCIATION

(a) **In general.** This Compact shall bind each Party State until renounced by the party state.

(b) **Effect.** Any renunciation of this Compact by a party state shall:

- (1) Be effected in the same manner by which the party state ratified this Compact; and
- (2) Become effective 180 days after written notice of renunciation is provided by the party state to each other party state and to the Federal Government.

ARTICLE X SEVERABILITY

The provisions of this Compact shall be severable, and if any phrase, clause, sentence, or provision of this Compact is declared to be contrary to the constitution of any participating state, or to the Constitution of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If a portion of this Compact is held contrary to the constitution of any party state, all other portions of this Compact shall remain in full force and effect as to the

remaining party states and in full force and effect as to the party state affected, as to all other provisions.

**ARTICLE XI
ADJUDICATION OF DISPUTES**

(a) **In general.** The Council shall:

- (1) Have initial authority to make determinations with respect to any dispute regarding:
 - (A) Interpretation of this Compact;
 - (B) Any rule or standard established by the Council pursuant to Article V; and
 - (C) Any dispute or controversy between any parties to this Compact; and
- (2) Hold a hearing concerning any dispute described in paragraph (1) at a regularly scheduled meeting of the Council and only render a decision based upon a majority vote of the members of the Council. Such decision shall be published pursuant to the requirements of Article VI(e).

(b) **Duties of FBI.** The FBI shall exercise immediate and necessary action to preserve the integrity of the III System, maintain system policy and standards, protect the accuracy and privacy of records, and to prevent abuses, until the Council holds a hearing on such matters.

(c) **Right of appeal.** The FBI or a Party State may appeal any decision of the Council to the Attorney General, and thereafter may file suit in the appropriate district court of the United States, which shall have original jurisdiction of all cases or controversies arising under this Compact. Any suit arising under this Compact and initiated in a State court shall be removed to the appropriate district court of the United States in the manner provided by section 1446 of title 28, United States Code, or other statutory authority.”

SECTION 3. Chapter 846, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§846- National Crime Prevention and Privacy Compact.** (a) The Hawaii criminal justice data center is the central repository of criminal history records for purposes of the National Crime Prevention and Privacy Compact and shall do all things necessary or incidental to carrying out the compact.

(b) The administrator of the Hawaii criminal justice data center, or the administrator’s designee, is the State’s compact officer and shall administer the compact within the State. The administrator may adopt rules and establish procedures for the cooperative exchange of criminal history records between this State and other state governments and with the federal government for the use in noncriminal justice background checks.”

SECTION 4. New statutory material is underscored.¹

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

(Approved May 8, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 84

S.B. NO. 2348

A Bill for an Act Making an Emergency Appropriation to the Department of Health for Pandemic Influenza Preparedness.

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

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

SECTION 2. Although funds were appropriated to the department of health for control of infectious diseases for the fiscal period beginning July 1, 2005, and ending June 30, 2006, a critical funding emergency now exists.

Highly pathogenic avian influenza has spread across Asia and has been detected in Eastern Europe. While primarily affecting birds at the present time, at least one hundred forty-four human cases have been reported in China, Vietnam, Thailand, Indonesia, Cambodia, and Turkey, with a mortality rate of approximately fifty per cent. Scientists are particularly concerned about the highly pathogenic avian influenza (H5N1) currently circulating in Asia and parts of Europe and agree that another influenza pandemic is inevitable and possibly imminent.

Based on historical patterns, influenza pandemics can be expected to occur, on average, three to four times each century when new virus subtypes emerge and are readily transmitted from person to person. However, the occurrence of influenza pandemics is unpredictable. In the twentieth century, the great influenza pandemic of 1918-1919 that caused an estimated forty to fifty million deaths worldwide was followed by pandemics in 1957-1958 and 1968-1969.

An influenza pandemic has the potential to cause more death and illness than any other public health threat. If a pandemic influenza virus with similar virulence to the 1918 strain emerged today, in the absence of intervention, it is estimated that one million nine hundred thousand Americans could die and almost ten million could be hospitalized over the course of the pandemic that may evolve over a year or more. Preparedness to lessen the impact of a pandemic is imperative.

The purpose of this Act is to appropriate funds for fiscal year 2005-2006 to prepare for a novel strain of influenza by acquiring medications, mass clinic supplies, laboratory supplies and equipment, personal protective equipment, and a data management system for tracking cases and contacts.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,318,618 or so much thereof as may be necessary for fiscal year 2005-2006 to prepare for a pandemic of a novel strain of influenza.

There is appropriated out of the emergency and budget reserve fund of the State of Hawaii the sum of \$5,000,000, or so much thereof as may be necessary for fiscal year 2005-2006 to prepare for a pandemic of a novel strain of influenza by acquiring additional:

- (1) Medication;
- (2) Laboratory equipment;
- (3) Supplies;
- (4) Necessary personnel as determined by the director of health; or
- (5) Public education programs;

provided that moneys under this section shall not be expended unless a declaration or determination is made pursuant to subparagraph 328L-3(d)(4), Hawaii Revised Statutes.

ACT 85

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

SECTION 4. Any provision of this Act to the contrary notwithstanding, the appropriation authorized under this Act shall not lapse at the end of the fiscal year for which the appropriation is made. Any unexpended and unencumbered balance of the appropriation made in this Act as of the close of the¹ business on June 30, 2007, shall lapse.

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

(Approved May 9, 2006.)

Note

1. So in original.

ACT 85

S.B. NO. 2339

A Bill for an Act Making an Emergency Appropriation to the Department of Health for the Emergency Medical Services System Branch.

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

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

SECTION 2. Although funds were appropriated to the department of health for emergency medical services for the fiscal period beginning July 1, 2005, and ending June 30, 2006, a critical funding emergency now exists.

The purpose of this Act is to appropriate additional funds for ambulance service contracts and other costs, and helicopter medical transport services.

An additional \$4,245,055 in general funds for fiscal year 2005-2006 is required to pay for unexpected ambulance service contract collective bargaining costs, fuel, and other ambulance service operating costs, and contract ambulance billing and collection costs. This emergency appropriation is necessary to comply with collective bargaining increases negotiated by ambulance service providers statewide, increases in fuel and other ambulance service operating costs, and increases in workload in contracted ambulance billing and collection services. In addition, the purpose of this Act is to request an increase in the expenditure ceiling of the emergency medical services special fund due to an increase in costs in contract ambulance services in Maui and Kauai counties.

An additional \$2,356,497 in general funds for fiscal year 2005-2006 is required to pay for Hawaii National Guard helicopter medical transport services. This emergency appropriation is necessary to cover the costs incurred by the National Guard in providing critical transport services that were previously provided by the United States Army.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$6,601,552 to the department of health, to be distributed as follows:

- (1) The sum of \$2,982,938, or so much thereof as may be necessary for fiscal year 2005-2006 for the city and county of Honolulu for ambu-

- lance related services, including general operating expenses, equipment, and supplies;
- (2) The sum of \$763,965, or so much thereof as may be necessary for the county of Hawaii for ambulance related services, including general operating expenses, equipment, and supplies;
 - (3) The sum of \$279,685, or so much thereof as may be necessary for the purposes of payment to the American Medical Response-Maui;
 - (4) The sum of \$126,121, or so much thereof as may be necessary for the purposes of payment to the American Medical Response-Kauai to comply with negotiated collective bargaining agreements, increases in fuel costs, and other ambulance service operating costs;
 - (5) The sum of \$92,346, or so much thereof as may be necessary, for fiscal year 2005-2006 for emergency medical system contract ambulance billing and collection costs; and
 - (6) The sum of \$2,356,497, or so much thereof as may be necessary, for fiscal year 2005-2006 for costs incurred by the Hawaii Army National Guard in providing helicopter medical transport services on Oahu.

SECTION 4. There is appropriated out of the emergency medical services special fund the sum of \$441,721, or so much thereof as may be necessary, for fiscal year 2005-2006 to be used for:

- (1) Increased costs in contract ambulance services for the counties of Maui and Kauai; and
- (2) Payment of the central service assessment and department administrative expenses for fiscal year 2005-2006.

SECTION 5. The sums appropriated in sections 3 and 4 shall be expended by the department of health.

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

(Approved May 9, 2006.)

ACT 86

S.B. NO. 2334

A Bill for an Act Making an Emergency Appropriation for the Hawaii Youth Correctional Facility.

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 178, Session Laws of Hawaii 2005, provided an appropriation of \$6,278,187 to the department of human services, office of youth services, to operate the Hawaii youth correctional facility for fiscal year 2005-2006. On August 4, 2005, the United States Department of Justice released a report on the findings of its Civil Rights Division's investigation of the conditions of confinement at the Hawaii youth correctional facility. Given the serious nature of the findings, the governor is taking immediate action to fund improvements at the Hawaii youth correctional facility. Some of the remedial actions that the United States Department of Justice report recommends have already been put into place. The implementation

of these remedial measures and associated overtime costs are the primary factors leading to the present budget shortfall.

The fiscal year 2005-2006 budget for the office of youth services, Hawaii youth correctional facility, did not include funding for any remedial actions at the facility, as a budget for remedial actions could not be compiled until after the United States Department of Justice report was issued.

While a negotiated settlement with the United States Department of Justice is anticipated at this time, it is apparent that improvements must be made in policies, procedures, and practices in the areas of suicide prevention and precaution, reporting of staff abuse and assaults, staff training, improved access to medical and mental health information, and special education services and vocational training.

The purpose of this Act is to appropriate additional general fund moneys to allow the department of human services, office of youth services, to continue to improve operations at the Hawaii youth correctional facility.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,679,091, or so much thereof as may be necessary for fiscal year 2005-2006, to be used for the Hawaii youth correctional facility.

The sum appropriated 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 May 9, 2006.)

ACT 87

S.B. NO. 2606

A Bill for an Act Relating to Bail.

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

SECTION 1. Section 804-2, Hawaii Revised Statutes, is amended to read as follows:

“§804-2 Unclaimed bail money. All money deposited by way of bail or bond, in any proceeding before any court, [which] that has not been declared forfeited, and not claimed within two years after the final disposition of the cause of action in which the money was deposited, shall [~~after due notice to the person who has deposited the same, by the then custodian of the money and upon order of court, be paid over to the director of finance of the State as a state government realization;~~] be presumed abandoned under chapter 523A.”

SECTION 2. This Act shall apply to all bail money held at the time of its enactment, or at any time thereafter.

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 10, 2006.)

ACT 88

S.B. NO. 2570

A Bill for an Act Relating to Digital Media.

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

SECTION 1. The legislature finds that the film industry in Hawaii is an important component of a diversified economy and that its financial impact can be strengthened significantly if existing incentives for the industry are adjusted.

The film industry has generated approximately \$160,000,000 in tax revenues for Hawaii since 1992. The State has long recognized the benefits of the film industry, and the dynamic synergy it brings to our top industry, tourism. The legislature has supported the growth of the film industry by developing the Hawaii film studio, establishing the academy for creative media at the University of Hawaii, streamlining the permitting process, and offering other incentives to attract film and television productions to the state.

The legislature also finds that there has been a dramatic increase in the number of state and local governments attempting to attract film productions. These jurisdictions have experienced dramatic increases in in-state spending and significant growth in workforce and infrastructure development. In New Mexico, production spending increased by \$162,000,000 since the state's incentive legislation passed in 2002. Louisiana saw cumulative film expenditures rise to \$800,000,000, since its legislation passed in 2002. New York City enjoyed an increase of \$600,000,000 in new production and the creation of six thousand new jobs since the state and city passed the "Made in NY" fifteen per cent incentive package in August 2004 and January 2005, respectively. More productions in Hawaii would stimulate more direct and indirect tax revenue. According to the department of business, economic development, and tourism, the film industry averages \$100,000,000 in direct spending annually, which generates \$13,000,000 in direct and indirect tax revenues. If annual production expenditures could be tripled, the State would stand to gain more than \$39,000,000 in annual tax revenues.

The legislature further finds that it is desirable to provide tools to the film industry to encourage similar dramatic growth in Hawaii because the film industry:

- (1) Infuses significant amounts of new money into the economy, which is dispersed across many communities and businesses and which benefits a wide array of residents;
- (2) Creates skilled, high-paying jobs;
- (3) Has a natural dynamic synergy with Hawaii's top industry, tourism, and is used as a destination marketing tool for the visitor industry; and
- (4) Is a clean, nonpolluting industry that values the natural beauty of Hawaii and its diverse multicultural population and wide array of architecture.

The legislature also finds that the industry has a strong desire to hire locally and invests in training and workforce development of island-based personnel. The three television series and one independent feature film that filmed in Hawaii in 2004 (North Shore, Hawaii, LOST, and Tides of War) had crews consisting of eighty-five to ninety per cent Hawaii residents. It is the intent of this Act to continue to encourage this industry practice of hiring a significant number of residents and to support training and educational initiatives and opportunities.

The legislature finds that series cancellations in recent years were due, in part, to the absence of cost-effective incentives that take into account the front-end budgeting methods normally used by the film industry and that allow for lower production costs. If this issue were addressed, a greater number of significant

projects would be attracted to the islands and help build our local film industry infrastructure.

Therefore, it is the purpose of this Act to encourage the growth of the film industry by:

- (1) Providing enhanced incentives that attract more film and television productions to Hawaii, thereby generating tax revenues;
- (2) Providing jobs and income for residents;
- (3) Supporting tourism and the natural beauty of Hawaii; and
- (4) Enabling the state to compete effectively against other jurisdictions that offer similar incentives.

SECTION 2. Section 235-17, Hawaii Revised Statutes, is amended to read as follows:

“§235-17 Motion picture, digital media, and film production[;] income tax credit. (a) ~~[There] Any law to the contrary notwithstanding, there shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit which shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The amount of the credit shall be [up to four]:~~

- (1) ~~Fifteen per cent of the qualified production costs incurred by a qualified production in any county of the State [in the production of motion picture or television films. The director of taxation shall specify by rule a schedule of allowable tax credits based on the principle that greater tax credits shall be allowed for greater benefits to the state economy.] with a population of over seven hundred thousand; or~~
- (2) ~~Twenty per cent of the qualified production costs incurred by a qualified production in any county of the State with a population of seven hundred thousand or less.~~

A qualified production occurring in more than one county may prorate its expenditures based upon the amounts spent in each county, if the population bases differ enough to change the percentage of tax credit.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for qualified production costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined by rule.

If a deduction is taken under section 179 (with respect to election to expense depreciable business assets) of the Internal Revenue Code of 1986, as amended, no tax credit shall be allowed for those costs for which the deduction is taken.

The basis for eligible property for depreciation of accelerated cost recovery system purposes for state income taxes shall be reduced by the amount of credit allowable and claimed.

~~[(b) There shall be allowed to each taxpayer subject to the taxes imposed by this chapter, an income tax credit which shall be deductible from the taxpayer’s net income tax liability, if any, imposed by this chapter for the taxable year in which the credit is properly claimed. The amount of the credit shall be up to 7.25 per cent effective January 1, 1999, of the costs incurred in the State in the production of motion picture or television films for actual expenditures for transient accommodations. The director of taxation shall specify by rule a schedule of allowable tax credits based on the principle that greater tax credits shall be allowed for greater benefits to the state economy.~~

~~In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for production costs incurred by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level.~~

(e)] (b) The credit allowed under this section shall be claimed against the net income tax liability for the taxable year. For the [purpose] purposes of this section, “net income tax liability” means net income tax liability reduced by all other credits allowed under this chapter.

[(d)] (c) If the tax credit under this section exceeds the taxpayer’s income tax liability, the excess of credits over liability shall be refunded to the taxpayer; provided that no refunds or payment on account of the tax credits allowed by this section shall be made for amounts less than \$1. All claims, including any amended claims, for tax credits under this section shall be filed on or before the end of the twelfth month following the close of the taxable year for which the credit may be claimed. Failure to comply with the foregoing provision shall constitute a waiver of the right to claim the credit.

(d) To qualify for this tax credit, a production shall:

- (1) Meet the definition of a qualified production specified in subsection (l);
- (2) Have qualified production costs totaling at least \$200,000;
- (3) Provide the State, at a minimum, a shared-card, end-title screen credit, where applicable;
- (4) Provide evidence of reasonable efforts to hire local talent and crew; and
- (5) Provide evidence of financial or in-kind contributions or educational or workforce development efforts, in partnership with related local industry labor organizations, educational institutions, or both, toward the furtherance of the local film and television and digital media industries.

(e) On or after July 1, 2006, no qualified production cost that has been financed by investments for which a credit was claimed by any taxpayer pursuant to section 235-110.9 is eligible for credits under this section.

(f) To receive the tax credit, the taxpayer shall first prequalify the production for the credit by registering with the department of business, economic development, and tourism during the development or preproduction stage. Failure to comply with this provision may constitute a waiver of the right to claim the credit.

[(e)] (g) The director of taxation shall prepare forms as may be necessary to claim a credit under this section. The director may also require the taxpayer to furnish information to ascertain the validity of the claim for credit made under this section and may adopt rules necessary to effectuate the purposes of this section pursuant to chapter 91.

(h) Every taxpayer claiming a tax credit under this section for a qualified production shall, no later than ninety days following the end of each taxable year in which qualified production costs were expended, submit a written, sworn statement to the department of business, economic development, and tourism, identifying:

- (1) All qualified production costs as provided by subsection (a), if any, incurred 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 number of total hires versus the number of local hires by category (i.e., department) and by county.

(i) The department of business, economic development, and tourism shall:

- (1) Maintain records of the names of the taxpayers and qualified productions thereof claiming the tax credits under subsection (a);
- (2) Obtain and total the aggregate amounts of all qualified production costs per qualified production and per qualified production per taxable year; and
- (3) Provide a letter to the director of taxation specifying the amount of the tax credit per qualified production for each taxable year that a tax credit is claimed and the cumulative amount of the tax credit for all years claimed.

Upon each determination required under this subsection, the department of business, economic development, and tourism shall issue a letter to the taxpayer, regarding the qualified production, specifying the qualified production costs and the tax credit amount qualified for in each taxable year a tax credit is claimed. The taxpayer for each qualified production shall file the letter with the taxpayer's tax return for the qualified production to the department of taxation. Notwithstanding the authority of the department of business, economic development, and tourism under this section, the director of taxation may audit and adjust the tax credit amount to conform to the information filed by the taxpayer.

(j) Total tax credits claimed per qualified production shall not exceed \$8,000,000.

(k) Qualified productions shall comply with subsections (d), (e), (f), and (h).

(l) For the purposes of this section:

"Commercial":

- (1) Means an advertising message that is filmed using film, videotape, or digital media, for dissemination via television broadcast or theatrical distribution;
- (2) Includes a series of advertising messages if all parts are produced at the same time over the course of six consecutive weeks; and
- (3) Does not include an advertising message with Internet-only distribution.

"Digital media" means production methods and platforms directly related to the creation of cinematic imagery and content, specifically using digital means, including but not limited to digital cameras, digital sound equipment, and computers, to be delivered via film, videotape, interactive game platform, or other digital distribution media (excluding Internet-only distribution).

"Post production" means production activities and services conducted after principal photography is completed, including but not limited to editing, film and video transfers, duplication, transcoding, dubbing, subtitling, credits, closed captioning, audio production, special effects (visual and sound), graphics, and animation.

"Production" means a series of activities that are directly related to the creation of visual and cinematic imagery to be delivered via film, videotape, or digital media and to be sold, distributed, or displayed as entertainment or the advertisement of products for mass public consumption, including but not limited to scripting, casting, set design and construction, transportation, videography, photography, sound recording, interactive game design, and post production.

"Qualified production":

- (1) Means a production, with expenditures in the state, for the total or partial production of a feature-length motion picture, short film, made-for-television movie, commercial, music video, interactive game, television series pilot, single season (up to twenty-two episodes) of a television series regularly filmed in the state (if the number of episodes per single season exceeds twenty-two, additional episodes for the same season shall constitute a separate qualified production), television special, single television episode that is not part of a television series regularly filmed or based in the state, national magazine show, or national talk show. For the purposes of subsections (d) and (j), each of the aforementioned qualified production categories shall constitute separate, individual qualified productions; and
- (2) Does not include: daily news; public affairs programs; non-national magazine or talk shows; televised sporting events or activities; productions that solicit funds; productions produced primarily for industrial,

corporate, institutional, or other private purposes; and productions that include any material or performance prohibited by chapter 712.

“Qualified production costs” means the costs incurred by a qualified production within the state that are subject to the general excise tax under chapter 237 or income tax under this chapter and that have not been financed by any investments for which a credit was or will be claimed pursuant to section 235-110.9. Qualified production costs include but are not limited to:

- (1) Costs incurred during preproduction such as location scouting and related services;
- (2) Costs of set construction and operations, purchases or rentals of wardrobe, props, accessories, food, office supplies, transportation, equipment, and related services;
- (3) Wages or salaries of cast, crew, and musicians;
- (4) Costs of photography, sound synchronization, lighting, and related services;
- (5) Costs of editing, visual effects, music, other post-production, and related services;
- (6) Rentals and fees for use of local facilities and locations;
- (7) Rentals of vehicles and lodging for cast and crew;
- (8) Airfare for flights to or from Hawaii, and interisland flights;
- (9) Insurance and bonding;
- (10) Shipping of equipment and supplies to or from Hawaii, and interisland shipments; and
- (11) Other direct production costs specified by the department in consultation with the department of business, economic development, and tourism.”

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, 2006; provided that:

- (1) Section 2 of this Act shall apply to qualified production costs incurred on or after July 1, 2006, and before January 1, 2016; and
- (2) This Act shall be repealed on January 1, 2016, and section 235-17, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved May 10, 2006.)

ACT 89

H.B. NO. 2133

A Bill for an Act Relating to the Natural Area Reserve System.

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

SECTION 1. The legislature finds that the Kaena point area, at the westernmost tip of the island and comprising of approximately thirty-four acres, represents the last relatively intact coastal dune ecosystem remaining on Oahu. Prior to the inclusion of the area into the natural area reserve system managed by the department of land and natural resources, it was a favored spot for off-road driving that severely degraded the value of the ecosystem. The simple traversing of the area in a vehicle on a then existing narrow jeep trail caused extreme degradation to the resources of

ACT 90

the area. Soon after the department of land and natural resources closed the area to vehicular access, the vegetation began to recover.

The purpose of this Act is to prohibit all public vehicular access within the Kaena point natural area reserve.

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

“§195- Kaena point natural area reserve; vehicular access prohibited.

(a) The use of any vehicle within or traversing the Kaena point natural area reserve is prohibited, except as provided in this section. Any violation of this section shall be subject to section 195-8.

(b) The department may adopt rules pursuant to chapter 91 to allow a limited number of persons vehicular access to the Kaena point natural area reserve for department-permitted fishing and camping activities.

(c) This prohibition shall not apply to:

(1) Vehicles operated by personnel or agents of the department of land and natural resources necessary for the management and maintenance of the Kaena point natural area reserve and its resources; and

(2) Emergency vehicles, including emergency medical ambulances, police department vehicles, and fire department vehicles.

(d) For purposes of this section, “vehicle” means every motorized device in, upon, or by which any person or property is or may be transported or drawn, including all-terrain vehicles and mopeds.”

SECTION 3. New statutory material is underscored.¹

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. This Act shall take effect upon its approval.

(Approved May 10, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 90

S.B. NO. 2357

A Bill for an Act Relating to Section 13 of Act 380, Session Laws of Hawaii 1997.

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

SECTION 1. Act 380, Session Laws of Hawaii 1997, as amended by Act 3, Session Laws of Hawaii 2001, is amended by amending section 13 to read as follows:

“SECTION 13. This Act shall take effect upon its approval; provided that no new safe harbor agreements, habitat conservation plans, or incidental take licenses issued pursuant to [sections] section 195D-4, 195D-21, or 195D-22, Hawaii Revised Statutes, shall be approved or issued subsequent to July 1, [~~2007~~] 2012.”

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 10, 2006.)

ACT 91

S.B. NO. 2599

A Bill for an Act Relating to Appeals.

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

SECTION 1. Section 205-5.1, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Any decision made by an appropriate county authority or the board pursuant to a public hearing or hearings under this section may be appealed directly on the record to the [supreme] intermediate appellate court for final decision and shall not be subject to a contested case hearing. Sections 91-14(b) and (g) shall govern the appeal, notwithstanding the lack of a contested case hearing on the matter. The appropriate county authority or the board shall provide a court reporter to produce a transcript of the proceedings at all public hearings under this section for purposes of an appeal.”

SECTION 2. Section 235-114, Hawaii Revised Statutes, is amended to read as follows:

“**§235-114 Appeals.** (a) Any person aggrieved by any assessment of the tax or liability imposed by this chapter may appeal from the assessment in the manner and within the time hereinafter set forth. Appeal may be made either to the district board of review or to the tax appeal court. The first appeal to either the district board of review or to the tax appeal court may be made without payment of the tax so assessed. Either the taxpayer or the assessor may appeal to the tax appeal court from a decision by the board or to [an] the intermediate appellate court from a decision by the tax appeal court; provided that if the decision by the board or the tax appeal court is appealed by the taxpayer, or the decision by the board in favor of the department is not appealed, the taxpayer shall pay the tax so assessed plus interest as provided in section 231-39(b)(4).

(b) If the appeal is first made to the board, the appeal shall either be heard by the board or be transferred to the tax appeal court for hearing at the election of the taxpayer or employer. If heard by the board, an appeal shall lie from the decision thereof to the tax appeal court and to the intermediate appellate court, subject to chapter 602, in the manner and with the costs provided by chapter 232. The supreme court shall prescribe forms to be used in the appeals. The forms shall show:

- (1) The amount of taxes or liability upon the basis of the taxpayer’s computation of the taxpayer’s taxable income or the employer’s computation of the employer’s liability;
- (2) The amount upon the basis of the assessor’s computation;
- (3) The amount upon the basis of the decisions of the board of review and tax appeal court, if any; and
- (4) The amount in dispute.

If or when the appeal is filed with or transferred to the tax appeal court, the court shall proceed to hear and determine the appeal, subject to appeal to the intermediate appellate court as is provided in chapter 232.

ACT 91

(c) Any taxpayer or employer appealing from any assessment of income taxes or liability shall lodge with the assessor or assistant assessor a notice of the appeal in writing, stating the ground of the taxpayer's or employer's objection to the additional assessment or any part thereof. The taxpayer or employer also shall file the notice of appeal with the board or the tax appeal court at any time within thirty days subsequent to the date when the notice of assessment was mailed, properly addressed to the taxpayer or employer at the taxpayer's or employer's last known residence or place of business. Except as otherwise provided, the manner of taking the appeal, the costs applicable thereto, and the hearing and disposition thereof, including the distribution of costs and of taxes paid by the taxpayer pending the appeal, shall be as provided in chapter 232.

The tax appeal court may allow an individual taxpayer to file a subsequent appeal without payment of the net income tax in cases where the total tax liability does not exceed \$50,000 in the aggregate for all tax years, upon proof that the taxpayer would be irreparably injured by payment of the tax."

SECTION 3. Section 353-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Upon the refusal of any person in charge of any such correctional facility to give free access thereto or to any records or books kept in connection therewith, or of any such officer, district judge, sheriff, official, or employee to furnish such information, the paroling authority or director may make informal application in writing to any circuit court, reciting the facts and requesting an order directing the person concerned to give such access, or furnish such information and the court, after such reasonable notice to the person as it shall direct, shall proceed to hear the application and shall make such order as may appear proper. In case of the refusal of a circuit judge to furnish information as is required by this section, the paroling authority or director may apply to the [supreme] intermediate appellate court for relief in the same manner as in the case of an application to a circuit court provided in this section. The circuit courts and the [supreme] intermediate appellate court, subject to chapter 602, shall have jurisdiction and all powers necessary for the purposes of this section."

SECTION 4. Section 438-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) An appeal may be taken from a final action of the board suspending or revoking a license, apprentice permit, or temporary permit for the causes mentioned in section 438-14 or 439-19 to the circuit court of the circuit in which the person whose license, apprentice permit, or temporary permit has been suspended or revoked resides. The judgment of the circuit court may be reviewed by the [supreme] intermediate appellate court[-], subject to chapter 602."

SECTION 5. Section 607-7, Hawaii Revised Statutes, is amended to read as follows:

"**§607-7 Deposit and payment of fees and costs on appeal.** All fees and costs required to be paid upon the filing of [any] a notice of appeal from a court shall be [~~deposited with~~] paid to the clerk of the court from which the appeal is taken[-, which deposit shall be transmitted]. The clerk of the court shall immediately transmit a record of the payments and deposits, along with a copy of the notice of appeal, to the clerk of the supreme court [~~together with the record of the appeal; provided that the filing fee~~]. The required fees and costs for an appeal shall be

payable only once upon the initial filing of the appeal. The deposit shall be made at the time of filing the notice of appeal.

Where the appeal is from a governmental official or body other than a court, the required ~~[payment of]~~ costs and fees for filing the appeal shall be made payable to the clerk of the court to which the appeal is taken ~~[except as otherwise provided.]~~ and transmitted by the government official or body upon receipt to the clerk of the court to which the appeal is taken, along with a copy of the notice of appeal. If an appeal from a government official or body is taken directly to the intermediate appellate court, the required costs and fees for the appeal shall be payable only once, upon the initial filing of the appeal.”

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

SECTION 7. This Act shall take effect on the effective date of sections 1 through 82 of Act 202, Session Laws of Hawaii 2004.

(Approved May 10, 2006.)

ACT 92

S.B. NO. 3111

A Bill for an Act Establishing a Commission to Recognize and Honor Congresswoman Patsy T. Mink.

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

SECTION 1. The legislature finds that Congresswoman Patsy Takemoto Mink made a tremendous impact on the people of Hawaii and the nation through her illustrious career as an outstanding public servant. During her political career, she served a total of thirty-three years in the Hawaii territorial house, the Hawaii territorial senate, the Hawaii state senate, the Honolulu city council, and the United States House of Representatives.

A legislative trailblazer, Congresswoman Mink is known for championing the rights of immigrants, minorities, women, families, and children. Compassionate, articulate, and focused, Congresswoman Mink overcame gender and racial discrimination to become one of the most influential leaders of her generation.

Born on December 6, 1927, in the Maui plantation community of Paia, she began her unofficial political career during her junior year in high school when she ran for student body president against Elmer Cravalho, who later became speaker of the Hawaii house of representatives. She won the very close election, graduated in 1944 as Maui high school's class valedictorian, and began college at the University of Hawaii.

She transferred to the University of Nebraska, where she experienced racial discrimination through a policy of segregated student housing. Characteristic of her strong sense of justice and equality, she brought together other students, their parents, the community, and university trustees to end the policy of segregated student housing. She later returned to the University of Hawaii, graduating with degrees in zoology and chemistry in 1948. However, after her graduation from the university, none of the numerous medical schools to which she applied would accept women as students.

As a result, Congresswoman Mink decided to study law, instead of medicine, and was accepted by the University of Chicago School of Law because she was considered a "foreign student." She obtained her law degree in 1951, but could not

get hired at any law firm in Hawaii. She opened her own private practice in 1953, becoming the first Japanese-American woman to practice law in Hawaii.

She became active in the Democratic Party of Hawaii, and was chosen president of the Young Democrats at the party's 1954 convention. Her political career as an elected official began in 1956, when she was elected to the territorial house of representatives. She was elected to the territorial senate in 1958, and the Hawaii state senate from 1962 to 1964, where she chaired the education committee.

When she was elected to Congress in 1964 to an at-large position, Patsy T. Mink became the first non-white woman in the United States House of Representatives. She was also the first woman of Asian descent to serve in the United States Congress. She served six consecutive terms in the United States House of Representatives from 1965 to 1977. She was elected again in 1990 and served until her death in 2002.

Congresswoman Mink developed a reputation as a passionate advocate, courageous critic, and eloquent speaker. Her tenure in Congress is marked by many noteworthy achievements. She introduced the first comprehensive Early Childhood Education Act and authored the Women's Educational Equity Act.

Her most prominent accomplishment is the landmark Title IX Amendment of the Higher Education Act, which she co-authored. The Title IX Amendment of the Higher Education Act prohibits gender discrimination by federally funded educational institutions and guarantees equal federal support for women in both academics and athletics. In addition to broadening educational opportunities for girls and women, the groundbreaking law gave rise to women's athletic programs throughout the nation's high schools and colleges and universities. In June 2002, at a ceremony honoring the thirtieth anniversary of Title IX legislation, Congresswoman Mink was recognized as the National Organization of Women's Woman of Vision. She was one of only two women in the organization's history to receive the award. To further honor her profound, successful efforts to bring gender equity to education, the United States Congress renamed the Title IX Amendment of the Higher Education Act as the Patsy T. Mink Equal Opportunity in Education Act in October 2002.

Congresswoman Mink is also celebrated as one of America's most important civil rights leaders. She joined the National Association for the Advancement of Colored People in the early days of the civil rights movement, and she had a nearly one hundred per cent voting record on votes that were supported by the American Civil Liberties Union, the American Federation of State, County and Municipal Employees, and the League of Conservation Voters. In 1992, *McCall's* magazine named her one of the ten best politicians in Congress. Congresswoman Mink received numerous awards and honorary degrees and has been honored for her positive impact on public policy statutes on civil rights.

Congresswoman Mink's passion for social justice, public education, and peace afforded her broad national exposure. An early opponent of the Vietnam War, Congresswoman Mink's contributions to the peace movement are well-recognized. To demonstrate her strong desire for peace, she accompanied fellow United States Representative Bella Abzug to Paris to meet with participants in the Vietnam War peace talks.

Congresswoman Mink was also a leader in public access to government information. When the Environmental Protection Agency refused to provide records on underground nuclear tests in the Aleutian Islands of Alaska, Congresswoman Mink filed suit under the Freedom of Information Act to force the release of relevant reports. The suit became the first case under the Freedom of Information Act to be argued before the United States Supreme Court. The case significantly expanded the public's access to government information and was later cited as precedent by the Supreme Court in its ruling ordering the release of the Watergate tapes.

After twelve years in the United States House of Representatives, Patsy T. Mink made an unsuccessful run for the United States Senate in 1976. In 1977, President Jimmy Carter appointed her as the Assistant Secretary of State for Oceans and International, Environmental and Scientific Affairs. The experience enhanced her advocacy for the protection and conservation of the national resources of our nation and Hawaii. When she was elected again to Congress in 1990, she helped strengthen federal protection of whales and regulations of toxic dumping and ocean mining. She later introduced legislation to create the East Maui National Heritage Area, to expand the Puuhonua O Honaunau National Historic Park, and to establish the Kalaupapa National Historic Park. She was also involved in the successful effort to reform laws permitting strip mining. Congresswoman Mink left a lasting impression as a strong environmental advocate, supporting energy policy issues of regional, national, and global impact. For her accomplishments in the area of environmental advocacy, she received the Friend of the National Parks Award from the National Parks Conservation Association.

After her service in the Carter administration, Mink returned to Honolulu where she was elected to the Honolulu city council and served from 1983 to 1987. She was elected by her peers on the council as chairwoman from 1983 to 1985. She ran for governor in 1986, but lost in the primary election. Two years later, she ran for the office of Honolulu mayor and lost. In 1990, she won a special election to the United States House of Representatives, where she served until her death in 2002. After a long and distinguished career in local, state, and national public service, Congresswoman Patsy T. Mink passed away on September 28, 2002, at the age of seventy-four.

The purpose of this Act is to establish a commission to recognize and honor Congresswoman Patsy T. Mink.

SECTION 2. There is established a temporary commission to be known as the Congresswoman Patsy T. Mink commission, which shall have charge of all arrangements for recognizing and honoring Congresswoman Patsy T. Mink. The commission shall be placed within the office of the governor for administrative purposes and shall cease to exist after December 31, 2009.

SECTION 3. The commission shall consist of fourteen members who shall be appointed, without regard to section 26-34, Hawaii Revised Statutes, as follows:

- (1) Two by the speaker of the house of representatives;
- (2) Two by the president of the senate;
- (3) Two by the governor;
- (4) One by the Maui county council;
- (5) One by the Honolulu city council;
- (6) One by the Kauai county council; and
- (7) One by the Hawaii county council.

The commission members shall include a member from the family of Congresswoman Patsy T. Mink, the Japanese-American community, labor unions, the feminist community, the civil rights community, the American Civil Liberties Union, and the Americans for Democratic Action. The Library of Congress is requested to participate by sending to the governor a list of names of nominees for a representative. The commission also shall include two members from the public.

The speaker of the house of representatives shall select the members representing the Japanese-American community and the labor unions. The president of the senate shall select the members representing the civil rights community and the feminist community. The governor shall select the members representing the Library of Congress and the Americans for Democratic Action. The county councils shall

select the members representing the family of Congresswoman Patsy T. Mink, and the American Civil Liberties Union, and two members representing the public.

The speaker of the house of representatives and the president of the senate shall designate a chair pro tem by mutual agreement from among the appointed members. The majority of the members shall constitute a quorum. An individual appointed to another state board or commission may be eligible to be appointed as a member of this commission.

The members shall not receive compensation for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred in the performance of their duties under this Act.

Any member of the commission shall be immune from civil liability, as provided for under section 26-35.5, Hawaii Revised Statutes.

SECTION 4. The commission shall research and recommend how the State can honor Congresswoman Patsy T. Mink and shall submit to the legislature, no later than twenty days prior to the convening of the regular session of 2007, a written report of its recommendations, including the following:

- (1) A summary outlining the development, planning, and coordination of the various program activities to be scheduled in honor of Congresswoman Patsy T. Mink;
- (2) An identification of a nonprofit organization that will be responsible for any moneys received or expended for honoring Congresswoman Patsy T. Mink; and
- (3) A detailed plan on how to execute its recommendations.

In fulfilling its responsibilities, the commission shall consult, cooperate with, and seek advice from appropriate organizations and agencies. The department of accounting and general services shall assist the commission and provide administrative support.

The governor may direct any or as many employees from any state executive agencies as the governor deems appropriate, to staff the commission.

SECTION 5. The commission may seek grants from public and private sources and may accept donations to finance the projects, programs, and activities of the commission. Any funds received by the commission shall be turned over to the nonprofit organization responsible for any moneys received or expended for honoring Congresswoman Patsy T. Mink.

All property acquired by the commission shall be deposited for preservation in the Hawaii state public library system, museums, and public archives or shall otherwise be disposed of as directed by the commission.

SECTION 6. At the end of its term, the commission shall submit to the governor and the legislature a final report of all its activities, including an accounting of all moneys received and disbursed. The report shall include, as applicable, a description of:

- (1) The production, publication, and distribution of books, films, and other educational materials on the life and experiences of Congresswoman Patsy T. Mink;
- (2) Conferences, conventions, lectures, and seminars on the life and experiences of Congresswoman Patsy T. Mink; and
- (3) Traveling exhibits, other exhibits, ceremonies, theatrical productions, and other special events honoring Congresswoman Patsy T. Mink.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,000 or so much thereof as may be necessary for fiscal year

2006-2007 to be used by the Congresswoman Patsy T. Mink commission for the purposes of this Act.

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

SECTION 8. This Act shall take effect on July 1, 2006.

(Approved May 11, 2006.)

ACT 93

S.B. NO. 2607

A Bill for an Act Relating to Transfer of Appeals.

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

SECTION 1. Section 602-58, Hawaii Revised Statutes, is amended to read as follows:

“§602-58 Application for transfer to the supreme court. (a) The [intermediate-appellate] supreme court, in the manner and within the time provided by the rules of court, [may entertain] shall grant an application [at any time before its issuance of a decision requesting] to transfer [of an appeal] any case within the jurisdiction of the intermediate appellate court to the supreme court[-] upon the grounds that the case involves:

- (1) A question of imperative or fundamental public importance;
- (2) An appeal from a decision of any court or agency when appeals are allowed by law:

(A) Invalidating an amendment to the state constitution; or

(B) Determining a state statute, county ordinance, or agency rule to be invalid on the grounds that it was invalidly enacted or is unconstitutional, on its face or as applied, under either the constitution of the State or the United States; or

- (3) A sentence of life imprisonment without the possibility of parole.

~~[(b) The moving party shall state the grounds of the application, indicating how the case on appeal involves a question of such imperative or fundamental public importance as to warrant a direct appeal to the supreme court.~~

~~(e)] (b) The supreme court, in a manner and within the time provided by the rules of court, may grant an application to transfer any case within the jurisdiction of the intermediate appellate court to the supreme court upon the grounds that the case involves:~~

- ~~(1) A question of first impression or a novel legal question; or~~

- ~~(2) Issues upon which there is an inconsistency in the decisions of the intermediate appellate court or of the supreme court.~~

~~(c) The [issuance] grant or denial of [a certificate] an application for transfer [to the supreme court] under subsection (b) shall be discretionary [upon the intermediate appellate court, and acceptance or rejection of such certification shall be discretionary upon the supreme court. Neither the failure to issue such certification by the intermediate appellate court nor the rejection of such certification by the supreme court] and shall not be subject to further review [and shall reinstate the appeal to the intermediate appellate court]. Denial of an application for transfer under subsection (b) shall not prejudice a later application for a writ of certiorari.”~~

ACT 94

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

SECTION 3. This Act shall take effect on the effective date of sections 1 through 82 of Act 202, Session Laws of Hawaii 2004.

(Approved May 11, 2006.)

ACT 94

H.B. NO. 2897

A Bill for an Act Relating to Appellate Jurisdiction.

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

SECTION 1. Section 85 of Act 202, Session Laws of Hawaii 2004, is amended to read as follows:

“SECTION 85. This Act shall take effect upon its approval; provided that sections 1 through 82 shall take effect on July 1, 2006[-], and shall be repealed on June 30, 2010.”

SECTION 2. No later than twenty days prior to the convening of the regular session of 2010, the judiciary shall submit a report to the legislature that shall include a detailed assessment of the effects and consequences of the changes to the appellate court system as a result of the implementation of sections 1 through 82 of Act 202, Session Laws of Hawaii 2004, and of any other laws that may have been enacted since the 2006 regular session further relating to the changes. The report shall include, at a minimum:

- (1) Information relating to case load per intermediate appellate court judge;
- (2) The number and nature of appeals and applications for transfer to the supreme court;
- (3) The length of time required for disposition of cases and motions for both the intermediate appellate court and the supreme court;
- (4) Any changes in human resource needs or logistical support systems; and
- (5) All such other information as may be requested by the legislature prior to adjournment sine die of the regular session of 2009.

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 11, 2006.)

ACT 95

S.B. NO. 3065

A Bill for an Act Relating to the One Call Center Advisory Committee.

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

SECTION 1. Section 269E-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“~~[(a)]~~ The commission shall establish a one call center advisory committee as a governmental entity as defined under chapter 662D to advise the commission in implementing this chapter. The committee shall consist of ~~[fifteen]~~ seventeen voting members and one ex officio nonvoting member. Of the voting members:

- (1) ~~[Nine]~~ Eleven shall be appointed by the commission to serve until successors are appointed by the commission. The appointments shall be as follows:
 - (A) One from the gas utility industry;
 - (B) One from the electric utility industry;
 - (C) One from the telecommunications utility industry;
 - (D) One from the pipeline operator industry;
 - (E) Two from the General Contractors Association of Hawaii;
 - (F) Two from the Building Industry Association of Hawaii; ~~[and]~~
 - (G) One from the cable service industry;
 - (H) One from the water utility industry; and
 - (I) One from the wastewater industry.
- (2) One shall be the representative of the city and county of Honolulu designated by the mayor of the city and county of Honolulu;
- (3) One shall be the representative of the county of Hawaii designated by the mayor of the county of Hawaii;
- (4) One shall be the representative of the county of Maui designated by the mayor of the county of Maui;
- (5) One shall be the representative of the county of Kauai designated by the mayor of the county of Kauai;
- (6) One shall be the director of the state department of transportation, or the director's representative; and
- (7) One shall be the executive director of the division of consumer advocacy, department of commerce and consumer affairs, or the executive director's representative.

A representative of the center shall serve as an ex officio nonvoting member of the committee.”

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

SECTION 3. This Act shall take effect upon approval.

(Approved May 11, 2006.)

ACT 96

H.B. NO. 2175

A Bill for an Act Relating to Energy.

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

PART I

SECTION 1. The legislature finds that Hawaii's dependence on petroleum for about ninety per cent of its energy needs is higher than any other state in the nation. This dependence makes the state extremely vulnerable to any oil embargo, supply disruption, and international market dysfunction, and many other factors beyond the control of the State. Furthermore, the continued consumption of conventional petroleum fuel negatively impacts the environment.

The legislature also finds that increased energy efficiency and use of renewable energy resources would increase Hawaii's energy self-sufficiency, achieving broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

Over the years, the legislature has worked steadily to encourage the deployment of renewable energy resources and energy efficiency initiatives. This includes:

- (1) Establishing a net energy metering program, interconnection standards, and renewable energy tax credits;
- (2) Establishing greenhouse gas and energy consumption reduction goals for state facilities and requiring the use of energy efficient products in state facilities; and
- (3) Providing incentives for the deployment of solar energy devices.

The legislature also established an enforceable renewable energy portfolio standard, under which twenty per cent of Hawaii's electricity is to be generated from renewable resources by the end of 2020.

To shape Hawaii's energy future and achieve the goal of energy self-sufficiency for the State of Hawaii, our efforts must continue on all fronts, integrating new and evolving technologies and providing incentives and assistance to address barriers.

The purpose of this Act is to provide one segment of a larger comprehensive approach to achieving energy self-sufficiency for the state by:

- (1) Authorizing the issuance of general obligation bonds to develop and implement a pilot project to install photovoltaic systems at public schools within the counties of Oahu, Hawaii, Kauai, and Maui;
- (2) Establishing new planning and budget preparation goals for state agencies that incorporate green building practices; the installation of renewable energy resources such as cost-effective solar water heating systems; increased conservation, waste reduction, and pollution prevention directives; the procurement of environmentally preferable products, including fuel-efficient vehicles and alternative fuels; and the use of energy-savings contracts for the provision of energy services and equipment; and
- (3) Promoting the use of green building practices by requiring each county agency that issues building, construction, or development-related permits to establish a procedure for priority processing of permit applications for construction projects incorporating energy and environmental design building standards.

PART II RENEWABLE ENERGY AND ENERGY-EFFICIENCY IN HAWAII'S PUBLIC SCHOOLS

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 to develop and implement a photovoltaic, net energy metered pilot project in public schools. The project sites shall be determined by the department of education as those most suitable in meeting the pilot project's objectives. The project objectives are as follows:

- (1) To have, at minimum, a project site at one public school within each of the counties of Oahu, Hawaii, Kauai, and Maui;
- (2) To allow installation of photovoltaic systems to be timed in conjunction with substantial roof repairs or roof replacement of a building to further reduce project costs;

- (3) To use the application of net energy metering to offset costs of the system;
- (4) To recapture system costs within three quarters of the useful life of the photovoltaic system; and
- (5) When advantageous, to use energy-savings contracts such as third party lease or purchase contracts to maximize the objectives of this section.

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

The department of education shall submit an interim report of the pilot project to the legislature no later than twenty days prior to the convening of the regular session of 2007 and a final report to the legislature no later than twenty days prior to the convening of the regular session of 2008.

SECTION 3. The appropriations made for the capital improvement projects authorized by section 2 shall not lapse at the end of the fiscal biennium for which the appropriation is made; provided that all moneys from the appropriation unencumbered as of June 30, 2008, shall lapse as of that date.

PART III

PROMOTING RENEWABLE ENERGY AND ENERGY EFFICIENCY FOR STATE FACILITIES, MOTOR VEHICLES, AND EQUIPMENT

SECTION 4. Chapter 196, Hawaii Revised Statutes, is amended by adding one new section to be appropriately designated and to read as follows:

“§196-A Energy efficiency and environmental standards for state facilities, motor vehicles, and transportation fuel. (a) Each agency is directed to implement, to the extent possible, the following goals during planning and budget preparation and program implementation.

(b) With regard to buildings and facilities, each agency shall:

- (1) Design and construct buildings meeting the Leadership in Energy and Environmental Design silver or two green globes rating system or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system, except when the guideline, standard, or system interferes or conflicts with the use of the building or facility as an emergency shelter;
- (2) Incorporate energy-efficiency measures to prevent heat gain in residential facilities up to three stories in height to provide R-19 or equivalent on roofs, R-11 or equivalent in walls, and high-performance windows to minimize heat gain and, if air conditioned, minimize cool air loss. R-value is the constant time rate resistance to heat flow through a unit area of a body induced by a unit temperature difference between the surfaces. R-values measure the thermal resistance of building envelope components such as roof and walls. The higher the R-value, the greater the resistance to heat flow. Where possible, buildings shall be oriented to maximize natural ventilation and day-lighting without heat gain and to optimize solar for water heating. This provision shall apply to new residential facilities built using any portion of state funds or located on state lands;
- (3) Install solar water heating systems where it is cost-effective, based on a comparative analysis to determine the cost-benefit of using a conventional water heating system or a solar water heating system. The analysis shall be based on the projected life cycle costs to purchase and operate the water heating system. If the life cycle analysis is positive,

the facility shall incorporate solar water heating. If water heating entirely by solar is not cost-effective, the analysis shall evaluate the life cycle, cost-benefit of solar water heating for preheating water. If a multi-story building is centrally air conditioned, heat recovery shall be employed as the primary water heating system. Single family residential clients of the department of Hawaiian home lands and any agency or program that can take advantage of utility rebates shall be exempted from the requirements of this paragraph so they may continue to qualify for utility rebates for solar water heating;

- (4) Implement water and energy efficiency practices in operations to reduce waste and increase conservation;
 - (5) Incorporate principles of waste minimization and pollution prevention, such as reducing, revising, and recycling as a standard operating practice in programs, including programs for waste management in construction and demolition projects and office paper and packaging recycling programs;
 - (6) Use life cycle cost-benefit analysis to purchase energy efficient equipment such as ENERGY STAR products and use utility rebates where available to reduce purchase and installation costs; and
 - (7) Procure environmentally preferable products, including recycled and recycled-content, bio-based, and other resource-efficient products and materials.
- (c) With regard to motor vehicles and transportation fuel, each agency shall:
- (1) Comply with Title 10, Code of Federal Regulations, Part 490, Subpart C, "Mandatory State Fleet Program", if applicable;
 - (2) Comply with all applicable state laws regarding vehicle purchases;
 - (3) Once federal and state vehicle purchase mandates have been satisfied, purchase the most fuel-efficient vehicles that meet the needs of their programs; provided that life cycle cost-benefit analysis of vehicle purchases shall include projected fuel costs;
 - (4) Purchase alternative fuels and ethanol blended gasoline when available;
 - (5) Evaluate a purchase preference for biodiesel blends, as applicable to agencies with diesel fuel purchases;
 - (6) Promote efficient operation of vehicles;
 - (7) Use the most appropriate minimum octane fuel; provided that vehicles shall use 87-octane fuel unless the owner's manual for the vehicle states otherwise or the engine experiences knocking or pinging;
 - (8) Beginning with fiscal year 2005-2006 as the baseline, collect and maintain, for the life of each vehicle acquired, the following data:
 - (A) Vehicle acquisition cost;
 - (B) United States Environmental Protection Agency rated fuel economy;
 - (C) Vehicle fuel configuration, such as gasoline, diesel, flex-fuel gasoline/E85, and dedicated propane;
 - (D) Actual in-use vehicle mileage;
 - (E) Actual in-use vehicle fuel consumption; and
 - (F) Actual in-use annual average vehicle fuel economy; and
 - (9) Beginning with fiscal year 2005-2006 as the baseline with respect to each agency that operates a fleet of thirty or more vehicles, collect and maintain, in addition to the data in paragraph (8), the following:
 - (A) Information on the vehicles in the fleet, including vehicle year, make, model, gross vehicle weight rating, and vehicle fuel configuration;
 - (B) Fleet fuel usage, by fuel;

- (C) Fleet mileage; and
- (D) Overall annual average fleet fuel economy and average miles per gallon of gasoline and diesel.’’

SECTION 5. Section 196-1, Hawaii Revised Statutes, is amended to read as follows:

“**§196-1 Findings and declaration of necessity.** The legislature finds that:

- (1) ~~[There is widespread shortage of]~~ The global demand for petroleum and its derivatives ~~[which]~~ has caused severe economic hardships throughout the State and ~~[which]~~ threatens to impair the public health, safety and welfare.

~~[The current energy crisis is caused by a global energy shortage which will worsen through the remainder of this decade and may continue to the end of this century.]~~ The State of Hawaii, with its total dependence ~~[for energy]~~ on imported fossil fuel, is particularly vulnerable to dislocations in the global energy market. This is an anomalous situation, as there are few places in the world so generously endowed with natural energy: geothermal, solar radiation, ocean temperature differential, wind, waves, and currents—all potential non-polluting power sources[-];

- (2) There is a real need for strategic comprehensive planning in the effort towards achieving full utilization of Hawaii’s energy resource programs and the most effective allocation of energy resources throughout the State. Planning is necessary and desirable in order that the State may recognize and declare the major problems and opportunities in the field of energy resources. Both short-range and long-range planning will permit the articulation of:

(A) ~~[broad]~~ Broad policies, goals, and objectives;

(B) ~~[criteria]~~ Criteria for measuring and evaluating accomplishments of objectives;

(C) ~~[identification]~~ Identification and implementation of programs ~~[which]~~ that will carry out such objectives; and

(D) ~~[a]~~ A determination of requirements necessary for the optimum development of Hawaii’s energy resources.

Such planning efforts will identify present conditions and major problems relating to energy resources, their exploration, development, production, and distribution. It will show the projected nature of the situation and rate of change and present conditions for the foreseeable future based on a projection of current trends in the development of energy resources in Hawaii[-];

- (3) There are many agencies of the federal, state, and county governments in Hawaii, as well as many private agencies, engaged in, or expressing an interest in, various aspects of the exploration, research, distribution, conservation, and production of all forms of energy resources in Hawaii. Some of these agencies include the University of Hawaii, the department of land and natural resources, the department of business, economic development, and tourism, the ~~[consumer protection,]~~ division of consumer advocacy, the federal energy office, and various county agencies, as well as the oil companies, gas stations, and other private enterprises[-]; and

- (4) There is immediate need to coordinate the efforts of all these agencies, establish and coordinate programs to effectuate the conservation of fuel, to provide for the equitable distribution thereof, and to formulate

plans for the development and use of alternative energy sources. There is a need for such coordination so that there will be maximum conservation and utilization of energy resources in the State.”

SECTION 6. Section 196-18, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The coordinator shall appoint an advisory committee consisting of representatives from:

- (1) State agencies[;], including the University of Hawaii;
- ~~[(2) County governments;~~
- ~~(3)] (2) Energy service companies;~~
- ~~[(4)] (3) Utility companies;~~
- ~~[(5)] (4) Equipment manufacturers;~~
- ~~[(6)] (5) Construction and architectural companies;~~
- ~~[(7)] (6) Environmental, energy, and consumer groups; and~~
- ~~[(8)] (7) Other energy-related organizations.~~

(b) The committee shall provide input on state energy management, including how to:

- (1) Improve the use of energy-savings [~~performance~~] contracts [~~and utility energy efficiency service contracts~~];
- (2) Improve procurement of ENERGY STAR and other energy efficient products;
- (3) Improve building design;
- (4) Reduce [~~process~~] energy use; [~~and~~]
- (5) Enhance applications of efficient and renewable energy technologies at state facilities[-];
- (6) Establish benchmarks and evaluate the State’s progress in incorporating energy efficiency and conservation for state facilities, vehicles, and equipment;
- (7) Make recommendations on how and when to conduct periodic energy audits; and
- (8) Make recommendations to the legislature no later than twenty days prior to the convening of each regular session, starting with the 2008 regular session, regarding policy or other statutory changes to carry out the purposes of this chapter.”

SECTION 7. Section 196-21, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Agencies shall maximize their use of available alternative financing contracting mechanisms, including energy-savings [~~performance~~] contracts [~~and utility energy efficiency service contracts~~], when life-cycle cost-effective, to reduce energy use and cost in their facilities and operations. Energy-savings contracts shall include:

- (1) Energy performance contracts;
- (2) Municipal lease and purchase financing; and
- (3) Utility energy-efficiency service contracts.

Energy-savings [~~performance~~] contracts [~~and utility energy efficiency service contracts~~] shall provide significant opportunities for making state facilities more energy efficient at no net cost to taxpayers.”

2. By amending subsection (c) to read as follows:

“(c) Notwithstanding any law to the contrary relating to the award of public contracts, any agency desiring to enter into an [~~energy performance~~] energy-savings contract shall do so in accordance with the following provisions:

- (1) The agency shall issue a public request for proposals, advertised in the same manner as provided in chapter 103D, concerning the provision of [~~energy efficiency~~] energy-efficiency services or the design, installation, operation, and maintenance of energy equipment[~~, or both~~]. The request for proposals shall contain terms and conditions relating to submission of proposals, evaluation, and selection of proposals, financial terms, legal responsibilities, and other matters as may be required by law and as the agency determines appropriate;
- (2) Upon receiving responses to the request for proposals, the agency [~~may~~] shall select the most qualified proposal or proposals [~~on~~] and may base its determination on the basis of the experience and qualifications of the proposers, the technical approach, the financial arrangements, the overall benefits to the agency, [~~and~~] or other factors determined by the agency to be relevant and appropriate;
- (3) The agency thereafter may negotiate and enter into an [~~energy performance~~] energy-savings contract with the person or company whose proposal is selected as the most qualified based on the criteria established by the agency;
- (4) The term of any [~~energy performance~~] energy-savings contract entered into pursuant to this section shall not exceed fifteen years;
- (5) Any [~~energy performance~~] energy-savings contract may provide that the agency ultimately shall receive title to the energy system being financed under the contract; and
- (6) Any [~~energy performance~~] energy-savings contract shall provide that total payments shall not exceed total savings.”

SECTION 8. Section 196-22, Hawaii Revised Statutes, is amended to read as follows:

“**§196-22 State energy projects.** State energy projects may be implemented under this chapter with the approval of the comptroller and the director of finance. Notwithstanding section 36-41 or 196-21, the comptroller or the senior agency official of the department of accounting and general services, along with the director of finance, may exempt a state energy project from the advertising and competitive bidding requirements of section 36-41 or 196-21 and chapter 103, if the comptroller deems exemption appropriate for energy projects with proprietary technology or necessary to meet the goals of the legislature. In addition, this section shall be construed to provide the greatest possible flexibility to agencies in structuring agreements [~~entered into~~] so that economic benefits and existing energy incentives may be used and maximized, and financing and other costs to agencies may be minimized. The specific terms of [~~energy performance~~] energy-savings contracting under section 36-41 may be altered if deemed advantageous to the agency and approved by the director of finance and the senior agency official.”

SECTION 9. Section 196-23, Hawaii Revised Statutes, is amended to read as follows:

“**[§196-23] Energy efficient products.** (a) Agencies shall select, [~~where~~] when life-cycle cost-effective, ENERGY STAR and other energy efficient products when acquiring energy-using products. For product groups where ENERGY STAR labels are not yet available, agencies may select products that are in

the upper twenty-five per cent of energy efficiency as designated by the United States Department of Energy, Office of Energy Efficiency and Renewable Energy, [~~Federal Energy Management Program.~~] federal energy management program.

(b) Agencies shall incorporate [~~energy-efficient~~] energy-efficient criteria consistent with designated [~~energy-efficiency~~] energy-efficiency levels [~~into all guide specifications and project specifications developed for new construction and renovation, as well as~~] into product specification language developed for all purchasing procedures.

(c) The State shall [~~also~~] consider the creation of financing agreements with private sector suppliers to provide private funding to offset higher up-front costs of efficient products.

~~[(b) Agencies shall strive to meet the ENERGY STAR building criteria for energy performance and indoor environmental quality in their eligible facilities to the maximum extent practicable by December 31, 2005. Agencies may use energy-savings performance contracts, utility energy efficiency service contracts, or other means to conduct evaluations and make improvements to facilities. Facilities that rank in the top twenty-five per cent in energy efficiency relative to comparable commercial and state buildings shall receive the ENERGY STAR building label or its equivalent as determined by the coordinator. Agencies shall integrate this rating tool into their general facility audits.~~

~~[(c) The State shall employ sustainable design principles and agencies shall apply the principles to the siting, design, and construction of new facilities. Agencies shall optimize life cycle costs, pollution, and other environmental and energy costs associated with the construction, life cycle operation, and decommissioning of the facility. Agencies shall consider using energy-savings performance contracts or utility energy efficiency service contracts to aid them in constructing sustainably designed buildings.]~~

(d) Agencies entering into leases, including the renegotiation or extension of existing leases, shall [~~incorporate~~]:

- (1) Incorporate lease provisions that encourage energy and water efficiency wherever life-cycle cost-effective. Build-to-suit lease solicitations shall contain criteria encouraging sustainable design and development, energy efficiency, and verification of facility performance[~~Agencies shall include~~];
- (2) Include a preference for facilities having an ENERGY STAR building label in their selection criteria for acquiring leased facilities[~~In addition, all agencies shall encourage~~]; and
- (3) Encourage lessors to apply for an ENERGY STAR building label and to explore and implement projects that will reduce costs to the State, including projects carried out through the lessors' energy-savings [~~performance~~] contracts [~~or utility energy efficiency service contracts~~].

~~[(e) Agencies shall implement energy reduction systems, and other highly efficient systems, in new construction or retrofit projects when life cycle cost-effective. Agencies shall consider combined cooling, heat, and power systems when determined to be the most cost effective when measured against other alternatives on a life cycle cost basis. Agencies shall survey local natural resources to optimize use of available solar, ocean thermal, biomass, bioenergy, geothermal, or other naturally occurring energy sources.~~

~~[(f) Agencies shall use off grid generation systems, including solar hot water, solar electric, solar outdoor lighting, small wind turbines, fuel cells, and other off-grid alternatives, where such systems are life cycle cost effective and offer benefits including energy efficiency, pollution prevention, source energy reductions, avoided infrastructure costs, or expedited service.]'~~

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2006-2007, to carry out the purposes of this part regarding energy-efficiency for state facilities and equipment.

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

SECTION 11. The department of education and department of accounting and general services are requested to identify projects that need to be funded through general obligation bonds and report back to the legislature at least twenty days before the convening of the regular session of 2007.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$65,000 or so much thereof as may be necessary for fiscal year 2006-2007 to establish one full-time permanent energy coordinator position to address energy efficiency in department of education facilities.

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

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$130,000 or so much thereof as may be necessary for fiscal year 2006-2007 to establish two full-time energy coordinator positions to address energy efficiency in department of business, economic development, and tourism facilities.

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

SECTION 14. Section 196-8, Hawaii Revised Statutes, is repealed.

SECTION 15. Section 196-12, Hawaii Revised Statutes, is repealed.

SECTION 16. Section 196-13, Hawaii Revised Statutes, is repealed.

SECTION 17. Section 196-14, Hawaii Revised Statutes, is repealed.

SECTION 18. Section 196-15, Hawaii Revised Statutes, is repealed.

SECTION 19. Section 196-16, Hawaii Revised Statutes, is repealed.

SECTION 20. Section 196-17, Hawaii Revised Statutes, is repealed.

SECTION 21. Section 196-20, Hawaii Revised Statutes, is repealed.

SECTION 22. Section 196-24, Hawaii Revised Statutes, is repealed.

SECTION 23. Section 196-25, Hawaii Revised Statutes, is repealed.

SECTION 24. Section 196-26, Hawaii Revised Statutes, is repealed.

SECTION 25. Section 196-27, Hawaii Revised Statutes, is repealed.

SECTION 26. Section 196-28, Hawaii Revised Statutes, is repealed.

SECTION 27. Section 196-29, Hawaii Revised Statutes, is repealed.

PART IV
ENERGY-EFFICIENT VEHICLES

SECTION 28. Section 103D-412, Hawaii Revised Statutes, is amended to read as follows:

“~~[§103D-412]~~ **[Highly energy-efficient] Energy-efficient vehicles.** (a) The procurement policy for all agencies purchasing or leasing motor ~~[vehicle fleets] vehicles~~ shall be to obtain ~~[alternative-fuel] energy-efficient~~ vehicles. ~~[Beginning January 1, 2006, all state agencies]~~ All covered fleets are directed to procure increasing percentages of ~~[alternative-fuel] energy-efficient~~ vehicles as part of their annual vehicle acquisition plans, which shall be as follows:

- (1) ~~[By January 1, 2007,]~~ In the fiscal year beginning July 1, 2006, at least twenty per cent of newly purchased light-duty vehicles acquired by each ~~[agency]~~ covered fleet shall be ~~[alternative-fuel] energy-efficient~~ vehicles;
- (2) In the fiscal year beginning July 1, 2007, at least thirty per cent of newly purchased light-duty vehicles acquired by each covered fleet shall be energy-efficient vehicles;
- ~~[(2)]~~ By January 1, 2009,] (3) In the fiscal year beginning July 1, 2008, at least forty per cent of newly purchased light-duty vehicles acquired by each ~~[agency]~~ covered fleet shall be ~~[alternative-fuel] energy-efficient~~ vehicles; and
- ~~[(3)]~~ (4) For each subsequent fiscal year ~~[subsequent to January 1, 2009]~~, the percentage of ~~[alternative-fuel] energy-efficient~~ vehicles newly purchased shall be five percentage points higher than the previous year, until at least ~~[sixty] seventy-five~~ per cent of each ~~[agency's]~~ covered fleet's newly purchased, light-duty vehicles are ~~[alternative-fuel] energy-efficient~~ vehicles.

(b) For the purposes of this section:

“Agency” means a state agency, office, or department.

“Alternative fuel” has the same meaning as contained in 10 Code of Federal Regulations Part 490.

“Covered fleet” has the same meaning as contained in 10 Code of Federal Regulations Part 490 Subpart C.

~~[[Alternative-fuel]~~ “Energy-efficient vehicle” means a vehicle that:

- (1) Is capable of using an alternative fuel;
- ~~[(1)]~~ (2) Is powered primarily through the use of an electric battery or battery pack that stores energy produced by an electric motor through regenerative braking to assist in vehicle operation;
- ~~[(2)]~~ (3) Is propelled by power derived from one or more cells converting chemical energy directly into electricity by combining oxygen with hydrogen fuel that is stored on board the vehicle in any form; [or]
- ~~[(3)]~~ (4) Draws propulsion energy from onboard sources of stored energy generated from an internal combustion or heat engine using combustible fuel and a rechargeable energy storage system[-]; or
- (5) Is on the list of “Most Energy Efficient Vehicles” in its class or is in the top one-fifth of the most energy-efficient vehicles in its class available in Hawaii as shown by vehicle fuel efficiency lists, rankings, or reports maintained by the United States Environmental Protection Agency.

“Excluded vehicles” has the same meaning as provided in 10 Code of Federal Regulations Section 490.3.

“Light-duty vehicle” has the same meaning as contained in 10 Code of Federal Regulations Part 490.

(c) Agencies may offset [the] energy-efficient vehicle purchase requirements [for alternative fuel vehicles] by successfully demonstrating percentage improvements in overall light-duty vehicle fleet mileage economy. The offsets shall be measured against the fleet average [mileage economy] miles per gallon of petroleum-based gasoline and diesel fuel, using [calendar year 2004] the fiscal year beginning July 1, 2006, as a baseline, on a percentage-by-percentage basis.

(d) Agencies that use biodiesel fuel may offset the vehicle purchase requirements of this section at the rate of one vehicle for each four hundred fifty gallons of neat biodiesel fuel used. Neat biodiesel fuel is one hundred per cent biodiesel (B100) by volume.

(e) Agencies may apply to the chief procurement officer for exemptions from the requirements of this section to the extent that the vehicles required by this section are not available or do not meet the specific needs of the agency.

(f) Vehicles acquired from another state agency and excluded vehicles are exempt from the requirements of this section.

(g) Nothing in this section is intended to interfere with an agency’s ability to comply with federally-imposed vehicle purchase mandates such as those required by 10 Code of Federal Regulations Part 490 Subpart C.”

PART V COUNTY BUILDING PERMITS AND ENERGY AND ENVIRONMENTAL EFFICIENT DESIGN PRIORITY PROCESSING

SECTION 29. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- County building permits; incorporation of energy and environmental design building standards in project design; priority processing. (a) Each county agency that issues building, construction, or development-related permits shall establish a procedure for the priority processing of a permit application submitted by a private entity for a construction project that incorporates energy and environmental design building standards into its project design. The permit processing procedure shall give priority to private sector permit applicants at no additional cost to the applicant. Any priority permit processing procedure established by a county pursuant to this section shall not imply or provide that any permit application filed under the priority processing procedure shall be automatically approved.

(b) For the purposes of this section:

“Energy and environmental design building standards” means the leadership in energy and environmental design silver or two green globes rating system or another comparable state-approved, nationally recognized, and consensus-based guideline, standard, or system.

“Private entity” means any permit applicant that is not the State, a county, the federal government, or any political subdivision thereof.”

PART VI MISCELLANEOUS PROVISIONS

SECTION 30. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

ACT 97

SECTION 31. In codifying the new sections added by this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 32. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 33. This Act shall take effect upon its approval; provided that sections 2, 3, 10, 12 and 13 shall take effect on July 1, 2006.

(Approved May 12, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 97

H.B. NO. 3235

A Bill for an Act Relating to the State of Hawaii Endowment Fund.

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

SECTION 1. The purpose of this Act is to appropriate funds for the State of Hawaii endowment fund, which is a separate fund of the Honolulu symphony trust. Income and capital gains from the fund are to be used for the production of music by an Oahu-based symphony orchestra as determined by the state foundation on culture and the arts.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 to be deposited into the State of Hawaii endowment fund, from which the income and capital gains shall be used for the production of music by an Oahu-based symphony orchestra; provided that the funds appropriated in this section are matched, dollar-for-dollar, by private funds.

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved May 12, 2006.)

ACT 98

H.B. NO. 2277

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 2005-2006 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:	
Oceanic Companies, Inc. v. State of Hawaii, Civil No. 04-1-0054, Fifth Circuit	\$ 130,800.00 Settlement
SUBTOTAL:	<u>\$ 130,800.00</u>
2. DEPARTMENT OF EDUCATION:	
Aguinaldo, et al. v. De Costa, et al. Civil No. 05-1-0380(3), Second Circuit	\$ 16,500.00 Settlement
Aldana, Cesar (Tort Claim)	\$ 137,500.00 Settlement
Anova Science Education Corp. and Robert Landsman v. Halau Lokahi Public Charter School, et al. Civil No. 05-1-1395-08, First Circuit	\$ 20,000.00 Settlement
Cacho v. State of Hawaii, et al. Civil No. 04-1-1091-06, First Circuit	\$ 25,000.00 Settlement
Hewett v. State of Hawaii Civil No. 05-1-0313, First Circuit	\$ 37,000.00 Settlement
Sula, Pamata (Tort Claim)	\$ 125,000.00 Settlement
SUBTOTAL:	<u>\$ 361,000.00</u>
3. DEPARTMENT OF HEALTH:	
Hawaii Disability Rights Center, et al v. State of Hawaii, et al. Civil No. 03-00524, USDC	\$ 121,169.17 Judgment
Tyler, et al v. State of Hawaii, et al. Civil No. 05-1-0037-01, First Circuit	\$ 32,889.00 Settlement
SUBTOTAL:	<u>\$ 154,058.17</u>
4. HOUSING AND COMMUNITY DEVELOPMENT CORPORATION OF HAWAII:	
Amone, et al. v. Aveiro, et al. Civil No. 04-00508, USDC	\$ 40,138.59 Settlement
SUBTOTAL:	<u>\$ 40,138.59</u>
5. DEPARTMENT OF HUMAN SERVICES:	
Doi v. State of Hawaii, et al. Civil No. 97-4036-10, First Circuit	\$2,000,000.00 Settlement
Hirata v. Chandler, et al. Civil No. 02-1-2277-09, First Circuit	\$ 90,000.00 Settlement
Kahoohanohano, et al. v. Department of Human Services, et al. Civil No. 03-1-0012(2), Second Circuit	\$ 74,000.00 Settlement
Rayford v. Omura, et al. Civil No. 04-00565, USDC	\$ 65,000.00 Settlement

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	AMOUNT
R.G., et al., v. Koller, et al. Civil No. 05-566, USDC	\$ 625,000.00 Settlement
Ryan, et al. v. Kamaka, et al. Civil No. 03-00384, USDC	\$ 47,500.00 Settlement
SUBTOTAL:	<u>\$2,901,500.00</u>
6. DEPARTMENT OF LAND AND NATURAL RESOURCES:	
Fielder v. Murphy Civil No. 01-00608, USDC	\$ 162,018.34 Judgment
Giltner v. State of Hawaii, et al. Civil No. 02-1-0187, Fifth Circuit	\$ 79,469.52 Judgment
Rumball, et al. v. State of Hawaii, et al. Civil No. 04-1-0038K, Third Circuit	\$ 100,000.00 Settlement
SUBTOTAL:	<u>\$ 341,487.86</u>
7. DEPARTMENT OF PUBLIC SAFETY:	
Abiley v. State of Hawaii Civil No. 04-1-0725-04, First Circuit	\$ 23,000.00 Settlement
Belle v. State of Hawaii, et al. Civil No. 04-1-1355-07, First Circuit	\$ 225,000.00 Settlement
Fineman v. Maesaka, et al. Civil No. 04-1-1619-09, First Circuit And Allstate Insurance Company, et al. v. State of Hawaii, et al., Civil No. 05-1-1049-06, First Circuit	\$ 70,000.00 Settlement
Rodenhurst v. State of Hawaii, et al. Civil No. 04-1-0724-04, First Circuit	\$ 31,342.71 Judgment
Roe v. Murashige, et al. Civil No. 05-1-0008(1), Second Circuit	\$ 95,000.00 Settlement
Siuze v. Department of Public Safety, et al. Civil No. 05-1-0780-05, First Circuit	\$ 36,238.80 Settlement
SUBTOTAL:	<u>\$ 480,581.51</u>
8. RESEARCH CORPORATION OF THE UNIVERSITY OF HAWAII:	
Perreira v. Maloney, et al. Civil No. 04-1-1075, Third Circuit	\$ 22,500.00 Settlement
SUBTOTAL:	<u>\$ 22,500.00</u>
9. MISCELLANEOUS CLAIMS:	
Boetcher, Barbara E.	\$ 65.08
SUBTOTAL:	<u>\$ 65.08</u>
TOTAL (SECTION 1):	<u>\$4,432,131.21</u>

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 2005-2006 are appropriated out of the state highway fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	AMOUNT
DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:	
Adams, et al. v. Lee Loy, et al. Civil No. 04-1-0413, Third Circuit	\$ 35,073.97 Settlement
Benicta v. State of Hawaii Civil No. 05-1-1556-08, First Circuit	\$ 15,000.00 Settlement
Brzezowski, et al. v. State of Hawaii, et al. Civil No. 04-1-0595-03, First Circuit	\$ 150,000.00 Settlement
Carvalho, et al. v. State of Hawaii, et al. Civil No. 04-1-118, Third Circuit	\$ 25,000.00 Settlement
Fearon v. State of Hawaii Civil No. 03-1-1939-09, First Circuit	\$ 65,000.00 Settlement
Fortuno v. Lee Loy, et al. Civil No. 04-1-0402, Third Circuit	\$ 15,000.00 Settlement
Kamalu v. Paren, et al. Civil No. 97-4959-12, First Circuit	\$1,702,327.87 Judgment
Kienker, et al. v. Bauer, et al. Civil No. 98-033K, Third Circuit	\$1,135,188.72 Judgment
Kramer v. Elliott, et al. Civil No. 97-256, Third Circuit	\$ 160,753.09 Judgment
Lewis, et al. v. State of Hawaii, et al. Civil No. 02-1-0257, Second Circuit	\$ 318,467.62 Settlement
Moniz, et al. v. Keola, et al. Civil No. 02-1-2741-11, First Circuit	\$ 75,000.00 Settlement
Nelson v. State of Hawaii, et al. Civil No. 03-1-0415(3), Second Circuit	\$ 40,000.00 Settlement
Newhouse v. Buza, et al. Civil No. 04-1-0090, Fifth Circuit	\$ 200,000.00 Settlement
Pregil v. State of Hawaii Civil No. 06-1-0052-01 SSM, First Circuit	\$ 15,000.00 Settlement
SUBTOTAL:	\$3,951,811.27
TOTAL (SECTION 2):	\$3,951,811.27

The sums appropriated shall be expended by the department of transportation, highways division, 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 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 SETTLEMENT OF CLAIMS:**

**DEPARTMENT OF LAND AND NATURAL
RESOURCES.**

Allstate Insurance Company (Tort Claim)	\$ 25,000.00 Settlement
SUBTOTAL:	\$ 25,000.00
TOTAL (SECTION 3):	\$ 25,000.00

Provided that the legislative appropriation for the department of land and natural resources for fiscal year 2006-2007 shall be expended from the special land and development fund S-07-318 by the department of land and natural resources for the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,300,000, for fiscal year 2006-2007, to the housing and community development corporation of Hawaii, for the purpose of the settlement of the case entitled, Smith, et al. v. Housing and Community Development Corporation of Hawaii, Civil No. 04-1-0096K, Third Circuit.

Funds appropriated under this section shall be subject to:

- (1) Obtaining necessary approval of the settlement from the circuit court and the Department of Housing and Urban Development;
- (2) Disbursement of settlement money to individual qualified resident households, with a set-off or rent credit for any delinquent amounts owed to the housing and community development corporation of Hawaii, and in the form of future rent credits, provided that the housing and community development corporation of Hawaii shall retain any amount of moneys for such rent credits, set-offs, or future rent credits; and
- (3) Payment of any attorney's fees.

Funds appropriated under this section shall be allocated and expended by the housing and community development corporation of Hawaii for the purposes of and in accordance with this section, including but not limited to the terms and conditions of the applicable settlement agreement, and for any rent credit, set-off, or future rent credit.

SECTION 5. 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 that the departments shall obtain the approval of the attorney general before payment of any claim can be made.

SECTION 6. 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 the statute applies.

PART III

SECTION 7. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2007, shall lapse.

SECTION 8. 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 9. This Act shall take effect upon its approval.

(Approved May 15, 2006.)

ACT 99

S.B. NO. 2255

A Bill for an Act Relating to Time Limitations.

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

SECTION 1. Section 701-108, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for:

- (a) Any offense an element of which is either fraud, deception, as defined in section 708-800, or a breach of fiduciary obligation within three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is oneself not a party to the offense, but in no case shall this provision extend the period of limitation by more than six years from the expiration of the period of limitation prescribed in subsection (2);
- (b) Any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation by more than three years from the expiration of the period of limitation prescribed in subsection (2); and
- (c) Any felony offense involving evidence containing deoxyribonucleic acid from the offender, if a test confirming the presence of deoxyribonucleic acid is performed prior to expiration of the period of limitation prescribed in subsection (2), but in no case shall this provision extend the period of limitation by more than ten years from the expiration of the period of limitation prescribed in subsection (2).”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 3. New statutory material is underscored.

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

(Approved May 15, 2006.)

A Bill for an Act Relating to Housing.

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

PART I

SECTION 1. Act 196, Session Laws of Hawaii 2005 (Act 196), was passed by the legislature to address Hawaii’s affordable housing and homeless crisis. Act 196 provided a number of mechanisms and incentives to increase the supply of low-income rental housing. In addition, the legislature, recognizing that more meaningful solutions to Hawaii’s housing and homeless crisis were needed, established a joint legislative housing and homeless task force to further identify near-term solutions to Hawaii’s affordable housing and homeless problem.

The task force spent many hours researching data and meeting with state and county officials, private developers, and nonprofit organizations on Oahu, the Big Island, Kauai, and Maui and also held public hearings and briefings in each county. The task force relied on the information collected in developing its recommendations.

The purpose of this part is to implement many of the recommendations of the task force.

PART II
THE HOMELESS

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

“§201G- **Temporary emergency housing.** (a) In addition to any other duties prescribed by law, the administration shall develop, in consultation with the four counties, a procedure for identifying locations that shall be used for temporary emergency shelters for homeless individuals and families. The administration shall actively partner with and monitor the efforts of the counties.

(b) Each county shall be responsible for partnering with nonprofit organizations to locate, designate, and maintain the areas that shall be used for temporary emergency shelters. The designated locations may include private, county, and state lands and federal lands at Kalaeloa.

(c) The administration shall pursue and secure Barbers Point Barracks as temporary housing for homeless families and individuals.

(d) The administration shall submit an annual report to the legislature detailing the activities and outcomes under this section no later than twenty days prior to the convening of each regular session beginning with the 2007 regular session.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the following sums, or so much thereof as may be necessary for fiscal year 2006-2007, to assist the counties in implementing section 201G- (b), Hawaii Revised Statutes, and this Act:

City and county of Honolulu	\$2,000,000
County of Kauai	\$ 400,000
County of Maui	\$ 400,000
County of Hawaii	\$ 400,000
Total	\$3,200,000

The sums 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 general revenues of the State of Hawaii the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 to repair and modernize existing federal and state buildings for transitional shelters and emergency shelters, as defined under section 201G-451, Hawaii Revised Statutes.

The sum appropriated shall be expended by the Hawaii public housing administration for the purposes of this section.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Hawaii Helping the Hungry Have Hope (H5) for a pilot program to provide mobile temporary housing for the homeless.

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

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$690,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Kauai Economic Opportunity, Inc. for a homeless emergency shelter and wastewater system for the homeless emergency shelter, transitional housing, and related buildings.

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

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,100,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Ohana Ola O Kahumana for the construction of a community center at the transitional housing program for homeless families with dependent children.

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

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$599,161 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Ohana Family of the Living God for a pilot project for temporary mobile shelters.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this section.

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Victory Ohana Prison Fellowship to assist the mentally ill, parolees, and substance abusers who are homeless.

The sum appropriated shall be expended by the department of public safety for the purposes of this section.

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$68,920 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Victory Ohana Prison Fellowship to purchase a computer system to establish a

classroom for educational and job assistance for the mentally ill, parolees, and substance abusers who are homeless.

The sum appropriated shall be expended by the department of public safety for the purposes of this section.

SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$65,500 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Victory Ohana Prison Fellowship to purchase a solar energy system for the emergency shelter.

The sum appropriated shall be expended by the department of public safety for the purposes of this section.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$180,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Catholic Charities for the Maili Land Transitional Housing Program.

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

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Child and Family Service for the construction of emergency and transitional housing for abused families with dependent children.

The sum appropriated shall be expended by the judiciary for the purposes of this section.

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii Coalition of Christian Churches for the development of a housing project to include emergency, transitional, and low-income rental housing and related services in Waianae.

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

SECTION 15. 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 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Street Beat, Inc., to provide outreach services to the homeless.

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

SECTION 16. There is appropriated out of the general revenues of the State of Hawaii the sum of \$80,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the county of Hawaii department of parks and recreation for transportation for the homeless and disabled.

The sum appropriated shall be expended by the county of Hawaii for the purposes of this section.

SECTION 17. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,000,000 or so much thereof as may be necessary for fiscal

year 2006-2007 to renovate homeless shelters and transitional housing and provide homeless services.

The sum appropriated shall be expended by the Hawaii public housing authority for the purposes of this section.

PART III LOW-INCOME AND AFFORDABLE HOUSING

SECTION 18. Section 201G-232, Hawaii Revised Statutes, is amended to read as follows:

“§201G-232 Housing owner defined. As used in this subpart, the term “housing owner” means:

- (1) A private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, that is a mortgagor under section 202, 207, 213, 221(d)(3), 221(d)(5), or 231 of the National Housing Act, as amended, or that conforms to the standards of those sections but that is not a mortgagor under those sections or any other private mortgagor under the National Housing Act, as amended, for very low income, low-income, or moderate-income family housing, regulated or supervised under federal or state laws or by political subdivisions of the State, or agencies thereof, as to rents, charges, capital structure, rate of return, and methods of operation, from the time of issuance of the building permit for the project; ~~and~~
- (2) Any other owner of a standard housing unit or units deemed qualified by the administration[-]; and
- (3) The administration.”

SECTION 19. Section 201G-233, Hawaii Revised Statutes, is amended to read as follows:

“§201G-233 Qualified tenant defined. As used in this subpart, the term “qualified tenant” means any single person or family, pursuant to criteria and procedures established by the administration, that has been determined to have an income not exceeding the very low income limit as determined by the administration pursuant to rules adopted by the administration; provided that the qualified tenant’s primary place of residence shall be in the State of Hawaii or that the qualified tenant intends to make the State of Hawaii the qualified tenant’s primary place of residence. The terms “qualified tenant” and “tenant” include a member of a cooperative who satisfies the foregoing requirements and who, upon resale of the member’s membership to the cooperative, will not be reimbursed for more than fifty per cent of any equity increment accumulated through payments under this subpart. With respect to members of a cooperative, the terms “rental” and “rental charges” mean the charges under the occupancy agreements between the members and the cooperative. ~~[The term “qualified tenant” shall not include any person receiving money payments for public assistance from the department of human services; provided that the term “public assistance” shall exclude aid provided through the federal Supplemental Security Income Program.]”~~

SECTION 20. Section 201G-432, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) For the period commencing July 1, 2005, through June 30, ~~[2007,]~~ 2009, the fund may be used to provide grants for rental units set aside for persons

and families with incomes at or below thirty per cent of the median family income in any project financed in whole or in part by the fund in proportion of those units to the total number of units in the project. At the conclusion of the period described in this subsection, the administration shall report to the legislature on the number and use of grants provided and whether the grants were an effective use of the funds for purposes of developing rental housing for families at or below thirty per cent of median family income.’’

SECTION 21. Section 247-7, Hawaii Revised Statutes, is amended to read as follows:

“**§247-7 Disposition of taxes.** All taxes collected each fiscal year under this chapter shall be paid into the state treasury to the credit of the general fund of the State, to be used and expended for the purposes for which the general fund was created and exists by law; provided that of the taxes collected each fiscal year:

- (1) Ten per cent shall be paid into the land conservation fund established pursuant to section 173A-5;
- (2) ~~Thirty~~ **Fifty** per cent shall be paid into the rental housing trust fund established by section 201G-432; and
- (3) Twenty-five per cent shall be paid into the natural area reserve fund established by section 195-9; provided that the funds paid into the natural area reserve fund shall be annually disbursed by the department of land and natural resources in the following priority:
 - (A) To natural area partnership and forest stewardship programs after joint consultation with the forest stewardship committee and the natural area reserves system commission;
 - (B) Projects undertaken in accordance with watershed management plans pursuant to section 171-58 or watershed management plans negotiated with private landowners, and management of the natural area reserves system pursuant to section 195-3; and
 - (C) The youth conservation corps established under chapter 193.’’

SECTION 22. There is appropriated out of the general revenues of the State of Hawaii the sum of \$700,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant-in-aid to the Hawaii Habitat for Humanity Association to establish a zero interest revolving loan fund to be used to provide loans to low-income families to build self-help ownership homes on leased¹ from the State and administered in accordance with subpart B of part III of chapter 201G, Hawaii Revised Statutes.

The sum appropriated shall be expended by the Hawaii housing finance and development administration for the purposes of this part.

SECTION 23. There is appropriated out of the general revenues of the State of Hawaii the sum of \$350,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Nanakuli Housing Corporation for Project Hana Hou.

The sum appropriated shall be expended by the Hawaii public housing administration for the purposes of this part.

SECTION 24. There is appropriated out of the general revenues of the State of Hawaii the sum of \$225,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Hawaii Homeownership Center to provide homebuyer education and counseling on Oahu, Kauai, and Hawaii.

The sum appropriated shall be expended by the Hawaii housing finance and development corporation for the purposes of this section.

SECTION 25. There is appropriated out of the general revenues of the State of Hawaii the sum of \$490,000 or so much thereof as may be necessary for fiscal year 2006-2007 as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Lokahi Pacific for mixed-use affordable rental housing and economic development project.

The sum appropriated shall be expended by the Hawaii housing finance and development corporation for the purposes of this section.

PART IV

SECTION 26. In its final report dated January 2006, the joint legislative housing and homeless task force expressed concern that the inventory of affordable housing rental units is at risk of being reduced. Affordable rental housing projects built in part with government subsidies have been offered for sale at market prices in anticipation of the expiration of income and regulatory restrictions encumbering the property. The task force is committed to ensuring that these units remain affordable to persons at lower income levels.

In recent months, media reports have announced several affordable housing projects that may be offered for sale, such as the Kulana Nani apartments in Kaneohe, Oahu, that offer affordable rental housing.

The purpose of this part is to preserve Kulana Nani as an affordable rental housing project.

SECTION 27. The Hawaii housing finance and development administration shall make available, without competitive award, public financing resources to assist a potential buyer of the land currently owned by Kamehameha Schools; provided that one hundred per cent of the housing units on the property shall be retained in perpetuity as affordable housing for households at or below the current income restrictions for rental housing units on the property.

SECTION 28. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2006-2007 for land acquisition of the Kulana Nani property, tax map key 4-6-31:15, owned by Kamehameha Schools.

The sum appropriated shall be expended by the Hawaii housing finance and development administration for the purposes of this part.

PART V

SECTION 29. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 30. This Act shall take effect on July 1, 2006; provided that on June 30, 2007, section 21 shall be repealed and section 247-7, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the approval of this Act.

(Approved May 16, 2006.)

Notes

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

A Bill for an Act Relating to Affordable Housing.

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

SECTION 1. Chapter 201H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§201H- Land leases to nonprofit organizations providing affordable housing. (a) Notwithstanding any provision to the contrary, the administration, pursuant to section 201H-4(b), may lease land to any qualified nonprofit organization providing affordable housing, under the following terms and conditions:

- (1) Leases shall be for ninety-nine years at \$1 per year per parcel; and
- (2) The instrument of lease shall include provisions, enforceable by the administration, that the land shall:
 - (A) Be used only for providing affordable housing through long-term, renewable, and transferable leases or other means that are in accordance with rules adopted by the administration under chapter 91; and
 - (B) Revert back to the administration if:
 - (i) The land is used for any purpose other than as provided under subparagraph (A); or
 - (ii) The qualified nonprofit organization ceases operations.

(b) For the purposes of this section:

“Affordable housing” means housing that is affordable to households with incomes at or below one hundred forty per cent of the median family income as determined by the United States Department of Housing and Urban Development.

“Qualified nonprofit organization” means any private entity that is organized and operated:

- (1) In accordance with Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and
- (2) For the purpose of providing affordable housing through long-term, renewable, and transferable leases.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved May 16, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

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

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

SECTION 1. The purpose of this Act is to enact legislation allowing the implementation of article VII, section 12 of the state constitution that permits the issuance of special purpose revenue bonds for governmental programs for low- and moderate-income housing.

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

“PART . ASSISTING NOT-FOR-PROFIT PRIVATE ORGANIZATIONS, FOR-PROFIT PRIVATE ORGANIZATIONS, AND PUBLIC INSTRUMENTALITIES AND THEIR QUALIFIED AFFILIATES IN THE DEVELOPMENT OF LOW- AND MODERATE-INCOME HOUSING

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

“Department” means the department of budget and finance.

“Low- and moderate-income housing project” means any housing project where:

- (1) All project units are offered for rent, of which at least:
 - (A) Twenty per cent of the units are rented to households with an income of up to fifty per cent of the area median income as determined by the United States Department of Housing and Urban Development;
 - (B) Forty per cent of the housing units in the project are rented to households with an income of up to eighty per cent of the area median income as determined by the United States Department of Housing and Urban Development; or
 - (C) Sixty per cent of the housing units in the project are rented to households with an income of up to one hundred forty per cent of the area median income as determined by the United States Department of Housing and Urban Development;
- (2) All project units are offered for sale through the conveyance of individual units by deed or share, of which at least fifty per cent of the units are sold to households with an income of up to one hundred forty per cent of the area median income as determined by the United States Department of Housing and Urban Development; or
- (3) The project qualifies for federal tax exempt status pursuant to 26 U.S.C. §142(a)(7) and (d);

provided that if there is an insufficient number of persons or families who meet the income qualifying criteria, the developer of the housing project may make units available to households with higher incomes to ensure full occupancy of the housing project.

“Project” means the acquisition, purchase, design, development, construction, reconstruction, rehabilitation, improvement, betterment, extension, financing, or refinancing of low- and moderate-income housing.

“Project agreement” means any agreement entered into under this part by the department with a project party providing for the issuance of special purpose revenue bonds to finance the development of low- and moderate-income housing, or to loan the proceeds of the special purpose revenue bonds to assist a project party in the development of low- and moderate-income housing, including without limitation any loan agreement.

“Project party” means an entity engaged in the development of a low- and moderate-income housing project, including a not-for-profit private organization, for-profit private organization, or public instrumentalities and their qualified affiliates.

“Qualified affiliate” means a not-for-profit private organization that assists a public instrumentality or a for-profit private organization that may be a corpora-

tion, partnership, limited liability company, or trust in which each shareholder, partner, member, or beneficiary assists a public instrumentality.

“Refinancing of outstanding obligations” or “refinancing” means the liquidation, the retirement, or the provision for retirement through the proceeds of bonds issued by the State of any indebtedness of a project party incurred to finance, in whole or in part, a low- and moderate-income housing project of the project party not financed pursuant to this part; or the consolidation of such indebtedness with indebtedness of the State related to the purpose for which the indebtedness of the project party was initially incurred.

“Special purpose revenue bonds” or “bonds” means bonds, notes, or other evidence of indebtedness of the State issued pursuant to this part.

§39A-B Department powers in the development of low- and moderate-income housing. In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for this project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related to the project agreement; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part of the project for lease or

transfer to a project party, nor shall the State operate a project on behalf of a project party.

§39A-C Compliance with state and local law. The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of the project from the laws, ordinances, and rules of the State or any of its political subdivisions, or any departments or boards thereof, with respect to the construction, operation, and maintenance of projects; compliance with zoning laws or regulations; obtaining of building permits; and compliance with building codes, health codes, and other laws, ordinances, or rules of a similar nature pertaining to the project. These laws shall apply to the party or another user to the same extent that it would be if the costs of the project were directly financed by the project party.

§39A-D Conditions precedent to negotiating and entering into a project agreement. Prior to entering into negotiations with any project party, the department shall require that the project party reimburse the State for any and all costs and expenses, direct or indirect, incurred by the State in implementing and administering this part, as determined by the department, even though a project agreement may not be entered into and may further require the deposit of moneys with the department for reimbursement. The department shall return any amount of the deposit exceeding the amount required to reimburse the State to the party that made the deposit. The State shall not be required to pay to the project party any interest or earnings on the deposit.

The department shall not enter into any project agreement with respect to any project unless the department shall first find and determine either that:

- (1) The project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project or some other reason; or
- (2) The obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project or some other reason.

§39A-E Project agreement. No special purpose revenue bonds shall be issued unless, at the time of issuance, the department shall have entered into a project agreement with respect to the project for the financing or refinancing of which the bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party to:

- (1) Pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, a sum at a time and in an amount that shall be at least sufficient to:
 - (A) Pay the principal and interest on all special purpose revenue bonds issued with respect to the project as and when they become due, including any premium payable upon any required redemption of the bonds;
 - (B) Establish or maintain a reserve, if any, as may be required by the instrument authorizing or securing the special purpose revenue bonds;
 - (C) Pay all fees and expenses, including the fees and expenses of the paying agents and trustees, incurred in connection with the special purpose revenue bonds; and

- (D) Pay the expenses, direct or indirect, incurred by the State, as determined by the department, in administering the bonds or in carrying out the project agreement; and
- (2) Operate, maintain, and repair the project as long as it is used to provide low- and moderate-income housing, and to pay all costs of operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, nor be deemed to be, revenues of the project and shall be paid into the general fund of the State.

§39A-F Issuance of special purpose revenue bonds to finance projects. In addition to the other powers that it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance the costs of developing low- and moderate-income housing or to loan the proceeds of bonds to assist project parties in the development of low- and moderate-income housing. All bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

In determining the cost of any project, the department may also include:

- (1) Financing charges, fees, the expenses of trustees, and the cost of paying agents to issue special purpose revenue bonds to fund the project;
- (2) Interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed or refinanced from the proceeds of the bonds accruing or incurred prior to and during the period of construction, not to exceed twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administration expenses;
- (7) The cost of interest incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds;
- (8) Fees and expenses incurred in connection with the refinancing of outstanding obligations;
- (9) Other costs, commissions, and expenses incidental to the project;
- (10) The financing or refinancing of the project and placing the project in operation; and
- (11) The issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of the bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to not-for-profit private organizations, for-profit private organizations, and public instrumentalities and their qualified affiliates in the development of low- and moderate-income housing, and that the issuance of special purpose revenue bonds to finance or refinance projects of or for project parties or to loan the proceeds of the bonds to assist project parties in the development of low- and moderate-income housing is in the public interest. The legislature further finds that this governmental assistance to not-for-profit private organizations, for-profit private organizations, and public instrumentalities and their qualified affiliates is necessary to encourage public-private partnerships to develop affordable housing for low- and moderate-income families in the state.

§39A-G Authorization of special purpose revenue bonds. (a) The department, with the approval of the governor, may issue special purpose revenue bonds for each single project or multi-project program for not-for-profit private organizations, for profit private organizations, and public instrumentalities and their qualified affiliates engaged in the development of low- and moderate-income housing that has been authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the members to which each house is entitled; provided that the legislature shall find that the issuance of the special purpose revenue bonds is in the public interest; and provided further that no authorization shall be made for a period exceeding five years of its enactment. Any special purpose revenue bond authorization, or any portion of a special purpose revenue bond authorization, which has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for a single project, multiple projects, a single-project party, or multiple-project parties pursuant to the authority of one, or the combined authority of more than one, separate act of the legislature.

The department may combine into a single issue of special purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private organizations, for-profit private organizations, and public instrumentalities and their qualified affiliates in the development of low- and moderate-income housing, separately authorized and approved by the governor as aforesaid, in the total amount not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds. The special purpose revenue bonds of each issue:

- (1) Shall be dated;
- (2) Shall bear interest at a rate or rates;
- (3) Shall mature at a time or times, not to exceed forty years from their date or dates;
- (4) Shall have a rank or priority; and
- (5) May be made redeemable before maturity at the option of the department, at a price or prices and under terms and conditions,

all as may be determined by the department.

The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached, and the manner of execution of the special purpose revenue bonds. The department shall also fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest, which may be at any bank or trust company approved by the director of finance within or without the state. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine. Provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds in a manner, either at public or private sale, and for a price as it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon pertaining to such a bond become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for and upon the cancellation of the mutilated bond or coupon, or in lieu of and in substitution for the lost, stolen, or destroyed bond or coupon.

The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has:

- (1) Paid the reasonable expense and charges in connection therewith;
 - (2) Filed with the department or its fiduciary evidence satisfactory to the department or its fiduciary that the bond or coupon was lost, stolen, or destroyed, if such was the case, and that the holder was the owner; and
 - (3) Has furnished indemnity satisfactory to the department.
- (d) In its discretion, the department may direct that CUSIP identification numbers shall be printed on the bonds. If CUSIP identification numbers are imprinted on the bonds:
- (1) No such number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted; and
 - (2) No liability shall attach to the department or any of its officers or agents, including any fiscal agent, paying agent, or registrar for the bonds, because of the numbers or their use, including any use made by the department or any of its officers or agents, or because of any inaccuracy, error, or omission with respect thereto or in the numbers' use.

In its discretion, the department may require that all costs of obtaining and imprinting the CUSIP identification numbers shall be paid by the purchaser of the bonds.

For the purposes of this subsection, "CUSIP identification numbers" means the numbering system adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

§39A-H Special purpose revenue bond anticipation notes. Whenever the department shall have authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale thereof, for the purpose for which the bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of the notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of the sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which the bonds would be secured; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of the bonds, the maximum amount of bonds in anticipation of which the notes are issued that has been authorized shall be reduced by the amount of notes paid in that manner. The authorization, issuance, and details of the notes shall be governed by the provision of this part with respect to special purpose revenue bonds insofar as the same may apply; provided that each note, together with all renewals and extensions of the note, or refundings of the note by other notes issued under this section, shall mature within five years from the date of the original note.

§39A-I Powers with respect to and security for special purpose revenue bonds. To secure the payment of any of the special purpose revenue bonds issued pursuant to this part, including interest on the bonds, or in connection with the bonds, the department shall have the power to:

- (1) Pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed or refinanced from bond proceeds, including interest on the bonds, and to covenant against pledging any revenues or receipts to any other bonds or any

- other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon the revenues;
- (2) Pledge and assign the interest of the department under the project agreement and other related agreements and the rights, duties, and obligations of the department thereunder, including the right to receive revenues;
 - (3) Covenant as to the use and disposition of the proceeds from the sale of the bonds;
 - (4) Covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition thereof;
 - (5) Covenant and prescribe as to what occurrences shall constitute "events of default" and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;
 - (6) Covenant as to the rights, liabilities, powers, and duties arising upon the breach by the department of any covenant, condition, or obligation;
 - (7) Designate a national or state bank or trust company within or without the state, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which the bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply the revenues to the payment of the principal and interest on the bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering the bonds or in carrying out the project agreement. If a trustee is appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary, convenient, or desirable to secure the bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other related agreements as well as the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds. The department may also authorize and empower the trustee to perform functions with respect to payment, purchase, registration, transfer, exchange, and redemption as the department may deem necessary, advisable, or expedient, including, without limitation, the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction of the bonds and coupons according to the law;
 - (8) Execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties; and

- (9) Make covenants and perform any acts as may be necessary, convenient, or desirable to secure the bonds, although such covenants, acts, or items may not be enumerated here.

The department may do all things in the issuance of the bonds and for their security that are consistent with the Constitution of the State of Hawaii.

§39A-J Security for special purpose revenue bonds. Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement, project agreements, or other supplemental agreements entered into with respect to the project or projects for the financing of which the special purpose revenue bonds were issued. The special purpose revenue bonds shall be secured solely by these revenues and by the pledges and assignments authorized by this part. Subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, all special purpose revenue bonds of the same issue shall have a prior and paramount lien on the revenue derived from the project agreement or agreements with respect to the project or projects for which the bonds were issued. The lien shall be over and ahead of all special purpose revenue bonds of any issue payable from the revenues that may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the right and privilege may be reserved by the department in the trust indenture securing an issue of special purpose revenue bonds to subsequently issue additional special purpose revenue bonds, subject to legislative authorization of the issue as provided in section 39A-G. The department may also permit the project party or another party on its behalf to incur debt, from time to time, payable from the revenues derived from the project agreement on a parity with the first issue of the special purpose revenue bonds. Any subsequent issue of special purpose revenue bonds and other debt issued or incurred in accordance with the provisions of the trust indenture shall be secured equally and ratably with the first issue of the special purpose revenue bond by a lien on the revenues in accordance with this part and without priority based on the date of sale, date of execution, or date of delivery.

Notwithstanding any other provisions of this part, all or part of the property constituting the project and all interest of the project party in the project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds. The rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage.

§39A-K Special purpose revenue bonds not a general obligation of the State. No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of the taxing power of the State to pay for the bonds or the interest on the bonds, and no moneys other than the revenues pledged to the bonds shall be applied toward their payment. Each special purpose revenue bond issued under this part shall recite in substance that the bond, including interest on the bond, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof and that the bond is not secured directly or indirectly by the full faith and credit of the State, by the general credit of the State, or by any revenue or taxes of the State other than the revenues specifically pledged thereto.

§39A-L Validity of special purpose revenue bonds. The special purpose revenue bonds bearing the signature or facsimile signature of officers on the date of the signing of the bonds shall be valid and sufficient for all purposes, notwithstanding that before the delivery of and payment for the bonds, all the persons whose signatures appear on the bonds shall have ceased to be officers of the department. The special purpose revenue bonds shall contain a recital that they are issued pursuant to this part, and the recital shall be conclusive evidence of their validity and of the regularity of their issuance.

§39A-M Use of revenues derived from project agreement. The department may appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premium, if any, and interest on the bonds for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operation, and maintenance of the project, including reserves.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State.

§39A-N Special purpose revenue bonds exempt from taxation. Special purpose revenue bonds and the income derived from the bonds issued pursuant to this part shall be exempt from all state, county, and municipal taxation, except for inheritance, transfer, and estate taxes.

§39A-O Federal tax-exempt status. To the extent practicable, special purpose revenue bonds issued pursuant to this part shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal income tax purposes, except as certain minimum taxes or environmental taxes may apply. The department may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes.

§39A-P Exemption from taxation of department property. All revenues derived by the department from any project or under the project agreement pertaining to it shall be exempt from all state, county, and municipal taxation. Any right, title, and interest of the department in any project shall also be exempt from all state, county, and municipal taxation.

Except as otherwise provided by law, the interest of the project party or user of a project under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the project party or other user.

§39A-Q Refunding special purpose revenue bonds. The legislature, by an act passed by an affirmative vote of two-thirds of the members to which each house is entitled, may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption.

The legislature may also provide, by an act passed by an affirmative vote of two-thirds of the members to which each house is entitled, for the issuance of a single issue of special purpose revenue bonds for the combined purposes of:

- (1) Financing or refinancing the cost of a project or improvement or expansion of the project; and
- (2) Refunding special purpose revenue bonds that shall have been issued under this part and shall then be outstanding, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the legislature to elect to redeem or prepay special purpose revenue bonds being refunded. Moreover, nothing in this section shall require or be deemed to require the legislature to elect to redeem or prepay the special purpose revenue bonds being refunded, which were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any law authorizing the issuance thereof, or, if the department elects to redeem or prepay any bonds, to redeem or prepay as of any particular date or dates. The issuance of the special purpose revenue bonds, the maturities and other details regarding the bonds, the rights and remedies of the bondholders, and the rights, powers, privileges, duties, and obligations of the department with respect to the bonds and bondholders, shall be governed by the foregoing provisions of this part insofar as may be applicable.

§39A-R Status of special purpose revenue bonds under Uniform Commercial Code. Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration.

§39A-S Special purpose revenue bonds as legal investments and lawful security. The special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State and its political corporations or subdivisions. The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and of the counties or other political corporations or subdivisions of the State. The bonds shall be lawful and sufficient security for these deposits to the extent of their value when accompanied by all unmatured coupons pertaining to the bonds.

§39A-T Access to and public disclosure of financial records of project party. (a) Each project party with a project agreement with the department shall allow the department full access to its financial records. Upon the request of the department for the examination of the financial records, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records that pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purpose of this section.

§39A-U Estimate of benefits. (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on a comparison between the use of the proceeds of the special purpose revenue bonds instead of other means of financing and shall be in terms of dollars projected to be or actually saved by consumers of the services of the project party. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing less costly services by a project party to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section.

§39A-V Construction of this part. The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall control.”

SECTION 3. In codifying the new part added to chapter 39A, Hawaii Revised Statutes, by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved May 16, 2006.)

ACT 103

S.B. NO. 2065

A Bill for an Act Relating to Motor Vehicle Registration.

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

SECTION 1. Section 291D-10, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) In all cases where the registered owner of a motor vehicle to which a notice of traffic infraction has been issued fails to pay the total amount of fines, fees, surcharges, costs, or monetary assessments that have been ordered, the court shall cause an entry to be made in the motor vehicle’s record so as to prevent issuance or renewal of the motor vehicle’s certificate of registration and transfer of title to the motor vehicle until the outstanding amount is paid or the notice of traffic infraction is otherwise disposed of pursuant to this chapter[-]; provided that if the traffic infraction involves an unpaid parking violation, this subsection shall not prevent the issuance or renewal of the motor vehicle’s certificate of registration and transfer of title to the motor vehicle to another person, in which case the clerk of the court shall issue a clearance to effectuate the registration and transfer of title; and provided further that in no event shall a clearance:

- (1) Absolve the registered owner of the motor vehicle at the time the parking violation was incurred from paying the fine;

- (2) Prevent any subsequent issuance or renewal of the motor vehicle's certificate of registration and transfer of title to the motor vehicle; or
- (3) Otherwise encumber the title of that motor vehicle."

SECTION 2. This Act shall apply retroactively to vehicles that have been prevented from being transferred prior to the effective date of this Act by reason of section 291D-10(b), 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 upon its approval.

(Approved May 17, 2006.)

ACT 104

S.B. NO. 2259

A Bill for an Act Relating to Information Charging.

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

SECTION 1. Section 806-83, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Criminal charges may be instituted by written information for a felony when the charge is a class C felony under section 19-3.5 (voter fraud); section 128D-10 (knowing releases); section [H]132D-14(a)(1), (2)(A), and (3)[H] (penalties for failure to comply with requirements of sections 132D-7, 132D-10, and 132D-16); section 134-6 (carrying or use of firearm in the commission of a separate felony); section 134-7(a) and (b) (ownership or possession prohibited); section 134-8 (prohibited ownership); section 134-9 (licenses to carry); section 134-17(a) (relating to false information or evidence concerning psychiatric or criminal history); section 134-51 (deadly weapons); section 134-52 (switchblade knives); section 134-53 (butterfly knives); section 188-23 (possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited); section 231-34 (attempt to evade or defeat tax); section 231-36 (false and fraudulent statements); section 245-37 (sale or purchase of packages of cigarettes without stamps); section 245-38 (vending unstamped cigarettes); section 245-51 (sale of export cigarettes prohibited); section 245-52 (alteration of packaging prohibited); section 291C-12.5 (accidents involving substantial bodily injury); section 291E-61.5 (habitually operating a vehicle under the influence of an intoxicant); section 329-41 (prohibited acts B); section 329-42 (prohibited acts C); section 329-43.5 (prohibited acts related to drug paraphernalia); section 329C-2 (manufacture, distribution, or possession with intent to distribute an imitation controlled substance to a person under eighteen years of age); section 346-34(d)(2) and (e) (fraud involving food stamps or coupons with a value exceeding \$300); section 346-43.5 (medical assistance fraud); section 383-141 (falsely obtaining benefits); section 431:10C-307.7 (insurance fraud); section 482D-7 (violation of fitness standards and stamping requirements); section 485-8 (registration of securities); section 485-14 (registration of dealers, investment advisers, salespersons, and investment adviser representatives); section 485-25 (fraudulent and other prohibited practices); section 707-703 (negligent homicide in the second degree); section 707-705 (negligent injury in the first degree); section 707-711 (assault in the second degree); section 707-713

(reckless endangering in the first degree); section 707-721 (unlawful imprisonment in the first degree); section 707-726 (custodial interference in the first degree); section 707-757 (electronic enticement of a child in the second degree); section 707-766 (extortion in the second degree); section 708-811 (burglary in the second degree); section 708-821 (criminal property damage in the second degree); section 708-831 (theft in the second degree); section 708-833.5 (shoplifting); section 708-835.5 (theft of livestock); section 708-836 (unauthorized control of propelled vehicle); section 708-836.5 (unauthorized entry into motor vehicle); section 708-839.5 (theft of utility services); section 708-839.8 (identity theft in the third degree); section 708-852 (forgery in the second degree); section 708-854 (criminal possession of a forgery device); section 708-858 (suppressing a testamentary or recordable instrument); section 708-875 (trademark counterfeiting); section 708-891.5 (computer fraud in the second degree); section 708-892.5 (computer damage in the second degree); section 708-895.6 (unauthorized computer access in the second degree); section 708-8100 (fraudulent use of a credit card); section 708-8102 (theft/forgery of credit cards); section 708-8103 (credit card fraud by a provider of goods or services); section 708-8104 (possession of unauthorized credit card machinery or incomplete cards); section 708-8200 (cable television service fraud in the first degree); section 708-8202 (telecommunication service fraud in the first degree); section 709-903.5 (endangering the welfare of a minor in the first degree); [§] 709-906 (abuse of family or household members); section 710-1016.3 (obtaining a government-issued identification document under false pretenses in the first degree); section 710-1016.6 (impersonating a law enforcement officer in the first degree); section 710-1017.5 (sale or manufacture of deceptive identification document); section 710-1018 (securing the proceeds of an offense); section 710-1021 (escape in the second degree); section 710-1023 (promoting prison contraband in the second degree); section 710-1024 (bail jumping in the first degree); section 710-1029 (hindering prosecution in the first degree); section 710-1060 (perjury); section 710-1072.5 (obstruction of justice); section 711-1103 (riot); section 711-1109.3 (cruelty to animals/fighting dogs); section 711-1110.9 (violation of privacy in the first degree); section 711-1112 (interference with the operator of a public transit vehicle); section 712-1221 (promoting gambling in the first degree); section 712-1222.5 (promoting gambling aboard ships); section 712-1224 (possession of gambling records in the first degree); section 712-1243 (promoting a dangerous drug in the third degree); section 712-1246 (promoting a harmful drug in the third degree); section 712-1247 (promoting a detrimental drug in the first degree); section 712-1249.6 (promoting a controlled substance in, on, or near schools or school vehicles); section 803-42 (interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited); or section ~~[846E-9(a)(2) (penalty for failure to comply with requirements of chapter 846E).]~~ 846E-9(b) (failure to comply with covered offender registration requirements).”

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 17, 2006.)

A Bill for an Act Relating to Driver Licensing.

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

SECTION 1. Section 286-102.6, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§286-102.6]]~~ **Provisional license for persons under the age of eighteen.** (a) A person may be granted a provisional license to drive passenger cars of any gross vehicle weight rating, buses designed to transport fifteen or fewer occupants, and trucks and vans having a gross vehicle weight rating of fifteen thousand pounds or less if the person:

- (1) Is at least sixteen years of age but under the age of eighteen;
- (2) Holds an instruction permit and has held the permit for a period of at least one hundred eighty days and there is no pending proceeding that might result in the suspension or revocation of the instruction permit; and
- (3) Satisfactorily completes all requirements of sections 286-108 and 286-109.

(b) The provisional license shall entitle the provisional licensee to drive the class of motor vehicles specified in subsection (a) upon the roadways of the State; provided that:

- (1) The provisional licensee shall have the provisional license in the provisional licensee's immediate possession while driving;
- (2) All occupants of the motor vehicle shall be restrained by safety belts or a child passenger restraint system as required under sections 291-11.5 and 291-11.6;
- (3) The provisional licensee shall not transport more than one person under the age of eighteen, unless the person is, with respect to the provisional licensee:
 - (A) A household member; or
 - (B) A household member's foster or hanai child, without being accompanied and supervised by a licensed driver who is the provisional licensee's parent or guardian; and
- (4) Except as provided in subsection (c), whenever the provisional licensee is driving between the hours of 11:00 p.m. and 5:00 a.m., a licensed driver who is the provisional licensee's parent or guardian and is licensed to operate the same category of motor vehicle as the licensee, shall be in the motor vehicle and shall occupy the passenger seat beside the licensee.

(c) A provisional licensee may drive between the hours of 11:00 p.m. and 5:00 a.m. without a licensed parent or guardian in the motor vehicle under the following conditions:

- (1) The provisional licensee is traveling to or from the provisional licensee's place of employment, operation of the motor vehicle is necessary for this purpose, and the provisional licensee keeps in the provisional licensee's possession a signed statement from the employer containing the employer's name, address, telephone number, and verification of employment and work hours; or
- (2) The provisional licensee is traveling to or from a school-authorized activity of the provisional licensee, operation of a motor vehicle is necessary for this purpose, and the provisional licensee keeps in the

provisional licensee's possession a signed statement from a parent or guardian containing the parent's or guardian's name, address, and telephone number, and verification that operation of the motor vehicle by the provisional licensee is necessary to travel to or from the school-authorized activity;

provided that the provisional licensee shall not transport more than one person under the age of eighteen between the hours of 11:00 p.m. and 5:00 a.m. without being accompanied and supervised by a licensed driver who is the provisional licensee's parent or guardian.

(d) If the provisional licensee violates any of the requirements of subsection (b) or (c):

(1) For a first violation of any requirement, the provisional license shall be suspended for a period of three months by a district court or family court judge. If the person's provisional license is suspended, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until:

(A) The person is eighteen years of age; or

(B) Three months have elapsed since the date of suspension, whichever is sooner, and the person has otherwise satisfied the requirements of this chapter; and

(2) For a second or any subsequent violation of any requirement, the provisional license shall be revoked for six months by a district court or family court judge. If the person's provisional license is revoked, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until:

(A) The person is eighteen years of age; or

(B) Six months have elapsed since the date of revocation, whichever is sooner, and the person has otherwise satisfied the requirements of this chapter.

(e) If the provisional licensee is ~~convicted~~ adjudicated of an offense relating to the operation of a motor vehicle other than the requirements of subsection (b) or (c):

(1) For a first ~~conviction~~ adjudication, the provisional license shall be suspended or revoked by a district court or family court judge, in addition to any other penalties that may be prescribed by law. If the person's provisional license is suspended or revoked, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until:

(A) The person is eighteen years of age; or

(B) Six months have elapsed since the date of suspension or revocation,

whichever is sooner, and the person has otherwise satisfied the requirements of this chapter; and

(2) For a second or any subsequent ~~conviction~~ adjudication, the provisional license shall be revoked for one year by a district court or family court judge, in addition to any other penalties that may be prescribed by law. If the person's provisional license is revoked, the person shall not be eligible for reissuance of the provisional license or issuance of a driver's license until:

(A) The person is eighteen years of age; or

(B) One year has elapsed since the date of revocation, whichever is later, and the person has otherwise satisfied the requirements of this chapter.

(f) A provisional licensee may be issued a driver's license in accordance with this chapter if the provisional licensee:

- (1) Has satisfactorily held a provisional license for at least six months;
- (2) Has no pending proceeding that might result in the suspension or revocation of the license;
- (3) Is at least seventeen years of age; and
- (4) Has satisfactorily complied with all requirements of this chapter.

(g) If not suspended or revoked, the provisional license shall expire on the date of the provisional licensee's nineteenth birthday.

(h) The fee for a provisional license shall be set in accordance with section 286-111.

(i) This section shall not apply to the licensing of of:

- (1) An emancipated minor; and
- (2) Motorcycle or motor scooter drivers.

(j) For the purposes of this section, "household member" shall have the same meaning as defined in section 291E-1.

(k) Notwithstanding any other provisions, for the purposes of this section, the district court and family court shall notify the driver's license examiner of all persons under the age of eighteen who have pending violations or proceedings that might result in the suspension or revocation of the provisional license, and any pending adjudication of an offense relating to the operation of a motor vehicle."

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, 2007.

(Approved May 17, 2006.)

ACT 106

H.B. NO. 2282

A Bill for an Act Relating to Chapter 846E.

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

SECTION 1. Section 846E-1, Hawaii Revised Statutes, is amended by amending the definition of "repeat covered offender" to read as follows:

““Repeat covered offender” means:

- (1) A person who is or has been convicted at any time, whether before or after May 9, 2005, of more than one covered offense as defined in this section[;], except that a conviction for multiple counts within a single charging document that allege covered offenses against the same victim and that allege the same date of the covered offense against that single victim shall be considered, for the purposes of this definition, a single covered offense; or
- (2) A person who is or has been charged at any time, whether before or after May 9, 2005, with more than one covered offense as defined in this section and who has been, more than once, either:
 - (A) Convicted;
 - (B) Found unfit to proceed pursuant to chapter 704; or
 - (C) Acquitted due to a physical or mental disease, disorder, or defect pursuant to chapter 704.”

SECTION 2. Section 846E-2, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) In addition to the requirement under subsection (a) to register with the attorney general and comply with the provisions of this chapter until a court relieves the covered offender of the registration requirements of this chapter, each covered offender shall also register in person with the chief of police where the covered offender resides or is present. Registration under this subsection is for the purpose of providing the covered offender’s photograph, fingerprints, and registration information. Registration under this subsection is required whenever the covered offender, whether or not a resident of this State, remains in this State for more than ten days or for an aggregate period exceeding thirty days in one calendar year. Covered offenders required to register in person with the chief of police under this subsection shall register no later than three working days after~~[:]~~ the earliest of:

- (1) Arrival in this State;
- (2) Release from incarceration;
- (3) Release from commitment;
- (4) Release on furlough;
- (5) Conviction for a covered offense, unless incarcerated;
- (6) Release on probation;
- ~~[(5)]~~ (7) Placement on parole; or
- ~~[(6)]~~ (8) Arrival in a county in which the covered offender resides or expects to be present for a period exceeding ten days.

In addition to any other requirement to register under this subsection or subsection (a), each covered offender shall report in person every five years to the chief of police where the covered offender resides for purposes of having a new photograph taken.”

SECTION 3. Section 846E-3, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) After forty years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (1); thirty years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (2); twenty-five years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (3); fifteen years have elapsed after release or sentencing, whichever is later for covered offenders subject to subsection (c), paragraph (4); and ten years have elapsed after release or sentencing, whichever is later, for covered offenders subject to subsection (c), paragraph (5), a covered offender may petition the court in a civil proceeding to terminate public access. In the civil proceeding to terminate public access, the State shall be represented by the attorney general; provided that the attorney general, with the prosecuting agency’s consent, may designate the prosecuting agency that prosecuted the covered offender for the most recent covered offense within the State to represent the State. For covered offenders who have never been convicted of a covered offense within the State of Hawaii, the attorney general shall represent the State; provided that the attorney general, with the prosecuting agency’s consent, may designate the prosecuting agency for the county in which the covered offender resides to represent the State. The court may order this termination upon proof by a preponderance of the evidence that the covered offender:

- (1) Has had no new convictions for covered offenses;
- (2) Is very unlikely to commit a covered offense ever again; and
- (3) Public access to the covered offender’s public information will not assist in protecting the safety of the public or any member thereof;

provided that a denial by the court for relief pursuant to a petition under this section shall preclude the filing of another petition for five years from the date of the last denial.”

SECTION 4. Section 846E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A covered offender required to register under this chapter, who changes any of the covered 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 is absent from the person’s registered residence for ten or more days. If, at any time, a covered offender required to register under this chapter is absent from the person’s registered residence for ten or more days and fails to establish a new residence within the ten days that the covered offender is absent from their registered residence, the covered offender, in addition to notifying the attorney general in writing within three working days that the covered offender no longer resides at the covered offender’s registered residence, shall also report to any police station in the State by the last day of every month for verification of identity by photograph and fingerprint impression until the covered offender establishes a new residence and notifies the attorney general in writing of the actual address of the new residence. Each time the covered offender reports to a police station, the covered offender shall disclose every location where the covered offender has slept in the previous month. If the new residence is in another state that has a registration requirement, the person shall register with the designated law enforcement agency in the state to which the person moves, within the period of time mandated by the new state’s sex offender registration laws.”

SECTION 5. Section 846E-9, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person commits the offense of failure to comply with covered offender registration requirements if the person is required to register under this chapter and the person intentionally, knowingly, or recklessly:

- (1) Fails to register with the attorney general by providing to the attorney general or the Hawaii criminal justice data center the person’s registration information;
- (2) Fails to report in person to the chief of police where the covered offender’s residence is located, for purposes of having a new photograph taken within five years after the previous photograph was taken;
- (3) Fails to register in person with the chief of police having jurisdiction of the area where the covered offender resides or is present within three working days whenever the provisions of section 846E-2(e) require the person to do so;
- (4) Fails to notify the attorney general or the Hawaii criminal justice data center of a change of any of the covered offender’s registration information in writing within three working days of the change;
- (5) Provides false registration information to the attorney general, the Hawaii criminal justice data center, or a chief of police;
- (6) Signs a statement verifying that all of the registration information is accurate and current when any of the registration information is not substantially accurate and current; [ø]
- (7) Having failed to establish a new residence within the ten days while absent from the person’s registered residence for ten or more days:

- (A) Fails to notify the attorney general in writing within three working days that the person no longer resides at the person's registered residence; or
- (B) Fails to report to a police station in the State by the last day of every month; or
- [~~(7)~~] (8) Fails to mail or deliver the periodic verification of registration information form to the attorney general within ten days of receipt, as required by section 846E-5; provided that it shall be an affirmative defense that the periodic verification form mailed to the covered offender was delivered when the covered offender was absent from the registered address and the covered offender had previously notified the Hawaii criminal justice data center that the covered offender would be absent during the period that the periodic verification form was delivered.’’

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, 2006.

(Approved May 17, 2006.)

ACT 107

H.B. NO. 2737

A Bill for an Act Relating to the Honopou District of the County of Maui.

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

SECTION 1. The legislature finds that the safety of residents of the Honopou district of the county of Maui may be at risk because of the condition of Honopou road, which includes Honopou bridge. Residents report that several years ago, a Maui county fire department fire truck failed to respond to an emergency call for assistance from a Honopou district resident because the fire truck crew apparently had concerns about the truck's ability to cross the Honopou bridge safely. As a result of the Maui county fire department's failure to cross Honopou bridge to provide the necessary fire-fighting assistance, the home of the Honopou resident burned down.

Presumably because of Honopou bridge's five-ton rating, the fire department feared for the safety of its firefighters in crossing the bridge, although residents of the area report that fully-loaded cement trucks, weighing approximately thirty-five tons, cross Honopou bridge regularly without incident.

Although Honopou road, a dirt road, runs through state land, a jurisdictional dispute exists over ownership of Honopou road, which includes the Honopou bridge. Regarding ownership of the road, the department of land and natural resources defers to the department of transportation, which claims that the road and bridge are the responsibility of the county of Maui.

The legislature further finds that the lack of established jurisdictional responsibility has resulted in a corresponding lack of maintenance of Honopou road, including Honopou bridge. To avoid future threats to the safety and well-being of the residents of the Honopou district of the county of Maui, the matter of jurisdictional responsibility must be resolved, and the Honopou bridge must be strengthened and maintained in a manner that allows the Maui county fire department safe access across the Honopou bridge to provide necessary public services to the residents of the Honopou area.

The purpose of this Act is to protect the safety and well-being of the residents of the Honopou district by:

- (1) Requiring the department of the attorney general to assist in resolving the jurisdictional dispute over the Honopou road and Honopou bridge; and
- (2) Determining the costs of bringing the Honopou bridge up to standards that will allow access to Honopou district residents by the Maui county fire department.

SECTION 2. The department of the attorney general shall investigate and assist in the resolution of the issue of ownership of Honopou road, including Honopou bridge, and submit a report of its findings and recommendations, including any legislation deemed necessary to clarify legal jurisdiction, to the legislature no later than twenty days before the convening of the regular session of 2007.

SECTION 3. The department of transportation shall review the issues relating to the safety of Honopou bridge and submit a report to the legislature, mayor of Maui, and county council of Maui no later than twenty days before the convening of the regular session of 2007. The report shall include the department’s findings and recommendations, including any legislation deemed necessary, that will result in strengthening, repairing, increasing the load limit, and improving Honopou bridge to provide safe access to Honopou district by the Maui county fire department. The department of transportation shall include in its report the estimated cost of improvements to Honopou bridge that are necessary to protect the safety and well-being of residents of the Honopou district.

Upon the resolution of the issue of ownership of Honopou road and Honopou bridge, the department of transportation shall also forward its report to the entity identified with the assistance of the attorney general as having jurisdiction over Honopou road and Honopou bridge. The department of transportation’s report of its findings and recommendations shall be transmitted to the appropriate government agency no less than thirty days after the department’s receipt of the attorney general’s report on the resolution of the jurisdictional issue over which public agency has responsibility for the Honopou road and Honopou bridge.

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

(Approved May 17, 2006.)

ACT 108

S.B. NO. 3076

A Bill for an Act Relating to Coqui Frogs.

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

SECTION 1. Section 141-3, Hawaii Revised Statutes, is amended to read as follows:

“§141-3 Designation of pests; control or eradication of pests; emergency power. (a) The department of agriculture shall ~~[establish]~~ designate the coqui frog as a pest. All other pest designations shall be established by rule, including the criteria and procedures for the designation of pests for control or eradication.

(b) The department of agriculture shall, so far as reasonably practicable, assist, free of cost to individuals, in the control or eradication of insects, mites,

diseases, noxious weeds, or other pests injurious to the environment or vegetation of value; and in the investigation, suppression, and eradication of contagious, infectious, and communicable diseases among domestic animals; and shall in like manner distribute to points where needed, beneficial insects, or pathogens and other antidotes for the control of insects, mites ~~[and]~~, diseases, or other pests injurious to the environment or vegetation of value, and for the control or eradication of vegetation of a noxious character.

(c) Notwithstanding subsection (a), if the department finds the incipient infestation of a pest that has an adverse effect on the environment or that is injurious or deleterious or that is likely to become injurious or deleterious to the agricultural, horticultural, aquacultural, or livestock industries of the State without immediate action, it may proceed without prior notice or upon a minimum of forty-eight hours notice and hearing to adopt an emergency rule for the eradication of the pest to be effective for a period of not longer than one hundred eighty days without renewal.”

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 18, 2006.)

ACT 109

S.B. NO. 2486

A Bill for an Act Relating to Invasive Species.

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

SECTION 1. Act 85, Session Laws of Hawaii 2003, is amended by amending section 3 to read as follows:

“SECTION 3. (a) There is established [~~a temporary~~] the 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~~ placed within the department of land and natural resources for administrative purposes only 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, the legislature, and members of the private sector shall be asked to participate or consulted for advice and assistance. Representatives of the legislature shall consist of eight members, as follows:

- (1) Four senators, one from each county, to be selected by the senate president; and
- (2) Four representatives, one from each county, to be selected by the speaker of the house of representatives.

(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. Notwithstanding any law to the contrary:

- (1) A simple majority of voting members of the council shall constitute a quorum to do business; and
- (2) Any action taken by the council shall be by a simple majority of the voting members.

(e) The council shall submit a report of its activities to the governor and legislature annually.”

SECTION 2. Section 12 of Act 85, Session Laws of Hawaii 2003, as amended by section 16 of Act 10, Session Laws of Hawaii 2004, is amended to read as follows:

“SECTION 12. This Act shall take effect upon its approval [~~and, except for sections 9 and 10, shall be repealed on July 1, 2008].”~~

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 18, 2006.)

ACT 110

H.B. NO. 957

A Bill for an Act Relating to Taxation.

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

SECTION 1. Hawaii’s resurging economy and the positive economic trend forecast for both Hawaii and the nation has resulted in a substantial budget surplus, providing lawmakers the chance to offer tax relief after years of budget constraints.

In its most recent report, the tax review commission stated that the state income tax brackets are so compressed that people on public assistance pay income taxes, while the highest rate for married taxpayers filing jointly begins when their taxable income reaches just over \$80,000. Today, the median income of a family of four in Hawaii, with both parents working, is approximately \$70,000. This means that if this hypothetical middle class family earned only \$900 more each month, they would be taxed in the same bracket as a family with an annual income of \$900,000.

The legislature finds that the current Hawaii income taxation tables actually impose a financial penalty on most middle class families in Hawaii. Comparisons with the average income in other states are meaningless when the cost of housing, food and clothing, education, and transportation are factored in. In reality, a \$70,000 family income in Hawaii buys much less than a \$70,000 family income in most other cities in the United States. Hawaii's income tax brackets need to reflect this reality.

The purpose of this Act is to provide tax relief for Hawaii's residents by:

- (1) Increasing the standard income tax deduction for individuals filing single or joint returns or as a surviving spouse or head of household;
- (2) Expanding the state income tax brackets; and
- (3) Creating a tax credit for those affected by the flooding of the Manoa Stream in 2004 on Oahu, and the flooding in all counties in 2006 caused by the record rainstorms between February 20 and April 9.

These amendments will bring residents more in line with the economic realities of the high cost of living in Hawaii, bring long-term tax relief to low- and middle-income families, and provide a measure of relief to those facing losses due to unforeseen natural forces.

SECTION 2. Section 235-2.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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]~~ \$4,000 in the case of:
 - (A) A joint return as provided by section 235-93; or
 - (B) A surviving spouse (as defined in section 2(a) of the Internal Revenue Code);
- (2) ~~[\$1,650]~~ \$2,920 in the case of a head of household (as defined in section 2(b) of the Internal Revenue Code);
- (3) ~~[\$1,500]~~ \$2,000 in the case of an individual who is not married and who is not a surviving spouse or head of household; or
- (4) ~~[\$950]~~ 2,000 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.”

SECTION 3. Section 235-51, Hawaii Revised Statutes, is amended by amending subsections (a), (b), (c), and (d) to read as follows:

“(a) There is hereby imposed on the taxable income of (1) every taxpayer who files a joint return under section 235-93; and (2) every surviving spouse a tax determined in accordance with the following table:

~~[In the case of any taxable year beginning after December 31, 1998:~~

If the taxable income is:	The tax shall be:
Not over \$4,000	1.60% of taxable income
Over \$4,000 but not over \$8,000	\$64.00 plus 3.90% of excess over \$4,000
Over \$8,000 but not over \$16,000	\$220.00 plus 6.80% of excess over \$8,000

Over \$16,000 but not over \$24,000	\$764.00 plus 7.20% of excess over \$16,000
Over \$24,000 but not over \$32,000	\$1,340.00 plus 7.50% of excess over \$24,000
Over \$32,000 but not over \$40,000	\$1,940.00 plus 7.80% of excess over \$32,000
Over \$40,000 but not over \$60,000	\$2,564.00 plus 8.20% of excess over \$40,000
Over \$60,000 but not over \$80,000	\$4,204.00 plus 8.50% of excess over \$60,000
Over \$80,000	\$5,904.00 plus 8.75% of excess over \$80,000

In the case of any taxable year beginning after December 31, 2000:

If the taxable income is:	The tax shall be:
Not over \$4,000	1.50% of taxable income
Over \$4,000 but not over \$8,000	\$60.00 plus 3.70% of excess over \$4,000
Over \$8,000 but not over \$16,000	\$208.00 plus 6.40% of excess over \$8,000
Over \$16,000 but not over \$24,000	\$720.00 plus 6.90% of excess over \$16,000
Over \$24,000 but not over \$32,000	\$1,272.00 plus 7.30% of excess over \$24,000
Over \$32,000 but not over \$40,000	\$1,856.00 plus 7.60% of excess over \$32,000
Over \$40,000 but not over \$60,000	\$2,464.00 plus 7.90% of excess over \$40,000
Over \$60,000 but not over \$80,000	\$4,044.00 plus 8.20% of excess over \$60,000
Over \$80,000	\$5,684.00 plus 8.50% of excess over \$80,000]

In the case of any taxable year beginning after December 31, 2001:

If the taxable income is:	The tax shall be:
Not over \$4,000	1.40% of taxable income
Over \$4,000 but not over \$8,000	\$56.00 plus 3.20% of excess over \$4,000
Over \$8,000 but not over \$16,000	\$184.00 plus 5.50% of excess over \$8,000
Over \$16,000 but not over \$24,000	\$624.00 plus 6.40% of excess over \$16,000
Over \$24,000 but not over \$32,000	\$1,136.00 plus 6.80% of excess over \$24,000
Over \$32,000 but not over \$40,000	\$1,680.00 plus 7.20% of excess over \$32,000
Over \$40,000 but not over \$60,000	\$2,256.00 plus 7.60% of excess over \$40,000
Over \$60,000 but not over \$80,000	\$3,776.00 plus 7.90% of excess over \$60,000
Over \$80,000	\$5,356.00 plus 8.25% of excess over \$80,000.

In the case of any taxable year beginning after December 31, 2006:

<u>If the taxable income is:</u>	<u>The tax shall be:</u>
<u>Not over \$4,800</u>	<u>1.40% of taxable income</u>

<u>Over \$4,800 but not over \$9,600</u>	<u>\$67.00 plus 3.20% of excess over \$4,800</u>
<u>Over \$9,600 but not over \$19,200</u>	<u>\$221.00 plus 5.50% of excess over \$9,600</u>
<u>Over \$19,200 but not over \$28,800</u>	<u>\$749.00 plus 6.40% of excess over \$19,200</u>
<u>Over \$28,800 but not over \$38,400</u>	<u>\$1,363.00 plus 6.80% of excess over \$28,800</u>
<u>Over \$38,400 but not over \$48,000</u>	<u>\$2,016.00 plus 7.20% of excess over \$38,400</u>
<u>Over \$48,000 but not over \$72,000</u>	<u>\$2,707.00 plus 7.60% of excess over \$48,000</u>
<u>Over \$72,000 but not over \$96,000</u>	<u>\$4,531.00 plus 7.90% of excess over \$72,000</u>
<u>Over \$96,000</u>	<u>\$6,427.00 plus 8.25% of excess over \$96,000</u>

(b) There is hereby imposed on the taxable income of every head of a household a tax determined in accordance with the following table:

[In the case of any taxable year beginning after December 31, 1998:

If the taxable income is:	The tax shall be:
Not over \$3,000	1.60% of taxable income
Over \$3,000 but not over \$6,000	\$48.00 plus 3.90% of excess over \$3,000
Over \$6,000 but not over \$12,000	\$165.00 plus 6.80% of excess over \$6,000
Over \$12,000 but not over \$18,000	\$573.00 plus 7.20% of excess over \$12,000
Over \$18,000 but not over \$24,000	\$1,005.00 plus 7.50% of excess over \$18,000
Over \$24,000 but not over \$30,000	\$1,455.00 plus 7.80% of excess over \$24,000
Over \$30,000 but not over \$45,000	\$1,923.00 plus 8.20% of excess over \$30,000
Over \$45,000 but not over \$60,000	\$3,153.00 plus 8.50% of excess over \$45,000
Over \$60,000	\$4,428.00 plus 8.75% of excess over \$60,000

In the case of any taxable year beginning after December 31, 2000:

If the taxable income is:	The tax shall be:
Not over \$3,000	1.50% of taxable income
Over \$3,000 but not over \$6,000	\$45.00 plus 3.70% of excess over \$3,000
Over \$6,000 but not over \$12,000	\$156.00 plus 6.40% of excess over \$6,000
Over \$12,000 but not over \$18,000	\$540.00 plus 6.90% of excess over \$12,000
Over \$18,000 but not over \$24,000	\$954.00 plus 7.30% of excess over \$18,000
Over \$24,000 but not over \$30,000	\$1,392.00 plus 7.60% of excess over \$24,000
Over \$30,000 but not over \$45,000	\$1,848.00 plus 7.90% of excess over \$30,000
Over \$45,000 but not over \$60,000	\$3,033.00 plus 8.20% of excess over \$45,000

Over \$60,000	\$4,263.00 plus 8.50% of excess over \$60,000]
In the case of any taxable year beginning after December 31, 2001:	
If the taxable income is:	The tax shall be:
Not over \$3,000	1.40% of taxable income
Over \$3,000 but not over \$6,000	\$42.00 plus 3.20% of excess over \$3,000
Over \$6,000 but not over \$12,000	\$138.00 plus 5.50% of excess over \$6,000
Over \$12,000 but not over \$18,000	\$468.00 plus 6.40% of excess over \$12,000
Over \$21,600 ¹ but not over \$24,000	\$852.00 plus 6.80% of excess over \$18,000
Over \$24,000 but not over \$30,000	\$1,260.00 plus 7.20% of excess over \$24,000
Over \$30,000 but not over \$45,000	\$1,692.00 plus 7.60% of excess over \$30,000
Over \$45,000 but not over \$60,000	\$2,832.00 plus 7.90% of excess over \$45,000
Over \$60,000	\$4,017.00 plus 8.25% of excess over \$60,000.

In the case of any taxable year beginning after December 31, 2006:

<u>If the taxable income is:</u>	<u>The tax shall be:</u>
<u>Not over \$3,600</u>	<u>1.40% of taxable income</u>
<u>Over \$3,600 but not over \$7,200</u>	<u>\$50.00 plus 3.20% of excess over \$3,600</u>
<u>Over \$7,200 but not over \$14,400</u>	<u>\$166.00 plus 5.50% of excess over \$7,200</u>
<u>Over \$14,400 but not over \$21,600</u>	<u>\$562.00 plus 6.40% of excess over \$14,400</u>
<u>Over \$21,600 but not over \$28,800</u>	<u>\$1,022.00 plus 6.80% of excess over \$21,600</u>
<u>Over \$28,800 but not over \$36,000</u>	<u>\$1,512.00 plus 7.20% of excess over \$28,000</u>
<u>Over \$36,000 but not over \$54,000</u>	<u>\$2,030.00 plus 7.60% of excess over \$36,000</u>
<u>Over \$54,000 but not over \$72,000</u>	<u>\$3,398.00 plus 7.90% of excess over \$54,000</u>
<u>Over \$72,000</u>	<u>\$4,820.00 plus 8.25% of excess over \$72,000.</u>

(c) There is hereby imposed on the taxable income of (1) every unmarried individual (other than a surviving spouse, or the head of a household) and (2) on the taxable income of every married individual who does not make a single return jointly with the individual's spouse under section 235-93 a tax determined in accordance with the following table:

In the case of any taxable year beginning after December 31, 1998:

<u>If the taxable income is:</u>	<u>The tax shall be:</u>
<u>Not over \$2,000</u>	<u>1.60% of taxable income</u>
<u>Over \$2,000 but not over \$4,000</u>	<u>\$32.00 plus 3.90% of excess over \$2,000</u>
<u>Over \$4,000 but not over \$8,000</u>	<u>\$110.00 plus 6.80% of excess over \$4,000</u>
<u>Over \$8,000 but not over \$12,000</u>	<u>\$382.00 plus 7.20% of excess over \$8,000</u>

Over \$12,000 but not over \$16,000	\$670.00 plus 7.50% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$970.00 plus 7.80% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,282.00 plus 8.20% of excess over \$20,000
Over \$30,000 but not over \$40,000	\$2,102.00 plus 8.50% of excess over \$30,000
Over \$40,000	\$2,952.00 plus 8.75% of excess over \$40,000

In the case of any taxable year beginning after December 31, 2000:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.50% of taxable income
Over \$2,000 but not over \$4,000	\$30.00 plus 3.70% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$104.00 plus 6.40% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$360.00 plus 6.90% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$636.00 plus 7.30% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$928.00 plus 7.60% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,232.00 plus 7.90% of excess over \$20,000
Over \$30,000 but not over \$40,000	\$2,022.00 plus 8.20% of excess over \$30,000
Over \$40,000	\$2,842.00 plus 8.50% of excess over \$40,000]

In the case of any taxable year beginning after December 31, 2001:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.40% of taxable income
Over \$2,000 but not over \$4,000	\$28.00 plus 3.20% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$92.00 plus 5.50% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$312.00 plus 6.40% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$568.00 plus 6.80% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$840.00 plus 7.20% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,128.00 plus 7.60% of excess over \$20,000
Over \$30,000 but not over \$40,000	\$1,888.00 plus 7.90% of excess over \$30,000
Over \$40,000	\$2,678.00 plus 8.25% of excess over \$40,000.

In the case of any taxable year beginning after December 31, 2006:

<u>If the taxable income is:</u>	<u>The tax shall be:</u>
<u>Not over \$2,400</u>	<u>1.40% of taxable income</u>
<u>Over \$2,400 but not over \$4,800</u>	<u>\$34.00 plus 3.20% of excess over \$2,400</u>

<u>Over \$4,800 but not over \$9,600</u>	<u>\$110.00 plus 5.50% of excess over \$4,800</u>
<u>Over \$9,600 but not over \$14,400</u>	<u>\$374.00 plus 6.40% of excess over \$9,600</u>
<u>Over \$14,400 but not over \$19,200</u>	<u>\$682.00 plus 6.80% of excess over \$14,400</u>
<u>Over \$19,200 but not over \$24,000</u>	<u>\$1,008.00 plus 7.20% of excess over \$19,200</u>
<u>Over \$24,000 but not over \$36,000</u>	<u>\$1,354.00 plus 7.60% of excess over \$24,000</u>
<u>Over \$36,000 but not over \$48,000</u>	<u>\$2,266.00 plus 7.90% of excess over \$36,000</u>
<u>Over \$48,000</u>	<u>\$3,214.00 plus 8.25% of excess over \$48,000</u>

(d) The tax imposed by section 235-2.45 on estates and trusts shall be determined in accordance with the following table:

~~In the case of any taxable year beginning after December 31, 1998:~~

If the taxable income is:	The tax shall be:
Not over \$2,000	1.60% of taxable income
Over \$2,000 but not over \$4,000	\$32.00 plus 3.90% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$110.00 plus 6.80% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$382.00 plus 7.20% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$670.00 plus 7.50% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$970.00 plus 7.80% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,282.00 plus 8.20% of excess over \$20,000
Over \$30,000 but not over \$40,000	\$2,102.00 plus 8.50% of excess over \$30,000
Over \$40,000	\$2,952.00 plus 8.75% of excess over \$40,000

In the case of any taxable year beginning after December 31, 2000:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.50% of taxable income
Over \$2,000 but not over \$4,000	\$30.00 plus 3.70% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$104.00 plus 6.40% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$360.00 plus 6.90% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$636.00 plus 7.30% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$928.00 plus 7.60% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,232.00 plus 7.90% of excess over \$20,000
Over \$30,000 but not over \$40,000	\$2,022.00 plus 8.20% of excess over \$30,000
Over \$40,000	\$2,842.00 plus 8.50% of excess over \$40,000]

In the case of any taxable year beginning after December 31, 2001:

If the taxable income is:	The tax shall be:
Not over \$2,000	1.40% of taxable income
Over \$2,000 but not over \$4,000	\$28.00 plus 3.20% of excess over \$2,000
Over \$4,000 but not over \$8,000	\$92.00 plus 5.50% of excess over \$4,000
Over \$8,000 but not over \$12,000	\$312.00 plus 6.40% of excess over \$8,000
Over \$12,000 but not over \$16,000	\$568.00 plus 6.80% of excess over \$12,000
Over \$16,000 but not over \$20,000	\$840.00 plus 7.20% of excess over \$16,000
Over \$20,000 but not over \$30,000	\$1,128.00 plus 7.60% of excess over \$20,000
Over \$30,000 but not over \$40,000	\$1,888.00 plus 7.90% of excess over \$30,000
Over \$40,000	\$2,678.00 plus 8.25% of excess over \$40,000.”

SECTION 4. (a) There shall be allowed to each taxpayer who is not claimed or is not otherwise eligible to be claimed as a dependent by another taxpayer for federal or Hawaii state individual income tax purposes, who files a net income tax return for a taxable year, a one-time nonrefundable flood victim tax credit, except as otherwise provided in this Act. The tax credit shall be deductible from the taxpayer’s net income tax liability imposed by chapter 235.

(b) The amount of the tax credit shall be ten per cent of the amount expended by the taxpayer for costs directly related to the damage directly caused by heavy rain and flooding occurring on the dates specified in subsection (c) to the taxpayer’s real or personal property; provided that:

- (1) The expenses or costs are not reimbursable by insurance proceeds or disaster relief payments from government agencies or non-profit organizations;
- (2) The tax credit shall not exceed \$10,000 per taxpayer; and
- (3) No refund as provided in subsection (f) or payment on account of the tax credit allowed by this Act shall be made for amounts less than \$1.

(c) The tax credit shall apply to a taxpayer who suffered damage to the taxpayer’s real or personal property that is situated in the State, having occurred:

- (1) On October 30 of 2004 in Manoa, Oahu; or
- (2) During February 20 to April 9 of 2006 in Kauai, Hawaii, Maui and Honolulu counties.

(d) To qualify for the income tax credit, the taxpayer shall certify to the department of taxation that the taxpayer is in compliance with all applicable federal, state, and county statutes, rules, and regulations.

(e) To qualify for the income tax credit, the taxpayer shall sign a statement and provide information determined by the department of taxation as necessary to claim the credit under penalties of perjury.

(f) If the tax credit under this section exceeds the taxpayer’s net income tax liability, any excess of the tax credit may be used as a credit against the taxpayer’s income tax liability for the taxable year the credit is claimed; provided that tax credits properly claimed by a taxpayer shall be refunded to the taxpayer after being credited against the taxpayer’s income tax liability for the taxable year, if the taxpayer qualifies under one of the following tests:

(1) All of the taxpayer's income is exempt from taxation under section 235-7(a)(2) or section 235-7(a)(3); or

(2) The taxpayer's adjusted gross income is \$20,000 or less.

(g) In the case of a partnership, S corporation, estate, trust, or association of apartment owners, the tax credit allowable is for expenses incurred and paid for by the entity for the taxable year. The cost upon which the tax credit is computed shall be determined at the entity level.

(h) If a deduction is taken under section 179 (with respect to election to expense certain depreciable business assets) of the Internal Revenue Code of 1986, as amended, no tax credit shall be allowed for that portion of the expenses for which the deduction is taken.

The basis of property shall not be increased by any amount for which the credit is allowable and claimed. In the alternative, the taxpayer shall treat the amount of the credit allowable and claimed as a taxable income item for the taxable year in which it is properly recognized under the method of accounting used to compute taxable income.

(i) No taxpayer who claims the tax credit under this section shall claim any other credit or deduction for the same losses or other expenses or costs.

(j) Every claim, including amended claims, for the tax credit under this section shall be filed on or before December 31, 2007. Failure to meet the filing requirements of this subsection shall constitute a waiver of the right to claim the tax credit.

(k) If at any time after claiming the tax credit, the taxpayer no longer qualifies for the credit because of subsequent recovery for expenses utilized to calculate the credit, the credits claimed shall be recaptured. The recapture shall be equal to one hundred per cent of the tax credits that were subsequently ineligible as a result of later recovery. The amount of the recaptured tax credits shall be added to the taxpayer's tax liability for the taxable year in which the recapture occurs.

(l) In the case of fraud, making of a false statement, or willful disregard for the facts, associated with making a return or otherwise claiming the tax credit, there shall be added to the amount wrongfully claimed on a return a penalty of 50 per cent of the amount of such credit claimed.

(m) The director of taxation shall prepare any forms as may be necessary to claim a tax credit under this section, may require proof of the claim for the tax credit, and may adopt rules without regard to chapter 91 to effectuate the purposes of this section.

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, 2006; provided that section 4 shall apply to taxable years beginning after December 31, 2003, and ending before January 1, 2007.

(Approved May 19, 2006.)

Note

1. Prior to amendment "\$18,000" appeared here.

ACT 111

S.B. NO. 2213

A Bill for an Act Relating to Tort Actions.

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

SECTION 1. Section 663-10.95, Hawaii Revised Statutes, is amended to read as follows:

~~“(a) Any waiver and release, waiver of liability, or indemnity agreement in favor of an owner, lessor, lessee, operator, or promoter of a motorsports facility, which releases or waives any claim by a participant or anyone claiming on behalf of the participant which is signed by the participant in any motorsports or sports event involving motorsports in the State, shall be valid and enforceable against any negligence claim for personal injury of the participant or anyone claiming on behalf of and for the participant against the motorsports facility, or the owner, operator, or promoter of a motorsports facility. The waiver and release shall be valid notwithstanding any claim that the participant did not read, understand, or comprehend the waiver and release, waiver of liability, or indemnity agreement if the waiver or release is signed by both the participant and a witness; provided that a. A waiver and release, waiver of liability, or indemnity agreement executed pursuant to this section shall not be enforceable against the rights of any minor [or the minor’s representative.], unless executed in writing by a parent or legal guardian.~~

(b) The execution of a waiver and release, waiver of liability, or indemnity agreement shall create a presumption that the person signing the document read and understood the document.

~~[(c) For the purposes of this section:~~

~~“Motorsports facility” means land, building, structure, or area designed or modified for motorsports activities including the track and surrounding area wherein a motorsports or other event involving motor vehicles is held and which is clearly demarcated as a restricted area to spectators. “Motorsports facility” shall not include the areas intended for use by spectators or nonparticipants.~~

~~“Owner” means a person or entity which owns or holds fee simple title to, or a leasehold interest in, a motorsports facility or any portion of a motorsports facility, and shall include without limitation, a fee owner or lessor of the underlying land, a lessee, or sublessee, or a sublessor or master lessor, of a motorsports facility or a portion thereof.~~

~~“Participant” means a person who is participating in a motorsports event at a motorsports facility, including practices or trials, as a rider, passenger or driver, official, or owner of a vehicle or equipment used in a motorsports, or anyone assisting any of the foregoing, or a person entering an area of the motorsports facility restricted to participants.]~~

~~[(d)] (c) A waiver and release, waiver of liability, or indemnity agreement executed under this section shall be construed as an express assumption of risk on the part of the party executing such a waiver and release, waiver of liability, or indemnity agreement.~~

~~[(e)] (d) This section shall not apply to acts or omissions constituting gross negligence, wilful and wanton conduct, or intentional acts on the part of another participant or employees or agents of the motorsports facility.~~

~~[(f)] (e) The provisions of this section shall not apply to any motorsports facility unless the facility has a general liability policy of no less than \$1,000,000 for spectators and no less than \$500,000 for participants, per claim, indemnifying participants and spectators for the negligence of the facility, its employees or agents.~~

(f) Without regard to whether a waiver and release, waiver of liability, or indemnity agreement has been executed pursuant to subsection (a) and without regard to subsection (e), no public entity or public employee shall be liable to a participant, for injury or damage sustained during the person’s use of a motorsports facility, except when the injury or damage is caused by a condition resulting from the public entity’s failure to design, maintain, or repair the motorsports facility. This limitation of liability for public entities and employees applies only to the provision of motorsports facilities and shall not extend to other activities, including but not

limited to police and security, ambulance and medical, fire, food concessions, and other non-motorsports activities or functions.

(g) For the purposes of this section:

“Motorsports facility” means land, building, structure, or area designed or modified for motorsports activities, including the track and surrounding area wherein a motorsports or other event involving motor vehicles is held and which is clearly demarcated as a restricted area to spectators. “Motorsports facility” shall not include the areas intended for use by spectators or nonparticipants.

“Owner” means a person or entity that owns or holds fee simple title to, or a leasehold interest in, a motorsports facility or any portion of a motorsports facility, and shall include without limitation, a fee owner or lessor of the underlying land, a lessee, or sublessee, or a sublessor or master lessor, of a motorsports facility or a portion thereof.

“Participant” means a person who is participating in a motorsports event at a motorsports facility, including practices or trials, as a rider, passenger or driver, official, or owner of a vehicle or equipment used in a motorsports event, or anyone assisting any of the foregoing, or a person entering an area of the motorsports facility restricted to participants.”

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, 2006.)

ACT 112

H.B. NO. 237

A Bill for an Act Relating to Torts.

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

SECTION 1. Section 663-10.5, Hawaii Revised Statutes, is amended to read as follows:

“§663-10.5 Government entity as a tortfeasor; abolition of joint and several liability. [Notwithstanding] Any other law to the contrary notwithstanding, including but not limited to sections 663-10.9, 663-11 to 663-13, 663-16, 663-17, and [section] 663-31, in any case where a government entity is determined to be a tortfeasor along with one or more other tortfeasors, the government entity shall be liable for no more than that percentage share of the damages attributable to the government entity[-]; provided that joint and several liability shall be retained for tort claims relating to the maintenance and design of highways pursuant to section 663-10.9.

For purposes of this section, “government entity” means any unit of government in this State, including the State and any county or combination of counties, department, agency, institution, board, commission, district, council, bureau, office, governing authority, or other instrumentality of state or county government, or corporation or other establishment owned, operated, or managed by or on behalf of this State or any county.

For purposes of this section, the liability of a government entity shall include its vicarious liability for the acts or omissions of its officers and employees.”

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 and its provisions shall apply retroactively to the extent permitted by law.

(Approved May 19, 2006.)

ACT 113

H.B. NO. 2987

A Bill for an Act Relating to the Issuance of Special Purpose Revenue Bonds for Saint Louis 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 health, safety, and general welfare.

Saint Louis School is the successor of the College of Ahuimanu in Windward Oahu, established in 1846 by the Catholic Missions under the direction of the Fathers of the Sacred Hearts of Jesus and Mary. In 1881, the school moved to its second location on Beretania Street, adjoining Washington Place. The name, "College of St. Louis," was given to the institution in honor of Bishop Louis Maigret's patron saint. Classes began at the school's present location at Kalaepohaku in 1928.

The mission of Saint Louis School is to educate and challenge students of various religious, ethnic, and economic backgrounds to achieve a quality education and become gentlemen of character, reaching individual potential through the Catholic Marianist tradition of spiritual, academic, physical, and emotional maturity.

The proposed expansion or improvement of Saint Louis School that may be supported by the issuance of special purpose revenue bonds includes approximately:

- (1) \$4,250,000 for the renovation of Hale Hoaloha to house the grade school classrooms;
- (2) \$2,500,000 to remodel and update the current facilities;
- (3) \$5,500,000 to build the Clarence T. C. Ching Fine Arts Complex; and
- (4) \$2,750,000 for an administration or classroom building.

The purpose of this Act is to authorize the issuance of special purpose revenue bonds for Saint Louis School to finance or refinance the planning, acquisition, construction, and improvement of its educational facilities.

SECTION 2. Pursuant to part VIII, chapter 39A, Hawaii Revised Statutes, the department of budget and finance, with the approval of the governor, is authorized to issue special purpose revenue bonds in a total amount not to exceed \$15,000,000, in one or more series, for the purpose of assisting Saint Louis School, a Hawaii not-for-profit corporation, to finance and refinance the planning, construction, and improvement of its educational facilities in the State. The legislature finds and determines that the planning, acquisition, construction, and improvement of the facilities of Saint Louis School constitute a project as defined in part VIII, chapter 39A, Hawaii Revised Statutes, and the financing thereof is assistance to not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities that serve 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 VIII,

chapter 39A, Hawaii Revised Statutes, 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 part VIII, chapter 39A, Hawaii Revised Statutes, 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 part VIII, chapter 39A, Hawaii Revised Statutes, 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 authorized, from time to time, including times subsequent to June 30, 2011, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund 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 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2011.

SECTION 7. This Act shall take effect on July 1, 2006.

(Approved May 19, 2006.)

ACT 114

H.B. NO. 2713

A Bill for an Act Relating to Special Purpose Revenue Bonds for Kawaiahao 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 health, safety, and general welfare.

SECTION 2. Pursuant to part VIII, 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 \$6,000,000, in one or more series, for the purpose of assisting Kawaiahao School, a Hawaii not-for-profit corporation, to finance the planning, construction, and improvement of its educational facilities in the State of Hawaii. The legislature hereby finds and determines that the planning, construction, and improvement of the facilities of Kawaiahao School constitute a project as defined in part VIII, chapter

39A, Hawaii Revised Statutes, and the financing thereof is assistance to a not-for-profit private elementary school serving 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 VIII, chapter 39A, Hawaii Revised Statutes, 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 serving 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 part VIII, chapter 39A, Hawaii Revised Statutes, 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 part VIII, chapter 39A, Hawaii Revised Statutes, 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 authorized, from time to time, including times subsequent to June 30, 2011, to issue special purpose revenue bonds in whatever principal amounts the department shall determine to be necessary to refund the special purpose revenue bonds authorized in section 2 and to refund 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 6. The authorization to issue special purpose revenue bonds under this Act shall lapse on June 30, 2011.

SECTION 7. This Act shall take effect on July 1, 2006.

(Approved May 19, 2006.)

ACT 115

S.B. NO. 2214

A Bill for an Act Relating to Disaster Preparedness.

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

PART I
MAJOR DISASTER FUND

SECTION 1. Section 127-11, Hawaii Revised Statutes, is amended to read as follows:

“§127-11 Major disaster fund. The director shall submit requests to the legislature to appropriate from the general revenues of the State sufficient moneys as

may be necessary for expenditure by or under the direction of the governor for immediate relief in the event of the occurrence of any major disaster in any part of the State; provided that:

- (1) The governor may not expend in excess of [~~\$1,000,000~~] \$2,000,000 for immediate relief of any single major disaster[~~;~~ and] or emergency; and
- (2) [~~Provided further that in~~] In addition to the funds in paragraph (1), an additional [~~\$1,000,000~~] \$2,000,000 shall be available solely for the purpose of matching federal disaster relief funds when these funds become available following a presidential disaster declaration.

In expending the moneys, the governor may allot any portion thereof to any agency, office, or employee, federal, state, or county, for the more speedy and efficient relief of the conditions created by the disasters. The governor may determine whether a major disaster contemplated by this section has occurred[~~, and any determination shall be conclusive~~].'

PART II

SECTION 2. There is appropriated out of interest derived from the hurricane reserve trust fund the sum of \$4,500,000, or so much thereof as may be necessary for fiscal year 2006-2007, for disaster preparedness, as follows:

- | | |
|---|-------------|
| (1) Purchasing or improving early warning systems | \$1,000,000 |
| (2) Public education programs on disaster preparedness | \$ 250,000 |
| (3) Loss mitigation or reduction efforts or programs, including but not limited to deposits to the loss mitigation grant fund under section 431:22-102, Hawaii Revised Statutes | \$2,000,000 |
| (4) Updating tsunami inundation and evacuation maps in phone books | \$ 250,000 |
| (5) Establishing and maintaining an emergency supply cache to provide immediate relief in the case of a disaster or emergency | \$1,000,000 |

The sums appropriated shall be expended by the department of defense for the purposes of this Act; provided that the appropriation for the loss mitigation or reduction efforts or programs, including but not limited to, deposits to the loss mitigation grant fund under section 431:22-102, Hawaii Revised Statutes, shall be expended by the department of commerce and consumer affairs.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2006-2007, for providing around-the-clock alert staff for the civil defense division of the department of defense, including salaries and overtime costs.

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

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, as grant pursuant to chapter 42F, Hawaii Revised Statutes, to the American Red Cross to allow it to assist residents of the State in times of disaster.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000, or so much thereof as may be necessary for fiscal

ACT 116

year 2006-2007, as grant pursuant to chapter 42F, Hawaii Revised Statutes, to the Queen's Medical Center for an emergency backup electrical system.

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 6. All appropriations made under this Act shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all moneys from the appropriation unencumbered as of June 30, 2008, shall lapse as of that date.

PART III

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

SECTION 8. This Act shall take effect on July 1, 2006.

(Approved May 22, 2006.)

ACT 116

H.B. NO. 2343

A Bill for an Act Relating to the Penal Code.

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

SECTION 1. Throughout history, victims of emergencies or disasters have often become victimized a second time by opportunists who engage in civil unrest, looting, and other crimes. Most recently, the world had a front-row seat to wide spread criminal activity and looting following Hurricane Katrina.

The legislature recognizes that if strong measures to control law and order are not in place before a disaster or emergency, civil unrest and looting and other crimes are likely to increase after a disaster or emergency. The legislature also recognizes that preventive measures require fewer resources than those required to restore and rebuild.

The legislature also finds that when resources are needed to restore law and order, emergency response aid to victims is hampered and delayed, leaving victims at an increased risk of bodily injury or death.

The legislature finds that every effort should be made to protect the health and safety of the public by preventing civil unrest and looting and other crimes before they occur and that severe penalties will deter the majority of these crimes of opportunity.

The purpose of this Act is to significantly increase the criminal penalties for the commission of certain crimes during a time of civil defense emergency proclaimed by the governor under chapter 128, Hawaii Revised Statutes, or during the period of disaster relief under chapter 127, Hawaii Revised Statutes.

SECTION 2. Chapter 707, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§707- Assault against an emergency worker. (1) A person commits the offense of assault against an emergency worker if the person, during the time of a civil defense emergency proclaimed by the governor pursuant to chapter 128, within the area covered by the civil defense emergency or during the period of disaster relief under chapter 127:

- (a) Intentionally, knowingly, or recklessly causes serious or substantial bodily injury to an emergency worker; or
 - (b) Intentionally, knowingly, or recklessly causes bodily injury to an emergency worker with a dangerous instrument.
- (2) Assault against an emergency worker is a class B felony.”

SECTION 3. Chapter 708, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§708- Burglary of a dwelling during a civil defense emergency or disaster relief period. (1) A person commits the offense of burglary of a dwelling during a civil defense emergency or disaster relief period if the person:

- (a) Intentionally enters or remains unlawfully in a dwelling with intent to commit therein a crime against a person or against property rights; and
- (b) Recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling,

during the time of a civil defense emergency proclaimed by the governor pursuant to chapter 128, within the area covered by the civil defense emergency or during the period of disaster relief under chapter 127.

(2) Burglary of a dwelling during a civil defense emergency or disaster relief period is a class A felony.

§708- Burglary of a building during a civil defense emergency or disaster relief period. (1) A person commits the offense of burglary of a building during a civil defense emergency or disaster relief period if the person intentionally enters or remains unlawfully in a building other than a dwelling with intent to commit therein a crime against a person or against property rights during the time of a civil defense emergency proclaimed by the governor pursuant to chapter 128, within the area covered by the civil defense emergency or during the period of disaster relief under chapter 127.

(2) Burglary of a building during a civil defense emergency or disaster relief period is a class B felony.”

SECTION 4. Section 707-700, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Emergency worker” means any:

- (1) Law enforcement officer, including but not limited to any police officer, public safety officer, parole or probation officer, or any other officer of any county, state, federal, or military agency authorized to exercise law enforcement or police powers;
- (2) Firefighter, emergency medical services personnel, emergency medical technician, ambulance crewmember, or any other emergency response personnel;
- (3) Member of the Hawaii national guard on any duty or service done under or in pursuance of an order or call of the governor or the President of the United States or any proper authority;
- (4) Member of the United States Army, Air Force, Navy, Marines, or Coast Guard on any duty or service done under or in pursuance of an order or call of the President of the United States or any proper authority;
- (5) Member of the national guard from any other state ordered into service by any proper authority;
- (6) Person engaged in civil defense functions as authorized by the director of civil defense or as otherwise authorized under chapter 128; or

- (7) Person engaged in disaster relief by authorization of the director of disaster relief or as otherwise authorized under chapter 127.”

SECTION 5. Section 708-820, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(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[-];
- or
- (c) The person intentionally or knowingly damages the property of another during the time of a civil defense emergency proclaimed by the governor pursuant to chapter 128, within the area covered by the civil defense emergency or during the period of disaster relief under chapter 127.”

SECTION 6. Section 708-830.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of theft in the first degree if the person commits theft:

- (a) Of property or services, the value of which exceeds \$20,000;
- (b) Of a firearm; [or]
- (c) Of dynamite or other explosive[-]; or
- (d) Of property or services during the time of a civil defense emergency proclaimed by the governor pursuant to chapter 128, within the area covered by the civil defense emergency or during the period of disaster relief under chapter 127, the value of which exceeds \$300.”

SECTION 7. Section 708-840, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of robbery in the first degree if, in the course of committing theft:

- (a) The person attempts to kill another, or intentionally or knowingly inflicts or attempts to inflict serious bodily injury upon another; [or]
- (b) The person is armed with a dangerous instrument and:
 - (i) The person uses force against the person of anyone present with intent to overcome that person’s physical resistance or physical power of resistance; or
 - (ii) The person threatens the imminent use of force against the person of anyone [who-is] present with intent to compel acquiescence to the taking of or escaping with the property[-];
- (c) The person uses force against the person of anyone present with the intent to overcome that person’s physical resistance or physical power of resistance during the time of a civil defense emergency proclaimed by the governor pursuant to chapter 128, within the area covered by the civil defense emergency or during the period of disaster relief under chapter 127; or
- (d) The person threatens the imminent use of force against the person of anyone present with intent to compel acquiescence to the taking of or

escaping with the property during the time of a civil defense emergency proclaimed by the governor pursuant to chapter 128, within the area covered by the civil defense emergency or during the period of disaster relief under chapter 127.”

SECTION 8. This Act does not affect rights and duties that were 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 May 22, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 117

H.B. NO. 3121

A Bill for an Act Relating to Civil Defense.

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

SECTION 1. The legislature finds that pets enrich our lives in more ways than we sometimes realize. In turn, they depend on us for their safety and well-being. In times of natural disaster, both humans and animals, particularly pet animals, are in danger of loss of life or serious injury. However, the legislature finds that, during an emergency period, most emergency shelters will not accept pet animals due to public health concerns.

The legislature is concerned with the welfare of pet animals during emergencies; however, of equal concern is the fact that many pet owners, worried about their pets' safety, may be dissuaded or delayed in seeking proper shelter in these emergencies. As recent events have shown, many pet owners would put themselves in harm's way rather than abandon their pets.

The purpose of this Act is to require the director of civil defense and organizations under the direction of the director that operate and maintain emergency shelters during emergency periods, subject to the public's health and safety, to make suitable arrangements and accommodations to provide shelter to pet animals.

SECTION 2. Chapter 128, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§128- Public shelters; accommodation of pet animals. (a) The governor shall prescribe rules, pursuant to section 128-27, for the purpose of establishing criteria, requirements, conditions, and limitations for providing suitable arrangements and accommodations for the sheltering of pet animals in public shelters under this chapter.

(b) The director of civil defense shall identify, in coordination with other organizations engaged in civil defense functions relating to providing shelter, or the management or operation of a public shelter under this chapter, those public shelters that are suitable for the sheltering of pet animals.

(c) The director may also identify, in coordination with private owners, operators, or controllers of real property, private shelters that are suitable for the sheltering of pet animals; provided that any private shelter so identified shall not be subject to the rules prescribed by the governor for the operation of a public shelter that has been identified for the sheltering of pet animals pursuant to subsection (b).

(d) A public shelter identified for the sheltering of pet animals pursuant to subsection (b) need not be subject to the criteria developed pursuant to section 5 of Act 5, Special Session Laws of Hawaii 2005, unless the particular shelter has been specifically identified as a shelter for both pet animals and the public.

(e) For purposes of this section, "pet animal" shall have the same meaning as defined in section 711-1100."

SECTION 3. New statutory material is underscored.¹

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

(Approved May 22, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 118

H.B. NO. 970

A Bill for an Act Relating to Emergency Relief for Natural Disasters.

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 Hawaii State Constitution.

SECTION 2. The purpose of this Act is to appropriate funds to:

- (1) Cover the costs of recovery and remediation efforts as a result of storms that have occurred in February and March 2006;
- (2) Stabilize and repair storm-damaged slopes, drainage ways, and drainage systems to restore functionality and prevent future damage;
- (3) Hire consultants to:
 - (a) Determine the structural integrity of dams and reservoirs statewide;
 - (b) Assess potential immediate risks; and
 - (c) Recommend long-term plans to ensure dam safety; and
- (4) Investigate and review legal issues related to dam and reservoir failures, issues relating to the safety of dam and reservoir failures, and issues relating to the safety of existing dams and reservoirs.

The legislature finds and declares that the appropriations under this Act are in the public interest and for the public health, safety, and general welfare of the state.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2005-2006 for staff expenses and to hire consultants to assess the impact existing dams and reservoirs have on agricultural operations and the impact if existing dams and reservoirs were removed.

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

SECTION 4. There is appropriated out of the emergency 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 2005-2006 to improve and restore, which includes the planning and design of, the Kailua reservoir and dam as a flood mitigation device in Waimanalo, Oahu.

The department of agriculture shall also consult with property owners in the vicinity of the reservoir prior to commencing and during work on the reservoir.

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

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2005-2006 for overtime, travel and other staff expenses, and to hire consultants and experts to review legal issues related to dam and reservoir failures, and issues relating to the safety of existing dams and reservoirs. Funds may also be used for expenses related to possible litigation concerning dam and reservoir failures.

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

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2005-2006 to cover operational expenses associated with storm recovery efforts, including but not limited to:

- (1) State civil defense twenty-four-hour emergency operations center overtime costs expended by civil defense workers;
- (2) Contractors that are helping to pump reservoirs to maintain safer water levels;
- (3) National guard personnel on state active-duty status; and
- (4) Blackhawk helicopter operating expenses.

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

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2005-2006 for staff expenses and to hire consultants to conduct surveys, studies, and assessments of private and government-owned dams and reservoirs statewide to determine their current physical integrity. Assessments shall include recommendations for future structural needs and identification of potential effects or threats to areas around and downstream of the dams and reservoirs.

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

SECTION 8. There is appropriated out of the emergency budget reserve fund of the State of Hawaii the sum of \$4,375,000 or so much thereof as may be necessary and the same sum or so much thereof as may be necessary for fiscal year 2005-2006 for the planning, designing, and constructing of roadways and slope stabilization measures along Round Top Drive, Oahu, and within Maunaloa Valley, Oahu.

The work on this project includes:

- (1) Installation of drainage systems;
- (2) Installation of retaining walls;
- (3) Grading;
- (4) Removal of sediment and debris; and
- (5) Installation of other soil stabilization measures and other related work.

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

SECTION 9. There is appropriated out of the emergency budget reserve fund of the State of Hawaii the sum of \$3,000,000 or so much thereof as may be necessary and the same sum or so much thereof as may be necessary for fiscal year 2005-2006 for the planning, designing, and constructing of slope stabilization measures, within and adjacent to forest reserve areas of Round Top Drive, Oahu, in the Tantalus and Manoa Valley areas.

The work on this project includes:

- (1) Installation of drainage systems;
- (2) Installation of retaining walls;
- (3) Grading;
- (4) Removal of sediment and debris; and
- (5) Installation of other soil stabilization measures and other related work.

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

SECTION 10. There is appropriated out of the emergency budget reserve fund of the State of Hawaii the sum of \$3,000,000 or so much thereof as may be necessary and the same sum or so much thereof as may be necessary for fiscal year 2005-2006 for the planning, designing, and constructing of slope stabilization measures along a portion of Round Top Drive, Oahu, above Puuhonua Street in Manoa Valley.

The work on this project includes:

- (1) Installation of drainage systems;
- (2) Installation of retaining walls;
- (3) Grading;
- (4) Removal of sediment and debris; and
- (5) Installation of other soil stabilization measures and other related work.

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 general revenues of the State of Hawaii the sum of \$1,275,000 or so much thereof as may be necessary for fiscal year 2005-2006 for the engineering division to hire consultants and contractors to assess, respond to, and clean up storm damage, and to reimburse the United States Army Corps of Engineers and United States Geological Survey for work performed and equipment used in dam inspections.

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 general revenues of the State of Hawaii the sum of \$260,750 or so much thereof as may be necessary for fiscal year 2005-2006 to the division of forestry and wildlife for staff and operating expenses and to hire consultants and contractors to assess, respond to, and clean up and repair storm damage, and to undertake storm-related landslide, rockfall, and hazard tree mitigation measures on forestry land.

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 general revenues of the State of Hawaii the sum of \$1,346,500 or so much thereof as may be necessary for fiscal year 2005-2006 to the division of state parks for staff and operating expenses and to

hire consultants and contractors to assess, respond to, and clean up and repair storm damage, and to undertake rock fall mitigation measures on state park lands.

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

SECTION 14. There is appropriated out of the emergency budget reserve fund of the State of Hawaii the sum of \$155,207 or so much thereof as may be necessary for fiscal year 2005-2006 to the division of boating and ocean recreation for staff and operating expenses and to hire contractors to respond to, clean up, and repair storm damage at small boat harbors, and to clean up the Ala Wai Canal, Oahu.

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 emergency budget reserve fund of the State of Hawaii the sum of \$1,200,000 or so much thereof as may be necessary and the same sum or so much thereof as may be necessary for the planning, designing, constructing, and dredging of the channel and entrance leading to Wailoa small boat harbor, Hawaii.

The work for this project includes:

- (1) Dredging;
- (2) Disposal of sediments; and
- (3) Other related work.

The sums appropriated shall be expended by the department of land and natural resources.

SECTION 16. There is appropriated out of the emergency budget reserve fund of the State of Hawaii the sum of \$750,000 or so much thereof as may be necessary and the same sum or so much thereof as may be necessary for the planning, designing, constructing, and dredging of the canal, upstream and fronting Waikea boat ramp, Kauai.

The work for this project includes:

- (1) Dredging;
- (2) Disposal of sediments; and
- (3) Other related work.

The sums appropriated shall be expended by the department of land and natural resources.

SECTION 17. There is appropriated out of the general revenues of the State of Hawaii the sum of \$115,800 or so much thereof as may be necessary for fiscal year 2005-2006 to the division of conservation and resource enforcement for staff and operating expenses to respond to the storm, and to replace a damaged radio repeater on the island of Kauai.

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

SECTION 18. There is appropriated out of the state highway fund the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2005-2006 in TRN 501 – Oahu highways for expenses, including but not limited to staff and operating expenses and maintenance expenditures resulting from storm damage on Oahu.

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

SECTION 19. There is appropriated out of the state highway fund the sum of \$3,500,000 or so much thereof as may be necessary for fiscal year 2005-2006 in

TRN 561 – Kauai highways for expenses, including but not limited to staff and operating expenses and maintenance expenditures resulting from storm damage on Kauai.

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

SECTION 20. There is appropriated out of the state highway fund (TRN 501) the sum of \$15,500,000 or so much thereof as may be necessary for fiscal year 2005-2006 and appropriated out of federal funds the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2005-2006 for the design, land acquisition, and construction for remediation of eroded portions along various state routes on Oahu caused by storm damage.

The work on this project includes but is not limited to:

- (1) Installing temporary and permanent erosion control measures;
- (2) Restoring roadways, shoulders, and utility improvements;
- (3) Installing guardrails;
- (4) Installing slope and shoulder stabilization measures;
- (5) Installing retaining walls; and
- (6) Upgrading drainage structures.

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

SECTION 21. There is appropriated out of the state highway fund (TRN 501) the sum of \$12,500,000 or so much thereof as may be necessary for fiscal year 2005-2006 and appropriated out of federal funds the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2005-2006 for the design, land acquisition, and construction for remediation of eroded portions along various state routes on Kauai caused by storm damage.

The work on this project includes but is not limited to:

- (1) Installing temporary and permanent erosion control measures;
- (2) Restoring roadways, shoulders, and utility improvements;
- (3) Installing guardrails;
- (4) Installing slope and shoulder stabilization measures;
- (5) Installing retaining walls; and
- (6) Upgrading drainage structures.

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

SECTION 22. There is appropriated out of the emergency budget reserve fund of the State of Hawaii the sum of \$5,000,000 or so much thereof as may be necessary for fiscal year 2005-2006 for improvements in Kuahea Street in Palolo Valley to reconstruct a concrete roadway that buckled, repair damaged underground utilities, and stabilize slopes.

The sum appropriated shall be expended by the city and county of Honolulu for the purposes of this Act.

SECTION 23. The governor shall report to the legislature on the status of the emergency budget reserve fund no later than July 15, 2006, January 15, 2007, and July 15, 2007.

SECTION 24. Each department or agency expending funds authorized by this Act shall submit reports to the legislature no later than July 15, 2006, January 15, 2007, and July 15, 2007. The information contained in the reports shall:

- (1) Be organized by county;

- (2) Provide summaries of expenditure data on a statewide basis; and
- (3) Include:
 - (A) The date of each expenditure;
 - (B) The purpose and a description of each expenditure;
 - (C) The identification of any recipient of payments from each expenditure; and
 - (D) For funds not authorized by this Act but nevertheless used by any department or agency for the purposes of this Act:
 - (i) The source of those funds, by specific program;
 - (ii) The impact to the programs originally funded by those funds; and
 - (iii) The need for any emergency appropriations that resulted from the diversion of those funds.

SECTION 25. The reports required from the department of land and natural resources under section 24 of this Act shall also contain progress reports that include:

- (1) A list of dams for which inspections have been completed;
- (2) A list of dams that are currently in the process of being inspected; and
- (3) A list of dams that have not yet been inspected.

SECTION 26. Any provision of this Act to the contrary notwithstanding, the appropriations authorized under this Act shall not lapse at the end of the fiscal year for which the appropriations were made. All unexpended and unencumbered balances of the appropriations made in this Act as of the close of business on June 30, 2007, shall lapse.

SECTION 27. This Act shall take effect upon its approval.

(Approved May 22, 2006.)

ACT 119

S.B. NO. 3051

A Bill for an Act Relating to County Fiscal Administration.

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

SECTION 1. Section 46-41, Hawaii Revised Statutes, is amended to read as follows:

“§46-41 Budgets; financial records on fiscal year basis. Except as otherwise provided in this chapter, all counties shall maintain accounting and financial records on a fiscal year basis, beginning on July 1 or another day of [one] a calendar year and ending on [June 30] the appropriate day of the next succeeding calendar year. Counties may prepare a budget for a one- or two-year period; provided that accounting and financial records are maintained on a fiscal year basis as described above.”

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 and shall apply to fiscal years beginning after December 31, 2005.

(Approved May 23, 2006.)

A Bill for an Act Relating to the Judiciary.

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

SECTION 1. This Act shall be known and may be cited as the Judiciary Supplemental Appropriations Act of 2006.

SECTION 2. Act 110, Session Laws of Hawaii 2005, is amended by amending part II to read as follows:

“PART II. PROGRAM APPROPRIATIONS

SECTION 3. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are appropriated or authorized from the sources of funding specified to the judiciary for the fiscal biennium beginning July 1, 2005, and ending June 30, 2007. 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 2005-06	M O F	FISCAL YEAR 2006-07	M O F
The Judicial System							
1.	JUD101	COURTS OF APPEAL			76.00*	[—76.00*]	
	OPERATING		JUD	6,294,630A		79.00*	[6,344,855A]
			JUD	243,261W		6,429,114A	6,429,114A
						243,261W	
2.	JUD310	FIRST JUDICIAL CIRCUIT			1,054.50*	[—1,054.50*]	
	OPERATING		JUD	63,038,216A		1,060.50*	[63,217,182A]
			JUD	35.00*		64,703,300A	64,703,300A
			JUD	3,386,016B		35.00*	35.00*
						3,386,016B	3,386,016B
3.	JUD320	SECOND JUDICIAL CIRCUIT			205.00*	[—205.00*]	
	OPERATING		JUD	13,267,672A		208.00*	[13,199,107A]
						13,442,059A	13,442,059A
4.	JUD330	THIRD JUDICIAL CIRCUIT			206.00*	[—206.00*]	
	OPERATING		JUD	15,151,926A		209.00*	[15,164,016A]
						15,339,176A	15,339,176A

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
5.	JUD350	FIFTH JUDICIAL CIRCUIT			94.00*		[-94.00*] 98.00*
	OPERATING		JUD	5,949,863A			[6,159,463A] 6,498,998A
6.	JUD601	ADMINISTRATION			214.00*		[-214.00*] 218.00*
	OPERATING		JUD	18,645,539A			[18,013,340A] 19,839,234A
			JUD	1.00*			1.00*
	INVESTMENT CAPITAL		JUD	5,550,000B			5,550,000B
			JUD	95,500,000C			[-----E] 14,000,000C'

SECTION 3. Part III, Act 110, Session Laws of Hawaii 2005, is amended:

(1) By adding a new section to read as follows:

“SECTION 7.1. Provided that of the general fund appropriation for the first judicial circuit (JUD 310), the sum of \$1,215,046 or so much thereof as may be necessary for fiscal year 2006-2007 shall be expended by the judiciary for the probation modification project; 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 judiciary shall submit a detailed report that shall include an analysis of the effectiveness of the project; and provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(2) By adding a new section to read as follows:

“SECTION 7.2. Provided that of the general fund appropriation for administration (JUD 601), the sum of \$32,000 or so much thereof as may be necessary for fiscal year 2006-2007 shall be expended by the judiciary for training technical staff on its human resources management system; 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.”

(3) By adding a new section to read as follows:

“SECTION 7.3. Provided that of the general fund appropriation for administration (JUD 601), the sum of \$158,329, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the judiciary for the court interpreter certification program; 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 judiciary shall submit a detailed report that shall include, but not be limited to, a detailed breakdown of expenditures, the number of interpreters certified, and a review of the effectiveness of 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 2007 regular session.”

SECTION 4. Act 110, Session Laws of Hawaii 2005, is amended by amending part IV to read as follows:

“PART IV. CAPITAL IMPROVEMENT PROJECTS

SECTION 8. The sum of [~~\$95,500,000~~] \$109,500,000 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 is in thousands of dollars.

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F

The Judicial System

JUD601 - ADMINISTRATION

1. KAPOLEI JUDICIARY COMPLEX, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW JUDICIARY COMPLEX AT KAPOLEI, OAHU.

DESIGN		1,000	
CONSTRUCTION		85,000	
EQUIPMENT		9,000	
TOTAL FUNDING	JUD	95,000C	C]

1. KAPOLEI JUDICIARY COMPLEX, OAHU

LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW JUDICIARY COMPLEX AT KAPOLEI, OAHU.

LAND			6,000
DESIGN		1,000	
CONSTRUCTION		85,000	
EQUIPMENT		9,000	
TOTAL FUNDING	JUD	95,000C	6,000C

2. DOMESTIC VIOLENCE CLEARINGHOUSE AND LEGAL HOTLINE, OAHU

LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ACQUISITION AND RENOVATION OF ADDITIONAL OFFICE SPACE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

LAND		1	
DESIGN		1	
CONSTRUCTION		497	
EQUIPMENT		1	
TOTAL FUNDING	JUD	500C	C]

2. DOMESTIC VIOLENCE CLEARINGHOUSE AND LEGAL HOTLINE, OAHU

LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ACQUISITION AND

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		<u>RENOVATION OF OFFICE SPACE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.</u>					
		LAND				1	
		DESIGN				1	
		CONSTRUCTION				497	
		EQUIPMENT				1	
		TOTAL FUNDING	JUD			500	C
2.01.		<u>HILO JUDICIARY COMPLEX, HAWAII</u>					
		<u>DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW JUDICIARY COMPLEX IN HILO, HAWAII.</u>					
		DESIGN					250
		CONSTRUCTION					5,000
		EQUIPMENT					750
		TOTAL FUNDING	JUD			C	6,000
2.02.		<u>MASTER PLANNING FOR JUDICIARY FACILITIES, STATEWIDE</u>					
		<u>PLANS, LAND ACQUISITION, AND DESIGN FOR MASTER PLANNING FOR CAPITAL IMPROVEMENTS AND OTHER PHYSICAL FACILITIES-RELATED PROJECTS FOR THE JUDICIARY, STATEWIDE.</u>					
		PLANS					498
		LAND					1
		DESIGN					1
		TOTAL FUNDING	JUD			C	500
2.03.		<u>LUMP SUM CIP - RENOVATIONS, REPAIRS, AND IMPROVEMENTS TO JUDICIARY FACILITIES, STATEWIDE</u>					
		<u>PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATIONS, REPAIRS, AND IMPROVEMENTS TO JUDICIARY FACILITIES.</u>					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					997
		EQUIPMENT					1
		TOTAL FUNDING	JUD			C	1,000
2.04.		<u>CHILD AND FAMILY SERVICE, OAHU</u>					
		<u>CONSTRUCTION OF AN EMERGENCY AND TRANSITIONAL HOUSING COMPLEX FOR ABUSED FAMILIES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.</u>					
		CONSTRUCTION					500
		TOTAL FUNDING	JUD			C	500

SECTION 5. Part V, Act 110, Session Laws of Hawaii 2005, is amended:
 (1) By amending section 9 to read as follows:

“SECTION 9. 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

ACT 121

and listed in part IV of this Act; provided that the sum total of the general obligation bonds so issued shall not exceed [~~\$95,500,000~~] \$109,500,000.”

(2) By adding a new section to read as follows:

“SECTION 9.1. Any law to the contrary notwithstanding, the appropriations under Act 1, Special Session Laws of Hawaii 2001, section 14, as amended and renumbered by Act 91, Session Laws of Hawaii 2002, Section 4, in the amount indicated or balances thereof, allotted, encumbered, and unrequired, is hereby lapsed:

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>JUD 601-11A</u>	<u>\$350,000 C</u>
<u>JUD 601-11C</u>	<u>45,000 C</u>
<u>JUD 601-11J</u>	<u>98,000 C</u>
<u>JUD 601-11L</u>	<u>17,000 C</u> ”

SECTION 6. 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 7. 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 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, 2006.

(Approved May 23, 2006.)

ACT 121

H.B. NO. 1879

A Bill for an Act Relating to Veterans.

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

SECTION 1. The legislature finds that a reliable and effective method of communicating important information to Hawaii’s military veterans and their families is essential. Without the current veterans’ newsletter, veterans from all branches of the military would lack important information regarding available outreach services, upcoming veteran-related events in the community, and the dates of various military ceremonies for veterans and their families.

Presently, the office of veterans’ services, located within the state department of defense, only possesses funding to publish the newsletter until June 2006. Without additional funding, the office of veterans’ services will be unable to continue to disseminate this important informational publication to all military veterans and their families.

The purpose of this Act is to appropriate funds for the office of veterans’ services to publish and mail its quarterly Hawaii veterans’ newsletter.

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 2006-2007 to publish the Hawaii veterans' newsletter.

The sum appropriated shall be expended by the office of veterans' services for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved May 23, 2006.)

ACT 122

H.B. NO. 3217

A Bill for an Act Relating to Kupuna Recognition Day.

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

SECTION 1. Chapter 8, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§8- Kupuna Recognition Day. The fourth Saturday of July shall be known and designated as Kupuna Recognition Day, in recognition of the very significant role that kupuna play in Hawaii's culture, history, and traditions. This day is not and shall not be construed as a state holiday.”

SECTION 2. New statutory material is underscored.¹

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

(Approved May 23, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 123

H.B. NO. 2399

A Bill for an Act Relating to Inter-Island Ferry Service.

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

SECTION 1. Section 200-9, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding any limitations on commercial permits for [~~Lahaina and Maalaea~~] Maui county small boat [~~harbors;~~] facilities, vessels engaging in inter-island ferry service [~~between the islands of Maui and Molokai~~] within Maui county shall be afforded preferential consideration for [~~both~~] ferry landings [~~and other commercial purposes~~], including the issuance of a commercial operating permit and the waiver of any applicable fees, at [~~Lahaina and Maalaea~~] Maui county small boat [~~harbors;~~] facilities; provided that:

- (1) The vessel operator has been issued a certificate of public convenience and necessity for the purpose of engaging in inter-island ferry service that includes a route [~~between the islands of Maui and Molokai;~~] within Maui county;

ACT 124

- (2) The design and performance characteristics of the vessel will permit safe navigation within the [~~Lahaina~~] harbor entrance channel and safe docking [~~along the north face of the Lahaina pier;~~] within Maui county small boat facilities;
- (3) The vessel operations will not result in unreasonable interference with the use of [~~Lahaina or Maalaea small boat harbors~~] Maui county small boat facilities by other vessels; and
- (4) All preferential consideration and waivers, including any commercial permits issued under this section, shall cease upon the vessel operator's termination of inter-island ferry service [~~route between the islands of Maui and Molokai;~~] within Maui county."

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, 2006.

(Approved May 23, 2006.)

ACT 124

H.B. NO. 2412

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. 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, [~~2004;~~] 2005, 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, [~~2004;~~] 2005, 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 and except for the provisions of Public Law 109-001 which apply to section 170 of the Internal Revenue Code. The provisions of Public Law 109-001 to accelerate the deduction for charitable cash contributions for the relief of victims of the 2004 Indian Ocean tsunami are applicable for the calendar year that ended December 31, 2004, and the calendar year ending December 31, 2005.

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)(2) (relating to net capital gain reduced by the amount taken into account as investment income), except sections 2(a), 2(b), and 2(c) (with respect to the definition of “surviving spouse” and “head of household”), 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). For treatment, any transaction as specified in the transitional rule for 2005 and 2006 as specified in the American Jobs Creation Act of 2004 section 101(d) and any transaction that has occurred pursuant to a binding contract as specified in the American Jobs Creation Act of 2004 section 101(f) are inoperative;
- (6) Section 120 (with respect to amounts received under qualified group legal services plans). For treatment, see section 235-7(a)(9) to (11);
- (7) Section 122 (with respect to certain reduced uniformed services retirement pay). For treatment, see section 235-7(a)(3);
- (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);
- (9) Subchapter B (sections 141 to 150) (with respect to tax exemption requirements for state and local bonds);
- (10) Section 151 (with respect to allowance of deductions for personal exemptions). For treatment, see section 235-54;
- (11) Section 179B (with respect to expensing of capital costs incurred in complying with [~~environmental protection agency~~] Environmental Protection Agency sulphur regulations);
- (12) Section 181 (with respect to special rules for certain film and television productions);
- (13) Section 196 (with respect to deduction for certain unused investment credits);
- (14) Section 199 (with respect to the U.S. production activities deduction);
- (15) Section 222 (with respect to qualified tuition and related expenses);
- (16) Sections 241 to 247 (with respect to special deductions for corporations). For treatment, see section 235-7(c);
- (17) Section 280C (with respect to certain expenses for which credits are allowable). For treatment, see section 235-110.91;
- (18) Section 291 (with respect to special rules relating to corporate preference items);
- (19) Section 367 (with respect to foreign corporations);
- (20) Section 501(c)(12), (15), (16) (with respect to exempt organizations);
- (21) Section 515 (with respect to taxes of foreign countries and possessions of the United States);
- (22) Subchapter G (sections 531 to 565) (with respect to corporations used to avoid income tax on shareholders);

- (23) 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;
- (24) 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;
- (25) Section 646 (with respect to tax treatment of electing Alaska Native settlement trusts);
- (26) Section 668 (with respect to interest charge on accumulation distributions from foreign trusts);
- (27) Subchapter L (sections 801 to 848) (with respect to insurance companies). For treatment, see sections 431:7-202 and 431:7-204;
- (28) Section 853 (with respect to foreign tax credit allowed to shareholders). For treatment, see section 235-55;
- (29) 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;
- (30) Section 1042(g) (with respect to sales of stock in agricultural refiners and processors to eligible farm cooperatives);
- (31) Section 1055 (with respect to redeemable ground rents);
- (32) Section 1057 (with respect to election to treat transfer to foreign trust, etc., as taxable exchange);
- (33) Sections 1291 to 1298 (with respect to treatment of passive foreign investment companies);
- (34) Subchapter Q (sections 1311 to 1351) (with respect to readjustment of tax between years and special limitations);
- (35) Subchapter R (sections 1352 to 1359) (with respect to election to determine corporate tax on certain international shipping activities using per ton rate);
- (36) 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]
- (37) Subchapter W (sections 1400 to 1400C) (with respect to District of Columbia enterprise zone)[-];
- (38) Section 1400O (with respect to education tax benefits);
- (39) Section 1400P (with respect to housing tax benefits);¹
- (40) Section 1400R (with respect to employment relief); and
- (41) Section 1400T (with respect to special rules for mortgage revenue bonds).”

SECTION 2. Section 235-2.45, Hawaii Revised Statutes, is amended to read as follows:

“§235-2.45 Operation of certain Internal Revenue Code provisions; sections 641 to 7518. (a) Section 641 (with respect to imposition of tax) of the Internal Revenue Code shall be operative for the purposes of this chapter subject to the following:

- (1) The deduction for exemptions shall be allowed as provided in section 235-54(b);
- (2) The deduction for contributions and gifts in determining taxable income shall be limited to the amount allowed in the case of an individual, unless the contributions and gifts are to be used exclusively in the State; and

- (3) The tax imposed by section 1(e) of the Internal Revenue Code as applied by section 641 of the Internal Revenue Code is hereby imposed by this chapter at the rate and amount as determined under section 235-51 on estates and trusts.

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

(c) Section 685 (with respect to treatment of qualified funeral trusts) of the Internal Revenue Code shall be operative for purposes of this chapter, except that the tax imposed under this chapter shall be computed at the tax rates provided under section 235-51, and no deduction for the exemption amount provided in section 235-54(b) shall be allowed. The cost-of-living adjustment determined under section 1(f)(3) of the Internal Revenue Code shall be operative for the purpose of applying section 685(c)(3) under this chapter.

(d) Section 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;
- (2) Allocations of net operating loss pursuant to section 235-111.5;
- (3) Allocations of the attractions and educational facilities tax credit allowed by section 235-110.46; or
- (4) Allocations of low-income housing tax credits among partners under section 235-110.8.

(e) Section 1212 (with respect to capital loss carrybacks and carryforwards) of the Internal Revenue Code shall be operative for the purposes of this chapter; except that for the purposes of this chapter the capital loss carryback provisions of section 1212 shall not be operative and the capital loss carryforward allowed by section 1212(a) shall be limited to five years; except for a qualified high technology business as defined in section 235-7.3, which shall be limited to fifteen years.

(f) Subchapter S (sections 1361 to 1379) (with respect to tax treatment of S corporations and their shareholders) of chapter 1 of the Internal Revenue Code shall be operative for the purposes of this chapter as provided in part VII.

(g) Section 1400N (with respect to tax benefits for Gulf Opportunity Zone) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that sections 1400N(a) (with respect to tax-exempt bond financing); 1400N(b) (with respect to advance refundings of certain tax-exempt bonds); 1400N(d) (with respect to special allowance for certain property acquired on or after August 28, 2005); 1400N(e) (with respect to increase in expensing under section 179); 1400N(h) (with respect to increase in rehabilitation credit); 1400N(l) (with respect to credit to holders of Gulf tax credit bonds); 1400N(m) (with respect to application of new markets tax credit to investments in community development entities serving Gulf Opportunity Zone); 1400N(n) (with respect to treatment of representations regarding income eligibility for purposes of qualified residential rental project requirements) shall not be operative for purposes of this chapter.

(h) Section 1400S (with respect to additional tax relief provisions) of the Internal Revenue Code shall be operative for the purposes of this chapter, except that section 1400S(d) (with respect to the special rule for determining earned income) shall not be operative for the purposes of this chapter.

~~[(g)]~~ (i) Section 6015 (with respect to relief from joint and several liability on joint return) of the Internal Revenue Code is operative for purposes of this chapter.

~~[(h)]~~ (j) Sections 6103(i)(3)(C) and 6103(i)(7) (with respect to disclosures of information to the United States Justice Department or appropriate federal or state law enforcement agency for purposes of investigating terrorist incidents, threats, or activities, and for analyzing intelligence concerning investigating terrorist incidents, threats, or activities) of the Internal Revenue Code shall be operative for the purposes of this chapter.

~~[(i)]~~ (k) Subchapter C (sections 6221 to 6233) (with respect to tax treatment of partnership items) of chapter 63 of the Internal Revenue Code shall be operative for the purposes of this chapter.

~~[(j)]~~ (l) Subchapter D (sections 6240 to 6255) (with respect to simplified audit procedures for electing large partnerships) of the Internal Revenue Code shall be operative for the purposes of this chapter, with due regard to chapter 232 relating to tax appeals.

~~[(k)]~~ (m) Section 6511(h) (with respect to running of periods of limitation suspended while taxpayer is unable to manage financial affairs due to disability) of the Internal Revenue Code shall be operative for purposes of this chapter, with due regard to section 235-111 relating to the limitation period for assessment, levy, collection, or credit.

~~[(l)]~~ (n) Section 7518 (with respect to capital construction fund for commercial fishers) of the Internal Revenue Code shall be operative for the purposes of this chapter. Qualified withdrawals for the acquisition, construction, or reconstruction of any qualified asset that is attributable to deposits made before the effective date of this section shall not reduce the basis of the asset when withdrawn. Qualified withdrawals shall be treated on a first-in-first-out basis.”

SECTION 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 and shall apply to taxable years beginning after December 31, 2005; provided that section 235-2.45(h), Hawaii Revised Statutes, shall apply to contributions made between August 28, 2005, to December 31, 2005.

(Approved May 24, 2006.)

Note

- 1. Semicolon should be underscored.

ACT 125

H.B. NO. 2423

A Bill for an Act Relating to the State Highway Fund.

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

SECTION 1. The legislature finds that Act 178, Session Laws of Hawaii 2005, appropriated a total of \$10,000,000 for fiscal year 2005-2006 from the state highway fund to the city and county of Honolulu (\$4,000,000), the county of Hawaii (\$2,000,000), the county of Maui (\$2,000,000), and the county of Kauai (\$2,000,000), as subsidies for county road work. The legislature also finds that section 248-9, Hawaii Revised Statutes, authorizes the use of state highway fund moneys only for the state highway system. It does not authorize the use of such moneys for the road systems of the counties.

The purpose of this Act is to authorize the use of moneys from the state highway fund for the road systems of the counties for fiscal year 2005-2006.

SECTION 2. Section 248-9, Hawaii Revised Statutes, is amended to read as follows:

“**§248-9 State highway fund.** (a) Moneys in the state highway fund may be expended for the following purposes:

- (1) To pay the costs of operation, maintenance, and repair of the state highway system, including without limitation, the cost of equipment and general administrative overhead;
- (2) To pay the costs of acquisition (including real property and interests therein), planning, designing, construction and reconstruction of the state highway system, and bikeways, including, without limitation, the cost of equipment and general administrative overhead; [and]
- (3) To reimburse the general fund for interest on and principal of general obligation bonds issued to finance highway projects where the bonds are designated to be reimbursable out of the state highway fund[-]; and
- (4) To pay the costs of construction, maintenance, and repair of county roads; provided that none of the funds expended on a county road or program shall be federal funds when such expenditure would cause a violation of federal law or a federal grant agreement.

(b) At any time the director of transportation may transfer from the state highway fund all or any portion of available moneys determined by the director of transportation to be in excess of one hundred thirty-five per cent of the requirements for the ensuing twelve months for the state highway fund as permitted by and in accordance with section 37-53. For purposes of the determination, the director of transportation shall take into consideration:

- (1) The amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the state highway fund during the period;
- (2) Amounts on deposit in the state highway fund which are encumbered or otherwise obligated;
- (3) Budgeted amounts payable from the state highway fund during the period;
- (4) Revenues anticipated to be received by and expenditures to be made from the state highway fund during the period based on existing agreements and other information for the ensuing twelve months; and
- (5) Any other factors as the director of transportation shall deem appropriate.”

SECTION 3. It is the intent of this Act not to jeopardize the receipt of any federal aid nor to impair the obligation of the State or any agency thereof to the holders of any bond issued by the State or any such agency, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 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 24, 2006.)

A Bill for an Act Relating to Education.

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

SECTION 1. Section 302A-1111, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Except as otherwise provided, the superintendent shall sign all drafts for the payment of moneys, all commissions and appointments, all deeds, official acts, or other documents of the department. The superintendent may use a printed facsimile signature in approving appointments, contracts, and other documents. ~~[The superintendent, at such time as may be prescribed by the board, shall present to the board full annual reports of the principal transactions within the department during the last completed year, which reports together with such recommendations as the board may think proper, shall be presented to the governor and the legislature.] ’’~~

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

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

(Approved May 24, 2006.)

A Bill for an Act Making an Appropriation to the Hawaii Civil Air Patrol.

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

SECTION 1. The legislature finds that the Hawaii civil air patrol provides necessary disaster relief, search and rescue, homeland security, and medical emergency transport services to local and national organizations.

Since the early 1950s, the civil air patrol has provided tsunami warning services to the State. Once a tsunami alert has been issued by the National Weather Service, the civil air patrol mobilizes its aircraft, making repeated passes over beaches and coastal communities using sirens and loud speakers to warn residents.

The legislature also finds that the civil air patrol flies more than ninety-five per cent of the nation’s inland search and rescue missions. Approximately one hundred people are saved every year by civil air patrol volunteers. In July 2002, the civil air patrol was instrumental in locating a small plane that went down on Maui.

The civil air patrol also plays a vital role in disaster relief. Volunteer civil air patrol members fly disaster relief officials to remote locations and support local, state, and national disaster relief organizations with experienced pilots and personnel. The civil air patrol transports time-sensitive medical materials, blood products, and body tissue.

Today, as a peacetime auxiliary of the Air Force, the civil air patrol remains an active volunteer organization with approximately five hundred fifty members, including two hundred cadets. The Hawaii wing has three primary missions:

- (1) Search and rescue;
- (2) Aerospace education; and
- (3) The cadet program.

It is also an active participant in counter-drug operations for the Drug Enforcement Agency, flying over one hundred seventy-nine missions in 2003.

The legislature further finds that the civil air patrol depends on state funding to defray its operational expenses, but past budget restrictions have hampered its ability to carry out necessary operations. A lack of funding could result in:

- (1) Termination of weekly tsunami watch patrols;
- (2) Difficulties in notifying emergency personnel; and
- (3) Operations conducted at the expense of members.

The purpose of this Act is to make an appropriation to help defray the operational expenses of the Hawaii civil air patrol.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$60,000, or so much thereof as may be necessary for fiscal year 2006-2007, to complement the \$50,000 offered for support by the department of defense, for the operational expenses of the Hawaii civil air patrol.

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, 2006.

(Approved May 24, 2006.)

ACT 128

H.B. NO. 2637

A Bill for an Act Relating to Transportation.

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

SECTION 1. The legislature finds that many airport concessions are in need of improvements. A number of airport concessions have complained that, given stringent accounting rules, they cannot make necessary improvements to their concessions because there is no remaining term on the lease, or due to the very short remaining term that does not allow amortization of further improvements. Over twenty airport concessions now experience this problem.

As a result, improvements that the airports and various concessionaires would like to see take place are simply not being made. All agree that Hawaii's airports would be better in overall appearance and enhanced revenues may potentially accrue to the department of transportation if improvements could be made.

While there were a number of concessions prior to September 11, 2001, that had only a few years or no remaining term on their leases, the events of September 11, 2001, the severe acute respiratory syndrome epidemic of March 2003, and the general downturn and uncertainty in the economy that followed did not make it feasible to put concessions out to bid.

The legislature further finds that, while the economy has now improved, it will take two to three years to put these twenty or more concessions out to bid. Rather than have some of these concessions forego necessary improvements for two to three more years, it would be beneficial for both concessionaires and the airports if some of the concession leases could be extended on a short-term basis to allow for some improvements.

To allow the airports to temporarily grant fixed short-term lease extensions, Hawaii's statutes requiring airport concessions to be put out to sealed bid would have to be temporarily suspended. During this period, the department of transportation, in its sole discretion, would be allowed to discuss and negotiate fixed short-term lease extensions as a condition for concession improvements.

Since this Act is intended as a one-time and temporary change in the law to allow for only some improvements while the back log of concessions waiting to be bid is reduced, it is the intent of the legislature that:

- (1) The term of the extension shall be limited to not more than forty per cent of the original concession term;
- (2) The cost of improvements must justify the extension; and
- (3) There must be no reduction in lease rent during the extension period.

Further, concession lessees who received rent relief from the department of transportation after April 30, 2002, by way of negotiation or pursuant to Act 201, Session Laws of Hawaii 2004, shall not be eligible for any fixed short-term lease extension provided by this Act.

To expedite these discussions and these improvements, the legislature further finds that it is necessary to grant the department of transportation, for a period of twelve months, the sole discretion and authority to negotiate all terms and conditions for any short-term lease extension within these parameters. The department of transportation shall have the opportunity and flexibility to negotiate improvements in return for fixed short-term lease extensions. In addition to possible added revenues to the department of transportation, the improvements will immediately jump-start and enhance the ambience, appearance, and overall experience at Hawaii's public airports for visitors and local residents alike, and avoid improvement delays for another few years.

The purpose of this Act is to provide the department of transportation with:

- (1) The flexibility to allow airport concessions to make improvements; and
- (2) The authority to:
 - (A) Grant short-term extensions to concession leases or concession permits within specified parameters in exchange for improvements; and
 - (B) Modify and alter older leases and permits by changing the relief terms to similar terms found in newer concession leases that allow a concession to receive economic emergency relief in case of disruptive economic events.

SECTION 2. Notwithstanding any law to the contrary and for concession leases or permits that did not receive rent relief after April 30, 2002, by way of negotiation or pursuant to Act 201, Session Laws of Hawaii 2004, the department of transportation, in its sole discretion and authority, upon mutual agreement with a concession seeking to make improvements, may modify, alter, or amend the terms of concession leases and permits in exchange for improvements, including but not limited to locations, requirements, and obligations; provided that:

- (1) Any extension of a lease or permit shall be for a period not longer than forty per cent of the original term of the concession lease;
- (2) The rents during the extension period shall not be lower than rents paid by the concession under its existing lease or permit; and
- (3) Rent relief terms for leases or permits signed prior to April 30, 2002, may be modified and altered to include terms in newer concession leases that provide economic emergency relief for concessions in case of disruptive economic events.

Within twelve months prior to the termination of any lease or permit receiving an extension pursuant to this Act, the department of transportation shall solicit bids for a new lease; provided the solicitation of bids may be delayed for good cause, including the occurrence of a disruptive event similar to the events of September 11, 2001, as determined by the director of transportation in the director's sole discretion.

SECTION 3. This Act shall take effect upon its approval and shall be repealed on July 1, 2007.

(Approved May 24, 2006.)

ACT 129

H.B. NO. 862

A Bill for an Act Relating to Traffic Offenses.

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

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

“§291C- Excessive speeding. (a) No person shall drive a motor vehicle at a speed exceeding:

- (1) The applicable state or county speed limit by thirty miles per hour or more; or
- (2) Eighty miles per hour or more irrespective of the applicable state or county speed limit.

(b) For the purposes of this section, “the applicable state or county speed limit” means:

- (1) The maximum speed limit established by county ordinance;
- (2) The maximum speed limit established by official signs placed by the director of transportation on highways under the director’s jurisdiction; or
- (3) The maximum speed limit established pursuant to section 291C-104 by the director of transportation or the counties for school zones and construction areas in their respective jurisdictions.

(c) Any person who violates this section shall be guilty of a petty misdemeanor and shall be sentenced as follows without the possibility of probation or suspension of sentence:

- (1) For a first offense not preceded by a prior conviction for an offense under this section in the preceding five years:
 - (A) A fine of not less than \$500 and not more than \$1,000;
 - (B) Thirty-day prompt suspension of license and privilege to operate a vehicle during the suspension period, or the court may impose, in lieu of the thirty-day prompt suspension of license, a minimum fifteen-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the thirty-day period, a restriction on the license that allows the person to drive for limited work-related purposes;
 - (C) Attendance in a course of instruction in driver retraining;
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
 - (E) An assessment for driver education pursuant to section 286G-3; and
 - (F) Either one of the following:
 - (i) Thirty-six hours of community service work; or
 - (ii) Not less than forty-eight hours and not more than five days of imprisonment;
- (2) For an offense that occurs within five years of a prior conviction for an offense under this section, by:

- (A) A fine of not less than \$750 and not more than \$1,000;
 - (B) Prompt suspension of license and privilege to operate a vehicle for a period of thirty days with an absolute prohibition from operating a vehicle during the suspension period;
 - (C) Attendance in a course of instruction in driver retraining;
 - (D) A surcharge of \$25 to be deposited into the neurotrauma special fund;
 - (E) An assessment for driver education pursuant to section 286G-3; and
 - (F) Either one of the following:
 - (i) Not less than one hundred twenty 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; and
- (3) For an offense that occurs within five years of two prior convictions for offenses under this section, by:
- (A) A fine of \$1,000;
 - (B) Revocation of license and privilege to operate a vehicle for a period of not less than ninety days but not more than one year;
 - (C) Attendance in a course of instruction in driver retraining;
 - (D) No fewer than ten days but no more than thirty days of imprisonment of which at least forty-eight hours shall be served consecutively;
 - (E) A surcharge of \$25 to be deposited into the neurotrauma special fund; and
 - (F) An assessment for driver education pursuant to section 286G-3.’’

SECTION 2. Section 286G-3, Hawaii Revised Statutes, is amended to read as follows:

“**§286G-3 Driver education assessments.** (a) A driver education assessment of \$7 shall be levied on a finding that a violation of a statute or county ordinance relating to vehicles or their drivers or owners occurred, except for:

- (1) Offenses relating to stopping (when prohibited), standing, or parking;
- (2) Offenses relating to registration; and
- (3) Offenses by pedestrians.

~~(b) [In addition, a driver]~~ Driver education [assessment] assessments of:

- (1) \$100 shall be levied on persons convicted under section 291E-61 or 291E-61.5 to defray costs of services provided by the driver education and training program; [and]
- (2) \$50 shall be levied on persons required to attend a child passenger restraint system safety class under section 291-11.5[-]; and
- (3) \$75 shall be levied on persons convicted under section 291C- to defray costs of services provided by the driver education and training program.

~~[(b)] (c)~~ The driver education assessments levied by [subsection] subsections (a) and (b) shall be paid for each violation in addition to any fine imposed by the court, and regardless of whether a fine is suspended; provided that the driver education assessment of \$100 levied on a person convicted under section 291E-61 or 291E-61.5 may be waived by the court if the court determines that the person is unable to pay the driver education assessment.

~~[(e)] (d)~~ The amount of each driver education assessment levied by ~~[subsection]~~ subsections (a) and (b) shall be transmitted by the clerk of the court for deposit in the driver education and training fund.”

SECTION 3. Section 291C-102, Hawaii Revised Statutes, is amended to read as follows:

“§291C-102 Noncompliance with speed limit prohibited. ~~[(a) No person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit established by county ordinance.~~

~~(b) The director of transportation with respect to highways under the director’s jurisdiction may place signs establishing maximum speed limits or minimum speed limits. Such signs shall be official signs and no person shall drive a vehicle at a speed greater than a maximum speed limit and no person shall drive a motor vehicle at a speed less than a minimum speed limit stated on such signs.]~~

(a) A person violates this section if the person drives:

(1) A motor vehicle at a speed greater than the maximum speed limit other than provided in section 291C- ; or

(2) A motor vehicle at a speed less than the minimum speed limit, where the maximum or minimum speed limit is established by county ordinance or by official signs placed by the director of transportation on highways under the director’s jurisdiction.

~~[(e)] (b)~~ If the maximum speed limit is exceeded by more than ten miles per hour, a surcharge of \$10 shall be imposed, in addition to any other penalties, and shall be deposited into the neurotrauma special fund.

~~[(d) In addition to the penalties prescribed by section 291C-161 and the surcharge imposed pursuant to subsection (c), the driver’s license and privilege to operate a vehicle of a person who violates this section by operating a vehicle at a speed exceeding ninety miles per hour may be ordered revoked by the court for a period not to exceed five years.]”~~

SECTION 4. Section 291C-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person shall drive a motor vehicle at a speed greater than the maximum speed limit established pursuant to subsection (b) within a school zone or a construction area~~[-];~~ provided that if the person drives a motor vehicle at a speed greater than thirty miles an hour or more over the maximum speed limit established in subsection (b), or over eighty miles per hour or more in a school zone or a construction zone, the provisions of section 291C- shall control. Appropriate law enforcement personnel may enforce the maximum speed limits established for school zones and construction areas.”

SECTION 5. Section 291C-161, Hawaii Revised Statutes, is amended to read as follows:

“§291C-161 Penalties. (a) It is a violation for any person to violate any of the provisions of this chapter, except as otherwise specified in ~~[subsection (e) of this section]~~ subsections (c) and (d) and unless the violation is by other law of this State declared to be a felony, misdemeanor, or petty misdemeanor.

(b) Except as provided in ~~[subsection]~~ subsections (c) and (d), every person who violates any provision of this chapter for which another penalty is not provided shall be fined:

- (1) Not more than \$200 for a first conviction thereof;
- (2) Not more than \$300 for conviction of a second offense committed within one year after the date of the first offense; and
- (3) Not more than \$500 for conviction of a third or subsequent offense committed within one year after the date of the first offense[;

~~provided that upon a conviction for a violation of section 291C-12, 291C-12.5, 291C-12.6, or 291C-95, the person shall be sentenced in accordance with that section].~~

(c) Every person convicted of violating section 291C-12, 291C-12.5, 291C-12.6, 291C- , or 291C-95 shall be sentenced in accordance with those sections.

~~[(e)]~~ (d) Every person who violates section 291C-13 or 291C-18 shall:

- (1) Be fined not more than \$200 or imprisoned not more than ten days for a first conviction thereof;
- (2) Be fined not more than \$300 or imprisoned not more than twenty days or both for conviction of a second offense committed within one year after the date of the first offense; and
- (3) Be fined not more than \$500 or imprisoned not more than six months or both for conviction of a third or subsequent offense committed within one year after the date of the first offense.

~~[(e)]~~ (e) The court may assess a sum not to exceed \$50 for the cost of issuing a penal summons upon any person who fails to appear at the place within the time specified in the citation issued to the person for any traffic violation.

(e) (f) The court may require a person who violates any of the provisions of this chapter to attend a course of instruction in driver retraining as deemed appropriate by the court, in addition to any other penalties imposed.”

SECTION 6. Section 321H-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established the neurotrauma special fund to be administered by the department with advisory recommendations from the neurotrauma advisory board. The fund shall consist of:

- (1) Moneys raised pursuant to the surcharges levied under sections 291-11.5, 291-11.6, 291C-12, 291C-12.5, 291C-12.6, 291C-102, 291C- , and 291E-61;
- (2) Federal funds granted by Congress or executive order, for the purpose of this chapter; provided that the acceptance and use of federal funds shall not commit state funds for services and shall not place an obligation upon the legislature to continue the purpose for which the federal funds are made available; and
- (3) Funds appropriated by the legislature for the purpose of this chapter.”

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.¹

SECTION 9. This Act shall take effect on January 1, 2007.

(Approved May 24, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 130

S.B. NO. 845

A Bill for an Act Relating to Commercial Driver Licensing.

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

SECTION 1. Chapter 286, Hawaii Revised Statutes, is amended by adding a new section to part XIII to be appropriately designated and to read as follows:

“§286- Hazardous materials endorsement. The examiner of drivers shall not issue, renew, upgrade, or transfer a hazardous materials endorsement for a commercial driver’s license to any individual unless the federal transportation security administration has determined that the individual does not pose a security risk warranting denial of the endorsement.”

SECTION 2. Section 286-2, Hawaii Revised Statutes, is amended as follows:
1. By adding two new definitions to be appropriately inserted and to read:

““Gross combination weight rating” means the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, gross combination weight rating shall be determined by adding the gross vehicle weight rating of the power unit and the total weight of the towed unit and any load thereon.

“Tank vehicle” means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include but are not limited to cargo tanks and portable tanks, as defined in Title 49 Code of Federal Regulations Part 171. This definition does not include portable tanks having a rated capacity under one thousand gallons.”

2. By amending the definitions of “commercial motor vehicle”, “gross vehicle weight rating”, and “hazardous materials” to read:

““Commercial motor vehicle” means a motor vehicle [designed] or combination of motor vehicles used in commerce to transport passengers or property:

(1) If the vehicle has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit(s) with a gross vehicle weight rating of more than 10,000 pounds;

[4] (2) If the vehicle has a gross vehicle weight rating of 26,001 or more pounds;

[2] (3) If the vehicle is designed to transport sixteen or more occupants, including the driver; or

[3] (4) If the vehicle, regardless of size, is [transporting] used in the transportation of hazardous materials [and is required to be placarded in accordance with 49 Code of Federal Regulations, Part 172, Subpart F-], as defined in this section.

“Gross vehicle weight rating” [(GVWR)] means the value specified by the [manufacturers] manufacturer as the [maximum] loaded weight of a single [or a combination (articulated) vehicle, or registered gross weight, whichever is greater. The gross vehicle weight rating of a combination (articulated) vehicle (commonly referred to as the “gross combination weight rating” or GCWR) is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of the towed unit.] vehicle.

“Hazardous materials” [has the meaning as that found in section 103 of the Hazardous Materials Transportation Act (49 United States Code app. §1801¹].

means any material that has been designated as hazardous under title 49 United States Code section 5103 and is required to be placarded under subpart F of part 172, title 49, Code of Federal Regulations, or any quantity of a material listed as a select agent or toxin in title 42 Code of Federal Regulations part 73.”

SECTION 3. Section 286-235.5, Hawaii Revised Statutes, is amended to read as follows:

“§286-235.5 Persons exempt from [~~license.~~] licensure. The following persons shall be exempt from licensure under this part:

- (1) [~~Any active-duty military personnel while operating a commercial motor vehicle in the service of the United States Department of Defense, provided that the driver has a current valid license or permit from the Department of Defense to drive the commercial motor vehicle; and~~] Individuals who operate commercial motor vehicles for military purposes. This exception is limited to active-duty military personnel, members of the military reserves, members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms), and active-duty United States Coast Guard personnel. This exception is not applicable to United States reserve technicians; and
- (2) Federal, state, and county firefighters, and law enforcement officers who drive federal, state, or county fire trucks, including fire pumpers, aerial ladder trucks, and elevated platform trucks, or authorized emergency vehicles; provided that they are trained by the federal, state, or county government[-] and the commercial motor vehicles are equipped with audible and visual signals and are not subject to normal traffic regulation. For purposes of this [~~section.~~] paragraph, “authorized emergency vehicle” shall have the same meaning as in section 291C-1.”

SECTION 4. Section 286-236, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read as follows:

“(f) The commercial driver’s instruction permit shall not be valid for a period in excess of [~~six months.~~] one year. 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. The permit may be reissued after the applicant requalifies meeting the requirements of subsection (e).

(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, Mexico, 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[-] and be determined by the federal transportation security administration not to pose a security risk warranting denial of the endorsement.”

SECTION 5. Section 286-239, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b) and (c) to read:

“(b) Commercial driver’s licenses may be issued with the following categories:

- (1) Category A – Any combination of vehicles with a gross [vehiele] combination weight rating [(GVWR)] of 26,001 pounds or more; provided that the gross vehicle weight rating of the vehicles being towed is in excess of 10,000 pounds;
- (2) Category B – Any single vehicle with a gross vehicle weight rating of 26,001 pounds or more, or [~~if the gross vehicle weight rating of the vehicle being towed is~~] any such vehicle towing a vehicle not in excess of 10,000 pounds; and
- (3) Category C – Any single vehicle or combination of vehicles that meets neither the definition of category A nor that of category B, but that is either:
 - (A) Designed to transport sixteen or more passengers, including the driver; or
 - (B) Used in the transportation of hazardous materials which requires the vehicle to comply with Title 49 Code of Federal Regulations, Part 172, Subpart F.

(c) Commercial drivers’ licenses may be issued with any one or more of the following endorsements and [~~restriction:~~] restrictions:

- (1) “H” – Authorizes the driver to drive a vehicle transporting hazardous materials;
- (2) “K” – Restricts the driver to vehicles not equipped with air brakes;
- (3) “T” – Authorizes driving double and triple trailers;
- (4) “P” – Authorizes driving vehicles carrying passengers;
- (5) “N” – Authorizes driving tank vehicles;
- (6) “X” – Represents a combination of hazardous materials and tank vehicle endorsements; [~~and~~]
- (7) “S” – Authorizes driving school buses[.]; and
- (8) “V” – Restricts the driver from operating in interstate commerce as defined in of² Title 49 Code of Federal Regulations Section 390.5.”

2. By amending subsections (e), (f), and (g) to read:

“(e) Before issuing a commercial driver’s license, the examiner of drivers shall complete a check of the applicant’s driving record to determine whether the applicant is subject to any disqualification under section 286-240, or any license suspension, revocation, or cancellation under state law, and whether the applicant has a driver’s license from more than one state or jurisdiction. The record check shall be made no earlier than twenty-four hours prior to the initial issuance or transfer and no sooner than ten days before renewals and upgrades of a commercial driver’s license. The record check shall include but is not limited to the following:

- (1) A check of the applicant’s driving record as maintained by the applicant’s state of licensure;
- (2) A check with the commercial driver license information system;
- (3) A check with the National Driver Register; and
- (4) A request for the applicant’s complete driving record from all states where the applicant was previously licensed to drive any motor vehicle over the last ten years. This check is only required for drivers renewing a commercial driver’s license for the first time after September 30, 2002[.]; provided that a notation is made on the driver’s record confirming the check has been made and the date it was done.

(f) Within ten days after issuing a commercial driver’s license, the examiner of drivers, in the following situations, shall [notify] provide the operator of the commercial driver’s license information system [of that fact, providing] with all

information ~~[required to ensure identification of]~~ obtained by the examiner that is necessary to identify the licensee[-]:

- (1) The issuance of each commercial driver’s license;
- (2) The notation of any changes in driver identification information; and
- (3) The notation of any changes to the driver’s driving record relating to the transfer of a commercial driver’s license from one state to another.

(g) An initial or renewed commercial driver’s license with a hazardous materials endorsement shall expire no later than five years from its date of issuance, except if the licensee is seventy-two years of age or older. The expiration date of a commercial driver’s license with a hazardous materials endorsement shall be the same expiration date as the hazardous materials endorsement. If the licensee is seventy-two years of age or older, the initial or renewed commercial driver’s license with a hazardous materials endorsement shall not exceed two years. All other initial commercial driver’s [license] licenses shall be valid for not less than³ two- or six-year period, beginning on the driver’s birthday. [Renewal] All other renewed licenses shall be valid for not more than³ two- or six-year period from the expiration date of the previous valid license. [The] With the exception of a commercial driver’s license with a hazardous materials endorsement, the commercial driver’s license shall expire on the next birthday of the licensee occurring six years after the date of issuance of the license unless sooner revoked, suspended, or canceled; provided that, unless sooner revoked, the license shall expire on the second birthday of the licensee following the issuance of the license if at that time the licensee is seventy-two years of age or older.”

SECTION 6. Section 286-240, Hawaii Revised Statutes, is amended to read as follows:

“§286-240 Disqualification and cancellation. (a) [A] The examiner of drivers shall disqualify any person [is disqualified] from driving a commercial motor vehicle for a period of not less than one year if convicted of a first violation of:

- (1) Driving a motor vehicle under the influence of alcohol, a controlled substance, or any drug which impairs driving ability;
- (2) Driving a commercial motor vehicle while the alcohol concentration of the driver’s blood is 0.04 per cent or more by weight;
- (3) Refusing to submit to a test to determine the driver’s alcohol concentration while driving a motor vehicle as required under sections 286-243 and 291E-11;
- (4) Using a motor vehicle in the commission of any felony;
- (5) Leaving the scene of an accident involving the motor vehicle driven by the person;
- (6) Unlawful transportation, possession, or use of a controlled substance while on-duty time;
- (7) Driving a commercial motor vehicle when, as a result of prior violations committed while operating a commercial motor vehicle, the driver’s commercial driver’s license had been revoked, suspended, or canceled, or the driver was otherwise disqualified from operating a commercial motor vehicle; or
- (8) Causing a fatality through the operation of a commercial motor vehicle, including but not limited to the crimes of manslaughter and negligent homicide in any degree.

(b) [A] The examiner of drivers shall disqualify any person [is disqualified] for a period of not less than three years for any conviction of a violation of any offense listed in subsection (a) that is committed while a hazardous material required

to be placarded under Title 49 Code of Federal Regulations, Part 172, Subpart F, is being transported.

(c) [A] The examiner of drivers shall disqualify any person [is disqualified] from driving a commercial motor vehicle for life if convicted two or more times for violations of any of the offenses listed in subsection (a).

(d) [A] The examiner of drivers shall disqualify any person [is disqualified] from driving a commercial motor vehicle for life if the person uses a motor vehicle in the commission of any felony involving the manufacturing, distributing, or dispensing of a controlled substance, or possession with intent to manufacture, distribute, or dispense a controlled substance.

(e) [A] The examiner of drivers shall disqualify any person [is disqualified] from driving a commercial motor vehicle for a period of not less than sixty days if convicted of two serious traffic violations, or one hundred twenty days if convicted of three serious traffic violations, committed in a commercial motor vehicle arising from separate incidents occurring within a three-year period. The one hundred twenty-day disqualification period required for a third conviction within three years of a "serious traffic violation," as defined in section 286-231, shall be in addition to any other previously imposed period of disqualification. These disqualification periods shall also apply to offenses committed while operating a noncommercial motor vehicle only if the conviction for the offense results in the revocation, cancellation, or suspension of the driver's license.

(f) [A] The examiner of drivers shall disqualify any person [is disqualified] from driving a commercial motor vehicle or from resubmitting an application for a period of not less than sixty days, if the examiner of drivers finds that a commercial driver's license holder or applicant for a commercial driver's license has falsified information or failed to report or disclose required information either before or after issuance of a commercial driver's license.

(g) [A] The examiner of drivers shall disqualify any person [is disqualified] from driving a commercial motor vehicle for a period of not less than ninety days and not more than one year for a first violation, or for at least one year and not more than five years for a second violation, or at least three years and not more than five years for a third or subsequent violation of a driver or vehicle out-of-service order committed in a commercial motor vehicle arising from separate incidents occurring within a ten-year period.

(h) [A] The examiner of drivers shall disqualify any person [is disqualified] from driving a commercial motor vehicle for a period of not less than one hundred eighty days or more than two years for a first violation, or for at least three years and not more than five years for any subsequent violation, of a driver or vehicle out-of-service order committed in a commercial motor vehicle transporting hazardous materials or designed to transport sixteen or more occupants, arising from separate incidents occurring within a ten-year period.

(i) [A] The examiner of drivers shall disqualify any person [is disqualified] from driving a commercial motor vehicle for a period of not less than sixty days if convicted of a first violation, not less than one hundred twenty days if convicted of a second violation during any three-year period, or not less than one year if convicted of a third or subsequent violation during any three-year period for a violation of a federal, state, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing:

- (1) For all drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;
- (2) For all drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;
- (3) For all drivers who are always required to stop, failing to stop before driving onto the crossing;

- (4) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;
- (5) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing; or
- (6) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(j) [A] The examiner of drivers shall disqualify any person [is disqualified] from driving a commercial motor vehicle when the driver's driving is determined to constitute an imminent hazard, as defined in section 286-231, and the disqualification is imposed in accordance with the provisions of Title 49 Code of Federal Regulations Section 383.52."

SECTION 7. Section 286-241, Hawaii Revised Statutes, is amended to read as follows:

"§286-241 Notification of disqualification, suspension, revocation, or cancellation of commercial driver's licenses or permits. After disqualifying a person, or suspending, revoking, or canceling a commercial driver's license or permit, the records of the examiner of drivers shall be updated to reflect that action within ten days. Any disqualification imposed in accordance with section 286-240(j) and transmitted by the Federal Motor Carrier Safety Administration shall become a part of the driving record. After suspending, revoking, or canceling a nonresident commercial driver's license or permit, the examiner of drivers shall notify the licensing authority of the state which issued the commercial driver's license within ten days. The notification shall include information regarding any disqualification and the violation or violations that resulted in the disqualification, revocation, suspension, or cancellation."

SECTION 8. Section 286-242, Hawaii Revised Statutes, is amended to read as follows:

"§286-242 Commercial drivers prohibited from operating with any alcohol in their body. (a) Notwithstanding any other provision of this chapter, a person may not drive a commercial motor vehicle while having any alcohol in that person's body.

(b) A person who drives a commercial motor vehicle while having an alcohol concentration of 0.01 per cent or more by weight or who refuses to take a test as provided by section 286-243 shall be issued a twenty-four-hour out-of-service order. The driver shall also be placed out-of-service for twenty-four hours if the results of a blood test are not immediately available.

(c) It is unlawful for any person who has 0.04 per cent or more, by weight, of alcohol in the person's blood to drive a "commercial motor vehicle," as defined in section 286-2. Any person who violates this provision shall be subject to the penalties as provided in section 286-249."

SECTION 9. Section 286-245, Hawaii Revised Statutes, is amended to read as follows:

"§286-245 Driving record information to be recorded and furnished. ~~[(a) All convictions, disqualifications, and other licensing actions for violations of any state or county law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle by a holder of a commercial driver's license shall be recorded and maintained as part of the driver's record.~~

~~(b) All convictions, disqualifications, and other licensing actions for violations of any state or county law relating to motor vehicle traffic control, other than a parking violation, committed while the driver was operating a commercial motor vehicle and was required to have a commercial driver's license shall be recorded and maintained as part of the driver's record.]~~

(a) Whenever a person is convicted of a moving traffic violation based on a statute, ordinance, or rule, fails to appear for a hearing, trial, or other court or administrative proceeding on the moving traffic violation, or fails to pay a fine or court cost ordered for a moving violation, the state judiciary shall forward to the examiner of drivers the record of the conviction. The record of conviction shall include whether the offender was operating a commercial motor vehicle at the time of the offense, whether the offender was transporting hazardous materials requiring placarding under Title 49 Code of Federal Regulations Section 172, Subpart F, the citation date, the conviction date, the citation number, the court in which the conviction occurred, and the offense(s) convicted of. No record of conviction so transmitted and maintained in the statewide traffic records system shall be used for purposes other than the licensing of drivers.

(b) Within ten days of an in-state conviction, and within ten days of the receipt of notice of an out-of-state conviction, the examiner of drivers shall record and maintain as part of the driver's record:

- (1) All convictions, disqualifications, and other licensing actions for violations both in this state and out-of-state, of any law relating to motor vehicle traffic control, other than a parking violation, committed in any type of vehicle, by a holder of a commercial driver's license; and
- (2) All convictions, disqualifications, and other licensing actions for violations both in this state and out-of-state, of any law relating to motor vehicle traffic control, other than a parking violation, committed while the driver was operating a commercial motor vehicle, and was required to have a commercial driver's license.

(c) No commercial driver's license driver's conviction for any violation, in any type of motor vehicle, of a state or local traffic control law, except a parking violation, shall be expunged or subject to deferred imposition of judgment, nor shall an individual be allowed to enter into a diversion program that would prevent the conviction from appearing on the driver's driving record, whether the driver was convicted for an offense committed in this state⁴ or another state.

(d) The state judiciary and the examiner of drivers shall make available information from any driver's record required by this section to the greatest extent possible, to the users designated in subsection (f), or their authorized agent, within ten days of:

- (1) Receiving the conviction or disqualification information from another state; or
- (2) Receiving the conviction for a violation occurring in this State.

(e) All convictions, disqualifications, and other licensing actions for violations shall be retained on each driver's record for at least three years or longer as required under [title] Title⁵ 49 Code of Federal Regulations [section]⁶ Section 384.231(d).

(f) Only the following users or their authorized agents may obtain a driver's record:

- (1) States may receive all information regarding any driver's record;
- (2) The Secretary of Transportation may receive all information regarding any driver's record;
- (3) A driver may receive only information related to that driver's record; and

- (4) A motor carrier or prospective motor carrier may receive all information regarding a driver's ~~history~~ driving record, or the driver's driving record of a prospective driver; provided that the request is made by the driver.

(g) The traffic violations bureaus of the district courts, upon request, shall furnish users designated in subsection (f), a certified driver record listing all convictions, disqualifications, and all licensing actions in this state and notification of any action received from other states that are recorded and maintained by the examiner of drivers. The traffic violations bureaus shall collect a fee for those requests by users designated in subsection (f)(3) and (4), not to exceed \$9, of which \$5 shall be deposited into the general fund, \$2 shall be deposited into the judiciary computer system special fund, and \$2 shall be deposited into the highway fund."

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:
- (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
 - (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; or
- (2) Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to:
- (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;
 - (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; or
 - (C) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b) unless the conditional license permit is restricted to a category 1, 2, or 3 license under section 286-102(b).”

SECTION 11. Section 286-237, Hawaii Revised Statutes, is repealed.

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁷

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

(Approved May 24, 2006.)

Notes

- 1. Prior to amendment, ending parenthesis appeared here.
- 2. So in original.
- 3. Prior to amendment “a” appeared here.
- 4. Prior to amendment “state” was “State”.

5. Prior to amendment "title" was "Title".
6. Prior to amendment "section" was "Section".
7. Edited pursuant to HRS §23G-16.5.

ACT 131

H.B. NO. 2367

A Bill for an Act Relating to Criminal History Record Checks for Service Providers of the Office of Youth Services.

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

SECTION 1. Chapter 352D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§352D- Criminal history record checks. (a) Employees, prospective employees, and volunteers of contracted providers or subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office shall be required to agree to criminal history record checks. The office shall develop procedures for obtaining verifiable information regarding the criminal history records of individuals seeking to serve as employees or volunteers of contracted providers or subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office.

(b) Except as otherwise specified, any individual who is employed, seeks employment, or volunteers with a contracted provider or subcontractor in a position that necessitates close proximity to youth when providing services on behalf of the office shall:

- (1) Submit to the office a sworn statement indicating whether the individual has ever been convicted of an offense for which incarceration is a sentencing option;
- (2) Be subject to criminal history record checks through the Hawaii criminal justice data center in accordance with section 846-2.7. An annual name inquiry shall be conducted in the state criminal history record files; and
- (3) Provide to the office written consent to obtain criminal history record information for verification.

Information obtained pursuant to this section shall be used exclusively by the office for purposes of determining whether a person is suitable for working or volunteering in a position that necessitates close proximity to youth when providing contracted services on behalf of the office or in conjunction with services provided for youth at the Hawaii youth correctional facility, while in custody, on furlough or on parole. All such decisions shall be subject to any applicable federal laws and regulations.

(c) The office may require the contracted provider or subcontractor to refuse employment to an applicant for employment, terminate the employment of an employee, or terminate the services of a volunteer if:

- (1) The employee, prospective employee, or volunteer of the contracted provider or subcontractor has been convicted of an offense for which incarceration is a sentencing option; and
- (2) The office finds that the criminal history record of the employee, prospective employee, or volunteer of the contracted provider or subcontractor indicates that the employee, prospective employee, or volunteer may pose a risk to the health, safety, or well-being of youth receiving direct services by that employee, prospective employee, or volunteer.

(d) For the purposes of this section:

“Prospective employee” means any applicant for a position with a contracted provider or subcontractor that provides direct services to youth on behalf of the office.

“Provider” means any organization that or individual who enters into, or intends to enter into, a contract with or is currently contracted by the office to provide direct services to youth. The term includes all individuals who are authorized to provide direct services to youth under the contract with the organization or individual.

“Subcontractor” means any organization that or individual who enters into, or intends to enter into, a contract or agreement with a contracted provider to provide direct services to youth. The term includes all persons who may provide direct services to youth under the contract with the organization or individual.

“Volunteer” means any individual who provides, or intends to provide, direct services to youth on a non-compensatory basis.

(e) Notwithstanding any other law to the contrary, the office shall be exempt from section 831-3.1 for purposes of this section and need not conduct its investigations, notifications, or hearings in accordance with chapter 91.”

SECTION 2. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(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, as provided by section 321-171.5;
 - (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 section 302A-601.5;
 - (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 281-53.5;
 - (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 section 346-19.7;
 - (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 346-154;
 - (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 346-152.5;
 - (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 346-335;
 - (11) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;

- (12) The department of human services on employees, prospective employees, and volunteers of contracted providers and subcontractors in positions that place them in close proximity to youth when providing services on behalf of the office or the Hawaii youth correctional facility as provided by section 352D- ;
- [(12)] (13) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;
- [(13)] (14) 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)] (15) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- [(15)] (16) 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 302C-1;
- [(16)] (17) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- [(17)] (18) 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 78-2.7; and
- [(18)] (19) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

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 24, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 132

S.B. NO. 696

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

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

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

““Criminal history record check” means a search by name using the state computerized criminal history record information system, and by fingerprints using the state automated fingerprint identification system.

“Criminal history record name inquiry” means a search by name and other identifying information using the state computerized criminal history record information system.”

SECTION 2. Section 846-10.5, Hawaii Revised Statutes, is amended to read as follows:

“**§846-10.5 Fees.** (a) Except for services provided to criminal justice agencies and state or county agencies for employment purposes, the Hawaii criminal justice data center and state and county criminal justice agencies shall assess the following fees for services provided or to be provided, which shall be deposited into the criminal history record improvement revolving fund:

- (1) For each criminal history record [~~name~~] check[;] or criminal history record name inquiry conducted by the data center[;] and other state and county agencies, [~~\$15;~~] \$20;
- (2) For each criminal history record name [~~check;~~] inquiry via [~~a public access terminal;~~] an electronic database maintained by the data center that is accessible to users through an interactive computer-based system, for which a certified printout is requested, \$10 per printout;
- [(3)] For each fingerprint-based search of the automated fingerprint identification system or manual fingerprint files, \$25;
- (4) (3) For processing of each application for the expungement of arrest records, \$25;
- [(5)] (4) For certification of documents, \$10 per document;
- [(6)] (5) For each duplicate expungement certificate requested, \$15; and
- [(7)] (6) For each complete set of fingerprints taken, \$15.

(b) Criminal history record checks mandated for child care facilities shall be exempt from the requirement to pay fees.

(c) Nonprofit charitable organizations that are tax-exempt under Internal Revenue Code Section 501(c)(3) shall be exempt from fees for criminal history record checks conducted on adult volunteers having direct contact with minors[;], the elderly, or the disabled.

(d) Any other law to the contrary notwithstanding, the data center may adopt rules pursuant to chapter 91 to establish reasonable fees for services provided by the data center and to establish other exemptions from the requirement to pay fees.”

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, 2006.

(Approved May 24, 2006.)

A Bill for an Act Relating to Court Appointed Counsel.

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

SECTION 1. Act 86, Session Laws of Hawaii 2005, is amended by amending section 1 to read as follows:

“SECTION 1. Section 802-5, Hawaii Revised Statutes, is amended to read as follows:

“**§802-5 Appointment of counsel; compensation.** (a) When it shall appear to a judge that a person requesting the appointment of counsel satisfies the requirements of this chapter, the judge shall appoint counsel to represent the person at all stages of the proceedings, including appeal, if any. If conflicting interests exist, or if the interests of justice require, the court may appoint private counsel, who shall receive reasonable compensation for necessary expenses, including travel, the amount of which shall be determined by the court, and reasonable fees pursuant to subsection (b). All expenses and fees shall be ordered by the court. Duly ordered payment shall be made upon vouchers approved by the director of finance and warrants drawn by the comptroller.

(b) The court shall determine the amount of reasonable compensation to appointed counsel, based on the rate of \$90 an hour; provided that the maximum allowable fee shall not exceed the following schedule:

- | | |
|--|---------|
| (1) Any felony case | \$6,000 |
| (2) Misdemeanor case - jury trial | 3,000 |
| (3) Misdemeanor case - jury waived | 1,500 |
| (4) Appeals [to the intermediate appellate court] | 5,000 |
| (5) Petty misdemeanor case | 900 |
| (6) Any other type of administrative or judicial proceeding, including cases arising under section 571-11(1), 571-14(a)(1), or 571-14(a)(2). | 3,000 |

Payment in excess of any maximum provided for under paragraphs (1) to (6) may be made whenever the court in which the representation was rendered certifies that the amount of the excess payment is necessary to provide fair compensation and the payment is approved by the administrative judge of that court.

(c) The public defender and the judiciary shall submit to the department of budget and finance for inclusion in the department’s budget request for each fiscal biennium, the amount required for each fiscal year for the payment of fees and expenses pursuant to this section.””

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved May 24, 2006.)

ACT 134

S.B. NO. 2360

A Bill for an Act Relating to Grounded Vessels.

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

SECTION 1. Chapter 200, Hawaii Revised Statutes, is amended by adding a new section to part III to be designated and to read as follows:

“**§200-47.5 Vessel aground on state property.** (a) All vessels grounded on state submerged lands, shorelines, or coral reefs shall be removed immediately by the owner or operator at the owner’s or operator’s expense. Vessels grounded on a sand beach, sandbar, or mudflat and not in imminent danger of breaking up shall be removed within seventy-two hours, unless otherwise agreed to by the department.

ACT 135

Damage to state or private property caused by a grounded vessel shall be the sole responsibility of the vessel's owner or operator.

(b) Solely for the purposes of removal and with no liability to the department, the department may assume control of any vessel that:

- (1) Is grounded on a coral reef or in imminent danger of breaking up; and
- (2) Cannot be immediately removed by the owner in a manner that is reasonably safe, as determined by the department.

Once the department assumes control over the vessel, the vessel shall be directed to a safer location. All costs and expenses of removing the vessel and damages to state or private property shall be the sole responsibility of the vessel's owner or operator. This section shall apply whether the vessel is attended or deemed derelict under section 200-48.

(c) The department may take legal action to collect any costs or expenses incurred by the department for any removal under this section. All moneys collected shall be deposited in the boating special fund.

(d) Any person who renders assistance to the department when it acts pursuant to subsection (b) and any person who, in good faith and without remuneration or expectation of remuneration, renders assistance at the scene of a vessel grounded on a coral reef or in imminent danger of breaking up shall not be liable for any civil damages resulting from the person's acts or omissions in providing or arranging towage or other assistance, except for damages caused by the person's gross negligence or wanton acts or omissions."

SECTION 2. New statutory material is underscored.¹

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

(Approved May 24, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 135

S.B. NO. 2290

A Bill for an Act Relating to Protection from Security Breaches.

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

SECTION 1. The privacy and financial security of individuals is increasingly at risk due to the widespread collection of personal information by the private sector and government agencies. Numerous sources include personal information that forms the source material for identity thieves.

Identity theft is one of the fastest growing crimes committed throughout the United States, including Hawaii. Criminals who steal personal information, such as social security numbers, use the information to open credit card accounts, write bad checks, buy cars, and commit other financial crimes with other people's identities.

The purpose of this Act is to alleviate the growing plague of identity theft by requiring businesses and government agencies that maintain records containing resident individuals' personal information to notify an individual whenever the individual's personal information has been compromised by unauthorized disclosure.

SECTION 2. The Hawaii Revised Statutes is amended by adding to title 26 a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
NOTIFICATION OF SECURITY BREACHES**

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

“Business” means a sole proprietorship, partnership, corporation, association, or other group, however organized, and whether or not organized to operate at a profit. The term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of the State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. The term also includes an entity whose business is records destruction.

“Encryption” means the use of an algorithmic process to transform data into a form in which the data is rendered unreadable or unusable without the use of a confidential process or key.

“Government agency” means any department, division, board, commission, public corporation, or other agency or instrumentality of the State or of any county.

“Personal information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (1) Social security number;
- (2) Driver’s license number or Hawaii identification card number; or
- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual’s financial account.

“Personal information” does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

“Records” means any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

“Redacted” means the rendering of data so that it is unreadable or is truncated so that no more than the last four digits of the identification number are accessible as part of the data.

“Security breach” means an incident of unauthorized access to and acquisition of unencrypted or unredacted records or data containing personal information where illegal use of the personal information has occurred, or is reasonably likely to occur and that creates a risk of harm to a person. Any incident of unauthorized access to and acquisition of encrypted records or data containing personal information along with the confidential process or key constitutes a security breach. Good faith acquisition of personal information by an employee or agent of the business for a legitimate purpose is not a security breach; provided that the personal information is not used for a purpose other than a lawful purpose of the business and is not subject to further unauthorized disclosure.

§ -2 Notice of security breach. (a) Any business that owns or licenses personal information of residents of Hawaii, any business that conducts business in Hawaii that owns or licenses personal information in any form (whether computerized, paper, or otherwise), or any government agency that collects personal information for specific government purposes shall provide notice to the affected person that there has been a security breach following discovery or notification of the breach. The disclosure notification shall be made without unreasonable delay, consistent with the legitimate needs of law enforcement as provided in subsection (c) of this section, and consistent with any measures necessary to determine sufficient contact information, determine the scope of the breach, and restore the reasonable integrity, security, and confidentiality of the data system.

(b) Any business located in Hawaii or any business that conducts business in Hawaii that maintains or possesses records or data containing personal information of residents of Hawaii that the business does not own or license, or any government agency that maintains or possesses records or data containing personal information of residents of Hawaii shall notify the owner or licensee of the information of any security breach immediately following discovery of the breach, consistent with the legitimate needs of law enforcement as provided in subsection (c).

(c) The notice required by this section shall be delayed if a law enforcement agency informs the business or government agency that notification may impede a criminal investigation or jeopardize national security and requests a delay; provided that such request is made in writing, or the business or government agency documents the request contemporaneously in writing, including the name of the law enforcement officer making the request and the officer's law enforcement agency engaged in the investigation. The notice required by this section shall be provided without unreasonable delay after the law enforcement agency communicates to the business or government agency its determination that notice will no longer impede the investigation or jeopardize national security.

(d) The notice shall be clear and conspicuous. The notice shall include a description of the following:

- (1) The incident in general terms;
- (2) The type of personal information that was subject to the unauthorized access and acquisition;
- (3) The general acts of the business or government agency to protect the personal information from further unauthorized access;
- (4) A telephone number that the person may call for further information and assistance, if one exists; and
- (5) Advice that directs the person to remain vigilant by reviewing account statements and monitoring free credit reports.

(e) For purposes of this section, notice to affected persons may be provided by one of the following methods:

- (1) Written notice to the last available address the business or government agency has on record;
- (2) Electronic mail notice, for those persons for whom a business or government agency has a valid electronic mail address and who have agreed to receive communications electronically if the notice provided is consistent with the provisions regarding electronic records and signatures for notices legally required to be in writing set forth in 15 U.S.C. Section 7001;
- (3) Telephonic notice, provided that contact is made directly with the affected persons; and
- (4) Substitute notice, if the business or government agency demonstrates that the cost of providing notice would exceed \$100,000 or that the affected class of subject persons to be notified exceeds two hundred thousand, or if the business or government agency does not have sufficient contact information or consent to satisfy paragraph (1), (2), or (3), for only those affected persons without sufficient contact information or consent, or if the business or government agency is unable to identify particular affected persons, for only those unidentifiable affected persons. Substitute notice shall consist of all the following:
 - (A) Electronic mail notice when the business or government agency has an electronic mail address for the subject persons;
 - (B) Conspicuous posting of the notice on the website page of the business or government agency, if one is maintained; and
 - (C) Notification to major statewide media.

(f) In the event a business provides notice to more than one thousand persons at one time pursuant to this section, the business shall notify in writing, without unreasonable delay, the State of Hawaii's office of consumer protection and all consumer reporting agencies that compile and maintain files on consumers on a nationwide basis, as defined in 15 U.S.C. Section 1681a(p), of the timing, distribution, and content of the notice.

(g) The following businesses shall be deemed to be in compliance with this section:

- (1) A financial institution that is subject to the Federal Interagency Guidance on Response Programs for Unauthorized Access to Consumer Information and Customer Notice published in the Federal Register on March 29, 2005 by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision, or subject to 12 C.F.R. Part 748, and any revisions, additions, or substitutions relating to said interagency guidance; and
- (2) Any health plan or healthcare provider that is subject to and in compliance with the standards for privacy or individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996.

(h) Any waiver of the provisions of this section is contrary to public policy and is void and unenforceable.

§ -3 Penalties; civil action. (a) Any business that violates any provision of this chapter shall be subject to penalties of not more than \$2,500 for each violation. The attorney general or the executive director of the office of consumer protection may bring an action pursuant to this section. No such action may be brought against a government agency.

(b) In addition to any penalty provided for in subsection (a), any business that violates any provision of this chapter shall be liable to the injured party in an amount equal to the sum of any actual damages sustained by the injured party as a result of the violation. The court in any action brought under this section may award reasonable attorneys' fees to the prevailing party. No such action may be brought against a government agency.

(c) The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State.

§ -4 Reporting requirements. A government agency shall submit a written report to the legislature within twenty days after discovery of a security breach at the government agency that details information relating to the nature of the breach, the number of individuals affected by the breach, a copy of the notice of security breach that was issued, the number of individuals to whom the notice was sent, whether the notice was delayed due to law enforcement considerations, and any procedures that have been implemented to prevent the breach from reoccurring. In the event that a law enforcement agency informs the government agency that notification may impede a criminal investigation or jeopardize national security, the report to the legislature may be delayed until twenty days after the law enforcement agency has determined that notice will no longer impede the investigation or jeopardize national security."

SECTION 3. This Act shall take effect on January 1, 2007.

(Approved May 25, 2006.)

A Bill for an Act Relating to Destruction of Personal Information Records.

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

SECTION 1. Business and government agency records are a leading source of personal information for identity thieves. Any entity that maintains personal information as part of its business operations should establish security procedures to maintain the confidentiality and integrity of that data. A critical element of any security plan is the destruction of records containing personal information when they are being discarded. Throughout the United States, there have been repeated instances of businesses carelessly dumping boxes containing scores of customers' personal information in dumpsters.

The purpose of this Act is to protect the people of Hawaii from identity theft by requiring businesses and government, when disposing of records containing personal information, to take reasonable measures to protect against unauthorized access to that information.

SECTION 2. The Hawaii Revised Statutes is amended by adding to title 26 a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
DESTRUCTION OF PERSONAL INFORMATION RECORDS**

§ -1 **Definitions.** As used in this chapter:

“Business” means a sole proprietorship, partnership, corporation, association, or other group, however organized and whether or not organized to operate at a profit. Except as provided in section -2(e), the term includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of the State, any other state, the United States, or any other country, or the parent or the subsidiary of any such financial institution. The term also includes an entity whose business is records destruction.

“Disposal” means the discarding or abandonment of records containing personal information or the sale, donation, discarding, or transfer of any medium, including computer equipment or computer media, containing records of personal information, or other nonpaper media upon which records of personal information are stored, or other equipment for nonpaper storage of information.

“Government agency” means any department, division, board, commission, public corporation, or other agency or instrumentality of the State or any county.

“Personal information” means an individual’s first name or first initial and last name in combination with any one or more of the following data elements, when either the name or the data elements are not encrypted:

- (1) Social security number;
- (2) Driver’s license number or Hawaii identification card number; or
- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual’s financial account.

“Personal information” shall not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

“Records” means any material on which written, drawn, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

§ -2 Destruction of personal information records. (a) Any business or government agency that conducts business in Hawaii and any business or government agency that maintains or otherwise possesses personal information of a resident of Hawaii shall take reasonable measures to protect against unauthorized access to or use of the information in connection with or after its disposal.

(b) The reasonable measures shall include:

- (1) Implementing and monitoring compliance with policies and procedures that require the burning, pulverizing, recycling, or shredding of papers containing personal information so that information cannot be practicably read or reconstructed;
- (2) Implementing and monitoring compliance with policies and procedures that require the destruction or erasure of electronic media and other nonpaper media containing personal information so that the information cannot practicably be read or reconstructed; and
- (3) Describing procedures relating to the adequate destruction or proper disposal of personal records as official policy in the writings of the business entity.

(c) A business or government agency may satisfy its obligation hereunder by exercising due diligence and entering into a written contract with, and thereafter monitoring compliance by, another party engaged in the business of record destruction to destroy personal information in a manner consistent with this section. Due diligence should ordinarily include one or more of the following:

- (1) Reviewing an independent audit of the disposal business's operations or its compliance with this statute or its equivalent;
- (2) Obtaining information about the disposal business from several references or other reliable sources and requiring that the disposal business be certified by a recognized trade association or similar third party with a reputation for high standards of quality review; or
- (3) Reviewing and evaluating the disposal business's information security policies or procedures, or taking other appropriate measures to determine the competency and integrity of the disposal business.

(d) A disposal business that conducts business in Hawaii or disposes of personal information of residents of Hawaii shall take reasonable measures to dispose of records containing personal information by implementing and monitoring compliance with policies and procedures that protect against unauthorized access to, or use of, personal information during or after the collection, transportation, and disposing of such information.

(e) This chapter shall not apply to any of the following:

- (1) Any financial institution that is subject to 15 U.S.C. Sections 6801 to 6809, as amended;
- (2) Any health plan or healthcare provider that is subject to and in compliance with the standards for privacy of individually identifiable health information and the security standards for the protection of electronic health information of the Health Insurance Portability and Accountability Act of 1996; or
- (3) Any consumer reporting agency that is subject to and in compliance with the Fair Credit Reporting Act, 15 U.S.C. Sections 1681 to 1681x.

§ -3 Penalties; civil action. (a) Any business that violates any provision of this chapter shall be subject to penalties of not more than \$2,500 for each violation. The attorney general or the executive director of the office of consumer protection may bring an action pursuant to this section. No such action may be brought against a government agency.

(b) In addition to any penalty provided for in subsection (a), any business that violates any provision of this chapter shall be liable to the injured party in an amount equal to the sum of any actual damages sustained by the injured party as a result of the violation. The court in any action brought under this section may award reasonable attorneys' fees to the prevailing party. No such action may be brought against a government agency.

(c) The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State.

§ -4 Reporting requirements. A government agency shall submit a written report to the legislature within twenty days after the discovery of a material occurrence of unauthorized access to personal information records in connection with or after its disposal by or on behalf of the government agency. The report shall contain information relating to the nature of the incident, the number of individuals affected by the incident, and any procedures that have been implemented to prevent the incident from reoccurring. In the event that a law enforcement agency informs the government agency that the report may impede a criminal investigation or jeopardize national security, the report to the legislature may be delayed until twenty days after the law enforcement agency has determined that the report will no longer impede the investigation or jeopardize national security."

SECTION 3. This Act shall take effect on January 1, 2007.

(Approved May 25, 2006.)

ACT 137

S.B. NO. 2293

A Bill for an Act Relating to Social Security Number Protection.

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

SECTION 1. The legislature finds that identity theft is a serious crime, with lasting negative repercussions on the finances and life of the person whose identity was stolen. One of the tools most frequently used to steal a person's identity is the person's social security number. While it was originally introduced by the federal government to keep track of payroll taxes, its use has spread so that it has virtually become a universal identifier. Security experts recommend, to the greatest extent possible, that people protect their social security number and use it only for its intended federal purposes.

The purpose of this Act is to minimize the abuses associated with the fraudulent use of a social security number by restricting its use as an identifier.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to title 26 to be appropriately designated and to read as follows:

**“CHAPTER
SOCIAL SECURITY NUMBER PROTECTION**

§ -1 Definitions. As used in this chapter:

“Business” means a sole proprietorship, partnership, limited partnership, corporation, limited liability company, association, or any other form of business entity. The term also includes a financial institution organized, chartered, or holding a license or authorization certificate under the laws of this State, any other state, the

United States, or any other country, or the parent or the subsidiary of any such financial institution. The term also includes an entity whose business is records destruction.

“Government agency” means any department, division, board, commission, public corporation, or other agency or instrumentality of the State or of any county.

“Redacted” means the rendering of data so that it is unreadable or is truncated so that no more than the last four digits of the identification number are accessible as part of the data.

§ -2 Social security number protection. (a) Except as otherwise provided in subsection (b), a business or government agency may not do any of the following:

- (1) Intentionally communicate or otherwise make available to the general public an individual’s entire social security number;
- (2) Intentionally print or imbed an individual’s entire social security number on any card required for the individual to access products or services provided by the person or entity;
- (3) Require an individual to transmit the individual’s entire social security number over the Internet, unless the connection is secure or the social security number is encrypted;
- (4) Require an individual to use the individual’s entire social security number to access an Internet website, unless a password or unique personal identification number or other authentication device is also required to access the Internet website; and
- (5) Print an individual’s entire social security number on any materials that are mailed to the individual, unless the materials are employer-to-employee communications, or where specifically requested by the individual.

(b) Subsection (a) shall not apply to:

- (1) The inclusion of a social security number in documents that are mailed and:
 - (A) Are specifically requested by the individual identified by the social security number;
 - (B) Required by state or federal law to be on the document to be mailed;
 - (C) Required as part of an application or enrollment process;
 - (D) Used to establish, amend, or terminate an account, contract, or policy; or
 - (E) Used to confirm the accuracy of the social security number for the purpose of obtaining a credit report pursuant to 15 U.S.C. section 1681(b).

A social security number that is permitted to be mailed under this paragraph may not be printed, in whole or in part, on a postcard or other mailer not requiring an envelope, or visible on the envelope or without the envelope having been opened;

- (2) The opening of an account or the provision of or payment for a product or service authorized by an individual;
- (3) The collection, use, or release of a social security number to investigate or prevent fraud; conduct background checks; conduct social or scientific research; collect a debt; obtain a credit report from or furnish data to a consumer reporting agency pursuant to the Fair Credit Reporting Act, 15 U.S.C. Sections 1681 to 1681x, as amended; undertaking a permissible purpose enumerated under the federal Gramm Leach Bliley Act, 15 U.S.C. Sections 6801 to 6809, as amended; locate an individual

who is missing or due a benefit, such as a pension, insurance, or unclaimed property benefit; or locate a lost relative;

- (4) A business or government agency acting pursuant to a court order, warrant, subpoena, or when otherwise required by law;
- (5) A business or government agency providing the social security number to a federal, state, or local government entity including a law enforcement agency or court, or their agents or assigns;
- (6) The collection, use, or release of a social security number in the course of administering a claim, benefit, or procedure relating to an individual's employment, including an individual's termination from employment, retirement from employment, injuries suffered during the course of employment, and other related claims, benefits, or procedures;
- (7) The collection, use, or release of a social security number as required by state or federal law;
- (8) The sharing of the social security number by business affiliates;
- (9) The use of a social security number for internal verification or administrative purposes;
- (10) A social security number that has been redacted; and
- (11) Documents or records that are recorded or required to be open to the public pursuant to the constitution or laws of the State or court rule or order.

(c) A business or government agency covered by this section shall make reasonable efforts to cooperate, through systems testing and other means, to ensure that the requirements of this chapter are complied with.

§ -3 Penalties; civil action. (a) Any business that violates any provision of this chapter shall be subject to penalties of not more than \$2,500 for each violation. The attorney general or the executive director of the office of consumer protection may bring an action pursuant to this section. No such action may be brought against a government agency.

(b) In addition to any penalty provided for in subsection (a), any business that violates any provision of this chapter shall be liable to the injured party in an amount equal to the sum of any actual damages sustained by the injured party as a result of the violation. The court in any action brought under this section may award reasonable attorneys' fees to the prevailing party. No such action may be brought against a government agency.

(c) The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of this State.

§ -4 Reporting requirements. A government agency shall submit a written report to the legislature within twenty days after the discovery of a material occurrence of a social security number disclosure by the government agency that is prohibited by this chapter. The report shall contain information relating to the nature of the incident, the number of individuals affected by the incident, and any procedures that have been implemented to prevent the incident from reoccurring. In the event that a law enforcement agency informs the government agency that the report may impede a criminal investigation or jeopardize national security, the report to the legislature may be delayed until twenty days after the law enforcement agency has determined that the report will no longer impede the investigation or jeopardize national security."

SECTION 3. This Act shall take effect on July 1, 2007.

(Approved May 25, 2006.)

ACT 138

H.B. NO. 1871

A Bill for an Act Relating to Consumer Credit Reporting Agencies.

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

SECTION 1. The Hawaii Revised Statutes is amended by adding to title 26 a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
CONSUMER CREDIT REPORTING AGENCIES**

§ **-1 Purpose.** The Federal Trade Commission recently determined that between October 1998, and September 2003, more than twenty-seven million three hundred Americans have been victims of identity theft, resulting in billions of dollars of losses to consumers. The purpose of this chapter is to protect Hawaii consumers who are victims of identity theft by allowing them to place a security freeze on their credit reports. This security freeze will prohibit a consumer reporting agency from releasing any information to unauthorized parties without the consumer’s express authorization and provide consumers more control over who has access to their credit report. This chapter aims to effectively prevent identity thieves from continuing to secure credit in an identity theft victim’s name.

§ **-2 Definitions.** When used in this chapter, unless the context otherwise requires:

“Consumer credit reporting agency” or “consumer reporting agency” means any person who, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing credit reports to third parties, but does not include any governmental agency whose records are maintained primarily for law enforcement or licensing purposes.

“Credit report” means any written, oral, or other communication of any credit information by a consumer reporting agency, as defined in the federal Fair Credit Reporting Act, which operates or maintains a database of consumer credit information bearing on a consumer’s credit worthiness, credit standing, or credit capacity.

“Identity theft” means the unauthorized use of another person’s identifying information to obtain credit, goods, services, money, or property.

“Security freeze” means a notice placed in a credit report, at the request of the consumer who is a victim of identity theft.

§ **-3 Security freeze by consumer reporting agency.** (a) A consumer who has been the victim of identity theft may place a security freeze on the consumer’s credit report by making a request in writing by certified mail to a consumer credit reporting agency, at an address designated by the agency to receive such requests, with a valid copy of a police report, investigative report, or complaint the consumer has filed with a law enforcement agency about unlawful use of the consumer’s personal information by another person. A consumer credit reporting agency shall not charge a fee for placing or removing a security freeze on a credit report. A security freeze shall prohibit the consumer credit reporting agency from releasing the consumer’s credit report or any information from it without the express authorization of the consumer. This subsection shall not prevent a consumer report-

ing agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report.

(b) A consumer reporting agency shall place a security freeze on a consumer's credit report no later than five business days after receiving a written request from the consumer.

(c) The consumer reporting agency shall send a written confirmation of the security freeze to the consumer within ten business days of placing the security freeze and shall provide the consumer with a unique personal identification number or password, other than the consumer's social security number, to be used by the consumer when providing authorization for the release of the consumer's credit report for a specific party, parties, or period of time.

(d) If the consumer wishes to allow access to the consumer's credit report for a specific party, parties, or period of time while a freeze is in place, the consumer shall contact the consumer reporting agency at a point of contact designated by the agency using the procedures that may be developed by the consumer reporting agency, request that the freeze be temporarily lifted, and provide the following:

- (1) Clear and proper identification;
- (2) The unique personal identification number or password provided by the consumer reporting agency; and
- (3) Clear and proper information regarding the third party, parties, or time period for which the report shall be available to users of the credit report.

(e) A consumer reporting agency may develop procedures involving the use of telephone, fax, the Internet, or other electronic media to receive and process a request from a consumer to temporarily lift a freeze on a credit report in an expedited manner.

(f) A consumer reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report shall comply with the request no later than three business days after receiving the request.

(g) A consumer reporting agency shall remove or temporarily lift a freeze placed on a consumer's credit report only in the following cases:

- (1) Upon consumer request; or
- (2) When the consumer's credit report was frozen due to a material misrepresentation of fact by the consumer.

If a consumer reporting agency intends to remove a freeze upon a consumer's credit report pursuant to this subsection, the consumer reporting agency shall notify the consumer in writing prior to removing the freeze on the consumer's credit report.

(h) If a third party requests access to a credit report on which a security freeze is in effect and this request is in connection with an application for credit or any other use and the consumer does not allow the consumer's credit report to be accessed by that specific party or for that period of time, the third party may treat the application as incomplete.

(i) If a consumer requests a security freeze, the consumer reporting agency shall disclose to the consumer the process of placing and temporarily lifting a security freeze and the process for allowing access to information from the consumer's credit report for a specific party, parties, or period of time while the security freeze is in place.

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer reporting agency shall remove a security freeze within three business days of receiving a request for removal at a point of contact designated by the agency using procedures that may be developed by the consumer reporting agency; provided that the consumer shall provide the following:

- (1) Clear and proper identification; and

- (2) The unique personal identification number or password provided by the consumer reporting agency pursuant to subsection (c).
- (k) A consumer reporting agency shall require clear and proper identification of the person making a request to place or remove a security freeze.
- (l) The provisions of this section, including the security freeze, do not apply to the use of a consumer's credit report by the following:
- (1) A person, or the person's subsidiary, affiliate, agent, or assignee with which the consumer has or, prior to assignment, had an account, contract, or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract, or debt, or extending credit to a consumer with a prior or existing account, contract, or debtor-creditor relationship. For purposes of this subsection, "reviewing the account" includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements;
 - (2) A subsidiary, affiliate, agent, assignee, or prospective assignee of a person to whom access has been granted for purposes of facilitating the extension of credit or other permissible use;
 - (3) Any person acting pursuant to a court order, warrant, or subpoena;
 - (4) A child support enforcement agency when investigating a child support case pursuant to Title IV-D of the Social Security Act (42 U.S.C. Sections 651 to 669b);
 - (5) The department of the attorney general or county prosecuting attorneys or their agents or assignees acting to investigate medicaid fraud;
 - (6) The department of taxation, county taxing authorities, or any of their agents or assignees, acting to investigate or collect delinquent taxes or assessments, including interest and penalties, unpaid court orders, or to fulfill any of their other statutory or charter responsibilities;
 - (7) The use of credit information for the purposes of prescreening as provided by the federal Fair Credit Reporting Act (15 U.S.C. Sections 1681 to 1681x);
 - (8) Any person for the sole purpose of providing a credit file monitoring subscription service to which the consumer has subscribed;
 - (9) A person for the sole purpose of providing a consumer with a copy of the consumer's credit report upon the consumer's request; and
 - (10) Any person or entity using a credit report in setting or adjusting a rate, adjusting a claim, or underwriting for insurance purposes.

§ -4 Consumer reporting agency duties if security freeze in place. If a security freeze is in place, a consumer reporting agency shall not change any of the following official information in a credit report without sending a written confirmation of the change to the consumer within thirty days of the change being posted to the consumer's file: name, date of birth, social security number, and address. Written confirmation shall not be required for technical modifications of a consumer's official information, including name and street abbreviations, complete spellings, or transposition of numbers or letters. In the case of an address change, the written confirmation shall be sent to both the new address and the former address.

§ -5 Persons not required to place security freeze. The requirement under this chapter to place a security freeze on a credit report shall not apply to:

- (1) A check services or fraud prevention services company that reports on incidents of fraud or issues authorizations for the purpose of approving or processing negotiable instruments, electronic fund transfers, or similar methods of payment;

- (2) A deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, ATM abuse, or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution;
- (3) A consumer reporting agency that:
 - (A) Acts only to resell credit information by assembling and merging information contained in a database of one or more consumer reporting agencies; and
 - (B) Does not maintain a permanent database of credit information from which new credit reports are produced.

§ -6 Violation, penalties. (a) A person who violates any provision of this chapter shall be subject to penalties of not more than \$2,500 for each violation. The attorney general or the executive director of the office of consumer protection may bring an action pursuant to this section.

(b) In addition to any penalty provided for in subsection (a), any person who violates any provision of this chapter shall be liable to the injured party in an amount equal to the sum of any actual damages sustained by the injured party as a result of the violation. The court in any action brought under this section may award reasonable attorneys' fees to the prevailing party.

(c) The penalties provided in this section shall be cumulative to the remedies or penalties available under all other laws of the State."

SECTION 2. This Act shall take effect on January 1, 2007.

(Approved May 25, 2006.)

ACT 139

S.B. NO. 2159

A Bill for an Act Relating to Identity Theft.

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

SECTION 1. In 2005, the Hawaii anti-phishing task force was established in the department of the attorney general to develop state policy on how best to prevent further occurrences of phishing and other forms of electronic commerce-based crimes in the State. The task force focused on:

- (1) Examining state agencies charged with the responsibility of developing policies, procedures and operations to prevent, monitor, and enforce electronic commerce-based criminal activities and sanctions;
- (2) Deriving best practice models from the review of other jurisdictions' activities, policies, and laws related to the prevention of electronic commerce-based crimes;
- (3) Exploring other options available to the task force to deter electronic commerce-based crimes from occurring in the State; and
- (4) Establishing findings and recommendations on electronic commerce-based crime prevention.

The task force submitted to the legislature findings and recommendations on deterring electronic commerce-based crime.

The purpose of this bill is to implement the recommendations of the task force on protection of personal information.

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

“§708- Unauthorized possession of confidential personal information.

(1) A person commits the offense of unauthorized possession of confidential personal information if that person intentionally or knowingly possesses, without authorization, any confidential personal information of another in any form, including but not limited to mail, physical documents, identification cards, or information stored in digital form.

(2) It is an affirmative defense that the person who possessed the confidential personal information of another did so under the reasonable belief that the person in possession was authorized by law or by the consent of the other person to possess the confidential personal information.

(3) Unauthorized possession of confidential personal information is a class C felony.”

SECTION 3. Section 708-800, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

““Confidential personal information” means information in which an individual has a significant privacy interest, including but not limited to a driver’s license number, a social security number, an identifying number of a depository account, a bank account number, a password or other information that is used for accessing information, or any other name, number, or code that is used, alone or in conjunction with other information, to confirm the identity of a person.”

SECTION 4. Section 706-606.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Notwithstanding section 706-669 and any other law to the contrary, any person convicted of murder in the second degree, any class A felony, any class B felony, or any of the following class C felonies: section 188-23 relating to possession or use of explosives, electrofishing devices, and poisonous substances in state waters; section 707-703 relating to negligent homicide in the first degree; 707-711 relating to assault in the second degree; 707-713 relating to reckless endangering in the first degree; 707-716 relating to terroristic threatening in the first degree; 707-721 relating to unlawful imprisonment in the first degree; 707-732 relating to sexual assault or rape in the third degree; 707-735 relating to sodomy in the third degree; 707-736 relating to sexual abuse in the first degree; 707-751 relating to promoting child abuse in the second degree; 707-766 relating to extortion in the second degree; 708-811 relating to burglary in the second degree; 708-821 relating to criminal property damage in the second degree; 708-831 relating to theft in the first degree as amended by Act 68, Session Laws of Hawaii 1981; 708-831 relating to theft in the second degree; 708-835.5 relating to theft of livestock; 708-836 relating to unauthorized control of propelled vehicle; 708-839.8 relating to identity theft in the third degree; 708- relating to unauthorized possession of confidential personal information; 708-852 relating to forgery in the second degree; 708-854 relating to criminal possession of a forgery device; 708-875 relating to trademark counterfeiting; 710-1071 relating to intimidating a witness; 711-1103 relating to riot; 712-1203 relating to promoting prostitution in the second degree; 712-1221 relating to gambling in the first degree; 712-1224 relating to possession of gambling records in the first degree;

712-1243 relating to promoting a dangerous drug in the third degree; 712-1247 relating to promoting a detrimental drug in the first degree; 134-7 relating to ownership or possession of firearms or ammunition by persons convicted of certain crimes; 134-8 relating to ownership, etc., of prohibited weapons; 134-9 relating to permits to carry, or who is convicted of attempting to commit murder in the second degree, any class A felony, any class B felony, or any of the class C felony offenses enumerated above and who has a prior conviction or prior convictions for the following felonies, including an attempt to commit the same: murder, murder in the first or second degree, a class A felony, a class B felony, any of the class C felony offenses enumerated above, or any felony conviction of another jurisdiction shall be sentenced to a mandatory minimum period of imprisonment without possibility of parole during such period as follows:

- (a) One prior felony conviction:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—ten years;
 - (ii) Where the instant conviction is for a class A felony—six years, eight months;
 - (iii) Where the instant conviction is for a class B felony—three years, four months;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—one year, eight months;
- (b) Two prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—twenty years;
 - (ii) Where the instant conviction is for a class A felony—thirteen years, four months;
 - (iii) Where the instant conviction is for a class B felony—six years, eight months;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—three years, four months;
- (c) Three or more prior felony convictions:
 - (i) Where the instant conviction is for murder in the second degree or attempted murder in the second degree—thirty years;
 - (ii) Where the instant conviction is for a class A felony—twenty years;
 - (iii) Where the instant conviction is for a class B felony—ten years;
 - (iv) Where the instant conviction is for a class C felony offense enumerated above—five years.”

SECTION 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. New statutory material is underscored.¹

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

(Approved May 25, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 140

H.B. NO. 3244

A Bill for an Act Relating to Identity Theft.

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

SECTION 1. In 2005, the Hawaii anti-phishing task force was established in the department of the attorney general to develop state policy on how best to prevent further occurrences of phishing and other forms of electronic commerce-based crimes in the state. The task force focused on:

- (1) Examining state agencies charged with the responsibility of developing policies, procedures, and operations to prevent, monitor, and enforce electronic commerce-based criminal activities and sanctions;
- (2) Deriving best practice models from the review of other jurisdictions' activities, policies, and laws related to the prevention of electronic commerce-based crimes;
- (3) Exploring other options available to the task force to deter electronic commerce-based crimes from occurring in the state; and
- (4) Establishing findings and recommendations on electronic commerce-based crime prevention.

The task force submitted to the legislature findings and recommendations on deterring electronic commerce-based crime.

The purpose of this Act is to implement the recommendations of the task force on identity theft.

PART I

SECTION 2. Act 65, Session Laws of Hawaii 2005, is amended by amending section 2 to read as follows:

“SECTION 2. (a) There is established [within the department of the attorney general – a Hawaii anti-phishing] an identity theft task force to examine options to prevent electronic commerce-based crimes in the [State-] state and to safeguard and protect from identity theft all personal identifying information in public documents across the gamut of state and county agencies.

(b) The [Hawaii anti-phishing] identity theft task force shall include members as follows:

- (1) The attorney general or the attorney general's designee;
- (2) The director of the office of consumer protection;
- (3) The United States Attorney for the District of Hawaii or the United States Attorney's designee;
- (4) Two members [of the Hawaii state senate] appointed by the president of the senate;
- (5) Two members [of the Hawaii state house of representatives] appointed by the speaker of the house of representatives;
- (6) Two members representing the financial services industry, one appointed by the president of the senate and one appointed by the speaker of the house of representatives;
- (7) A member of the Honolulu police department's criminal investigation division; [and]
- (8) A member of the Honolulu field office's United States Secret Service electronic crimes unit~~[-]~~;
- (9) The administrative director of the judiciary or the administrative director's designee;

- (10) A member representing all of the county police departments, appointed by the police chiefs;
- (11) A member representing the Hawaii Prosecuting Attorneys' Association;
- (12) A member representing the United States Postal Service;
- (13) A member representing the University of Hawaii;
- (14) A member representing the department of education;
- (15) A member representing all of the counties, appointed by the Hawaii State Association of Counties;
- (16) Two members representing consumer and business organizations, one appointed by the president of the senate and one appointed by the speaker of the house of representatives;
- (17) Two members representing the retail and small business community, one appointed by the president of the senate and one appointed by the speaker of the house of representatives; and
- (18) A member representing the department of accounting and general services.

(c) The task force shall:

- (1) Examine the policies, procedures, and operations of state agencies charged with the responsibility of developing policies to prevent electronic commerce-based crimes, monitoring electronic commerce-based criminal activity, and enforcing electronic commerce-based criminal sanctions;
- (2) Review other jurisdictions' activities, policies, directives, and laws related to preventing electronic commerce-based crimes and derive best [practices] practice models therefrom;
- (3) Explore any other options available to the task force to deter electronic commerce-based crimes from occurring in the State; [and]
- (4) Establish findings and develop recommendations on how the State may best deter electronic commerce-based crimes from occurring in the [State.] state;
- (5) Identify the best practices to prevent identity theft by reviewing other jurisdictions' activities, policies, and laws related to protecting personal identifying information collected by government agencies, and establishing a timetable for the immediate removal of personal identifying information from public records in Hawaii, including:
 - (A) The review of current practices associated with use and disclosure for public inspection of social security numbers in any records or documents maintained by state and county agencies;
 - (B) The review of the current volume of these records or documents and likely future increase or decrease in the volume of these records or documents; and
 - (C) The practicability of any proposed mandatory redaction for certain types of records or documents, and the impact that any proposed mandatory redaction may have on human or other resources necessary to implement the redaction; and
- (6) Identify and recommend solutions to issues involving social security number protection, including the sale, lease, trade, rent, or otherwise intentional release of an individual's social security number to a third party.

(d) The members of the task force shall select the chairperson of the task force and shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

[(d)] (e) The task force shall submit its findings and recommendations to the legislature, including any proposed legislation, no later than twenty days prior to the convening of the [2006] 2007 regular session[-] and the 2008 regular session.

~~[(e)]~~ (f) The ~~[department of the attorney general]~~ office of the auditor shall provide the research and organizational support services necessary to assist the task force in achieving its purpose as required under this Act.

~~[(f)]~~ (g) The task force shall cease to exist on ~~[June 30, 2006.]~~ December 31, 2007.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2006-2007 for research and support services, including reimbursement of expenses for members.

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

SECTION 4. 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 the attorney general relating to the functions transferred to the office of the auditor shall be transferred with the functions to which they relate.

PART II

SECTION 5. Numerous law enforcement agencies in the state have adopted and implemented strategies to address and combat the increasing problem of identity theft. In particular, the department of the attorney general has committed a substantial amount of its resources and has worked closely with almost every criminal enforcement authority in the state in an effort to thwart identity theft. In 2002, the department created the Hawaii high technology crime unit to increase the number of investigations and prosecutions of computer-related crimes. The unit focuses on prosecuting crimes involving Internet fraud and recovering money for victims. The unit also creates and administers task forces, which are composed of federal, state, and county law enforcement agencies. The task forces coordinate investigations, share resources, and provide community outreach.

Despite current participation from various departments and agencies, more effort is needed to effectively combat the occurrence of identity theft, prosecute criminals, and enforce penalties. Law enforcement authorities track identity theft crimes in various ways; the current tracking methods do not provide accurate statistical information about identity theft in the state. A uniform system of tracking will provide law enforcement authorities with a better understanding of the depth and pervasiveness of the problem in Hawaii.

Once adopted and implemented by law enforcement authorities, the uniform tracking and reporting system will yield better statistics on the range and breadth of identity theft and electronic crimes. The compiled data is intended to be used to support a future U.S. Secret Service application for designation of Hawaii as one of its regional centers for the Electronic Crimes Task Force.

SECTION 6. 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 2006-2007 for the high technology crime unit and the crime prevention and justice assistance division of the department of the attorney general to develop a uniform system of tracking identity theft crimes.

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

ACT 141

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; provided that sections 3 and 6 shall take effect on July 1, 2006.

(Approved May 25, 2006.)

ACT 141

H.B. NO. 2535

A Bill for an Act Relating to Offenses Against Property Rights.

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

SECTION 1. Section 708-893, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of use of a computer in the commission of a separate crime if the person [~~knowingly~~]:

(a) Intentionally uses a computer to obtain control over the property of the victim to commit theft in the first or second degree; or

(b) Knowingly uses a computer to identify, select, solicit, persuade, coerce, entice, induce, or procure the victim or intended victim of the following offenses:

[(a)] (i) Section 707-726, relating to custodial interference in the first degree;

[(b)] (ii) Section 707-727, relating to custodial interference in the second degree;

[(c)] (iii) Section 707-731, relating to sexual assault in the second degree;

[(d)] (iv) Section 707-732, relating to sexual assault in the third degree;

[(e)] (v) Section 707-733, relating to sexual assault in the fourth degree;

[(f)] (vi) Section 707-751, relating to promoting child abuse in the second degree; [~~and~~] or

[(g)] (vii) Section 712-1215, relating to promoting pornography for minors.”

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 25, 2006.)

ACT 142

H.B. NO. 2214

A Bill for an Act Relating to Rental Motor Vehicle Surcharge Tax.

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

SECTION 1. The purpose of this Act is to specify that the motor vehicle lessor shall be exempt from the rental motor vehicle surcharge tax if the motor vehicle lessor or the motor vehicle repair dealer retains the record of the repair order.

SECTION 2. Section 251-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is levied and shall be assessed and collected each month a rental motor vehicle surcharge tax of \$2 a day, except that for the period of September 1, 1999, to August 31, 2007, the tax shall be \$3 a day, or any portion of a day that a rental motor vehicle is rented or leased. The rental motor vehicle surcharge tax shall be levied upon the lessor; provided that the tax shall not be levied on the lessor if:

- (1) The lessor is renting the vehicle to replace a vehicle of the lessee that is being repaired; and
- (2) [The] A record of the repair order for the vehicle is retained either by the lessor for [four] two years for verification purposes[;] or by a motor vehicle repair dealer for two years as provided in section 437B-16.”

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, 2006.

(Approved May 26, 2006.)

ACT 143

H.B. NO. 1021

A Bill for an Act Relating to Public Utilities.

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

SECTION 1. Section 269-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The chairperson of the public utilities commission may appoint and employ ~~[such]~~ clerks, stenographers, agents, engineers, accountants, and other assistants for the public utilities commission as the chairperson finds necessary for the performance of the commission’s functions and define their powers and duties. The chairperson may appoint and, at pleasure, dismiss a chief administrator[; ~~research assistants, economists, legal secretaries, enforcement officers,~~] and ~~[such]~~ hearings officers as may be necessary. Notwithstanding section 103D-209(b), the chairperson shall appoint one or more attorneys independent of the attorney general who shall act as attorneys for the commission and define their powers and duties and fix their compensation. The chief administrator[; ~~research assistants, economists, legal secretaries, enforcement officers, hearings officers,~~] and attorneys shall be exempt from chapter 76. Research assistants, economists, legal secretaries, utility analysts, legal assistants, and enforcement officers may be appointed with or without regard to chapter 76. Other employees shall be appointed as may be needed by the chairperson in accordance with chapter 76.”

SECTION 2. The public utilities commission shall conduct an in-depth review of its organization to develop a comprehensive plan to restructure and supplement the commission and its resources to function more effectively and efficiently in light of, among other matters, changing regulatory conditions, duties, and requirements and advances in technology; and submit a report to the legislature no later than twenty days before the convening of the regular session of 2007. In the report, the public utilities commission shall specify the specific types and numbers of positions, and the amounts necessary to restructure the commission and supple-

ACT 144

ment its resources as may be necessary and appropriate; and propose any necessary legislation.

SECTION 3. The division of consumer advocacy shall conduct an in-depth review of its organization to develop a comprehensive plan to restructure and supplement the division and its resources to function more effectively and efficiently in light of, among other matters, changing regulatory conditions, duties, and requirements and advances in technology; and submit a report to the legislature no later than twenty days before the convening of the regular session of 2007. In the report, the division of consumer advocacy shall specify the specific types and numbers of positions, and the amounts necessary to restructure the division and supplement its resources as may be necessary and appropriate; and propose any necessary legislation.

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, 2006.

(Approved May 26, 2006.)

ACT 144

S.B. NO. 2243

A Bill for an Act Relating to Biological Evidence.

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

SECTION 1. Section 844D-31, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Testing pursuant to this section shall begin immediately for all persons who have been convicted of murder in any degree or any felony offense defined in chapter 846E[;] and all persons convicted of any felony offense who are confined in a correctional facility or other detention facility, including private correctional facilities, but shall not begin for other persons until thirty days after statewide publication of notice by the attorney general pursuant to section 1-28.5.”

SECTION 2. Section 844D-62, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) The department of the attorney general shall provide all blood specimen collectors, buccal swab sample collectors, mailing [tubes,] envelopes, labels, and instructions for the collection of the blood specimens, buccal swab samples, and print impressions. The specimens, samples, and print impressions shall thereafter be forwarded to the department [for analysis of DNA and other forensic identification markers. Additionally, the department of the attorney general shall provide all print impression cards, mailing envelopes, and instructions for the collection of print impressions. The print impressions shall be forwarded to the department for maintenance in a file for identification purposes].”

2. By amending subsection (d) to read:

“(d) [Print impressions of each hand shall be taken on forms prescribed by the department of the attorney general. The print impression forms shall be forwarded to and maintained by the department of the attorney general.] Print impres-

sions taken at the time of the collection of samples or specimens shall be placed on the samples and specimens container and forms as directed by the department. The samples, specimens, and forms shall be forwarded to and maintained by the department.”

SECTION 3. Section 844D-111, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person commits the offense of refusal or failure to provide specimen for forensic identification if the person is required by this chapter to provide any blood specimens, buccal swab samples, or print impressions and intentionally or knowingly refuses or fails to provide any of the required blood specimens, buccal swab samples, or print impressions after the person has received written notice from the department, the department of public safety, any law enforcement personnel, or officer of the court that the person is required to provide each and every one of the blood specimens, buccal swab samples, and print impressions required by this chapter.”

SECTION 4. Section 844D-121, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§844D-121**~~]]~~ **Petition for post-conviction DNA testing.** Notwithstanding any other law or rule of court governing post-conviction relief to the contrary, a person who was convicted of and sentenced for a crime, or acquitted of a crime on the ground of physical or mental disease, disorder, or defect excluding responsibility, may file a motion, at any time, for DNA analysis of any evidence that:

- (1) Is in the custody or control of a police department, prosecuting attorney, laboratory, or court;
- (2) Is related to the investigation or prosecution that resulted in the judgment of conviction~~[-and]~~ or acquittal of a crime on the ground of physical or mental disease, disorder, or defect excluding responsibility; and
- (3) May contain biological evidence.”

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

SECTION 6. This Act shall take effect upon approval.

(Approved May 26, 2006.)

ACT 145

S.B. NO. 2597

A Bill for an Act Relating to Appellate Jurisdiction.

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

SECTION 1. Section 602-57, Hawaii Revised Statutes, is amended to read as follows:

“**§602-57 Jurisdiction.** Notwithstanding any other law to the contrary, the intermediate appellate court shall have jurisdiction, subject to transfer as provided in section 602-58 or review on application for a writ of certiorari as provided in section 602-59:

- (1) To hear and determine appeals from ~~[the district, family, and circuit courts and from]~~ any court or agency when appeals are allowed by law; ~~[and]~~
- (2) To entertain, in its discretion, any case submitted without suit when there is a question of law that could be the subject of a civil action or proceeding in the circuit court, or tax appeal court, and the parties agree upon the facts upon which the controversy depends[-]; and
- (3) To make or issue any order or writ necessary or appropriate in the aid of its jurisdiction, and in such case, any judge may issue a writ or an order to show cause returnable before the court."

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

SECTION 3. This Act shall take effect on the effective date of sections 1 through 82 of Act 202, Session Laws of Hawaii 2004.

(Approved May 26, 2006.)

ACT 146

H.B. NO. 1977

A Bill for an Act Relating to Structured Settlements.

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
STRUCTURED SETTLEMENT PROTECTION ACT**

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

“Annuity issuer” means an insurer that has issued a contract to fund periodic payments under a structured settlement.

“Dependents” include a payee’s spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

“Discounted present value” means the present value of future payments, determined by discounting the payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

“Gross advance amount” means the sum payable to the payee or for the payee’s account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from the consideration.

“Independent professional advice” means advice of an attorney, certified public accountant, actuary, or other licensed professional adviser.

“Interested party” means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under the structured settlement.

“Net advance amount” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under section -2(5).

“Payee” means an individual who is receiving tax free payments under a structured settlement and proposes to make a transfer of the payment rights.

“Periodic payments” includes both recurring payments and scheduled future lump sum payments.

“Qualified assignment agreement” means an agreement providing for a qualified assignment within the meaning of Section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time.

“Responsible administrative authority” means, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by the structured settlement.

“Settled claim” means the original tort claim resolved by a structured settlement.

“Structured settlement” means an arrangement for periodic payment of damages for personal injuries or sickness established by settlement or judgment in resolution of a tort claim.

“Structured settlement agreement” means the agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

“Structured settlement obligor” means, with respect to any structured settlement, the party that has the continuing obligation to make periodic payments to the payee under a structured settlement agreement or a qualified assignment agreement.

“Structured settlement payment rights” means rights to receive periodic payments under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

- (1) The payee is domiciled in, or the domicile or principal place of business of the structured settlement obligor or the annuity issuer is located in, this State;
- (2) The structured settlement agreement was approved by a court or responsible administrative authority in this State; or
- (3) The structured settlement agreement is expressly governed by the laws of this State.

“Terms of the structured settlement” include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of any court or responsible administrative authority or other government authority that authorized or approved the structured settlement.

“Transfer” means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for consideration; provided that the term “transfer” shall not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest, or otherwise to enforce the blanket security interest against the structured settlement payment rights.

“Transfer agreement” means the agreement providing for a transfer of structured settlement payment rights.

“Transfer expenses” means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including, without limitation, court filing fees, attorneys fees, escrow fees, lien recordation fees, judgment and lien search fees, finders’ fees, commissions, and other payments to a broker or other intermediary. “Transfer expenses” shall not

include preexisting obligations of the payee payable for the payee's account from the proceeds of a transfer.

"Transferee" means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

§ -2 Required disclosures to payee. Not less than three days prior to the date on which a payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than fourteen points, setting forth:

- (1) The amounts and due dates of the structured settlement payments to be transferred;
- (2) The aggregate amount of the payments in paragraph (1);
- (3) The discounted present value of the payments to be transferred, which shall be identified as the "calculation of current value of the transferred structured settlement payments under federal standards for valuing annuities", and the amount of the applicable federal rate used in calculating the discounted present value;
- (4) The gross advance amount;
- (5) An itemized listing of all applicable transfer expenses, other than attorneys' fees and related disbursements payable in connection with the transferee's application for approval of the transfer, and the transferee's best estimate of the amount of any of the fees and disbursements stated in this paragraph;
- (6) The net advance amount;
- (7) The amount of any penalties or liquidated damages payable by the payee in the event of any breach of the transfer agreement by the payee; and
- (8) A statement that the payee has the right to cancel the transfer agreement, without penalty or further obligation, not later than the third business day after the date the agreement is signed by the payee.

§ -3 Approval of transfers of structured settlement payment rights. No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights, unless the transfer has been approved in advance in a final court order or order of a responsible administrative authority based upon express findings by the court or responsible administrative authority that:

- (1) The transfer is in the best interest of the payee, taking into account the welfare and support of the payee's dependents;
- (2) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received the advice or knowingly waived the advice in writing; and
- (3) The transfer does not contravene any applicable statute or the order of any court or other government authority.

§ -4 Effects of transfer of structured settlement payment rights. Following a transfer of structured settlement payment rights under this chapter:

- (1) The structured settlement obligor and the annuity issuer, as to all parties except the transferee, shall be discharged and released from any and all liability for the transferred payments;
- (2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

- (A) For any taxes incurred by the parties as a consequence of the transfer, if the transfer contravenes the terms of the structured settlement; and
 - (B) For any other liabilities or costs, including reasonable costs and attorneys' fees, arising from compliance by the parties with the order of the court or responsible administrative authority, or arising as a consequence of the transferee's failure to comply with this chapter;
- (3) Neither the annuity issuer nor the structured settlement obligor may be required to divide any periodic payment between the payee and any transferee or assignee or between two or more transferees or assignees; and
 - (4) Any further transfer of structured settlement payment rights by the payee may be made only after compliance with all of the requirements of this chapter.

§ -5 Procedure for approval of transfers. (a) An application under this chapter for approval of a transfer of structured settlement payment rights shall be made by the transferee and may be brought in any court or before any responsible administrative authority:

- (1) In the county in which the payee resides;
- (2) In the county in which the structured settlement obligor or the annuity issuer maintains its principal place of business; or
- (3) That approved the structured settlement agreement.

(b) To apply for approval of a transfer of structured settlement payment rights under section -3, the transferee shall file with the court or responsible administrative authority and serve on all interested parties a notice of the proposed transfer and the application for its authorization. The notice shall include:

- (1) A copy of the transferee's application;
- (2) A copy of the transfer agreement;
- (3) A copy of the disclosure statement required under section -2;
- (4) A listing of each of the payee's dependents, together with each dependent's age;
- (5) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or responsible administrative authority or by participating in the hearing; and
- (6) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application shall be filed, to be considered by the court or responsible administrative authority; provided that the written responses shall be filed not less than fifteen days after service of the transferee's notice.

§ -6 General provisions construction. (a) The provisions of this chapter may not be waived by any payee.

(b) Any transfer agreement entered into on or after the effective date of this Act by a payee who resides in this state shall provide that disputes under the transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of this State. No transfer agreement shall authorize the transferee or any other party to confess judgment or consent to entry of judgment against the payee.

(c) No transfer of structured settlement payment rights shall extend to any payments that are life-contingent unless, prior to the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain

procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

- (1) Periodically confirming the payee’s survival; and
- (2) Giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee’s death.

(d) No payee who proposes to make a transfer of structured settlement payment rights shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee or any assignee based on any failure of the transfer to satisfy the conditions of this chapter.

(e) Nothing contained in this chapter shall be construed to authorize any transfer of structured settlement payment rights in contravention of any law or to imply that any transfer under a transfer agreement entered into prior to the effective date of this Act is valid or invalid.

(f) Compliance with the requirements set forth in section -2 and fulfillment of the conditions set forth in section -3 shall be solely the responsibility of the transferee in any transfer of structured settlement payment rights, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, non-compliance with the requirements or failure to fulfill the conditions.”

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

(Approved May 26, 2006.)

ACT 147

H.B. NO. 2503

A Bill for an Act Relating to Derelict Vehicle.

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

SECTION 1. The legislature finds that the current law that permits disposal of a derelict vehicle without notice to the owner because the vehicle is “ten model years old or older” does not comply with the holding in *Wong v. City and County of Honolulu*, 333 F. Supp. 2d 942 (D. Hawaii 2004). In that case, United States District Court Senior Judge Alan C. Kay ruled that disposing of a vehicle deemed derelict under current law, without providing notice to the owner, simply because it is ten model years old or older violates constitutional guarantees of procedural due process.

The purpose of this Act is to delete the reference to vehicles that are “ten model years old or older” from the list of conditions in section 290-8, Hawaii Revised Statutes, which permit a derelict vehicle to be disposed of without notice to the owner. This Act also changes the references to the housing and community development corporation of Hawaii to the Hawaii public housing administration to reflect changes made by Act 196, Session Laws of Hawaii 2005, that take effect on July 1, 2006.

SECTION 2. Section 290-8, Hawaii Revised Statutes, is amended to read as follows:

“**§290-8 Derelict vehicle.** A vehicle shall be deemed a derelict vehicle by the administrative head of the county agency designated to carry out section 290-1, or by the executive director or a representative of the executive director of the ~~[housing and community development corporation of]~~ Hawaii public housing administration in the case of a vehicle ~~[which]~~ that has been abandoned on property

owned, managed, or administered by the [~~corporation,~~] administration, if major parts have been removed or material damage to the vehicle has rendered the vehicle inoperable and one of the following conditions exists:

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

Prior to authorizing the removal of a derelict vehicle, the administrative head of the county agency designated to carry out section 290-1 or the executive director or a representative of the executive director of [~~the housing and community development corporation of Hawaii]~~ the Hawaii public housing administration in the case of vehicles [~~which~~] that have been abandoned on property owned, managed, or operated by the [~~corporation,~~] administration, shall notify the county chief of police only if the vehicle is reported stolen or otherwise needed for police investigation.”

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 26, 2006.)

ACT 148

S.B. NO. 2485

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

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

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

“PART . ASSISTING AGRICULTURAL ENTERPRISES SERVING IMPORTANT AGRICULTURAL LANDS

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

“Department” means the department of budget and finance.

“Important agricultural lands” means those lands designated as such pursuant to part III of chapter 205.

“Project” means any combination of land, buildings, and other improvements thereon, including without limitation irrigation systems and infrastructure, for use of, or for, or to assist an agricultural enterprise serving important agricultural lands, including without limiting the generality of the foregoing, machinery, equip-

ment, furnishings, and apparatus that are deemed necessary, suitable, or useful to the enterprise.

“Project agreement” means any agreement entered into under this part by the department with a project party to finance, construct, operate, or maintain a project from the proceeds of special purpose revenue bonds, or to lend the proceeds of special purpose revenue bonds to assist an agricultural enterprise serving important agricultural lands, including without limitation any loan agreement.

“Project party” means a person, firm, or corporation qualified to do business in this State and conducting or proposing to conduct an agricultural enterprise serving important agricultural lands.

“Special purpose revenue bonds” or “bonds” means bonds, notes, or other evidences of indebtedness of the State issued pursuant to this part.

§39A-B Department powers as to agricultural enterprises serving important agricultural lands. In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, maintenance of a project, or refinancing of outstanding obligations related to a project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which the bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for the extension or renewal contained in a project agreement or related agreement previously approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not

exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.

§39A-C Compliance with state and local law. The issuance of special purpose revenue bonds with respect to any project under this part shall not relieve any project party or other user of the project from the laws, ordinances, and rules of the State or any political subdivision thereof, or any departments or boards thereof with respect to:

- (1) The construction, operation, and maintenance of projects;
- (2) Compliance with zoning laws or regulations;
- (3) Obtaining of building permits; and
- (4) Compliance with building and health codes and other laws, ordinances, or rules and regulations of similar nature pertaining to the project.

These laws shall be applicable to the party or any other user to the same extent they would be if the costs of the project were directly financed by the project party.

§39A-D Conditions precedent to negotiating and entering into a project agreement. Prior to entering into negotiations with respect to a project agreement or at any time during the negotiations, the department shall require that as a condition to the negotiations or the continuation thereof, the State shall be reimbursed for any and all costs and expenses incurred by it even though a project agreement may not be entered into and may further require the deposit of moneys with the department as security for the reimbursement. Any amount of the deposit in excess of the amount required to reimburse the State shall be returned by the department to the party that has made the deposit. The State shall not be required to pay to the project party any interest or earnings on such deposit.

The department shall not enter into any project agreement with respect to any project unless the legislature shall have first authorized the issuance of special purpose revenue bonds to finance the project pursuant to section 39A-G and the department has thereafter found and determined either that the project party is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise, or that the obligations of the project party under the project agreement will be unconditionally guaranteed by a person who is a responsible party, whether by reason of economic assets or experience in the type of enterprise to be undertaken through the project, or otherwise.

§39A-E Project agreement. No special purpose revenue bonds shall be issued unless at the time of issuance the department shall have entered into a project agreement with respect to the project for the financing of which the special purpose revenue bonds are to be issued. Any project agreement entered into by the department shall contain provisions unconditionally obligating the project party:

- (1) To pay to the department during the period or term of the project agreement, exclusive of any renewal or extension thereof and whether or not the project is used or occupied by the project party, the sum or sums, at time or times, and in amounts that will be at least sufficient:
 - (A) To pay the principal and interest on all special purpose revenue bonds issued with respect to the project as and when the same become due, including any premium payable upon any required redemption of the bonds;
 - (B) To establish or maintain a reserve, if any, that may be required by the instrument authorizing or securing the special purpose revenue bonds;

- (C) To pay all fees and expenses, including the fees and expenses of the paying agents and trustees, incurred in connection with the special purpose revenue bonds; and
 - (D) To pay the expenses, direct or indirect, incurred by the State, as determined by the department, in administering the bonds or in carrying out the project agreement; and
- (2) To operate, maintain, and repair the project as long as the same is used, as provided in the project agreement, and to pay all costs of the operation, maintenance, and repair.

Moneys received by the department pursuant to paragraph (1)(D) shall not be, or be deemed to be, revenues of the project and shall be paid into the general fund of the State.

§39A-F Issuance of special purpose revenue bonds to finance projects. In addition to the other powers that it may otherwise have, the department may issue special purpose revenue bonds to finance or refinance, in whole or in part, the costs of facilities of, or for, or to loan the proceeds of the bonds to assist project parties. All revenue bonds issued under this part are special purpose revenue bonds and the provisions of part III of chapter 39 shall not apply thereto. All special purpose revenue bonds shall be issued in the name of the department and not in the name of the State.

In determining the cost of any project, the department may also include the following:

- (1) Financing charges, fees, and expenses of any trustee and paying agents for special purpose revenue bonds issued to pay the cost of the project;
- (2) Interest on the bonds and the expenses of the State in connection with the bonds and the project to be financed from the proceeds of the bonds accruing or incurred prior to and during the estimated period of construction and for the period not exceeding twelve months thereafter;
- (3) Amounts necessary to establish or increase reserves for the special purpose revenue bonds;
- (4) The cost of plans, specifications, studies, surveys, and estimates of costs and of revenues;
- (5) Other expenses incidental to determining the feasibility or practicability of the project;
- (6) Administration expenses;
- (7) Legal, accounting, consulting, and other special service fees;
- (8) Interest cost incurred by the project party with respect to the project prior to the issuance of the special purpose revenue bonds; and
- (9) Other costs, commissions, and expenses incidental to the construction, acquisition, reconstruction, renovation, rehabilitation, improvement, betterment, operation, maintenance, or extension of the project, the financing or refinancing thereof, placing of same in operation, and the issuance of the special purpose revenue bonds, whether incurred prior to or after the issuance of the bonds.

The legislature finds and determines that the exercise of the powers vested in the department by this part constitutes assistance to an agricultural enterprise serving important agricultural lands and that the issuance of special purpose revenue bonds to finance facilities of, or for, or to loan the proceeds of the bonds to assist project parties is in the public interest.

§39A-G Authorization of special purpose revenue bonds. (a) Special purpose revenue bonds for each project or multi-project program shall be authorized by a separate act of the legislature, by an affirmative vote of two-thirds of the

members to which each house is entitled; provided that the legislature shall find that the issuance of the bonds is in the public interest; provided further that no authorization shall be made for a period exceeding five years of its enactment. Any special purpose revenue bond authorization, or any portion of the special purpose revenue bond authorization that has not been issued at the close of the fiscal year for the period for which the authorization is made, shall lapse. Special purpose revenue bonds issued pursuant to this part may be in one or more series for each project. The special purpose revenue bonds of each issue shall be dated, shall bear interest at a rate or rates, shall mature at a time or times not exceeding forty years from their date or dates, shall have a rank or priority and may be made redeemable before maturity at the option of the department, at a price or prices and under terms and conditions, all as may be determined by the department. The department shall determine the form of the special purpose revenue bonds, including any interest coupons to be attached thereto, and the manner of execution of the special purpose revenue bonds, and shall fix the denomination or denominations of the special purpose revenue bonds and the place or places of payment of principal and interest that may be at any bank or trust company within or without the State. The special purpose revenue bonds may be issued in coupon or in registered form, or both, as the department may determine. Provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. The department may sell special purpose revenue bonds either at public or private sale and for a price that it may determine.

(b) Prior to the preparation of definitive special purpose revenue bonds, the department may issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery.

(c) Should any bond issued under this part or any coupon appertaining thereto become mutilated or be lost, stolen, or destroyed, the department may cause a new bond or coupon of like date, number, and tenor to be executed and delivered in exchange and substitution for, and upon the cancellation of the mutilated bond or coupon, or in lieu of and in substitution for a lost, stolen, or destroyed bond or coupon. The new bond or coupon shall not be executed or delivered until the holder of the mutilated, lost, stolen, or destroyed bond or coupon has:

- (1) Paid the reasonable expense and related charges;
- (2) In the case of a lost, stolen, or destroyed bond or coupon, filed with the department or its fiduciary evidence satisfactory to the department or its fiduciary that the bond or coupon was lost, stolen, or destroyed and that the holder was the owner of the bond; and
- (3) Furnished indemnity satisfactory to the department.

(d) The department may provide that CUSIP identification numbers be printed on the special purpose revenue bonds. If numbers are imprinted on the bonds:

- (1) No CUSIP identification number shall constitute a part of the contract evidenced by the particular bond upon which it is imprinted; and
- (2) No liability shall attach to the department or any of its officers or agents, including any fiscal agent, paying agent, or registrar for the bonds, by reason of the numbers or any use made thereof, including any use made by the department, any officer, or any agent, or by reason of any inaccuracy, error, or omission with respect thereto or in any use.

The department may require that all costs of obtaining and imprinting the numbers shall be paid by the purchaser of the bonds. For the purpose of this subsection, the term "CUSIP identification numbers" means the numbering system

adopted by the Committee for Uniform Security Identification Procedures formed by the Securities Industry Association.

§39A-H Special purpose revenue bond anticipation notes. Whenever the department has authorized the issuance of special purpose revenue bonds under this part, special purpose revenue bond anticipation notes of the department may be issued in anticipation of the issuance of the bonds and of the receipt of the proceeds of sale of the bonds, for the purposes for which the bonds have been authorized. All special purpose revenue bond anticipation notes shall be authorized by the department, and the maximum principal amount of the notes shall not exceed the authorized principal amount of the bonds. The notes shall be payable solely from and secured solely by the proceeds of sale of the special purpose revenue bonds in anticipation of which the notes are issued and the revenues from which would be payable and by which the bonds would be secured; provided that to the extent that the principal of the notes shall be paid from moneys other than the proceeds of sale of the bonds, the maximum amount of bonds in anticipation of which the notes are issued that has been authorized shall be reduced by the amount of notes paid in such manner. The authorization, issuance, and the details of the notes shall be governed by this part with respect to special purpose revenue bonds insofar as the same may be applicable; provided that each note, together with all renewals and extensions thereof, or refundings thereof by other notes issued under this section, shall mature within five years from the date of the original note.

§39A-I Powers with respect to and security for special purpose revenue bonds. To secure the payment of any of the special purpose revenue bonds issued pursuant to this part and interest thereon, or in connection with the bonds, the department shall have the power:

- (1) To pledge all or any part of the revenues derived by the department from the project agreement to the punctual payment of special purpose revenue bonds issued with respect to the project financed from proceeds thereof and interest thereon, and to covenant against thereafter pledging any revenues or receipts to any other bonds or any other obligations of the department for any other purpose, except as otherwise stated in the law providing for the issuance of additional special purpose revenue bonds to be equally and ratably secured by a lien upon the revenues;
- (2) To pledge and assign the interest and right of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder;
- (3) To covenant as to the use and disposition of the proceeds from the sale of the bonds;
- (4) To covenant to set aside or pay over reserves and sinking funds for the bonds and as to the disposition thereof;
- (5) To covenant and prescribe as to what happenings or occurrences shall constitute "events of default" and the terms and conditions upon which any or all of the bonds shall become or may be declared due before maturity and as to the terms and conditions upon which the declaration and its consequences may be waived;
- (6) To covenant as to the rights, liabilities, powers, and duties arising upon the breach by it of any covenant, condition, or obligation;
- (7) To designate a national or state bank or trust company within or without the State, incorporated in the United States, to serve as trustee for the holders of the special purpose revenue bonds and to enter into a

trust indenture or trust agreement or indenture of mortgage with the trustee. The trustee may be authorized by the department to receive and receipt for, hold, and administer the proceeds of the special purpose revenue bonds issued for the project and to apply the proceeds to the purposes for which the bonds are issued, or to receive and receipt for, hold, and administer the revenues derived by the department under the project agreement and to apply the revenues to the payment of the principal and interest on the bonds, or both, and any excess revenues to the payment of expenses incurred by the State in administering the bonds or in carrying out the project agreement. If a trustee is appointed, any trust indenture or trust agreement or indenture of mortgage entered into by the department with the trustee may contain whatever covenants and provisions as may be necessary or convenient or desirable to secure the bonds. The department may pledge and assign to the trustee the interest of the department under the project agreement and other agreements related thereto and the rights, duties, and obligations of the department thereunder, including the right to receive revenues thereunder. The department may appoint the trustee to serve as fiscal agent for the payment of the principal and interest, and for the purchase, registration, transfer, exchange, and redemption of the special purpose revenue bonds. The department may also authorize and empower the trustee to perform these functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the department may deem necessary, advisable, or expedient, including without limitation the holding of the special purpose revenue bonds and coupons that have been paid and the supervision of the destruction thereof in accordance with law;

- (8) To execute all instruments necessary or convenient in the exercise of the powers herein granted or in the performance of its covenants and duties; and
- (9) To make covenants and do any and all acts as may be necessary, convenient, or desirable to secure the bonds, notwithstanding that the covenants, acts, or items may not be enumerated herein.

The department shall have the power to do all things in the issuance of the bonds and for their security that are consistent with the Constitution of the State of Hawaii.

§39A-J Security for special purpose revenue bonds. Special purpose revenue bonds shall be payable solely from the revenues derived by the department from payments made to the department under the project agreement or other supplemental agreements entered into with respect to the project and shall be secured solely by the bond revenues and by the pledges and assignments authorized by this part. Subject to the prior and superior rights of outstanding bonds, claims, obligations, or mechanic's and materialman's liens, all special purpose revenue bonds of the same issue shall have a prior and paramount lien on the revenues derived from the project agreement with respect to the project, for which the bonds have been issued, over and ahead of all special purpose revenue bonds of any issue payable from the revenues that may be subsequently issued and over and ahead of any claims or obligations of any nature against the revenues subsequently arising or subsequently incurred; provided that the department may reserve the right and privilege to subsequently issue additional series of special purpose revenue bonds, from time to time, payable from the revenues derived from the project agreement on a parity with the special purpose revenue bonds previously issued, and the subsequently issued series of special purpose revenue bonds may be secured, without

priority by reason of date of sale, date of execution, or date of delivery, by a lien on the revenues in accordance with law, including this part.

Notwithstanding any other provisions herein, all or part of the property constituting the project and all interest of the project party in the project and the revenues of the project party therefrom may be subjected to the present and future lien of any mortgage of the project party securing the project party's bonds, and the rights of the department and any trustee for the holders of the special purpose revenue bonds and the holders of the special purpose revenue bonds in the project and the revenues therefrom may be made subject to the prior lien of the project party's mortgage.

§39A-K Special purpose revenue bonds not a general obligation of the State. No holder or holders of any special purpose revenue bonds issued under this part shall ever have the right to compel any exercise of the taxing power of the State to pay the bonds or the interest thereon and no moneys other than the revenues pledged to the bonds shall be applied to the payment thereof. Each special purpose revenue bond issued under this part shall recite in substance that the bond, including interest thereon, is not a general obligation of the State and is payable solely from the revenues pledged to the payment thereof, and that the bond is not secured, directly or indirectly, by the full faith and credit or the general credit of the State or by any revenues or taxes of the State other than the revenues specifically pledged thereto.

§39A-L Validity of special purpose revenue bonds. The special purpose revenue bonds bearing the signature or facsimile signature of officers in office on the date of the signing thereof shall be valid and sufficient for all purposes, notwithstanding that before the delivery thereof and payment therefor, any or all the persons whose signatures appear thereon shall have ceased to be officers of the department. Special purpose revenue bonds shall contain a recital that they are issued pursuant to this part, which recital shall be conclusive evidence of their validity and of the regularity of their issuance.

§39A-M Use of revenues derived from project agreement. The department shall have the right to appropriate, apply, or expend the revenues derived with respect to the project agreement for a project for the following purposes:

- (1) To pay when due all special purpose revenue bonds, premiums if any, and interest thereon, for the payment of which the revenues are or have been pledged, charged, or otherwise encumbered, including reserves therefor; and
- (2) To the extent not paid by the project party to provide for all expenses of administration, operations, and maintenance of the project, including reserves therefor.

Unless and until adequate provision has been made for the foregoing purposes, the department shall not transfer the revenues derived from the project agreement to the general fund of the State.

§39A-N Special purpose revenue bonds exempt from taxation. Special purpose revenue bonds and the income therefrom issued pursuant to this part shall be exempt from all state and county taxation except inheritance, transfer, and estate taxes.

§39A-O Federal tax exempt status. To the extent practicable, special purpose revenue bonds issued pursuant to this part shall be issued to comply with requirements imposed by applicable federal law providing that the interest on the special purpose revenue bonds shall be excluded from gross income for federal

income tax purposes, except as certain minimum taxes or environmental taxes may apply. The director of finance may enter into agreements, establish funds or accounts, and take any action required to comply with applicable federal law. Nothing in this part shall be deemed to prohibit the issuance of special purpose revenue bonds, the interest on which may be included in gross income for federal income tax purposes.

§39A-P Exemption from taxation of department property. All revenues derived by the department from any project or under the project agreement pertaining thereto shall be exempt from all state and county taxation. Any right, title, and interest of the department in any project shall also be exempt from all state and county taxation.

Except as otherwise provided by law, the interest of the project party or user of the project under the project agreement or related agreement shall not be exempt from taxation to a greater extent than it would be if the costs of the project were directly financed by the project party or other user.

§39A-Q Refunding special purpose revenue bonds. By act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, the legislature may authorize the issuance of refunding special purpose revenue bonds for the purpose of refunding any special purpose revenue bonds then outstanding and issued under this part, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption. By act enacted by an affirmative vote of two-thirds of the members to which each house is entitled, the legislature may provide for the issuance of a single issue of special purpose revenue bonds for the combined purposes of:

- (1) Financing or refinancing the cost of a project or improvement or expansion thereof; and
- (2) Refunding special purpose revenue bonds that shall theretofore have been issued under this part and shall then be outstanding, whether or not the outstanding special purpose revenue bonds have matured or are then subject to redemption.

Nothing in this section shall require or be deemed to require the department to elect to redeem or prepay special purpose revenue bonds being refunded, or to redeem or prepay special purpose revenue bonds being refunded that were issued in the form customarily known as term bonds in accordance with any sinking fund installment schedule specified in any instruments providing for the issuance thereof, or, if the department elects to redeem or prepay any bonds, to redeem or prepay as of any particular date or dates. The issuance of refunding special purpose revenue bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties, and obligations of the department with respect to the same, shall be governed by the foregoing provisions of this part insofar as the same may be applicable.

§39A-R Status of special purpose revenue bonds under the Uniform Commercial Code. Notwithstanding any of the provisions of this part or any recitals in any special purpose revenue bonds issued under this part, all special purpose revenue bonds shall be deemed to be investment securities under the Uniform Commercial Code, chapter 490, subject only to the provisions of the special purpose revenue bonds pertaining to registration.

§39A-S Special purpose revenue bonds as legal investments and lawful security. Special purpose revenue bonds issued pursuant to this part shall be and are declared to be legal and authorized investments for banks, savings banks, trust

companies, savings and loan associations, insurance companies, credit unions, fiduciaries, trustees, guardians, and for all public funds of the State or other political corporations or subdivisions of the State. The special purpose revenue bonds shall be eligible to secure the deposit of any and all public funds of the State and any and all public funds of counties or other political corporations or subdivisions of the State, and the bonds shall be lawful and sufficient security for public fund deposits to the extent of their value when accompanied by all unmatured coupons appertaining thereto.

§39A-T Access to and public disclosure of financial records of project party. (a) Each project party with a project agreement with the department shall allow the department full access to the project party's financial records. Upon the request of the department for the examination of any financial record, the project party shall allow the department to examine the requested records within a reasonably prompt time from the date of the request. If the department requests copies of the records, the project party shall provide the copies.

(b) To provide the public with full knowledge of the use of the proceeds and benefits derived from special purpose revenue bonds issued under this part, the department shall require each project party with a project agreement with the department to make available to the public all relevant financial records that pertain to the use of or savings resulting from the use of special purpose revenue bonds.

(c) The department shall adopt rules under chapter 91 for the purposes of this section.

§39A-U Estimate of benefits. (a) Each project party with a project agreement with the department shall estimate the benefits derived from the use of the proceeds of special purpose revenue bonds. The benefits estimated shall be based on the creation of new jobs and potential effect on tax receipts. The format of and method for determining the estimates shall be established by the department and shall be uniform for each project party.

(b) To promote public understanding of the role played by special purpose revenue bonds in providing benefits to the general public, the department shall take appropriate steps to ensure public access to and scrutiny of the estimates determined under subsection (a).

(c) The department shall adopt rules under chapter 91 for the purposes of this section.

§39A-V Construction of this part. The powers conferred by this part shall be in addition and supplemental to the powers conferred by any other law. Insofar as the provisions of this part are inconsistent with the provisions of any other law, this part shall control."

SECTION 2. In codifying the new part added to chapter 39A, Hawaii Revised Statutes, 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 3. This Act shall take effect upon its approval and upon ratification of constitutional amendments authorizing the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist agricultural enterprises serving important agricultural lands.

(Approved May 26, 2006.)

ACT 149

S.B. NO. 2609

A Bill for an Act Relating to Writ of Certiorari.

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

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

“(a) After issuance of the intermediate appellate court’s judgment~~[-]~~ or dismissal order, a party may seek review of the intermediate appellate court’s decision and judgment or dismissal order only by application to the supreme court for a writ of certiorari, the acceptance or rejection of which shall be discretionary upon the supreme court.

(b) The application for writ of certiorari shall tersely state its grounds~~[-]~~, which shall include:

(1) Grave errors of law or of fact; or

(2) Obvious inconsistencies in the decision of the intermediate appellate court with that of the supreme court, federal decisions, or its own decision, and the magnitude of those errors or inconsistencies dictating the need for further appeal.

(c) An application for writ of certiorari may be filed with the supreme court no later than ~~[thirty]~~ ninety days after the filing of the ~~[decision]~~ judgment or dismissal order of the intermediate appellate court. Opposition to an application for a writ of certiorari may be filed no later than fifteen days after the application is filed. The supreme court shall determine to accept the application within thirty days after an objection is or could have been filed. The failure of the supreme court to accept within thirty days shall constitute a rejection of the application.”

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

SECTION 3. This Act shall take effect on the effective date of sections 1 through 82 of Act 202, Session Laws of Hawaii 2004.

(Approved May 30, 2006.)

ACT 150

S.B. NO. 3192

A Bill for an Act Relating to Sister State and Province Relationships.

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

SECTION 1. The purpose of this Act is to statutorily reestablish the process for initiating and maintaining sister state and sister province relationships as outlined by the former state office of international relations in 1993.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
SISTER STATE AND PROVINCE RELATIONSHIPS**

§ -1 **Definition.** For the purposes of this chapter, unless the context otherwise requires, “sister state or province relationship” means a relationship

between the State of Hawaii and the state or province or similar governmental or political subdivision of a foreign nation.

§ -2 **Hawaii sister state committee.** There shall be established the Hawaii sister state committee, to be placed within the department of business, economic development, and tourism for administrative purposes only, consisting of five members appointed by the governor as provided in section 26-34.

The purpose of the committee shall be to advise the governor and the legislature on matters relating to sister state or province relations and relations, in general, between the State and the states or provinces of foreign countries. The governor shall appoint five members, one member from each of five lists of nominees submitted respectively by the following:

- (1) Speaker of the house of representatives;
- (2) President of the senate;
- (3) Native Hawaiian cultural organization;
- (4) East-West Center; and
- (5) Hawaii State Association of Counties.

A chair and vice chair of the committee shall be appointed by the committee members from among themselves. Members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

§ -3 **Initiating sister-state relationships.** The Hawaii sister state committee shall evaluate and develop recommendations for the initiation of all sister state or province relationships and forward its recommendation to the legislature. The legislature, if it so chooses, shall implement the recommendation to initiate a sister state or province relationship by either adopting a concurrent resolution or by enacting session law to that effect.

§ -4 **Maintaining sister state relationships.** The Hawaii sister state committee shall periodically evaluate established sister state relationships and forward its recommendations on maintaining sister state relationships to the governor and to the legislature.

§ -5 **Dissolving sister state relationships.** The Hawaii sister state committee may make a recommendation to terminate a sister state relationship it deems to be defunct, moribund, or not beneficial and forward its recommendation to the legislature. The legislature, if it so chooses, shall implement the recommendation to terminate a sister state relationship either by adopting a concurrent resolution or by enacting session law to that effect.”

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

(Approved May 30, 2006.)

ACT 151

H.B. NO. 1865

A Bill for an Act Relating to the Department of Education.

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

SECTION 1. The legislature finds that educational systems today are not only faced with changing needs and growing demands, but also with tighter budgets.

To meet the challenge of twenty-first century realities, educational systems, and the leadership and management structures within them, must be rethought.

With its multimillion-dollar annual budget, large consumer base, and wide-reaching impact, the State of Hawaii department of education is much like a large corporation. In these modern times, most successful corporations are operated through the leadership and management of individuals who lend their expertise to steer businesses on the best possible course. Corporations employ chief financial officers, for example, to effectively manage their budgets and finances. These officers play a critical role in determining business goals and the ability to meet them by maximizing resources and ensuring efficient operations from a financial perspective.

It is only reasonable that an institution as important as the department of education—one that nurtures the future of our children and state—be operated as would a successful corporation, under the guidance of a chief financial officer to work hand-in-hand with the superintendent.

There are many experts in our local business community who agree that improving the administration of the department of education is in order. The department needs a comprehensive budgeting and accounting system that takes into account the whole picture, from the administration to the school level. As any responsible business employs measures to ensure accountability and transparency of financial operations, a chief financial officer would be the authority on how educational dollars are being spent—resources entrusted to them by Hawaii's taxpayers. A chief financial officer would greatly strengthen the operations of the department of education.

The purpose of this Act is to strengthen the operations of the department of education by creating a chief financial officer position and a secretarial position in the office of the superintendent.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$115,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the establishment of one full-time equivalent (1.00 FTE) permanent assistant superintendent position in the department of education's office of the superintendent to perform the functions of a chief financial officer, including the preparation, management, and execution of the department of education's financial statements, budgets, accounting, and vendor payments.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$43,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the establishment of one full-time equivalent (1.00 FTE) permanent secretary position in the department of education to assist the assistant superintendent performing the functions of a chief financial officer.

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

SECTION 5. This Act shall take effect on July 1, 2006.

(Approved May 30, 2006.)

A Bill for an Act Relating to Public Meetings.

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

SECTION 1. Section 92-3.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A meeting held by videoconference shall be terminated if, after the meeting convenes, both the audio and video communication cannot be maintained with all locations where the meeting is being held, even if a quorum of the board is physically present in one location[-]; provided that a meeting may be continued by audio communication alone, if:

- (1) All visual aids required by, or brought to the meeting by board members or members of the public have already been provided to all meeting participants at all videoconference locations where the meeting is held; or
- (2) Participants are able to readily transmit visual aids by some other means (e.g., fax copies), to all other meeting participants at all other videoconference locations where the meeting is held. If copies of visual aids are not available to all meeting participants at all videoconference locations where the meeting is held, those agenda items related to the visual aids shall be deferred until the next meeting; and
- (3) No more than fifteen minutes shall elapse in implementing the requirements listed in paragraph (2).”

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, 2006.)

A Bill for an Act Relating to Money Transmitters.

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
MONEY TRANSMITTERS ACT**

§ -1 **Short title.** This chapter may be cited as the Money Transmitters Act.

§ -2 **Purpose.** It is the intent of the legislature to establish within the State a licensure system to ensure the safe and sound operation of money transmission businesses, to ensure that these businesses are not used for criminal purposes, to promote confidence in the State’s financial system, and to protect the public interest.

§ -3 License required. (a) On or after July 1, 2007, no person except those excluded pursuant to section -5, shall engage in the business of money transmission without a license as provided in this chapter.

(b) A person is engaged in providing money transmission if the person provides those services to persons in the State, even if the person providing services has no physical presence in the State.

(c) If a licensee has a physical presence in the State, the licensee may conduct its business at one or more locations, directly or indirectly owned, or through one or more authorized delegates, or both, pursuant to the single license granted to the licensee.

§ -4 Definitions. For purposes of this chapter:

“Applicant” means a person filing an application for a license under this chapter.

“Authorized delegate” means an entity designated by the licensee under this chapter to sell or issue payment instruments or engage in the business of transmitting money on behalf of a licensee.

“Commissioner” means the commissioner of financial institutions.

“Control” means ownership of, or the power to vote, twenty-five per cent or more of the outstanding voting securities of a licensee or controlling person. For purposes of determining the percentage of a licensee controlled by any person, there shall be aggregated with the controlling person’s interest the interest of any other person controlled by the person, or by any spouse, parent, or child of the person.

“Controlling person” means any person in control of a licensee.

“Division” means the division of financial institutions within the department of commerce and consumer affairs.

“Electronic instrument” means a card or other tangible object for the transmission or payment of money, including a stored value card or device, which contains a microprocessor chip, magnetic stripe, or other means for the storage of information, that is prefunded and for which the value is decremented upon each use, but does not include a card or other tangible object that is redeemable by the issuer in goods or services.

“Executive officer” means a president, chairperson of an executive committee, senior officer responsible for the licensee’s business, chief financial officer, or any other person who performs similar functions related to the licensee.

“Key shareholder” means any person, or group of persons acting in concert, who is the owner of twenty-five per cent or more of any voting class of an applicant’s stock.

“License” means a license under this chapter.

“Licensee” means a person licensed under this chapter.

“Material litigation” means any litigation that, according to generally accepted accounting principles, is deemed significant to an applicant’s or licensee’s financial health and would be required to be referenced in the applicant’s or licensee’s annual audited financial statements, report to shareholders, or similar documents.

“Monetary value” means a medium of exchange, whether or not redeemable in money.

“Money transmission” means to engage in the business of:

- (1) Selling or issuing payment instruments; or
- (2) Receiving money or monetary value for transmission to a location within or outside the United States by any and all means, including wire, facsimile, or electronic transfer.

Money transmission does not apply to courier services.

“Outstanding payment instrument” means any payment instrument issued by the licensee that has been sold in the United States:

- (1) Directly by the licensee; or
- (2) By an authorized delegate of the licensee in the United States, which has been reported to the licensee as having been sold, and that has not yet been paid by or for the licensee.

“Payment instrument” means any electronic or written check, draft, money order, traveler’s check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable. The term “payment instrument” does not include any credit card voucher, any letter of credit, or any instrument that is redeemable by the issuer in goods or services.

“Permissible investments” means:

- (1) Cash;
- (2) Certificates of deposit or other debt obligations of a financial institution, either domestic or foreign;
- (3) Bills of exchange or time drafts drawn on and accepted by a commercial bank, known as bankers’ acceptances, that are eligible for purchase by member banks of the federal reserve system;
- (4) Any investment bearing a rating of one of the three highest grades as defined by a nationally recognized organization that rates securities;
- (5) Investment securities that are obligations of the United States, its agencies, or its instrumentalities, obligations that are guaranteed fully as to principal and interest of the United States, or any obligations of any state, municipality, or any political subdivision thereof;
- (6) Shares in a money market mutual fund, interest-bearing bills, notes, or bonds, debentures or stock traded on any national securities exchange or on a national over-the-counter market, mutual funds primarily composed of these securities, or a fund composed of one or more permissible investments as set forth in this subsection;
- (7) Any demand borrowing agreement or agreements made with a corporation or a subsidiary of a corporation whose capital stock is listed on a national exchange;
- (8) Receivables that are due to a licensee from its authorized delegates pursuant to a contract under section -21, that are not past due or doubtful of collection; or
- (9) Any other investments or security device approved by the commissioner.

“Person” means any individual, partnership, limited liability company, association, joint-stock association, trust, or corporation.

“Remit” means:

- (1) To make direct payment of the funds to the licensee or its representatives authorized to receive those funds; or
- (2) To deposit the funds in a bank, credit union, savings and loan association, savings bank, financial services loan company, or other similar financial institution in an account specified by the licensee.

“Stored value” means monetary value that is evidenced by an electronic record.

§ -5 Exclusions. (a) This chapter shall not apply to:

- (1) The United States or any department, agency, or instrumentality thereof;
- (2) The United States Postal Service;
- (3) The State or any political subdivisions thereof;
- (4) Banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, financial ser-

vices loan companies, or mutual banks organized under the laws of the United States or any state, even if those entities act as authorized delegates for licensees and provided that they do not issue or sell payment instruments through authorized delegates who are not banks, bank holding companies, credit unions, building and loan associations, savings and loan associations, savings banks, financial services loan companies, or mutual banks; and

- (5) The electronic transfer of government benefits for any federal, state, or county governmental agency as defined in Federal Reserve Board Regulation E, by a contractor for, and on behalf of the United States or any department, agency, or instrumentality thereof, or any state or any political subdivisions thereof.

(b) Authorized delegates of a licensee acting within the scope of authority conferred by a written contract under section -21 shall not be required to obtain a license pursuant to this chapter.

§ -6 License qualifications. (a) Each licensee, at all times, shall have a net worth of not less than \$1,000, calculated in accordance with generally accepted accounting principles.

(b) Each corporate applicant, at the time of filing an application, and at all times after a license is issued, shall be in good standing in the state of its incorporation. All non-corporate applicants, at the time of filing an application for a license under this chapter, and at all times after a license is issued, shall be registered or qualified to do business in the State.

§ -7 Bond or other security device. (a) Each application for a license shall be accompanied by a surety bond, irrevocable letter of credit, or other similar security device acceptable to the commissioner in the amount of \$1,000. The commissioner may increase the amount of the bond or security device to a maximum of \$500,000 upon the basis of the impaired financial condition of a licensee, as evidenced by a reduction in net worth, financial losses, or other relevant criteria.

(b) The security device shall be in a form satisfactory to the commissioner and shall run to the State for the benefit of any claimants against the licensee to secure the faithful performance of the obligations of the licensee relating to the receipt, handling, transmission, and payment of money in connection with the sale and issuance of payment instruments or transmission of money. In the case of a bond, the aggregate liability of the surety shall not exceed the principal sum of the bond. Claimants against the licensee may bring suit directly on the security device or the commissioner may bring suit on behalf of claimants, either in one action or in successive actions.

(c) To meet the requirement of a security device or of any portion of the principal amount thereof, the licensee may deposit with the commissioner, or with such banks in this State as the licensee may designate and the commissioner may approve, cash, interest-bearing stocks and bonds, notes, debentures, or other obligations:

- (1) Of the United States or any agency or instrumentality thereof;
- (2) Guaranteed by the United States;
- (3) Of the State, a county, or instrumentality of the State; or
- (4) Guaranteed by the State,

in an aggregate amount based upon the principal amount or market value, whichever is lower, of not less than the amount of the security device or portion thereof.

(d) The securities or cash deposited pursuant to subsection (c) shall secure the same obligations as would the security device, but the depositor shall:

- (1) Be entitled to receive all interest and dividends thereon;

- (2) Have the right, with the approval of the commissioner, to substitute other securities for those deposited; and
 - (3) Be required to substitute other securities for those deposited upon a showing of good cause and written order of the commissioner.
- (e) The security device shall remain in effect until cancellation, which may occur only after thirty days written notice to the commissioner. Cancellation shall not affect any liability incurred or accrued during the period.
- (f) The security device shall remain in place for no longer than five years after the licensee ceases money transmission operations in the State. Notwithstanding this provision, the commissioner may permit the security device to be reduced or eliminated prior to that time to the extent that the amount of the licensee's payment instruments outstanding in the State are reduced. The commissioner may also permit a licensee to substitute a letter of credit or other form of security device acceptable to the commissioner for the security device in place at the time the licensee ceases money transmission operations in the State.

§ -8 Permissible investments and statutory trust. (a) A licensee, at all times, shall possess permissible investments having an aggregate market value, calculated in accordance with generally accepted accounting principles, of not less than the aggregate amount of all outstanding payment instruments issued or sold by the licensee in the United States. This requirement may be waived by the commissioner if the dollar volume of a licensee's outstanding payment instruments does not exceed the bond or other security devices posted by the licensee pursuant to section -7.

(b) Permissible investments, even if commingled with other assets of the licensee, shall be held in trust for the benefit of the purchasers and holders of the licensee's outstanding payment instruments in the event of the bankruptcy of the licensee.

§ -9 Application for license. (a) An application for a license under this chapter shall be made in writing, and in a form prescribed by the commissioner. Each application shall contain the following:

- (1) For all applicants:
 - (A) The exact name of the applicant, any fictitious or trade name used by the applicant in the conduct of its business, the applicant's principal address, and the location of the applicant's business records;
 - (B) The history of the applicant's material litigation and criminal convictions for the five-year period prior to the date of the application;
 - (C) A description of the business activities conducted by the applicant and a history of operations;
 - (D) A description of the business activities in which the applicant seeks to engage within the State;
 - (E) A list identifying the applicant's proposed authorized delegates in the State, if any, at the time of the filing of the license application;
 - (F) A sample authorized delegate contract, if applicable;
 - (G) A sample form of payment instrument, if applicable;
 - (H) The locations where the applicant and its authorized delegates, if any, propose to conduct their licensed activities in the State; and
 - (I) The name and address of the clearing bank or banks on which the applicant's payment instruments will be drawn or through which payment instruments will be payable;

- (2) If the applicant is a corporation, the applicant shall also provide:
- (A) The date of the applicant's incorporation and state of incorporation;
 - (B) A certificate of good standing from the state in which the applicant was incorporated;
 - (C) A description of the corporate structure of the applicant, including the identity of any parent or subsidiary company of the applicant, and the disclosure of whether any parent or subsidiary company is publicly traded on any stock exchange;
 - (D) The name, business and residence address, and employment history, for the past five years, of the applicant's executive officers and the officers or managers who will be in charge of the applicant's activities to be licensed under this chapter;
 - (E) The name, business and residence address, and employment history of any key shareholder of the applicant, for the period of five years before the date of the application;
 - (F) For the five-year period prior to the date of the application, the history of material litigation involving, and criminal convictions of, every executive officer or key shareholder of the applicant;
 - (G) A copy of the applicant's most recent audited financial statement, including balance sheets, statements of income or loss, statements of changes in shareholder equity and statement of changes in financial position, and, if available, the applicant's audited financial statements for the preceding two-year period or, if the applicant is a wholly owned subsidiary of another corporation, either the parent corporation's consolidated audited financial statements for the current year and for the preceding two-year period, or the parent corporation's Form 10-K reports filed with the United States Securities and Exchange Commission for the prior three years in lieu of the applicant's financial statements, or if the applicant is a wholly owned subsidiary of a corporation having its principal place of business outside the United States, similar documentation filed with the parent corporation's non-United States regulator; and
 - (H) Copies of all filings, if any, made by the applicant with the United States Securities and Exchange Commission, or with a similar regulator in a country other than the United States, within the year preceding the date of filing of the application; and
- (3) If the applicant is not a corporation, the applicant shall also provide:
- (A) The name, business and residence address, personal financial statement, and employment history, for the past five years, of each principal of the applicant;
 - (B) The name, business and residence address, and employment history, for the past five years, of any other persons who will be in charge of the applicant's activities to be licensed under this chapter;
 - (C) The place and date of the applicant's registration or qualification to do business in this State;
 - (D) The history of material litigation and criminal convictions for the five-year period before the date of the application for each individual having any ownership interest in the applicant and each individual who exercises supervisory responsibility over the applicant's activities; and

(E) Copies of the applicant's audited financial statements, including balance sheets, statements of income or loss, and statements of changes in financial position for the current year and, if available, for the preceding two-year period.

(b) The commissioner, for good cause may:

- (1) Waive any requirement of this section relating to any license application; or
- (2) Permit an applicant to submit substituted information in its license application in lieu of the information required by this section.

§ -10 **Application and license fees.** (a) Each application shall be accompanied by:

- (1) A non-refundable application fee in the amount of \$1,000 plus \$100 for each additional location in the State, not to exceed a maximum fee of \$4,000; and
 - (2) A license fee of \$500 plus \$100 for each additional location in the State, not to exceed a maximum fee of \$2,000.
- (b) The license fee shall be refunded if the application is denied.

§ -11 **Issuance of license.** (a) Upon the filing of a complete application, the commissioner shall investigate the financial condition and responsibility, financial and business experience, character, and general fitness of the applicant. The commissioner may conduct an on-site investigation of the applicant, the reasonable cost of which shall be borne by the applicant.

(b) If the commissioner finds that:

- (1) The applicant's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community;
- (2) The applicant has fulfilled the requirements imposed by this chapter; and
- (3) The applicant has paid the required license fee,

the commissioner shall issue a license to the applicant authorizing the applicant to engage in the licensed activities in the State for a term of one year. If these requirements have not been met, the commissioner shall deny the application in writing setting forth the reasons for the denial.

(c) Any applicant aggrieved by a denial issued by the commissioner under this chapter may submit a request for a contested case hearing in accordance with chapter 91.

§ -12 **Renewal of license and annual report.** (a) On or before December 31 of each year, each licensee shall pay to the commissioner an annual license fee of \$500, plus \$100 for each authorized delegate, not to exceed an aggregate fee of \$2,000.

(b) The annual license fee shall be accompanied by a report, in a form prescribed by the commissioner, which shall include:

- (1) A copy of the licensee's most recent audited annual financial statement, including balance sheets, statement of income or loss, statement of changes in shareholder's equity, and statement of changes in financial position or, if a licensee is a wholly owned subsidiary of another corporation, the consolidated audited annual financial statement of the parent corporation in lieu of the licensee's audited annual financial statement;
- (2) For the most recent quarter for which data is available prior to the date of the filing of the renewal application, but in no event more than one hundred twenty days prior to the renewal date, the licensee shall

provide the number of payment instruments sold by the licensee in the State, the dollar amount of those instruments, and the dollar amounts of those instruments currently outstanding;

- (3) Any material changes to any of the information submitted by the licensee on its original application that have not previously been reported to the commissioner on any other report required to be filed under this chapter;
- (4) A list of the licensee's permissible investments; and
- (5) A list of the locations, if any, within this State where business regulated by this chapter is being conducted by either the licensee or the licensee's authorized delegates.

(c) A licensee that has not filed a renewal report or paid its annual license fee by the renewal filing deadline, and has not been granted an extension of time to do so by the commissioner, shall have its license suspended on the renewal date. The licensee has thirty days after its license is suspended to file a renewal report and pay the annual license fee, plus \$100 for each business day after suspension that the commissioner does not receive the renewal report and the annual license fee. The commissioner, for good cause, may grant an extension of the renewal date or reduce or suspend the \$100 per day late filing fee.

§ -13 **Licensee liability.** A licensee's responsibility to any person for a money transmission conducted on that person's behalf by the licensee or the licensee's authorized delegate shall be limited to the amount of money transmitted, the face amount, or the purchase amount of the payment instrument.

§ -14 **Extraordinary reporting requirements.** Within fifteen business days of the occurrence of any one of the events listed below, a licensee shall file a written report with the commissioner describing the event and its expected impact on the licensee's activities in this State. These events are:

- (1) Any material changes in information provided in a licensee's application or renewal report;
- (2) The filing for bankruptcy or reorganization by the licensee;
- (3) Revocation or suspension proceedings against the licensee by any state or governmental authority relating to the licensee's money transmission activities;
- (4) Any felony indictment of the licensee or any of its key officers or directors related to money transmission activities; or
- (5) Any felony conviction of the licensee or any of its key officers or directors related to money transmission activities.

§ -15 **Changes in control of a licensee.** (a) A licensee shall give the commissioner written notice of a proposed change of control and request approval of the proposal.

(b) After review of a request for approval under subsection (a), the commissioner may require the licensee to provide additional information concerning the persons who are to assume control of the licensee. The additional information shall be limited to similar information required of the licensee or persons in control of the licensee as part of its original license or renewal application under sections -9 and -12.

(c) The commissioner shall approve a request for change of control under subsection (a) if, after investigation, the commissioner determines that the person or group of persons requesting approval has the competence, experience, character, and general fitness to control the licensee or person in control of the licensee in a lawful

and proper manner, and that the interests of the public will not be jeopardized by the change of control.

(d) The following persons are exempt from the requirements of subsection (a), but the licensee regardless, shall notify the commissioner of a change of control:

- (1) A person who acts as a proxy for the sole purpose of voting at a designated meeting of the security holders or holders of voting interests of a licensee or person in control of a licensee;
- (2) A person who acquires control of a licensee by devise or descent;
- (3) A person who acquires control as a personal representative, custodian, guardian, conservator, trustee, or as an officer appointed by a court of competent jurisdiction or by operation of law; or
- (4) A person who the commissioner, by rule or order, exempts in the public interest.

(e) Subsection (a) shall not apply to public offerings of securities.

(f) Before filing a request for approval for a change in control, a person may request in writing, a determination from the commissioner as to whether the person would be considered a person in control of a licensee upon consummation of a proposed transaction. If the commissioner determines that the person would not be a person in control of a licensee, the commissioner shall enter an order to that effect and the proposed person and transaction shall not be subject to the requirements of subsections (a) through (c).

§ -16 Money laundering reports. (a) Every licensee and its authorized delegates shall file with the commissioner all reports relating to transactions in the State, as required by federal recordkeeping and reporting requirements in Title 31 United States Code Section 5311 et seq., 31 Code of Federal Regulations Part 103, Section 125, and other federal and state laws pertaining to money laundering.

(b) The timely filing of a complete and accurate report with the appropriate federal agency shall satisfy the requirements of subsection (a), unless the commissioner notifies the licensee that reports of this type are not being regularly and comprehensively transmitted by the federal agency.

§ -17 Examinations. (a) The commissioner may conduct an annual on site examination of a licensee upon sixty days written notice to the licensee. The commissioner may examine a licensee without prior notice if the commissioner has a reasonable basis to believe that the licensee is not in compliance with this chapter. When the commissioner concludes that an on site examination of a licensee is necessary, the licensee shall pay all reasonably incurred costs of the examination. The on site examination may be conducted in conjunction with examinations performed by representatives of agencies of the federal government, or of another state or states. The commissioner, in lieu of an on site examination, may accept the examination report of the federal government, an agency of another state, or an independent accounting firm. Accepted reports are considered, for all purposes, an official report of the commissioner. The licensee shall bear the cost of reasonable expenses incurred by the division, agencies of another state, or an independent licensed or certified public accountant in conducting an examination or making a report.

(b) The commissioner may request financial data from a licensee in addition to that required under section -12, or conduct an on site examination of any authorized delegate or location of a licensee within the State without prior notice to the authorized delegate or licensee only if the commissioner has a reasonable basis to believe that the licensee or authorized delegate is not in compliance with this chapter. When the commissioner examines an authorized delegate's operations, the authorized delegate shall pay all reasonably incurred costs of the examination. When

the commissioner examines a licensee's location within the State, the licensee shall pay all reasonably incurred costs of the examination.

§ -18 Maintenance of records. (a) Each licensee shall make, keep, preserve, and make available for inspection by the commissioner the following books, accounts, and other records for a period of three years:

- (1) A record or records of each payment instrument;
- (2) A general ledger containing all assets, liability, capital, income, and expense accounts that shall be posted at least monthly;
- (3) Bank statements and bank reconciliation records;
- (4) Records of outstanding payment instruments;
- (5) Records of each payment instrument paid within the three-year period;
- (6) A list of the names and addresses of all of the licensee's authorized delegates; and
- (7) Any other records the commissioner reasonably requires by rule adopted pursuant to chapter 91.

(b) Maintenance of documents in a photographic, electronic, or other similar form shall comply with this section.

(c) Records may be maintained at a location outside the State; provided that these records are made accessible to the commissioner within seven business days of receipt of a written notice issued by the commissioner.

§ -19 Confidentiality of records. (a) The commissioner and all employees, contractors, attorneys contracted or employed by the State, and appointees of the division of financial institutions shall not divulge or furnish any information in their possession or obtained by them in the course of their official duties to persons outside the division, except the director of commerce and consumer affairs, or unless otherwise permitted by this section or any other law regulating licensees or authorized delegates, in which case the disclosure shall not authorize or permit any further disclosure of the information. The disclosures prohibited by this section shall include, without limitation, information that is:

- (1) Privileged or exempt from disclosure under any federal or state law;
- (2) Related to an examination performed by or on behalf of the commissioner or contained in any report of examination;
- (3) Contained in any report submitted to, or for the use of the commissioner, except for the nonproprietary portions of applications;
- (4) Related to the business, personal, or financial affairs of any person and is furnished to, or for the use of, the commissioner in confidence;
- (5) Privileged or confidential and related to trade secrets and commercial or financial information obtained from a person;
- (6) Obtained pursuant to any lawful investigation for the purpose of enforcing the laws regulating licensees or authorized delegates;
- (7) Related solely to the internal personnel rules or other internal practices of the commissioner;
- (8) Contained in personnel, medical, and similar files, including financial files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or
- (9) Contained in inter-agency and intra-agency communications, whether or not contained in written memoranda, letters, tapes, or records, that would not be routinely available by law to a private party, including memoranda, reports, and other documents prepared by the staff of the commissioner.

(b) Any information identified in subsection (a) is confidential and not subject to subpoena or other legal process.

(c) The commissioner shall furnish a copy of each report of examination to the licensee or authorized delegate examined. The report and its contents shall remain the property of the commissioner and shall not be disclosed to any person who is not an officer, director, employee, authorized auditor, attorney, other consultant, or advisor of the licensee or authorized delegate. Any person who has received the report from the licensee or authorized delegate shall be bound by the confidentiality provisions of this section. The report and its contents shall not be subject to subpoena or other legal process requiring disclosure.

§ -20 Money transmitter receipts and refunds. (a) Each licensee who receives money or monetary value for transmission and the licensee's authorized delegates shall transmit the monetary equivalent of all money or equivalent value received from a customer for transmission, net of any fees, or issue instructions committing the money or its monetary equivalent, to the person designated by the customer within ten business days after receiving the money or equivalent value, unless otherwise ordered by the customer or unless the licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may occur as a result of transmitting the money.

(b) Each licensee who receives money or monetary value for transmission and the licensee's authorized delegates shall provide a receipt to the customer that clearly states the amount of money or equivalent value presented for transmission and the total of the fees charged by the licensee. If the rate of exchange for a money transmission to be paid in the currency of another country is fixed by the licensee for that transaction at the time the money transmission is initiated, the receipt provided to the customer shall disclose the rate of exchange for that transaction, and the duration, if any, for the payment to be made at that fixed rate of exchange. If the rate of exchange for a money transmission to be paid in the currency of another country is not fixed at the time the money transmission is sent, the receipt provided to the customer shall disclose that the rate of exchange for that transaction will be set at the time the recipient of the money transmission picks up the funds in the foreign country.

(c) For purposes of this section:

- (1) Money is considered to have been transmitted when it is available to the person designated by the customer, whether or not the designated person has taken possession of the money;
- (2) "Monetary equivalent", when used in connection with a money transmission in which the customer provides the licensee or its authorized delegate with the money of one government, and the designated recipient is to receive the money of another government, means the amount of money, in the currency of the government that the designated recipient is to receive, as converted at the retail exchange rate offered by the licensee or its authorized delegate to the customer in connection with the transaction; and
- (3) "Fees" do not include revenue that a licensee or its authorized delegate generates, in connection with a money transmission, in converting the money of one government into the money of another government.

(d) Each licensee who receives money or monetary value for a money transmission and the licensee's authorized delegates shall refund to a customer all moneys received for transmittal within ten days of receipt of a written request for a refund unless any of the following occurs:

- (1) The moneys have been transmitted and delivered to the person designated by the customer prior to receipt of the written request for a refund;

- (2) Instructions have been given committing an equivalent amount of money to the person designated by the customer prior to receipt of a written request for a refund;
- (3) The licensee or its authorized delegate has reason to believe that a crime has occurred, is occurring, or may occur as a result of transmitting the money as requested by the customer or refunding the money as requested by the customer; or
- (4) The licensee is otherwise barred by law from making a refund.

§ -21 **Authorized delegate contracts.** Licensees desiring to conduct licensed activities through authorized delegates shall authorize each delegate to operate pursuant to an express written contract. These contracts shall provide the following:

- (1) That the licensee appoints the person as the licensee's delegate with authority to engage in money transmission on behalf of the licensee;
- (2) That neither a licensee nor an authorized delegate may authorize sub-delegates without the written consent of the commissioner;
- (3) That the licensee is subject to supervision and rule by the commissioner; and
- (4) That the authorized delegate certifies that it is in compliance with the recordkeeping and reporting requirements under Title 31 United States Code Section 5311 et seq., 31 Code of Federal Regulations Part 103, Section 125, and other federal and state laws pertaining to money laundering.

§ -22 **Authorized delegate; conduct.** (a) An authorized delegate of a licensee shall not make any fraudulent or false statement or misrepresentation to a licensee or to the commissioner.

(b) All money transmissions, sales, or issuances of payment instruments conducted by authorized delegates shall be in accordance with the licensee's written procedures provided to the authorized delegate.

(c) An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate. The commissioner shall have the discretion to set, by rule, adopted pursuant to chapter 91, the maximum remittance time.

(d) An authorized delegate is deemed to consent to the commissioner's inspection, with or without prior notice to the licensee or authorized delegate, of the books and records of the authorized delegate when the commissioner has a reasonable basis to believe that the licensee or delegate is not in compliance with this chapter.

(e) An authorized delegate is under a duty to act only as authorized under the contract with the licensee. An authorized delegate that exceeds its authority is subject to cancellation of the delegate's contract and further disciplinary action by the commissioner.

(f) All funds, except fees, received by an authorized delegate from the sale or delivery of a payment instrument issued by a licensee or received by the delegate for transmission, from the time the funds are received by the delegate until the time when the funds or an equivalent amount are remitted by the delegate to the licensee, shall constitute trust funds owned by and belonging to the licensee. If an authorized delegate commingles any trust funds with any other funds or property owned or controlled by the delegate, all commingled funds and other property of the delegate shall be impressed with a trust in favor of the licensee in an amount equal to the amount of the proceeds due to the licensee.

(g) An authorized delegate shall report to the licensee the theft or loss of payment instruments within twenty-four hours from the time the delegate knew or should have known of the theft or loss.

§ **-23 Prohibited practices.** It is a violation of this chapter for a licensee to:

- (1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead any person, including, but not limited to, bait and switch advertising or sales practices;
- (2) Directly or indirectly engage in any unfair or deceptive act or practice toward any person, including but not limited to any false or deceptive statement about fees or other terms of a money transmission or currency exchange;
- (3) Directly or indirectly obtain property by fraud or misrepresentation;
- (4) Knowingly make, publish, or disseminate any false, deceptive, or misleading information in the provision of money services;
- (5) Knowingly receive or take possession for personal use any property of any money services business, other than in payment for services rendered, and with intent to defraud, and omit to make, or cause or direct to omit to make, a full and true entry in the books and accounts of the regulated business;
- (6) Concur in making any false entry, or omit or concur in omitting any material entry in the books or accounts of the business;
- (7) Knowingly make or publish to the commissioner or commissioner's designee, or concur in making or publishing to the commissioner or commissioner's designee, any written report, exhibit, or statement of the licensee's affairs or pecuniary condition containing any material statement that is false, or omit or concur in omitting any statement required by law to be contained therein; or
- (8) Fail to make any report or statement lawfully required by the commissioner.

§ **-24 Suspension or revocation of licenses.** The commissioner may suspend or revoke a license if the commissioner finds that:

- (1) Any fact or condition exists that, if it had existed at the time when the licensee applied for its license, would have been grounds for denying the licensee's application;
- (2) The licensee's net worth becomes inadequate and the licensee, after ten days written notice from the commissioner, fails to take steps as the commissioner deems necessary to remedy a deficiency;
- (3) The licensee knowingly violates any material provision of this chapter or any rule or order validly adopted by the commissioner under authority of this chapter;
- (4) The licensee is conducting its business in an unsafe or unsound manner;
- (5) The licensee is insolvent;
- (6) The licensee has suspended payment of its obligations, has made an assignment for the benefit of its creditors, or has admitted, in writing, its inability to pay its debts as they become due;
- (7) The licensee has filed for bankruptcy, reorganization, arrangement, or other relief under any bankruptcy law;
- (8) The licensee refuses to permit the commissioner to make any examination authorized by this chapter; or

- (9) The competence, experience, character, or general fitness of the licensee indicates that it is not in the public interest to allow the licensee to have a license.

§ -25 Suspension or revocation of authorized delegates. (a) The commissioner may issue an order suspending or revoking the designation of an authorized delegate, if the commissioner finds that:

- (1) The authorized delegate violates this chapter or a rule adopted or an order issued under this chapter;
- (2) The authorized delegate does not cooperate with an examination or investigation by the commissioner;
- (3) The authorized delegate engages in fraud, intentional misrepresentation, or gross negligence;
- (4) The authorized delegate is convicted of a violation of a federal or state anti-money laundering statute;
- (5) The competence, experience, character, or general fitness of the authorized delegate or a person in control of the delegate indicates that it is not in the public interest to permit the delegate to provide money services; or
- (6) The authorized delegate is engaging in an unsafe or unsound practice.

(b) In determining whether an authorized delegate is engaging in an unsafe or unsound practice, the commissioner may consider the size and condition of the delegate's provision of money services, the magnitude of the loss, the gravity of the violation of this chapter, and the previous conduct of the delegate.

(c) An authorized delegate may apply for relief from a suspension or revocation of designation as an authorized delegate according to procedures prescribed by the commissioner.

§ -26 Orders to cease and desist. (a) If the commissioner determines a violation of this chapter or a rule adopted or an order issued under this chapter by a licensee or authorized delegate is:

- (1) Likely to cause immediate and irreparable harm to the licensee, the licensee's customers, or the public as a result of the violation; or
 - (2) Cause insolvency or significant dissipation of assets of the licensee,
- the commissioner may issue an order requiring the licensee or authorized delegate to cease and desist from the violation. The order becomes effective upon service of the order upon the licensee or authorized delegate.

(b) The commissioner may order a licensee to cease and desist from providing money transmission services through an authorized delegate that is the subject of a separate order pursuant to section -25 by the commissioner.

(c) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to chapter 91.

(d) A licensee or an authorized delegate that is served with an order to cease and desist may petition the circuit court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order pending the completion of an administrative proceeding pursuant to section -31 or -32.

(e) The commissioner shall commence an administrative proceeding pursuant to chapter 91 within twenty days after issuing an order to cease and desist.

(f) The commissioner may apply to the circuit court for an appropriate order to protect the public interest.

§ -27 Consent orders. The commissioner may enter into a consent order at any time with a person to resolve a matter arising under this chapter. A consent order shall be signed by the person to whom the order is issued or by the person's

authorized representative, and shall indicate agreement with the terms contained in the order. A consent order may provide that it does not constitute an admission by a person that this chapter or a rule adopted or an order issued under this chapter has been violated.

§ -28 **Civil penalties.** The commissioner may assess a fine against a person who violates this chapter or a rule adopted or an order issued under this chapter in an amount not to exceed \$500 per day for each day the violation is outstanding, plus the State's costs and expenses for the investigation and prosecution of the matter, including reasonable attorneys' fees.

§ -29 **Criminal penalties.** (a) A person who intentionally makes a false statement, misrepresentation, or false certification in a record filed or required to be maintained under this chapter, who intentionally makes a false entry, or who omits a material entry in a record shall be guilty of a class C felony.

(b) An individual or person who knowingly engages in any activity for which a license is required under this chapter, without being licensed under this chapter, shall be guilty of a misdemeanor, and be subject to a fine in an amount not to exceed \$1,000, imprisonment of not more than one year, or both, and each day a violation exists shall be deemed a separate offense.

§ -30 **Unlicensed persons.** (a) If the commissioner has reason to believe that a person has violated or is violating section -3, the commissioner may issue an order to show cause why an order to cease and desist should not issue requiring that the person cease and desist from the violation of section -3.

(b) If the commissioner has reason to believe that a person has violated or is violating section -3, the commissioner may petition the circuit court for the issuance of a temporary restraining order if the public would be irreparably harmed.

(c) An order to cease and desist becomes effective upon service of the order upon the person.

(d) An order to cease and desist remains effective and enforceable pending the completion of an administrative proceeding pursuant to section -26.

(e) A person who is served with an order to cease and desist for violating section -3 may petition the circuit court for a judicial order setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the order to cease and desist pending the completion of an administrative proceeding pursuant to section -26.

(f) The commissioner shall commence an administrative proceeding within twenty days after issuing an order to cease and desist.

§ -31 **Administrative procedures.** All administrative proceedings under this chapter shall be conducted in accordance with chapter 91.

§ -32 **Hearings.** Except as otherwise provided in sections -12(c) and -26, the commissioner may not suspend or revoke a license, issue an order to cease and desist, suspend or revoke the designation of an authorized delegate, or assess a civil penalty without notice and an opportunity to be heard.

§ -33 **Division functions.** (a) The division shall exercise all administrative functions of the State in relation to the regulation, supervision, and licensing of money transmitters.

(b) The division shall interpret and carry out the provisions of this chapter.

§ -34 Rules. (a)¹ The commissioner may adopt rules pursuant to chapter 91 to implement this chapter.”

SECTION 2. A person who would be regulated under this Act shall not be required to comply with this Act until July 1, 2007, but may elect to do so before July 1, 2007. A person who files an application for a license pursuant to this Act before July 1, 2007, and whose application is determined to be complete by the commissioner on or before July 1, 2007, shall be deemed in compliance with the licensing provisions of chapter _____, Hawaii Revised Statutes, until such time as the license is issued or denied by the commissioner.

SECTION 3. This Act shall take effect upon approval.

(Approved May 31, 2006.)

Note

1. No subsection (b).

ACT 154

H.B. NO. 2319

A Bill for an Act Relating to Insurance.

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

SECTION 1. Section 431:2-215, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Sums from the compliance resolution fund expended by the commissioner shall be used to defray any administrative costs, including personnel costs, associated with the programs of the division, and costs incurred by supporting offices and divisions. Any law to the contrary notwithstanding, the commissioner may use the moneys in the fund to employ or retain, by contract or otherwise, without regard to chapter 76, hearings officers, attorneys, investigators, accountants, examiners, and other necessary professional, technical, administrative, and support personnel to implement and carry out the purposes of title 24; provided that any position, except any attorney position, that [is] was subject to chapter 76 prior to July 1, 1999, shall remain subject to chapter 76.”

SECTION 2. 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~~] 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 first 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~~] This 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 ~~[insurance regulation,]~~ the programs of the division, and costs incurred by supporting offices and divisions. Any law to the contrary notwithstanding, the commissioner may use the moneys from assessments to employ~~], without regard to chapter 76, necessary professional, technical, administrative, and support personnel to implement and]~~ or retain, by contract or otherwise, without regard to chapter 76, hearings officers, attorneys, investigators, accountants, examiners, and other 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[-]; provided that any position, except any attorney position, that was subject to chapter 76 prior to July 1, 1999, shall remain subject to chapter 76.”

SECTION 3. 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]~~ 431:9-235 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 4. Section 431:8-202, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) No person ~~[in this State]~~ shall directly or indirectly act as producer for, or otherwise represent or aid on behalf of another, any unauthorized insurer in the solicitation, negotiation, procurement, or effectuation of insurance, or renewals thereof, or forwarding of applications, or delivery of policies or contracts or inspection of risks, or fixing of rates, or investigation or adjustment of claims or losses, or collection or forwarding of premiums, or in any other manner represent or assist ~~[such]~~ an unauthorized insurer in the transaction of an insurance business.”

SECTION 5. Section 431:8-205, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Gross premiums charged for the insurance, less any return premiums, are subject to a tax at the rate of 4.68 per cent. At the time of filing the report required in subsection (b), the insured shall pay the tax to the commissioner.

As used in this subsection, “gross premiums” mean the amount of the policy or coverage premium charged by the insurer in consideration for the insurance contract. Any charges for policy, survey, inspection, service, or similar fees or other charges added by the broker shall not be considered part of gross premiums.”

SECTION 6. Section 431:8-207, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Service of process in ~~[such]~~ an action or proceeding shall be made in accordance with section 431:2-206. ~~[Such service]~~ Service is sufficient if:

- (1) Notice of [sueh] service and a copy of the court process or the notice, order, pleading, or process in [sueh] the administrative proceeding are sent within ten days by registered mail by the plaintiff or the plaintiff's attorney in the court proceeding, or by the commissioner in the administrative proceeding, to the defendant or defendant's agent or representative at the defendant's last known principal place of business;
- (2) The defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person or insurer to whom the letter is addressed, and an affidavit of the plaintiff or the plaintiff's attorney in a court proceeding, or of the commissioner in an administrative proceeding, are filed with the clerk of the court in which [sueh] the proceeding is pending or with the commissioner in administrative proceedings, on or before the date the defendant is required to appear or respond, or within [sueh] any further time as the court or commissioner may allow."

SECTION 7. Section 431:8-209, Hawaii Revised Statutes, is amended to read as follows:

“§431:8-209 Attorney’s fees. In an action against an unauthorized insurer upon a contract of insurance issued or delivered to a person in this State [~~to a resident thereof or to a corporation authorized to do business therein~~], if the insurer has failed for thirty days after demand prior to the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that [sueh] the refusal was vexatious and without reasonable cause, the court may allow to the plaintiff reasonable attorney’s fees and include [sueh] the fees in any judgment that may be rendered in [sueh] the action. The fee shall not exceed twelve and one-half per cent of the amount [~~which~~] that the court or jury finds the plaintiff is entitled to recover against the insurer, but in no event shall the fee be less than \$25. Failure of an insurer to defend any such action shall be deemed prima facie evidence that its failure to make payment was vexatious and without reasonable cause.”

SECTION 8. Section 431:8-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any person, other than an insured, who [~~in this State~~] represents or aids an unauthorized insurer in violation of this part may be subject to a fine not in excess of \$1,000.”

SECTION 9. Section 431:8-310, Hawaii Revised Statutes, is amended to read as follows:

“§431:8-310 Surplus lines broker license required; qualifications for license. (a) No person shall procure any contract of surplus lines insurance with an unauthorized insurer unless [sueh] the person is licensed as a surplus lines broker.

(b) The commissioner shall issue a surplus lines broker license to any producer licensed under article 9A when the producer has:

- (1) Remitted the annual license fee to the commissioner as provided in article 7; and
- (2) Submitted a completed license application on a form furnished by the commissioner.

(c) A surplus lines broker license shall be inactivated if the licensee fails to pay any required fee or penalty. A surplus lines broker who allows the surplus lines

broker's license to become inactive for nonpayment of the renewal fee may reinstate that license without the necessity of a written examination; provided that the surplus lines broker:

- (1) Pays the fee and a penalty in the amount of fifty per cent of the then unpaid fees within twenty-four months from the inactivation date; and
- (2) Is in compliance with all requirements of chapter 431.

The license shall automatically expire if the surplus lines broker does not reinstate the surplus lines broker's license within the twenty-four-month period.

~~[(e) Corporations, including foreign corporations,]~~ (d) Business entities shall be eligible to be surplus lines brokers, upon meeting the following conditions:

- (1) The [eorporate] business entity licensee shall list individuals within the [eorporation] business entity who have satisfied all requirements of this part to become surplus lines brokers; [and]
- (2) Only those individuals listed on the [eorporate] business entity's license shall transact surplus lines business[-]; and
- (3) An individual licensed as a surplus lines broker shall be identified as the business entity's designated representative.

~~[(d)]~~ (e) Licensing procedure, duration, and related matters are governed by [artiele] articles 7 and 9A."

SECTION 10. Section 431:8-315, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) 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 [sueh] the broker during the preceding calendar year. The tax shall be in the amount of 4.68 per cent of gross premiums, less return premiums, on taxable surplus lines insurance.

As used in this subsection, "gross premiums" mean the amount of the policy or coverage premium charged by the insurer in consideration for the insurance contract. Any charges for policy, survey, inspection, service, or similar fees or other charges added by the broker shall not be considered part of gross premiums."

SECTION 11. 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. (a) If any surplus lines broker fails to:

- (1) File an annual statement[-]; or
- (2) Pay the premium tax required by section 431:8-315 when the tax is due,
the surplus lines broker [shall] may be liable for a fine of up to \$25 for each day of delinquency. [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.]

(b) The commissioner may:

- (1) Collect the premium tax required by section 431:8-315 by distraint;
- (2) Recover the premium tax required by section 431:8-315 and fine for failure to pay the premium tax by instituting an action in any court of competent jurisdiction; or
- (3) Recover the fine for failure to file the annual statement by instituting an action in any court of competent jurisdiction."

SECTION 12. 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]~~ the 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]~~ the accounts are required to be maintained under this article;
- (4) Any of the causes for which a producer’s license may be suspended or revoked under article 9A;
- (5) Any cause for which issuance of the license could have been refused had it then existed and been known to the commissioner;
- (6) If the licensee wilfully violates or knowingly participates in the violation of any provision of this code;
- (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;
- (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;
- (9) If the licensee ~~[has]~~, with intent to deceive, has materially misrepresented the terms or effect of any insurance contract, or has engaged or is about to engage in any fraudulent transaction;
- (10) If the licensee has been guilty of any unfair practice or fraud as defined in article 13;
- (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;
- (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
- (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 13. Section 431:9-101, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-101 Scope.** This article shall govern the qualifications and procedures for granting licenses to all insurance adjusters[,] and independent bill reviewers~~[,] and limited service representatives~~.”

SECTION 14. Section 431:9-105, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-105 [Adjuster defined. (a) Adjuster means] Definitions.** As used in this article, unless the context otherwise requires:

“Adjuster”:

- (1) Means any individual who:

- [(1)] (A) Acts solely on behalf of either the insurer or the insured, as an independent contractor or as an employee of an independent contractor; and
- [(2)] (B) Investigates for, reports to, or adjusts for the individual's principal relative to claims arising under insurance contracts[-]; but
- (2) Does not include an individual who is:
 - (A) An attorney at law who adjusts insurance losses from time to time incidental to the practice of the attorney's profession;
 - (B) An adjuster of marine losses;
 - (C) A salaried employee of an insurer or salaried employee of an adjusting corporation or an association owned or controlled by an insurer; or
 - (D) An individual who acts for a self-insurer or for an insured that administers its own group insurance contract.

[(b) Independent adjuster] "Independent adjuster" means an adjuster representing the interests of the insurer.

"Independent bill reviewer":

- (1) Means any individual who:
 - (A) Acts solely on behalf of either the insurer as an independent contractor or as an employee of an independent contractor; and
 - (B) Reviews or audits billings for medical services; but
- (2) Does not include an individual who is:
 - (A) A salaried employee of an insurer or salaried employee of an adjusting corporation or an association owned or controlled by an insurer; or
 - (B) A database provider for the insurer.

[(e) Public adjuster] "Public adjuster" means an adjuster employed by and solely representing the financial interests of the insured named in the policy.

[(d) For the purposes of this article, the following individuals are not deemed to be an adjuster:

- (1) ~~An attorney at law who adjusts insurance losses from time to time incidental to the practice of the attorney's profession;~~
- (2) ~~An adjuster of marine losses;~~
- (3) ~~A salaried employee of a producer, an insurer, or of an adjusting corporation or association owned and controlled by insurers; and~~
- (4) ~~An individual who acts for a self-insurer or for an insured which administers its own group insurance contract.~~

(e) ~~Following a catastrophe in this State, a Hawaii license shall not be required of a nonresident independent adjuster for the adjustment of losses; provided that:~~

- (1) ~~The common losses suffered that are to be adjusted are a direct result of that catastrophe;~~
- (2) ~~The adjuster provides to the licensing branch of the insurance division a certified copy of the adjuster's current license in another state. That other state shall have similar licensing requirements to section 431:9-222; and~~
- (3) ~~Within three working days of when the nonresident independent adjuster begins work, the insurance company, independent adjusting company, or producer that is utilizing the adjuster shall provide on its letterhead to the licensing branch of the insurance division:~~
 - (A) ~~The name of the adjuster;~~
 - (B) ~~The adjuster's Hawaii mailing and business addresses and phone numbers; and~~

- ~~(c) The adjuster's permanent home and business addresses and phone numbers.~~

~~For the purpose of this subsection, a catastrophe exists when due to a sudden, specific, and natural or manmade disaster or phenomenon, there arises property losses in Hawaii that are covered by insurance. These losses must be so severe that resident licensed and independent adjusters will be unable to adjust the losses within a reasonable time as determined by the insurance division.~~

~~(f) Upon satisfaction of all the requirements in subsection (e), the nonresident independent adjuster may be registered with the licensing branch of the insurance division and adjust catastrophic losses in this State for up to one hundred twenty days from the date of registration or for a period of time determined by the commissioner, whichever is less.]'~~

SECTION 15. Section 431:9-201, Hawaii Revised Statutes, is amended to read as follows:

“§431:9-201 License required[.]; exception. (a) No person engaging in the business of insurance in this State shall act as, be appointed as, or hold oneself out to be an adjuster or independent bill reviewer unless so licensed by this State.

(b) Notwithstanding subsection (a), following a catastrophe in this State, a Hawaii license shall not be required of a nonresident adjuster for the adjustment of losses; provided that:

- (1) The common losses suffered that are to be adjusted are a direct result of the catastrophe and shall be so severe that licensed adjusters and licensed independent adjusters who are residents of this State will be unable to adjust the losses within a reasonable time as determined by the commissioner;
- (2) The nonresident adjuster provides to the commissioner a certified copy of the adjuster's current license in another state. The other state shall have substantially similar licensing requirements to section 431:9-222; and
- (3) Within three working days of the commencement of work by the nonresident adjuster, the insurance company, independent adjusting company, or producer that is using the adjuster shall provide on its letterhead to the commissioner:
 - (A) The name of the nonresident adjuster;
 - (B) The nonresident adjuster's Hawaii mailing and business addresses and phone numbers; and
 - (C) The nonresident adjuster's permanent home and business addresses and phone numbers.

Upon satisfaction of all of these requirements, the nonresident adjuster may be registered with the commissioner and adjust catastrophic losses in this State for up to one hundred twenty days from the date of registration or for a period of time determined by the commissioner, whichever is less.

As used in this subsection, “catastrophe” means insured property losses in Hawaii that result from a sudden, specific, and natural or manmade disaster or phenomenon, as determined by the commissioner.

~~[(b)]~~ (c) Any person violating this section shall be assessed a civil penalty not to exceed \$5,000 for each factually different violation.

~~[(e)]~~ (d) Any person who knowingly violates this section shall be assessed a civil penalty of not less than \$1,000 and not more than \$10,000 for each violation.

~~[(d)]~~ (e) Each repetition of an act that constitutes a violation subject to subsection ~~[[(b)] or](c) []~~ or (d) shall constitute a separate violation.”

SECTION 16. Section 431:9-203, Hawaii Revised Statutes, is amended to read as follows:

“§431:9-203 General qualifications for license. (a) For the protection of the public, the commissioner shall not issue or extend any ~~[such]~~ license ~~[except]~~ for an adjuster or independent bill reviewer:

- (1) ~~Except [in compliance with this article, and shall not issue or extend any such license to]~~ as provided by this article; or
- (2) To any individual less than eighteen years of age.

(b) An applicant for a license under this article shall notify the commissioner of the applicant’s legal name and trade name, if applicable. An applicant doing business under any name other than applicant’s legal name shall notify the commissioner prior to using the assumed name.

(c) A licensee shall:

- (1) Inform the commissioner by any means acceptable to the commissioner of any change of status within thirty days of the change; and
- (2) Report any change of status to the business registration division if the licensee is a business entity registered with the department of commerce and consumer affairs pursuant to title 23 or title 23A, or if the licensee has registered a trade name pursuant to part I of chapter 482.

Failure to timely inform the commissioner or business registration division of a change of status shall result in a penalty pursuant to section 431:2-203.

(d) As used in this section, “change of status” includes but shall not be limited to change of legal name, assumed name, trade name, business address, home address, business phone number, business fax number, business electronic mail address, business website address, or home phone number.”

SECTION 17. Section 431:9-222, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To qualify for an adjuster’s license, an applicant shall comply with this article and shall:

- (1) Be domiciled in this State, or in a state ~~[which]~~ that will permit residents of this State to act as adjusters in ~~[such]~~ the other state;
- (2) Have had experience, special education, or training with reference to the handling of loss claims under insurance contracts, of sufficient duration and extent reasonably to make the individual competent to fulfill the responsibilities of an adjuster;
- (3) Have successfully passed any examination required under section 431:9-206; and
- (4) Have paid the license ~~[fee.]~~ fees required by section 431:7-101.”

SECTION 18. Section 431:9-232, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) A license for an adjuster or independent bill reviewer shall be inactivated if a licensee fails to pay any required fees or penalties.

An adjuster or independent bill reviewer who allows the adjuster’s or independent bill reviewer’s license to become inactive for nonpayment of the renewal fee may reinstate that license without the necessity of a written examination; provided that the adjuster or independent bill reviewer:

- (1) Pays the fee and a penalty in the amount of fifty per cent of the then unpaid fees within twenty-four months from the inactivation date; and
- (2) Is in compliance with all requirements of chapter 431.

The license shall automatically expire if the adjuster or independent bill reviewer does not reinstate the license within the twenty-four-month period.”

SECTION 19. Section 431:9-235, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-235 Denial, suspension, revocation of licenses.** (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 [sueh] license issued under this article through wilful misrepresentation or fraud, or has failed to pass any examination required by section 431:9-206;
- (4) If the licensee has misappropriated, [oer] 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, has 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 has dealt with, or attempted to deal with, insurance or to exercise powers relative to insurance outside the scope of the licensee’s licenses.

(b) The license of any partnership or corporation may be so suspended, revoked, or refused for any of [sueh] the causes [as] that relate to any individual designated in the license to exercise its powers.

(c) The holder of any license, which has been revoked or suspended, shall surrender the license certificate to the commissioner at the commissioner’s request.

(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.

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, shall renew, reinstate, or grant the license only upon receipt of an authorization from the administering entity.

(e) The commissioner may suspend, revoke, or refuse to extend any license for any cause specified in this article by an order:

- (1) Given to the licensee not fewer than fifteen days prior to the effective date thereof, subject to the right of the licensee to have a hearing as provided in section 431:2-308, and pending that hearing, the license shall be suspended; or

- (2) Made after a hearing, conducted as provided in section 431:2-308, effective ten days after the date the order is given to the licensee, subject to the right of the licensee to appeal to the circuit court of the first judicial circuit of this state as provided in chapter 91.”

SECTION 20. Section 431:9-235.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§431:9-235.5]~~ **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, 431:9-235, ~~[431:9-236,]~~ 431:9-237, 431:9-238, 431:9-239, and 431:9-240 shall not apply to a refusal to renew, reinstate, or restore a license or to a license suspension or denial pursuant to this section.”

SECTION 21. Section 431:9-243, Hawaii Revised Statutes, is amended to read as follows:

“**§431:9-243 Qualification for independent bill reviewer’s license.** To qualify for an independent bill reviewer’s license, an applicant shall comply with this article and shall:

- (1) Be domiciled in this State, or in a state that will permit residents of this State to act as independent bill reviewers in ~~[such]~~ the other state;
- (2) Have experience, special education, or training with reference to the review or audit of billings for medical services under insurance contracts, of sufficient duration and extent to reasonably make the individual competent to fulfill the responsibilities of an independent bill reviewer;
- (3) Have successfully passed any examination required under section 431:9-206; and
- (4) Pay the license ~~[fee;]~~ fees required by section 431:7-101;

provided that any applicant who holds the credential of certified professional coder granted by the American Academy of Professional Coders or the credential of registered health information administrator, registered health information technician, certified coding specialist, or certified coding associate granted by the American Health Information Management Association shall be exempt from the requirements in paragraphs (1) to (3).”

SECTION 22. 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 brokers licensed through article 8, except as provided in sections 431:9A-108 and 431:9A-116.]”~~

SECTION 23. Section 431:9A-102, Hawaii Revised Statutes, is amended by amending the definition of "limited lines insurance" to read as follows:

"“Limited lines insurance” means those lines of insurance a producer may be licensed to sell pursuant to section 431:9A-107.5 or any other line of insurance sold to individuals under state law or rule for which an insurance producer license in one or more of the lines of authority set forth in section 431:9A-107(a)(1) to [(5)] (4) is not required.”

SECTION 24. Section 431:9A-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) ~~[A resident applicant applying]~~ An applicant 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.”

SECTION 25. Section 431:9A-106, Hawaii Revised Statutes, is amended to read as follows:

"**§431:9A-106 Application for license.** (a) A person applying for ~~[a resident]~~ an insurance producer license shall make application to the commissioner on the uniform application and declare under penalty of denial, suspension, or revocation of the license that the statements made in the application are true, accurate, and complete to the best of the applicant’s knowledge and belief. Before approving the application, the commissioner shall find that the applicant:

- (1) Is at least eighteen years of age;
- (2) Has not committed any act that is a ground for a licensure sanction set forth in section 431:9A-112;
- (3) Has paid the applicable fee set forth in section 431:7-101; and
- (4) Has passed, within the two years immediately preceding the date of the examination or issuance of the license, whichever is later, the applicable examination for each line of authority for which the applicant has applied.

(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 all applicable 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]:~~

“Control” has the same meaning as in section 431:11-102.

“Corporation or partnership” includes 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.]

(c) The commissioner may require any documents reasonably necessary to verify the information contained in an application.

~~[(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 shall be subject to approval by the commissioner.]”~~

SECTION 26. Section 431:9A-107, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) ~~[Licensees]~~ A licensee shall [inform]:

- (1) Inform the commissioner by any means acceptable to the commissioner of [a change of legal name or address] any change of status within thirty days of the change[-]; and
- (2) Report any change of status to the business registration division if the licensee is a business entity registered with the department of commerce and consumer affairs pursuant to title 23 or title 23A, or if the licensee has registered a trade name pursuant to part I of chapter 482.

Failure to timely inform the commissioner or the business registration division of a change of [legal name or address shall] status may result in a penalty pursuant to section 431:2-203.

As used in this subsection, “change of status” includes but shall not be limited to change of legal name, assumed name, trade name, business address, home address, business phone number, business fax number, business electronic mail address, or business website address.”

SECTION 27. 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 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 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)]~~ (4) A limited line credit insurance producer license to any individual who sells [policies of individual or group credit life, credit 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-], solicits, or negotiates limited line credit insurance.”

SECTION 28. Section 431:9A-108, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Except as provided in section 431:9A-112, a nonresident applicant shall receive a nonresident producer license if:

- (1) The applicant is currently licensed as a resident and is in good standing in the applicant's home state;
- (2) The applicant has submitted the proper request for licensure and has paid the fees required by section 431:7-101;
- (3) The applicant has submitted or transmitted to the commissioner the application for licensure that the applicant submitted to the applicant's home state, or in lieu of the same, a completed uniform application; and
- (4) The applicant's home state awards [a] nonresident producer [license] licenses to [a-resident] residents of this State on the same basis."

2. By amending subsection (d) to read:

"(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 broker license if [the]:

- (1) The applicant complies with subsection (a) [- Except as to subsection (a), nothing in this section otherwise amends or supersedes any provision of article 8-; and
- (2) The applicant's home state issues nonresident surplus lines broker licenses to residents of this State on the same basis."

SECTION 29. Section 431:9A-110, Hawaii Revised Statutes, is amended to read as follows:

"[H]§431:9A-110[- Assumed] Legal, trade, and assumed names. (a) Every insurance producer doing business in this State shall notify the commissioner in writing of the insurance producer's legal name and trade name, if applicable.

(b) An insurance producer doing business under any name other than the producer's legal name shall [be required to] notify the commissioner in writing prior to using the assumed name."

SECTION 30. Section 431:9A-112, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) [In the event that] If 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] thirty 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] that 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 31. Section 431:9A-124, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) To qualify for a license renewal, a licensee shall:

- (1) During the [twenty-three] twenty-four 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."

2. By amending subsections (d) and (e) to read:

“(d) Unless an extension of time has been granted in advance by the commissioner, a licensee’s failure to satisfy all of the continuing education requirements ~~[one month prior to]~~ by the renewal date shall result in that licensee’s license being automatically placed on an inactive status. To reactivate a license, the licensee shall submit proof to the insurance division that the requisite number of credit hours ~~[have]~~ has been completed and the licensee shall pay any required fees and penalties.

(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 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.]~~ within fifteen days of course completion.”

SECTION 32. Section 431:9A-142, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) The commissioner may issue a limited lines motor vehicle rental company producer license to a motor vehicle rental company; provided~~[-]~~ that:

- (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) 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]~~ Disclose 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]~~ State that purchases by the motor vehicle renter of the kinds of coverages offered by the motor vehicle rental company producer is not required to rent a vehicle; and
 - (D) ~~[Describes]~~ Describe 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."

2. By amending subsection (d) to read:

~~“(d) The limited license shall not be issued until all applicable licensing fees required by article 7 have been paid. [The commissioner shall collect in advance of issuance of the limited license the following fees:~~

- ~~(1) Issuance of limited line motor vehicle rental company producer's license: \$1,000; and~~
- ~~(2) The fees for services of the department of commerce and consumer affairs subsequent to the issuance of license: \$600 a year for all services (including extension of the license) for a limited line motor vehicle company producer.~~

~~The services referred to in paragraphs (1) and (2) shall not include services in connection with examinations, investigations, hearings, appeals, and deposits with a depository other than the department of commerce and consumer affairs.]”~~

SECTION 33. Section 431:9A-151, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

~~“(a) An approved continuing education course shall be offered only by a person who has a valid continuing education course provider certificate. 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.”~~

2. By amending subsection (d) to read:

“(d) An application may be denied, or the continuing education course provider certificate may be suspended or revoked, 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~~ or 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.”

SECTION 34. Section 431:9A-152, Hawaii Revised Statutes, is amended to read as follows:

“~~[(H)§431:9A-152]~~ **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]~~ fifteen 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.”

SECTION 35. Section 431:9A-153, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

~~“(a) [A continuing education course provider shall obtain prior approval for the course from the commissioner before advertising or soliciting for a course.] No continuing education course hours shall be credited for a course unless the provider conducting the course has a valid continuing education course provider certificate at the time the course is conducted.”~~

2. By amending subsections (c) and (d) to read:

~~“(c) The commissioner [may refuse to] shall not 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.] A continuing education course provider shall submit for approval to the commissioner a course application at least sixty days prior to the date the course will be offered. Course applications shall be submitted to the commissioner for approval for new courses, renewals of course certificates, or whenever changes are proposed in the course material, course hours, method of presentation, or method of examination. A continuing education course provider shall obtain the commissioner’s prior approval for the course before advertising or soliciting for the course.”~~

3. By amending subsection (g) to read:

~~“(g) The continuing education course [provider] certificate[:~~

- (1) ~~Shall~~ shall expire:
- ~~[(A)]~~ (1) 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)]~~ (2) 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].

~~The certificate may be renewed once for a two-year period by application [for a period of one year] beginning on July 1 and ending on July 1 of the [following] second calendar year[, unless the certificate is earlier]; provided that the certificate is not suspended, expired, or revoked by the commissioner.”~~

SECTION 36. Section 431:9A-154, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

~~“(d) The effective date of a completed examination pursuant to this section shall be the date the continuing education course provider receives the completed examination. 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.] fifteen days.”~~

SECTION 37. Section 431:9A-158, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§431:9A-158**~~]]~~ **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]~~ fifteen days after the course is completed or the competency examination is scored~~[-, which-ever-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).”

SECTION 38. Section 431:10A-603, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§431:10A-603**~~]]~~ **Self-employed persons, exemption.** The requirements of this article related to mandated coverages for persons insured under accident and health or sickness policies shall not apply to accident and health or sickness policies for self-employed persons in this State; provided that this exemption shall apply only to those portions of the accident and health or sickness policies that cover self-employed persons in this State[-] and individuals included in the self-employed person’s family coverage.”

SECTION 39. Section 431:14-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“~~(a) Every insurer shall file [in triplicate] with the commissioner[-, except as to specific inland marine risks which by general custom of the business are not written according to manual rate or rating plans and bail bonds subject to section 804-62,-] every manual of classifications, rules, and rates, every rating plan,¹ every other rating rule, and every modification of any of the foregoing [which] that it proposes to use[-. Every filing shall state its proposed effective date, and shall indicate the character and extent of the coverage contemplated. The filing also shall include a report on investment income.]; provided that filings with regard to specific inland marine risks, which by general custom of the business are not written according to manual rate or rating plans, and bail bonds, subject to section 804-62, shall not be required pursuant to this subsection.~~

Every filing shall:

- (1) Consist of two printed copies and one copy filed by electronic, telephonic, or optical means;
- (2) State its proposed effective date;
- (3) Indicate the character and extent of the coverage contemplated; and
- (4) Include a report on investment income.”

SECTION 40. Section 431:14F-105, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“~~(a) Every managed care plan shall file [in triplicate] with the commissioner, every rate, charge, classification, schedule, practice, or rule and every modification of any of the foregoing [which] that it proposes to use. Every filing shall [state its proposed effective date and shall indicate the character and extent of the coverage contemplated. The filing also shall include a report on investment income.];~~

- (1) Consist of two printed copies and one copy filed by electronic, telephonic, or optical means;

- (2) State its proposed effective date;
- (3) Indicate the character and extent of the coverage contemplated; and
- (4) Include a report on investment income.”

SECTION 41. 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) Sections 431:1-103 and 431:1-105;
- (2) Sections 431:1-212, 431:1-213, and 431:1-214;
- (3) Sections 431:2-101 to 431:2-106, and sections 431:2-108 to 431:2-110;
- (4) Sections 431:2-201 to 431:2-204, [~~and~~] sections 431:2-207 to 431:2-212[;], and section 431:2-215;
- (5) Sections 431:2-302, 431:2-303, 431:2-305, and 431:2-306;
- (6) Sections 431:3-101 to 431:3-105;
- (7) Sections 431:3-201 to 431:3-203, 431:3-205, and 431:3-206, and sections 431:3-209 to 431:3-220;
- (8) Sections 431:3-301, 431:3-305, 431:3-307, and 431:3-308;
- (9) Sections 431:4-102 to 431:4-127;
- (10) Sections 431:4-202 to 431:4-207;
- (11) Section 431:5-101;
- (12) Sections 431:5-201 to 431:5-203;
- (13) Sections 431:5-305 and 431:5-306, and sections 431:5-308 to 431:5-311;
- (14) Article 6;
- (15) Article 7;
- (16) Article 9A;
- (17) Sections 431:10-211, 431:10-216 to 431:10-218, and 431:10-220, 431:10-221, and 431:10-224, 431:10-225, and sections 431:10-235 to 431:10-238;
- (18) Article 13; and
- (19) Article 15.”

SECTION 42. Section 431K-8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A purchasing group located in this State may not purchase insurance from [a]:

- (1) A risk retention group that is not chartered in this State [~~or from an~~]; or
- (2) An insurer not authorized in this State,

unless the purchase is [~~effected~~] made through a licensed producer acting pursuant to the surplus lines laws [~~of the licensed producer’s state of domicile.~~] set forth in article 8 of chapter 431.”

SECTION 43. Section 432:2-609, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Fraternal benefit society producers shall be licensed in accordance with the provisions governing producers in [~~article~~] articles 7 and 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 9[.] of chapter 431. No examination shall be required of an individual licensed to represent a fraternal benefit society prior to July 1, 1988.”

SECTION 44. Section 481X-2, Hawaii Revised Statutes, is amended by amending the definition of “provider” to read as follows:

““Provider” means a person who is contractually obligated to the service contract holder under the terms of the service contract[~~, including all sellers of motor vehicle service contracts~~].”

SECTION 45. Section 481X-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§481X-4]]~~ **Financial responsibility.** A provider shall comply with the requirements under any one of the following paragraphs, and shall not be subject to any other financial security requirements under state law:

- (1) The provider shall insure all service contracts under a contractual liability insurance policy issued by an insurer authorized to transact insurance in this State or issued pursuant to part III of article 8 of chapter 431;
- (2) The provider shall:
 - (A) Maintain a funded reserve account for all obligations under service contracts issued and in force in this State. The reserves shall not be less than forty per cent of the gross consideration received from the sale of the service contract, less claims paid, for all in force contracts. The reserve account shall be subject to examination by the commissioner; and
 - (B) Place in trust with the commissioner, for all service contracts issued and in force in this State, a financial security deposit having a value that is ~~[not less than]~~ the larger of \$25,000[~~;~~] or five per cent of the gross consideration received, less claims paid for the sale of the service contracts. The financial security deposit shall consist of one of the following:
 - (i) A surety bond issued by an authorized surety;
 - (ii) Securities of the type eligible for deposit by authorized insurers in this State;
 - (iii) Cash;
 - (iv) A letter of credit issued by a qualified financial institution; or
 - (v) Another form of security authorized by the commissioner by rule; or
- (3) The provider or its parent company shall:
 - (A) Maintain a net worth or stockholders’ equity of at least \$100,000,000; and
 - (B) Upon request, provide the commissioner with a copy of the provider’s or the provider’s parent company’s most recent Form 10-K or Form 20-F filed with the Securities and Exchange Commission within the last calendar year, or if the company does not file with the Securities and Exchange Commission, a copy of the provider’s or the provider’s parent company’s audited financial statements.

If the financial responsibility requirement under this paragraph is to be maintained by the provider’s parent company, the parent company shall guarantee the provider’s obligations under service contracts sold by the provider in this State.”

SECTION 46. Section 804-10.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) No person shall be sufficient surety who:

- (1) Has been convicted of perjury for submitting a false statement under section 804-11.5;
- (2) Does not satisfy the requirements of section 804-11.5; or
- (3) Does not satisfy the requirements of article [9,] 9A, chapter 431, if posting an insurance bond as defined in section 431:1-210(1).”

SECTION 47. Section 431:9-236, Hawaii Revised Statutes, is repealed.

SECTION 48. Section 431:9-241, Hawaii Revised Statutes, is repealed.

SECTION 49. Statutory material to be repealed is bracketed and stricken.² New statutory material is underscored.

SECTION 50. This Act shall take effect on July 1, 2006.

(Approved May 31, 2006.)

Notes

1. Prior to amendment “and” appeared here.
2. Edited pursuant to HRS §23G-16.5.

ACT 155

H.B. NO. 2899

A Bill for an Act Relating to Judgment Liens.

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

SECTION 1. Section 636-3, Hawaii Revised Statutes, is amended to read as follows:

“**§636-3 Judgment, orders, decrees; lien when.** Any money judgment, order, or decree of a state court or the United States District Court for the District of Hawaii shall be a lien upon real property when a copy thereof, certified as correct by a clerk of the court where it is entered, is recorded in the bureau of conveyances. No such lien shall continue beyond ~~[ten years after the date of the judgment.]~~ the length of time the underlying judgment, order, or decree is in force. Except as otherwise provided, every judgment shall contain or have endorsed on it the social security number, ~~[State of]~~ the Hawaii ~~[general-exercise taxpayer]~~ tax identification number, or ~~the~~ federal employer identification number for persons, corporations, partnerships, or other entities against whom the judgment, order, or decree is rendered. If the ~~[judgment]~~ debtor has no social security number, ~~[State of]~~ Hawaii ~~[general-exercise taxpayer]~~ tax identification number, or federal employer identification number, or if that information is not in the possession of the party seeking registration of the judgment, order, or decree, the judgment, order, or decree shall be accompanied by a certificate that provides that the information does not exist or is not in the possession of the party seeking recordation of the judgment. Failure to disclose or disclosure of an incorrect social security number, ~~[State of]~~ Hawaii ~~[general-exercise taxpayer]~~ tax identification number, or federal employer identification number shall not in any way adversely affect or impair the lien created upon recordation of the judgment~~[-],~~ order, or decree. When any ~~[such]~~ judgment, order, or decree is fully paid, the

creditor or the creditor's attorney of record in the action shall, at the expense of the debtor, execute, acknowledge, and deliver to the debtor a satisfaction thereof, which may be recorded in the bureau. Every satisfaction or assignment of judgment, order, or decree shall contain a reference to the book and page or document number of the registration of the original judgment. The recording fees for a judgment, order, or decree and for each assignment or satisfaction of judgment, order, or decree shall be as provided by section 502-25.

In the case of registered land, section 501-102 and sections 501-241 to 501-248 shall govern.”

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 31, 2006.)

ACT 156

H.B. NO. 2772

A Bill for an Act Relating to Criminal Property Damage to Agricultural and Aquacultural Property.

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

SECTION 1. Results from a 2005 statewide survey of farmers and ranchers conducted by the Hawaii department of agriculture, the U.S. Department of Agriculture, and the Hawaii Farm Bureau Federation provide a detailed accounting of the economic impact of agricultural theft and vandalism on the agriculture industry. Losses attributed to an estimated one thousand one hundred fifty-three acts of vandalism amounted to \$2.02 million, with an average loss of \$1,751 per incident. Ranchers were particularly affected, suffering \$4,902 in loss or injury to livestock per incident while crop farmers lost \$3,901 per incident. Farmers and ranchers that suffered vandalism to their machinery and equipment lost \$2,751 per incident. Almost sixty per cent of the economic loss was suffered by Maui farmers and ranchers (57.5 per cent), followed by Oahu (28.1 per cent), Hawaii (9.6 per cent), and Kauai (4.9 per cent).

Total theft of farm commodities, materials, equipment, and other property was found to be \$1.95 million. Agricultural theft is often committed using tools such as chain saws, axes, machetes, and large pruning shears that provide a means of quickly “harvesting” agricultural products and leaving the scene as fast as possible. This method frequently results in the death of the tree, bush, or other plant. The thief has effectively deprived the farmer of not only the produce on the plant at the time of the theft, but also subsequent produce for that season and succeeding years over the expected life of the plant. The farmer has also been robbed of the investment made to get the plant to the point of production.

During the survey period, there were one hundred sixty-nine incidents where agricultural machinery and equipment were damaged to the extent that they were rendered inoperable or where vehicles were used for “joy rides” in the fields, causing damage to planted crops as well as the soil and the vehicle.

The purpose of this Act is to strengthen the laws of the State to recognize the actual loss of agricultural and aquacultural property suffered by farmers and ranchers from such criminal actions and to impose appropriate penalties.

SECTION 2. Section 708-800, Hawaii Revised Statutes, is amended as follows:

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

““Aquacultural equipment, supplies, or products” means any equipment, supplies, products, or commodities used, raised, grown, or maintained for the production of fish, shellfish, mollusk, crustacean, algae, or other aquatic plant or animal by an aquaculture enterprise or research agency while owned by the enterprise or agency.”

2. By deleting the definition of “aquaculture product”.

~~[““Aquaculture product” means any fish, shellfish, mollusk, crustacean, algae, or other aquatic plant or animal raised, grown, or maintained by an aquaculture enterprise or research agency while owned by the enterprise or agency.”]~~

SECTION 3. 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; [øf]
- (b) The person intentionally or knowingly damages the property of another, without the other’s consent, in an amount exceeding \$20,000[-];
or
- (c) The person intentionally or knowingly damages the agricultural equipment, supplies, or products or aquacultural equipment, supplies, or products of another, including trees, bushes, or any other plant and livestock of another, without the other’s consent, in an amount exceeding \$1,500. In calculating the value of damage, the value of future crops that were damaged is included.

(2) Criminal property damage in the first degree is a class B felony.”

SECTION 4. 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; [øf]
- (b) The person intentionally or knowingly damages the property of another, without the other’s consent, in an amount exceeding \$1,500[-]; or
- (c) The person intentionally or knowingly damages the agricultural equipment, supplies, or products or aquacultural equipment, supplies, or products of another, including trees, bushes, or any other plant and livestock of another, without the other’s consent, in an amount exceeding \$500. In calculating the value of damage, the value of future crops that were damaged is included.

(2) Criminal property damage in the second degree is a class C felony.”

SECTION 5. Section 708-822, Hawaii Revised Statutes, is amended to read as follows:

“§708-822 Criminal property damage in the third degree.

(1) A person commits the offense of criminal property damage in the third degree if:

- (a) The person recklessly damages the property of another, without the other’s consent, by the use of widely dangerous means; [or]
 - (b) The person intentionally damages the property of another, without the other’s consent, in an amount exceeding \$500[-]; or
 - (c) The person intentionally damages the agricultural equipment, supplies, or products or aquacultural equipment, supplies, or products of another, including trees, bushes, or any other plant and livestock of another, without the other’s consent, in an amount exceeding \$100. In calculating the value of damage, the value of future crops that were damaged is included.
- (2) Criminal property damage in the third degree is a misdemeanor.”

SECTION 6. Section 708-831, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of theft in the second degree if the person commits theft:

- (a) Of property from the person of another;
- (b) Of property or services the value of which exceeds \$300;
- (c) Of an [~~aquaculture~~] aquacultural product or part thereof from premises that is fenced or enclosed in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: “Private Property”; or
- (d) Of agricultural equipment, supplies, or products, or part thereof, the value of which exceeds \$100 but does not exceed \$20,000, or of agricultural products that exceed twenty-five pounds, from premises that are fenced, enclosed, or secured in a manner designed to exclude intruders or there is prominently displayed on the premises a sign or signs sufficient to give notice and reading as follows: “Private Property.” The sign or signs, containing letters not less than two inches in height, shall be placed along the boundary line of the land in a manner and in such position as to be clearly noticeable from outside the boundary line. Possession of agricultural products without ownership and movement certificates, when a certificate is required pursuant to chapter 145, is prima facie evidence that the products are or have been stolen.”

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 on July 1, 2006.

(Approved May 31, 2006.)

ACT 157

H.B. NO. 2271

A Bill for an Act Relating to Non-Agricultural Park Lands.

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

SECTION 1. Chapter 166E, Hawaii Revised Statutes, is amended by adding six new sections to be appropriately designated and to read as follows:

“§166E-A Disposition. (a) Any provision of this chapter to the contrary notwithstanding, the department may dispose of:

- (1) Public lands and related facilities set aside and designated for use pursuant to this chapter; and
- (2) Other lands and facilities under the jurisdiction of the department pursuant to section 166E-B and notwithstanding chapter 171, by negotiation, drawing of lot, conversion, or public auction.

Except as provided by subsection (d), the department shall dispose of public lands by lease.

(b) In all dispositions, the department shall be subject to the requirements set forth in rules adopted by the board consistent with section 166E-6 and subject to the following:

- (1) All land and facilities shall be disposed of for purposes of agricultural or aquacultural activities only;
- (2) Each lessee shall derive a major portion of the lessee's total annual income earned from the lessee's activities on the premises; provided that this restriction shall not apply if:
 - (A) Failure to meet the restriction results from mental or physical disability or the loss of a spouse; or
 - (B) The premises are fully used in the production of crops or products for which the disposition was granted;
- (3) The lessee shall comply with all federal and state laws regarding environmental quality control;
- (4) The board shall:
 - (A) Determine the specific uses for which the disposition is intended;
 - (B) Parcel the land into minimum size economic units sufficient for the intended uses;
 - (C) Make, or require the lessee to make, improvements that are required to achieve the intended uses;
 - (D) Set the upset price or lease rent based upon an appraised evaluation of the property value, adjustable to the specified use of the lot;
 - (E) Set the term of the lease that shall be not less than fifteen years nor more than sixty-five years, including any extension granted for mortgage lending or guarantee purposes; and
 - (F) Establish other terms and conditions it deems necessary, including but not limited to restrictions against alienation and provisions for withdrawal by the board; and
- (5) Any transferee, assignee, or sublessee of a non-agricultural park lease shall first qualify as an applicant under this chapter. For the purpose of this paragraph, any transfer, assignment, sale, or other disposition of any interest, excluding a security interest, by any legal entity that holds a non-agricultural park lease shall be treated as a transfer of the non-agricultural park lease and shall be subject to the approval of the board and to reasonable terms and conditions, consistent with this chapter or

rules of the board that the board may deem necessary. No transfer shall be approved by the board if the disposition of the stock or assets or other interest of the legal entity would result in the failure of the entity to qualify for a non-agricultural park land lease.

(c) After notice of the breach or default as provided in rules adopted by the board consistent with section 166E-6, a violation of any provision in this section shall be cause for the board to cancel the lease and take possession of the land.

(d) The board may issue easements, licenses, permits, and rights-of-entry for uses that are consistent with the purposes for which the lands were set aside or are otherwise subject to the authority of the department pursuant to section 166E-B.

§166E-B Authority to plan, develop, and manage non-agricultural park lands. In accordance with this chapter, the department may plan, develop, and manage non-agricultural park lands on:

- (1) Public lands set aside by executive order for use as non-agricultural park lands pursuant to section 171-11;
- (2) Other lands with the approval of the board that may be subject to a joint venture partnership agreement pursuant to section 166E-C; and
- (3) Lands acquired by the department by way of foreclosure, voluntary surrender, or otherwise pursuant to section 155-4(11).

§166E-C Non-agricultural park land development. On behalf of the State or in partnership with a federal agency, a county, or a private party and except as provided in this section, the department may develop non-agricultural park lands that, at the option of the board, may be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and construction of buildings thereon; provided that:

- (1) The board finds the development is consistent with the public purpose and intent of this chapter and meets minimum health and safety requirements;
- (2) The development of the proposed non-agricultural park land does not contravene any safety standards or tariffs approved by the public utilities commission for public utilities;
- (3) The county in which the non-agricultural park development is proposed shall approve the non-agricultural park development; and provided further that:
 - (A) The county shall approve or disapprove the development within forty-five days after the department submits preliminary plans and specifications for the development to the county. If the county does not disapprove the development after the forty-fifth day, the development shall be deemed approved;
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees, on any actions taken by them in reviewing, approving, or disapproving the plans and specifications; and
 - (C) The final plans and specifications for the development shall be deemed approved by the county if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the planning, zoning, building, construction, and subdivision standards for that development. For purposes of sections 501-85 and 502-17, the chairperson of the board or the responsible county official may certify maps and plans of lands connected with the development as having complied with appli-

- cable laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar; and
- (4) The State shall assume the responsibility of maintaining all roads and infrastructure improvements within the boundaries if the improvements are developed exempt from applicable county ordinances, charter provisions, and rules regarding development.

§166E-D Lease negotiation. (a) The department may negotiate and enter into leases with any person who:

- (1) Holds a revocable permit for agricultural purposes;
- (2) Has formerly held an agricultural lease or a holdover lease of public land that expired within the last ten years and has continued to occupy the land; or
- (3) Is determined by the department to have a beneficial impact on agriculture.

(b) Lands eligible for lease negotiations under this section are limited to lands that are:

- (1) Zoned and used for agricultural purposes;
- (2) Set aside for agricultural uses only, by the governor through an executive order to the department; and
- (3) Not needed by any state or county agency for any other public purpose.

(c) In negotiating and executing a lease as authorized, the board shall:

- (1) Require the appraisal of the parcel using standards of national appraiser organizations to determine the rental, including percentage rent;
- (2) Require the payment of a premium, computed at twenty-five per cent of the annual lease rent, with the premium to be added to the annual lease rent for each year of the lease equal to the number of years the lessee has occupied the land, except that the premium period shall not exceed four years; and
- (3) Recover from the lessee the costs of expenditures required by the department to convert the parcel into leasehold.

The department shall notify in writing those eligible for lease negotiations under this section and shall inform the applicants of the terms, conditions, and restrictions provided by this section. Any eligible person may apply for a lease by submitting a written application to the department within thirty days from the date of receipt of notification; provided that the department may require documentary proof from any applicant to determine that the applicant meets eligibility and qualification requirements for a lease.

§166E-E Policy. Notwithstanding chapter 171, disposition of lands set aside for use pursuant to this chapter shall not be subject to the prior approval of the board of land and natural resources.

§166E-F Rights of holders of security interests. (a) Prior board action shall be required when an institutional lender acquires the lessee's interest through a foreclosure sale, judicial or nonjudicial, or by way of assignment in lieu of foreclosure, or when the institutional lender sells or causes the sale of the lessee's interest in a lease by way of a foreclosure sale, judicial or nonjudicial. The institutional lender shall convey a copy of the sale or assignment as recorded in the bureau of conveyances.

(b) Notwithstanding any provisions of this chapter, if any lease is subject to a security interest held by an institutional lender and if the institutional lender has given to the board a copy of the encumbrance as recorded in the bureau of conveyances:

- (1) If the lease is canceled for violation of any non-monetary lease term or condition, or if the lease is deemed terminated or rejected under bankruptcy laws, the institutional lender shall be entitled to issuance of a new lease in its name for a term equal to the term of the lease remaining immediately prior to the cancellation, termination, or rejection, with all terms and conditions being the same as in the canceled, terminated, or rejected lease, except only for the liens, claims, and encumbrances, if any, that were superior to the institutional lender before the cancellation, termination, or rejection. If a lease is rejected or deemed rejected under bankruptcy law, the lease shall be deemed canceled and terminated for all purposes under state law;
- (2) If the lessee's interest under a lease is transferred to an institutional lender, including by reason of the provisions of paragraph (1), by reason of acquisition of the lessee's interest pursuant to a foreclosure sale, judicial or nonjudicial, and by reason of an assignment in lieu of foreclosure:
 - (A) The institutional lender shall be liable for the obligations of the lessee under the lease for the period of time during which the institutional lender is the holder of the lessee's interest but shall not be liable for any obligations of the lessee arising after the institutional lender has assigned the lease; and
 - (B) The provisions of section 166E-A(b)(1) and (2) shall not apply to the lease or the demised land during such time as the institutional lender holds the lease; provided that:
 - (i) For non-monetary lease violations, the institutional lender shall first remedy the lease terms that caused the cancellation, termination, or rejection to the satisfaction of the board; and
 - (ii) The new lease issued to the institutional lender shall terminate one hundred twenty days from the effective date of issuance, when the institutional lender shall either sell or assign the lease,
after which date section 166E-A(b)(1) and (2) shall apply to the new lease;
- (3) As long as there is a delinquent loan balance secured by a security interest, the lease may not be canceled or terminated, except for cancellation by reason of default of the lessee, and no increase over and above the fair market rent, based upon the actual use of the land demised and subject to the use restrictions imposed by the lease and applicable laws, may be imposed or become payable, and no lands may be withdrawn from the lease, except by eminent domain proceedings beyond the control of the board, except with prior written consent by the institutional lender and that consent shall not be unreasonably withheld; and
- (4) If the lease contains any provision requiring the payment of a premium to the lessor on assignment of the lease, any premium shall be assessed only after all amounts owing by any debt secured by a security interest held by an institutional lender shall have been paid in full.
 - (c) Ownership of both the lease and the security interest by an institutional lender shall not effect or cause a merger thereof, and both interests shall remain distinct and in full force and effect unless the institutional lender elects in writing to merge the estates with the consent of the board.
 - (d) The board may include in any consent form or document provisions consistent with the intent of this section as may be required to make a lease mortgageable or more acceptable for mortgageability by an institutional lender.

(e) The rights of a purchaser, assignee, or transferee of an institutional lender's security interest, including a junior lien holder, shall be exercisable by the purchaser, assignee, or transferee as successor in interest to the institutional lender; provided that:

- (1) The purchase, assignment, or transfer shall conform with subsection (b)(4); and
- (2) The purchase, assignment, or transfer of such rights shall be reserved for and exercisable only by an institutional lender.

Other purchasers may not be precluded from acquiring the institutional lender's security interest but shall not have exercisable rights as successor in interest to the original institutional lender.

(f) For the purposes of this section:

"Institutional lender" means a federal, state, or private lending institution licensed to do business in the state and that makes loans to qualified applicants under this chapter on the basis of a lease awarded pursuant to this chapter for security, in whole or in part, together with any other entity that acquires all or substantially all of an institutional lender's loan portfolio.

"Making a loan" means lending of new money or the renewal or extension of indebtedness owing by a qualified applicant to an institutional lender, after June 30, 2006.

"Security interest" means any interest created or perfected by a mortgage, assignment by way of mortgage, or by a financing statement and encumbering a lease, land demised by the lease, or personal property located at, affixed or to be affixed to, or growing or to be grown upon the demised land."

SECTION 2. Section 166E-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Aquacultural activities" means the farming or ranching or any plant or animal species in a controlled salt, brackish, or freshwater environment; provided that the farm or ranch is on or directly adjacent to land."

SECTION 3. Section 166E-6, Hawaii Revised Statutes, is amended to read as follows:

"[§166E-6] Rules. The board shall adopt rules pursuant to chapter 91, including eligibility requirements for each disposition and applicant qualifications, to effectuate the purposes of this chapter."

SECTION 4. In codifying the new sections added to chapter 166E, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in the designations of and references to those new sections.

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 31, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Litter Control.

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

SECTION 1. The legislature finds that, even though Hawaii's natural beauty makes this island state great, the communities that comprise Hawaii still suffer from rampant littering problems. One cause of the problem is lack of enforcement. Hawaii prohibits people from littering from an automobile and in public. This State has even made certain littering acts a criminal offense. For example, with over 1,200,000 residents, the State prosecuted just over four hundred violations of criminal littering or littering from a vehicle.

With enforcement lacking, a greater deterrent is necessary to prevent people who live in and visit Hawaii from littering the State's beautiful 'aina. Presently, the minimum fine assessed against any person who litters is \$25. As is evidenced by the amount of litter seen strewn about the streets in Hawaii, the present fine schedule is not serving its deterrent purpose. This Act seeks to update the current fine schedule to serve as a stronger incentive to keep Hawaii beautiful and clean.

SECTION 2. Section 291C-132, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The court shall fine the person convicted of committing the offense of littering at least [~~\$25,~~] \$100, but not more than \$500.”

SECTION 3. Section 339-8, Hawaii Revised Statutes, is amended to read as follows:

“**§339-8 Penalties.** (a) Except as otherwise provided by this chapter, any person violating any provision of this chapter or any rule adopted [~~hereunder~~] under this chapter shall be guilty of a violation, and shall be fined not less than [~~\$25,~~] \$100, and not more than \$500 for each offense, and ordered to pick up and remove litter from a public place under the supervision of the director as follows:

- (1) For the first offense, [~~defendant~~] the violator shall spend four hours of either picking up litter or performing community service[-]; and
- (2) For any subsequent offense, [~~defendant~~] the violator shall spend eight hours of either picking up litter or performing community service.

(b) If the court judges the violator to be incapable of litter removal and pick up, the court may provide some other community work as it deems appropriate. All persons who are caught littering shall be required to remove the litter that they caused or shall be liable for the costs of removing that litter.”

SECTION 4. Section 708-829, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (1) to read:

“(1) A person commits the offense of criminal littering if that person knowingly places, throws, or drops litter on any public or private property or in any public or private waters, except:

- (a) In a place [~~which is~~] designated by the department of health or the county for the disposal of garbage and refuse;
- (b) Into a litter receptacle;

- (c) Into a litter bag[.]; provided that the bag is disposed of properly into a litter receptacle or in a place [~~which is~~] designated by the department of health or the county for the disposal of garbage and refuse.”

2. By amending subsection (4) to read:

“(4) The court shall sentence any person convicted of committing the offense of criminal littering as follows:

- (a) For the first offense, [~~defendant~~] the person shall spend four hours of either picking up litter on public property or performing community service[-];
- (b) For any subsequent offense, [~~defendant~~] the person shall spend eight hours of either picking up litter on public property or performing community service[-]; and
- (c) The court shall fine the person convicted of committing the offense of criminal littering at least [~~\$25;~~] \$500, but not more than [~~\$500-~~] \$1,000.”

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.

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

(Approved June 1, 2006.)

ACT 159

S.B. NO. 826

A Bill for an Act Relating to Child Abuse.

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

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

1. By amending subsection (a) to read:

“(a) Notwithstanding any other state law concerning confidentiality to the contrary, the following persons who, in their professional or official capacity, have reason to believe that child abuse or neglect has occurred or that there exists a substantial risk that child abuse or neglect may occur in the reasonably foreseeable future, shall immediately report the matter orally to the department or to the police department:

- (1) Any licensed or registered professional of the healing arts [~~and~~] or any health-related occupation who examines, attends, treats, or provides other professional or specialized services, including but not limited to physicians, including physicians in training, psychologists, dentists, nurses, osteopathic physicians and surgeons, optometrists, chiropractors, podiatrists, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private school;
- (3) Employees or officers of any public or private agency or institution, or other individuals, providing social, medical, hospital, or mental health services, including financial assistance;

ACT 160

- (4) Employees or officers of any law enforcement agency, including but not limited to the courts, police departments, department of public safety, correctional institutions, and parole or probation offices;
- (5) Individual providers of child care, or employees or officers of any licensed or registered child care facility, foster home, or similar institution;
- (6) Medical examiners or coroners; and
- (7) Employees of any public or private agency providing recreational or sports activities.”

2. By amending subsection (c) to read:

“(c) The initial oral report shall be followed as soon as possible by a report in writing to the department. If a police department or the department of public safety is the initiating agency, a written report shall be filed with the department for cases that the police [~~take~~] or the department of public safety takes further action on or for active cases in the department under this chapter. All written reports shall contain the name and address of the child and the child’s parents or other persons responsible for the child’s care, if known, the child’s age, the nature and extent of the child’s injuries, and any other information that the reporter believes might be helpful or relevant to the investigation of the child abuse or neglect. This subsection shall not be construed to serve as a cause of action against the department [~~or~~], the police[~~;~~], or the department of public safety.”

SECTION 2. Section 587-2, Hawaii Revised Statutes, is amended by amending the definition of “police officer” to read as follows:

““Police officer” means a person employed by any county in this State to enforce the laws and ordinances for preserving the peace, safety, and good order of the community[~~;~~] or an employee authorized by the director of public safety under section 329-51 or 353C-4 to exercise the powers of 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 on July 1, 2006.

(Approved June 1, 2006.)

ACT 160

H.B. NO. 1900

A Bill for an Act Relating to the State Budget.

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

SECTION 1. This Act shall be known and may be cited as the Supplemental Appropriations Act of 2006.

SECTION 2. This Act amends Act 178, Session Laws of Hawaii 2005, and other appropriations and authorizations effective during fiscal biennium 2005-2007.

SECTION 3. Act 178, Session Laws of Hawaii 2005, is amended by amending section 3 to read as follows:

“SECTION 3. APPROPRIATIONS. The following sums, or so much thereof as may be sufficient to accomplish the purposes and programs designated herein, are hereby appropriated or authorized, as the case may be, from the means of financing specified to the expending agencies designated for the fiscal biennium beginning July 1, 2005, and ending June 30, 2007. 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 2005-06	M O F	FISCAL YEAR 2006-07	M O F
A. ECONOMIC DEVELOPMENT							
1.	BED100 - STRATEGIC MARKETING & SUPPORT						
	OPERATING		BED	18.00*		19.00*	
			BED	1,852,208A		1,995,056A	
			BED	250,000N		250,000N	
	INVESTMENT CAPITAL		BED	1,821,915W		1,821,915W	
			BED	300,000C		200,000C	
2.	BED105 - ARTS, FILM AND ENTERTAINMENT						
	OPERATING		BED	9.00*		10.00*	
				1,307,414A		1,432,414A	
3.	BED107 - FOREIGN TRADE ZONE						
	OPERATING		BED	19.00*		19.00*	
				1,955,541B		1,955,541B	
4.	BED120 - ENERGY AND NATURAL RESOURCES						
	OPERATING		BED	11.00*		11.00*	
			BED	1,198,347A		1,398,347A	
			BED	3,608,674N		3,660,250N	
			BED	1,861,769U		1,561,769U	
5.	BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT						
	OPERATING		BED	34.00*		34.00*	
				2,250,586A		2,346,638A	
	INVESTMENT CAPITAL		BED	200,000C		C	
6.	BED113 - TOURISM						
	OPERATING		BED	25,000A		1,025,000A	
				3.00*		2.00*	
			BED	117,200,000B		122,304,887B	
7.	AGR101 - FINANCIAL ASSISTANCE FOR AGRICULTURE						
	OPERATING		AGR	10.00*		10.00*	
			AGR	1,054,203B		1,054,203B	
				5,000,000W		5,000,000W	
8.	AGR122 - PLANT, PEST, AND DISEASE CONTROL						
	OPERATING		AGR	88.00*		133.00*	
			AGR	4,569,063A		6,843,715A	
			AGR	327,533N		620,621N	
			AGR	498,371T		512,962T	
				9.00*		9.00*	
			AGR	494,816U		1,424,816U	
			AGR	58,360W		58,360W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
9.	AGR131 - RABIES QUARANTINE						
	OPERATING		AGR		A	100,000A	
					33.00*	32.00*	
			AGR	2,787,272B		2,787,272B	
10.	AGR132 - ANIMAL DISEASE CONTROL						
	OPERATING		AGR		22.50*	23.50*	
			AGR	1,207,114A		1,211,864A	
				397,454U		409,068U	
11.	LNR172 - FORESTRY - PRODUCTS DEVELOPMENT						
	OPERATING		LNR		19.00*	19.00*	
				758,307A		758,307A	
			LNR	700,000B		715,886B	
				2.50*		2.50*	
			LNR	416,785N		418,989N	
12.	AGR151 - QUALITY AND PRICE ASSURANCE						
	OPERATING		AGR		24.00*	24.00*	
				1,291,013A		1,292,863A	
				2.00*		2.00*	
			AGR	277,675B		277,675B	
			AGR	52,424N		52,424N	
			AGR	300,000T		300,000T	
			AGR	470,926W		470,926W	
13.	AGR171 - AGRICULTURAL DEVELOPMENT AND MARKETING						
	OPERATING		AGR		18.00*	18.00*	
				1,871,776A		2,873,476A	
			AGR	75,000N		75,000N	
14.	AGR141 - AGRICULTURAL RESOURCE MANAGEMENT						
	OPERATING		AGR		4.00*	2.00*	
				562,417A		562,417A	
				3.00*		5.00*	
			AGR	405,580B		605,580B	
				13.00*		13.00*	
	INVESTMENT CAPITAL		AGR	1,312,615W		1,332,077W	
			AGR	3,600,000C		1,186,000C	
			AGR	3,000,000N		N	
15.	AGR161 - AGRIBUSINESS DEVELOPMENT AND RESEARCH						
	OPERATING		AGR		140,558A	390,558A	
			AGR	3,357,718W		3,357,718W	
16.	AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE						
	OPERATING		AGR		29.00*	29.00*	
	INVESTMENT CAPITAL		AGR	1,611,328A		1,614,128A	
					C	1,000,000C	
17.	LNR153 - COMMERCIAL FISHERIES AND RESOURCE ENHANCEMENT						
	OPERATING		LNR		9.00*	9.00*	
			LNR	710,130A		710,130A	
			LNR	314,193B		314,193B	
			LNR	308,210N		708,210N	
18.	AGR153 - AQUACULTURE DEVELOPMENT PROGRAM						
	OPERATING		AGR		8.00*	8.00*	
				502,844A		553,014A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
			AGR	30,000B		30,000B	
			AGR	85,115N		85,115N	
19.	BED143	HIGH TECHNOLOGY DEVELOPMENT CORPORATION		1.50*		1.50*	
	OPERATING		BED	936,930A		936,930A	
				1.50*		1.50*	
			BED	3,871,030B		3,846,030B	
			BED	3,789,392N		3,489,392N	
			BED	1,500,000W		1,500,000W	
20.	BED145	HAWAII STRATEGIC DEVELOPMENT CORPORATION		1.00*			
	OPERATING		BED	92,848A			
				*		*	
			BED	4,238,125W		4,263,440W	
21.	BED146	NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY					
	OPERATING		BED	169,993A		250,000A	
			BED	3,709,604B		5,105,227B	
			BED	6,918,525N		6,843,525N	
	INVESTMENT CAPITAL		BED		C	1,602,000C	
			BED		N	4,000,000N	
22.	LNR141	WATER AND LAND DEVELOPMENT		3.00*		3.00*	
	OPERATING		LNR	285,052A		285,052A	
			LNR	110,000W		110,000W	
	INVESTMENT CAPITAL		LNR	850,000C		15,600,000C	
			LNR	1,200,000N		3,000,000N	
			LNR	600,000S		185,000S	
23.	BED150	HAWAII COMMUNITY DEVELOPMENT AUTHORITY		2.00*		2.00*	
	OPERATING		BED	262,281A		288,245A	
			BED	2,500,000B		2,500,000B	
			BED	12,865N			
			BED	546,725W		533,860W	
	INVESTMENT CAPITAL		BED	2,603,000C		2,672,000C	
24.	BED151	ALOHA TOWER DEVELOPMENT CORPORATION		1.00*			*
	OPERATING		BED	1,533,386B		1,506,734B	
B. EMPLOYMENT							
1.	LBR111	PLACEMENT SERVICES		4.30*		4.30*	
	OPERATING		LBR	296,099A		296,099A	
			LBR	6,777,527B		6,777,527B	
				119.20*		119.20*	
			LBR	48,902,800N		48,902,800N	
			LBR	3,567,524U		3,567,524U	
2.	LBR135	WORKFORCE DEVELOPMENT COUNCIL		3.00*		3.00*	
	OPERATING		LBR	227,100A		177,100A	
			LBR	434,606N		434,606N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
3.	LBR143 - OCCUPATIONAL SAFETY AND HEALTH						
	OPERATING		LBR	39.00*		39.00*	
				1,918,306A		1,918,306A	
				25.00*		25.00*	
			LBR	2,149,301N		2,149,301N	
			LBR	50,000W		50,000W	
4.	LBR152 - WAGE STANDARDS AND FAIR EMPLOYMENT PRACTICES						
	OPERATING		LBR	24.50*		24.50*	
				1,173,257A		1,173,257A	
			LBR	53,131U		53,131U	
5.	LBR153 - CIVIL RIGHTS COMMISSION						
	OPERATING		LBR	21.50*		24.50*	
				1,147,692A		1,282,236A	
				5.50*		5.50*	
			LBR	545,706N		545,706N	
6.	LBR161 - PUBLIC AND PRIVATE EMPLOYMENT						
	OPERATING		LBR	1.00*		1.00*	
				421,716A		421,716A	
7.	LBR171 - UNEMPLOYMENT COMPENSATION						
	OPERATING		LBR	166,626,650B		166,626,650B	
				218.30*		218.30*	
			LBR	14,811,202N		14,811,202N	
8.	LBR183 - DISABILITY COMPENSATION						
	OPERATING		LBR	109.00*		109.00*	
				5,053,665A		5,053,665A	
				4.00*		8.00*	
			LBR	23,675,713B		23,675,713B	
9.	HMS802 - VOCATIONAL REHABILITATION						
	OPERATING		HMS	26.36*		26.36*	
				3,859,253A		3,895,309A	
				92.64*		92.64*	
			HMS	12,379,474N		12,379,474N	
			HMS	1,330,200W		1,330,200W	
	INVESTMENT CAPITAL		HMS	C		200,000C	
10.	LBR901 - DLIR - DATA GATHERING, RESEARCH, AND ANALYSIS						
	OPERATING		LBR	8.88*		8.88*	
				738,114A		850,114A	
				28.12*		28.12*	
			LBR	2,476,695N		2,476,695N	
11.	LBR902 - GENERAL ADMINISTRATION						
	OPERATING		LBR	27.46*		27.46*	
				1,472,172A		1,472,172A	
				35.48*		35.48*	
			LBR	2,967,486N		2,967,486N	
12.	LBR903 - OFFICE OF COMMUNITY SERVICES						
	OPERATING		LBR	4.00*		4.00*	
				4,412,792A		6,750,696A	
				2.00*		2.00*	
			LBR	5,831,719N		5,831,719N	
	INVESTMENT CAPITAL		LBR	5,900,000C		14,958,000C	

PROGRAM APPROPRIATIONS

APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
13. LBR812 - LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD						12.00*	12.00*
	OPERATING		LBR	700,256A		700,256A	
C. TRANSPORTATION FACILITIES							
1. TRN102 - HONOLULU INTERNATIONAL AIRPORT							
	OPERATING		TRN	588.50*		588.50*	
			TRN	87,306,848B		105,611,169B	
	INVESTMENT CAPITAL		TRN	4,000,000N		2,425,000N	
			TRN	4,879,000B		19,145,000B	
			TRN	E		106,812,000E	
			TRN	8,012,000N		9,135,000N	
			TRN	35,938,000X		88,277,000X	
2. TRN104 - GENERAL AVIATION							
	OPERATING		TRN	30.00*		30.00*	
	INVESTMENT CAPITAL		TRN	5,323,844B		6,563,080B	
			TRN	537,000B		200,000B	
			TRN	6,285,000N		4,370,000N	
3. TRN111 - HILO INTERNATIONAL AIRPORT							
	OPERATING		TRN	79.00*		79.00*	
			TRN	11,939,954B		10,720,039B	
	INVESTMENT CAPITAL		TRN	2,000,000N		760,000N	
			TRN			1,250,000B	
4. TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOLE							
	OPERATING		TRN	83.00*		83.00*	
			TRN	12,166,267B		11,663,378B	
	INVESTMENT CAPITAL		TRN	760,000N		100,000N	
			TRN	1,280,000B		3,000,000B	
			TRN	1,817,000N		N	
			TRN	1,225,000X		X	
5. TRN116 - WAIMEA-KOHALA AIRPORT							
	OPERATING		TRN	2.00*		2.00*	
			TRN	608,082B		433,455B	
	INVESTMENT CAPITAL		TRN	N		323,000N	
			TRN	56,000B		300,000B	
			TRN	E		30,000E	
			TRN	659,000N		3,770,000N	
6. TRN118 - UPOLU AIRPORT							
	OPERATING		TRN	343,500B		149,500B	
7. TRN131 - KAHULUI AIRPORT							
	OPERATING		TRN	149.00*		149.00*	
			TRN	19,423,988B		17,764,381B	
	INVESTMENT CAPITAL		TRN	600,000N			
			TRN	3,675,000B		7,450,000B	
			TRN	E		33,915,000E	
			TRN	2,329,000N		18,315,000N	
			TRN	10,293,000X		X	
8. TRN133 - HANA AIRPORT							
	OPERATING		TRN	1.00*		2.00*	
			TRN	140,158B		345,489B	
	INVESTMENT CAPITAL		TRN	N		323,000N	
			TRN	56,000B		300,000B	
			TRN	659,000N		3,200,000N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
9.	TRN135	KAPALUA AIRPORT					
	OPERATING		TRN		6.00*		6.00*
				1,318,950B		1,294,740B	
10.	TRN141	MOLOKAI AIRPORT					
	OPERATING		TRN		13.50*		13.50*
	INVESTMENT CAPITAL		TRN	1,225,026B		1,797,847B	
			TRN	20,000B			B
			TRN	915,000E			135,000E
			TRN	1,400,000N			2,500,000N
11.	TRN143	KALAUPAPA AIRPORT					
	OPERATING		TRN		1.00*		2.00*
			TRN	228,621B		222,720B	
			TRN		N	323,000N	
	INVESTMENT CAPITAL		TRN	56,000B		300,000B	
			TRN	659,000N		3,200,000N	
12.	TRN151	LANAI AIRPORT					
	OPERATING		TRN		10.00*		10.00*
	INVESTMENT CAPITAL		TRN	1,400,011B		1,431,971B	
			TRN	600,000E			E
			TRN	550,000N			N
13.	TRN161	LIHUE AIRPORT					
	OPERATING		TRN		100.00*		100.00*
			TRN	13,132,822B		17,905,795B	
			TRN	2,000,000N		2,260,000N	
	INVESTMENT CAPITAL		TRN	2,942,000B		7,500,000B	
			TRN		E	3,821,000E	
			TRN	19,320,000N		13,666,000N	
			TRN	370,000X		4,725,000X	
14.	TRN163	PORT ALLEN AIRPORT					
	OPERATING		TRN		1,841B		26,841B
15.	TRN195	AIRPORTS ADMINISTRATION					
	OPERATING		TRN		109.00*		109.00*
	INVESTMENT CAPITAL		TRN	99,457,463B		99,146,790B	
			TRN	16,166,000B		14,376,000B	
			TRN		E	4,150,000E	
			TRN	29,750,000N		39,220,000N	
			TRN		X	31,200,000X	
16.	TRN301	HONOLULU HARBOR					
	OPERATING		TRN		119.00*		118.00*
	INVESTMENT CAPITAL		TRN	21,344,565B		20,058,285B	
			TRN	5,900,000B		3,300,000B	
			TRN			6,000,000E	
			TRN		R	2,000,000R	
17.	TRN303	KALAELOA BARBERS POINT HARBOR					
	OPERATING		TRN		3.00*		3.00*
	INVESTMENT CAPITAL		TRN	792,522B		1,055,713B	
			TRN	225,000B		1,800,000B	
18.	TRN305	KEWALO BASIN					
	OPERATING		TRN		2.00*		2.00*
			TRN	1,263,808B		831,738B	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
19.	TRN311	- HILO HARBOR					
	OPERATING		TRN		15.00*		14.00*
	INVESTMENT CAPITAL		TRN	2,183,405B		2,243,133B	
			TRN	1,900,000B			B
			TRN			45,000,000E	
20.	TRN313	- KAWAIHAE HARBOR					
	OPERATING		TRN		1.00*		2.00*
	INVESTMENT CAPITAL		TRN	945,172B		945,508B	
			TRN	200,000B		1,700,000B	
21.	TRN331	- KAHULUI HARBOR					
	OPERATING		TRN		18.00*		18.00*
	INVESTMENT CAPITAL		TRN	2,650,570B		2,739,678B	
			TRN	1,200,000B		3,500,000B	
			TRN		E	12,000,000E	
22.	TRN341	- KAUNAKAKAI HARBOR					
	OPERATING		TRN		1.00*		1.00*
				482,755B		502,909B	
23.	TRN361	- NAWILIWILI HARBOR					
	OPERATING		TRN		15.00*		15.00*
	INVESTMENT CAPITAL		TRN	2,194,874B		2,233,002B	
			TRN	375,000B		100,000B	
			TRN		E	2,000,000E	
24.	TRN363	- PORT ALLEN HARBOR					
	OPERATING		TRN		1.00*		1.00*
	INVESTMENT CAPITAL		TRN	895,940B		502,221B	
				500,000B			B
25.	TRN351	- KAUMALAPAU HARBOR					
	OPERATING		TRN		208,000B		208,000B
	INVESTMENT CAPITAL		TRN	500,000B		4,000,000B	
26.	TRN395	- HARBORS ADMINISTRATION					
	OPERATING		TRN		57.00*		59.00*
	INVESTMENT CAPITAL		TRN	45,283,463B		49,144,997B	
			TRN	7,863,000B		3,838,000B	
			TRN	20,000,000D		20,000,000D	
			TRN	2,000,000N			N
27.	TRN501	- OAHU HIGHWAYS					
	OPERATING		TRN		228.00*		228.00*
			TRN	74,037,884B		65,731,575B	
			TRN	900,000N		900,000N	
	INVESTMENT CAPITAL		TRN	3,000,000B		3,430,000B	
			TRN	17,400,000E		50,670,000E	
			TRN	40,720,000N		164,108,000N	
			TRN		R	2,707,000R	
			TRN		X	1,500,000X	
28.	TRN511	- HAWAII HIGHWAYS					
	OPERATING		TRN		124.00*		124.00*
	INVESTMENT CAPITAL		TRN	25,735,257B		26,787,291B	
			TRN	6,451,000E		12,876,000E	
			TRN	39,999,000N		52,589,000N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
29.	TRN531 - MAUI HIGHWAYS						
	OPERATING		TRN	65.00*		65.00*	
	INVESTMENT CAPITAL		TRN	17,506,124B		17,472,079B	
			TRN	19,520,000E		4,495,000E	
			TRN	80,000N		10,210,000N	
30.	TRN541 - MOLOKAI HIGHWAYS						
	OPERATING		TRN	12.00*		12.00*	
	INVESTMENT CAPITAL		TRN	4,536,206B		4,161,302B	
			TRN	565,000E		235,000E	
			TRN	1,495,000N		940,000N	
31.	TRN551 - LANAI HIGHWAYS						
	OPERATING		TRN	4.00*		4.00*	
				918,193B		824,931B	
32.	TRN561 - KAUAI HIGHWAYS						
	OPERATING		TRN	51.00*		51.00*	
	INVESTMENT CAPITAL		TRN	11,740,850B		12,858,419B	
			TRN	9,310,000E		11,880,000E	
			TRN	22,200,000N		43,520,000N	
33.	TRN595 - HIGHWAYS ADMINISTRATION						
	OPERATING		TRN	80.00*		80.00*	
			TRN	78,470,756B		78,644,294B	
			TRN	3,288,113N		5,421,018N	
	INVESTMENT CAPITAL		TRN	19,250,000B		18,000,000B	
			TRN	15,265,000E		8,824,000E	
			TRN	19,360,000N		19,401,000N	
34.	TRN597 - HIGHWAY SAFETY						
	OPERATING		TRN	31.00*		31.00*	
				5,924,225B		5,924,225B	
				9.00*		9.00*	
			TRN	5,538,482N		5,538,482N	
35.	TRN995 - GENERAL ADMINISTRATION						
	OPERATING		TRN	100.00*		103.00*	
			TRN	14,661,518B		13,287,518B	
			TRN	2,381,854N		16,342,926N	
			TRN	112,500R		140,969R	

D. ENVIRONMENTAL PROTECTION

1.	HTH840 - ENVIRONMENTAL MANAGEMENT						
	OPERATING		HTH	53.00*		57.00*	
				3,225,126A		3,306,443A	
				50.20*		60.20*	
			HTH	60,500,843B		60,696,902B	
				47.40*		47.40*	
			HTH	8,184,259N		8,356,169N	
				53.40*		54.40*	
			HTH	97,390,091W		164,210,249W	
	INVESTMENT CAPITAL		HTH	3,714,000C		3,714,000C	
			HTH	18,567,000N		18,567,000N	
2.	AGR846 - PESTICIDES						
	OPERATING		AGR	18.00*		18.00*	
				836,475A		836,705A	
				1.00*		1.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
			AGR	418,806N		418,806N	
				4.00*		4.00*	
			AGR	738,521W		738,521W	
3.	LNR401	AQUATIC RESOURCES					
	OPERATING		LNR	27.00*		27.00*	
				2,338,928A		2,377,878A	
				1.00*		1.00*	
			LNR	1,188,797N		2,288,797N	
4.	LNR402	FORESTS AND WILDLIFE RESOURCES					
	OPERATING		LNR	52.00*		55.50*	
				5,057,911A		3,372,769A	
			LNR	3,023,087B		3,023,087B	
				5.50*		6.00*	
	INVESTMENT CAPITAL		LNR	5,017,900N		5,105,458N	
			LNR		C	500,000C	
5.	LNR404	WATER RESOURCES					
	OPERATING		LNR	19.00*		21.00*	
				1,582,432A		2,335,120A	
				3.00*		3.00*	
			LNR	350,246B		350,246B	
6.	LNR405	CONSERVATION AND RESOURCES ENFORCEMENT					
	OPERATING		LNR	93.00*		109.00*	
				5,112,718A		6,049,876A	
				22.00*		22.00*	
			LNR	1,596,200B		1,558,569B	
				2.00*		2.00*	
			LNR	634,914N		654,598N	
				1.00*		1.00*	
			LNR	36,054W		36,054W	
7.	LNR407	NATURAL AREA RESERVES AND MANAGEMENT					
	OPERATING		LNR	22.00*		22.00*	
				1,137,714A		1,137,714A	
						1.00*	
			LNR	3,300,000B		10,031,500B	
8.	HTH850	POLICY DEVELOPMENT, COORDINATION, AND ANALYSIS FOR NATURAL PHYSICAL ENVIRONMENT					
	OPERATING		HTH	5.00*		5.00*	
				297,112A		297,170A	
9.	LNR906	LNR - NATURAL AND PHYSICAL ENVIRONMENT					
	OPERATING		LNR	32.00*		32.00*	
				1,894,007A		1,894,007A	
				5.00*		5.00*	
	INVESTMENT CAPITAL		LNR	540,137B		575,103B	
			LNR	6,175,000C		2,175,000C	
10.	HTH849	ENVIRONMENTAL HEALTH ADMINISTRATION					
	OPERATING		HTH	14.50*		15.00*	
				809,237A		846,902A	
						.50*	
			HTH		B	49,875B	
				17.50*		14.50*	
			HTH	3,098,129N		3,037,634N	
				10.00*		14.00*	
			HTH	2,974,507W		3,210,682W	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
E. HEALTH							
1.	HTH101 - TUBERCULOSIS CONTROL						
	OPERATING		HTH	32.00*		32.00*	
				2,516,597A		2,516,792A	
				2.00*		1.00*	
			HTH	1,318,876N		1,318,876N	
2.	HTH111 - HANSEN'S DISEASE SERVICES						
	OPERATING		HTH	68.00*		68.00*	
				4,707,801A		4,812,981A	
				3.00*		8.00*	
	INVESTMENT CAPITAL		HTH	695,669N		695,669N	
			AGS			750,000C	
3.	HTH121 - STD/AIDS PREVENTION SERVICES						
	OPERATING		HTH	15.00*		15.00*	
				5,513,222A		5,513,384A	
				4.50*		4.50*	
			HTH	5,909,282N		5,909,282N	
4.	HTH131 - DISEASE OUTBREAK CONTROL						
	OPERATING		HTH	20.60*		20.60*	
				1,519,422A		1,519,686A	
				22.40*		34.40*	
			HTH	10,404,041N		10,404,041N	
5.	HTH141 - DENTAL DISEASES						
	OPERATING		HTH	25.00*		25.00*	
				1,762,681A		1,762,976A	
6.	HTH730 - EMERGENCY MEDICAL SERVICES AND INJURY PREVENTION SYSTEM						
	OPERATING		HTH	14.00*		14.00*	
				42,104,770A		50,788,283A	
			HTH	5,230,000B		4,293,658B	
				3.00*		3.00*	
			HTH	3,494,122N		3,614,122N	
7.	HTH501 - DEVELOPMENTAL DISABILITIES						
	OPERATING		HTH	230.75*		235.75*	
				48,692,087A		55,878,587A	
				3.00*		3.00*	
			HTH	1,008,662B		1,008,662B	
			HTH	200,000N			
	INVESTMENT CAPITAL		HTH			51,559,936U	
			AGS			1,500,000C	
			HTH			500,000C	
8.	HTH530 - CHILDREN WITH SPECIAL HEALTH NEEDS SERVICES						
	OPERATING		HTH	120.75*		120.75*	
				10,108,534A		10,109,756A	
				3.00*		3.00*	
			HTH	1,125,171B		1,125,171B	
				41.00*		43.00*	
			HTH	4,309,227N		4,442,727N	
9.	HTH540 - WOMEN, INFANTS & CHILDREN SERVICES						
	OPERATING		HTH	115.50*		113.50*	
				29,660,385N		30,078,144N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
10.	HTH550 - MATERNAL AND CHILD HEALTH SERVICES						
	OPERATING		HTH	17,00*		17,00*	
			HTH	17,354,246A		16,430,639A	
			HTH	400,000B		379,120B	
			HTH	22.50*		23.50*	
			HTH	5,920,144N		5,520,000N	
			HTH	1.00*		1.00*	
			HTH	758,190U		758,190U	
11.	HTH180 - CHRONIC DISEASE MANAGEMENT AND CONTROL						
	OPERATING		HTH	19.00*		20.00*	
			HTH	1,027,226A		1,227,332A	
			HTH	18,000B		18,000B	
			HTH	11.00*		11.00*	
			HTH	3,362,821N		3,362,821N	
12.	HTH570 - COMMUNITY HEALTH NURSING						
	OPERATING		HTH	449.00*		451.00*	
			HTH	15,856,509A		15,892,292A	
			HTH	90,720B		90,720B	
13.	HTH595 - HEALTH RESOURCES ADMINISTRATION						
	OPERATING		HTH	28.00*		28.00*	
			HTH	6,381,797A		7,450,935A	
			HTH	2.00*		2.00*	
			HTH	47,359,441B		48,359,441B	
			HTH	7.50*		8.50*	
	INVESTMENT CAPITAL		HTH	867,373N		1,007,373N	
			HTH	6,096,000C		8,258,000C	
14.	HTH210 - HAWAII HEALTH SYSTEMS CORPORATION						
	OPERATING		HTH	32,280,041A		34,154,041A	
			HTH	2,836.25*		2,836.25*	
			HTH	334,443,937B		332,569,937B	
	INVESTMENT CAPITAL		HTH	7,390,000C		21,509,000C	
			HTH	22,000,000E		E	
			HTH	18,228,000N		1,800,000N	
15.	SUB601 - PRIVATE HOSPITALS AND MEDICAL SERVICES ¹						
16.	HTH420 - ADULT MENTAL HEALTH - OUTPATIENT						
	OPERATING		HTH	200.50*		200.50*	
			HTH	61,561,900A		61,607,425A	
			HTH	14,652,757B		22,382,981B	
			HTH	1,643,030N		1,643,030N	
17.	HTH430 - ADULT MENTAL HEALTH - INPATIENT						
	OPERATING		HTH	627.50*		627.50*	
			HTH	49,389,054A		49,552,846A	
	INVESTMENT CAPITAL		AGS	55,000C		3,582,000C	
			HTH	C		150,000C	
18.	HTH440 - ALCOHOL AND DRUG ABUSE						
	OPERATING		HTH	22.00*		22.00*	
			HTH	13,470,829A		18,391,149A	
			HTH	150,000B		150,000B	
			HTH	6.00*		6.00*	
			HTH	10,859,867N		10,859,867N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
19.	HTH460 - CHILD AND ADOLESCENT MENTAL HEALTH				163.50*		163.50*
	OPERATING		HTH	49,970,774A		50,387,520A	
			HTH	12,530,867B		12,530,867B	
			HTH	731,138N		1,039,238N	
			HTH	2,250,000U		2,250,000U	
20.	HTH495 - BEHAVIORAL HEALTH SERVICES ADMINISTRATION				65.00*		65.00*
	OPERATING		HTH	7,686,555A		7,687,133A	
			HTH	1,504,499N		1,504,499N	
21.	HTH610 - ENVIRONMENTAL HEALTH SERVICES				139.00*		139.00*
	OPERATING		HTH	6,890,882A		6,892,270A	
				8.00*		7.00*	
			HTH	944,184B		894,309B	
				7.00*		7.00*	
			HTH	594,682N		594,682N	
				2.00*		2.00*	
			HTH	91,259U		91,259U	
22.	HTH710 - STATE LABORATORY SERVICES				84.00*		86.00*
	OPERATING		HTH	5,347,308A		6,022,120A	
	INVESTMENT CAPITAL		AGS		C	212,000C	
23.	HTH720 - MEDICAL FACILITIES - STDS, INSPECTION, AND LICENSING				19.20*		20.40*
	OPERATING		HTH	1,263,918A		1,365,841A	
			HTH	356,000B		356,000B	
				17.60*		17.60*	
			HTH	1,559,994N		1,559,994N	
			HTH		U	903,403U	
24.	HTH906 - COMPREHENSIVE HEALTH PLANNING				8.00*		8.00*
	OPERATING		HTH	494,962A		495,018A	
			HTH	39,000B		39,000B	
25.	HTH760 - HEALTH STATUS MONITORING				26.00*		26.00*
	OPERATING		HTH	1,505,741A		1,506,102A	
			HTH	250,000B		250,000B	
				2.00*		2.00*	
			HTH	397,214N		397,214N	
26.	HTH905 - POLICY DEVELOPMENT AND ADVOCACY FOR DEVELOPMENTAL DISABILITIES				1.50*		1.50*
	OPERATING		HTH	99,005A		99,021A	
				6.50*		6.50*	
			HTH	462,315N		462,315N	
27.	HTH907 - GENERAL ADMINISTRATION				118.50*		118.50*
	OPERATING		HTH	7,429,802A		7,481,933A	
			HTH	1,304,909N		1,304,909N	
	INVESTMENT CAPITAL		AGS	421,000C		3,290,000C	
			HTH		C	600,000C	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
F. SOCIAL SERVICES							
1.	HMS301 - CHILD WELFARE SERVICES						
	OPERATING		HMS	264.44*		264.44*	
			HMS	21,057,140A		21,672,370A	
			HMS	450,000B		450,000B	
			HMS	187.06*		187.06*	
			HMS	26,690,319N		33,880,805N	
2.	HMS302 - CHILD CARE SERVICES						
	OPERATING		HMS	23.00*		23.00*	
			HMS	1,123,902A		1,155,792A	
			HMS	1.00*		1.00*	
			HMS	5,646,971N		6,442,270N	
3.	HMS303 - CHILD PLACEMENT BOARD AND RELATED CLIENT PAYMENTS						
	OPERATING		HMS	39,908,053A		44,816,013A	
			HMS	17,986,470N		20,095,666N	
4.	HMS305 - CHILD CARE PAYMENTS						
	OPERATING		HMS	22,411,811A		22,411,811A	
			HMS	39,531,967N		34,250,754N	
5.	HMS501 - YOUTH SERVICES ADMINISTRATION						
	OPERATING		HMS	21.00*		21.00*	
			HMS	1,173,259A		1,383,303A	
			HMS	4,484,811N		2,196,154N	
	INVESTMENT CAPITAL		HMS	200,000C		1,500,000C	
6.	HMS502 - YOUTH SERVICES PROGRAM						
	OPERATING		HMS	3,632,308A		4,012,192A	
			HMS	1,309,342N		1,209,342N	
	INVESTMENT CAPITAL		HMS	500,000C		2,000,000C	
7.	HMS503 - YOUTH RESIDENTIAL PROGRAMS						
	OPERATING		HMS	88.50*		114.50*	
			HMS	6,278,187A		11,123,241A	
			HMS	1,463,704N		1,763,704N	
			HMS	.50*		.50*	
	INVESTMENT CAPITAL		HMS	16,540U		16,540U	
			HMS	100,000C		1,745,000C	
8.	DEF112 - SERVICES TO VETERANS						
	OPERATING		DEF	24.00*		25.00*	
			DEF	1,414,201A		2,486,097A	
	INVESTMENT CAPITAL		AGS	2,064,000C		C	
			DEF	1,350,000C		2,740,000C	
9.	HMS601 - ADULT AND COMMUNITY CARE SERVICES BRANCH						
	OPERATING		HMS	99.58*		99.58*	
			HMS	9,233,205A		9,337,560A	
			HMS	17.92*		17.92*	
			HMS	5,393,860N		5,435,536N	
			HMS	10,000R		10,000R	
	INVESTMENT CAPITAL		HMS	280,106U		280,106U	
			HMS	500,000C		C	
10.	HMS201 - TEMPORARY ASSISTANCE TO NEEDY FAMILIES						
	OPERATING		HMS	11,145,517A		11,145,517A	
			HMS	50,220,369N		50,220,369N	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
11.	HMS202 -	PAYMENTS TO ASSIST THE AGED, BLIND, AND DISABLED OPERATING	HMS	6,850,560A		5,352,539A	
12.	HMS204 -	GENERAL ASSISTANCE PAYMENTS OPERATING	HMS	18,764,891A		19,362,912A	
13.	HMS206 -	FEDERAL ASSISTANCE PAYMENTS OPERATING	HMS	2,035,806N		2,035,806N	
14.	HMS203 -	TEMPORARY ASSISTANCE TO OTHER NEEDY FAMILIES OPERATING	HMS	31,164,660A		31,164,660A	
15.	HMS220 -	RENTAL HOUSING SERVICES OPERATING	HMS	584,556A		584,556A	
				198.00*		197.00*	
			HMS	43,372,325N		42,934,146N	
				23.00*		23.00*	
		INVESTMENT CAPITAL	HMS	3,899,185W		3,843,134W	
			HMS	2,000,000C		2,000,000C	
16.	BED220 -	RENTAL HOUSING SERVICES					
17.	HMS807 -	TEACHER HOUSING OPERATING	HMS	360,917W		360,917W	
18.	HMS229 -	HCDCH ADMINISTRATION OPERATING	HMS	10,705,025N		10,398,053N	
				29.00*		23.00*	
			HMS	20.00*		12.00*	
		INVESTMENT CAPITAL	HMS	2,896,234W		1,504,030W	
			HMS	3,000,000C		8,950,000C	
19.	HMS225 -	PRIVATE HOUSING DEVELOPMENT & OWNERSHIP OPERATING	HMS	1,594,370N		1,383,042N	
				10.00*		9.00*	
			HMS	8.00*		4.00*	
			HMS	6,962,849W		5,540,355W	
20.	HMS223 -	BROADENED HOMESITE OWNERSHIP OPERATING	HMS	211,473W			W
21.	BED229 -	HPHA ADMINISTRATION OPERATING	BED		W	15.00*	
						2,098,526W	
22.	HMS227 -	HOUSING FINANCE OPERATING	HMS	3,000,000N			N
				11.00*			*
			HMS	1,484,511W			W
23.	HMS222 -	RENTAL ASSISTANCE SERVICES OPERATING	HMS	1,236,941A		1,236,941A	
				5.25*		5.25*	
			HMS	11.75*		17.75*	
			HMS	25,577,240N		25,637,265N	
24.	BED225 -	PRIVATE HOUSING DEV & OWNERSHIP OPERATING	BED		W	6.00*	
		INVESTMENT CAPITAL	BED	1,500,000C		1,908,073W	C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
25.	HMS224	- HOMELESS SERVICES					
	OPERATING		HMS	4.00*		5.00*	
			HMS	6,566,670A		6,587,766A	
	INVESTMENT CAPITAL		HMS	1,369,108N		1,369,108N	
			HMS	500,000C			C
26.	HMS231	- RENTAL HOUSING TRUST FUND					
	OPERATING		HMS	19,008,563T			T
27.	BED223	- BROADENED HOMESITE OWNERSHIP					
	OPERATING		BED		W	211,473W	
28.	BED227	- HOUSING FINANCE					
	OPERATING		BED		N	3,000,000N	
			BED		W	9.00*	
						1,390,189W	
29.	BED231	- RENTAL HOUSING TRUST FUND					
	OPERATING		BED		T	22,000,000T	
30.	HMS230	- HEALTH CARE PAYMENTS					
	OPERATING		HMS	240,191,626A		249,412,982A	
			HMS	368,877,940N		342,120,386N	
			HMS	10,341,215U		10,341,215U	
31.	HMS603	- HOME AND COMMUNITY BASED CARE SERVICES					
	OPERATING		HMS	17,916,194A		19,141,396A	
			HMS	66,191,306N		69,563,236N	
			HMS	32,793,013U		34,068,348U	
32.	HMS245	- QUEST HEALTH CARE PAYMENTS					
	OPERATING		HMS	150,853,551A		183,129,343A	
			HMS	214,934,945N		247,411,589N	
33.	HMS236	- ELIGIBILITY DETERMINATION AND EMPLOYMENT RELATED SERVICES					
	OPERATING		HMS	328.86*		328.86*	
			HMS	12,903,771A		13,268,235A	
			HMS	255.14*		255.14*	
			HMS	15,525,799N		15,525,799N	
34.	HMS238	- DISABILITY DETERMINATION					
	OPERATING		HMS	45.00*		45.00*	
			HMS	5,218,275N		5,218,275N	
35.	ATG500	- CHILD SUPPORT ENFORCEMENT SERVICES					
	OPERATING		ATG	57.46*		57.46*	
			ATG	2,217,344A		2,217,164A	
			ATG	138.60*		138.60*	
			ATG	14,820,203N		14,819,853N	
			ATG	13.94*		13.94*	
			ATG	2,742,353T		2,742,353T	
36.	HMS237	- EMPLOYMENT AND TRAINING					
	OPERATING		HMS	491,214A		491,214A	
			HMS	1,197,541N		1,197,541N	
37.	HHL602	- PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS					
	OPERATING		HHL	14.00*		14.00*	
			HHL	601,791A		851,791A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
				66.00*		66.00*	
			HHL	4,639,793B		4,639,793B	
				51.00*		51.00*	
		INVESTMENT CAPITAL	HHL	3,084,984T		3,084,984T	
			HHL	2,300,000C		2,500,000C	
38.		HHL625 - MANAGEMENT & GEN SUPPORT FOR HAWAIIAN HOMESTEADS					
				4.00*		4.00*	
		OPERATING	HHL	215,768A		215,768A	
				34.00*		34.00*	
			HHL	3,672,486B		3,672,486B	
				26.00*		26.00*	
			HHL	1,636,888T		1,636,888T	
39.		HMS605 - COMMUNITY-BASED RESIDENTIAL SUPPORT					
		OPERATING	HMS	14,394,149A		14,969,915A	
40.		HTH904 - EXECUTIVE OFFICE ON AGING					
				3.55*		3.55*	
		OPERATING	HTH	6,146,597A		6,443,625A	
				7.45*		7.45*	
		INVESTMENT CAPITAL	HTH	7,141,320N		7,443,720N	
			HTH	700,000C		1,250,000C	
41.		HTH520 - PROGRAM DEVELOPMENT, COORDINATION OF SERVICES, AND ACCESS FOR PERSONS WITH DISABILITIES					
				5.00*		5.00*	
		OPERATING	HTH	966,434A		1,116,894A	
			HTH	10,000B		10,000B	
						2.00*	
			HTH		U	178,000U	
42.		HMS902 - GENERAL SUPPORT FOR HEALTH CARE PAYMENTS					
				102.49*		102.49*	
		OPERATING	HMS	8,877,550A		9,729,372A	
				104.51*		104.51*	
			HMS	16,724,781N		17,192,349N	
43.		HMS903 - GENERAL SUPPORT FOR BENEFITS, EMPLOYMENT, AND SUPPORT SERVICES					
				59.96*		59.96*	
		OPERATING	HMS	10,160,813A		10,217,725A	
				50.04*		50.04*	
			HMS	27,312,576N		55,018,767N	
44.		HMS904 - GENERAL ADMINISTRATION					
				173.34*		173.34*	
		OPERATING	HMS	8,206,608A		8,131,608A	
				15.66*		15.66*	
		INVESTMENT CAPITAL	HMS	1,465,198N		1,465,198N	
			HMS		C	1,000,000C	
45.		HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES					
				27.56*		27.56*	
		OPERATING	HMS	1,657,030A		1,682,578A	
				19.44*		19.44*	
		INVESTMENT CAPITAL	HMS	1,591,777N		1,591,777N	
			HMS	1,000,000C			C

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
G. FORMAL EDUCATION							
1. EDN100 - SCHOOL-BASED BUDGETING							
	OPERATING		EDN	1,207,587,227A		1,329,630,652A	
			EDN	5,372,924B		5,372,924B	
			EDN	144,301,896N		165,509,732N	
			EDN	5,950,000T		5,950,000T	
			EDN	2,000,000U		2,000,000U	
			EDN	3,400,000W		3,398,000W	
	INVESTMENT CAPITAL		EDN	212,114,000B		150,618,000B	
			EDN		C	2,050,000C	
			EDN	500,000R			R
			EDN		A	15,000,000A	
2. EDN150 - COMPREHENSIVE STUDENT² SUPPORT SERVICES							
	OPERATING		EDN	306,689,072A		326,542,106A	
				2.00*		2.00*	
			EDN	46,249,630N		49,653,056N	
			EDN				U
							575,979U
3. EDN200 - INSTRUCTIONAL SUPPORT							
	OPERATING		EDN	27,027,762A		30,556,579A	
				2.00*		2.00*	
			EDN	1,600,000B		1,600,000B	
			EDN	1,720,000N		1,985,461N	
			EDN	800,000U		800,000U	
4. EDN300 - STATE AND DISTRICT ADMINISTRATION							
	OPERATING		EDN	32,399,578A		39,136,520A	
			EDN	590,000N		590,000N	
5. EDN400 - SCHOOL SUPPORT							
	OPERATING		EDN	148,651,458A		130,573,969A	
				726.50*		726.50*	
			EDN	22,810,599B		23,112,819B	
				3.00*		3.00*	
			EDN	34,533,485N		35,040,145N	
							4.00*
			EDN	2,000,000W		2,000,000W	
	INVESTMENT CAPITAL		EDN	2,959,000C		2,959,000C	
6. EDN500 - SCHOOL COMMUNITY SERVICE							
	OPERATING		EDN	10,593,211A		10,847,773A	
			EDN	1,939,006B		1,939,006B	
			EDN	3,260,007N		3,260,007N	
			EDN	7,500,000U		8,000,000U	
			EDN	7,530,000W		7,530,000W	
7. EDN600 - CHARTER SCHOOLS							
	OPERATING		EDN	30,796,584A		45,786,762A	
8. AGS807 - PHYSICAL PLANT OPERATIONS AND MAINTENANCE - AGS							
	OPERATING		AGS	4,453,524A		4,453,524A	
			AGS	1,000,000U		1,000,000U	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
9. EDN407 - PUBLIC LIBRARIES							
	OPERATING		EDN	553.55*		555.55*	
			EDN	26,120,761A		26,216,761A	
			EDN	3,125,000B		3,125,000B	
	INVESTMENT CAPITAL		EDN	1,365,244N		1,365,244N	
			AGS	17,760,000C		6,950,000C	
10. DEF114 - HAWAII NATIONAL GUARD YOUTH CHALLENGE ACADEMY							
	OPERATING		DEF	1,119,970A		1,280,000A	
			DEF	1,680,000N		1,920,000N	
11. UOH100 - UNIVERSITY OF HAWAII, MANOA							
	OPERATING		UOH	3,310.34*		3,420.84*	
			UOH	222,737,245A		198,175,330A	
			UOH	79.75*		251.25*	
			UOH	76,979,097B		165,993,868B	
			UOH	78.06*		78.06*	
			UOH	5,484,229N		5,484,229N	
			UOH	302.75*		134.25*	
	INVESTMENT CAPITAL		UOH	144,986,769W		73,265,857W	
			UOH	27,826,000C		7,351,000C	
			UOH	31,000,000E		E	
			UOH	N		25,000,000N	
			UOH	12,000,000W		W	
			UOH	A		12,500,000A	
12. UOH210 - UNIVERSITY OF HAWAII, HILO							
	OPERATING		UOH	389.25*		458.25*	
			UOH	21,920,835A		27,590,785A	
			UOH	14.00*		24.00*	
			UOH	9,440,557B		12,142,646B	
			UOH	394,543N		394,543N	
			UOH	11.50*		1.50*	
	INVESTMENT CAPITAL		UOH	5,084,938W		3,382,849W	
			UOH	22,600,000C		5,000,000C	
			UOH	W		2,900,000W	
13. UOH220 - SMALL BUSINESS DEVELOPMENT							
	OPERATING		UOH	637,167A		637,167A	
14. UOH700 - UNIVERSITY OF HAWAII, WEST OAHU							
	OPERATING		UOH	54.50*		69.00*	
			UOH	2,682,442A		3,936,264A	
			UOH	1,985,000B		1,985,000B	
			UOH	7,000N		7,000N	
			UOH	125,000W		125,000W	
	INVESTMENT CAPITAL		UOH	500,000C		C	
15. UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES							
	OPERATING		UOH	1,579.25*		1,712.00*	
			UOH	78,402,061A		94,635,506A	
			UOH	77.50*		82.00*	
			UOH	43,684,229B		46,762,071B	
			UOH	15.60*		15.60*	
			UOH	3,540,927N		3,540,927N	
			UOH	4.50*		*	
	INVESTMENT CAPITAL		UOH	4,848,882W		4,664,323W	
			UOH	27,115,000C		14,637,000C	
			UOH	3,003,000N		N	
			UOH	14,003,000R		500,000R	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
16. UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT							
	OPERATING		UOH	329.50*		389.50*	
				264,527,756A		287,873,394A	
				4.00*		4.00*	
			UOH	8,857,472B		13,671,868B	
				4.00*		4.00*	
			UOH	659,031N		659,031N	
				5.00*		5.00*	
	INVESTMENT CAPITAL		UOH	14,087,414W		14,104,478W	
			UOH	50,742,000C		36,000,000C	
			UOH		A	30,000,000A	
H. CULTURE AND RECREATION							
1. UOH881 - UNIVERSITY OF HAWAII, AQUARIA							
	OPERATING		UOH	13.00*		13.00*	
				541,327A		2,041,327A	
				7.00*		7.00*	
			UOH	1,718,689B		1,718,689B	
			UOH	1,000,000W		1,000,000W	
2. AGS881 - PERFORMING AND VISUAL ARTS EVENTS							
	OPERATING		AGS	10.00*		10.00*	
				2,447,544A		2,817,544A	
				12.00*		13.00*	
			AGS	4,178,568B		4,178,568B	
				1.00*		2.00*	
			AGS	753,158N		753,158N	
			AGS		U	625,000U	
	INVESTMENT CAPITAL		AGS		B	1,000,000B	
			AGS	750,000C		1,590,000C	
3. AGS818 - ETHNIC GROUP PRESENTATIONS							
	OPERATING		AGS	36,000A		36,000A	
4. LNR802 - HISTORIC PRESERVATION							
	OPERATING		LNR	13.00*		13.00*	
			LNR	946,445A		896,445A	
			LNR	135,265B		135,265B	
			LNR	488,553N		488,553N	
	INVESTMENT CAPITAL		LNR		C	1,000,000C	
5. LNR804 - FOREST RECREATION							
	OPERATING		LNR	33.00*		34.00*	
				1,348,445A		1,380,705A	
				3.50*		3.50*	
			LNR	534,184B		534,184B	
				3.50*		3.50*	
			LNR	532,994N		532,994N	
			LNR	564,785W		564,785W	
6. LNR805 - RECREATIONAL FISHERIES							
	OPERATING		LNR	7.00*		7.00*	
			LNR	238,640A		238,640A	
			LNR	68,000B		75,575B	
			LNR	431,013N		811,625N	
7. LNR806 - PARKS ADMINISTRATION AND OPERATION							
	OPERATING		LNR	90.00*		90.00*	
				4,907,328A		5,577,328A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS				
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F	
			LNR	584,164B		862,324B	5.00*	
			LNR	285,201N		1,218,456N		
		INVESTMENT CAPITAL	LNR	4,710,000C		11,100,000C		
8.	LNR801	OCEAN-BASED RECREATION						
				90.00*		95.00*		
		OPERATING	LNR	15,371,690B		15,561,561B		
			LNR	700,000N		700,000N		
		INVESTMENT CAPITAL	LNR	9,530,000C		7,900,000C		
			LNR	5,000,000D		2,150,000D		
			LNR	11,520,000N		14,750,000N		
9.	AGS889	SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM						
				39.50*		39.50*		
		OPERATING	AGS	7,560,979B		7,408,612B		
		INVESTMENT CAPITAL	AGS	425,000B		75,000B		
			AGS	1,185,000C		1,065,000C		
			AGS	E		12,000,000E		
10.	LNR807	PARK INTERPRETATION						
				15.00*		15.00*		
		OPERATING	LNR	3,206,325B		3,226,009B		
I. PUBLIC SAFETY								
1.	PSD402	HALAWA CORRECTIONAL FACILITY						
				403.00*		403.00*		
		OPERATING	PSD	19,446,828A		19,656,114A		
			PSD	58,336W		28,719W		
		INVESTMENT CAPITAL	AGS	882,000C		4,357,000C		
2.	PSD403	KULANI CORRECTIONAL FACILITY						
				77.00*		77.00*		
		OPERATING	PSD	4,285,331A		4,375,729A		
3.	PSD404	WAIAWA CORRECTIONAL FACILITY						
				108.00*		108.00*		
		OPERATING	PSD	4,717,997A		4,754,589A		
			PSD	15,000W		15,000W		
4.	PSD405	HAWAII COMMUNITY CORRECTIONAL CENTER						
				152.00*		152.00*		
		OPERATING	PSD	6,020,018A		6,049,901A		
		INVESTMENT CAPITAL	PSD	C		200,000C		
5.	PSD406	MAUI COMMUNITY CORRECTIONAL CENTER						
				187.00*		187.00*		
		OPERATING	PSD	7,346,703A		8,229,060A		
			PSD	200,000S		200,000S		
		INVESTMENT CAPITAL	PSD	C		24,350,000C		
6.	PSD407	OAHU COMMUNITY CORRECTIONAL CENTER						
				483.00*		495.00*		
		OPERATING	PSD	23,403,362A		23,971,633A		
			PSD	30,000W		30,000W		
7.	PSD408	KAUAI COMMUNITY CORRECTIONAL CENTER						
				68.00*		68.00*		
		OPERATING	PSD	2,956,652A		3,020,520A		

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
8.	PSD409 - WOMEN'S COMMUNITY CORRECTIONAL CENTER						
	OPERATING		PSD	134.00*		134.00*	
				5,676,028A		5,743,786A	
9.	PSD410 - INTAKE SERVICE CENTERS						
	OPERATING		PSD	53.00*		55.00*	
				2,554,359A		2,616,230A	
10.	PSD420 - CORRECTION PROGRAM SERVICES						
	OPERATING		PSD	180.50*		180.50*	
			PSD	16,667,989A		16,791,121A	
					N	488,000N	
11.	PSD421 - HEALTH CARE						
	OPERATING		PSD	147.60*		159.60*	
			PSD	13,809,955A		15,786,888A	
					N	39,261N	
12.	PSD502 - NARCOTICS ENFORCEMENT						
	OPERATING		PSD	11.00*		11.00*	
			PSD	737,836A		743,520A	
					N	195,000N	
				6.00*		6.00*	
			PSD	528,375W		458,375W	
13.	PSD503 - SHERIFF						
	OPERATING		PSD	252.00*		252.00*	
				10,300,343A		10,486,487A	
				7.00*		7.00*	
			PSD	563,336N		563,336N	
				72.00*		72.00*	
			PSD	6,056,303U		6,056,303U	
14.	PSD611 - ADULT PAROLE DETERMINATIONS						
	OPERATING		PSD	2.00*		3.00*	
				196,352A		238,220A	
15.	PSD612 - ADULT PAROLE SUPERVISION AND COUNSELING						
	OPERATING		PSD	54.00*		55.00*	
				3,303,887A		3,242,495A	
16.	PSD613 - CRIME VICTIM COMPENSATION COMMISSION						
	OPERATING		PSD	7.00*		7.00*	
			PSD	1,741,242B		1,741,242B	
				850,000N		850,000N	
17.	PSD900 - GENERAL ADMINISTRATION						
	OPERATING		PSD	145.10*		156.10*	
			PSD	57,454,201A		70,527,865A	
			PSD	693,832B		693,832B	
			PSD	75,065T		75,065T	
				9.00*		2.00*	
			PSD	7,578,537W		7,335,451W	
			PSD	742,980X		742,980X	
	INVESTMENT CAPITAL		AGS	2,000,000C		10,078,000C	
18.	ATG231 - STATE CRIMINAL JUSTICE INFORMATION AND IDENTIFICATION						
	OPERATING		ATG	30.00*		30.00*	
				1,636,666A		1,636,666A	
						1.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
			ATG	1,800,000N		1,835,832N	
				15.00*		23.00*	
			ATG	2,512,813W		2,552,312W	
19.	LNR810 -	PREVENTION OF NATURAL DISASTERS					
	OPERATING		LNR	133,631A	2.10*	278,806A	4.10*
				.90*		.90*	
	INVESTMENT CAPITAL		LNR	318,519N		318,519N	
			LNR		C	250,000C	
20.	DEF110 -	AMELIORATION OF PHYSICAL DISASTERS					
	OPERATING		DEF	7,992,197A	122.80*	8,067,074A	122.80*
				47.70*		47.70*	
			DEF	19,997,125N		69,674,625N	
			DEF		S	464,458S	
			DEF		U	4,700,000U	
	INVESTMENT CAPITAL		AGS	1,639,000C		5,973,000C	
			AGS	100,000N		100,000N	
			DEF	100,000C		650,000C	
			DEF			4,000,000N	
J. INDIVIDUAL RIGHTS							
1.	CCA102 -	CABLE TELEVISION					
	OPERATING		CCA	1,208,738B	4.00*	2,208,738B	4.00*
2.	CCA103 -	CONSUMER ADVOCATE FOR COMMUNICATION, UTILITIES, AND TRANSPORTATION SERVICES					
	OPERATING		CCA	2,592,100B	23.00*	2,592,100B	23.00*
3.	CCA104 -	FINANCIAL INSTITUTION SERVICES					
	OPERATING		CCA	2,443,258B	29.00*	2,443,258B	29.00*
4.	CCA105 -	PROFESSIONAL, VOCATIONAL, AND PERSONAL SERVICES					
	OPERATING		CCA	4,949,871B	56.00*	4,949,871B	56.00*
				4.00*		4.00*	
			CCA	1,792,847T		1,862,847T	
5.	BUF901 -	TRANSPORTATION, COMMUNICATIONS, AND UTILITIES					
	OPERATING		BUF	8,505,197B	41.00*	8,205,197B	41.00*
6.	CCA106 -	INSURANCE REGULATORY SERVICES					
	OPERATING		CCA	11,217,079B	76.00*	11,018,739B	79.00*
			CCA	200,000T		200,000T	
7.	CCA110 -	OFFICE OF CONSUMER PROTECTION - UNFAIR AND DECEPTIVE PRACTICES					
	OPERATING		CCA	1,487,471B	16.00*	1,487,471B	16.00*
			CCA	50,681T		50,681T	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
8.		AGR812 - MEASUREMENT STANDARDS					
	OPERATING		AGR	15.00*		15.00*	
				671,431A		674,481A	
9.		CCA111 - BUSINESS REGISTRATION					
	OPERATING		CCA	73.00*		75.00*	
				5,918,382B		6,064,425B	
10.		CCA112 - REGULATED INDUSTRIES COMPLAINTS OFFICE					
	OPERATING		CCA	14.00*		15.00*	
				4,975,448B		4,975,448B	
11.		CCA191 - GENERAL SUPPORT - PROTECTION OF THE CONSUMER					
	OPERATING		CCA	43.00*		43.00*	
				4,872,168B		4,972,168B	
12.		LTG105 - ENFORCEMENT OF INFORMATION PRACTICES					
	OPERATING		LTG	5.00*		5.00*	
				385,587A		385,587A	
13.		BUF151 - LEGAL ASSISTANCE IN CRIMINAL ACTIONS					
	OPERATING		BUF	80.00*		81.00*	
				8,517,898A		8,651,266A	
14.		LNR111 - CONVEYANCES AND RECORDINGS					
	OPERATING		LNR	55.00*		55.00*	
				3,665,582B		3,348,355B	
15.		HMS888 - COMMISSION ON THE STATUS OF WOMEN					
	OPERATING		HMS	1.00*		1.00*	
				97,492A		97,492A	

K. GOVERNMENT-WIDE SUPPORT

1.		GOV100 - OFFICE OF THE GOVERNOR					
	OPERATING		GOV	34.00*		34.00*	
	INVESTMENT CAPITAL		GOV	3,174,794A		3,557,994A	
				1,000C		1,000C	
2.		LTG100 - OFFICE OF THE LIEUTENANT GOVERNOR					
	OPERATING		LTG	3.00*		3.00*	
				614,727A		819,010A	
3.		GOV102 - OTHER POLICY DEVELOPMENT AND COORDINATION					
	OPERATING		GOV	3.00*		3.00*	
				238,877A		242,731A	
4.		BED144 - STATEWIDE PLANNING AND COORDINATION					
	OPERATING		BED	18.00*		19.00*	
				1,580,561A		1,622,561A	
			BED	4.00*		4.00*	
			BED	2,433,682N		2,304,282N	
			BED	1,000,000W		1,000,000W	
5.		BED103 - STATEWIDE LAND USE MANAGEMENT					
	OPERATING		BED	6.00*		6.00*	
				466,200A		466,200A	
6.		BED130 - ECONOMIC PLANNING AND RESEARCH					
	OPERATING		BED	16.00*		16.00*	
				977,480A		977,480A	
				4.00*		4.00*	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
			BED	1,327,887B			B
			BED		U	1,577,887U	
7.	BUF101	- DEPARTMENTAL ADMINISTRATION & BUDGET DIVISION					
	OPERATING		BUF	49.00*		49.00*	
			BUF	152,152,289A		162,611,392A	
			BUF	30,957N		30,957N	
			BUF	218,826,133U		232,172,479U	
			BUF	899X		899X	
	INVESTMENT CAPITAL		AGS	1,200,000C			C
			BUF	242,114,000C		356,157,000C	
8.	AGS871	- CAMPAIGN SPENDING COMMISSION					
	OPERATING		AGS	5.00*		5.00*	
				434,538T		4,463,226T	
9.	AGS879	- OFFICE OF ELECTIONS					
	OPERATING		AGS	3.00*		3.00*	
			AGS	2,851,773A		2,508,227A	
			AGS	7,446,803N		7,446,803N	
10.	TAX102	- INCOME ASSESSMENT AND AUDIT					
	OPERATING		TAX	101.00*		101.00*	
				4,727,884A		4,757,096A	
11.	TAX103	- TAX COLLECTIONS ENFORCEMENT					
	OPERATING		TAX	88.50*		94.50*	
				3,440,558A		3,628,186A	
12.	TAX105	- TAX SERVICES AND PROCESSING					
	OPERATING		TAX	110.00*		110.00*	
				5,655,764A		6,069,950A	
13.	TAX107	- SUPPORTING SERVICES - REVENUE COLLECTION					
	OPERATING		TAX	67.00*		67.00*	
			TAX	7,849,807A		7,380,807A	
			TAX	452,000B		452,000B	
14.	AGS101	- ACCOUNTING SYSTEM DEVELOPMENT AND MAINTENANCE					
	OPERATING		AGS	7.00*		7.00*	
				728,289A		728,289A	
15.	AGS102	- EXPENDITURE EXAMINATION					
	OPERATING		AGS	18.00*		18.00*	
				1,052,954A		1,052,954A	
16.	AGS103	- RECORDING AND REPORTING					
	OPERATING		AGS	11.00*		11.00*	
				627,606A		627,606A	
17.	AGS104	- INTERNAL POST AUDIT					
	OPERATING		AGS	12.00*		12.00*	
				663,787A		723,787A	
18.	BUF115	- FINANCIAL ADMINISTRATION					
	OPERATING		BUF	14.00*		14.00*	
			BUF	233,885,233A		255,563,492A	
			BUF	4.00*		4.00*	
			BUF	4,768,000T		4,768,000T	
			BUF	279,922,453U		304,588,269U	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
19.	ATG100 - LEGAL SERVICES						
	OPERATING		ATG	206.15*		216.15*	
				18,351,296A		19,694,101A	
				17.00*		17.00*	
			ATG	1,569,236B		1,754,156B	
				12.00*		13.00*	
			ATG	8,493,813N		8,621,175N	
			ATG	3,918,000T		3,918,000T	
				45.35*		53.35*	
			ATG	7,203,563U		7,400,229U	
				3.00*		3.00*	
			ATG	3,096,386W		2,996,386W	
20.	AGS131 - INFORMATION PROCESSING SERVICES						
	OPERATING		AGS	170.00*		170.00*	
				15,630,748A		15,320,748A	
				33.00*		33.00*	
	INVESTMENT CAPITAL		AGS	2,182,654U		2,182,654U	
			AGS	1,000,000C		2,141,000C	
21.	AGS891 - WIRELESS ENHANCED 911 BOARD						
	OPERATING		AGS	7,000,000B		6,500,000B	
22.	HRD102 - WORK FORCE ATTRACTION, SELECTION, CLASSIFICATION, AND EFFICIENCY						
	OPERATING		HRD	99.00*		99.00*	
			HRD	14,623,581A		14,825,281A	
			HRD	700,000B		700,000B	
			HRD	4,886,281U		4,886,281U	
23.	HRD191 - SUPPORTING SERVICES						
	OPERATING		HRD	13.00*		13.00*	
				1,339,742A		1,339,742A	
24.	BUF141 - RETIREMENT						
	OPERATING		BUF	201,895,621A		207,081,631A	
			BUF	283,883,400U		292,127,076U	
				75.00*		75.00*	
			BUF	8,077,962X		8,622,888X	
25.	BUF143 - HAWAII EMPLOYER - UNION TRUST FUND						
	OPERATING		BUF	26.00*		26.00*	
				3,925,905T		4,466,274T	
26.	LNR101 - PUBLIC LANDS MANAGEMENT						
	OPERATING		LNR	51.00*		51.00*	
			LNR	5,853,470B		10,613,470B	
			LNR	72,634N		72,634N	
	INVESTMENT CAPITAL		LNR	4,000,000C		2,000,000C	
27.	AGS203 - RISK MANAGEMENT						
	OPERATING		AGS	4.00*		4.00*	
			AGS	425,081A		1,646,681A	
			AGS			278,200B	
			AGS			200T	
			AGS	11,950,000W		18,450,000W	
28.	AGS211 - LAND SURVEY						
	OPERATING		AGS	17.00*		17.00*	
			AGS	820,789A		820,789A	
			AGS	285,000U		285,000U	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
29.	AGS223 -	OFFICE LEASING					
	OPERATING		AGS	4.00*		4.00*	
			AGS	11,600,703A		11,600,703A	
				5,500,000U		5,500,000U	
30.	AGS221 -	CONSTRUCTION					
	OPERATING		AGS	15.00*		15.00*	
			AGS	1,012,767A		1,012,767A	
			AGS	4,000,000W		4,000,000W	
	INVESTMENT CAPITAL		AGS	22,816,000C		20,002,000C	
			AGS	400,000R		3,000,000R	
31.	AGS231 -	CUSTODIAL SERVICES					
	OPERATING		AGS	155.50*		158.50*	
			AGS	13,579,178A		14,342,669A	
			AGS	58,744B		58,744B	
			AGS	894,001U		894,001U	
32.	AGS232 -	GROUNDS MAINTENANCE					
	OPERATING		AGS	39.50*		38.50*	
				1,386,081A		1,818,333A	
33.	AGS233 -	BUILDING REPAIRS AND ALTERATIONS					
	OPERATING		AGS	29.00*		29.00*	
				2,564,258A		2,564,258A	
34.	AGS240 -	STATE PROCUREMENT					
	OPERATING		AGS	21.00*		21.00*	
				1,099,647A		1,099,647A	
35.	AGS244 -	SURPLUS PROPERTY MANAGEMENT					
	OPERATING		AGS	5.00*		5.00*	
				1,726,904W		1,726,904W	
36.	AGS251 -	MOTOR POOL					
	OPERATING		AGS	12.50*		12.50*	
				2,257,938W		2,311,486W	
37.	AGS252 -	PARKING CONTROL					
	OPERATING		AGS	26.50*		26.50*	
				3,385,621W		3,301,393W	
38.	AGS111 -	RECORDS MANAGEMENT					
	OPERATING		AGS	18.00*		18.00*	
				780,742A		780,742A	
39.	AGS901 -	GENERAL ADMINISTRATIVE SERVICES					
	OPERATING		AGS	39.00*		39.00*	
				2,171,687A		2,171,687A	
			AGS	1.00*		1.00*	
				56,216U		56,216U	
40.	SUB201 -	CITY AND COUNTY OF HONOLULU					
	OPERATING		SUB	200,000A		200,000A	
			SUB	4,000,000B			
	INVESTMENT CAPITAL		CCH	2,450,000C		4,217,000C	
			CCH			2,500,000S	
41.	SUB301 -	COUNTY OF HAWAII					
	OPERATING		SUB	630,000A		630,000A	

PROGRAM APPROPRIATIONS

ITEM NO.	PROG. ID	PROGRAM	EXPENDING AGENCY	APPROPRIATIONS			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		INVESTMENT CAPITAL	SUB COH COH	2,000,000B 6,000,000C			1,837,000C 500,000S
42.	SUB401 - COUNTY OF MAUI	OPERATING	SUB SUB	200,000A 2,000,000B			200,000A
43.	SUB501 - COUNTY OF KAUAI	OPERATING	SUB SUB	200,000A 2,000,000B			200,000A
		INVESTMENT CAPITAL	COK	1,650,000C			550,000C''

SECTION 4. Part III, Act 178, Session Laws of Hawaii 2005, is amended:
(1) By adding a new section to read as follows:

“SECTION 3.1 Provided that of the general fund appropriation for arts, film and entertainment (BED 105), the sum of \$50,000 for fiscal year 2006-2007 shall be expended to support film projects involving Hawaii-China film development programs.”

(2) By adding a new section to read as follows:

“SECTION 4.1. Provided that of the special fund appropriation for tourism (BED 113), the sum of \$1,577,887 for fiscal year 2006-2007 shall be transferred to economic planning and research (BED 130).”

(3) By adding a new section to read as follows:

“SECTION 4.2. Provided that of the appropriations for plant, pest, and disease control (AGR 122), the sums of \$293,088 in federal funds, \$430,000 in interdepartmental transfer funds, and \$2,230,412 in general funds for fiscal year 2006-2007 shall be expended by the department of agriculture for pest prevention, including response and control, research, and public outreach as necessary; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to their respective funds; provided further that the department shall prepare a report that shall include, but not be limited to, how well Hawaii is doing in the fight against invasive species, including data, measures of effectiveness, and outcomes from its efforts to:

- (1) Inspect and detect greater numbers and percentages of invasive species at airports and harbors;
- (2) Jointly work with other agencies and the community;
- (3) Control and eradicate alien species that have become established in Hawaii; and
- (4) Discuss user fees with airport and harbor users and managers, and recommend user fee and other legislation to improve Hawaii's effectiveness against invasive species;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(4) By adding a new section to read as follows:

“SECTION 4.3. Provided that of the general fund appropriation for rabies quarantine (AGR 131), the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be deposited into the animal quarantine special fund to be expended for the purposes of the fund; provided further that the funds shall not be expended for any other purpose; provided further that the department shall prepare a report that shall include, but not be limited to, its assessment of the animal quarantine program’s current and future needs, and propose alternative strategies leading to self-sufficiency for the program, such as reorganization, redescription of positions to accomplish current needs, and fee schedule changes; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(5) By adding a new section to read as follows:

“SECTION 7.2. Provided that of the special fund appropriation for the natural energy laboratory of Hawaii authority (BED 146), the sum of \$111,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of business, economic development, and tourism for security; provided further that the funds shall not be expended for any other purpose; provided further that the department shall prepare a detailed report that shall include, but not be limited to, a detailed breakdown of expenditures, the number of security incidents that occurred on authority property, and explanations and outcomes of the incidents; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(6) By adding a new section to read as follows:

“SECTION 7.3. Provided that of the special fund appropriation for the natural energy laboratory of Hawaii authority (BED 146), the sum of \$63,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of business, economic development, and tourism to hire a water quality lab manager; provided further that the funds shall not be expended for any other purpose; provided further that after hiring a water quality lab manager, the department shall prepare a detailed report that shall include, but not be limited to:

- (1) A list of the delinquent quarterly and annual reports the authority is required to file with state and federal agencies;
- (2) The progress made on filing the delinquent quarterly and annual reports;
- (3) Any sanctions against the authority and/or the State due to the delinquent reports not being filed since June 2000; and
- (4) A summary of the findings of the latest reports filed, which shall include the filing date and the agency;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(7) By adding a new section to read as follows:

“SECTION 7.4. Provided that of the general fund appropriation for the natural energy laboratory of Hawaii authority (BED 146), the sum of \$250,000 for

fiscal year 2006-2007 shall be expended for the purpose of repaying the funds owed to the Defense Advanced Research Projects Agency.”

(8) By adding a new section to read as follows:

“SECTION 8.1. Provided that of the special fund appropriation for aloha tower development corporation (BED 151), the sum of \$182,322 or so much thereof as may be necessary, for fiscal year 2006-2007 shall be expended to hire two temporary project managers; provided further that these positions shall:

- (1) Be provided on a transitional basis only;
- (2) Be non-recurring; and
- (3) Shall not be included as part of the corporation’s base budget for fiscal biennium 2007-2009;

provided further that the corporation shall prepare a report that shall include but not be limited to a plan on the best method to address the need for positions with similar responsibilities; and provided further that the corporation shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(9) By adding a new section to read as follows:

“SECTION 9.1. Provided that of the general fund appropriation for dliir – data gathering, research, and analysis (LBR 901), the sum of \$24,000 or so much thereof as may be necessary for fiscal year 2006-2007 shall be expended to continue reporting on local workforce statistical industry information by counties.”

(10) By adding a new section to read as follows:

“SECTION 10.1. Provided that of the appropriations for Kona international airport at Keahole (TRN 114), the sums of \$10,000 in special funds and \$100,000 in federal funds for fiscal year 2006-2007 shall be expended by the department of transportation for the purchase of a mobile command vehicle and communication equipment; provided further that the department shall prepare a report that shall include, but not be limited to, detailed expenditures, rationale for such expenditures, and operating evaluation of the vehicle and equipment purchased; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(11) By adding a new section to read as follows:

“SECTION 11.1. Provided that of the special fund appropriation for airports administration (TRN 195), the sum of \$88,754 for fiscal year 2006-2007 shall be expended by the department of transportation for a temporary planning analyst position emphasizing marketing and revenue generation; provided further that the funds shall not be expended for any other purpose; provided further that the department shall prepare a report that shall include, but not be limited to, the measures of effectiveness and outcomes achieved by the planning analyst on marketing and revenue generation; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(12) By amending section 12 to read as follows:

ACT 160

“SECTION 12. 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 2005-2007[.] shall be expended for special repair and maintenance purposes only as follows:

<u>Program I.D.</u>	<u>FY 2005-2006</u>	<u>FY 2006-2007</u>	
TRN 301	\$5,684,000	[\$5,344,000]	<u>\$5,594,000</u>
TRN 303	\$ 331,000	\$ 331,000	
TRN 305	\$ 465,000	[\$ 465,000]	<u>\$ 30,000</u>
TRN 311	\$ 826,000	\$ 846,000	
TRN 313	\$ 756,000	\$ 526,000	
TRN 331	\$ 936,000	\$ 936,000	
TRN 341	\$ 368,400	\$ 368,400	
TRN 351	\$ 208,000	\$ 208,000	
TRN 361	\$ 673,000	\$ 673,000	
TRN 363	\$ 393,000	\$ 393,000;	

provided further that any unexpended funds shall ~~be lapsed~~ lapse to the harbor special fund; provided further that the department of transportation shall prepare a report on planned uses and actual expenditures of all special repair and maintenance appropriations as of December 1 for each fiscal year; provided further this report shall also 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 2006 and 2007 regular sessions.”

(13) By amending section 13 to read as follows:

“SECTION 13. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$24,499,024 for fiscal year 2005-2006 and the sum of ~~[\$24,539,732]~~ \$27,420,742 for fiscal year 2006-2007 shall be expended for the following purposes:

<u>Purpose</u>	<u>FY 2005-2006</u>	<u>FY 2006-2007</u>	
Interest and principal on general obligation bonds	\$ 25,017	[\$ 24,763]	<u>\$1,065,751</u>
Interest and principal on revenue bonds	\$24,474,007	[\$24,514,969;]	<u>\$26,354,991;</u>

and provided further that any funds not expended for these purposes shall lapse to the harbor special fund.”

(14) By adding a new section to read as follows:

“SECTION 13.1. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$128,906 for fiscal year 2006-2007 shall be expended by the department of transportation for a temporary harbor project manager and a temporary secretary for the Hawaii harbor task force; provided further that the funds shall not be expended for any other purpose; provided further that the department shall prepare a report that shall include, but not be limited to, the measures of effectiveness and outcomes achieved by the Hawaii harbor task force; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(15) By adding a new section to read as follows:

“SECTION 13.2. Provided that of the special fund appropriation for harbors administration (TRN 395), the sum of \$500,000 for fiscal year 2006-2007 shall be expended by the department of transportation only upon the formal disaster declaration by the governor; provided further that any unexpended funds shall lapse to the state harbor special fund; and provided further that the department of transportation shall submit a report to the legislature of the disasters declared and the sums expended no later than twenty days prior to the convening of the 2007 regular session.”

(16) By amending section 14 to read as follows:

“SECTION 14. Provided that of the special fund appropriations for the harbors division (TRN 301-395), the following sums specified for security for fiscal biennium 2005-2007, shall be expended for security purposes only as follows:

<u>Program I.D.</u>	<u>FY 2005-2006</u>	<u>FY 2006-2007</u>	
TRN 301	\$4,452,400	[\$4,452,400]	\$2,197,508
TRN 303	\$ 216,004	[\$ 216,004]	\$ 440,004
TRN 305	\$ -0-	\$ -0-	
TRN 311	\$ 232,000	[\$ 232,000]	\$ 268,463
TRN 313	\$ 66,750	[\$ 66,750]	\$ 257,873
TRN 331	\$ 254,000	[\$ 254,000]	\$ 276,000
TRN 341	\$ -0-	\$ -0-	
TRN 351	\$ -0-	\$ -0-	
TRN 361	\$ 263,000	\$ 263,000	
TRN 363	\$ 403,363	[\$ 443,699]	\$ -0-
TRN 395	\$2,035,000	\$2,035,000;	

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 actual expenditures of all security appropriations as of June 30 for each fiscal year; provided further that³ this report shall include the previous fiscal year; and provided further that the [this] report shall⁴ be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.”

(17) By adding a new section to read as follows:

“SECTION 15.1. Provided that of the special fund appropriation for Maui highways (TRN 531), the sum of \$50,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended for cultural interest area signs at each of the bridges along the Hana Highway.”

(18) By adding a new section to read as follows:

“SECTION 18.1. Provided that the division of airports and the division of harbors of the department of transportation shall prepare audited financial statements that shall include, but not be limited to:

- (1) A statement of net assets;
- (2) A statement of revenues, expenses, and changes in net assets,
- (3) A statement of cash flows, schedule of revenue bond coverage; and
- (4) An aging schedule of accounts receivable;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(19) By adding a new section to read as follows:

“SECTION 18.2. Provided that of the federal fund appropriation for environmental management (HTH 840), the sum of \$300,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of health for the new online permitting and reporting project; provided further that the department shall prepare a progress report on the online permitting and reporting project that shall include a detailed timeline and cost breakdown from start up to projected completion and any accomplishments to date; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(20) By adding a new section to read as follows:

“SECTION 18.3. Provided that of the general fund appropriation for aquatic resources and management (LNR 401), the sum of \$38,950 for fiscal year 2006-2007, shall be expended to hire an aquatic biologist to complete plans to prevent the introduction of marine organisms from ballast water and hull-fouling; provided further that the alien aquatic organism task force shall identify possible quarantine sites statewide for accommodating ballast water and hull-fouling emergencies or violations; provided further that the department shall prepare a report that shall include but not be limited to a summary of current practices, recommended practices, cooperative agreements and partnerships with other agencies, and resources needed to adequately implement Act 134, Session Laws of Hawaii 2000; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(21) By adding a new section to read as follows:

“SECTION 19.1. Provided that of the general fund appropriation for water resources (LNR 404), the sum of \$650,000 for fiscal year 2006-2007 shall be expended for statewide field investigations of streams to establish instream flow standards; provided further that any unexpended funds shall lapse to the general fund; and provided further that the department shall submit a report on the status of statewide field investigations of streams to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(22) By adding a new section to read as follows:

“SECTION 19.2. Provided that of the general fund appropriation for conservation and resources enforcement (LNR 405), the sum of \$91,680 for fiscal year 2006-2007 shall be expended for a data systems processing analyst and a telecommunications planner; provided further that the division of conservation and resources enforcement (DOCARE) shall submit progress reports to the legislature on December 31, 2006, and June 30, 2007 on objectives, accomplishments, and plans to improve:

- (1) Electronic report writing, data collection, and retrieval for field inspection reports, and
- (2) Telecommunications with and between officers in the field, including the costs and benefits of utilizing other state or county agencies with dispatch services and excess radio capacity.”

(23) By adding a new section to read as follows:

“SECTION 19.3. Provided that of the general fund appropriations for conservation and resources enforcement (LNR 405), the sum of \$389,664 for fiscal year 2006-2007 shall be expended to hire eleven additional conservation and enforcement officers; provided further that each island branch shall conduct regular marine patrols of marine districts, management areas, sanctuaries, reserves, restricted areas, small boat harbors, and shorelines; provided further that DOCARE shall prepare monthly reports by branch on all enforcement activities, including forestry, state parks, cruise ship, and ocean-based enforcement activities that shall include, but not be limited to:

- (1) Enforcement categories (for example, recreational boating, boating facilities, cruise ships);
- (2) Position number of enforcement officer involved;
- (3) Type of enforcement activities conducted;
- (4) Date that enforcement activities were conducted;
- (5) Location of activities;
- (6) Number of hours spent for each enforcement activity; and
- (7) A brief description of outcome or status of enforcement activities;

provided further that copies of the monthly report shall be submitted to the chairperson of the board of land and natural resources no later than twenty days after the end of each month for dissemination to the division of boating and ocean-based recreation, to meet its federal and court-required reporting requirements, other divisions, and the legislature; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and provided further that the chairperson shall deposit all assessments to the general fund.”

(24) By adding a new section to read as follows:

“SECTION 19.4. Provided that of the general fund appropriation for conservation and resources enforcement (LNR 405), the sum of \$70,000 for fiscal year 2006-2007 shall be expended for planning, studies, community surveys, and measures of effectiveness to improve functions at all branches; provided further that each branch shall conduct risk assessment studies to demonstrate each branch’s enforcement capabilities at current and temporarily higher levels of staffing; provided further that strategic planning to utilize enforcement division resources shall involve all branch chiefs of all divisions and all enforcement division staff members; provided further that studies shall be conducted on officer position descriptions, qualifications, bargaining unit placement, and incentives for performing additional specialized duties; and provided further that reports on the above-mentioned studies and plans, and steps by the department, division, and branches to address the auditor’s recommendations in report 06-01 shall be submitted to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(25) By adding a new section to read as follows:

“SECTION 19.5. Provided that of the special fund appropriation for natural area reserves and management (LNR 407), the sums of:

- (1) \$500,000 for fiscal year 2006-2007 shall be expended by the department of land and natural resources for coqui frog control and eradication on the islands of Kauai (\$50,000), Oahu (\$50,000), Maui (\$100,000), and Hawaii (\$300,000);
- (2) \$1,000,000 for fiscal year 2006-2007 shall be expended by August 1, 2006, as a grant to the county of Hawaii for coqui frog control and eradication; and

(3) \$500,000 for fiscal year 2006-2007 shall be transferred by August 1, 2006, to the department of agriculture for coqui frog control and eradication, including research;
provided further that the department of land and natural resources, the county of Hawaii, and the department of agriculture shall each prepare a report on the above-mentioned activities, focusing on whether the coqui infestation on the island of Hawaii can be controlled, stopped from expanding, reduced, or eradicated, and including projected timetables, projected expenditures, potential volunteer/community contributions of time and funds, and coqui population targets over time; and provided further that each entity shall submit its report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(26) By adding a new section to read as follows:

“SECTION 19.6. Provided that of the special fund appropriation for natural area reserves and management (LNR 407), the sum of \$4,700,000 for fiscal year 2006-2007 shall be expended for on-the-ground management activities for the natural area reserves system, watershed management, watershed partnerships, youth conservation corps, and the natural area partnership program; provided further that a portion of this amount shall be expended to hire twenty temporary positions and contractual services related to the protection and preservation of the natural area reserves system and watershed partnerships; and provided further that the funds shall not be expended for any other purpose.”

(27) By adding a new section to read as follows:

“SECTION 21.1. Provided that for disease outbreak control (HTH 131), twelve temporary federal funded positions shall be converted to full-time permanent status for the bioterrorism preparedness and response branch to ensure stability and continuity for these positions within the bioterrorism program; and provided further that the conversion from temporary federal funded positions to permanent status shall take effect on July 1, 2006.”

(28) By adding a new section to read as follows:

“SECTION 22.1. Provided that of the general fund and special fund appropriations for emergency medical services and injury prevention system (HTH 730), the sums of \$7,696,254 and \$1,000,000, respectively, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of health to meet additional funding requirements as a result of projected collective bargaining and operational increases for contracting agencies providing emergency ambulance services on Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to their respective funds; provided further that the department shall prepare a detailed report that breaks down services by contracts, cost categories, and dollar amounts; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(29) By adding a new section to read as follows:

“SECTION 22.2. Provided that of the general fund appropriation for emergency medical services and injury prevention system (HTH 730), the sum of \$881,088, or so much thereof as may be necessary for fiscal year 2006-2007, shall be

expended by the department of health to meet additional funding requirements for projected operational increases for contracted billing services to collect fees for emergency ambulance services on Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department shall prepare a detailed report that breaks down services by contracts, cost categories, and dollar amounts; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(30) By adding a new section to read as follows:

“SECTION 22.3. Provided that of the general fund appropriation for emergency medical services and injury prevention system (HTH 730), the sum of \$106,031, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of health to meet additional funding requirements for projected operational and collective bargaining increases for contracting agencies providing 911 emergency medical services system dispatch service on Kauai, Maui, Molokai, and Lanai; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department shall prepare a detailed report that breaks down services by contracts, cost categories, and dollar amounts; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(31) By adding a new section to read as follows:

“SECTION 22.4. Provided that of the special fund appropriation for emergency medical services and injury prevention system (HTH 730), the sum of \$693,658, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of health to meet additional funding requirements for projected operational and collective bargaining increases for contracting agencies providing emergency ambulance services on Oahu, Hawaii, Kauai, Maui, Molokai, and Lanai; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the special fund; provided further that the department shall prepare a detailed report that breaks down services by contracts, cost categories, and dollar amounts; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(32) By adding a new section to read as follows:

“SECTION 22.5. Provided that of the general fund appropriation for developmental disabilities (HTH 501), the sum of \$169,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of health to support the infrastructure needs at the Waimano campus; provided further that of the total sum, \$79,000 shall be used for routine maintenance on a recurring annual basis for grass cutting, tree trimming, and maintaining the water, sewer, and fire systems; provided further that the remaining sum of \$90,000 shall be used in fiscal year 2006-2007 for non-recurring special maintenance efforts at the Waimano campus to include but not limited to demolition, repaving the road, expanding the parking lot, and tree trimming; and provided further that any unexpended funds shall lapse to the general fund.”

(33) By adding a new section to read as follows:

“SECTION 23.1. Provided that the healthy start program (HTH 550) shall continue to retool its program to improve its delivery of services; provided that the program shall prepare a report on the cost effectiveness and efficacy of its program for fiscal year 2006-2007; provided further that the report shall include a comprehensive plan that shall address but not be limited to the following information:

- (1) A detailed accounting of improvements made to the healthy start program with regard to its delivery of services for home visits, specific steps taken by the program to retool, and any progress made by the program in its efforts to re-evaluate current delivery of services;
- (2) An evaluation of the development of standards and protocols for model efficacy and cost effectiveness;
- (3) Corrective action to improve the inconsistent program implementation cited by the Johns Hopkins University and appropriate measures to retool with regard to healthy start providers deviating from the program model;
- (4) Development and implementation of new billing policies and procedures that best reflect accurate program costs and best practices; and
- (5) Findings and recommendations made by the healthy start advisory task force and steps taken by the healthy start program to implement the healthy start advisory task force’s recommendations regarding its restructuring and priority re-design issues;

and provided further that the healthy start program shall submit a status and progress report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(34) By adding a new section to read as follows:

“SECTION 29.1. Provided that of the special fund appropriation for the family health services division, health resources administration (HTH 595), the sum of \$2,000,000, or so much thereof as may be necessary, from the early intervention special fund for fiscal year 2006-2007 shall be expended for the early intervention services program.”

(35) By adding a new section to read as follows:

“SECTION 29.2. Provided that of the special fund appropriation for the family health services division, health resources administration (HTH 595), the sum of \$2,400,000, or so much thereof as may be necessary, from the early intervention special fund for fiscal year 2006-2007 shall be expended for the healthy start program.”

(36) By adding a new section to read as follows:

“SECTION 29.3. Provided that of the general fund appropriation for adult mental health inpatient (HTH 430), the sum of \$60,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of health for the overhead paging capabilities and installation of new speakers and remote amps on existing fiber cabling in the Guensberg Building; provided further that the adult mental health division shall ensure that the installation of the paging system will not interfere with any of the proposed renovations to the Guensberg Building; and provided further that any unexpended funds shall lapse to the general fund.”

(37) By adding a new section to read as follows:

“SECTION 36.1. Provided that of the general fund appropriation for state laboratory services (HTH 710), the sum of \$377,500, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of health solely for the purpose of purchasing equipment for the state laboratory; provided further that of the total sum:

- (1) \$16,500 shall be used to purchase computers;
- (2) \$190,000 shall be used to purchase two autoclaves for the medical microbiology branch;
- (3) \$25,000 shall be used to purchase a refrigerated centrifuge;
- (4) \$131,000 shall be used to purchase a polymerase chain reaction machine; and
- (5) \$15,000 shall be used to purchase an ultra-low freezer;

provided further that any unexpended funds shall lapse to the general fund; and provided further that the state laboratory services shall submit an expenditure report that accounts for laboratory equipment purchases to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(38) By adding a new section to read as follows:

“SECTION 36.2. Provided that the office of health status monitoring (HTH 760) shall prepare a progress report on the reinvention of the vital statistics system; provided further that the report shall include, but not be limited to:

- (1) Updates on the backlog of processing and filing of vital statistics;
- (2) The computerization of registration and issuance of vital records;
- (3) The identification of procedural inefficiencies and recommended improvements to streamline operations and procedures; and
- (4) A detailed timeline and cost breakdown from the start up of the reinvention to its projected completion;

and provided further that the office shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(39) By adding a new section to read as follows:

“SECTION 38.1. Provided that of the federal fund appropriation for child welfare services (HMS 301), the sum of \$9,850,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of human services to improve the state’s federally mandated planned improvement program (PIP) goals; provided further that the department shall prepare a report that shall include, but not be limited to:

- (1) The child and family services report;
- (2) The number of children aided by the services provided by this funding;
- (3) The caseload per employee;
- (4) The status of any court mandates that the child welfare services is subject to; and
- (5) The progress being made towards reaching the PIP goals;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(40) By adding a new section to read as follows:

“SECTION 38.2. Provided that of the general fund and federal fund appropriations for youth services administration (HMS 501), the sums of \$59,100 and

\$9,900, respectively, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of human services for the purchase of new computers for youth services administration; and provided further that the funds shall not be expended for any other purpose.”

(41) By adding a new section to read as follows:

“SECTION 38.3. Provided that of the general fund appropriation for youth residential programs (HMS 503), the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of human services for the safehouse program; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department shall prepare a report that shall include, but not be limited to:

- (1) The number of youth residing at the safehouse;
- (2) The cost per youth at the safehouse;
- (3) Measurable outcomes of helping these youth re-enter society;
- (4) Present or future expansion plans for the safehouse program; and
- (5) Measurable statistics of how the safehouse program is lowering the population of the Hawaii youth correctional facility;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(42) By adding a new section to read as follows:

“SECTION 38.4. Provided that of the general fund appropriation for youth residential programs (HMS 503), the sum of \$1,858,229, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of human services for additional payroll costs necessary for compliance with the Hawaii youth correctional facility Department of Justice settlement; provided further the sum of \$2,037,651, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of human services for other current expenses necessary for compliance with the Hawaii youth correctional facility Department of Justice settlement; provided further the sum of \$212,400, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of human services for the purchase of equipment necessary for compliance with the Hawaii youth correctional facility Department of Justice settlement; provided further that the funds shall not be expended for any other purpose; provided further that the department shall prepare a report that shall include but not be limited to:

- (1) The memorandum of agreement related to the Department of Justice settlement;
- (2) The proposed budget for fiscal year 2007-2008;
- (3) The current status of any court mandates to which the Hawaii youth correctional facility is subject to; and
- (4) The progress being made towards complying with the Department of Justice settlement;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(43) By adding a new section to read as follows:

“SECTION 39.1. Provided that of the general fund and federal fund appropriations for health care payments (HMS 230), the sums of \$1,178,742 and

\$1,661,258, respectively, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of human services for adult dental care; provided further that the funds shall not be expended for any other purpose; provided further that the department shall prepare a report that shall include, but not be limited to:

- (1) The number of adults receiving these benefits;
- (2) The cost per person;
- (3) Total breakdown of administrative costs and other overhead costs; and
- (4) Statistics, if available, of how this dental program is reducing the number of emergency dental-related medical procedures;

provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session; provided further that the department shall be assessed a fee of \$10,000 each business day beyond the date that the report is due; and provided further that the director of human services shall deposit all assessments to the general fund.”

(44) By adding a new section to read as follows:

“SECTION 39.2. Provided that of the general and federal fund appropriations for health care payments (HMS 230), the sums of \$463,364 and \$636,348 respectively, or so much thereof as may be necessary, for fiscal year 2006-2007, shall be expended by the department of human services for an increase in the dental fee schedule for neighbor island providers; provided further that the funds shall not be expended for any other purpose; provided further that the department of human services shall prepare a report that shall include, but not be limited to:

- (1) The current number of dental providers by island; and
- (2) The increase, if any, in dental providers on the neighbor islands by island;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(45) By adding a new section to read as follows:

“SECTION 41.1. Provided that of the general fund and federal fund appropriations for QUEST health care payments (HMS 245), the sums of \$1,987,890 and \$2,801,629, respectively, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of human services for the restoration of adult dental care; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to their respective funds; provided further that the department shall prepare a report on:

- (1) The number of adults receiving these benefits;
- (2) The cost per person;
- (3) Total breakdown of administrative costs and other overhead costs; and
- (4) Statistics, if available, of how this dental program is reducing the number of emergency dental-related medical procedures;

provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session; provided further that the department shall be assessed a fee of \$10,000 each business day beyond the date that the report is due; and provided further that the director of human services shall deposit all assessments to the general fund.”

(46) By adding a new section to read as follows:

“SECTION 43.1. Provided that of the federal fund appropriation for general support for benefits, employment, and support services (HMS 903), the sum of \$883,022, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of human services for the lease of servers and software licenses for general support for benefits, employment, and support services; and provided further that the funds shall not be expended for any other purpose.”

(47) By adding a new section to read as follows:

“SECTION 43.2. Provided that of the federal fund appropriation for general support for benefits, employment, and support services (HMS 903), the sum of \$1,205,133, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of human services for the purchase of new computers for general support for benefits, employment, and support services; and provided further that the funds shall not be expended for any other purpose.”

(48) By amending section 45 to read as follows:

“SECTION 45. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$206,116,917 for fiscal year 2005-2006 and the sum of [~~\$231,840,873~~] \$224,279,599 for fiscal year 2006-2007 shall be used to pay for the 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.”

(49) By amending section 47 to read as follows:

“SECTION 47. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the following fiscal year 2006-2007 cost items shall be considered non-recurring cost items:

- | | |
|--|-------------------------------------|
| (1) Equipment for new facilities-regular instruction | [\$2,864,922]
\$3,314,729 |
| (2) Equipment for new facilities-special education | [\$27,338]
\$66,304 |
| (3) Equipment for new facilities-school administration | \$138,456 |
| (4) Equipment for new facilities-school libraries | \$94,135; |

and provided further that the aforementioned cost items shall be reduced by these amounts at the beginning of fiscal biennium 2007-2009.”

(50) By adding a new section to read as follows:

“SECTION 47.1. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$20,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of education as an additional amount to assist schools in the transition to weighted student formula funding; provided further that the funds shall be allocated as foundation funds as follows:

- (1) \$63,000 for each elementary school;
- (2) \$84,350 for each middle school;
- (3) \$126,580 for each high school;

(4) \$147,680 for each combination kindergarten-grade twelve school; and

(5) \$105,476 for each combination elementary and middle school;

provided further that the department shall prepare a report describing the work of the second committee on weights, including the weighted student formula adopted for fiscal year 2007-2008 by the board of education, the characteristics that are weighted, and other factors used in determining the formula; and provided further that the department of education shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.

(51) By adding a new section to read as follows:

“SECTION 47.2. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$1,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of education at the discretion of the superintendent of education to assist schools in the transition to weighted student formula funding; provided further that the department shall submit a report on the expenditures made to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(52) By adding a new section to read as follows:

“SECTION 47.3. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$24,380,143, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of education for the cost of conversion to a single school calendar; provided further that this expense shall be non-recurring; and provided further that the funds shall not be expended for any other purpose.”

(53) By adding a new section to read as follows:

“SECTION 47.4. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$2,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of education to pay for science textbooks and other science learning materials; provided further that the science curriculum within a school complex shall be aligned; and provided further that the funds shall not be expended for any other purpose.”

(54) By adding a new section to read as follows:

“SECTION 47.5. Provided that of the general fund appropriation for school-based budgeting (EDN 100), the sum of \$11,436,150 for fiscal year 2006-2007 may be expended by the department of education for the English for second language learners program.”

(55) By adding a new section to read as follows:

“SECTION 49.1. Provided that of the general fund appropriation for state and district administration (EDN 300), the sum of \$4,020,988, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of education to pay for information technology infrastructure; provided further that of the amount appropriated, the sum of \$1,450,280 shall be used to pay for expenses for human resources systems; 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.”

(56) By adding a new section to read as follows:

“SECTION 49.2. Provided that of the general fund appropriation for state and district administration (EDN 300), the sum of \$979,012, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of education for equipment for network and data center upgrades; provided further that these items shall be considered non-recurring cost items; 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.”

(57) By adding a new section to read as follows:

“SECTION 49.3. Provided that of the general fund appropriation for school-based budgeting (EDN 400), the sum of \$40,000 shall be expended by the department of education to provide transportation services for immersion schools for Kapaa, Kauai; and provided further that these funds may be matched on a one-to-one basis by the office of Hawaiian affairs.”

(58) By repealing section 60:

~~[SECTION 60. Provided that of the general fund appropriation for the university of Hawaii for fiscal year 2005-2006 and fiscal year 2006-2007, the university of Hawaii shall expend funds in the program IDs in which they are appropriated, with the exception of funds to be transferred to the department of budget and finance and funds budgeted in systemwide support (UOH 900).]~~

(59) By amending section 61 to read as follows:

“SECTION 61. Provided that of the general fund appropriation for University of Hawaii, systemwide support (UOH 900), the sum of \$73,800,011 for fiscal year 2005-2006 and the sum of [\$83,910,455] \$80,303,145 for fiscal year 2006-2007 shall be used to pay for debt service on general obligation bonds issued for [university] University of Hawaii projects and transferred to the financial administration program (BUF 115) of the department of budget and finance for that purpose; provided further that the funds shall be transferred no later than July 16 of each respective fiscal year; provided further that the department of budget and finance shall submit a detailed report comparing general fund appropriations to actual general fund expenditures for the [university] University of Hawaii’s share of general obligation bond debt service for each fiscal year from [the 2001-2002] fiscal year 2001-2002 through the last completed fiscal year, and a projection for each of the succeeding two fiscal years; and provided further that the University shall submit the [this] report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.”

(60) By adding a new section to read as follows:

“SECTION 63.1. Provided that of the general fund appropriation for health care (PSD 421), the sum of \$1,041,880 for fiscal year 2006-2007 shall be expended by the department of public safety for nursing services contracts for all correctional facilities; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of public safety shall prepare a report detailing the steps the department has taken to decrease its reliance on contracting-out nursing services as well as reporting the current number of nursing vacancies; and provided

further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(61) By adding a new section to read as follows:

“SECTION 63.2. Provided that of the general fund appropriation for sheriff (PSD 503), the sum of \$50,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of public safety to purchase three canines for the sheriff’s canine unit, equipment to transport canines, and related travel expenses for the sheriff’s canine unit; 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.”

(62) By adding a new section to read as follows:

“SECTION 63.3. Provided that the sheriff (PSD 503) shall prepare a report on the operation and maintenance of all vehicles within the division; provided further that this report shall include but not be limited to: current inventory of all vehicles, age of vehicles, mileage of vehicles, number of personnel required to operate a motor vehicle, yearly operation and maintenance cost of the fleet of vehicles, vehicle replacement schedule, and total cost of fleet replacement; and provided further that the sheriff shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(63) By amending section 64 to read as follows:

“SECTION 64. Provided that of the general fund appropriation for general administration (PSD 900), the sum of \$39,576,120 for fiscal year 2005-2006 and the sum of [~~\$40,724,428~~] \$52,467,493 for fiscal year 2006-2007 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 the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to [~~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; provided further that the report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions; provided further that the department shall be assessed a fee of \$10,000 for each business day beyond the date that the report is due; and⁵ provided further that the director of the department of public safety shall deposit all assessments to the general fund.”

(64) By adding a new section to read as follows:

“SECTION 67.1. Provided that of the federal fund appropriation for amelioration of physical disasters (DEF 110), the sum of \$50,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended for public assistance and mitigation for all open disasters, homeland security grants, and federal emergency management grants; provided further that the department of defense shall prepare a report that shall include but not be limited to the following information:

- (1) Details on programs funded by this appropriation;
- (2) Specific dates the expenditures were made; and
- (3) Detailed expenses broken down by expenditure type;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(65) By adding a new section to read as follows:

“SECTION 67.2. Provided that of the special fund appropriation for cable television (CCA 102), the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 shall be expended by the department of commerce and consumer affairs for institutional network (INET) projects for equipment and connection with particular emphasis on those projects requested by the department of education and the Hawaii health systems corporation; provided further that the expenditures of not more than \$800,000 on projects for the department of education shall be contingent upon the department of commerce and consumer affairs receiving a project list from the department of education; provided further that expenditures of not more than \$200,000 on projects for the Hawaii health systems corporation shall be contingent upon the department of commerce and consumer affairs receiving a project list from the Hawaii health systems corporation; and provided further that the department of education and the Hawaii health systems corporation consult with the department of commerce and consumer affairs prior to submitting their expenditure project list.”

(66) By adding a new section to read as follows:

“SECTION 69.1. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended for the gubernatorial transition; provided further that these funds shall be used to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a governor and the inauguration of a new governor; provided further that any unexpended funds shall lapse to the general fund; and provided further that the limitations of expenditures authorized under section 30-3 (c), Hawaii Revised Statutes shall apply in the case where the governor-elect is the incumbent governor.”

(67) By adding a new section to read as follows:

“SECTION 69.2. Provided that of the general fund appropriation for the office of the governor (GOV 100), the sum of \$215,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the governor’s office to fund five various policy analyst positions (#100575, #100473, #100336, #100511, and #101001); provided further that the appropriations shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; and provided further that governor’s office shall submit an updated status report detailing these expenditures to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(68) By adding a new section to read as follows:

“SECTION 69.3. Provided that of the inter-departmental transfer fund appropriation for economic planning and research (BED 130), the sum of \$250,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of business, economic development, and tourism for visitor industry

surveys; and provided further that the funds shall not be expended for any other purpose.”

(69) By amending section 74 to read as follows:

“SECTION 74. Provided that of the general fund appropriation for financial administration (BUF 115), the sum of \$231,789,298 for fiscal year 2005-2006 and the sum of [~~\$260,110,764~~] \$253,465,525 for fiscal year 2006-2007 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; provided further that any unexpended funds shall lapse to the general fund; provided further that the department of budget and finance shall submit a detailed report comparing general fund appropriations to actual general fund expenditures for the non-department of education and non-[~~university~~] University of Hawaii share of general obligation bond debt service for each fiscal year from the 2001-2002 fiscal year through the last completed fiscal year, and compare appropriations to a projection for the fiscal year in which the report is to be submitted; and provided further that the [this] report shall be submitted to the legislature no later than twenty days prior to the convening of the 2006 and 2007 regular sessions.”

(70) By amending section 77 to read as follows:

“SECTION 77. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$4,000 for fiscal year 2005-2006 and the sum of \$4,000 for fiscal year 2006-2007 shall be used to reimburse the life members of the commission to promote uniform legislation currently residing in Hawaii for travel expenses to attend national meetings.”

(71) By adding a new section to read as follows:

“SECTION 77.1. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of the attorney general for the purposes of the drug nuisance abatement unit; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the general fund; provided further that the department shall prepare a report of the drug nuisance abatement unit that outlines the unit’s goals and priorities, current and projected expenditures, unit actions and performance, and hindrances to effective unit operations; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(72) By adding a new section to read as follows:

“SECTION 77.2. Provided that of the general fund appropriation for legal services (ATG 100), the sum of \$151,020 shall be expended by the department of the attorney general to hire three investigator V positions; and provided further that these positions may be used to review legal issues relating to dam and reservoir failures and issues relating to the safety of existing dams and reservoirs.”

(73) By amending section 79 to read as follows:

“SECTION 79. Provided that of the general fund appropriation for work force attraction, selection, classification, and efficiency (HRD 102), the sum of

\$1,021,620 for fiscal year 2005-2006 and the sum of [~~\$1,021,620~~] \$1,223,320 for fiscal year 2006-2007 shall be expended for unemployment compensation claims of former state employees; and provided further that any unrequired and unexpended funds appropriated for this purpose may be expended to meet current workers' compensation claims."

(74) By adding a new section to read as follows:

"SECTION 84.1. Provided that of the other funds appropriation for retirement (BUF 141), the sum of \$25,000, or so much thereof as may be necessary, for fiscal year 2006-2007 shall be expended by the department of budget and finance to conduct a study on providing post retirement allowance increases to its members, especially those who have been retired for a greater number of years; and provided further that the department of budget and finance shall submit the study to the legislature no later than twenty days prior to the convening of the 2007 regular session."

(75) By adding a new section to read as follows:

"SECTION 84.2. Provided that of the trust fund appropriation for Hawaii employer-union trust fund (BUF 143), the sum of \$1,250,000, or so much thereof as may be necessary, for fiscal year 2006-2007 shall be expended by the department of budget and finance for the following purposes:

- (1) \$600,000 for services for additional application support for the obsolete PeopleSoft version; and
- (2) \$650,000 to begin implementation of a new benefits administration system;

provided further that these funds shall not be expended for any other purpose; and provided further that any unexpended funds shall lapse back to the trust fund."

(76) By adding a new section to read as follows:

"SECTION 84.3. Provided that of the special fund appropriation for public lands management (LNR 101), the sum of \$70,639, or so much thereof as may be necessary for fiscal year 2006-2007, shall be expended by the department of land and natural resources for an education and outreach coordinator; provided further that this coordinator shall develop a Hawaii environmental care code and a Hawaii water care code to be used in schools and the community as one of the bases for environmental education; provided further that the funds shall not be expended for any other purpose; provided further that any unexpended funds shall lapse to the special fund; provided further that the department shall prepare a report that shall include, but not be limited to, a description of the department's coordinated environmental education efforts, including division presentations to schools, students, community, and partner groups, and measurable impacts of these efforts on compliance; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session."

(77) By adding a new section to read as follows:

"SECTION 84.4. Provided that of the special fund appropriation for public lands management (LNR 101), the sum of \$110,000 for fiscal year 2006-2007 from the beach restoration special fund shall be expended for beach restoration projects and studies; provided further that the office of conservation and coastal lands shall develop a three-year plan, subject to change, for beach restoration studies and

projects; and provided further that the office shall submit a report on the three-year plan for beach restoration studies and projects to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

SECTION 5. Part IV, Act 178, Session Laws of Hawaii 2005, is amended by amending section 85 to read as follows:

“SECTION 85. CAPITAL IMPROVEMENT PROJECTS AUTHORIZED. The sums of money appropriated or authorized in part II of this Act for capital improvements shall be expended for the projects listed below. Accounting of the appropriations by the department of accounting and general services shall be based on the projects 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 PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
A. ECONOMIC DEVELOPMENT							
BED100 - STRATEGIC MARKETING & SUPPORT							
1.	P50001	WAIPAHAU COMMUNITY ASSOCIATION, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS FOR THE WAIPAHAU BUSINESS INCUBATOR AND TRAINING CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION			300		200
		TOTAL FUNDING	BED		300C		200C
BED142 - GENERAL SUPPORT FOR ECONOMIC DEVELOPMENT							
2.	HTA004	HONOLULU ZOO SOCIETY, OAHU					
		CONSTRUCTION FOR DEVELOPMENT OF THE EDUCATION/DISCOVERY ZONE AND HAWAIIAN ISLANDS EXHIBIT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION			200		
		TOTAL FUNDING	BED		200C		C
AGR141 - AGRICULTURAL RESOURCE MANAGEMENT							
3.	HA06002	WAIMEA IRRIGATION SYSTEM IMPROVEMENTS, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR INFRASTRUCTURE IMPROVEMENTS TO THE WAIMEA IRRIGATION SYSTEM.					
		PLANS			1		
		DESIGN			39		
		CONSTRUCTION			310		
		TOTAL FUNDING	AGR		350C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
4.	200402	MOLOKAI IRRIGATION SYSTEM IMPROVEMENTS, MOLOKAI					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE MOLOKAI IRRIGATION SYSTEM.					
		PLANS		50			
		DESIGN		250			
		CONSTRUCTION		449			
		EQUIPMENT		1			
		TOTAL FUNDING	AGR	750C			C
5.	P97002	UPCOUNTRY MAUI WATERSHED, MAUI					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE INSTALLATION OF PIPELINE FOR THE UPCOUNTRY MAUI WATERSHED PROJECT, KULA, MAUI.					
		PLANS		10			
		LAND		100			
		DESIGN		100			
		CONSTRUCTION		1,280			
		EQUIPMENT		10			
		TOTAL FUNDING	AGR	1,500C			C
6.	980002	LOWER HAMAKUA DITCH SYSTEM, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE LOWER HAMAKUA DITCH SYSTEM, TOGETHER WITH APPURTENANT WORKS, INCLUDING IMPROVEMENTS TO MITIGATE FLOOD DAMAGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1			
		DESIGN		499			
		CONSTRUCTION		3,500			
		TOTAL FUNDING	AGR	1,000C			C
			AGR	3,000N			N
6.01.	P04007	PAAUILO RENDERING PLANT, HAWAII					
		CONSTRUCTION FOR RENOVATIONS TO THE EXISTING FACILITY.					
		CONSTRUCTION					1,186
		TOTAL FUNDING	AGR		C		1,186C
AGR192 - GENERAL ADMINISTRATION FOR AGRICULTURE							
6.02.	981921	MISCELLANEOUS HEALTH, SAFETY, CODE AND OTHER REQUIREMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO ADDRESS HEALTH, SAFETY, CODE AND OTHER REQUIREMENTS, STATEWIDE.					
		DESIGN					200
		CONSTRUCTION					800
		TOTAL FUNDING	AGR		C		1,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
BED146 - NATURAL ENERGY LABORATORY OF HAWAII AUTHORITY							
6.03.	NELHA10	NELHA ONSHORE DISTRIBUTION SYSTEM, HAWAII					
		PLANS AND DESIGN FOR ADDITIONAL INFRASTRUCTURE AND DISTRIBUTION PIPELINES TO THE EXISTING 55" SEAWATER SYSTEM TO EXPAND THE SEAWATER DISTRIBUTION CAPACITY OF NELHA AND TO MEET FORECASTED TENANT DEMANDS FOR SEAWATER INTO THE FUTURE.					
							180
							360
			TOTAL FUNDING	BED		C	540C
6.04.	NELHA13	NELHA/HOST PARK INFRASTRUCTURE UPGRADES, HAWAII					
		CONSTRUCTION TO MAKE THE FINAL INTERCONNECTION BETWEEN TWO EXISTING 12" WATER MAINS AND TO COMPLETE A SYSTEM-WIDE UPGRADE.					
							50
			TOTAL FUNDING	BED		C	50C
6.05.	NELHA26	NELHA GROUNDWATER ENVIRONMENTAL MONITORING WELLS, HAWAII					
		DESIGN AND EQUIPMENT FOR GROUNDWATER ENVIRONMENTAL MONITORING WELLS.					
							24
							288
			TOTAL FUNDING	BED		C	312C
6.06.	NELHA29	NELHA MASTER PLAN RECONFIGURATION, HAWAII					
		PLANS AND DESIGN FOR RECONFIGURATION OF THE MASTER PLAN TO INCLUDE ALL PROPERTY MANAGED BY NELHA.					
							1
							299
			TOTAL FUNDING	BED		C	300C
6.07.	NELHA31	NELHA-KONA INTERNATIONAL AIRPORT CONNECTOR ROAD, HAWAII					
		CONSTRUCTION OF ROADS TO CONNECT NELHA AND KONA INTERNATIONAL AIRPORT AND QUEEN KAAHUMANU HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
							4,000
			TOTAL FUNDING	BED		N	4,000N
6.08.	NELHA33	NELHA/HOST PARK ROAD AND UTILITY DISTRIBUTION SYSTEM, HAWAII					
		PLANS AND DESIGN FOR ACCESS ROADS AND THE INSTALLATION OF SEWER, POTABLE WATER,					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		SEAWATER, ELECTRICAL, TELEPHONE AND CATV DISTRIBUTION SYSTEMS.					
		PLANS					40
		DESIGN					360
		TOTAL FUNDING	BED		C		400C
LNR141 - WATER AND LAND DEVELOPMENT							
7.	G83F	ALA WAI WATERSHED FLOOD STUDY, OAHU					
		PLANS, DESIGN AND CONSTRUCTION TO INVESTIGATE CONDITIONS AND PROVIDE MITIGATIVE MEASURES TO ALLEVIATE FLOODING IN THE ALA WAI WATERSHED, INCLUDING THE UPPER REACHES OF MAKIKI, MANOA, AND PALOLO VALLEYS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			2,400		1,499
		DESIGN					1
		CONSTRUCTION					3,000
		TOTAL FUNDING	LNR	600C			1,500C
			LNR	1,200N			3,000N
			LNR	600S			S
8.	P50005	NORTH SHORE WASTEWATER TREATMENT PLANT, OAHU					
		PLANS FOR STUDIES TO DETERMINE LOCATION AND TREATMENT ALTERNATIVES SUPPORTED BY THE COMMUNITY, METHODS OF ALLEVIATING CESSPOOL LEACHING, AND OTHER RELEVANT ISSUES.					
		PLANS			250		
		TOTAL FUNDING	LNR	250C			C
8.01.	G76	HONOKAA WELL DEVELOPMENT, HAWAII					
		DESIGN AND CONSTRUCTION FOR WELL DEVELOPMENT, INCLUDING PUMP INSTALLATION, CONTROLS, CONNECTING PIPELINE AND RELATED IMPROVEMENTS.					
		DESIGN					1
		CONSTRUCTION					1,984
		TOTAL FUNDING	LNR		C		1,800C
			LNR		S		185S
8.02.	J32	WAIMANALO WASTEWATER TREATMENT PLANT IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR INCREMENTAL IMPROVEMENTS TO MEET WATER QUALITY STANDARDS, INCLUDING INJECTION WELLS, FILTER STRUCTURES AND FILTER CELLS. DISINFECTION MIXING AND CONTACT CHAMBER, DISSOLVED AIR FLOTATION THICKENER, CLARIFIERS, PUMP STATION, FLOOD PROOFING, EQUALIZATION BASIN SYSTEM UPGRADES, TERTIARY TREATMENT, AND OTHER RELATED WORK.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		CONSTRUCTION					10,000
		TOTAL FUNDING	LNR		C		10,000C
8.03.	J38A	GEOTHERMAL WELL PLUGGING AND ABANDONMENT, PUNA, HAWAII					
		DESIGN AND CONSTRUCTION TO PLUG AND ABANDON TWO GEOTHERMAL WELLS AND RESTORE WELL SITES.					
		DESIGN					200
		CONSTRUCTION					2,100
		TOTAL FUNDING	LNR		C		2,300C
BED150 - HAWAII COMMUNITY DEVELOPMENT AUTHORITY							
9.	KA008	KAKAAKO MAKAI IMPROVEMENTS, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO IMPROVE INFRASTRUCTURE AND FOR RELOCATION OF EXISTING TENANTS TO PREPARE SITES FOR FUTURE DEVELOPMENT IN KAKAAKO MAKAI. PROJECT MAY INCLUDE IMPROVEMENTS TO THE ROADWAY AND UTILITY SYSTEMS.					
		PLANS					1
		LAND					248
		DESIGN					750
		CONSTRUCTION					1
		TOTAL FUNDING	BED		C		1,000C
10.	HCD001	KAKAAKO COMMUNITY DEVELOPMENT DISTRICT, OAHU					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT AND NON-PERMANENT PROJECT-FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE 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				1,603	1,672
		TOTAL FUNDING	BED		1,603C		1,672C
11.	KA014	KEWALO BASIN PARK IMPROVEMENTS, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INFRASTRUCTURE IMPROVEMENTS AND SITE PREPARATION AND DEVELOPMENT FOR THE SITE CURRENTLY OCCUPIED BY THE UNIVERSITY OF HAWAII, KEWALO BASIN MARINE MAMMAL LABORATORY, AND FOR PARK IMPROVEMENTS, AS NEEDED.					
		PLANS				1	
		DESIGN				100	
		CONSTRUCTION				898	
		EQUIPMENT				1	
		TOTAL FUNDING	BED		1,000C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)				
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F	
B. EMPLOYMENT								
HMS802 - VOCATIONAL REHABILITATION								
0.01.		ARC OF HILO, HAWAII						
		CONSTRUCTION FOR THE CLIENT SUPPORT SERVICES COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		CONSTRUCTION					200	
		TOTAL FUNDING	HMS			C	200C	
LBR903 - OFFICE OF COMMUNITY SERVICES								
1.		EASTER SEALS HAWAII, OAHU						
		CONSTRUCTION FOR A FULL SERVICE CENTER FOR EARLY INTERVENTION, YOUTH, AND ADULT PROGRAMS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		CONSTRUCTION			1,000			
		TOTAL FUNDING	LBR		1,000C		C	
2.		HAWAII COUNTY ECONOMIC OPPORTUNITY COUNCIL, HAWAII						
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS AND EQUIPMENT TO ENHANCE HAWAII COUNTY ECONOMIC OPPORTUNITY COUNCIL PROGRAMS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		DESIGN			1			
		CONSTRUCTION			1			
		EQUIPMENT			598			
		TOTAL FUNDING	LBR		600C		C	
3.		HONOLULU COMMUNITY ACTION PROGRAM, OAHU						
		LAND ACQUISITION TO ACQUIRE A FACILITY FOR AN ADMINISTRATIVE HEADQUARTERS AND RELATED COMMUNITY PROGRAMS FOR THE HONOLULU COMMUNITY ACTION PROGRAM. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		LAND			1,000			
		TOTAL FUNDING	LBR		1,000C		C	
4.		ORI ANUENUE HALE, INC., OAHU						
		DESIGN AND CONSTRUCTION FOR A COMMUNITY SERVICE FACILITY IN CENTRAL OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		DESIGN			100			
		CONSTRUCTION			2,400			
		TOTAL FUNDING	LBR		2,500C		C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
5.		SEAGULL SCHOOLS, INC., OAHU					
		DESIGN AND CONSTRUCTION OF PRESCHOOL FACILITIES IN THE KAILUA AREA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			40		
		CONSTRUCTION			260		
		TOTAL FUNDING	LBR		300C		C
6.		YMCA OF HONOLULU, OAHU					
		CONSTRUCTION FOR THE LEEWARD YMCA TO HOUSE COMMUNITY PROGRAMS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION			500		2,000
		TOTAL FUNDING	LBR		500C		2,000C
6.01.		HAWAII UNITED OKINAWA ASSOCIATION, OAHU					
		LAND ACQUISITION FOR EXPANSION OF THE HAWAII OKINAWA CENTER IN WAIPIO GENTRY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND					1,600
		TOTAL FUNDING	LBR			C	1,600C
6.02.		YMCA OF KAUAI, KAUAI					
		PLANS AND CONSTRUCTION FOR PHASE II OF THE YMCA OF KAUAI FACILITY PROJECT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					228
		CONSTRUCTION					3,069
		TOTAL FUNDING	LBR			C	3,297C
6.03.		MAUI ECONOMIC OPPORTUNITY, INC., MAUI					
		LAND ACQUISITION TO DEVELOP A TRANSIT FACILITY TO MEET COMMUNITY TRANSPORTATION NEEDS IN MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND					1,200
		TOTAL FUNDING	LBR			C	1,200C
6.04.		CATHOLIC CHARITIES OF THE DIOCESE OF HONOLULU, OAHU					
		LAND ACQUISITION FOR CATHOLIC CHARITIES HAWAII'S SOCIAL SERVICE COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND					1,000
		TOTAL FUNDING	LBR			C	1,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)				
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F	
6.05.		GOODWILL INDUSTRIES OF HAWAII, INC., OAHU						
		CONSTRUCTION OF AN OHANA CAREER AND LEARNING CENTER IN KAPOLEI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		CONSTRUCTION					2,000	
		TOTAL FUNDING	LBR		C		2,000C	
6.06.		HONOLULU COMMUNITY ACTION PROGRAM, OAHU						
		CONSTRUCTION TO RENOVATE AND REPAIR THE WAIANAЕ DISTRICT OFFICE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		CONSTRUCTION					500	
		TOTAL FUNDING	LBR		C		500C	
6.07.		YWCA OF OAHU, OAHU						
		CONSTRUCTION FOR RENOVATIONS TO YWCA'S LANIAKEA FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		CONSTRUCTION					3,000	
		TOTAL FUNDING	LBR		C		3,000C	
6.08.		HAWAII LABOR HERITAGE COUNCIL, HAWAII						
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF JACK HALL MEMORIAL BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		DESIGN					26	
		CONSTRUCTION					260	
		TOTAL FUNDING	LBR		C		286C	
6.09.		LANIKAI ASSOCIATION, OAHU						
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RESTORATION OF THE GEORGE PERRY BUILDING, PROVISION OF FENCING FOR THE COMMUNITY CENTER'S PLAYGROUND AREA, AND SECURITY FENCING SURROUNDING THE PARK GROUNDS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.						
		PLANS					1	
		DESIGN					1	
		CONSTRUCTION					72	
		EQUIPMENT					1	
		TOTAL FUNDING	LBR		C		75C	

C. TRANSPORTATION FACILITIES

TRN102 - HONOLULU INTERNATIONAL AIRPORT

- 1. A04A HONOLULU INTERNATIONAL AIRPORT, ENVIRONMENTAL IMPACT STATEMENT, OAHU

PLANS FOR AN ENVIRONMENTAL IMPACT STATEMENT FOR HONOLULU INTERNATIONAL

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1,500			
		TOTAL FUNDING	TRN	375B			B
			TRN	1,125N			N
2.	A20B	HONOLULU INTERNATIONAL AIRPORT, 3RD LEVEL STEEL CANOPY IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF THE EXISTING STRUCTURAL STEEL CANOPY ON THE THIRD LEVEL OF THE OVERSEAS TERMINAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		500			
		CONSTRUCTION				3,000	
		TOTAL FUNDING	TRN	150B		900B	
			TRN	350N		2,100N	
3.	A26A	HONOLULU INTERNATIONAL AIRPORT, ENVIRONMENTAL COMPLIANCE MEASURES, OAHU					
		CONSTRUCTION FOR ENVIRONMENTAL COMPLIANCE AT HONOLULU INTERNATIONAL AIRPORT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION		2,070			
		TOTAL FUNDING	TRN	345B			B
			TRN	1,725X			X
4.	A29A	HONOLULU INTERNATIONAL AIRPORT, AIR CONDITIONING SYSTEM IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR THE REPLACEMENT OF AIRPORT CHILLER PLANTS, INSTALLATION OF A CHILLED WATER LOOP, AND OTHER RELATED IMPROVEMENTS AT HONOLULU INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION		30,195		36,510	
		TOTAL FUNDING	TRN	1,100B			B
			TRN	E		2,910E	
			TRN	3,795N			N
			TRN	25,300X		33,600X	
5.	A41N	HONOLULU INTERNATIONAL AIRPORT, TERMINAL MODERNIZATION, OAHU					
		PLANS AND DESIGN OF TERMINAL IMPROVEMENTS TO OPTIMIZE AND MODERNIZE FACILITIES AND OPERATIONS AT THE AIRPORT.					
		PLANS		1,000			
		DESIGN				19,500	
		TOTAL FUNDING	TRN	1,000B		7,000B	
			TRN	E		12,500E	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
6.	A410	HONOLULU INTERNATIONAL AIRPORT, TERMINAL ROOF AND CEILING REPLACEMENT, OAHU					
		DESIGN AND CONSTRUCTION OF TERMINAL ROOF AND CEILING REPLACEMENT INCLUDING ASBESTOS REMOVAL, DRAINAGE IMPROVEMENTS, AND OTHER RELATED IMPROVEMENTS AT HONOLULU INTERNATIONAL AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,876		9,380
		CONSTRUCTION					2,345B
		TOTAL FUNDING	TRN		469B		2,345B
			TRN		1,407N		7,035N
7.	A41P	HONOLULU INTERNATIONAL AIRPORT, INTERNATIONAL ARRIVALS BUILDING CEILING REPLACEMENT, OAHU					
		CONSTRUCTION OF CEILING REPLACEMENT INCLUDING ASBESTOS REMOVAL AND OTHER RELATED IMPROVEMENTS IN THE INTERNATIONAL ARRIVALS BUILDING. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION					32,258
		TOTAL FUNDING	TRN		X		32,258X
8.	A43F	HONOLULU INTERNATIONAL AIRPORT, INTERISLAND MAINTENANCE FACILITY SITE PREPARATION, OAHU					
		DESIGN AND CONSTRUCTION FOR SITE PREPARATION (GRADING, ACCESS, AND UTILITIES) AND APRON NEEDED FOR A MAINTENANCE FACILITY AT THE NORTH RAMP.					
		DESIGN			800		
		CONSTRUCTION			250		8,900
		TOTAL FUNDING	TRN		1,050B		8,900B
9.	A44A	HONOLULU INTERNATIONAL AIRPORT, FIDS AND PA SYSTEM IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR REPLACEMENT AND UPGRADES TO THE FLIGHT INFORMATION DISPLAY SYSTEM (FIDS), PUBLIC ADDRESS SYSTEM (PA) AND VISUAL INFORMATION DISPLAY SYSTEM (VIDS) IN THE OVERSEAS TERMINAL (OST), INTERISLAND TERMINAL (IT) AND THE COMMUTER TERMINAL. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION			10,638		
		TOTAL FUNDING	TRN		390B		B
			TRN		1,335N		N
			TRN		8,913X		X

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
9.01.	A06A	HONOLULU INTERNATIONAL AIRPORT, NEW PARKING STRUCTURE, OAHU					
		DESIGN AND CONSTRUCTION FOR A NEW PARKING STRUCTURE, FACILITIES, AND OTHER RELATED IMPROVEMENTS AT HONOLULU INTERNATIONAL AIRPORT.					
		DESIGN					2,000
		CONSTRUCTION					25,000
		TOTAL FUNDING	TRN		E		27,000E
9.02.	A24B	HONOLULU INTERNATIONAL AIRPORT, INLINE BAGGAGE SYSTEM IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR INLINE BAGGAGE SYSTEM IMPROVEMENTS INCLUDING EXPLOSIVE DETECTION SYSTEMS, BAGGAGE BELT CONVEYORS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					63,250
		TOTAL FUNDING	TRN		E		63,250E
9.03.	A37B	HONOLULU INTERNATIONAL AIRPORT, ELEVATOR AND ESCALATOR IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR ELEVATOR AND ESCALATOR REPLACEMENT AND OTHER RELATED IMPROVEMENTS AT THE AIRPORT TERMINALS AND CONCOURSES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION					19,400
		TOTAL FUNDING	TRN		X		19,400X
9.04.	A37C	HONOLULU INTERNATIONAL AIRPORT, UTILITY INFRASTRUCTURE IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR IMPROVEMENTS TO THE UTILITY INFRASTRUCTURE SYSTEM AND RELATED IMPROVEMENTS. IMPROVEMENTS MAY INCLUDE WATER, ELECTRICAL, FIRE SPRINKLER, TELEPHONE DISTRIBUTION, SEWER AND STORM WATER SYSTEMS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION					4,171
		TOTAL FUNDING	TRN		E		1,152E
			TRN		X		3,019X

TRN104 - GENERAL AVIATION

10. A71C KALAELOA AIRPORT, FACILITY IMPROVEMENTS, OAHU

DESIGN AND CONSTRUCTION FOR KALAELOA AIRPORT FACILITY IMPROVEMENTS INCLUDING

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		LEASE LOTS, APRONS, RUNWAYS, TAXIWAYS, AND AVIATION FACILITIES SUCH AS THE CONTROL TOWER, AIRPORT RESCUE FIRE FIGHTING (ARFF) BUILDING, T-HANGAR, AVIATION FUEL SYSTEM, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.			800		
		DESIGN					4,570
		CONSTRUCTION					200B
		TOTAL FUNDING	TRN		40B		2,00B
			TRN		760N		4,370N
11.	A71D	KALAELOA AIRPORT, HANGAR 110 RENOVATIONS, OAHU					
		CONSTRUCTION FOR UPGRADING THE INFRASTRUCTURE TO HANGAR 110 TO MEET CURRENT BUILDING AND FIRE CODES INCLUDING COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT (ADA) AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			2,082		
		TOTAL FUNDING	TRN		182B		B
			TRN		1,900N		N
12.	A71E	KALAELOA AIRPORT, UTILITY SYSTEM IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR UPGRADING THE UTILITY INFRASTRUCTURE SYSTEM TO INCLUDE WATER, ELECTRICAL AND TELEPHONE DISTRIBUTION, AND SEWER AND STORM WATER SYSTEMS TO MEET CURRENT CIVIL AIRPORT STANDARDS AND CITY AND COUNTY OF HONOLULU STANDARDS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			3,940		
		TOTAL FUNDING	TRN		315B		B
			TRN		3,625N		N
TRN111 - HILO INTERNATIONAL AIRPORT							
13.	B10T	HILO INTERNATIONAL AIRPORT, RECONSTRUCT T-HANGARS, HAWAII					
		CONSTRUCTION FOR THE DEMOLITION OF EXISTING T-HANGARS AND RECONSTRUCTION OF NEW T-HANGARS.					
		CONSTRUCTION					1,250
		TOTAL FUNDING	TRN			B	1,250B
TRN114 - KONA INTERNATIONAL AIRPORT AT KEAHOLE							
14.	C03R	KONA INTERNATIONAL AIRPORT AT KEAHOLE, TERMINAL MODIFICATIONS, HAWAII					
		PLANS AND DESIGN FOR A TERMINAL EXPANSION STUDY TO INCORPORATE TSA					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		REQUIREMENTS AND A NEW OVERSEAS TERMINAL, AND TERMINAL MODIFICATIONS.					
		PLANS		1,000			
		DESIGN				3,000	
		TOTAL FUNDING	TRN	1,000 B		3,000B	
15.	C10A	KONA INTERNATIONAL AIRPORT AT KEAHOLE, PERIMETER ROAD, SECURITY FENCE AND GENERAL AVIATION LIGHTING, HAWAII					
		CONSTRUCTION FOR THE INSTALLATION OF A PERIMETER ROAD, SECURITY FENCING, GENERAL AVIATION (GA) LIGHTING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION		3,322			
		TOTAL FUNDING	TRN	280 B			B
				1,817 N			N
			TRN	1,225 X			X
TRN116 - WAIMEA-KOHALA AIRPORT							
16.	C55B	WAIMEA-KOHALA AIRPORT, PART 139 IMPROVEMENTS, HAWAII					
		PLANS FOR AN ENVIRONMENTAL ASSESSMENT, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR PART 139 COMPLIANCE IMPROVEMENTS TO AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION, PERIMETER FENCING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		220			
		LAND				600	
		DESIGN		495			
		CONSTRUCTION				3,500	
		TOTAL FUNDING	TRN	56 B		300B	
						30E	
			TRN	659 N		3,770N	
TRN131 - KAHULUI AIRPORT							
17.	D04M	KAHULUI AIRPORT, ACCESS ROAD, MAUI					
		DESIGN AND CONSTRUCTION FOR A NEW ACCESS ROAD TO THE AIRPORT FROM HANA HIGHWAY. IMPROVEMENTS INCLUDE SITE WORK, PAVING, ELECTRICAL, DRAINAGE, UTILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		1,335			
		CONSTRUCTION				16,750	
		TOTAL FUNDING	TRN	300 B		3,750B	
						13,000N	
			TRN	1,035 N			

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
18.	D05A	KAHULUI AIRPORT, RUNWAY SAFETY AREA IMPROVEMENTS, MAUI					
		CONSTRUCTION FOR RUNWAY SAFETY AREA IMPROVEMENTS INCLUDING SITE WORK, INSTALLATION OF A DRAINAGE SYSTEM, CONSTRUCTION OF A NEW SERVICE ROAD, RELOCATION OF PERIMETER FENCING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION		10,294			
		TOTAL FUNDING	TRN		375 B		B
			TRN		1,294 N		N
			TRN		8,625 X		X
19.	D06A	KAHULUI AIRPORT, NOISE MONITORING SYSTEM, MAUI					
		PLANS FOR NOISE MONITORING SYSTEM AT KAHULUI AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					400
		TOTAL FUNDING	TRN		B		100B
			TRN		N		300N
20.	D08I	KAHULUI AIRPORT, PERIMETER ROAD IMPROVEMENTS, MAUI					
		CONSTRUCTION OF PERIMETER ROAD, SECURITY FENCE, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION		1,668			
		TOTAL FUNDING	TRN		1,668 X		X
21.	D08K	KAHULUI AIRPORT, FUEL STORAGE SITE PREPARATION, MAUI					
		CONSTRUCTION FOR THE SITE PREPARATION OF A FUEL STORAGE TANK FARM. SITE WORK TO INCLUDE EXCAVATION, CLEARING AND GRUBBING, ACCESS ROAD AND UTILITIES, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION		2,000			
		TOTAL FUNDING	TRN		2,000 B		B
22.	D08M	KAHULUI AIRPORT, HELIPORT IMPROVEMENTS, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR HELIPORT IMPROVEMENTS.					
		PLANS			500		
		DESIGN			500		
		CONSTRUCTION					3,600
		TOTAL FUNDING	TRN		1,000 B		3,600B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
22.01.	D04D	KAHULUI AIRPORT, TERMINAL IMPROVEMENTS, MAUI					
		CONSTRUCTION OF TERMINAL IMPROVEMENTS INCLUDING LOADING BRIDGE REPLACEMENT, C.U.T.E., GATES AND TICKET LOBBIES, VIDEO INFORMATION DISPLAY SYSTEM, AIRCRAFT PARKING AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION					18,500
		TOTAL FUNDING	TRN		E		18,500E
22.02.	D08L	KAHULUI AIRPORT, INLINE BAGGAGE SYSTEM IMPROVEMENTS, MAUI					
		CONSTRUCTION OF INLINE BAGGAGE SYSTEM IMPROVEMENTS INCLUDING EXPLOSIVE DETECTION SYSTEMS, BAGGAGE BELT CONVEYORS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					14,300
		TOTAL FUNDING	TRN		E		14,300E
22.03.	D10A	KAHULUI AIRPORT, APRON AND TAXIWAY IMPROVEMENTS, MAUI					
		CONSTRUCTION OF APRON AND TAXIWAY IMPROVEMENTS FRONTING THE NEW ASAP BUILDING AND HOLD CARGO BUILDING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					4,255
		TOTAL FUNDING	TRN		E		1,115E
			TRN		N		3,140N
22.04.	F04R	KAHULUI AIRPORT, MASTER PLAN UPDATE, MAUI					
		PLANS TO UPDATE THE EXISTING MASTER PLAN AT KAHULUI AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1,875
		TOTAL FUNDING	TRN		N		1,875N
TRN133 - HANA AIRPORT							
23.	D20B	HANA AIRPORT, PART 139 IMPROVEMENTS, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR AN ENVIRONMENTAL ASSESSMENT, AND PART 139 COMPLIANCE IMPROVEMENTS TO AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION, PERIMETER FENCING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					220
		DESIGN					495
		CONSTRUCTION					3,500

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		TOTAL FUNDING	TRN		56B		300B
			TRN		659N		3,200N

TRN141 - MOLOKAI AIRPORT

24. D55B MOLOKAI AIRPORT ARFF STATION IMPROVEMENTS, MOLOKAI

CONSTRUCTION FOR THE MOLOKAI AIRPORT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION IMPROVEMENTS INCLUDING SITE WORK, DEMOLITION, RECONSTRUCTION AND/OR REPLACEMENT OF A BUILDING, UTILITIES, DRIVEWAY WITH A PARKING AREA, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION		2,115	
TOTAL FUNDING	TRN	915E	E
	TRN	1,200N	N

25. D55C MOLOKAI AIRPORT, PART 139 CULVERT IMPROVEMENTS, MOLOKAI

DESIGN AND CONSTRUCTION FOR CULVERT IMPROVEMENTS AT MOLOKAI AIRPORT INCLUDING SITE WORK, INSTALLATION OF A DRAINAGE SYSTEM AND BOX CULVERT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN		220	
CONSTRUCTION			2,635
TOTAL FUNDING	TRN	20B	B
	TRN	E	135E
	TRN	200N	2,500N

TRN143 - KALAUPAPA AIRPORT

26. D60A KALAUPAPA AIRPORT, PART 139 IMPROVEMENTS, MOLOKAI

PLANS, DESIGN, AND CONSTRUCTION FOR AN ENVIRONMENTAL ASSESSMENT AND PART 139 COMPLIANCE IMPROVEMENTS TO AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION, PERIMETER FENCING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS		220	
DESIGN		495	
CONSTRUCTION			3,500
TOTAL FUNDING	TRN	56B	300B
	TRN	659N	3,200N

TRN151 - LANAI AIRPORT

27. D70D LANAI AIRPORT ARFF STATION IMPROVEMENTS, LANAI

CONSTRUCTION FOR THE LANAI AIRPORT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATION IMPROVEMENTS INCLUDING SITE

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		WORK, DEMOLITION, RECONSTRUCTION AND/OR REPLACEMENT OF A BUILDING, UTILITIES, DRIVEWAY WITH A PARKING AREA, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			1,150		
		TOTAL FUNDING	TRN		600E		E
			TRN		550N		N
TRN161 - LIHUE AIRPORT							
28.	E03M	LIHUE AIRPORT, PERIMETER ROAD AND SECURITY FENCE, KAUAI					
		CONSTRUCTION OF A PERIMETER ROAD AND AIRFIELD FENCE TO MEET SAFETY AND SECURITY REQUIREMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION			4,332		
		TOTAL FUNDING	TRN		642B		B
			TRN		3,320N		N
			TRN		370X		X
29.	E03O	LIHUE AIRPORT, AHUKINI DUMP RESTORATION, KAUAI					
		CONSTRUCTION FOR THE RESTORATION OF THE AHUKINI DUMP AT LIHUE AIRPORT.					
		CONSTRUCTION			1,200		
		TOTAL FUNDING	TRN		1,200B		B
30.	E02A	LIHUE AIRPORT NOISE LAND ACQUISITION, KAUAI					
		LAND ACQUISITION OF A 173 ACRE PARCEL NORTH OF AHUKINI ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			17,100		
		TOTAL FUNDING	TRN		1,100B		B
			TRN		16,000N		N
30.01.	E03J	LIHUE AIRPORT, BAGGAGE CLAIM IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR IMPROVEMENTS TO BAGGAGE FACILITIES TO ACCOMMODATE THE LARGER BAGGAGE CAPACITY OF WIDE-BODY AIRCRAFT AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					5,091
		TOTAL FUNDING	TRN			E	925E
			TRN			N	4,166N
30.02.	E03P	LIHUE AIRPORT, AIR CONDITIONING SYSTEM IMPROVEMENTS, KAUAI					
		CONSTRUCTION FOR AIR CONDITIONING SYSTEM REPLACEMENT AND OTHER RELATED					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		IMPROVEMENTS AT LIHUE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		CONSTRUCTION					7,621
		TOTAL FUNDING	TRN		E		2,896E
			TRN		X		4,725X
30.03.	E03Q	LIHUE AIRPORT, INLINE BAGGAGE SYSTEM IMPROVEMENTS, KAUAI					
		CONSTRUCTION OF INLINE BAGGAGE SYSTEM IMPROVEMENTS INCLUDING EXPLOSIVE DETECTION SYSTEMS, BAGGAGE BELT CONVEYORS AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					17,000
		TOTAL FUNDING	TRN		B		7,500B
			TRN		N		9,500N
TRN195 - AIRPORTS ADMINISTRATION							
31.	F04J	AIRPORT PLANNING STUDY, STATEWIDE					
		PLANS FOR AIRPORT IMPROVEMENTS, ECONOMIC STUDIES, RESEARCH, NOISE MONITORING STUDIES, NOISE COMPATIBILITY STUDIES, AND ADVANCE PLANNING OF FEDERAL AID AND NON-FEDERAL AID PROJECTS.					
		PLANS					1,000
		TOTAL FUNDING	TRN				1,000B
32.	F04Q	AIRPORT SYSTEM PLAN, STATEWIDE					
		PLANS FOR THE DEVELOPMENT OF THE AIRPORT SYSTEM PLAN FOR THE AIRPORTS DIVISION. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1,000
		TOTAL FUNDING	TRN				250B
			TRN				750N
33.	F05B	COMMUTER AIR TERMINAL IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR TERMINAL IMPROVEMENTS INCLUDING FACILITIES FOR SECURITY SCREENING, EXPANSION OF HOLDROOM FACILITIES, BAGGAGE CLAIM FACILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					600
		CONSTRUCTION					12,600
		TOTAL FUNDING	TRN				600B
			TRN				N
							9,000N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
34.	F05C	STRUCTURAL IMPROVEMENTS TO AIRFIELD PAVING, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR STRUCTURAL IMPROVEMENTS TO RUNWAYS, TAXIWAYS, AND APRONS AT STATEWIDE AIRPORTS. IMPROVEMENTS INCLUDE PAVING, MILL AND REPLACE, RECONSTRUCTION, GROOVING, PAINTING, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			800		900
		CONSTRUCTION			10,250		11,370
		TOTAL FUNDING	TRN		3,200B		4,500B
			TRN		7,850N		7,770N
35.	F05D	LOADING BRIDGE MODERNIZATION, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF NEW PASSENGER LOADING BRIDGES, THE REMOVAL OF THE EXISTING LOADING BRIDGES, AND OTHER RELATED IMPROVEMENTS AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		DESIGN			740		
		CONSTRUCTION			8,250		18,500
		TOTAL FUNDING	TRN		2,590B		B
			TRN		6,400N		N
			TRN		X		18,500X
36.	F05E	FAA DISCRETIONARY FUNDED PROJECTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION OF FAA DISCRETIONARY FUNDED IMPROVEMENTS AT VARIOUS STATE AIRPORTS. IMPROVEMENTS MAY INCLUDE THOSE FOR SAFETY AND CERTIFICATION REQUIREMENTS, OPERATIONAL EFFICIENCY, AND PROJECTS REQUIRED FOR AIRPORT RELATED DEVELOPMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1,000		1,000
		DESIGN			2,000		2,000
		CONSTRUCTION			7,000		7,000
		TOTAL FUNDING	TRN		10,000N		10,000N
37.	F08F	AIRPORTS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S AIRPORTS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM PROJECT RELATED POSITIONS. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		PLANS			1		101
		DESIGN			1		1
		CONSTRUCTION			2,149		2,149
		TOTAL FUNDING	TRN		2,151B		2,151B
			TRN			X	100X
38.	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.					
		DESIGN			300		300
		CONSTRUCTION			2,700		2,700
		TOTAL FUNDING	TRN		3,000B		3,000B
39.	F08O	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE					
		CONSTRUCTION FOR CONSTRUCTION MANAGEMENT SUPPORT AT AIRPORT FACILITIES, STATEWIDE					
		CONSTRUCTION			125		125
		TOTAL FUNDING	TRN		125B		125B
40.	F08P	STORMWATER PERMIT COMPLIANCE, STATEWIDE					
		CONSTRUCTION FOR FACILITIES NEEDED FOR STORMWATER PERMIT COMPLIANCE AT AIRPORTS STATEWIDE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			5,000		
		TOTAL FUNDING	TRN		1,250B		B
			TRN		3,750N		N
41.	F08V	AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) FACILITY IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS NECESSARY TO RENOVATE AND/OR CONSTRUCT AIRCRAFT RESCUE AND FIRE FIGHTING (ARFF) STATIONS AND TRAINING PITTS, ENCLOSE NEW AND/OR RESERVE ARFF VEHICLES AND OTHER RELATED IMPROVEMENTS AT STATEWIDE AIRPORTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (OTHER FUNDS FROM PASSENGER FACILITY CHARGES).					
		DESIGN			3,000		
		CONSTRUCTION					29,200
		TOTAL FUNDING	TRN		2,000B		B
			TRN			E	4,150E
			TRN		1,000N		12,450N
			TRN			X	12,600X

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
TRN301 - HONOLULU HARBOR							
42.	J04	IMPROVEMENTS TO FACILITIES AT PIERS 19-29, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO PIERS AND YARD AREAS INCLUDING PAVED AREAS, UTILITIES, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN			600		
		CONSTRUCTION					6,000
		TOTAL FUNDING	TRN		600B		B
			TRN		E		6,000E
43.	J08	IMPROVEMENTS TO FACILITIES AT PIERS 1 AND 2, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR YARD IMPROVEMENTS INCLUDING THE UPGRADING OF THE LIGHTING SYSTEM, FENCING, PAVING, UTILITIES, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					100
		CONSTRUCTION			2,000		400
		TOTAL FUNDING	TRN		2,000B		500B
44.	J33	KAPALAMA CONTAINER TERMINAL, HONOLULU HARBOR, OAHU					
		PLANS, DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A NEW CONTAINER FACILITY AND OTHER RELATED IMPROVEMENTS.					
		PLANS			1,000		500
		DESIGN					500
		CONSTRUCTION					1,000
		TOTAL FUNDING	TRN		1,000B		2,000B
45.	J34	PIERS 36 TO 38 IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT THE DOMESTIC COMMERCIAL FISHING VILLAGE INCLUDING ENVIRONMENTAL STUDIES AND MITIGATION, UTILITY SERVICES, ROADWAYS, PARKING, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN			300		
		CONSTRUCTION			2,000		
		TOTAL FUNDING	TRN		2,300B		B
45.01.	J09	SAND ISLAND CONTAINER YARD EXPANSION, HONOLULU HARBOR, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE ESTABLISHMENT OF LAND ENTITLEMENTS, SITE IMPROVEMENTS TO PREPARE THE PARCELS FOR IMMEDIATE LEASE, AND OTHER RELATED ACTIONS.					
		PLANS					500
		DESIGN					100
		CONSTRUCTION					200
		TOTAL FUNDING	TRN			B	800B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
45.02.	J06	SAND ISLAND CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		DESIGN FOR IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, LIGHTING, UTILITIES, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					1,400
		TOTAL FUNDING	TRN		R		1,400R
45.03.	J07	PIER 51B CONTAINER YARD IMPROVEMENTS, HONOLULU HARBOR, OAHU					
		DESIGN FOR IMPROVEMENTS TO THE CONTAINER YARD INCLUDING RECONSTRUCTION OF PAVING, DRAINAGE, UTILITIES, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					600
		TOTAL FUNDING	TRN		R		600R
TRN303 - KALAELOA BARBERS POINT HARBOR							
46.	J11	KALAELOA BARBERS POINT HARBOR IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS INCLUDING UTILITIES, ROADWAYS, LIGHTING, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN				225	
		CONSTRUCTION					1,800
		TOTAL FUNDING	TRN		225B		1,800B
TRN311 - HILO HARBOR							
47.	L01	NAVIGATIONAL IMPROVEMENTS, HILO HARBOR, HAWAII					
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT HILO HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS				700	
		TOTAL FUNDING	TRN		700B		B
48.	L02	BARGE TERMINAL IMPROVEMENTS, HILO HARBOR, HAWAII					
		CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING PIERS, YARD, ROADWAYS, UTILITIES, STRUCTURES, AND OTHER RELATED IMPROVEMENTS.					
		CONSTRUCTION					45,000
		TOTAL FUNDING	TRN		E		45,000E
49.	L10	HILO HARBOR IMPROVEMENTS, HAWAII					
		DESIGN FOR PIER IMPROVEMENTS AT HILO HARBOR AND OTHER RELATED IMPROVEMENTS.					
		DESIGN				1,200	
		TOTAL FUNDING	TRN		1,200B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
TRN313 - KAWAIHAE HARBOR							
50. L09		NAVIGATIONAL IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII					
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT KAWAIHAE HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			200		
		TOTAL FUNDING	TRN		200B		B
50.01. L05		BARGE TERMINAL IMPROVEMENTS, KAWAIHAE HARBOR, HAWAII					
		DESIGN AND CONSTRUCTION FOR PAVED STORAGE AREAS, UTILITIES, LIGHTING, DEMOLITION OF STRUCTURES, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					200
		CONSTRUCTION					1,500
		TOTAL FUNDING	TRN			B	1,700B
TRN331 - KAHULUI HARBOR							
51. M01		KAHULUI HARBOR IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO PIER 1 INCLUDING A BERTHING DOLPHIN, WATER SYSTEM, COMFORT STATION, SEWER PUMP-OUT, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					100
		CONSTRUCTION			1,000		2,000
		TOTAL FUNDING	TRN		1,000B		100B
			TRN			E	2,000E
52. M09		BARGE TERMINAL IMPROVEMENTS, KAHULUI HARBOR, MAUI					
		LAND ACQUISITION, DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE BARGE TERMINAL INCLUDING YARD, ROADWAY, BUILDING, AND OTHER RELATED IMPROVEMENTS.					
		LAND					10,000
		DESIGN			200		500
		CONSTRUCTION					2,200
		TOTAL FUNDING	TRN		200B		2,700B
			TRN			E	10,000E
52.01. M04		PIER IMPROVEMENTS, KAHULUI HARBOR, MAUI					
		DESIGN FOR A NEW PIER 4 BERTH INCLUDING DREDGING, NEW PIER STRUCTURE, UTILITIES, INFRASTRUCTURE, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					700
		TOTAL FUNDING	TRN			B	700B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
TRN361 - NAWILIWILI HARBOR							
53. K07		NAWILIWILI HARBOR CHANNEL MODIFICATIONS, KAUAI					
		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			375		
		TOTAL FUNDING	TRN		375B		B
53.01. K10		BARGE TERMINAL IMPROVEMENTS, NAWILIWILI HARBOR, KAUAI					
		DESIGN AND CONSTRUCTION FOR YARD IMPROVEMENTS INCLUDING CORRECTING PAVEMENT SUBSIDENCE AT PIER 3 AND OTHER RELATED IMPROVEMENTS.					
		DESIGN					100
		CONSTRUCTION					2,000
		TOTAL FUNDING	TRN			B	100B
			TRN			E	2,000E
TRN363 - PORT ALLEN HARBOR							
54. K05		NAVIGATIONAL IMPROVEMENTS, PORT ALLEN HARBOR, KAUAI					
		PLANS FOR DEEPENING, WIDENING, AND OTHER IMPROVEMENTS TO THE NAVIGATIONAL AREAS AT PORT ALLEN HARBOR. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			500		
		TOTAL FUNDING	TRN		500B		B
TRN351 - KAUMALAPAU HARBOR							
55. M12		KAUMALAPAU HARBOR IMPROVEMENTS, LANAI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE PIER, YARD, LIGHTING, UTILITIES, STRUCTURES, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN			500		
		CONSTRUCTION					4,000
		TOTAL FUNDING	TRN		500B		4,000B
TRN395 - HARBORS ADMINISTRATION							
56. I00		HARBORS DIVISION CAPITAL IMPROVEMENT PROGRAM STAFF COSTS, STATEWIDE					
		PLANS FOR COSTS RELATED TO WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HARBORS DIVISION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		PLANS		988		1,088	
		TOTAL FUNDING	TRN	988B		1,088B	
57.	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	
58.	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		40	
		CONSTRUCTION		300		160	
		TOTAL FUNDING	TRN	375B		200B	
59.	I05	MISCELLANEOUS IMPROVEMENTS TO FACILITIES AT OAHU PORTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO YARD AREAS, SHEDS, PIERS, UTILITIES, WATER AREAS, MARITIME-INDUSTRIAL FACILITIES AND OTHER FACILITIES.					
		DESIGN		50		30	
		CONSTRUCTION		250		870	
		TOTAL FUNDING	TRN	300B		900B	
60.	I06	ARCHITECTURAL AND ENGINEERING SUPPORT, STATEWIDE					
		DESIGN FOR CONSULTANT SERVICES DURING THE DESIGN OF CAPITAL PROJECTS AT HARBOR FACILITIES STATEWIDE					
		DESIGN		750			
		TOTAL FUNDING	TRN	750B			B
61.	I07	ENVIRONMENTAL REMEDIATION OF COMMERCIAL HARBOR FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR STUDIES AND ENVIRONMENTAL REMEDIATION MEASURES AT COMMERCIAL HARBOR FACILITIES.					
		PLANS		250			
		DESIGN		250			
		CONSTRUCTION		500			
		TOTAL FUNDING	TRN	1,000B			B
62.	I08	REPLACEMENT OF TIMBER FENDERS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF TIMBER FENDER SYSTEMS WITH CONCRETE SYSTEMS AT COMMERCIAL HARBORS STATEWIDE.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)				
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F	
		DESIGN			100			
		CONSTRUCTION					1,300	
		TOTAL FUNDING	TRN		100B		1,300B	
63.	I13	CONSTRUCTION MANAGEMENT SUPPORT, STATEWIDE						
		CONSTRUCTION FOR CONSULTANT SERVICES DURING CONSTRUCTION PROJECTS AT HARBOR FACILITIES STATEWIDE.						
		CONSTRUCTION			1,000			
		TOTAL FUNDING	TRN		1,000B		B	
64.	I14	FERRY TERMINAL IMPROVEMENTS, STATEWIDE						
		DESIGN AND CONSTRUCTION FOR FERRY TERMINAL IMPROVEMENTS INCLUDING BERTHING FACILITIES, PARKING, LIGHTING, ROADWAYS, UTILITIES, AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		DESIGN			2,000		2,000	
		CONSTRUCTION			18,000		18,000	
		TOTAL FUNDING	TRN		20,000D		20,000D	
65.	I15	SECURITY IMPROVEMENTS AT COMMERCIAL HARBORS, STATEWIDE						
		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.						
		DESIGN			250			
		CONSTRUCTION			3,750			
		TOTAL FUNDING	TRN		2,000B		B	
			TRN		2,000N		N	
66.	M03	NEW HARBOR FACILITY, MAUI						
		PLANS FOR A STUDY FOR A NEW HARBOR FACILITY ON MAUI.						
		PLANS			1,000			
		TOTAL FUNDING	TRN		1,000B		B	
TRN501 - OAHU HIGHWAYS								
67.	S074	OAHU BIKEWAYS, OAHU						
		LAND ACQUISITION AND CONSTRUCTION FOR A MULTI-USE PATH FROM THE VICINITY OF WAIPIO POINT ACCESS ROAD TO LUALUALEI NAVAL ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		LAND					1,000	
		CONSTRUCTION					2,500	
		TOTAL FUNDING	TRN			E	700E	
			TRN			N	2,800N	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
68. S221		KALANIANAOLE HIGHWAY, INOAOLE STREAM BRIDGE REPLACEMENT, OAHU					
		CONSTRUCTION FOR THE REPLACEMENT OF THE INOAOLE STREAM BRIDGE WITH A LARGER BRIDGE, INCLUDING IMPROVEMENTS TO THE ROADWAY APPROACHES, DETOUR ROAD, AND UTILITY RELOCATIONS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION			1,550		
		TOTAL FUNDING	TRN		310E		E
			TRN		1,240N		N
69. S231		KALANIANAOLE HIGHWAY IMPROVEMENTS, OLOMANA GOLF COURSE TO WAIMANALO BEACH PARK, OAHU					
		LAND ACQUISITION FOR THE CONSTRUCTION OF TURNING LANES, SIDEWALKS, CURB RAMPS, BIKE PATHS OR BIKE ROUTES, UPGRADING TRAFFIC SIGNALS, UTILITY RELOCATION, DRAINAGE IMPROVEMENTS, AND OTHER MISCELLANEOUS IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			50		
		TOTAL FUNDING	TRN		10E		E
			TRN		40N		N
70. S266		GUARDRAIL AND SHOULDER IMPROVEMENTS, VARIOUS LOCATIONS, OAHU					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING THE EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILING, BRIDGE ENDPOSTS AND CRASH ATTENUATORS, RECONSTRUCTING AND PAVING OF SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			250		250
		CONSTRUCTION			3,000		3,000
		TOTAL FUNDING	TRN		650E		650E
			TRN		2,600N		2,600N
71. S270		TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, OAHU					
		DESIGN AND CONSTRUCTION FOR MISCELLANEOUS IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES NECESSARY FOR IMPROVED TRAFFIC OPERATION INCLUDING ELIMINATING CONSTRICTIONS, MODIFYING AND/OR INSTALLING TRAFFIC SIGNALS, CONSTRUCTING TURNING LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS FOR MORE EFFICIENT TRAFFIC FLOW.					
		DESIGN			200		200

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		CONSTRUCTION		1,000		1,000	
		TOTAL FUNDING	TRN	1,200E		1,200E	
72. S273		KAMEHAMEHA HIGHWAY, INTERSECTION IMPROVEMENTS AT KUILIMA DRIVE, OAHU					
		CONSTRUCTION FOR A LEFT TURN LANE ON KAMEHAMEHA HIGHWAY INTO KUILIMA DRIVE, REPLACING O'IO STREAM BRIDGE AND OTHER RELATED IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				6,000	
		TOTAL FUNDING	TRN		E	1,200E	
			TRN		N	4,800N	
73. S280		INTERSTATE ROUTE H-1, PEARL CITY VIADUCT AND WAIMALU VIADUCT IMPROVEMENTS, OAHU					
		CONSTRUCTION FOR THE REPLACING, REPAIRING, AND/OR STRENGTHENING OF THE PEARL CITY AND WAIMALU VIADUCTS CONCRETE DECK AND OTHER STRUCTURAL COMPONENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				5,000	
		TOTAL FUNDING	TRN		E	1,000E	
			TRN		N	4,000N	
74. S296		KAMEHAMEHA HIGHWAY, KAIPAPAU STREAM BRIDGE REPLACEMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OR REHABILITATION OF KAIPAPAU STREAM BRIDGE TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		200			
		CONSTRUCTION				8,800	
		TOTAL FUNDING	TRN	200E		1,760E	
			TRN		N	7,040N	
75. S301		FARRINGTON HIGHWAY, MAKAHA BRIDGES NO. 3 AND NO. 3A REPLACEMENT, OAHU					
		CONSTRUCTION FOR THE REPLACEMENT OF BRIDGES NO. 3 AND 3A IN THE VICINITY OF MAKAHA BEACH PARK TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION				12,500	
		TOTAL FUNDING	TRN		E	2,500E	
			TRN		N	10,000N	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)				
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F	
76. S304		KAMEHAMEHA HIGHWAY, CANE HAUL ROAD INBOUND BRIDGE REPLACEMENT, OAHU						
		CONSTRUCTION FOR REPLACEMENT OF THE INBOUND CANE HAUL ROAD STRUCTURE TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		CONSTRUCTION					3,500	
		TOTAL FUNDING	TRN		E		700E	
			TRN		N		2,800N	
77. S305		KAMEHAMEHA HIGHWAY, CANE HAUL ROAD OUTBOUND BRIDGE REPLACEMENT, OAHU						
		CONSTRUCTION FOR REPLACEMENT OF THE OUTBOUND CANE HAUL ROAD STRUCTURE TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		CONSTRUCTION					3,500	
		TOTAL FUNDING	TRN		E		700E	
			TRN		N		2,800N	
78. S306		KAMEHAMEHA HIGHWAY, SOUTH KAHANA STREAM BRIDGE REPLACEMENT, OAHU						
		CONSTRUCTION FOR REPLACEMENT OF SOUTH KAHANA STREAM BRIDGE TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		CONSTRUCTION					9,500	
		TOTAL FUNDING	TRN		E		1,900E	
			TRN		N		7,600N	
79. S307		KAMEHAMEHA HIGHWAY, KALUANUI STREAM BRIDGE REPLACEMENT, OAHU						
		CONSTRUCTION FOR REPLACEMENT OF KALUANUI STREAM BRIDGE TO INCLUDE SIDEWALKS, BRIDGE RAILINGS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.						
		CONSTRUCTION					8,500	
		TOTAL FUNDING	TRN		E		1,700E	
			TRN		N		6,800N	
80. S314		KAMEHAMEHA HIGHWAY, UPPER POAMOHO STREAM BRIDGE REPLACEMENT, OAHU						
		LAND ACQUISITION FOR REPLACEMENT OF A MULTI-GIRDER REINFORCED CONCRETE BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF WAHIAWA TO INCLUDE BRIDGE RAILINGS, PEDESTRIAN WALKWAYS, AND OTHER						

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			970		
		TOTAL FUNDING	TRN		195E		E
			TRN		775N		N
81.	S315	KAMEHAMEHA HIGHWAY, REHABILITATION OF LAIELOA STREAM BRIDGE, OAHU					
		LAND ACQUISITION FOR REHABILITATION OF A CONCRETE SLAB BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF LAIE TO INCLUDE BRIDGE RAILINGS, WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					250
		TOTAL FUNDING	TRN			E	50E
			TRN			N	200N
82.	S317	KAMEHAMEHA HIGHWAY, REHABILITATION OF WAIPILOPILO STREAM BRIDGE, OAHU					
		LAND ACQUISITION FOR REHABILITATION OF A CONCRETE TEE-BRIDGE ON KAMEHAMEHA HIGHWAY IN THE VICINITY OF HAUULA TO INCLUDE BRIDGE RAILINGS, WALKWAYS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND			380		
		TOTAL FUNDING	TRN		75E		E
			TRN		305N		N
83.	S318	HIGHWAY LIGHTING REPLACEMENT AT VARIOUS LOCATIONS, OAHU					
		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.					
		CONSTRUCTION			4,400		6,000
		TOTAL FUNDING	TRN		880E		1,200E
			TRN		3,520N		4,800N
84.	S319	PEARL CITY, WAIANAE, AND KANEOHE BASEYARDS WASHDOWN RACKS, OAHU					
		CONSTRUCTION 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.					
		CONSTRUCTION					1,400
		TOTAL FUNDING	TRN			E	1,400E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
85.	S326	KALANIANA'OLE HIGHWAY MEDIAN IMPROVEMENTS, VICINITY OF OLOMANA GOLF COURSE, OAHU					
		CONSTRUCTION FOR MEDIAN IMPROVEMENTS, WIDENING OF THE ROADWAY, INSTALLING SIGNS, MARKINGS, AND OTHER INCIDENTAL IMPROVEMENTS IN THE VICINITY OF OLOMANA GOLF COURSE.					
		CONSTRUCTION					1,750
		TOTAL FUNDING	TRN		E		1,750E
86.	S327	DRYING BED FACILITIES, OAHU					
		PLANS AND DESIGN FOR THE CONSTRUCTION OF DRYING BED FACILITIES FOR THE PROCESSING AND DISPOSAL OF HIGHWAY DEBRIS COLLECTED BY MAINTENANCE OPERATIONS.					
		PLANS				120	
		DESIGN					300
		TOTAL FUNDING	TRN		120E		300E
87.	S328	KAMEHAMEHA HIGHWAY, REHABILITATION OF MAKAUUA STREAM BRIDGE, OAHU					
		DESIGN FOR THE REHABILITATION OF MAKAUUA STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				600	
		TOTAL FUNDING	TRN		120E		E
			TRN		480N		N
88.	S329	KAMEHAMEHA HIGHWAY, REHABILITATION OF WAIKANE STREAM BRIDGE, OAHU					
		LAND ACQUISITION AND DESIGN FOR THE REHABILITATION OF WAIKANE STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					240
		DESIGN				600	
		TOTAL FUNDING	TRN		120E		50E
			TRN		480N		190N
89.	S330	KAMEHAMEHA HIGHWAY, REHABILITATION OF KAWAILOA STREAM BRIDGE, OAHU					
		DESIGN FOR THE REHABILITATION OF KAWAILOA STREAM BRIDGE TO INCLUDE BRIDGE RAILINGS, SHOULDERS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				600	
		TOTAL FUNDING	TRN		120E		E
			TRN		480N		N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
90.	S331	INTERSTATE ROUTE H-1 WIDENING, EASTBOUND, WAI'AU INTERCHANGE TO HALAWA INTERCHANGE, OAHU					
		DESIGN FOR THE WIDENING OF H-1 EAST BOUND FREEWAY AND VIADUCT STRUCTURE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					4,000
		TOTAL FUNDING	TRN		E		800E
			TRN		N		3,200N
91.	S332	EROSION CONTROL PROGRAM FOR STATE HIGHWAYS AND FACILITIES, OAHU					
		CONSTRUCTION FOR PERMANENT EROSION CONTROL MITIGATION MEASURES ON STATE HIGHWAYS AND FACILITIES ON OAHU.					
		CONSTRUCTION					
		TOTAL FUNDING	TRN		1,000		
					1,000E		E
92.	SP9101	NORTH/SOUTH ROAD, KAPOLEI PARKWAY TO VICINITY OF INTERSTATE ROUTE H-1, OAHU					
		LAND ACQUISITION AND CONSTRUCTION FOR NORTH/SOUTH ROAD FROM KAPOLEI PARKWAY TO VICINITY OF THE H-1 FREEWAY. IMPROVEMENTS INCLUDE A MULTI-LANE HIGHWAY AND AN INTERCHANGE AT THE H-1 FREEWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT. (SPECIAL FUNDS FROM HIGHWAY DEVELOPMENT SPECIAL FUND)					
		LAND					4,000
		CONSTRUCTION					82,000
		TOTAL FUNDING	TRN		38,500		
			TRN		3,000B		B
			TRN		4,700E		17,200E
			TRN		30,800N		68,800N
93.	SP0501	SAND ISLAND TO EWA BEACH TUNNEL, OAHU					
		PLANS FOR A FEASIBILITY STUDY FOR A TUNNEL UNDER PEARL HARBOR FROM SAND ISLAND TO EWA BEACH.					
		PLANS					200
		TOTAL FUNDING	TRN		200E		E
95.	S309	KAMEHAMEHA HIGHWAY IMPROVEMENTS, CENTER DRIVE TO WAIHONA STREET, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR TRANSPORTATION IMPROVEMENTS ON KAMEHAMEHA HIGHWAY FROM CENTER DRIVE TO WAIHONA STREET.					
		PLANS					1,000
		DESIGN					1,000
		CONSTRUCTION					5,700
		TOTAL FUNDING	TRN		1,000		7,700E
					1,200E		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
96.	SP0503	CENTRAL OAHU TRAFFIC STUDY, OAHU					
		PLANS FOR A TRAFFIC STUDY FOR CENTRAL OAHU TO INCLUDE A REVIEW OF ALL PAST STUDIES FOR THE AREA, AND TO STUDY A POSSIBLE CONTRAFLOW LANE TO MILLILANI.					
		PLANS			1,000		
		TOTAL FUNDING	TRN		1,000E		E
97.	SP0303	KAHEKILI HIGHWAY, CONTRAFLOW LANE, OAHU					
		PLANS FOR HIGHWAY WIDENING AND OTHER IMPROVEMENTS TO ACCOMMODATE A CONTRAFLOW LANE FROM HAIKU ROAD TO HUI IWA STREET.					
		PLANS			300		
		TOTAL FUNDING	TRN		300E		E
98.	SP9903	LEEWARD COMMUNITY COLLEGE, SECOND ACCESS, OAHU					
		DESIGN AND CONSTRUCTION FOR A SECOND ACCESS TO THE LEEWARD COMMUNITY COLLEGE.					
		DESIGN			1		
		CONSTRUCTION			4,999		
		TOTAL FUNDING	TRN		5,000E		E
98.01.	S246	INTERSTATE ROUTE H-1, WESTBOUND AFTERNOON (PM) ZIPPERLANE, OAHU					
		PLANS FOR THE IMPLEMENTATION OF AN AFTERNOON (PM) CONTRAFLOW LANE ON INTERSTATE ROUTE H-1 FROM THE VICINITY OF RADFORD DRIVE TO THE WAIAWA INTERCHANGE.					
		PLANS					1,000
		TOTAL FUNDING	TRN			E	1,000E
98.02.	S257	CASTLE HILLS ACCESS ROAD, DRAINAGE IMPROVEMENTS, OAHU					
		LAND ACQUISITION AND DESIGN FOR STORM RETENTION STRUCTURES AND EROSION CONTROLS TO REPAIR STORM DAMAGE AND EROSION, AND CONSTRUCTING CONCRETE SIDEWALKS, WHEELCHAIR RAMPS, AND OTHER MISCELLANEOUS IMPROVEMENTS.					
		LAND					1,800
		DESIGN					200
		TOTAL FUNDING	TRN			E	500E
			TRN			X	1,500X
98.03.	S297	KAMEHAMEHA HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, OAHU					
		CONSTRUCTION FOR REPLACEMENT OF THE EXISTING BRIDGE ON KAMEHAMEHA HIGHWAY AT KAWELA STREAM WITH A LARGER BRIDGE INCLUDING IMPROVEMENTS TO THE ROADWAY APPROACHES, SEISMIC UPGRADES, TEMPORARY DETOUR ROAD, AND UTILITY RELOCATIONS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					6,000
		TOTAL FUNDING	TRN		E		1,200E
			TRN		N		4,800N
98.04.	S313	INTERSTATE ROUTE H-1, ADDITION AND/OR MODIFICATION OF FREEWAY ACCESS, MAKAKILO TO PALAILAI IC, OAHU					
		CONSTRUCTION TO IMPROVE AND/OR MODIFY THE MAKAKILO AND PALAILAI INTERCHANGES AND CONSTRUCT A NEW INTERCHANGE (KAPOLEI INTERCHANGE). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					8,800
		TOTAL FUNDING	TRN		E		760E
			TRN		N		7,040N
			TRN		R		1,000R
98.05.	SP0304	KAMEHAMEHA HIGHWAY IMPROVEMENTS, LEFT TURN LANE AT KAHUKU HIGH SCHOOL, OAHU					
		CONSTRUCTION FOR A LEFT TURN LANE FROM KAMEHAMEHA HIGHWAY INTO THE KAHUKU HIGH SCHOOL CAMPUS ENTRANCE INCLUDING UTILITY RELOCATION, ROADWAY WIDENING, INTERSECTION LIGHTING AND SIGNAL ADJUSTMENTS, AND OTHER IMPROVEMENTS.					
		CONSTRUCTION					750
		TOTAL FUNDING	TRN		E		750E
98.06.	X333	ENVIRONMENTAL REMEDIATION OF HIGHWAY FACILITIES, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR ENVIRONMENTAL REMEDIATION MEASURES ON STATE HIGHWAYS AND FACILITIES.					
		PLANS					998
		DESIGN					1
		CONSTRUCTION					1
		TOTAL FUNDING	TRN		B		1,000B
98.07.	X334	INTERSTATE ROUTE H-1, KINAU STREET OFF-RAMP IMPROVEMENTS NEAR QUEEN'S MEDICAL CENTER, OAHU					
		CONSTRUCTION OF A RIGHT TURN LANE FROM THE KINAU STREET OFF-RAMP TO PROVIDE ACCESS ONTO LUSITANA STREET. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					3,000
		TOTAL FUNDING	TRN		N		1,293N
			TRN		R		1,707R
98.08.		WAIKALUA AND LILIPUNA ROAD IMPROVEMENTS, OAHU					
		DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO WAIKALUA AND LILIPUNA					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		ROAD TO INCLUDE SIDEWALKS AND OTHER IMPROVEMENTS FOR PEDESTRIAN SAFETY. FEDERAL FUNDS ARE FROM THE SAFE ROUTES TO SCHOOL (SRTS) PROGRAM. THIS PROJECT IS DEEMED NECESSARY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					50
		CONSTRUCTION					625
		TOTAL FUNDING	TRN		N		675N
98.09.	SP0601	INTERSTATE ROUTE H-1, OPERATIONAL IMPROVEMENTS, LUNALILO STREET TO VINEYARD BOULEVARD, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR OPERATIONAL IMPROVEMENTS TO MODIFY THE WEAVING MOVEMENTS ON THE INTERSTATE H-1 WESTBOUND, BETWEEN THE LUNALILO STREET ON-RAMP AND THE VINEYARD BOULEVARD OFF-RAMP. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1,215
		DESIGN					1,215
		CONSTRUCTION					21,870
		TOTAL FUNDING	TRN		B		2,430B
			TRN		N		21,870N
98.10.		FARRINGTON HIGHWAY IMPROVEMENTS BETWEEN HONOKAI HALE AND HAKIMO ROAD, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS ALONG FARRINGTON HIGHWAY FOR ALTERNATIVE CONGESTION RELIEF AND/OR SAFETY IMPROVEMENT PROJECTS ALONG FARRINGTON HIGHWAY BETWEEN HONOKAI HALE AND HAKIMO ROAD.					
		DESIGN					100
		CONSTRUCTION					1,900
		TOTAL FUNDING	TRN		E		2,000E
TRN511 - HAWAII HIGHWAYS							
99.	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
		TOTAL FUNDING	TRN		300E		300E
			TRN		1,200N		1,200N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
100.	T080	KAWAIHAE ROAD, WAIAKA STREAM BRIDGE REPLACEMENT AND REALIGNMENT, HAWAII					
		LAND ACQUISITION FOR REPLACING THE EXISTING WAIAKA STREAM BRIDGE, REALIGNING THE BRIDGE APPROACHES, RECONSTRUCTING THE ROUTE 19/ROUTE 250 INTERSECTION, AND INSTALLING SAFETY IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					3,890
		TOTAL FUNDING	TRN		E		780E
			TRN		N		3,110N
101.	T082	QUEEN KAAHUMANU HIGHWAY WIDENING, HAWAII					
		CONSTRUCTION FOR THE WIDENING OF QUEEN KAAHUMANU HIGHWAY TO A FOUR-LANE DIVIDED HIGHWAY FROM VICINITY OF KEALAKEHE PARKWAY TO THE VICINITY OF KEAHOLE AIRPORT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					30,000
		TOTAL FUNDING	TRN		E		1,000E
			TRN		N		29,000N
102.	T085	KEALAKEHE PARKWAY EXTENSION, VICINITY OF KEANALEHU DRIVE TO KEALAKAA STREET, HAWAII					
		DESIGN FOR THE EXTENSION OF KEALAKEHE PARKWAY FROM KEANALEHU DRIVE TO KEALAKAA STREET. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				500	
		TOTAL FUNDING	TRN		100E		E
			TRN		400N		N
103.	T108	SADDLE ROAD EXTENSION, HAWAII					
		DESIGN FOR A NEW ROADWAY AND/OR REALIGNMENT AND EXTENDING THE SADDLE ROAD FROM THE HILO TERMINUS TO THE QUEEN KAAHUMANU HIGHWAY. 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
104.	T110	HAWAII BELT ROAD ROCKFALL PROTECTION AT MAULUA, LAUPAHOEHOE, AND KAAWALII, HAWAII					
		CONSTRUCTION FOR SLOPE PROTECTION ALONG ROUTE 19, HAWAII BELT ROAD IN THE VICINITY OF MAULUA GULCH, LAUPAHOEHOE GULCH, AND KAAWALII GULCH. THIS PROJECT IS					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		10,000			
		TOTAL FUNDING	TRN	2,000E			E
			TRN	8,000N			N
105.	T116	KAWAIHAE ROAD BYPASS, WAIMEA TO KAWAIHAE, HAWAII					
		DESIGN FOR A NEW ROAD FROM WAIMEA TO KAWAIHAE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					2,500
		TOTAL FUNDING	TRN		E		500E
			TRN		N		2,000N
106.	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 TURN LANES, ACCELERATION AND/OR DECELERATION LANES, AND OTHER IMPROVEMENTS.					
		DESIGN		150			150
		CONSTRUCTION		950			950
		TOTAL FUNDING	TRN	1,100E			1,100E
107.	T119	WAIMEA AND HILO BASEYARDS IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION TO PROVIDE WASTEWATER IMPROVEMENTS FOR THE WAIMEA BASEYARD, AND TO PROVIDE A SEPTIC TANK SYSTEM TO THE HILO BASEYARD NECESSARY TO MEET DEPARTMENT OF HEALTH COMPLIANCE AND ENVIRONMENTAL PROTECTION AGENCY (EPA) COMPLIANCE.					
		DESIGN					75
		CONSTRUCTION		200			
		TOTAL FUNDING	TRN	200E			75E
108.	T125	AKONI PULE HIGHWAY, REALIGNMENT AND WIDENING AT AAMAKOA GULCH, HAWAII					
		DESIGN FOR REALIGNMENT AND WIDENING OF AKONI PULE HIGHWAY ON THE POLOLU VALLEY SIDE OF AAMAKOA GULCH, INCLUDING INSTALLING GUARDRAILS AND SIGNS.					
		DESIGN		250			
		TOTAL FUNDING	TRN	250E			E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
109.	T126	KUAKINI HIGHWAY ROADWAY AND DRAINAGE IMPROVEMENTS, VICINITY OF KAMEHAMEHA III ROAD, HAWAII					
		CONSTRUCTION FOR BUILDING UP PAVEMENT CROSS SLOPE TO IMPROVE DRAINAGE AND OTHER INCIDENTAL IMPROVEMENTS.					
		CONSTRUCTION			1,300		
		TOTAL FUNDING	TRN		1,300E		E
110.	T127	KEAAU-PAHOA ROAD SHOULDER LANE CONVERSION, KEAAU BYPASS ROAD TO SHOWER DRIVE, HAWAII					
		CONSTRUCTION FOR RECONSTRUCTING AND WIDENING THE EXISTING SHOULDER AND CONSTRUCTING NEW SHOULDERS ON THE INBOUND SIDE OF THE HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					6,600
		TOTAL FUNDING	TRN				1,320E
			TRN				5,280N
111.	T129	SADDLE ROAD IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR WIDENING AND/OR REALIGNING THE EXISTING TWO-LANE HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			1,000		
		CONSTRUCTION			29,000		8,000
		TOTAL FUNDING	TRN		1E		1E
			TRN		29,999N		7,999N
112.	T132	VOLCANO ROAD INTERSECTION IMPROVEMENTS AT KULANI ROAD, HAWAII					
		DESIGN FOR CONSTRUCTING LEFT TURN LANES AT THE KULANI ROAD INTERSECTION.					
		DESIGN			450		
		TOTAL FUNDING	TRN		450E		E
113.	T134	HONOKAA BASEYARD IMPROVEMENTS, HAWAII					
		CONSTRUCTION FOR IMPROVEMENTS TO HONOKAA BASEYARD, INCLUDING EXTENDING THE EXISTING GARAGE AND CONSTRUCTING A STORAGE ROOM.					
		CONSTRUCTION					800
		TOTAL FUNDING	TRN			E	800E
114.	T137	VOLCANO ROAD WIDENING, KEAAU TO PAAHANA, HAWAII					
		DESIGN AND CONSTRUCTION FOR THE WIDENING OF VOLCANO ROAD FROM KEAAU TO PAAHANA INCLUDING THE INSTALLATION OF SIGNS, PAVEMENT MARKINGS, DRAINAGE, GUARDRAILS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			500		
		CONSTRUCTION					2,000
		TOTAL FUNDING	TRN		100E		400E
			TRN		400N		1,600N
115.	TP0501	MAKUU FARMERS MARKET, HIGHWAY ACCESS IMPROVEMENT, HAWAII					
		DESIGN AND CONSTRUCTION TO IMPROVE ACCESS FROM KEAAU-PAHOA ROAD (HIGHWAY 130) TO THE MAKUU FARMERS MARKET IN PUNA, HAWAII.					
		DESIGN			150		
		CONSTRUCTION			500		
		TOTAL FUNDING	TRN		650E		E
115.01.		ANE KEOHOKALO LE HIGHWAY IMPROVEMENTS, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXTENSION OF ANE KEOHOKALO LE HIGHWAY, KEANALEHU DRIVE, MANAWALEA STREET, AND SUPPORTING WATER AND SEWER LINES.					
		DESIGN					1
		CONSTRUCTION					5,998
		EQUIPMENT					1
		TOTAL FUNDING	TRN		E		6,000E
TRN531 - MAUI HIGHWAYS							
116.	V048	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MAUI					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPOSTS AND CRASH ATTENUATORS; AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			100		100
		CONSTRUCTION					1,000
		TOTAL FUNDING	TRN		20E		220E
			TRN		80N		880N
117.	V053	HONOAPILANI HIGHWAY, REVETMENT PROTECTION AT LAUNIUPOKO, MAUI					
		CONSTRUCTION FOR THE REVETMENT AT LAUNIUPOKO TO PROTECT THE HONOAPILANI HIGHWAY FROM SHORELINE EROSION.					
		CONSTRUCTION			1,800		
		TOTAL FUNDING	TRN		1,800E		E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
118.	V075	HANA HIGHWAY ROCKFALL MITIGATION, HUELO TO HANA, MAUI					
		CONSTRUCTION TO REMOVE OVERHANGING, PROTRUDING, AND/OR UNSTABLE ROCKS FROM THE SLOPES ABOVE HANA HIGHWAY AT VARIOUS LOCATIONS.					
		CONSTRUCTION		4,700			
		TOTAL FUNDING	TRN	4,700E			E
119.	V083	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAY FACILITIES, MAUI					
		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			100
		CONSTRUCTION		900			900
		TOTAL FUNDING	TRN	1,000E			1,000E
120.	V089	HANA HIGHWAY IMPROVEMENTS, UAKEA ROAD TO KEAWA PLACE, MAUI					
		CONSTRUCTION FOR WIDENING THE EXISTING ROADWAY AND CONSTRUCTING SAFETY IMPROVEMENTS.					
		CONSTRUCTION					765
		TOTAL FUNDING	TRN			E	765E
121.	V092	HONOAPILANI HIGHWAY SHORELINE IMPROVEMENTS, VICINITY OF OLOWALU, MAUI					
		DESIGN FOR SHORELINE IMPROVEMENTS TO INCLUDE SHORELINE EROSION MITIGATION AND ROADWAY WORK.					
		DESIGN					350
		TOTAL FUNDING	TRN			E	350E
122.	V094	HONOAPILANI HIGHWAY, REPLACEMENT OF HONOLUA BRIDGE, MAUI					
		LAND ACQUISITION FOR REPLACEMENT OF A CONCRETE TEE-BEAM BRIDGE ON HONOAPILANI HIGHWAY IN THE VICINITY OF HONOLUA BAY TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					600
		TOTAL FUNDING	TRN			E	120E
			TRN			N	480N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F

123. VP0104 HONOAPILANI HIGHWAY WIDENING, LAHAINALUNA ROAD TO SOUTH OF FRONT STREET, MAUI

CONSTRUCTION FOR THE WIDENING OF HONOAPILANI HIGHWAY FROM TWO TO FOUR LANES FROM THE VICINITY OF LAHAINALUNA ROAD TO AHOLO ROAD. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

CONSTRUCTION						9,000
TOTAL FUNDING	TRN		E			1,800E
	TRN		N			7,200N

124. V042 HALEAKALA HIGHWAY WIDENING, MAUI

DESIGN AND CONSTRUCTION FOR THE WIDENING OF HALEAKALA HIGHWAY FROM THREE TO FOUR LANES.

DESIGN				1,000		
CONSTRUCTION				11,000		
TOTAL FUNDING	TRN			12,000E		E

124.01. V051 HONOAPILANI HIGHWAY WIDENING AND/OR REALIGNMENT, HONOKOWAI TO LAUNIUPOKO, MAUI

DESIGN FOR A NEW ALIGNMENT OF HONOAPILANI HIGHWAY FROM LAHAINALUNA ROAD TO THE VICINITY OF LAUNIUPOKO. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

DESIGN						1,200
TOTAL FUNDING	TRN		E			240E
	TRN		N			960N

124.02. KULA HIGHWAY AND HALEAKALA HIGHWAY IMPROVEMENTS, MAUI

PLANS, DESIGN, AND CONSTRUCTION FOR A SIDEWALK FOR KING KEKAULIKE HIGH SCHOOL ALONG KULA HIGHWAY, HALEAKALA HIGHWAY, AND OLD HALEAKALA HIGHWAY TO MAKAWAO AVENUE; APPROXIMATELY 1 1/2 MILES. FEDERAL FUNDS ARE FROM THE SAFE ROUTES TO SCHOOL (SRTS) PROGRAM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.

PLANS						35
DESIGN						35
CONSTRUCTION						620
TOTAL FUNDING	TRN		N			690N

TRN541 - MOLOKAI HIGHWAYS

125. W008 GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, MOLOKAI

DESIGN AND CONSTRUCTION TO BUILD ASPHALT CONCRETE PAVED SHOULDERS AND INSTALLING AND/OR UPGRADING EXISTING GUARDRAILS. THIS PROJECT IS DEEMED NECESSARY TO

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN		100			
		CONSTRUCTION		600			700
		TOTAL FUNDING	TRN	220E			140E
			TRN	480N			560N
126.	W011	KAMEHAMEHA V HIGHWAY, KAWELA STREAM BRIDGE REPLACEMENT, MOLOKAI					
		LAND ACQUISITION FOR REPLACEMENT OF KAWELA STREAM BRIDGE TO INCLUDE SIDEWALKS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND		620			
		TOTAL FUNDING	TRN	125E			E
			TRN	495N			N
127.	W013	KAMEHAMEHA V HIGHWAY, MAKAKUPAIA STREAM BRIDGE REPLACEMENT, MOLOKAI					
		LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF MAKAKUPAIA BRIDGE TO INCLUDE BRIDGE RAILINGS AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					475
		DESIGN		650			
		TOTAL FUNDING	TRN	130E			95E
			TRN	520N			380N
128.	W014	KAMEHAMEHA V HIGHWAY, CULVERT IMPROVEMENTS AT MILE POST 12.5, MOLOKAI					
		LAND ACQUISITION AND DESIGN TO UPGRADE THE EXISTING CULVERT, OTHER DRAINAGE FACILITIES, SHOULDERS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 12.5.					
		LAND		50			
		DESIGN		40			
		TOTAL FUNDING	TRN	90E			E
TRN561 - KAUAI HIGHWAYS							
129.	X006	KAUMUALII HIGHWAY IMPROVEMENTS, LIHUE TO WEST OF MALUHIA ROAD, KAUAI					
		CONSTRUCTION FOR WIDENING OF KAUMUALII HIGHWAY, LIHUE TO VICINITY OF KIPU, FROM TWO TO FOUR LANES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					31,500
		TOTAL FUNDING	TRN		E		6,300E
			TRN		N		25,200N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
130.	X007	KUHIO HIGHWAY IMPROVEMENTS, HANAMAULU TO KAPAA, KAUAI					
		DESIGN AND CONSTRUCTION FOR A NEW KAPAA BYPASS AND/OR WIDEN SECTIONS OF KUHIO HIGHWAY. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					4,000
		CONSTRUCTION					15,000
		TOTAL FUNDING	TRN		E		3,800E
			TRN		N		15,200N
131.	X051	GUARDRAIL AND SHOULDER IMPROVEMENTS ON STATE HIGHWAYS, KAUAI					
		DESIGN AND CONSTRUCTION FOR INSTALLING AND/OR UPGRADING OF GUARDRAILS, END TERMINALS, TRANSITIONS, BRIDGE RAILINGS, BRIDGE ENDPPOSTS AND CRASH ATTENUATORS; AND RECONSTRUCTING AND PAVING SHOULDERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			100		
		CONSTRUCTION			900		1,000
		TOTAL FUNDING	TRN		200E		200E
			TRN		800N		800N
132.	X100	KUHIO HIGHWAY, RETAINING WALLS AT LUMAHAI AND WAINIHA, KAUAI					
		LAND ACQUISITION FOR RETAINING WALLS TO PREVENT SLIPPAGE AND EROSION OF THE ROADWAY.					
		LAND			100		
		TOTAL FUNDING	TRN		100E		E
133.	X112	TRAFFIC OPERATIONAL IMPROVEMENTS TO EXISTING INTERSECTIONS AND HIGHWAYS, KAUAI					
		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			250		250
		CONSTRUCTION			750		750
		TOTAL FUNDING	TRN		1,000E		1,000E
134.	X118	KUAMOO ROAD, RETAINING WALL IN THE VICINITY OF MILE POST 1.1, KAUAI					
		CONSTRUCTION FOR REPLACING AN EXISTING WALL INCLUDING INSTALLATION OF					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		GUARDRAILS AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 1.1.					
		CONSTRUCTION		935			
		TOTAL FUNDING	TRN	935E			E
135.	X120	KAUMUALII HIGHWAY, KUHIO HIGHWAY, AND KUAMOO ROAD RETAINING WALLS, KAUAI					
		CONSTRUCTION FOR CONSTRUCTING AND/OR RECONSTRUCTING RETAINING WALLS AND OTHER APPURTENANT IMPROVEMENTS AT VARIOUS LOCATIONS.					
		CONSTRUCTION		1,225			
		TOTAL FUNDING	TRN	1,225E			E
136.	X121	KUHIO HIGHWAY, REPLACEMENT OF WAINIHA BRIDGES NOS. 1, 2, AND 3, KAUAI					
		CONSTRUCTION FOR REPLACEMENT OF WAINIHA BRIDGES NOS. 1, 2, AND 3. PROJECT WILL CONSTRUCT BRIDGE APPROACHES, DETOUR ROADS, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		25,000			
		TOTAL FUNDING	TRN	5,000E			E
			TRN	20,000N			N
137.	X123	WAIMEA CANYON DRIVE/KOKEE ROAD IMPROVEMENTS, MILE POST 0 TO MILE POST 14, KAUAI					
		DESIGN FOR CONSTRUCTING PAVED SHOULDERS, INSTALLING GUARDRAILS, PAVEMENT MARKINGS AND SIGNS, AND OTHER IMPROVEMENTS IN THE VICINITY OF MILE POST 0 TO MILE POST 14.					
		DESIGN		500			
		TOTAL FUNDING	TRN	500E			E
138.	X124	KUHIO HIGHWAY, KAPAIA BRIDGE REPLACEMENT, KAUAI					
		LAND ACQUISITION FOR REPLACEMENT OF A MULTI-TEE BEAM REINFORCED CONCRETE GIRDER BRIDGE ON KUHIO HIGHWAY IN THE VICINITY OF KAPAIA TO INCLUDE PEDESTRIAN WALKWAYS, BRIDGE RAILINGS AND APPROACHES, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND					750
		TOTAL FUNDING	TRN		E		150E
			TRN		N		600N
139.	X127	KAPULE HIGHWAY/RICE STREET/WAAPA ROAD IMPROVEMENTS AND STRENGTHENING/WIDENING OF NAWILIWILI BRIDGE, KAUAI					
		LAND ACQUISITION AND DESIGN FOR THE IMPROVEMENT OF: KAPULE HIGHWAY, RICE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		STREET, AND WAAPA ROAD; AND STRENGTHENING/WIDENING OF NAWLIWILI BRIDGE. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND DESIGN					800
		TOTAL FUNDING	TRN		E		700
			TRN		N		300E
							1,200N
140.	X128	KUHIO HIGHWAY, REPLACEMENT OF WAIOLI, WAIPA, AND WAIKOKO STREAM BRIDGES, KAUAI					
		LAND ACQUISITION AND DESIGN FOR THE REPLACEMENT OF WAIOLI STREAM BRIDGE, WAIPA STREAM BRIDGE, AND WAIKOKO STREAM BRIDGE ON KUHIO HIGHWAY ROUTE 560. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		LAND DESIGN					650
		TOTAL FUNDING	TRN		1,750		
			TRN		350E		130E
			TRN		1,400N		520N
TRN595 - HIGHWAYS ADMINISTRATION							
141.	X091	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					200
		CONSTRUCTION					800
		TOTAL FUNDING	TRN				800E
			TRN				800N
142.	X096	CLOSE-OUT OF HIGHWAY RIGHTS-OF-WAY, STATEWIDE					
		LAND ACQUISITION FOR COMPLETION OF ACQUISITION OF OUTSTANDING RIGHT-OF-WAY PARCELS ON PREVIOUSLY CONSTRUCTED PROJECTS OR PROJECTS WITH NECESSARY MITIGATIVE RESPONSES. ALSO, TO PROVIDE FOR THE TRANSFER OF REAL ESTATE INTERESTS FROM THE STATE TO THE COUNTIES FOR THE IMPLEMENTATION OF THE STATE HIGHWAY SYSTEM.					
		LAND					300
		TOTAL FUNDING	TRN				300E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
143.	X097	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		100
		CONSTRUCTION			1,250		1,250
		TOTAL FUNDING	TRN		1,350E		1,350E
144.	X098	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					3,000
		TOTAL FUNDING	TRN		375E		600E
			TRN			N	2,400N
145.	X099	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 (FHWA). THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			1,000		2,750
		TOTAL FUNDING	TRN		200E		550E
			TRN		800N		2,200N
146.	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 ACT (ADA) STANDARDS; AND INSTALLING CLOSED CIRCUIT TELEVISION FOR THE FREEWAY MANAGEMENT SYSTEM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			300		
		CONSTRUCTION			3,300		1,500
		TOTAL FUNDING	TRN		960E		300E
			TRN		2,640N		1,200N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
147.	X222	SEISMIC RETROFIT OF VARIOUS BRIDGES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR SEISMIC RETROFIT OF VARIOUS BRIDGES ON OAHU AND HAWAII. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					500
		CONSTRUCTION			8,000		500
		TOTAL FUNDING	TRN		1,600E		200E
			TRN		6,400N		800N
148.	X224	HIGHWAY SHORELINE PROTECTION, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR SHORELINE PROTECTION IMPROVEMENTS OF EXISTING STATE HIGHWAY FACILITIES, INCLUDING SHORELINE PROTECTION STRUCTURES, RELOCATION AND REALIGNMENT OF THE HIGHWAY AND BEACH FILL/NOURISHMENT. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN			550		1,975
		CONSTRUCTION					5,000
		TOTAL FUNDING	TRN		550E		2,975E
			TRN		N		4,000N
149.	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			23,997		23,997
		TOTAL FUNDING	TRN		18,000B		18,000B
			TRN		6,000N		6,000N
150.	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			2,000		1,000
		TOTAL FUNDING	TRN		400E		200E
			TRN		1,600N		800N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
151.	X230	BIKEWAY IMPROVEMENTS AT VARIOUS LOCATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION TO PROVIDE AND IMPROVE 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			400		500
		CONSTRUCTION			1,000		1,000
		TOTAL FUNDING	TRN		280E		300E
			TRN		1,120N		1,200N
152.	X231	HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY RENOVATION, OAHU					
		LAND ACQUISITION AND CONSTRUCTION FOR THE RENOVATION AND IMPROVEMENTS TO THE HIGHWAYS DIVISION MATERIALS TESTING AND RESEARCH FACILITY.					
		LAND			150		
		CONSTRUCTION			3,700		
		TOTAL FUNDING	TRN		3,850E		E
153.	X232	ALIIAIMOKU HALE BUILDING ELECTRICAL UPGRADING, OAHU					
		DESIGN AND CONSTRUCTION TO UPGRADE THE ELECTRICAL DISTRIBUTION SYSTEM TO CURRENT ELECTRICAL DEMANDS AND STANDARDS.					
		DESIGN			250		
		CONSTRUCTION					1,650
		TOTAL FUNDING	TRN		250E		1,650E
154.	X233	DESIGN MANAGEMENT SUPPORT, STATEWIDE					
		DESIGN FOR DESIGN MANAGEMENT SUPPORT SERVICE COSTS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENT PROGRAM (CIP) PROJECTS FOR THE DEPARTMENT OF TRANSPORTATION'S HIGHWAY DIVISION.					
		DESIGN			1,250		
		TOTAL FUNDING	TRN		1,250B		B
155.	X234	INTERSECTION AND ROADWAY IMPROVEMENTS TO VARIOUS HARBOR FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR INTERIM OR PERMANENT INTERSECTION IMPROVEMENTS INCLUDING TRAFFIC SIGNALS, STRIPING, AND OTHER IMPROVEMENTS AT VARIOUS INTERSECTIONS SERVICING HARBOR FACILITIES, STATEWIDE.					
		DESIGN			650		
		CONSTRUCTION			4,300		
		TOTAL FUNDING	TRN		4,950E		E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
155.01.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. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					200
		TOTAL FUNDING	TRN		E		199E
			TRN		N		1N
D. ENVIRONMENTAL PROTECTION							
HTH840 - ENVIRONMENTAL MANAGEMENT							
1.	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 342D, HRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION		12,317			12,317
		TOTAL FUNDING	HTH	2,053 C			2,053 C
			HTH	10,264 N			10,264 N
2.	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		9,964			9,964
		TOTAL FUNDING	HTH	1,661 C			1,661 C
			HTH	8,303 N			8,303 N
LNR402 - FORESTS AND WILDLIFE RESOURCES							
2.01.		NORTH KOHALA COMMUNITY RESOURCE CENTER, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE HAWAII WILDLIFE CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					50
		CONSTRUCTION					449
		EQUIPMENT					1
		TOTAL FUNDING	LNR		C		500C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
LNR906 - LNR - NATURAL AND PHYSICAL ENVIRONMENT							
3.	J00	ADA PUBLIC ACCESSIBILITY AT DLNR FACILITIES, STATEWIDE					
		CONSTRUCTION TO PROVIDE PUBLIC ACCESSIBILITY AT DLNR FACILITIES.					
		CONSTRUCTION		4,000			
		TOTAL FUNDING	LNR	4,000C			C
4.	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		2,175		2,175	
		TOTAL FUNDING	LNR	2,175C		2,175C	
E. HEALTH							
HTH111 - HANSEN'S DISEASE SERVICES							
0.01.	111701	KALAUPAPA SETTLEMENT, BULKHEAD AND PIER REPAIRS, MOLOKAI					
		DESIGN FOR THE REPLACEMENT OF THE KALAUPAPA HARBOR BULKHEAD WALL AND MAJOR REPAIRS TO THE KALAUPAPA PIER.					
		DESIGN				750	
		TOTAL FUNDING	AGS		C	750C	
HTH501 - DEVELOPMENTAL DISABILITIES							
0.02.	501701	WAIMANO HALE COMPLEX, VARIOUS IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION OF VARIOUS IMPROVEMENTS TO THE WAIMANO HALE COMPLEX. IMPROVEMENTS SHALL INCLUDING RE-ROOFING, RENOVATIONS OF EXISTING BUILDINGS, SITEWORK AND PARKING LOT IMPROVEMENTS.					
		DESIGN				125	
		CONSTRUCTION				1,375	
		TOTAL FUNDING	AGS		C	1,500C	
0.03.		LANAKILA REHABILITATION CENTER, OAHU					
		PLANS AND DESIGN FOR RENOVATIONS TO THE WAHIAWA CENTER AT THE WAHIAWA FRESHWATER STATE PARK. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS				250	
		DESIGN				250	
		TOTAL FUNDING	HTH		C	500C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
HTH595 - HEALTH RESOURCES ADMINISTRATION							
1.	50022	WAIANAE COAST COMPREHENSIVE HEALTH CENTER, OAHU					
		DESIGN AND CONSTRUCTION FOR SAFETY AND SECURITY IMPROVEMENTS, AND FOR THE RENOVATION OF THE OUTPATIENT BUILDING. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			446		
		CONSTRUCTION			2,500		
		TOTAL FUNDING	HTH		2,946C		C
2.	50023	ORGAN DONOR CENTER OF HAWAII, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR EQUIPMENT TO INCREASE ORGAN AND TISSUE DONATIONS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			5		
		CONSTRUCTION			10		
		EQUIPMENT			35		
		TOTAL FUNDING	HTH		50C		C
3.	50024	RONALD MCDONALD HOUSE CHARITIES, OAHU					
		LAND ACQUISITION TO ACQUIRE A FACILITY TO LODGE FAMILIES OF CHILDREN REQUIRING MEDICAL TREATMENT WHILE ON OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND			500		
		TOTAL FUNDING	HTH		500C		C
4.	10013	MOLOKAI GENERAL HOSPITAL, MOLOKAI					
		DESIGN AND CONSTRUCTION TO EXPAND AND IMPROVE MOLOKAI GENERAL HOSPITAL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			200		200
		CONSTRUCTION			1,400		1,400
		TOTAL FUNDING	HTH		1,600C		1,600C
5.	50026	BAY CLINIC, INC., HAWAII					
		DESIGN AND CONSTRUCTION FOR A NEW MEDICAL CLINIC AND IMPROVEMENTS TO EXISTING FACILITIES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			150		
		CONSTRUCTION			850		
		TOTAL FUNDING	HTH		1,000C		C
5.01.		WAIANAE DISTRICT COMPREHENSIVE HEALTH AND HOSPITAL BOARD, INC., OAHU					
		DESIGN AND CONSTRUCTION FOR THE WAIANAE COAST COMPREHENSIVE HEALTH CENTER CAPITAL IMPROVEMENT PROJECT TO UPGRADE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		AND EXPAND EMERGENCY SERVICES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					300
		CONSTRUCTION					3,450
		TOTAL FUNDING	HTH		C		3,750C
5.02.		KOKUA KALIHI VALLEY, OAHU					
		CONSTRUCTION TO RENOVATE THE P&P BUILDING AND FOR INFRASTRUCTURE IMPROVEMENTS AT KALIHI VALLEY NATURE PARK. THE PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION					1,000
		TOTAL FUNDING	HTH		C		1,000C
5.03.		COMMUNITY CLINIC OF MAUI INC., MAUI					
		CONSTRUCTION TO RENOVATE GSF BUILDING IN WAILUKU, MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION					1,359
		TOTAL FUNDING	HTH		C		1,359C
5.04.		HAWAII ORGAN PROCUREMENT ORGANIZATION, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION ASSOCIATED WITH THE PURCHASE AND RENOVATION OF A FBE SIMPLE OFFICE FACILITY FOR THE ORGAN DONOR CENTER OF HAWAII. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND					1
		DESIGN					9
		CONSTRUCTION					90
		TOTAL FUNDING	HTH		C		100C
5.05.		WAIKIKI HEALTH CENTER, OAHU					
		CONSTRUCTION TO RECONDITION FACILITIES AT WAIALUA COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION					25
		TOTAL FUNDING	HTH		C		25C
5.06.		OHANA CARE, KAUAI					
		DESIGN AND CONSTRUCTION TO RENOVATE ROOMS FOR PROGRAM USE AT THE QI CENTER KAUAI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					10
		CONSTRUCTION					190
		TOTAL FUNDING	HTH		C		200C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
5.07.		PACIFIC HEALTH MINISTRY, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO COMPLETE RENOVATIONS ON BUILDING FOR EXPANSION OF NEW PROGRAMS AND EXPANSION OF SERVICES TO OTHER ISLANDS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND					149
		DESIGN					34
		CONSTRUCTION					41
		TOTAL FUNDING	HTH		C		224C
HTH210 - HAWAII HEALTH SYSTEMS CORPORATION							
6. 05001		LUMP SUM CIP - LIFE SAFETY PROJECTS - FIRE PROTECTION, ROOFING, ELECTRICAL UPGRADES, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO ADDRESS LIFE SAFETY ISSUES AT VARIOUS HHSC FACILITIES. PROJECTS INCLUDE, BUT ARE NOT LIMITED TO, FIRE PROTECTION, ELECTRICAL UPGRADE, ELEVATOR RECALL SYSTEM, ROOFING, AND NURSE CALL SYSTEM UPGRADE.					
		DESIGN				507	50
		CONSTRUCTION				4,208	700
		EQUIPMENT				175	275
		TOTAL FUNDING	HTH			4,890C	1,025C
7. P30015		HAWAII HEALTH SYSTEMS FOUNDATION, HAWAII					
		CONSTRUCTION FOR A LONG-TERM CARE VETERANS HOME LOCATED ON THE CAMPUS OF THE HILO MEDICAL CENTER.					
		CONSTRUCTION				18,228	5,000
		TOTAL FUNDING	HTH		C		3,200C
			HTH			18,228N	1,800N
8.		MAUI MEMORIAL MEDICAL CENTER, ROOFING REPAIR/ REPLACEMENT, MAUI					
		DESIGN AND CONSTRUCTION TO REPLACE AGING AND WIND DAMAGED ROOFS.					
		DESIGN				50	
		CONSTRUCTION				700	
		TOTAL FUNDING	HTH			750C	C
9.		MAUI MEMORIAL MEDICAL CENTER, PARKING STRUCTURE, MAUI					
		DESIGN AND CONSTRUCTION FOR A PARKING STRUCTURE FOR MAUI MEMORIAL MEDICAL CENTER.					
		DESIGN				1,000	
		CONSTRUCTION				21,000	
		TOTAL FUNDING	HTH			22,000E	E

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
10.		WEST MAUI MEDICAL FACILITIES, MAUI					
		PLANS AND DESIGN FOR LONG-TERM CARE FACILITIES, ANCILLARY SUPPORT BUILDINGS, AND MEDICAL CLINIC IN WEST MAUI.					
		PLANS DESIGN			350		
		TOTAL FUNDING	HTH		650		
					1,000C		C
11.		MAUI MEMORIAL MEDICAL CENTER, HELIPORT, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A HELIPORT TO TRANSPORT PATIENTS.					
		DESIGN			1		
		CONSTRUCTION			748		
		EQUIPMENT			1		
		TOTAL FUNDING	HTH		750C		C
11.01.		HHSC38 MAUI MEMORIAL MEDICAL CENTER, HOSPITAL EXPANSION PROJECT, PHASE 1, MAUI					
		CONSTRUCTION FOR EXPANSION OF MAUI MEMORIAL MEDICAL CENTER.					
		CONSTRUCTION					5,300
		TOTAL FUNDING	HTH			C	5,300C
11.02.		MAUI MEMORIAL MEDICAL CENTER, AIR CONDITIONING, MAUI					
		CONSTRUCTION AND EQUIPMENT TO UPGRADE AIR CONDITIONING AND ENERGY EFFICIENCY SYSTEMS, AND RELATED IMPROVEMENTS.					
		CONSTRUCTION					3,300
		EQUIPMENT					3,300
		TOTAL FUNDING	HTH			C	6,600C
11.03.		MAUI MEMORIAL MEDICAL CENTER EMERGENCY ROOM, MAUI					
		CONSTRUCTION FOR RENOVATION AND EXPANSION OF THE EMERGENCY/URGENT CARE DEPARTMENT.					
		CONSTRUCTION					2,884
		TOTAL FUNDING	HTH			C	2,884C
11.04.		HILO MEDICAL CENTER, EMERGENCY ROOM, HAWAII					
		CONSTRUCTION FOR AN EMERGENCY ROOM FACILITY AT THE HILO MEDICAL CENTER.					
		CONSTRUCTION					2,500
		TOTAL FUNDING	HTH			C	2,500C
HTH430 - ADULT MENTAL HEALTH - INPATIENT							
12.	430601	HAWAII STATE HOSPITAL, VARIOUS IMPROVEMENTS TO THE COMPLEX, OAHU					
		DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO THE HOSPITAL COMPLEX. IMPROVEMENTS MAY INCLUDE REROOFING, RENOVATIONS, AIR CONDITIONING UPGRADES, AND OTHER VARIOUS IMPROVEMENTS.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		DESIGN		54			1
		CONSTRUCTION		1			409
		TOTAL FUNDING	AGS	55 C			410 C
12.01.	430701	HAWAII STATE HOSPITAL, SECURITY MEASURES, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL FENCING AND OTHER RELATED SECURITY MEASURES.					
		DESIGN					103
		CONSTRUCTION					1,550
		TOTAL FUNDING	AGS		C		1,653 C
12.02.	430703	HAWAII STATE HOSPITAL, IMPROVEMENTS AND CORRECTIVE WORK TO CAMPUS FACILITIES, OAHU					
		DESIGN AND CONSTRUCTION TO PROVIDE IMPROVEMENTS AND CORRECTIVE WORK TO THE CAMPUS FACILITIES.					
		DESIGN					175
		CONSTRUCTION					994
		TOTAL FUNDING	AGS		C		1,169 C
12.03.	430704	HAWAII STATE HOSPITAL, DEMOLITION OF GODDARD BUILDING, OAHU					
		DESIGN AND CONSTRUCTION TO REMOVE ALL HAZARDOUS MATERIALS AND TO DEMOLISH THE GODDARD BUILDING.					
		DESIGN					349
		CONSTRUCTION					1
		TOTAL FUNDING	AGS		C		350 C
12.04.		SUTTER HEALTH PACIFIC, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION OF KAHI MOHALA'S FACILITIES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					147
		EQUIPMENT					1
		TOTAL FUNDING	HTH		C		150 C
HTH710 - STATE LABORATORY SERVICES							
12.05.	710702	DEPARTMENT OF HEALTH LABORATORY, VARIOUS IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION TO REROOF THE ENTIRE BUILDING AND TO INSTALL PROTECTIVE RAILINGS ON THE PARAPET WALLS.					
		DESIGN					35
		CONSTRUCTION					177
		TOTAL FUNDING	AGS		C		212 C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
HTH907 - GENERAL ADMINISTRATION							
13.	907601	VARIOUS IMPROVEMENTS TO DEPARTMENT OF HEALTH FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS TO DOH FACILITIES STATEWIDE. IMPROVEMENTS MAY INCLUDE REROOFING, RENOVATIONS, AIR CONDITIONING UPGRADES, AND OTHER VARIOUS IMPROVEMENTS.					
		DESIGN		420			
		CONSTRUCTION		1		2,854	O
		TOTAL FUNDING	AGS	421 C		2,854 C	F
13.01.	907702	WAIMANO RIDGE, WATER SYSTEM IMPROVEMENTS, OAHU					
		DESIGN TO REPLACE WATERLINES, INSTALL FIRE HYDRANTS AND TO CONSTRUCT A NEW CONCRETE WATER TANK.					
		DESIGN				436	
		TOTAL FUNDING	AGS		C	436 C	
13.02.		KOOLAULOA COMMUNITY HEALTH AND WELLNESS CENTER, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR FACILITIES FOR THE KOOLAULOA COMMUNITY HEALTH AND WELLNESS CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS				25	
		DESIGN				25	
		CONSTRUCTION				550	
		TOTAL FUNDING	HTH		C	600 C	
F. SOCIAL SERVICES							
HMS501 - YOUTH SERVICES ADMINISTRATION							
1.		BOYS AND GIRLS CLUB OF THE BIG ISLAND, HAWAII					
		DESIGN AND CONSTRUCTION FOR FACILITY RENOVATIONS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN		10			
		CONSTRUCTION		190			
		TOTAL FUNDING	HMS	200 C			C
1.01.		HALE KIPA, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A COMPREHENSIVE CORE FACILITY, TWO RESIDENTIAL SITES, AND A SCHOOL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS				50	
		DESIGN				200	
		CONSTRUCTION				1,250	
		TOTAL FUNDING	HMS		C	1,500 C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F

HMS502 - YOUTH SERVICES PROGRAM

2. BIG BROTHERS BIG SISTERS OF HONOLULU, INC., OAHU

LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO ACQUIRE AND IMPROVE A FACILITY FOR AN ADMINISTRATIVE HEADQUARTERS AND RELATED PROGRAMS FOR BIG BROTHERS BIG SISTERS OF HONOLULU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

LAND			498		
DESIGN			1		
CONSTRUCTION			1		
TOTAL FUNDING	HMS		500C		C

2.01. BOYS AND GIRLS CLUB OF HAWAII, YOUTH CENTER IN NANAKULI, OAHU

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE BOYS AND GIRLS CLUB OF HAWAII, CLUB HOUSE IN NANAKULI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

DESIGN					50
CONSTRUCTION					1,900
EQUIPMENT					50
TOTAL FUNDING	HMS			C	2,000C

HMS503 - YOUTH RESIDENTIAL PROGRAMS

3. P50033 HYCF, SECURITY AND INFRASTRUCTURE IMPROVEMENTS AND REPAIRS, OAHU

DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND REPAIRS TO THE HAWAII YOUTH CORRECTIONAL FACILITY.

DESIGN			20		
CONSTRUCTION			80		
TOTAL FUNDING	HMS		100C		C

3.01. HYCF, LUMP SUM CIP - REPAIRS, IMPROVEMENTS, AND SAFETY MEASURES, OAHU

DESIGN AND CONSTRUCTION FOR REPAIRS AND IMPROVEMENTS TO THE HAWAII YOUTH CORRECTIONAL FACILITY TO ADDRESS THE DEPARTMENT OF JUSTICE MEMORANDUM OF AGREEMENT AND OTHER URGENT HEALTH AND SAFETY CONCERNS.

DESIGN					145
CONSTRUCTION					1,600
TOTAL FUNDING	HMS			C	1,745C

DEF112 - SERVICES TO VETERANS

4. OVS932 HAWAII STATE VETERANS CEMETERY, OAHU

PLANS, DESIGN, AND CONSTRUCTION FOR REPAIRS TO THE HAWAII STATE VETERANS CEMETERY. REPAIRS MAY INCLUDE, BUT NOT BE

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		LIMITED TO, ROAD CRACK REPAIR AND MONITORING, DRAINAGE IMPROVEMENTS, AND SLOPE REPAIR ABOVE THE COLUMBARIUM.					
		PLANS			60		
		DESIGN			60		
		CONSTRUCTION			444		
		TOTAL FUNDING	AGS		564	C	C
5.		NISEI VETERANS MEMORIAL CENTER, MAUI					
		DESIGN AND CONSTRUCTION FOR THE ADULT DAY CARE FACILITY COMPONENT OF THE NISEI VETERANS MEMORIAL'S INTERGENERATIONAL CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			100		
		CONSTRUCTION			1,400		
		TOTAL FUNDING	AGS		1,500	C	C
6.		ARIZONA MEMORIAL MUSEUM ASSOCIATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO REPLACE THE MUSEUM AND VISITOR CENTER AT THE USS ARIZONA MEMORIAL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS			300		
		DESIGN			100		
		CONSTRUCTION			100		500
		TOTAL FUNDING	DEF		500	C	500C
7.		OAHU VETERANS CENTER, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PHASE II IMPROVEMENTS AT THE OAHU VETERANS CENTER AT FOSTER VILLAGE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			50		
		CONSTRUCTION			790		
		EQUIPMENT			10		
		TOTAL FUNDING	DEF		850	C	C
7.01.		NISEI VETERANS MEMORIAL CENTER, EDUCATION CENTER, MAUI					
		CONSTRUCTION FOR EDUCATION CENTER TO HOUSE NISEI VETERANS ARCHIVES, AND PROVIDE CLASSROOM SPACE FOR STUDENT SEMINARS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION					750
		TOTAL FUNDING	DEF			C	750C
7.02.		100TH INFANTRY BATTALION VETERANS APARTMENT PROJECT, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR RENOVATION AND REPAIRS TO THE 100TH INFANTRY BATTALION VETERANS APARTMENT					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		PROJECT. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					498
		TOTAL FUNDING	DEF		C		500C
7.03.		PACIFIC AVIATION MUSEUM-PEARL HARBOR, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO DEVELOP AN AVIATION MUSEUM AND NATIONAL HISTORIC SITE ON FORD ISLAND. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					70
		DESIGN					80
		CONSTRUCTION					350
		TOTAL FUNDING	DEF		C		500C
7.04.		USS MISSOURI MEMORIAL ASSOCIATION, INC., OAHU					
		CONSTRUCTION FOR ADA COMPLIANT ACCESS FOR THE USS MISSOURI MEMORIAL. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION					490
		TOTAL FUNDING	DEF		C		490C
HMS601 - ADULT AND COMMUNITY CARE SERVICES BRANCH							
8.		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
HMS220 - RENTAL HOUSING SERVICES							
9.	RH006	LARGE CAPACITY CESSPOOL CONVERSIONS FOR FEDERAL AND STATE PROJECTS, STATEWIDE					
		DESIGN AND CONSTRUCTION TO CLOSE AND UPGRADE HCDCH CESSPOOLS.					
		DESIGN				300	300
		CONSTRUCTION				1,700	1,700
		TOTAL FUNDING	HMS			2,000C	2,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
HMS229 - HCDCH ADMINISTRATION							
11.	HA007	LUMP SUM CIP - REPAIR AND MAINTENANCE, SITE IMPROVEMENTS, AND RENOVATIONS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE REPAIR AND MAINTENANCE, SITE IMPROVEMENTS, AND RENOVATIONS OF EXISTING HOUSING PROJECTS, STATEWIDE.					
		DESIGN			500		500
		CONSTRUCTION			2,500		1,500
		TOTAL FUNDING	HMS		3,000C		2,000C
11.01.	F22902	LANAKILA HOMES, PHASE IIA & IIB, BUILDING CONSTRUCTION, HILO, HAWAII					
		DESIGN AND CONSTRUCTION TO REPAIR VARIOUS BUILDINGS AT LANAKILA HOMES, PHASE IIA & IIB.					
		DESIGN					700
		CONSTRUCTION					1,500
		TOTAL FUNDING	HMS			C	2,200C
11.02.	F22903	LANAKILA HOMES, PHASE IIIA, BUILDING CONSTRUCTION, HILO, HAWAII					
		DESIGN AND CONSTRUCTION OF VARIOUS BUILDINGS AT LANAKILA HOMES, PHASE IIIA.					
		DESIGN					350
		CONSTRUCTION					2,100
		TOTAL FUNDING	HMS			C	2,450C
11.03.	F22904	KAHALE KAHALUU BUILDING MODERNIZATION, KAILUA-KONA, HAWAII					
		CONSTRUCTION OF MODERNIZATION OF 50 UNITS AT THE KAHALE KAHALUU PUBLIC HOUSING PROJECT IN KAILUA-KONA, HAWAII.					
		CONSTRUCTION					1,500
		TOTAL FUNDING	HMS			C	1,500C
11.04.	F22905	KALIHI VALLEY HOMES HA-105 PHASE 3, BUILDING MODERNIZATION, OAHU					
		CONSTRUCTION TO REPAIR VARIOUS BUILDINGS AT KALIHI VALLEY HOMES, OAHU.					
		CONSTRUCTION					300
		TOTAL FUNDING	HMS			C	300C
11.05.		PALOLO VALLEY HOMES, ROCKFALL MITIGATION / FENCING, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR FENCING / ROCKFALL MITIGATION AT THE PALOLO VALLEY HOMES COMPLEX.					
		PLANS					10
		DESIGN					10
		CONSTRUCTION					480
		TOTAL FUNDING	HMS			C	500C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
BED225 - PRIVATE HOUSING DEV & OWNERSHIP							
11.06.		HANA RANCH AFFORDABLE HOUSING DEVELOPMENT, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION TO DEVELOP AFFORDABLE HOUSING IN HANA.					
		PLANS			500		
		DESIGN			250		
		CONSTRUCTION			750		
		TOTAL FUNDING	BED		1,500		C
HMS224 - HOMELESS SERVICES							
12.		LEEWARD COAST HOMELESS SHELTER, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR A NEW HOMELESS SHELTER FOR THE LEEWARD COAST OF OAHU.					
		PLANS			1		
		LAND			1		
		DESIGN			1		
		CONSTRUCTION			497		
		TOTAL FUNDING	HMS		500		C
HHL602 - PLANNING AND DEVELOPMENT FOR HAWAIIAN HOMESTEADS							
13.		NANAKULI HAWAIIAN HOMESTEAD COMMUNITY ASSOCIATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A NEW COMMUNITY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS			1		
		DESIGN			1		
		CONSTRUCTION			1,198		
		TOTAL FUNDING	HHL		1,200		C
14.		HAWAII MAOLI, OAHU					
		DESIGN AND CONSTRUCTION FOR A COMMUNITY CENTER FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			25		
		CONSTRUCTION			75		
		TOTAL FUNDING	HHL		100		C
15.		WAIMANALO HAWAIIAN HOMES ASSOCIATION, OAHU					
		DESIGN AND CONSTRUCTION FOR A CERTIFIED KITCHEN FACILITY AND COMPUTER TECHNOLOGY CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			100		
		CONSTRUCTION			900		
		TOTAL FUNDING	HHL		1,000		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
15.01.	HHL002	NANAİKAPONO SEWER IMPROVEMENTS, NANAKULI, OAHU					
		CONSTRUCTION OF REMOVAL OF LARGE CAPACITY CESSPOOLS AT THE FORMER NANAİKAPONO ELEMENTARY SCHOOL AND CONSTRUCTION OF NEW SEWER FACILITIES WHICH WILL CONNECT THE SITE TO THE EXISTING COUNTY SEWER SYSTEM.					
		CONSTRUCTION					1,500
		TOTAL FUNDING	HHL		C		1,500C
15.02.		HAWAIIAN HOME LANDS KAPOLEI RESIDENTIAL PROJECT, COMMUNITY FACILITY, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A COMMUNITY CENTER AT THE DEPARTMENT OF HAWAIIAN HOME LANDS KAPOLEI RESIDENTIAL PROJECT.					
		PLANS					1
		LAND					1
		DESIGN					1
		CONSTRUCTION					996
		EQUIPMENT					1
		TOTAL FUNDING	HHL		C		1,000C
HTH904 - EXECUTIVE OFFICE ON AGING							
16.	50044	PACIFIC HEALTH MINISTRY, OAHU					
		LAND ACQUISITION, DESIGN, AND CONSTRUCTION TO ACQUIRE AND IMPROVE FACILITIES FOR THE PACIFIC HEALTH MINISTRY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND					150
		DESIGN					10
		CONSTRUCTION					40
		TOTAL FUNDING	HTH			200C	C
17.	50045	POHAI NANI GOOD SAMARITAN, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A SENIOR WELLNESS CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					5
		DESIGN					20
		CONSTRUCTION					475
		TOTAL FUNDING	HTH			500C	C
17.01.		PALOLO CHINESE HOME, OAHU					
		CONSTRUCTION OF SKILLED NURSING/FOOD SERVICE COMPLEX AND ASSOCIATED INFRASTRUCTURE IMPROVEMENTS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION					100
		TOTAL FUNDING	HTH		C		100C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F

17.02. HALE MAHAOLU, MAUI

CONSTRUCTION OF AN AFFORDABLE RENTAL HOUSING CAMPUS FOR THE ELDERLY IN SOUTH MAUI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

CONSTRUCTION							1,150
TOTAL FUNDING	HTH				C		1,150C

HMS904 - GENERAL ADMINISTRATION

17.03. KEEHI MEMORIAL ORGANIZATION, OAHU

CONSTRUCTION OF THE KEEHI ADULT DAY HEALTH CENTER AND CHILD CARE CENTER FACILITY. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

CONSTRUCTION							1,000
TOTAL FUNDING	HMS				C		1,000C

HMS901 - GENERAL SUPPORT FOR SOCIAL SERVICES

18. HALE MAKUA, MAUI

DESIGN AND CONSTRUCTION FOR VARIOUS RENOVATIONS AND IMPROVEMENTS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.

DESIGN						1	
CONSTRUCTION						999	
TOTAL FUNDING	HMS					1,000C	C

G. FORMAL EDUCATION

EDN100 - SCHOOL-BASED BUDGETING

1. 000018 LUMP SUM CIP - CESSPOOL REMOVAL, STATEWIDE

DESIGN AND CONSTRUCTION FOR THE ELIMINATION OF CESSPOOLS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.

DESIGN						1,000	1,000
CONSTRUCTION						10,000	10,000
TOTAL FUNDING	EDN					11,000B	11,000B

2. 001001 LUMP SUM CIP - RELOCATE/CONSTRUCT TEMPORARY FACILITIES, STATEWIDE

DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RELOCATION OR CONSTRUCTION OF TEMPORARY FACILITIES AND RELATED SITE IMPROVEMENTS, EACH SCHOOL YEAR TO MEET ENROLLMENT SHIFTS, UNFORESEEN EMERGENCIES, AND TO PROVIDE TEMPORARY FACILITIES WHILE NEW SCHOOLS ARE BEING PLANNED AND/OR CONSTRUCTED.

DESIGN						500	1,000
CONSTRUCTION						4,000	5,000
EQUIPMENT						500	1,000
TOTAL FUNDING	EDN					5,000B	7,000B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
3.	002002	LUMP SUM CIP - MINOR RENOVATIONS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MINOR ADDITIONS, RENOVATIONS, AND IMPROVEMENTS TO BUILDINGS AND SCHOOL SITES TO IMPROVE THE EDUCATIONAL PROGRAM AND TO CORRECT EDUCATIONAL SPECIFICATIONS DEFICIENCIES.					
		DESIGN			300		300
		CONSTRUCTION			2,400		2,400
		EQUIPMENT			300		300
		TOTAL FUNDING	EDN		3,000B		3,000B
4.	020	LUMP SUM CIP - SCHOOL BUILDING IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE IMPROVEMENTS TO 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			10,000		
		CONSTRUCTION			65,000		
		TOTAL FUNDING	EDN		75,000B		B
5.	006006	LUMP SUM CIP - ARCHITECTURAL BARRIER REMOVAL, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO HANDICAPPED PERSONS.					
		DESIGN			300		300
		CONSTRUCTION			1,700		1,700
		TOTAL FUNDING	EDN		2,000B		2,000B
6.	007071	LUMP SUM CIP - PUBLIC ACCOMMODATIONS TRANSITION PLAN, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE PROVISION OF RAMPS, ELEVATORS, AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TYPICALLY VISITED BY THE PUBLIC; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			250		400
		CONSTRUCTION			500		1,600
		TOTAL FUNDING	EDN		750B		2,000B
7.	008008	LUMP SUM CIP - ASBESTOS/LEAD REMOVAL, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR THE CORRECTION, IMPROVEMENT, AND RENOVATION OF ALL EXISTING SCHOOL BUILDINGS. PROJECT TO INCLUDE THE REMOVAL OF ASBESTOS AND/OR LEAD.					
		DESIGN			50		50
		CONSTRUCTION			450		450
		TOTAL FUNDING	EDN		500B		500B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
8.	000007	LUMP SUM CIP - SPECIAL EDUCATION RENOVATIONS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE CLASSROOMS TO ADDRESS SPECIAL EDUCATION NEEDS.					
		DESIGN		250		250	
		CONSTRUCTION		500		500	
		EQUIPMENT		250		250	
		TOTAL FUNDING	EDN	1,000B		1,000B	
9.	19	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	EDN	2,000B		2,000B	
10.	P00026	LUMP SUM CIP - PLAYGROUND EQUIPMENT AND ACCESSIBILITY, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO REPLACE PLAYGROUND EQUIPMENT WHICH DOES NOT MEET SAFETY STANDARDS, PROVIDE APPROPRIATE PADDING IN THE AREA OF PLAYGROUND EQUIPMENT, PROVIDE ACCESSIBILITY TO THE PLAY AREAS/EQUIPMENT PER AMERICANS WITH DISABILITIES ACT ACCESSIBILITY GUIDELINES (ADAAG); GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		50		50	
		CONSTRUCTION		400		2,000	
		EQUIPMENT		300		300	
		TOTAL FUNDING	EDN	750B		2,350B	
11.	005005	LUMP SUM CIP - FIRE PROTECTION, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR FIRE PROTECTION SYSTEMS AND/OR CORRECTIVE MEASURES TO ADDRESS FIRE CODE VIOLATIONS.					
		DESIGN		100		100	
		CONSTRUCTION		400		400	
		TOTAL FUNDING	EDN	500B		500B	
12.	009009	LUMP SUM CIP - HEALTH AND SAFETY, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SCHOOL FACILITIES AND GROUNDS TO MEET HEALTH, SAFETY REQUIREMENTS/LAWS AND ORDINANCES AND/OR COUNTY REQUIREMENTS.					
		DESIGN		100		100	
		CONSTRUCTION		400		400	
		TOTAL FUNDING	EDN	500B		500B	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
13.	000020	LUMP SUM CIP - STRUCTURAL RENOVATIONS AND IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF SCHOOLS IN NEED OF REPAIRS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			500		500
		CONSTRUCTION			2,450		2,450
		EQUIPMENT			50		50
		TOTAL FUNDING	EDN		3,000B		3,000B
14.	004004	LUMP SUM CIP - NOISE/HEAT ABATEMENT, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR CORRECTIVE MEASURES TO SCHOOLS AFFECTED BY EXCESSIVE NOISE AND VENTILATION PROBLEMS.					
		DESIGN			300		500
		CONSTRUCTION			1,700		9,500
		TOTAL FUNDING	EDN		2,000B		5,000B
			EDN			A	5,000A
15.	014050	LUMP SUM CIP - ELECTRICAL UPGRADES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES AT VARIOUS SCHOOLS, STATEWIDE.					
		DESIGN			500		500
		CONSTRUCTION			1,500		1,500
		TOTAL FUNDING	EDN		2,000B		2,000B
16.	011	LUMP SUM CIP - TELECOMMUNICATIONS UPGRADES, 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	EDN		2,000B		2,000B
17.	18	LUMP SUM CIP - MASTER PLANS/LAND ACQUISITION, STATEWIDE					
		PLANS AND LAND ACQUISITION FOR MASTER PLANNING, SITE SELECTION, PRE-LAND ACQUISITION STUDIES, ACQUISITION OF SMALL PARCELS, FEASIBILITY STUDIES TO MEET FUTURE AND UNFORESEEN NEEDS, AND CIP ASSISTANCE FROM CONSULTANTS IN PROVIDING COST ESTIMATES.					
		PLANS			845		245
		LAND			5		5
		TOTAL FUNDING	EDN		850B		250B
18.	000010	LUMP SUM CIP - PROJECT ADJUSTMENT FUND, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CONTINGENCY FUND FOR PROJECT					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		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			100		100
		CONSTRUCTION			300		10,300
		EQUIPMENT			100		100
		TOTAL FUNDING	EDN		500B		500B
			EDN		A		10,000A
19. 014		LUMP SUM CIP - CAPITAL IMPROVEMENTS PROGRAM COSTS, STATEWIDE					
		PLANS FOR WAGES AND FRINGES FOR PERMANENT PROJECT FUNDED STAFF POSITIONS FOR IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CIP RELATED POSITIONS.					
		PLANS			400		419
		TOTAL FUNDING	EDN		400B		419B
20. 000060		LUMP SUM CIP - STATE/DISTRICT RELOCATIONS/IMPROVEMENTS, STATEWIDE					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STATE AND DISTRICT OFFICE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			35		35
		CONSTRUCTION			180		180
		EQUIPMENT			35		35
		TOTAL FUNDING	EDN		250B		250B
20.01. 022		LUMP SUM CIP - STORM WATER PLANS, STATEWIDE					
		PLANS FOR STORM WATER PLANNING TO MEET FUTURE AND UNFORESEEN NEEDS AND CIP ASSISTANCE IN PROVIDING COST ESTIMATES FOR BUDGETING AND EXPENDITURE PLANNING.					
		PLANS					1,000
		TOTAL FUNDING	EDN		B		1,000B
21. 200052		AIEA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AIR CONDITIONING UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	EDN		1,200B		B
22. 201051		AIEA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A BUS STOP OVERHANG; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		DESIGN			15		
		CONSTRUCTION			85		
		TOTAL FUNDING	EDN		100B		B
23.	201050	AIEA INTERMEDIATE SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN			100		98
		CONSTRUCTION			550		1,100
		EQUIPMENT					1
		TOTAL FUNDING	EDN		650B		1,200B
24.	201052	AIEA INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			39		1
		CONSTRUCTION			360		268
		EQUIPMENT			1		1
		TOTAL FUNDING	EDN		400B		270B
24.01.		AIEA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO EXPAND AND RENOVATE THE ADMINISTRATION OFFICE AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					125
		CONSTRUCTION					1,050
		EQUIPMENT					50
		TOTAL FUNDING	EDN			B	1,225B
24.02.		AIEA HIGH SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS ADDRESSING STUDENT SAFETY, TRAFFIC, AND PARKING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					310
		CONSTRUCTION					1,550
		TOTAL FUNDING	EDN			B	1,861B
25.	101040	ALA WAI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			100		
		CONSTRUCTION			500		
		TOTAL FUNDING	EDN		600B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
25.01.		ALA WAI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE BATHROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					399
		TOTAL FUNDING	EDN			B	400B
26.	103001	ANUENUE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PORTABLE CLASSROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			25		
		CONSTRUCTION			199		
		EQUIPMENT			1		
		TOTAL FUNDING	EDN		225 B		B
27.	P50053	AUGUST AHRENS ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR DRAINAGE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			1		
		CONSTRUCTION			299		
		TOTAL FUNDING	EDN		300 B		B
28.	250050	AUGUST AHRENS ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			100		
		CONSTRUCTION			1,000		
		TOTAL FUNDING	EDN		1,100 B		B
28.01.		AUGUST AHRENS ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A RETAINING WALL BETWEEN SCHOOL PROPERTY AND PUBLIC AREA AND ROADWAY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					30
		CONSTRUCTION					200
		TOTAL FUNDING	EDN			B	230B
29.	400060	BALDWIN HIGH SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW OR EXPANDED LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			765		
		CONSTRUCTION			9,500		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		EQUIPMENT			25		
		TOTAL FUNDING	EDN		10,290B		B
30.	252014	CAMPBELL HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			575		334
		CONSTRUCTION					6,300
		EQUIPMENT					60
		TOTAL FUNDING	EDN		575B		6,694B
31.	301060	CASTLE HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AN ALL WEATHER TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			50		
		CONSTRUCTION			730		
		TOTAL FUNDING	EDN		780B		B
31.01.		DOLE MIDDLE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THREE PORTABLE CLASSROOMS TO ACCOMMODATE INCREASE IN PROJECTED ENROLLMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					25
		CONSTRUCTION					100
		EQUIPMENT					25
		TOTAL FUNDING	EDN			B	150B
31.02.		DOLE MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE THREE BOYS AND THREE GIRLS RESTROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					65
		CONSTRUCTION					675
		TOTAL FUNDING	EDN			B	740B
31.03.	051	EWA MAKAI MIDDLE SCHOOL, OAHU					
		DESIGN FOR NEW MIDDLE SCHOOL IN EWA, OAHU; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					3,787
		TOTAL FUNDING	EDN			B	3,787B
32.	106060	FARRINGTON HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE INSTALLATION OF AN ALL WEATHER TRACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		DESIGN			35		
		CONSTRUCTION			650		
		TOTAL FUNDING	EDN		685B		B
32.01.		FARRINGTON HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A DINING AND MULTI-USE PAVILION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					20
		CONSTRUCTION					250
		EQUIPMENT					5
		TOTAL FUNDING	EDN			B	275B
33.	206R52	HALEIWA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION AND IMPROVEMENT OF THE TEACHERS' WORKROOM AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			10		
		CONSTRUCTION			140		
		TOTAL FUNDING	EDN		150B		B
34.	402050	HANA HIGH SCHOOL, MAUI					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			100		
		CONSTRUCTION			400		
		TOTAL FUNDING	EDN		500B		B
35.	303050	HAUULA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES; TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			80		
		CONSTRUCTION			719		
		EQUIPMENT			1		
		TOTAL FUNDING	EDN		800B		B
35.01.		HEEIA ELEMENTARY SCHOOL, ELECTRICAL UPGRADES, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AND UPGRADES OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					500
		TOTAL FUNDING	EDN			B	550B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
36.	208031	HELEMANO ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR CONCRETE SIDEWALKS FRONTING THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			10		
		CONSTRUCTION			145		
		TOTAL FUNDING	EDN		155B		B
37.	208B52	HELEMANO ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE CAFETERIA AND RENOVATION OF EXISTING FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			200		
		CONSTRUCTION			1,750		
		EQUIPMENT			50		
		TOTAL FUNDING	EDN		2,000B		B
38.	P50061	HELEMANO ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			499		
		CONSTRUCTION			1		
		TOTAL FUNDING	EDN		500B		B
39.	209D52	HICKAM ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW OR EXPANDED LIBRARY AND NEW OR EXPANDED ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			600		
		CONSTRUCTION			6,970		
		EQUIPMENT			100		
		TOTAL FUNDING	EDN		7,670B		B
39.01.		HIGHLANDS INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A FENCE BETWEEN SCHOOL GROUNDS AND THE NEIGHBORING CITY PARK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					20
		CONSTRUCTION					150
		TOTAL FUNDING	EDN			B	170B
39.02.		HILO HIGH SCHOOL, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW GYMNASIUM THAT WILL ALSO SERVE AS AN EMERGENCY SHELTER;					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					700
		CONSTRUCTION					6,250
		EQUIPMENT					49
		TOTAL FUNDING	EDN		B		7,000B
40.	109050	HOKULANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				60	
		CONSTRUCTION				340	
		TOTAL FUNDING	EDN			400B	B
40.01.		HOKULANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO PAVE UNIMPROVED AREA CURRENTLY BEING USED AS A PARKING LOT, INSTALL LIGHTING, AND IF FUNDS ARE AVAILABLE, INSTALL A FENCE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					40
		CONSTRUCTION					240
		TOTAL FUNDING	EDN		B		280B
41.	358010	HOLUALOA ELEMENTARY SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION FOR TELECOMMUNICATIONS UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				299	
		TOTAL FUNDING	EDN			300B	B
41.01.		HONOKAA HIGH AND INTERMEDIATE SCHOOLS, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CONSTRUCTION OF NEW BATHROOM FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					332
		EQUIPMENT					1
		TOTAL FUNDING	EDN		B		335B
41.02.		HONOKAA HIGH AND INTERMEDIATE SCHOOLS, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE ARMORY BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		PLANS					1
		DESIGN					1
		CONSTRUCTION					1,247
		EQUIPMENT					1
		TOTAL FUNDING	EDN			B	1,250B
42.	276E65	HONOWAI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING UPGRADES FOR THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					122
		EQUIPMENT					1
		TOTAL FUNDING	EDN			124B	B
43.	279050	ILIMA INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					100
		CONSTRUCTION					1,200
		TOTAL FUNDING	EDN			1,300B	B
43.01.		JEFFERSON ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REPAIR OR REPLACE AIR CONDITIONING SYSTEM IN SCHOOL LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					25
		CONSTRUCTION					100
		TOTAL FUNDING	EDN			B	125B
44.	P50067	KAAHUMANU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REPAVEMENT OF THE PLAYCOURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					73
		EQUIPMENT					1
		TOTAL FUNDING	EDN			75B	B
45.	112052	KAAHUMANU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE UPPER GRADE PLAYGROUND; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					88
		EQUIPMENT					1
		TOTAL FUNDING	EDN			90B	B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
45.01.		KAEWAI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ASBESTOS ABATEMENT, TILE REPLACEMENT AND RELATED WORK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					125
		CONSTRUCTION					1,575
		TOTAL FUNDING	EDN		B		1,700B
46.	306050	KAHALUU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES; TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				80	
		CONSTRUCTION				719	
		EQUIPMENT				1	
		TOTAL FUNDING	EDN		800B		B
47.	307001	KAHUKU HIGH AND INTERMEDIATE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PORTABLE CLASSROOM; DEMOLITION OF EXISTING PORTABLE SPRUNG STRUCTURE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				25	
		CONSTRUCTION				219	
		EQUIPMENT				6	
		TOTAL FUNDING	EDN		250B		B
47.01.		KAHUKU HIGH AND INTERMEDIATE SCHOOL, OAHU					
		LAND ACQUISITION TO SUPPLEMENT ANY SHORTFALL TO ACQUIRE LAND TO EXPAND KAHUKU HIGH AND INTERMEDIATE SCHOOL.					
		LAND					1,500
		TOTAL FUNDING	EDN		B		1,500B
48.	115051	KAIMUKI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A MEDIA CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				299	
		TOTAL FUNDING	EDN		300B		B
49.	P50072	KALAKAUA MIDDLE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION AND EQUIPMENT FOR A NEW LOCKER/SHOWER BUILDING OR STRUCTURAL REPAIRS TO EXISTING BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				181	81

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		CONSTRUCTION EQUIPMENT		2,000		2,000	
		TOTAL FUNDING	EDN	2,181	B	2,181	B
50.	121050	KALIHI KAI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES AND REPLACEMENT OF THE BELL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		1			
		CONSTRUCTION		198			
		EQUIPMENT		1			
		TOTAL FUNDING	EDN	200	B		B
51.	P50074	KALIHI UKA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF RESTROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		1			
		CONSTRUCTION		499			
		TOTAL FUNDING	EDN	500	B		B
51.01.		KALIHI UKA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR UPGRADES TO PARKING AREA INCLUDING IMPROVEMENTS TO PICK UP AND DROP OFF AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				10	
		CONSTRUCTION				150	
		TOTAL FUNDING	EDN		B	160	B
52.	P50075	KALIHI WAENA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR PAVED PARKING STALLS ADJACENT TO BUILDING H; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		10			
		CONSTRUCTION		40			
		TOTAL FUNDING	EDN	50	B		B
53.	275079	KAMAILE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE AIR CONDITIONING OF PORTABLES, AND UPGRADES TO THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100			
		CONSTRUCTION		750			
		EQUIPMENT		50			
		TOTAL FUNDING	EDN	900	B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
53.01.		KANOELANI ELEMENTARY SCHOOL AIR CONDITIONING, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR INSTALLATION OF AIR CONDITIONING OF 7 CLASSROOMS IN P BUILDING AND THE ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION					88
		EQUIPMENT					88
		TOTAL FUNDING	EDN		B		176B
53.02.		KAPAA HIGH SCHOOL, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION FOR A COVERED WALKWAY BETWEEN THE LOWER AND UPPER CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					100
		CONSTRUCTION					299
		TOTAL FUNDING	EDN		B		400B
54. 292051		KAPOLEI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ATHLETIC COMPLEX; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				50	
		CONSTRUCTION				5,249	
		EQUIPMENT				1	
		TOTAL FUNDING	EDN			5,300B	B
55. 407050		KAUNAKAKAI ELEMENTARY SCHOOL, MOLOKAI					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL SYSTEM UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				100	
		CONSTRUCTION				400	
		TOTAL FUNDING	EDN			500B	B
56. 126031		KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE THE BELL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				144	
		TOTAL FUNDING	EDN			145B	B
56.01.		KAWANANAKOA MIDDLE SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE AUDITORIUM, INCLUDING ELECTRICAL AND PLUMBING					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					649
		EQUIPMENT					1
		TOTAL FUNDING	EDN		B		651B
56.02.		KEAAU ELEMENTARY SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION FOR A SECOND ACCESS WAY TO THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					499
		TOTAL FUNDING	EDN		B		500B
57. 370051		KEAAU MIDDLE SCHOOL, HAWAII					
		DESIGN AND CONSTRUCTION FOR A NEW CLASSROOM BUILDING; ASSESSMENT OF BUILDING B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			645		100
		CONSTRUCTION					10,085
		TOTAL FUNDING	EDN		645B		10,185B
57.01.		KEALAKEHE ADMINISTRATION/LIBRARY BUILDING, HAWAII					
		CONSTRUCTION FOR A NEW ADMINISTRATION/ LIBRARY BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		CONSTRUCTION					2,000
		TOTAL FUNDING	EDN		B		2,000B
57.02.		KEOLU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTALLATION OF PERIMETER FENCING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					48
		EQUIPMENT					1
		TOTAL FUNDING	EDN		B		50B
58. P50081		KIHEI ELEMENTARY SCHOOL, MAUI					
		DESIGN AND CONSTRUCTION FOR VARIOUS RENOVATIONS AND IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			100		
		CONSTRUCTION			1,900		
		TOTAL FUNDING	EDN		2,000B		B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
58.01.		KIHEI HIGH SCHOOL, MAUI					
		PLANS, LAND ACQUISITION, AND DESIGN FOR A NEW HIGH SCHOOL IN KIHEI, MAUI; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					500
		LAND					2,500
		DESIGN					4,300
		TOTAL FUNDING	EDN		B		7,300B
59.	459B51	KILAUEA ELEMENTARY SCHOOL, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CAFETERIA AND/OR RELOCATE EXISTING CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				325	
		CONSTRUCTION				2,600	
		EQUIPMENT				75	
		TOTAL FUNDING	EDN			3,000B	B
60.	318030	KING INTERMEDIATE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL PARKING AND COVERED AREA FOR BUS STOP; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				100	
		CONSTRUCTION				900	
		TOTAL FUNDING	EDN			1,000B	B
61.	406001	KING KAMEHAMEHA III ELEMENTARY SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				24	
		CONSTRUCTION				225	
		EQUIPMENT				1	
		TOTAL FUNDING	EDN			250B	B
61.01.		KING KEKAULIKE HIGH SCHOOL, MAUI					
		PLANS AND DESIGN FOR A NEW AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					75
		DESIGN					575
		TOTAL FUNDING	EDN		B		650B
61.02.		KUHIO ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR NEW OR EXPANDED AREA FOR MULTI-PURPOSE USE; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					20
		CONSTRUCTION					150

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		EQUIPMENT					1
		TOTAL FUNDING	EDN		B		171B
62.	P50084	LAHAINALUNA HIGH SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100			500
		CONSTRUCTION		732			3,000
		EQUIPMENT		1			
		TOTAL FUNDING	EDN	833B			3,500B
62.01.	415051	LANAI HIGH AND ELEMENTARY, CLASSROOM BUILDING, LANAI					
		DESIGN FOR A CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					616
		TOTAL FUNDING	EDN		B		616B
62.02.		LEHUA ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A STRUCTURAL ENGINEERING STUDY OF BUILDING B TO DETERMINE STRUCTURAL INTEGRITY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					998
		DESIGN					1
		CONSTRUCTION					1
		TOTAL FUNDING	EDN		B		1,000B
63.	271079	LEIHOKU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ADMINISTRATION AND LIBRARY BUILDINGS AND OTHER VARIOUS SCHOOL IMPROVEMENTS, INCLUDING AIR CONDITIONING UPGRADES, ELECTRICAL SYSTEM UPGRADES, TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		80			
		CONSTRUCTION		1,124			
		EQUIPMENT		1			
		TOTAL FUNDING	EDN	1,205B			B
64.	214050	LEILEHUA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES; TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					199
		CONSTRUCTION					1,800

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		EQUIPMENT			1		
		TOTAL FUNDING	EDN	2,000B			B
64.01.		LEILEHUA HIGH SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE FOOTBALL FIELD; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION				1,998	
		TOTAL FUNDING	EDN				2,000B
64.02.		LEILEHUA HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A BASEBALL PARK AND ASSOCIATED FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					400
		CONSTRUCTION				1,600	
		EQUIPMENT				200	
		TOTAL FUNDING	EDN				2,200B
65. 131030		LIKELIKE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR VARIOUS IMPROVEMENTS; INCLUDES FIELD IMPROVEMENTS AND AIR CONDITIONING UPGRADES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			10		
		CONSTRUCTION			60		
		TOTAL FUNDING	EDN		70B		B
65.01.		LILUOKALANI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO INSTALL A DUMBWAITER IN THE ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					37
		TOTAL FUNDING	EDN				38B
66. 133030		LINAPUNI ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR PLAY AREA IMPROVEMENTS; INCLUDES RESURFACING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN			5		
		CONSTRUCTION			20		
		TOTAL FUNDING	EDN		25B		B
67. P50089		LINCOLN ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING UPGRADES; GROUND AND					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
					100		
					2,150		
					50		
		TOTAL FUNDING	EDN		2,300 B		B
68.	135050	LUNALILO ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE UPGRADE OF THE ELECTRICAL SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
					1		
					299		
		TOTAL FUNDING	EDN		300 B		B
69.	258006	MAKAHA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AN ELEVATOR AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO STUDENTS WITH DISABILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
					75		
					475		
		TOTAL FUNDING	EDN		550 B		B
69.01.		MAKALAPA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE AND EXPAND SCHOOL CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
						240	
						3,010	
						30	
		TOTAL FUNDING	EDN		B	3,280 B	
70.	260006	MANANA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR RAMPS AND OTHER CORRECTIVE MEASURES FOR ACCESSIBILITY OF SCHOOL FACILITIES TO STUDENTS WITH DISABILITIES; INCLUDES IMPROVEMENTS TO BUILDING K AND BUILDING J; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
					12		
					30		
		TOTAL FUNDING	EDN		42 B		B
71.	851051	MAUI LANI ELEMENTARY SCHOOL, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR VARIOUS IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
					1		

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		CONSTRUCTION EQUIPMENT		6,998			
		TOTAL FUNDING	EDN	7,000B	1		B
72.	428051	MAUI WAENA INTERMEDIATE SCHOOL, MAUI					
		PLANS, DESIGN, AND CONSTRUCTION FOR AN 8-CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS DESIGN		623			1
		CONSTRUCTION				8,698	1
		TOTAL FUNDING	EDN	623B		8,700B	
73.	138051	MCKINLEY HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A GIRLS ATHLETIC LOCKER ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100			
		CONSTRUCTION		1,899			
		EQUIPMENT				1	
		TOTAL FUNDING	EDN	2,000B			B
73.01.		MILILANI HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A NEW PHONE SYSTEM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION				79	
		TOTAL FUNDING	EDN		B		80B
73.02.		MILILANI HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TEN CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION				1,898	
		EQUIPMENT				1	
		TOTAL FUNDING	EDN		B		1,900B
74.	240052	MILILANI IKE ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR A TEN CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		100			
		TOTAL FUNDING	EDN	100B			B
75.	240001	MILILANI IKE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		DESIGN		500			
		CONSTRUCTION		1,419			
		EQUIPMENT		1			
		TOTAL FUNDING	EDN	1,920			B
75.01.		MILILANI IKE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A PORTABLE RESTROOM ADJACENT TO PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					399
		TOTAL FUNDING	EDN		B		400B
75.02.		MILILANI UKA ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR INSTALLATION OF AIR CONDITIONING FOR A PORTION OF THE ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					3
		CONSTRUCTION					27
		EQUIPMENT					20
		TOTAL FUNDING	EDN		B		51B
75.03.		MOANALUA HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF SCHOOL AUDITORIUM/PERFORMING ARTS CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1,700
		CONSTRUCTION					3,000
		TOTAL FUNDING	EDN		B		4,700B
76. 380051		NAALEHU ELEMENTARY AND INTERMEDIATE SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A SIX CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		500			
		CONSTRUCTION		4,470			
		EQUIPMENT		30			
		TOTAL FUNDING	EDN	5,000			B
76.01.		NANAIAKAPONO ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PLAYGROUND EQUIPMENT, EQUIPMENT FOR THE STUDENT SUPPORT CENTER, AND CONSTRUCTION OF A SAFETY SHACK; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		CONSTRUCTION					99
		EQUIPMENT					350
		TOTAL FUNDING	EDN		B		450B
77.	140051	NOELANI ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A MULTI-PURPOSE PLAY COURT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				100	
		CONSTRUCTION				1,850	
		EQUIPMENT				50	
		TOTAL FUNDING	EDN			2,000B	B
77.01.		NOELANI ELEMENTARY SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR SECURITY FENCING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					47
		EQUIPMENT					1
		TOTAL FUNDING	EDN				50B
78.	141065	NUUANU ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR REROOFING OF BUILDING F AND PORTABLE P; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				60	
		TOTAL FUNDING	EDN			61B	B
79.	100051	OCEAN POINTE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW CLASSROOM BUILDING AND EQUIPMENT FOR THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				998	
		EQUIPMENT				1	
		TOTAL FUNDING	EDN			1,000B	B
80.	383151	PAHOA HIGH SCHOOL, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A GYMNASIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION				3,600	3,700
		EQUIPMENT				50	48
		TOTAL FUNDING	EDN			3,650B	3,750B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
80.01.		PALISADES ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A RETAINING WALL BEHIND BUILDING D TO PREVENT EROSION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					160
		CONSTRUCTION					800
		TOTAL FUNDING	EDN		B		960B
81.	142030	PALOLO ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE EXPANSION OF THE PARKING LOT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				52	
		CONSTRUCTION				200	
		TOTAL FUNDING	EDN		252B		B
81.01.		PAUOA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REPAIR AND RECONSTRUCTION OF 12 BATHROOM FACILITIES; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					100
		CONSTRUCTION					1,600
		EQUIPMENT					100
		TOTAL FUNDING	EDN		B		1,800B
82.	265052	PEARL CITY ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT TO EXPAND AND IMPROVE THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				100	
		CONSTRUCTION				999	
		EQUIPMENT				1	
		TOTAL FUNDING	EDN		1,100B		B
82.01.		PEARL CITY HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR A WEIGHT TRAINING ROOM AND ATHLETIC TRAINING ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					1,449
		TOTAL FUNDING	EDN		B		1,450B
82.02.		PEARL CITY HIGHLANDS ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF A COVERING FOR THE EXISTING SIDEWALK BETWEEN BUILDING H AND BUILDING F; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		DESIGN					10
		CONSTRUCTION					110
		TOTAL FUNDING	EDN		B		120B
82.03.		PEARL RIDGE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION AND RENOVATION OF THE CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					15
		CONSTRUCTION					621
		EQUIPMENT					65
		TOTAL FUNDING	EDN		B		701B
82.04.		PEARL RIDGE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PARKING LOT IMPROVEMENTS TO INCLUDE PAVING THE GRAVEL LOT ADJACENT TO THE SCHOOL PARKING LOT AND THE INSTALLATION OF A FENCE TO SECURE THE NEWLY PAVED AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					9
		CONSTRUCTION					120
		EQUIPMENT					1
		TOTAL FUNDING	EDN		B		130B
83. P50101		POHAKEA ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR TELECOMMUNICATIONS AND PUBLIC ADDRESS SYSTEM IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				35	
		CONSTRUCTION				250	
		TOTAL FUNDING	EDN			285B	B
84. 145051		PUUHALE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR COVERED WALKWAYS; INCLUDES A COVERED WALKWAY BETWEEN BUILDING A AND BUILDING B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				25	
		CONSTRUCTION				200	
		TOTAL FUNDING	EDN			225B	B
84.01.		PUUHALE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION OF COVERED WALKWAY BETWEEN MAIN BUILDING AND CAFETERIA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					20
		CONSTRUCTION					230
		TOTAL FUNDING	EDN		B		250B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
84.02.		RADFORD HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR MULTI-PURPOSE ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					110
		CONSTRUCTION					930
		EQUIPMENT					50
		TOTAL FUNDING	EDN		B		1,090B
85.	225050	RED HILL ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR AIR CONDITIONING UPGRADES FOR THE ADMINISTRATION BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				15	
		CONSTRUCTION				150	
		TOTAL FUNDING	EDN		165B		B
86.	146060	ROOSEVELT HIGH SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE AUDITORIUM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				200	
		CONSTRUCTION				4,799	
		EQUIPMENT				1	
		TOTAL FUNDING	EDN		5,000B		B
87.	146030	ROOSEVELT HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE STADIUM; INCLUDES TRACK, FIELD, AND ACCESS ROAD IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				500	
		CONSTRUCTION				4,000	
		TOTAL FUNDING	EDN		4,000B		B
			EDN		500R		R
88.	239F60	SALT LAKE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR THE RENOVATION OF BUILDING F; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				50	
		CONSTRUCTION				750	
		TOTAL FUNDING	EDN		800B		B
89.	148060	STEVENSON MIDDLE SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION TO RENOVATE AND IMPROVE THE ADMINISTRATION BUILDING;					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		40			
		CONSTRUCTION		210			
		TOTAL FUNDING	EDN	250B			B
90.	326050	WAIHAOLE ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR ELECTRICAL SYSTEM UPGRADES; TELECOMMUNICATIONS AND POWER INFRASTRUCTURE IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		80			
		CONSTRUCTION		719			
		EQUIPMENT		1			
		TOTAL FUNDING	EDN	800B			B
91.	P50109	WAIAKEA ELEMENTARY SCHOOL, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR AIR CONDITIONING UPGRADES FOR THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		12			
		CONSTRUCTION		84			
		EQUIPMENT		24			
		TOTAL FUNDING	EDN	120B			B
92.	231051	WAIALUA ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW LIBRARY/MEDIA CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN		400			
		CONSTRUCTION		3,530			
		EQUIPMENT		70			
		TOTAL FUNDING	EDN	4,000B			B
92.01.		WAIALUA HIGH SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS TO THE ATHLETIC COMPLEX; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					498
		TOTAL FUNDING	EDN		B		500B
92.02.		WAIALUA HIGH SCHOOL, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR TENNIS COURT CONSTRUCTION; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					74

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		LAND					100
		DESIGN					1
		CONSTRUCTION					150
		TOTAL FUNDING	EDN			B	325B
93.	P50110	WAIANAE HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR FACILITY RENOVATIONS AND IMPROVEMENTS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					100
		CONSTRUCTION					1,000
		TOTAL FUNDING	EDN				1,100B
93.01.		WAIANAE HIGH SCHOOL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR AIR CONDITIONING AND POWER UPGRADE FOR BUILDINGS A&B; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					50
		DESIGN					50
		CONSTRUCTION					1,900
		TOTAL FUNDING	EDN			B	2,000B
94.	290011	WAIKELE ELEMENTARY SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR ADDITIONAL LIGHTING ON THE LOWER CAMPUS AREA; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					1
		CONSTRUCTION					99
		TOTAL FUNDING	EDN				100B
94.01.		WAILUKU ELEMENTARY SCHOOL II, MAUI					
		PLANS AND DESIGN FOR A NEW SCHOOL CAMPUS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					192
		DESIGN					3,500
		TOTAL FUNDING	EDN			B	3,692B
95.	233F52	WAIMALU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF THE LIBRARY; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					100
		CONSTRUCTION					746
		EQUIPMENT					1
		TOTAL FUNDING	EDN				847B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
95.01.		WAIMEA MIDDLE SCHOOL, HAWAII					
		PLANS AND DESIGN FOR NEW EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS DESIGN					1,000
		TOTAL FUNDING	EDN		B		2,000B
96.	274052	WAIPAHAU ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR PLAYGROUND EQUIPMENT; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				1	
		CONSTRUCTION				37	
		EQUIPMENT				38	
		TOTAL FUNDING	EDN			76B	B
96.01.		WAIPAHAU ELEMENTARY SCHOOL, OAHU					
		DESIGN FOR AN EIGHT CLASSROOM BUILDING; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					600
		TOTAL FUNDING	EDN		B		600B
97.	277030	WAIPAHAU HIGH SCHOOL, OAHU					
		DESIGN AND CONSTRUCTION FOR REPLACEMENT OF A FENCE FRONTING THE SCHOOL; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN				5	
		CONSTRUCTION				20	
		TOTAL FUNDING	EDN			25B	B
97.01.		WASHINGTON MIDDLE SCHOOL, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR VARIOUS IMPROVEMENTS INCLUDING A PARKING LOT EXTENSION, ELECTRICAL UPGRADES FOR BUILDINGS F & H, A FEASIBILITY STUDY FOR CONSTRUCTION OF A SCHOOL AUDITORIUM, CONSTRUCTION OF A THIRD MUSIC ROOM, AND CONSTRUCTION OF TWO EXTENDED PORTABLES FOR A PARENT/ COMMUNITY CENTER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS DESIGN					49
		CONSTRUCTION					100
		EQUIPMENT					1,200
		TOTAL FUNDING	EDN		B		1,350B

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
97.02.		WEBLING ELEMENTARY SCHOOL, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TWO PORTABLE CLASSROOMS; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					50
		CONSTRUCTION					438
		EQUIPMENT					12
		TOTAL FUNDING	EDN		B		500B
98.	P50115	WEST MAUI ELEMENTARY SCHOOL, MAUI					
		PLANS FOR A NEW ELEMENTARY SCHOOL IN WEST MAUI.					
		PLANS				300	
		TOTAL FUNDING	EDN			300B	B
98.01.		KEIKI O KA AINA PRESCHOOLS INC., OAHU					
		LAND ACQUISITION TO DEVELOP A FAMILY LEARNING CENTER, PRESCHOOL, AND EDUCATIONAL TRAINING FACILITY IN KALIHI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		LAND					2,000
		TOTAL FUNDING	EDN		C		2,000C
98.02.		AMERICAN BOX CAR RACING ASSOCIATION INTERNATIONAL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR PHASES I AND II OF A COMMUNITY BASED YOUTH FACILITY ON OAHU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					48
		TOTAL FUNDING	EDN		C		50C
EDN400 - SCHOOL SUPPORT							
99.	00014	LUMP SUM CIP - CAPITAL IMPROVEMENTS PROGRAM 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 EDUCATION. PROJECT MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS				2,955	2,955
		LAND				1	1
		DESIGN				1	1
		CONSTRUCTION				1	1
		EQUIPMENT				1	1
		TOTAL FUNDING	EDN			2,959C	2,959C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
EDN407 - PUBLIC LIBRARIES							
100.	01-H S	HEALTH AND SAFETY, STATEWIDE					
		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			200		50
		DESIGN			300		500
		CONSTRUCTION			1,450		2,900
		EQUIPMENT			50		50
		TOTAL FUNDING	AGS		2,000C		3,500C
101.	02-MAK	MAKAWAO PUBLIC LIBRARY, MAUI					
		LAND ACQUISITION FOR THE EXPANSION OF THE MAKAWAO PUBLIC LIBRARY AND PARKING AREA, MAUI.					
		LAND			744		
		TOTAL FUNDING	AGS		744C		C
102.	03-PCS	LUMP SUM CIP - PLANNING CONSULTANT, STATEWIDE					
		PLANS FOR PROFESSIONAL AND TECHNICAL ASSISTANCE TO PROVIDE ASSISTANCE IN DEVELOPING PLANS FOR NEW AND/OR REPLACEMENT LIBRARIES INCLUDING, BUT NOT LIMITED TO THE AIEA, MANOA, KOHALA, AND NANAKULI AREAS.					
		PLANS			125		
		TOTAL FUNDING	AGS		125C		C
103.		HANAPEPE PUBLIC LIBRARY, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE EXPANSION OF HANAPEPE PUBLIC LIBRARY.					
		DESIGN			100		
		CONSTRUCTION			1,350		
		EQUIPMENT			50		
		TOTAL FUNDING	AGS		1,500C		C
104.		MILLANI PUBLIC LIBRARY, OAHU					
		DESIGN AND CONSTRUCTION FOR VARIOUS RENOVATIONS AND IMPROVEMENTS TO THE MILLANI PUBLIC LIBRARY.					
		DESIGN			50		
		CONSTRUCTION			400		
		TOTAL FUNDING	AGS		450C		C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
105.		KOHALA PUBLIC LIBRARY, HAWAII					
		DESIGN AND CONSTRUCTION FOR A NEW LIBRARY FACILITY.					
		DESIGN		476			
		CONSTRUCTION		5,885			
		TOTAL FUNDING	AGS	6,361	C		C
106.	P50120	MANOA PUBLIC LIBRARY, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR THE EXPANSION OR REPLACEMENT OF THE LIBRARY.					
		PLANS		100			
		LAND		50			
		DESIGN		550			100
		CONSTRUCTION		5,800			2,900
		TOTAL FUNDING	AGS	6,500	C		3,000
107.	P50121	LILIHA PUBLIC LIBRARY, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS FOR THE LIBRARY TO INCLUDE REPLACEMENT OF FLOORING MATERIALS.					
		DESIGN		10			
		CONSTRUCTION		70			
		TOTAL FUNDING	AGS	80	C		C
107.01.		WAIALUA PUBLIC LIBRARY, OAHU					
		PLANS AND DESIGN FOR EXPANSION OF WAIALUA PUBLIC LIBRARY.					
		PLANS					1
		DESIGN					199
		TOTAL FUNDING	AGS		C		200
107.02.		MCCULLY-MOILILI PUBLIC LIBRARY, OAHU					
		DESIGN AND CONSTRUCTION FOR FIRE ALARM AND CHILLER; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		DESIGN					20
		CONSTRUCTION					230
		TOTAL FUNDING	AGS		C		250
UOH100 - UNIVERSITY OF HAWAII, MANOA							
108.	064	UHM, JOHN A. BURNS SCHOOL OF MEDICINE AND CANCER RESEARCH CENTER OF HAWAII, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE JOHN A. BURNS SCHOOL OF MEDICINE, CANCER RESEARCH CENTER OF HAWAII, AND RELATED PROJECTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1
		DESIGN					1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		CONSTRUCTION		8,998			
		EQUIPMENT		3,000			
		TOTAL FUNDING	UOH	12,000 W			W
109.	R06	UHM, HAWAII INSTITUTE OF MARINE BIOLOGY RESEARCH LAB AT COCONUT ISLAND, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A MODERN LAB/OFFICE COMPLEX FOR THE HAWAII INSTITUTE OF MARINE BIOLOGY AT COCONUT ISLAND.					
		PLANS		500			
		DESIGN		500			
		CONSTRUCTION		30,000			
		TOTAL FUNDING	UOH	31,000 E			E
110.	084	UHM, PERFORMING ARTS FACILITY, OAHU					
		DESIGN FOR A PERFORMING ARTS FACILITY AT THE UNIVERSITY OF HAWAII AT MANOA. PROJECT TO INCLUDE RELOCATION OF EXISTING PROGRAMS, INFRASTRUCTURE, PARKING, AND ALL RELATED PROJECT COSTS.					
		DESIGN		2,000			
		TOTAL FUNDING	UOH	2,000 C			C
111.	292	UHM, FREAR HALL REDEVELOPMENT, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE REDEVELOPMENT OF FREAR HALL DORMITORY. PROJECT TO INCLUDE DEMOLITION, GROUND AND SITE IMPROVEMENTS, INFRASTRUCTURE, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.					
		PLANS		1			
		DESIGN		4,500			
		CONSTRUCTION		20,498			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	25,000 C			C
112.	I08	UHM, CASTLE MEMORIAL HALL RENOVATION AND IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR RENOVATION AND IMPROVEMENTS FOR CASTLE MEMORIAL HALL.					
		DESIGN		75			
		CONSTRUCTION		450			
		EQUIPMENT		1			
		TOTAL FUNDING	UOH	526 C			C
113.	609	UHM, WAIALUA AGRIBUSINESS INCUBATOR, OAHU					
		PLANS FOR AN AGRIBUSINESS INCUBATOR IN WAIALUA, OAHU.					
		PLANS		300			
		TOTAL FUNDING	UOH	300 C			C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
113.01.		UHM, INSTITUTE FOR ASTRONOMY/ADVANCED TECHNOLOGY RESEARCH CENTER IN KULA, MAUI					
		EQUIPMENT FOR AN ADVANCED TECHNOLOGY RESEARCH CENTER IN KULA, MAUI. PROJECT TO INCLUDE EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.					
		EQUIPMENT					2,000
		TOTAL FUNDING	UOH		C		2,000C
113.02.		UHM, REGIONAL BIOCONTAINMENT LABORATORY, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR A REGIONAL BIOCONTAINMENT LABORATORY FACILITY ON OAHU. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1,000
		DESIGN					1,000
		CONSTRUCTION					35,500
		TOTAL FUNDING	UOH		N		25,000N
			UOH		A		12,500A
113.03.		UHM, CAMPUS CENTER RENOVATION, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE RENOVATION OF THE STUDENT CAMPUS CENTER.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					998
		TOTAL FUNDING	UOH		C		1,000C
113.04.		UHM, LAW SCHOOL, OAHU					
		PLANS FOR THE EXPANSION AND RENOVATION OF THE UNIVERSITY OF HAWAII AT MANOA WILLIAM S. RICHARDSON SCHOOL OF LAW.					
		PLANS					500
		TOTAL FUNDING	UOH		C		500C
113.05.		UHM, GARTLEY HALL, OAHU					
		DESIGN FOR THE RENOVATION OF GARTLEY HALL. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.					
		DESIGN					951
		TOTAL FUNDING	UOH		C		951C
113.06.		UHM, MURAKAMI STADIUM, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO REPLACE THE ARTIFICIAL PLAYING SURFACE AND SEATS AT MURAKAMI STADIUM.					
		PLANS					1
		DESIGN					100
		CONSTRUCTION					1,899
		TOTAL FUNDING	UOH		C		2,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
113.07.		UHM, NEW CLASSROOM BUILDING, OAHU					
		PLANS AND DESIGN FOR A NEW CLASSROOM BUILDING AT THE UNIVERSITY OF HAWAII AT MANOA.					
		PLANS					1
		DESIGN					379
		TOTAL FUNDING	UOH		C		380C
113.08.		W.M. KECK OBSERVATORY, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE HUALALAI LEARNING THEATRE. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					1
		LAND					1
		DESIGN					1
		CONSTRUCTION					16
		EQUIPMENT					1
		TOTAL FUNDING	UOH		C		20C
113.09.		UHM, KOMOHANA AGRICULTURAL COMPLEX, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE KOMOHANA AGRICULTURAL COMPLEX IN HILO.					
		DESIGN					1
		CONSTRUCTION					498
		EQUIPMENT					1
		TOTAL FUNDING	UOH		C		500C
UOH210 - UNIVERSITY OF HAWAII, HILO							
114. 347		UHH, HAWAIIAN LANGUAGE BUILDING, HAWAII					
		PLANS AND DESIGN FOR A HAWAIIAN LANGUAGE BUILDING AT THE UNIVERSITY OF HAWAII AT HILO. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, AND ALL RELATED PROJECT COSTS.					
		PLANS				200	
		DESIGN				1,800	
		TOTAL FUNDING	UOH		C	2,000C	C
115. 335		UHH, SCIENCES AND TECHNOLOGY BUILDING, HAWAII					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE SCIENCES AND TECHNOLOGY BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.					
		DESIGN				1	
		CONSTRUCTION				19,998	4,999
		EQUIPMENT				1	1
		TOTAL FUNDING	UOH		C	20,000C	5,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
116. 513		UHH, MAIN ENTRANCES TRAFFIC LIGHT IMPROVEMENTS, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR UH HILO MAIN ENTRANCES TRAFFIC LIGHT IMPROVEMENTS ON KAWILI STREET.					
		PLANS			1		
		DESIGN			49		
		CONSTRUCTION			500		
		EQUIPMENT			50		
		TOTAL FUNDING	UOH		600C		C
116.01.		UHH, CAMPUS CENTER, HAWAII					
		DESIGN AND CONSTRUCTION FOR AN ADDITION AND RENOVATION OF THE CAMPUS CENTER. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.					
		DESIGN					400
		CONSTRUCTION					2,500
		TOTAL FUNDING	UOH			W	2,900W
UOH700 - UNIVERSITY OF HAWAII, WEST OAHU							
117. 707		UHWO, TEMPORARY FACILITIES, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR TEMPORARY FACILITIES FOR THE UNIVERSITY OF HAWAII-WEST OAHU. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL PROJECT COSTS.					
		DESIGN			1		
		CONSTRUCTION			498		
		EQUIPMENT			1		
		TOTAL FUNDING	UOH		500C		C
UOH800 - UNIVERSITY OF HAWAII, COMMUNITY COLLEGES							
118. B42		KAP, CANNON CLUB SITE DEVELOPMENT, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF THE CANNON CLUB SITE FOR THE CULINARY INSTITUTE OF THE PACIFIC. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS			2		
		DESIGN			2		
		CONSTRUCTION			17,000		
		EQUIPMENT			2		
		TOTAL FUNDING	UOH		3,003N		N
			UOH		14,003R		R
119. L28		LEE, SOCIAL SCIENCES FACILITY, OAHU					
		PLANS AND DESIGN FOR A NEW SOCIAL SCIENCES FACILITY AT LEEWARD COMMUNITY COLLEGE.					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		PLANS DESIGN		367			
		TOTAL FUNDING	UOH	944			
				1,311	C		
120.	H03	HAW, MANONO CAMPUS, KOMOHANA CAMPUS AND WEST HAWAII CAMPUS CENTER DEVELOPMENTS, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE DEVELOPMENT OF HAWAII COMMUNITY COLLEGE AT THE MANONO CAMPUS, AT THE KOMOHANA CAMPUS SITUATED MAUKA OF KOMOHANA STREET, AND AT WEST HAWAII CAMPUS CENTER PROJECTS TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.					
		PLANS DESIGN		1,087			
		CONSTRUCTION		5,863		11,256	
		EQUIPMENT				1	
		TOTAL FUNDING	UOH	6,950	C	11,257	
121.	M65	MAU, STUDENT SERVICES BUILDING RENOVATION, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE RENOVATION OF THE STUDENT SERVICES BUILDING. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.					
		DESIGN		300			
		CONSTRUCTION		3,100			
		EQUIPMENT		100			
		TOTAL FUNDING	UOH	3,500	C		
122.	M15	MAU, SCIENCE BUILDING, MAUI					
		DESIGN FOR A NEW SCIENCE BUILDING AT MAUI COMMUNITY COLLEGE.					
		DESIGN		3,448			
		TOTAL FUNDING	UOH	3,448	C		
123.	K62	KAU, ONE STOP CENTER BUILDING, KAUAI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE ONE STOP CENTER BUILDING AT KAUAI COMMUNITY COLLEGE. PROJECT TO INCLUDE GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.					
		DESIGN		1			
		CONSTRUCTION		10,000			
		EQUIPMENT		1,780			
		TOTAL FUNDING	UOH	11,781	C		
124.	C04	CCS, KEY PROJECT, OAHU					
		DESIGN AND CONSTRUCTION FOR FACILITY IMPROVEMENTS FOR THE KUALOA-HEEIA ECUMENICAL YOUTH PROJECT. THIS PROJECT					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN		25			
		CONSTRUCTION		100			
		TOTAL FUNDING	UOH	125C			C
124.01.		KAU, KAUAI COMMUNITY COLLEGE SECOND ACCESS ROAD, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE EXTENSION OF THE EXISTING ACCESS ROAD TO CONNECT WITH KAUMUALII HIGHWAY AT THE INTERSECTION WITH NUHOU STREET.					
		DESIGN					1
		CONSTRUCTION					929
		TOTAL FUNDING	UOH		C		430C
			UOH		R		500R
124.02.		WIN, LIBRARY AND LEARNING CENTER, OAHU					
		PLANS AND DESIGN FOR A NEW LIBRARY AND LEARNING CENTER. PROJECT TO INCLUDE INFRASTRUCTURE, PARKING, GROUND AND SITE IMPROVEMENTS, EQUIPMENT AND APPURTENANCES, AND ALL RELATED PROJECT COSTS.					
		PLANS					1
		DESIGN					2,589
		TOTAL FUNDING	UOH		C		2,590C
124.03.		KAP, CRUISE LINE TRAINING LABORATORIES, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR CRUISE LINE TRAINING LABORATORIES TO INCLUDE A MOCK STATE ROOM; GROUND AND SITE IMPROVEMENTS; EQUIPMENT AND APPURTENANCES.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					358
		TOTAL FUNDING	UOH		C		360C
UOH900 - UNIVERSITY OF HAWAII, SYSTEM WIDE SUPPORT							
125. 541		SYS, CAPITAL RENEWAL AND DEFERRED MAINTENANCE, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR CAPITAL RENEWAL AND DEFERRED MAINTENANCE OF THE UNIVERSITY'S PHYSICAL PLANT. 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		500			1,000
		DESIGN		2,500			5,000
		CONSTRUCTION		31,999			43,999
		EQUIPMENT		1			1
		TOTAL FUNDING	UOH	35,000C			20,000C
			UOH		A		30,000A

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
126.	P50137	SYS, HEALTH, SAFETY, AND CODE REQUIREMENTS, STATEWIDE					
		PLANS, DESIGN AND CONSTRUCTION FOR MODIFICATIONS TO EXISTING FACILITIES AND/OR CONSTRUCTION OF NEW FACILITIES FOR HEALTH, SAFETY, AND CODE REQUIREMENTS.					
		PLANS					100
		DESIGN		1,244			1,500
		CONSTRUCTION		14,498			13,400
		TOTAL FUNDING	UOH	15,742C			15,000C
126.01.		SYS, INFORMATION TECHNOLOGY CENTER, OAHU					
		DESIGN FOR AN INFORMATION TECHNOLOGY CENTER BUILDING TO SERVICE THE UNIVERSITY OF HAWAII SYSTEM. PROJECT TO BE LOCATED ON THE CAMPUS OF THE UNIVERSITY OF HAWAII AT MANOA.					
		DESIGN					1,000
		TOTAL FUNDING	UOH		C		1,000C
H. CULTURE AND RECREATION							
AGS881 - PERFORMING AND VISUAL ARTS EVENTS							
1.	P50138	HUI NOEAU CENTER, LAND ACQUISITION, MAUI					
		LAND ACQUISITION TO ACQUIRE LAND IN KALUANUI, MAUI TO PREVENT DISPLACEMENT OF HUI NOEAU VISUAL ARTS CENTER.					
		LAND				500	
		TOTAL FUNDING	AGS	500C			C
2.	P50139	FRIENDS OF WAIPAHU CULTURAL GARDEN PARK, OAHU					
		CONSTRUCTION AND EQUIPMENT FOR HAWAII'S PLANTATION VILLAGE HISTORIC PRESERVATION PROJECT, TO INCLUDE EXPANSION AND IMPROVEMENT OF THE HAWAIIAN CULTURAL COMPLEX. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION				220	
		EQUIPMENT				30	
		TOTAL FUNDING	AGS	250C			C
2.01.	P103	STATE CAPITOL, REPLACE AQUARIUS MOSAIC, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE THE AQUARIUS MOSAIC LOCATED AT THE STATE CAPITOL ROTUNDA.					
		DESIGN					100
		CONSTRUCTION					1,400
		TOTAL FUNDING	AGS		B		1,000B
			AGS		C		500C
2.02.		THE STORYBOOK THEATRE OF HAWAII, KAUAI					
		CONSTRUCTION AND EQUIPMENT TO COMPLETE PHASE VI OF THE RENOVATION OF THE SPARK M. MATSUNAGA CHILDREN'S MEDIA CENTER IN					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		HANAPEPE, KAUALI THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION					173
		EQUIPMENT					17
		TOTAL FUNDING	AGS		C		190C
2.03.		MAUI ARTS AND CULTURAL CENTER, MAUI					
		CONSTRUCTION FOR THE RENOVATION AND EXPANSION OF THE MAUI ARTS AND CULTURAL CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION					250
		TOTAL FUNDING	AGS		C		250C
2.04.		HAWAII HERITAGE CENTER, OAHU					
		DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF A NEW HAWAII HERITAGE CENTER FACILITY IN CHINATOWN, HONOLULU. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN					40
		CONSTRUCTION					360
		TOTAL FUNDING	AGS		C		400C
2.05.		HONOLULU CULTURE AND ARTS DISTRICT ASSOCIATION, OAHU					
		CONSTRUCTION FOR FAÇADE IMPROVEMENT PROJECT ON HOTEL STREET. THIS QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		CONSTRUCTION					250
		TOTAL FUNDING	AGS		C		250C
LNR802 - HISTORIC PRESERVATION							
2.06.		KAWAIAHAO CHURCH, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR RENOVATIONS AND RESTORATION WORK TO EXISTING FACILITIES AND THE CONSTRUCTION OF A NEW MULTI-PURPOSE FACILITY ON THE KAWAIAHAO CAMPUS. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					998
		TOTAL FUNDING	LNR		C		1,000C
LNR806 - PARKS ADMINISTRATION AND OPERATION							
3. H-46		LUMP SUM CIP - STATE PARKS FACILITY IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR STATE PARKS IMPROVEMENTS, STATEWIDE, AND OTHER RELATED IMPROVEMENTS.					
		PLANS				250	
		DESIGN				250	
		CONSTRUCTION				2,500	1,750
		TOTAL FUNDING	LNR		3,000C		2,000C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
4.		KOKEE STATE PARK, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE WIDENING OF KOKEE ROAD.					
		DESIGN			50		
		CONSTRUCTION			550		
		TOTAL FUNDING	LNR		600C		C
5.		HAENA STATE PARK, KAUAI					
		PLANS FOR A MASTER PLAN FOR THE DEVELOPMENT OF HAENA STATE PARK TO ENSURE THE PRESERVATION OF RESOURCES AND ENHANCE HISTORICAL AND CULTURAL FEATURES.					
		PLANS			300		
		TOTAL FUNDING	LNR		300C		C
6.		DIAMOND HEAD VISITOR ORIENTATION CENTER, OAHU					
		PLANS FOR THE DIAMOND HEAD VISITOR ORIENTATION CENTER.					
		PLANS			260		
		TOTAL FUNDING	LNR		260C		C
7.		LAWAI INTERNATIONAL CENTER, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF THE LAWAI INTERNATIONAL CENTER. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			100		
		CONSTRUCTION			400		
		TOTAL FUNDING	LNR		500C		C
8.	P50144	DAUGHTERS OF HAWAII, HAWAII					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO HULIHEE PALACE IN KAILUA, KONA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		DESIGN			10		
		CONSTRUCTION			40		
		TOTAL FUNDING	LNR		50C		C
8.01.	F11A	IOLANI PALACE STATE MONUMENT, OAHU					
		DESIGN AND CONSTRUCTION FOR AIR CONDITIONING, CLIMATE CONTROL AND RELATED IMPROVEMENTS TO PRESERVE HISTORIC AND CULTURAL ARTIFACTS.					
		DESIGN					250
		CONSTRUCTION					650
		TOTAL FUNDING	LNR			C	900C
8.02.	F37A	DIAMOND HEAD STATE MONUMENT, OAHU					
		CONSTRUCTION OF ROCKFALL MITIGATION MEASURES AND RELATED IMPROVEMENTS.					
		CONSTRUCTION					700
		TOTAL FUNDING	LNR			C	700C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
8.03.	F46B	KOKEE-WAIMEA CANYON STATE PARKS, KAUAI					
		DESIGN AND CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS AND RELATED WORK.					
		DESIGN					500
		CONSTRUCTION					1,500
		TOTAL FUNDING	LNR			C	2,000C
8.04.	F46C	KOKEE STATE PARK, KAUAI					
		CONSTRUCTION OF IMPROVEMENTS TO KOKEE ROAD AND RELATED WORK.					
		CONSTRUCTION					500
		TOTAL FUNDING	LNR			C	500C
8.05.	F55A	WAIANAPANAPA STATE PARK, MAUI					
		DESIGN AND CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS AND RELATED WORK.					
		DESIGN					250
		CONSTRUCTION					1,000
		TOTAL FUNDING	LNR			C	1,250C
8.06.	F70A	SAND ISLAND STATE RECREATION AREA, OAHU					
		DESIGN AND CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS AND RELATED WORK.					
		DESIGN					250
		CONSTRUCTION					1,000
		TOTAL FUNDING	LNR			C	1,250C
8.07.	F75A	HAPUNA BEACH STATE RECREATION AREA, HAWAII					
		DESIGN AND CONSTRUCTION OF WATER SYSTEM IMPROVEMENTS AND RELATED WORK.					
		DESIGN					250
		CONSTRUCTION					1,000
		TOTAL FUNDING	LNR			C	1,250C
8.08.	H50A	NATURAL HAZARD WARNING SIGNAGE, STATEWIDE					
		CONSTRUCTION FOR NATURAL HAZARD WARNING SIGNAGE.					
		CONSTRUCTION					50
		TOTAL FUNDING	LNR			C	50C
8.09.		KALIHI VALLEY NATURE PARK, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO BUILD A KALIHI NATURE PARK ON A ONE HUNDRED-ACRE PARCEL IN THE BACK OF KALIHI VALLEY.					
		PLANS					5
		DESIGN					5
		CONSTRUCTION					190
		TOTAL FUNDING	LNR			C	200C
8.10.		HAWAII MAOLI, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR REPAIRS					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		AT MAUNAALA. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					1
		LAND					1
		DESIGN					1
		CONSTRUCTION					496
		EQUIPMENT					1
		TOTAL FUNDING	LNR		C		500C
8.11.		HAWAII NATURE CENTER, KAUAI					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A COMMUNITY BASED EDUCATION FACILITY AT THE WAILUA RESERVOIR ON KAUAI. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS					1
		LAND					1
		DESIGN					1
		CONSTRUCTION					496
		EQUIPMENT					1
		TOTAL FUNDING	LNR		C		500C
LNR801 - OCEAN-BASED RECREATION							
9.	299D	LUMP SUM CIP - FERRY SYSTEM IMPROVEMENTS, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS AT LAHAINA, MANELE, AND MAALAEA SMALL BOAT HARBORS TO SUPPORT EXISTING FERRY OPERATIONS, INCLUDING PIERS, LOADING DOCKS, DREDGING, PAVING, UTILITIES, COMFORT STATIONS, ADMINISTRATIVE OFFICES, COVERED WAITING AREAS, AND/OR OTHER BERTHING AND SHORE FACILITIES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN				1,150	
		CONSTRUCTION				13,650	
		TOTAL FUNDING	LNR			3,280C	C
			LNR			11,520N	N
10.	299E	LUMP SUM CIP - IMPROVEMENTS TO HARBOR FACILITIES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION FOR IMPROVEMENTS AT VARIOUS BOATING FACILITIES TO INCLUDE PIERS, LOADING DOCKS, UTILITIES, BOAT RAMPS, RESTROOMS, PAVING, DREDGING, ELIMINATION OF CESSPOOLS, AND OTHER RELATED WORK.					
		PLANS				100	
		DESIGN				500	
		CONSTRUCTION				4,400	
		TOTAL FUNDING	LNR			5,000D	D

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
11.		KAWAIHAE HARBOR IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR SEWER SYSTEM AND UTILITIES IMPROVEMENTS, AND THE INSTALLATION OF A LOADING DOCK.					
		DESIGN		600			
		CONSTRUCTION		2,100			
		TOTAL FUNDING	LNR	2,700C			C
12.		KAHULUI SMALL BOAT HARBOR IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE EXISTING RAMP FACILITY. IMPROVEMENTS TO INCLUDE THE CONSTRUCTION OF A NEW DOCK, AND OTHER RELATED IMPROVEMENTS.					
		DESIGN		1			
		CONSTRUCTION		999			
		TOTAL FUNDING	LNR	1,000C			C
13.		WAIANAE BOAT HARBOR, OAHU					
		DESIGN AND CONSTRUCTION TO IMPROVE OR REPLACE EXISTING FACILITIES.					
		DESIGN		150			
		CONSTRUCTION		600			
		TOTAL FUNDING	LNR	750C			C
14.	P50148	KEEHI BOAT HARBOR, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF DOCKS AND RELATED WORK.					
		DESIGN		300			
		CONSTRUCTION		1,500			
		TOTAL FUNDING	LNR	1,800C			C
14.01.	B45	MAALAEA SMALL BOAT HARBOR, MAUI					
		DESIGN AND CONSTRUCTION FOR ELECTRICAL AND SEWER IMPROVEMENTS TO INCLUDE THE INSTALLATION OF PUMP-OUT FACILITIES AND RELATED WORK.					
		DESIGN					100
		CONSTRUCTION					2,500
		TOTAL FUNDING	LNR		C		2,600C
14.02.	B31A	MANELE SMALL BOAT HARBOR - FERRY SYSTEM IMPROVEMENTS, LANAI					
		PLANS FOR FACILITY IMPROVEMENTS TO SUPPORT FERRY SYSTEM OPERATIONS AT MANELE SMALL BOAT HARBOR, LANAI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					500
		TOTAL FUNDING	LNR		C		100C
			LNR		N		400N

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
14.03.	B31B	MANELE SMALL BOAT HARBOR LOADING DOCK IMPROVEMENTS, LANAI					
		DESIGN AND CONSTRUCTION FOR THE RECONSTRUCTION OF LOADING DOCK AND RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					38
		CONSTRUCTION					112
		TOTAL FUNDING	LNR		D		38D
			LNR		N		112N
14.04.	B43A	HANA BOAT RAMP IMPROVEMENTS, MAUI					
		DESIGN AND CONSTRUCTION FOR THE RECONSTRUCTION OF THE BOAT RAMP REVETMENT, APPROACH AREA AND OTHER RELATED WORK.					
		DESIGN					100
		CONSTRUCTION					3,200
		TOTAL FUNDING	LNR		C		2,300C
			LNR		D		1,000D
14.05.	B45A	MAALAEA SMALL BOAT HARBOR - FERRY SYSTEM IMPROVEMENTS, MAUI					
		CONSTRUCTION FOR FACILITY IMPROVEMENTS TO SUPPORT FERRY SYSTEM OPERATIONS AT MAALAEA SMALL BOAT HARBOR, MAUI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					13,365
		TOTAL FUNDING	LNR		C		2,673C
			LNR		N		10,692N
14.06.	B61A	KAUNAKAKAI HARBOR - FERRY SYSTEM IMPROVEMENTS, MOLOKAI					
		CONSTRUCTION FOR FACILITY IMPROVEMENTS TO SUPPORT FERRY SYSTEM OPERATIONS AT KAUNAKAKAI HARBOR, MOLOKAI. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		CONSTRUCTION					3,135
		TOTAL FUNDING	LNR		C		227C
			LNR		N		2,908N
14.07.	B72B	KEEHI SMALL BOAT HARBOR PIER IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR THE REPLACEMENT OF PIERS AND RELATED WORK.					
		DESIGN					150
		CONSTRUCTION					750
		TOTAL FUNDING	LNR		D		900D
14.08.	B93A	KUKUIULA SMALL BOAT HARBOR IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE RECONSTRUCTION OF THE LOADING DOCK AND					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					50
		CONSTRUCTION					150
		TOTAL FUNDING	LNR		D		50D
			LNR		N		150N
14.09.	B98A	WAILUA MARINA BOAT RAMP IMPROVEMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR DREDGING, DOCK IMPROVEMENTS AND RELATED WORK. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		DESIGN					100
		CONSTRUCTION					400
		TOTAL FUNDING	LNR		D		125D
			LNR		N		375N
14.10.	B99A	ASSESSMENT REPORT FOR FUTURE DREDGING AT BOATING FACILITIES, STATEWIDE					
		PLANS FOR A REPORT TO ASSESS BOATING FACILITIES THAT REQUIRE REGULAR DREDGING AND IDENTIFY INTERVALS, QUALITIES, PERMITTING ISSUES AND COST ESTIMATES. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					150
		TOTAL FUNDING	LNR		D		37D
			LNR		N		113N
AGS889 - SPECTATOR EVENTS AND SHOWS - ALOHA STADIUM							
15.	SA2005001	ALOHA STADIUM, REPAIR AND IMPROVE ADMINISTRATIVE OFFICES, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE CEILING TILE SYSTEM; REPLACE FLOOR CARPETING; REPLACE ELECTRICAL RECEPTACLES AND FIXTURES; REPLACE DRAPERY; REPLACE WALL COVERING; TEXTURE AND/OR PAINT WALL SURFACES; SEAL LEAKS IN CEILING CRAWL SPACES; REPLACE DETERIORATED PLUMBING; AND PERFORM OTHER MISCELLANEOUS WORK.					
		DESIGN				50	25
		CONSTRUCTION				375	50
		TOTAL FUNDING	AGS			425B	75B
16.	SA2005003	ALOHA STADIUM, REPLACE SEATS AT MAUKA MOVABLE STANDS ORANGE LEVEL, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE SEATS AND MOUNTING HARDWARE AT VARIOUS SECTIONS OF THE ORANGE LEVEL OF THE MAUKA MOVABLE STANDS; PAINT, REPAIR, AND PERFORM OTHER MISCELLANEOUS WORK AT THE ORANGE					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		SEATING LEVEL OF THE MAUKA MOVABLE STANDS.					
		DESIGN		60			15
		CONSTRUCTION		1,125			50
		TOTAL FUNDING	AGS	1,185 C			65 C
16.01.	SA0702	ALOHA STADIUM, NECESSARY CAPITAL IMPROVEMENTS, YEAR ONE, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO COMPLETE NECESSARY CAPITAL IMPROVEMENTS FOR THE STADIUM TO ENSURE THE SAFETY AND LONGEVITY OF THE FACILITY. WORK INCLUDES PLANS AND DESIGN WORK, COMPLETE FOR THE OVERALL IMPROVEMENTS, AS WELL AS YEAR ONE OF FOUR YEARS OF CONSTRUCTION WORK FOR SUCH ITEMS AS REPLACEMENT OF THE EXTERIOR PROTECTIVE COATING SYSTEM AND STRUCTURAL REPAIRS.					
		PLANS					1,000
		DESIGN					1,000
		CONSTRUCTION					10,000
		TOTAL FUNDING	AGS		E		12,000 E
16.02.		ALOHA STADIUM ROOF REPAIR, OAHU					
		PLANS AND DESIGN FOR REPAIRS AND IMPROVEMENTS TO ALOHA STADIUM ROOF AND RELATED STRUCTURES.					
		PLANS					500
		DESIGN					500
		TOTAL FUNDING	AGS		C		1,000 C
I. PUBLIC SAFETY							
PSD402 - HALAWA CORRECTIONAL FACILITY							
1.	20021	HALAWA CORRECTIONAL FACILITY, LIFE SAFETY CODE IMPROVEMENTS AND REPLACEMENT OF MEDIUM-SECURITY FACILITY ROOFING SYSTEM, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR FIRE AND LIFE SAFETY CODE IMPROVEMENTS AND REPLACEMENT OF THE EXISTING ROOFING SYSTEM.					
		PLANS		35			
		DESIGN		232			21
		CONSTRUCTION		615			4,336
		TOTAL FUNDING	AGS	882 C			4,357 C
PSD405 - HAWAII COMMUNITY CORRECTIONAL CENTER							
1.01.		HAWAII COMMUNITY CORRECTIONAL CENTER, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR THE HALE NANI VOCATIONAL TRAINING PROGRAM.					
		PLANS					1
		LAND					1
		DESIGN					1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		CONSTRUCTION					196
		EQUIPMENT					1
		TOTAL FUNDING	PSD		C		200C
PSD406 - MAUI COMMUNITY CORRECTIONAL CENTER							
1.02.		MAUI COMMUNITY CORRECTIONAL CENTER EXPANSION/RELOCATION, MAUI					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A NEW ADULT LOCAL DETENTION FACILITY ON MAUI.					
		DESIGN					2,500
		CONSTRUCTION					20,000
		EQUIPMENT					1,850
		TOTAL FUNDING	PSD		C		24,350C
PSD900 - GENERAL ADMINISTRATION							
2.	20050	LUMP SUM CIP - REPAIRS, ALTERATIONS, AND IMPROVEMENTS FOR CORRECTIONAL FACILITIES, STATEWIDE					
		DESIGN AND CONSTRUCTION FOR REPAIRS, ALTERATIONS, AND IMPROVEMENTS FOR CORRECTIONAL FACILITIES, STATEWIDE.					
		DESIGN			400		1,018
		CONSTRUCTION			1,600		9,060
		TOTAL FUNDING	AGS		2,000C		10,078C
LNR810 - PREVENTION OF NATURAL DISASTERS							
2.01.		KULIOUOU STREAM FLOOD CONTROL, OAHU					
		PLANS FOR A FEASIBILITY STUDY TO DETERMINE THE VIABILITY OF THE KULIOUOU STREAM FLOOD CONTROL PROJECT.					
		PLANS					250
		TOTAL FUNDING	LNR		C		250C
DEF110 - AMELIORATION OF PHYSICAL DISASTERS							
3.	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 AND COMMUNICATIONS EQUIPMENT, STATEWIDE. 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			94		94
		CONSTRUCTION			1,093		1,093
		EQUIPMENT			195		195

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		TOTAL FUNDING	AGS AGS	1,284 100N	C	1,284 100N	C
4. C35		AMERICANS WITH DISABILITIES ACT (ADA) AND INFRASTRUCTURE IMPROVEMENTS, STATEWIDE					
		DESIGN FOR MODIFICATIONS FOR PERSONS WITH DISABILITIES AND TO IDENTIFY AND CORRECT EXISTING DEFICIENCIES FOR DEPARTMENT OF DEFENSE (DOD) FACILITIES. THIS PROJECT IS NECESSARY TO MEET REQUIREMENTS IN ACCORDANCE WITH STATE AND FEDERAL LAWS. CURRENT BUILDING ACCESSIBILITY DOES NOT MEET ADA CRITERIA FOR ACCESSIBILITY.					
		DESIGN		355			
		TOTAL FUNDING	AGS	355	C		C
5. A0201		BIRKHIMER TUNNEL AND SUPPORT FACILITIES, HEALTH AND SAFETY REQUIREMENTS, OAHU					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION AND EQUIPMENT FOR IMPROVEMENTS TO THE STATE EMERGENCY OPERATING CENTER, BIRKHIMER TUNNEL AND SUPPORT FACILITIES TO INCLUDE ADA COMPLIANCE, SPRINKLER SYSTEM, ADDITIONAL INSTALLATION OF CONDUITS, REMOVAL OF OVERHEAD UTILITY LINES, AND OTHER IMPROVEMENTS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1
		LAND					1
		DESIGN					137
		CONSTRUCTION					350
		EQUIPMENT					200
		TOTAL FUNDING	AGS		C		689C
6. P50149		KEAUKAHA JOINT MILITARY CENTER, HAWAII					
		PLANS AND DESIGN FOR A SPECIALLY DESIGNED COMPLEX FOR SOLDIERS, AIRMEN, VETERANS, AND RETIREES ON THE ISLAND OF HAWAII. THIS PROJECT WILL ALSO PROVIDE AN EXPANDED PX, LIMITED COMMISSARY AND OFFICE FOR VETERANS AFFAIRS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		100			
		DESIGN					4,300
		TOTAL FUNDING	DEF	100	C		300C
			DEF		N		4,000N
6.01. AB2073		29TH BRIGADE MONUMENT AND WAR MEMORIAL, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR TWO WAR MEMORIALS - THE FIRST MEMORIALIZING THE DEPLOYMENT OF THE 29TH BRIGADE TO IRAQ, AND THE SECOND MEMORIALIZING ALL HAWAII SOLDIERS INVOLVED WITH THE GLOBAL					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		WAR ON TERRORISM. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					10
		DESIGN					40
		CONSTRUCTION					300
		TOTAL FUNDING	DEF		C		350C
6.02.	AD2071	RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT TO RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES AND INCREASE THE NUMBER OF PUBLIC SHELTERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					1
		LAND					1
		DESIGN					470
		CONSTRUCTION					2,000
		EQUIPMENT					1,528
		TOTAL FUNDING	AGS		C		4,000C
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 - DEPARTMENTAL ADMINISTRATION & BUDGET DIVISION							
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		212,114		326,157	
		TOTAL FUNDING	BUF	212,114C		326,157C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
4.	P50150	BISHOP MUSEUM, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR BISHOP MUSEUM'S EDUCATION CENTER - MAGNET SCHOOL OF ENVIRONMENTAL AND CULTURAL STUDIES. THIS PROJECT QUALIFIES AS A GRANT, PURSUANT TO CHAPTER 42F, HRS.					
		PLANS			100		
		DESIGN			570		
		CONSTRUCTION			530		
		TOTAL FUNDING	AGS		1,200C		C
AGS131 - INFORMATION PROCESSING SERVICES							
5.	ICSD09	COMMUNICATIONS INFRASTRUCTURE ESSENTIALS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR STATEWIDE UPGRADES NECESSARY TO KEEP COMMUNICATIONS SYSTEMS WORKING EVERYDAY AND DURING NATURAL DISASTERS; IN LIHUE AND HILO, REPLACEMENT OF FAILING MICROWAVE LINKS; REPLACEMENT OF JOINT-USE TOWER AT HALEAKALA.					
		PLANS			1		
		LAND			1		
		DESIGN			197		
		CONSTRUCTION			800		
		EQUIPMENT			1		
		TOTAL FUNDING	AGS		1,000C		C
5.01.	ICSD02	ANUENUE (FORMERLY KNOWN AS RAINBOW) NEW RADIO SITES AND TOWERS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT TO SUPPORT THE MODERNIZATION OF THE SHARED STATE AND FEDERAL MICROWAVE SYSTEM TO DIGITAL OPERATION FOR USE BY PUBLIC SAFETY, EMERGENCY AND CIVIL DEFENSE STATEWIDE CONNECTIONS AND TO SUPPORT THE EQUIPMENT OF MAUI AND HAWAII COUNTIES RADIO AT THESE NEW FACILITIES.					
		PLANS					70
		LAND					1
		DESIGN					190
		CONSTRUCTION					900
		EQUIPMENT					880
		TOTAL FUNDING	AGS			C	2,041C
5.02.	ICSD13A	PLANS FOR AN ALTERNATE DATA CENTER (ADC) FACILITY, STATEWIDE					
		PLANS TO DO A FUNCTIONAL NEEDS ASSESSMENT, AND IF FUNDS ARE AVAILABLE, RESULTANT SITE SELECTION AND ASSOCIATED ENVIRONMENTAL PLANNING FOR AN ALTERNATE DATA CENTER (ADC) FACILITY THAT IS CO-LOCATED ON A PARCEL WITH OTHER EXISTING OR FUTURE STATE FACILITIES.					
		PLANS					100
		TOTAL FUNDING	AGS			C	100C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
LNR101 - PUBLIC LANDS MANAGEMENT							
6.		HONU'APO ESTUARY, LAND ACQUISITION IN KAU, HAWAII					
		LAND ACQUISITION FOR THE PURCHASE OF LAND IN KAU, HAWAII FOR THE PROTECTION OF NATURAL RESOURCES.					
		LAND				1,000	
		TOTAL FUNDING	LNR			1,000 C	C
7.		MOANALUA VALLEY, LAND ACQUISITION, OAHU					
		LAND ACQUISITION FOR THE PURCHASE OF LAND IN MOANALUA VALLEY FOR THE PROTECTION OF NATURAL RESOURCES.					
		LAND				3,000	
		TOTAL FUNDING	LNR			3,000 C	C
7.01.		WAIKIKI SEAWALL IMPROVEMENTS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE RESURFACING OF THE SEAWALL AND INSTALLATION OF RAILINGS ALONG WAIKIKI'S GOLD COAST. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS					50
		DESIGN					150
		CONSTRUCTION					1,800
		TOTAL FUNDING	LNR			C	2,000 C
AGS221 - CONSTRUCTION							
8.	E109	CAPITAL IMPROVEMENTS PROGRAM STAFF COSTS, STATEWIDE					
		PLANS, LAND ACQUISITION, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR COSTS RELATING TO WAGES AND FRINGES FOR PERMANENT, PROJECT-FUNDED STAFF POSITIONS FOR THE IMPLEMENTATION OF CAPITAL IMPROVEMENTS PROGRAM PROJECTS FOR THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES (DAGS). PROJECTS MAY ALSO INCLUDE FUNDS FOR NON-PERMANENT CAPITAL IMPROVEMENT PROGRAM RELATED POSITIONS.					
		PLANS				5,537	6,168
		LAND				1	1
		DESIGN				1	1
		CONSTRUCTION				1	1
		EQUIPMENT				1	1
		TOTAL FUNDING	AGS			5,541 C	6,172 C
9.	L102	KAMAMALU BUILDING, ASBESTOS REMOVAL AND BUILDING RENOVATION, OAHU					
		CONSTRUCTION FOR ASBESTOS MITIGATION AND INTERIOR RENOVATION FOR THE APPROXIMATELY 75,000 GROSS SQUARE FOOT KAMAMALU BUILDING.					
		CONSTRUCTION				12,600	
		TOTAL FUNDING	AGS			12,600 C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
10.	M106	WASHINGTON PLACE AND QUEEN'S GALLERY RENOVATION, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT TO RENOVATE WASHINGTON PLACE. PROJECT ALSO INCLUDES RENOVATION AND RESTORATION WORK OF THE QUEEN'S GALLERY AND OTHER AREAS AT THE WASHINGTON PLACE SITE.					
		PLANS		50			
		DESIGN		350			
		CONSTRUCTION				2,960	
		EQUIPMENT				40	
		TOTAL FUNDING	AGS	400R		3,000R	
11.	DEF07	RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES, STATEWIDE					
		PLANS, DESIGN, AND CONSTRUCTION TO RETROFIT PUBLIC BUILDINGS WITH HURRICANE PROTECTIVE MEASURES TO INCREASE THE NUMBER OF PUBLIC SHELTERS. THIS PROJECT IS DEEMED NECESSARY TO QUALIFY FOR FEDERAL AID FINANCING AND/OR REIMBURSEMENT.					
		PLANS		1			
		DESIGN		399			
		CONSTRUCTION		1,600			
		TOTAL FUNDING	AGS	2,000C			C
12.		LEAHI HOSPITAL, ATHERTON BUILDING ROOF REPLACEMENT, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO REPLACE THE ROOF OF THE ATHERTON BUILDING AT LEAHI HOSPITAL.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		333		305	
		TOTAL FUNDING	AGS	335C		305C	
13.		LEAHI HOSPITAL, SINCLAIR BUILDING ROOF REPLACEMENT, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION TO REPLACE THE ROOF OF THE SINCLAIR BUILDING AT LEAHI HOSPITAL.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		668		330	
		TOTAL FUNDING	AGS	670C		330C	
14.		LEAHI HOSPITAL, REPLACEMENT OF YOUNG BUILDING ELEVATORS, OAHU					
		PLANS, DESIGN, AND CONSTRUCTION FOR THE REPLACEMENT OF THE YOUNG BUILDING ELEVATORS AT LEAHI HOSPITAL.					
		PLANS		1			
		DESIGN		1			
		CONSTRUCTION		418		375	
		TOTAL FUNDING	AGS	420C		375C	

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
15.	0101	LUMP SUM CIP - PUBLIC BUILDING IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO PUBLIC BUILDINGS AND SITES, STATEWIDE. WORK MAY INCLUDE MAJOR BUILDING SYSTEMS REPAIR AND REPLACEMENT, MITIGATION OF HEALTH AND SAFETY HAZARDS, REMODELING AND REPAIR OF OCCUPIED SPACES, AS WELL AS PLANNING STUDIES NECESSARY FOR MANAGEMENT OF PUBLIC FACILITIES AND OPERATIONS.					
		PLANS				250	
		DESIGN				125	
		CONSTRUCTION				870	
		EQUIPMENT				5	
		TOTAL FUNDING	AGS			1,250 C	C
15.01.	P104	WASHINGTON PLACE HEALTH AND SAFETY AND QUEEN'S GALLERY RENOVATION, OAHU					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT TO ADDRESS IMMEDIATE HEALTH AND SAFETY NEEDS AT WASHINGTON PLACE. PROJECT INCLUDES LEAD BASED PAINT ABATEMENT/ ENCAPSULATION, BUILDING CODE REQUIREMENTS (STRUCTURAL, ELECTRICAL, PLUMBING, AND VENTILATION) AND ADAAG REQUIREMENTS FOR PRIMARY ACCESS ROUTES. WORK ALSO INCLUDES RENOVATION FOR THE PRESERVATION OF THE BUILDING WITH THE RETENTION OF EXISTING HISTORIC MATERIAL.					
		PLANS					1
		DESIGN					85
		CONSTRUCTION					413
		EQUIPMENT					1
		TOTAL FUNDING	AGS			C	500 C
15.02.	P105	STATE CAPITOL, STRUCTURAL IMPROVEMENTS AND REFINISH STATE SEALS, OAHU					
		DESIGN AND CONSTRUCTION TO REPLACE THE STRUCTURAL SUPPORT SYSTEM AND TO CLEAN AND REFINISH THE STATE SEALS AT THE STATE CAPITOL BUILDING.					
		DESIGN					25
		CONSTRUCTION					250
		TOTAL FUNDING	AGS			C	275 C
15.03.		LUMP SUM CIP - HEALTH, SAFETY AND CODE REQUIREMENTS, STATEWIDE					
		PLANS, 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.					
		PLANS					1

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		DESIGN					1
		CONSTRUCTION					3,497
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C		3,500C
15.04.		LUMP SUM CIP - ENERGY CONSERVATION IMPROVEMENTS, STATEWIDE					
		PLANS, DESIGN, CONSTRUCTION AND EQUIPMENT FOR DEVELOPMENT AND IMPLEMENTATION OF A COMPREHENSIVE ENERGY CONSERVATION PLAN TO MAXIMIZE ENERGY EFFICIENCY IN PUBLIC FACILITIES AND OPERATIONS.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					2,997
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C		3,000C
15.05.		KAILUA HIGH SCHOOL ACCESS ROAD, OAHU					
		DESIGN AND CONSTRUCTION OF AN ACCESS ROAD TO KAILUA HIGH SCHOOL FROM KALANIANA'OLE HIGHWAY.					
		DESIGN					25
		CONSTRUCTION					5,150
		TOTAL FUNDING	AGS		C		5,175C
15.06.		STATE CAPITOL IMPROVEMENTS, OAHU					
		DESIGN, CONSTRUCTION, AND EQUIPMENT FOR IMPROVEMENTS TO THE STATE CAPITOL ELECTRICAL AND COMPUTER NETWORKING SYSTEMS.					
		DESIGN					1
		CONSTRUCTION					368
		EQUIPMENT					1
		TOTAL FUNDING	AGS		C		370C
SUB201 - CITY AND COUNTY OF HONOLULU							
16.		NIU VALLEY GYMNASIUM, OAHU					
		PLANS AND DESIGN FOR A NEW GYMNASIUM IN NIU VALLEY.					
		PLANS				100	
		DESIGN				100	
		TOTAL FUNDING	CCH			200C	C
17.		MAUNALAHA HEIGHTS SUBDIVISION IMPROVEMENTS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE MAUNALAHA HEIGHTS SUBDIVISION, INCLUDING A NEW WATER LINE AND OTHER RELATED WORK.					
		DESIGN				50	
		CONSTRUCTION				750	
		TOTAL FUNDING	CCH			800C	C

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
18.		WAHIAWA DISTRICT PARK, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE BASEBALL FIELD, INCLUDING A NEW SCOREBOARD AND PUBLIC ADDRESS SYSTEM, AND OTHER RELATED WORK.					
		DESIGN			10		
		CONSTRUCTION			40		
		TOTAL FUNDING	CCH		50C		C
19.		SALT LAKE WATERWAYS, OAHU					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO SALT LAKE WATERWAYS, TO INCLUDE CLEANING AND OTHER RELATED WORK.					
		DESIGN			70		
		CONSTRUCTION			330		
		TOTAL FUNDING	CCH		400C		C
20.		MAKAKILO DRIVE EXTENSION, OAHU					
		PLANS AND DESIGN TO CREATE A SECOND ACCESS FOR MAKAKILO BY EXTENDING MAKAKILO DRIVE TO THE H-1 FREEWAY.					
		PLANS			500		
		DESIGN					5,000
		TOTAL FUNDING	CCH		500C		2,500C
			CCH			S	2,500S
20.01.		NIU VALLEY PARK PLAYGROUND EQUIPMENT, OAHU					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A PLAYGROUND IN NIU VALLEY.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					1
		EQUIPMENT					97
		TOTAL FUNDING	CCH			C	100C
20.02.		HALAWA HEIGHTS ROAD RETAINING WALL, OAHU					
		DESIGN AND CONSTRUCTION FOR A RETAINING WALL TO PREVENT EROSION OF HILLSIDE ALONG HALAWA HEIGHTS ROAD.					
		DESIGN					10
		CONSTRUCTION					40
		TOTAL FUNDING	CCH			C	50C
20.03.		REGIONAL URBAN HONOLULU TRAFFIC STUDIES, OAHU					
		PLANS FOR TRAFFIC STUDIES OF THE IMPACT OF DEVELOPMENT ON THE CENTRAL/URBAN HONOLULU CORE (CHINATOWN-ALA MOANA-MCCULLY/MOILILI, UNIVERSITY).					
		PLANS			500		
		TOTAL FUNDING	CCH		500C		C
20.04.		CENTRAL HONOLULU PLANNING STUDIES, OAHU					
		PLANS FOR STUDIES OF TRANSIT ORIENTED COMMUNITY BASED DEVELOPMENT IN					

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		HONOLULU'S CENTRAL URBAN CORE (DOWNTOWN/CHINATOWN TO UNIVERSITY AVE.)					
		PLANS					250
		TOTAL FUNDING	CCH		C		250C
20.05.		CROSSWALK AND PEDESTRIAN ACTIVATED LIGHT, OAHU					
		DESIGN AND CONSTRUCTION FOR A CROSSWALK AND PEDESTRIAN ACTIVATED LIGHT ON MAKAKILO DRIVE BETWEEN PANANA AND PALAHIA NEAR MAUKA LANI ELEMENTARY SCHOOL.					
		DESIGN					3
		CONSTRUCTION					314
		TOTAL FUNDING	CCH		C		317C
20.06.		HAWAII RACEWAY PARK, OAHU					
		LAND ACQUISITION TO ASSIST THE CITY AND COUNTY OF HONOLULU'S PURCHASE OF HAWAII RACEWAY PARK.					
		LAND					1,000
		TOTAL FUNDING	CCH		C		1,000C
SUB301 - COUNTY OF HAWAII							
21.		HAWAIIAN OCEAN VIEW ESTATES EXPLORATORY AND PRODUCTION WELLS, HAWAII					
		PLANS, LAND ACQUISITION, DESIGN, AND CONSTRUCTION FOR EXPLORATORY AND PRODUCTION WATER WELLS IN KAU, HAWAII.					
		PLANS					1
		LAND					1
		DESIGN					550
		CONSTRUCTION					5,448
		TOTAL FUNDING	COH			6,000C	C
21.01.		KAHUKU SKATEPARK, HAWAII					
		PLANS, DESIGN, CONSTRUCTION, AND EQUIPMENT FOR A CEMENT SKATEPARK WITH FENCING.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					84
		EQUIPMENT					1
		TOTAL FUNDING	COH		C		87C
21.02.		LAUPAHOEHOE POOL IMPROVEMENTS, HAWAII					
		DESIGN AND CONSTRUCTION FOR IMPROVEMENTS TO THE LAUPAHOEHOE POOL.					
		DESIGN					100
		CONSTRUCTION					900
		TOTAL FUNDING	COH		C		1,000C
21.03.		LAUPAHOEHOE BOAT RAMP, HAWAII					
		DESIGN AND CONSTRUCTION FOR BOAT RAMP IMPROVEMENTS.					
		DESIGN					50

CAPITAL IMPROVEMENT PROJECTS

ITEM NO.	CAPITAL PROJECT NO.	TITLE	EXPENDING AGENCY	APPROPRIATIONS (IN 000's)			
				FISCAL YEAR 2005-06	M O F	FISCAL YEAR 2006-07	M O F
		CONSTRUCTION					200
		TOTAL FUNDING	COH		C		250C
21.04.		TRANSITIONAL SHELTER FOR THE HOMELESS, HAWAII					
		PLANS, DESIGN, AND CONSTRUCTION OF A WEST HAWAII EMERGENCY HOMELESS SHELTER.					
		PLANS					50
		DESIGN					150
		CONSTRUCTION					800
		TOTAL FUNDING	COH		C		500C
			COH		S		500S
SUB501 - COUNTY OF KAUAI							
22.		KAUAI EMERGENCY HOMELESS AND TRANSITIONAL SHELTERS, KAUAI					
		DESIGN AND CONSTRUCTION FOR FACILITIES THAT ADDRESS EMERGENCY SHELTER AND TRANSITIONAL HOUSING UNIT NEEDS.					
		DESIGN					50
		CONSTRUCTION					600
		TOTAL FUNDING	COK				650C
							C
23.		KALEPA VILLAGE RENTAL APARTMENTS, KAUAI					
		DESIGN AND CONSTRUCTION FOR THE DEVELOPMENT OF UNITS TO PROVIDE HOUSING OPPORTUNITIES.					
		DESIGN					50
		CONSTRUCTION					950
		TOTAL FUNDING	COK				1,000C
							C
23.01.		KILAUEA WATER SYSTEM, KAUAI					
		DESIGN AND CONSTRUCTION FOR A DUCTILE IRON WATERLINE TO PROVIDE FIRE PROTECTION FOR KILAUEA SCHOOL.					
		DESIGN					80
		CONSTRUCTION					170
		TOTAL FUNDING	COK		C		250C
23.02.		WAILUA / KAPAA WATER SYSTEM, KAUAI					
		PLANS, DESIGN, AND CONSTRUCTION FOR WATER STORAGE TANKS AND IMPROVEMENTS.					
		PLANS					1
		DESIGN					1
		CONSTRUCTION					298
		TOTAL FUNDING	COK		C		300C

SECTION 6. Part V, Act 178, Session Laws of Hawaii 2005, is amended:

(1) By amending section 86 to read as follows:

“SECTION 86. Provided that of the general obligation bond fund appropriation for Hawaii community development authority (BED 150), the sum of

\$1,603,000 for fiscal year 2005-2006 and the sum of [~~\$1,603,000~~] \$1,672,000 for fiscal year 2006-2007 shall be used for Hawaii community development authority capital improvements program staff costs, statewide.”

(2) By amending section 87 to read as follows:

“SECTION 87. Provided that of the special funds and other funds appropriations for airports administration (TRN 195), the sum of \$2,151,000 for fiscal year 2005-2006 and the sum of [~~\$2,151,000~~] \$2,251,000 for fiscal year 2006-2007 shall be used for airports division capital improvements program staff costs, statewide.”

(3) By amending section 88 to read as follows:

“SECTION 88. Provided that of the special funds appropriation for harbors administration (TRN 395), the sum of \$988,000 for fiscal year 2005-2006 and the sum of [~~\$988,000~~] \$1,088,000 for fiscal year 2006-2007 shall be used for harbors division capital improvements program staff costs, statewide.”

(4) By adding a new section to read as follows:

“SECTION 88.1. Provided that of the general obligation reimbursable bond fund appropriation for harbors administration (TRN395), Item No. C-64, for ferry terminal improvements, statewide, no moneys shall be expended that have not been expended or encumbered as of the effective date of this Act until the department of transportation with the Hawaii Superferry, conducts site surveys and assessments, in collaboration with the Hawaii harbor users group, to implement a plan for harbor improvements, including but not limited to infrastructure and security, to accommodate the Hawaii Superferry operations and cargo terminal and container facilities at all state owned harbors affected by Hawaii Superferry operations; provided further that the department of transportation and Hawaii Superferry shall hold three public informational briefings in each county affected by Superferry operations to disseminate information and to receive public comment on harbor improvements planned under this program I.D. The first meeting shall take place no later than 6/30/2006, the second no later than 9/30/2006, and the third meeting shall take place no later than 3/30/2007; provided further that the public informational briefings shall be exempt from chapter 91, Hawaii Revised Statutes; and provided further that the department of transportation shall give at least ten days public notice of each public informational briefing, to be published in accordance with section 1-28.5, Hawaii Revised Statutes; and provided further that the Director of Transportation shall certify that all requirements of this proviso were met.”

(5) By adding a new section to read as follows:

“SECTION 91.1. Provided that of the general obligation bond fund appropriation for youth residential programs (HMS 503), for fiscal year 2006-2007, funds shall first be used to address all repairs, renovations, and improvements to the Hawaii youth correctional facility related to the Department of Justice Memorandum of Agreement; provided further that any remaining funds shall be used for necessary health and safety projects; provided further that the department of human services shall report quarterly on the progress made toward satisfying the Department of Justice Memorandum of Agreement as it relates to capital improvements; provided further that these reports shall include but not be limited to:

(1) The scope and estimated cost of each individual project funded through the lump sum;

- (2) Project completion percentages and estimated completion dates;
- (3) Amount allotted for each project;
- (4) Amount encumbered for each project; and
- (5) The identification of any projects that have been denied allotment;

and provided further that the department of human services shall submit a final report to the legislature on the steps taken to satisfy the Department of Justice Memorandum of Agreement no later than twenty days prior to the convening of the 2007 regular session.”

- (6) By amending section 92 to read as follows:

“SECTION 92. Provided that of the special funds appropriation for school-based budgeting (EDN 100), the sum of \$400,000 for fiscal year 2005-2006 and the sum of [~~\$400,000~~] \$419,000 for fiscal year 2006-2007 shall be used for department of education capital improvements program staff costs, statewide.”

- (7) By adding a new section to read as follows:

“SECTION 93.1. Provided that the department of public safety shall submit a report on the status of all capital improvement projects for which funds are appropriated in fiscal year 2006-2007 under Halawa Correctional Facility (PSD 402); provided further that this report shall include but not be limited to:

- (1) The scope of each fire and life safety code improvement;
- (2) Project completion percentages and estimated completion dates for all projects;
- (3) Amount allotted for each project;
- (4) Amount expended for each project;
- (5) Amount encumbered for each project; and
- (6) The identification of any projects that have been denied allotment;

and provided further that the department of public safety shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

- (8) By adding a new section to read as follows:

“SECTION 93.2. Provided that the department of public safety shall submit a report on the status of all lump sum capital improvement projects for which funds are appropriated in fiscal year 2006-2007 under general administration (PSD 900); provided further that this report shall provide a detailed breakdown of each individual project funded through the lump sum appropriation; provided further that this report shall include but not be limited to:

- (1) The scope of each individual planned project;
- (2) Project completion percentage and estimated completion date;
- (3) Amount allotted for each project;
- (4) Amount expended for each project;
- (5) Amount encumbered for each project; and
- (6) The identification of any projects that have been denied allotment;

and provided further that the department of public safety shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

- (9) By adding a new section to read as follows:

“SECTION 95.1. Provided that of the general obligation bond fund appropriation for construction (AGS 221), the sum of \$370,000 shall be used to upgrade the electrical and computer networking capacity of the State Capitol, including but not limited to, the provision of electrical outlets at each member’s desk in both the House and the Senate Chambers. Remaining funds may be used to increase the electrical and computer networking capacity of other areas of the Capitol building that are currently lacking sufficient capacity.”

(10) By adding a new section to read as follows:

“SECTION 98.1. Any law to the contrary notwithstanding, the appropriations under Act 1, First Special Session Laws of Hawaii 1981, section 3, as amended and renumbered by Act 264, Session Laws of Hawaii 1982, 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>
<u>A-8</u>	<u>\$449,000 C”</u>

(11) By adding a new section to read as follows:

“SECTION 98.2. Any law to the contrary notwithstanding, the appropriations under Act 296, Session Laws of Hawaii 1991, section 165, as amended and renumbered by Act 300, Session Laws of Hawaii 1992, section 6, in the amounts indicated or balances thereof, unallotted, allotted, encumbered, and unrequired, are hereby lapsed:

<u>“Item No.</u>	<u>Amount (MOF)</u>
<u>D-10</u>	<u>\$772,000 C</u>
<u>H-34</u>	<u>\$3,909 D”</u>

(12) By amending section 99 to read as follows:

“SECTION 99. 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>
<u>A-6</u>	<u>\$5,000,000 R</u>
<u>C-01</u>	<u>46,824 E</u>
<u>C-01</u>	<u>72,306 N</u>
<u>C-02</u>	<u>3,986,198 B</u>
<u>C-02</u>	<u>2,926 E</u>
<u>C-03</u>	<u>17,174 B</u>
<u>C-03</u>	<u>14,896 E</u>
<u>C-03</u>	<u>500,000 N</u>
<u>C-04</u>	<u>139,487 E</u>
<u>C-04</u>	<u>419,425 N</u>
<u>C-10</u>	<u>39,605 B</u>
<u>C-10</u>	<u>21,314 E</u>
<u>C-10</u>	<u>133,104 N</u>
<u>C-11</u>	<u>154,348 B</u>

<u>Item No.</u>	<u>Amount (MOF)</u>
<u>C-11</u>	<u>122,553 E</u>
<u>C-11</u>	<u>3,672,118 N</u>
<u>C-12</u>	<u>268,224 B</u>
<u>C-13</u>	<u>70,699 B</u>
<u>C-13</u>	<u>297,534 N</u>
<u>C-14</u>	<u>87,240 B</u>
<u>C-14</u>	<u>131,435 E</u>
<u>C-15</u>	<u>837,644 B</u>
<u>C-16</u>	<u>3,921 B</u>
<u>C-16</u>	<u>143,890 N</u>
<u>C-17</u>	<u>250,000 E</u>
<u>C-18</u>	<u>1,781,365 B</u>
<u>C-19</u>	<u>10,108 E</u>
<u>C-21</u>	<u>3 B</u>
<u>C-21</u>	<u>236,060 E</u>
<u>C-21</u>	<u>284,006 N</u>
<u>C-41</u>	<u>2,121,000 E</u>
<u>C-59D</u>	<u>7,000 E</u>
<u>C-59D</u>	<u>122,000 N</u>
<u>C-59E</u>	<u>41,000 E</u>
<u>C-59E</u>	<u>145,000 N</u>
<u>H-9</u>	<u>24,306 C</u>

(13) By amending section 100 to read as follows:

“SECTION 100. 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>
<u>A-10</u>	<u>\$ 747,956 C</u>
<u>C-01</u>	<u>2,356,749 B</u>
<u>C-01</u>	<u>205,883 E</u>
<u>C-01</u>	<u>2,287,140 N</u>
<u>C-02</u>	<u>654,500 B</u>
<u>C-02</u>	<u>1,000,000 E</u>
<u>C-06</u>	<u>16,385,029 B</u>
<u>C-06</u>	<u>21,921,750 N</u>
<u>C-06A</u>	<u>1,441,000 N</u>
<u>C-06B</u>	<u>1,000,000 N</u>
<u>C-07B</u>	<u>6,026,477 N</u>
<u>C-08</u>	<u>2,000 N</u>
<u>C-10</u>	<u>80,059 B</u>
<u>C-10</u>	<u>60,216 E</u>
<u>C-26</u>	<u>3,859,000 E</u>
<u>C-26</u>	<u>640,000 N</u>
<u>C-85A</u>	<u>65,346 C</u>
<u>G-79</u>	<u>204,000 N</u> ”

(14) By amending section 101 to read as follows:

“SECTION 101. 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>
<u>C-03</u>	<u>\$ 9,307,690 B</u>
<u>C-05</u>	<u>126,701 N</u>
<u>C-10A</u>	<u>794,860 B</u>
<u>C-21B</u>	<u>4,000,000 N</u>
<u>C-37A</u>	<u>532,826 N</u>
<u>C-42</u>	<u>24,986,281 B</u>
<u>C-48</u>	<u>16,866 B</u>
<u>C-48</u>	<u>7,319,586 N</u>
<u>C-66</u>	<u>20,000,000 B</u>
<u>C-67</u>	<u>79,000 B</u>
<u>C-70</u>	<u>151,447 B</u>
<u>C-70</u>	<u>3,960,765 N</u>
<u>C-73</u>	<u>29,037 B</u>
<u>C-73</u>	<u>19,500 N</u>
<u>C-76</u>	<u>3,649 B</u>
<u>C-76</u>	<u>250,000 N</u>
<u>G-117</u>	<u>25,600 C</u>
<u>G-123</u>	<u>207,597 C</u>
<u>G-125</u>	<u>111,090 C</u>
<u>G-131</u>	<u>24,681 C</u>
<u>I-10</u>	<u>150,000 C</u>
<u>I-13</u>	<u>12,959 C</u>
<u>I-14</u>	<u>30,000 C</u>
<u>K-20</u>	<u>262,460 B”</u>

(15) By amending section 102 to read as follows:

“SECTION 102. Any law to the contrary notwithstanding, the appropriations under Act 91, Session Laws of Hawaii 1999, section 64, as amended and renumbered by Act 281, Session Laws of Hawaii 2000, 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>
<u>A-16A</u>	<u>\$543,194 C</u>
<u>A-16C</u>	<u>70,000 C</u>
<u>G-59</u>	<u>750,000 N</u>
<u>G-81</u>	<u>70,000 C</u>
<u>G-89</u>	<u>211,812 C</u>
<u>G-96</u>	<u>292,089 C</u>
<u>G-97</u>	<u>91,129 C</u>
<u>G-98A</u>	<u>370,000 C</u>
<u>I-11</u>	<u>514,000 C</u>
<u>I-11</u>	<u>460,000 N”</u>

(16) By amending section 104 to read as follows:

“SECTION 104. Any law to the contrary notwithstanding, the appropriations under Act 200, Session Laws of Hawaii 2003, section 77, as amended and renumbered by Act 41, Session Laws of Hawaii 2004, 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-0.03	\$ 1,900,000 N
<u>A-0.06</u>	<u>700,000 C</u>
<u>A-2</u>	<u>2,131,828 C</u>
<u>A-3</u>	<u>200,000 C</u>
<u>A-3.03</u>	<u>986,000 C</u>
<u>A-4</u>	<u>500,000 C</u>
<u>A-4.02</u>	<u>2,000,000 C</u>
<u>A-6</u>	<u>39,839 C</u>
<u>A-6.01</u>	<u>425,000 C</u>
<u>B-2</u>	<u>625,000 C</u>
E-5	20,000,000 C
F-3.08	660,000 C
<u>G-19.02</u>	<u>300,000 B</u>
<u>G-19.03</u>	<u>270,000 B</u>
<u>G-24.01</u>	<u>2,000,000 B</u>
<u>G-24.02</u>	<u>335,000 B</u>
<u>G-32</u>	<u>474,000 B</u>
<u>G-33.01</u>	<u>593,000 B</u>
<u>G-33.03</u>	<u>4,800,000 B</u>
<u>G-37.01</u>	<u>400,000 B</u>
<u>G-46</u>	<u>3,750,000 B</u>
<u>G-47.01</u>	<u>1,450,000 B</u>
<u>G-48.01</u>	<u>400,000 B</u>
<u>G-57</u>	<u>2,000,000 B</u>
<u>G-57.01</u>	<u>3,400,000 B</u>
<u>G-64</u>	<u>6,500,000 C</u>
<u>G-70.05</u>	<u>430,000 C</u>
<u>G-70.05</u>	<u>200,000 R</u>
<u>H-6.03</u>	<u>100,000 C</u>
<u>H-9.01</u>	<u>250,000 C</u>
<u>H-9.02</u>	<u>250,000 C</u>
<u>H-9.03</u>	<u>75,000 C</u>
<u>K-3</u>	<u>197,960,000 C</u>
<u>K-9.01</u>	<u>500,000 C</u>
<u>K-9.01</u>	<u>500,000 S</u>
<u>K-12.01</u>	<u>4,500,000 C</u>
<u>K-12.04</u>	<u>500,000 C</u>
<u>K-12.04</u>	<u>500,000 S”</u>

SECTION 7. Part VI, Act 178, Session Laws of Hawaii 2005, is amended:
 (1) By amending section 105 to read as follows:

“SECTION 105. 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, any additional principal amount that may be necessary by the department to pay interest on the airport revenue bonds during the estimated period of construction of the capital improvements program project for which the airport revenue bonds are issued, to establish, maintain, or increase reserves for the airport revenue bonds and to pay the expenses of issuance of the bonds. The 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, to the extent not paid from the proceeds of such bonds, shall be paid from the airport revenue fund.

~~[The governor, in the governor's discretion, is authorized to use the airport revenue fund to finance those projects authorized in part II and listed in part IV of this Act where the method of financing is designated to be by airport revenue bond funds.]~~

SECTION 8. Part VII, Act 178, Session Laws of Hawaii 2005, is amended:

(1) By amending section 119 to read as follows:

“SECTION 119. 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 2005-2007 that are unencumbered as of June 30, 2008 shall lapse as of that date; provided further that this lapsing date shall not apply to: (a) appropriations for projects described in section 85 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 which, if unencumbered on June 30, 2010, shall lapse as of that date; and (b) non-general fund appropriations for projects described in section 85 of this Act where such appropriations have been deemed necessary to qualify for federal aid financing and reimbursement.”

(2) By adding a new section to read as follows:

“SECTION 124.1. Provided that notwithstanding any provision in part III of this Act, the governor is authorized to transfer savings or unrequired balances as may be available of general funds from any program in this Act, up to an aggregate total of \$300,000, to supplement the department of land and natural resources' fire-fighter's contingency fund; provided further that these funds shall be used for prevention, control, and extinguishment of wildland fires within forest reserves, public hunting areas, wildlife and plant sanctuaries, and natural area reserves in cooperation with fire control agencies of the counties and federal government; provided further that the department shall prepare a report on:

(1) The department's utilization of the funds;

(2) A comparison of acres damaged by wildfires in previous years; and
(3) Plans and activities to prevent more fires in the future;
and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(3) By repealing section 156:

~~[SECTION 156. Provided that of the federal fund appropriation for the department of human services there is appropriated current year federal Temporary Assistance for Needy Families (TANF) funds, which are federal TANF funds from the current federal fiscal year’s block grant, the sum of \$63,904,788, or so much thereof as may be necessary, for fiscal year 2005-2006, and the same sum, or so much thereof as may be necessary, for fiscal year 2006-2007 for the purposes of implementing the TANF program, its associated programs, and transfers to other programs.]~~

(4) By adding a new section to read as follows:

“SECTION 156. Provided that of the federal fund appropriation for the department of human services, there are appropriated current year and carry-over federal Temporary Assistance for Needy Families (TANF) funds, in the sum of \$131,400,000, or so much thereof as may be necessary for fiscal year 2006-2007, which shall be used for the implementation of the TANF program, its associated programs, and transfer to other programs; and provided further that any other provision to spend funds from the carry-over federal TANF funds or current year federal TANF funds shall be construed as a portion of, and not in addition to, the sum indicated in this section.”

(5) By adding a new section to read as follows:

“SECTION 156.1. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$9,500,000, or so much thereof as may be necessary for fiscal year 2006-2007, that shall be used for administration of the department’s TANF program.”

(6) By adding a new section to read as follows:

“SECTION 156.2. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$45,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, that shall be used for cash payments to needy families and associated eligibility determination costs.”

(7) By adding a new section to read as follows:

“SECTION 156.3. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$12,200,000, or so much thereof as may be necessary for fiscal year 2006-2007, that shall be used for teen pregnancy and family strengthening services.”

(8) By adding a new section to read as follows:

“SECTION 156.4. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum

of \$7,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, that shall be used for purchase of service contracts for child welfare services.”

(9) By adding a new section to read as follows:

“SECTION 156.5. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$13,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, that shall be used for work program contracts.”

(10) By adding a new section to read as follows:

“SECTION 156.6. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$13,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, that shall be used for support services for TANF recipients.”

(11) By adding a new section to read as follows:

“SECTION 156.7. Provided that of the federal fund appropriation for the department of human services, there is appropriated federal TANF funds in the sum of \$500,000, or so much thereof as may be necessary, for fiscal year 2006-2007, that shall be expended for the city and county of Honolulu to provide direct services for pre-employment, education, and leadership development programs that serve at-risk youth.”

(12) By adding a new section to read as follows:

“SECTION 156.8. Provided that the department of human services shall prepare a report that shall include, but not be limited to, a detailed financial plan for federal TANF funds, including anticipated expenditures by type and fiscal year, and the balance of funding in the federal TANF reserve fund; provided further that this plan shall encompass the prior two fiscal years, the current fiscal year, and the next four fiscal years; and provided that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(13) By repealing section 157:

~~[SECTION 157. Provided that of the federal fund appropriation for the department of human services there is appropriated carry over federal funds in the sum of \$45,000,000 or so much thereof as may be necessary for fiscal year 2005-2006, and the same sum, or so much thereof as may be necessary for fiscal year 2006-2007 for the purpose of implementing the TANF program and its associated programs.]~~

(14) By adding a new section to read as follows:

“SECTION 157. Provided that the department of human services shall prepare a report on the TANF program that includes:

- (1) Its outcomes and measures of effectiveness with regards to the TANF program;
- (2) Work participation rates for two-parent families and all families in the TANF program; and

(3) A listing of all contracts funded by the TANF program and how these contracts will help the state’s TANF program fulfill federal requirements;
and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(15) By adding a new section to read as follows:

“SECTION 157.1. Provided that the department of human services shall prepare a report that shall include, but not be limited to, finding alternative sources of funding for teen pregnancy prevention and child welfare services programs that are currently budgeted for with federal TANF funds; and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(16) By amending section 167 to read as follows:

“SECTION 167. Provided that for fiscal year 2006-2007 no funds, including federal funds, shall be expended to fill any position not authorized by the legislature; provided further that this prohibition shall not apply to:

- (1) The University of Hawaii and the Hawaii health systems corporation;
- (2) Civil service positions entirely federally funded; or
- (3) Positions established pursuant to section 76-16(b) subsections (3), (13), (21), and (23), Hawaii Revised Statutes, or where an agency has explicit statutory authorization to establish positions to accomplish necessary functions;

provided further that with regard to any of the positions identified in paragraphs (1), (2), or (3), the respective agency or department shall submit a report to the legislature within five days of each use of this provision; provided further that the report shall include:

- (1) Authority used to establish the position;
- (2) Date the position was established;
- (3) Projected date the position will be filled;
- (4) Amounts projected to be expended in fiscal year 2006-2007;
- (5) Source of funds used to pay for the position; and
- (6) Functions to be performed by the position;

provided further that a report shall be prepared by the department of budget and finance identifying all positions not authorized by the legislature (both filled and vacant) in the [~~Executive Branch~~] executive branch with the exception of the department of education and the [~~university~~] University of Hawaii; provided further that this report shall include for each position the authority used to establish the position, the date the position was established, whether the position is filled or vacant, if the position is vacant the date the position became vacant, if the position is filled the date the position was filled, the amount expended for the position for fiscal year 2004-2005, the amount projected to be expended in fiscal year 2005-2006, the amount projected to be expended for fiscal year 2006-2007, the source of funds used to pay for the position, the impact of eliminating the position and funds projected to be expended for the position; and provided further that the report shall be submitted to the legislature no later than October 1, 2005.”

(17) By adding a new section to read as follows:

“SECTION 168.1. Provided that in implementing Act 196, Session Laws of Hawaii 2005, the department of human services and the department of business, economic development, and tourism, with the approval of the governor, may each

transfer positions and funds to the other department; provided further that the transfers are necessary for the operations of the departments' housing and development programs; provided further that each department shall prepare a report of all uses of this provision during the previous twelve-month period from December 1 to November 30; and provided further that each department shall submit its report to the legislature no later than twenty days prior to the convening of the 2007 regular session."

(18) By adding a new section to read as follows:

"SECTION 168.2. Provided that with the approval of the governor, the department of education may transfer to the department of human services funds appropriated by the department of education for health services provided to Medicaid-eligible school-aged children, whenever the department of human services can utilize the funds to match federal funds to finance the cost of health services provided to Medicaid-eligible school-aged children; provided further that the governor shall notify the legislature within five days of each use of this provision; provided further that the governor shall submit a report to the legislature of all uses of this provision for the twelve month period from December 1 to November 30; and provided further that this report shall be submitted no later than twenty days prior to the convening of the 2007 regular session."

(19) By adding a new section to read as follows:

"SECTION 168.3. Provided that the department of human services is authorized to:

(1) Enter into agreements with the department of education to furnish health services provided to Medicaid-eligible school-aged children; and

(2) Pay the department of education for the care; provided further that the governor shall notify the legislature within five days of each use of this provision; and provided further that the governor shall prepare a report of all uses of this provision for the twelve month period from December 1 to November 30; and provided further that the governor shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session."

(20) By adding a new section to read as follows:

"SECTION 168.4. Provided that the department of human services shall prepare a report with regards to the implementation of the QUEST Adult Coverage Expansion (ACE) and direct payments to hospitals; provided further that the department shall prepare a report that shall include but not be limited to:

(1) Identifying the hospitals receiving direct payments;

(2) The amount paid to each hospital;

(3) The number of people enrolled in QUEST-ACE;

(4) The federal benchmarks for QUEST-ACE; and

(5) Measurable statistics of how the QUEST-ACE program is lowering the uninsured population of Hawaii;

and provided further that the department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session."

(21) By adding a new section to read as follows:

“SECTION 168.5. Provided that each executive department shall plan for or install energy reduction, energy savings, or energy producing efforts and technologies to lessen electrical consumption or to increase efficiencies in using electrical energy; provided further that each department shall prepare a report on:

- (1) Energy consumption in kilowatt hours for the past two years (July 1, 2004 to June 30, 2006);
- (2) Steps taken to inventory, investigate, plan, and implement energy reduction efforts; and
- (3) A plan or alternatives to reduce energy consumption in the future; and provided further that each department shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

(22) By adding a new section to read as follows:

“SECTION 168.6. Provided that the state auditor shall conduct a follow-up report to the 2003 study entitled “Study of the Automated Child Support Enforcement System (KEIKI)”’; provided further that the report shall include, but not be limited to, recommendations that have been implemented since the 2003 study, recommendations that have yet to be implemented, additional recommendations, and a comparison of the current state of the child support enforcement agency between 2003 and 2006; and provided further that the auditor shall submit the report to the legislature no later than twenty days prior to the convening of the 2007 regular session.”

SECTION 9. 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 10. 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 11. Material to be repealed is bracketed and stricken. New statutory material is underscored. In printing this Act, the revisor of statutes need not include the bracketed material or the underscoring.

SECTION 12. Nothing in this Act shall affect the validity or continuing effectiveness of any provisions of Act 178, Session Laws of Hawaii 2005, not repealed or modified by this Act.

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

(Approved June 1, 2006.)

Notes

1. This item 15 is new. Items 16 to 27 were items 15 to 26 in Act 178, SLH 2005.
2. Prior to amendment “school” appeared here.
3. “That” should be underscored.
4. Prior to amendment this part of the proviso read “provided further that the report shall”.
5. “And” should not be underscored.

ACT 161

H.B. NO. 1866

A Bill for an Act Relating to Education.

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

SECTION 1. Section 40-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) With respect to the executive branch, except the University of Hawaii[;] until June 30, 2011, the Hawaii tourism authority, and the department of education[;] until June 30, 2011, the comptroller shall have complete supervision of all accounts. The comptroller shall preaudit all proposed payments of \$10,000 or more to determine the propriety of expenditures and compliance with executive orders and rules that may be in effect. When necessary, the comptroller shall withhold approval of any payment. Whenever approval is withheld, the department or agency concerned shall be promptly notified. With respect to the University of Hawaii, the Hawaii tourism authority, and the department of education, the comptroller shall issue warrants for the release of funds for the operating costs of the university, the Hawaii tourism authority, or the department of education, as applicable, in amounts and at times mutually agreed upon by the governor or director of finance and the university, the Hawaii tourism authority, or department of education, as applicable; provided:

- (1) The amounts released shall not exceed the allotment ceilings for the respective funding sources of the university’s or the department of education’s appropriations established by the governor for an allotment period pursuant to section 37-34, or in the case of the Hawaii tourism authority, revenues received by the convention center enterprise special fund and the tourism special fund pursuant to section 237D-6.5; and
- (2) The comptroller may issue warrants as an advance from the state treasury to the University of Hawaii, the Hawaii tourism authority, and the department of education to establish a checking account and provide working capital in amounts and at times mutually agreed upon by the governor or director of finance and the University of Hawaii, the Hawaii tourism authority, and the department of education.

The University of Hawaii, the Hawaii tourism authority, and the department of education shall preaudit all proposed payments to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules as may be in effect. The University of Hawaii, the Hawaii tourism authority, and the department of education shall make disbursements for operating expenses from the amounts released by the comptroller and maintain records and documents necessary to support those disbursements at times mutually agreed upon by the university president, the executive director of the Hawaii tourism authority, or the superintendent of education, as applicable, and the comptroller; provided that when requested by the university, the Hawaii tourism authority, or department of education, the comptroller shall make all disbursements for the university, the Hawaii tourism authority, or department of education, as applicable, subject to available allotment. Funds released pursuant to this section shall be deposited by the university, the Hawaii tourism authority, or department of education, as applicable, in accordance with the provisions applicable to the director of finance by chapter 38. Except for moneys deposited by the Hawaii tourism authority in the convention center enterprise special fund pursuant to section 201B-8, and in the tourism special fund pursuant to section 201B-11, any interest earned on the deposit of funds released pursuant to this section shall be deposited in the state treasury at the end of each fiscal year.”

SECTION 2. Section 40-2, Hawaii Revised Statutes, is amended to read as follows:

“§40-2 Accounting systems and internal control; enforcing the use of and inspection of the same. The accounting system installed by the commission on public accountancy under Act 181, Session Laws of Hawaii 1923, as amended by Act 220, Session Laws of Hawaii 1925, for use in the offices of the comptroller, director of finance, departmental and agency services of the State, and the auditors, treasurers, departmental and agency services of the several counties shall be the accounting and reporting systems of the State and counties; provided that the University of Hawaii, until June 30, 2011, may install a different accounting system which shall be in conformity with generally accepted accounting principles as applied to colleges and universities; and provided further that the department of education, until June 30, 2011, may install a different accounting system which shall be in conformity to generally accepted accounting principles. The comptroller shall make such changes and modifications in the accounting system as shall from time to time appear to be in the best interest of the State and counties.

The departments and agencies of the executive branch are respectively charged with the responsibility to maintain an adequate system of internal control and with the further responsibility to see that the internal control system continues to function effectively as designed. The comptroller shall make such investigations and audits from time to time to enforce the use of the accounting system and internal control systems in the executive branch.

The judiciary, the legislature, and each county shall be responsible for the establishment and maintenance of its respective internal control system.”

SECTION 3. Section 40-4, Hawaii Revised Statutes, is amended to read as follows:

“§40-4 Publication of statements. The comptroller shall prepare and submit to the governor, immediately following the close of each fiscal year, a statement of income and expenditure by funds, showing the principal sources of revenue, the function or purpose for which expenditures were made, together with a consolidated statement showing similar information for all funds; also a statement showing the balance in each fund at the beginning of the fiscal year, plus the receipts, minus the disbursements, and the balance on hand at the close of the fiscal year after deducting outstanding warrants and vouchers. The comptroller may request all agencies, the judiciary, the University of Hawaii[;] until June 30, 2011, the Hawaii tourism authority, the department of education[;] until June 30, 2011, and the legislature to provide such information as may be required for the preparation of statements.”

SECTION 4. Section 40-6, Hawaii Revised Statutes, is amended to read as follows:

“§40-6 Approval of business and accounting forms. The comptroller shall determine the forms required to adequately supply accounting and statistical data for the state government. The comptroller shall require heads of departments and establishments of the state government to submit proposed new forms or proposed changes in current business and accounting forms for review and approval before ordering the same printed; except that the University of Hawaii[;] until June 30, 2011, the Hawaii tourism authority, and the department of education until June 30, 2011, shall be subject to this requirement only with respect to uniform business and accounting forms of statewide use in the State’s accounting system. All standard state forms shall be classified, numbered, and standardized in design, dimensions,

color, and grade of paper and recorded in a catalogue of accounting and statistical forms by the comptroller.”

SECTION 5. Section 40-58, Hawaii Revised Statutes, is amended to read as follows:

“**§40-58 In favor of assignees.** No assignment of moneys by a person to whom the State is directly indebted shall be effective unless the assignment is first approved by the comptroller or, in the case of the University of Hawaii and the department of education, until June 30, 2011, by their respective chief financial officers. The comptroller or the chief financial officers of the University of Hawaii and the department of education may prescribe the form for an assignment, and may approve the assignment within a reasonable time period if, in their respective discretion, the rights or obligations of the State, the University of Hawaii, or the department of education under any contract or other undertaking or under any law, rule, or order by a competent authority will not be prejudiced thereby. Upon approval of the assignment, the comptroller or the respective chief financial officers of the University of Hawaii and the department of education shall draw a warrant payable to the assignee. Except as to contracts encumbered by the comptroller, the University of Hawaii, or the department of education, each expending agency, upon notification of the comptroller’s approval of an assignment, shall prepare a claim for payment in accordance with the terms of the assignment.”

SECTION 6. Section 40-81, Hawaii Revised Statutes, is amended to read as follows:

“**§40-81 Report by agencies receiving special moneys.** All state officers, departments, boards, bureaus, commissions, or agencies collecting or receiving any moneys not required by law to be deposited in the state treasury shall report to the comptroller all receipts and disbursements on account thereof for each quarterly period of the calendar year not later than the fifteenth day following the end of each quarterly period on such forms and under such rules as may be prescribed by the comptroller; provided that until June 30, 2011, with respect to all moneys held outside the state treasury by the University of Hawaii or the department of education pursuant to the authority granted to the university and the department of education by this chapter, the University of Hawaii and the department of education shall report to the comptroller all transactions for each quarterly period not later than the fifteenth day following the end of each quarterly period on such forms and under such rules as may be prescribed by the comptroller.”

SECTION 7. Section 12 of Act 321, Session Laws of Hawaii 1986; as amended by section 69 of Act 283, Session Laws of Hawaii 1987; as amended by section 7 of Act 371, Session Laws of Hawaii 1989; as amended by section 3 of Act 163, Session Laws of Hawaii 1991; as amended by section 2 of Act 314, Session Laws of Hawaii 1993; as amended by section 22 of Act 8, Special Session Laws of Hawaii 1993, as amended by section 1 of Act 180, Session Laws of Hawaii 1997; as amended by section 24 of Act 115, Session Laws of Hawaii 1998; and as amended by section 1 of Act 137, Session Laws of Hawaii 2005, is amended to read as follows:

“SECTION 12. This Act shall take effect on July 1, 1986[, and be repealed as of June 30, 2006; provided that on repeal sections 40-1, 40-2, 40-4, 40-6 and 40-81, Hawaii Revised Statutes, are reenacted in the form in which they read on June

ACT 162

~~30, 1986, and section 40-58, Hawaii Revised Statutes, is reenacted in the form in which it read on June 30, 1991].”~~

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

SECTION 9. This Act shall take effect on June 29, 2006.

(Approved June 1, 2006.)

ACT 162

S.B. NO. 3185

A Bill for an Act Relating to Energy.

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

SECTION 1. Chapter 269, Hawaii Revised Statutes, is amended by adding four new sections to be appropriately designated and to read as follows:

“§269-A Public benefits fund; authorization. (a) The public utilities commission, by order or rule, may redirect all or a portion of the funds collected through the current demand-side management surcharge by Hawaii’s electric utilities into a public benefits fund that may be established by the public utilities commission.

(b) If the public utilities commission establishes a public benefits fund, the surcharge shall be known as the public benefits fee. Moneys in the fund shall be ratepayer funds that shall be used to support energy-efficiency and demand-side management programs and services, subject to the review and approval of the public utilities commission. These moneys shall not be available to meet any current or past general obligations of the State.

§269-B Public benefits fund administrator; establishment. (a) If the public utilities commission establishes a public benefits fund, the public utilities commission shall appoint a fund administrator to operate and manage any programs established under section 269-A. The fund administrator shall not expend more than ten per cent of the fund in any fiscal year, or other reasonable percentage determined by the public utilities commission, for administration of the programs established under section 269-A.

(b) The fund administrator shall be subject to regulation by the public utilities commission, including pursuant to sections 269-7, 269-8, 269-8.2, 269-8.5, 269-9, 269-10, 269-13, 269-15, 269-19.5, and 269-28, and shall report to the public utilities commission on a regular basis. Notwithstanding any other provision of law to the contrary, the fund administrator shall not be an electric public utility or an electric public utility affiliate.

§269-C Requirements for the public benefits fund administrator. (a) Any fund administrator appointed pursuant to section 269-B shall satisfy the qualification requirements established by the public utilities commission by rule or order. These requirements may include experience and expertise in:

- (1) Energy-efficient and renewable energy technologies and methods; and
- (2) Identifying, developing, administering, and implementing demand-side management and energy-efficiency programs.

(b) The fund administrator's duties and responsibilities shall be established by the public utilities commission by rule or order, and may include:

- (1) Identifying, developing, administering, promoting, implementing, and evaluating programs, methods, and technologies that support energy-efficiency and demand-side management programs;
- (2) Encouraging the continuance or improvement of efficiencies made in the production, delivery, and use of energy-efficiency and demand-side management programs and services;
- (3) Using the energy-efficiency expertise and capabilities that have developed or may develop in the State and consulting with state agency experts;
- (4) Promoting program initiatives, incentives, and market strategies that address the needs of persons facing the most significant barriers to participation;
- (5) Promoting coordinated program delivery, including coordination with electric public utilities regarding the delivery of low-income home energy assistance, other demand-side management or energy-efficiency programs, and any utility programs;
- (6) Consideration of innovative approaches to delivering demand-side management and energy-efficiency services, including strategies to encourage third party financing and customer contributions to the cost of demand-side management and energy-efficiency services; and
- (7) Submitting, to the public utilities commission for review and approval, a multi-year budget and planning cycle that promotes program improvement, program stability, and maturation of programs and delivery resources.

§269-D Transitioning from utility demand-side management programs to the public benefits fund. If the public utilities commission establishes a public benefits fund pursuant to section 269-A, the public utilities commission shall:

- (1) Develop a transition plan that ensures that:
 - (A) Utility demand-side management programs are continued, to the extent practicable, until the transition date; and
 - (B) The fund administrator will be able to provide demand-side management and energy-efficiency services on the transition date;
- (2) Encourage programs that allow all retail electricity customers, including state and county agencies, regardless of the retail electricity or gas provider, to have an opportunity to participate in and benefit from a comprehensive set of cost-effective demand-side management and energy-efficiency programs and initiatives designed to overcome barriers to participation;
- (3) Encourage programs, measures, and delivery mechanisms that reasonably reflect current and projected utility integrated resource planning, market conditions, technological options, and environmental benefits;
- (4) Facilitate the delivery of these programs as rapidly as possible, taking into consideration the need for these services and cost-effective delivery mechanisms;
- (5) Consider the unique geographic location of the State and the high costs of energy in developing programs that will promote technologies to advance energy efficiency and use of renewable energy and permit the State to take advantage of activities undertaken in other states, including the opportunity for multi-state programs;

- (6) Require the fund administrator appointed by the public utilities commission under section 269-B to deliver programs in an effective, efficient, timely, and competent manner and to meet standards that are consistent with state policy and public utilities commission policy; and
- (7) Before January 2, 2008, and every three years thereafter, require verification by an independent auditor of the reported energy and capacity savings and incremental renewable energy production savings associated with the programs delivered by the fund administrator appointed by the public utilities commission to deliver energy-efficiency and demand-side management programs under section 269-A.”

SECTION 2. Section 269-16, Hawaii Revised Statutes, is amended to read as follows:

“**§269-16 Regulation of utility rates; ratemaking procedures.** (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility[;] or by two or more public utilities jointly[;] shall be just and reasonable and shall be filed with the public utilities commission. The rates, fares, classifications, charges, and rules of every public utility shall be published by the public utility in such manner as the public utilities commission may require, and copies shall be furnished to any person on request.

To the extent the contested case proceedings referred to in chapter 91 are required in any rate proceeding [~~in order~~] to ensure fairness and to provide due process to parties [~~which~~] that may be affected by rates approved by the commission, [~~such~~] the evidentiary hearings shall be conducted expeditiously and shall be conducted as a part of the ratemaking proceeding.

(b) No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, except after thirty days’ notice to the commission as prescribed in section 269-12(b) [~~to the commission~~], and prior approval by the commission for any increases in rates, fares, or charges. The commission [~~may~~], in its discretion and for good cause shown, may allow any rate, fare, charge, classification, schedule, rule, or practice to be established, abandoned, modified, or departed from upon notice less than that provided for in section 269-12(b). A contested case hearing shall be held in connection with any increase in rates, and [~~such~~] the hearing shall be preceded by a public hearing as prescribed in section 269-12(c), at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The commission, upon notice to the public utility, may [~~suspend~~]:

- (1) Suspend the operation of all or any part of the proposed rate, fare, charge, classification, schedule, rule, or practice or any proposed abandonment or modification thereof or departure therefrom [~~after~~];
- (2) After a hearing, by order [~~regulate~~]:
 - (A) Regulate, fix, and change all such rates, fares, charges, classifications, schedules, rules, and practices[;] so that the same shall be just and reasonable [~~and prohibit~~];
 - (B) Prohibit rebates and unreasonable discrimination between localities[;] or between users or consumers[;] under substantially similar conditions[; ~~regulate~~];
 - (C) Regulate the manner in which the property of every public utility is operated with reference to the safety and accommodation of the public[; ~~prescribe~~];

- (D) Prescribe its form and method of keeping accounts, books, and records, and its accounting system~~[-regulate]~~;
 - (E) Regulate the return upon its public utility property~~[-]~~;
 - (F) Regulate the incurring of indebtedness relating to its public utility business~~[-]~~; and
 - (G) Regulate its financial transactions;¹ and ~~[do]~~
- (3) Do all things ~~[in addition which]~~ that are necessary and in the exercise of ~~[such]~~ the commission's power and jurisdiction, all of which as so ordered, regulated, fixed, and changed ~~[shall be]~~ are just and reasonable, and ~~[such as shall]~~ provide a fair return on the property of the utility actually used or useful for public utility purposes.

(c) The commission may in its discretion ~~[and]~~, after public hearing~~[-]~~ and upon showing by a public utility of probable entitlement and financial need, authorize temporary increases in rates, fares, and charges; provided that the commission shall require by order ~~[require]~~ the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts~~[-]~~ with interest, at a rate equal to the rate of return on ~~[such]~~ the public utility's rate base found to be reasonable by the commission, received by reason of ~~[such]~~ continued operation ~~[which]~~ that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any ~~[such]~~ excess shall commence as of the date that any rate, fare, or charge goes into effect ~~[which]~~ that results in ~~[any such]~~ the excess and shall continue to accrue on the balance of ~~[any such]~~ the excess until returned.

(d) The commission shall make every effort to complete its deliberations and issue its decision as expeditiously as possible and before nine months from the date the public utility filed its completed application; provided that in carrying out this mandate, the commission shall require all parties to a proceeding to comply strictly with procedural time schedules ~~[which]~~ that it establishes. If a decision is rendered after the nine-month period, the commission shall report in writing ~~[report]~~ the reasons therefor to the legislature within thirty days after rendering the decision.

Notwithstanding subsection (c), if the commission has not issued its final decision on a public utility's rate application within the nine-month period stated in this section, the commission ~~[shall]~~, within one month after the expiration of the nine-month period, shall render an interim decision allowing the increase in rates, fares and charges, if any, to which the commission, based on the evidentiary record before it, believes the public utility is probably entitled. The commission may postpone its interim rate decision for thirty days if the commission considers the evidentiary hearings incomplete. In the event interim rates are made effective, the commission shall require by order ~~[require]~~ the public utility to return, in the form of an adjustment to rates, fares, or charges to be billed in the future, any amounts~~[-]~~ with interest, at a rate equal to the rate of return on ~~[such]~~ the public utility's rate base found to be reasonable by the commission, received under ~~[such]~~ the interim rates ~~[which]~~ that are in excess of the rates, fares, or charges finally determined to be just and reasonable by the commission. Interest on any ~~[such]~~ excess shall commence as of the date that any rate, fare, or charge goes into effect ~~[which]~~ that results in ~~[any such]~~ the excess and shall continue to accrue on the balance of ~~[any such]~~ the excess until returned.

The nine-month period in this subsection shall begin only after a completed application has been filed with the commission and a copy served on the consumer advocate. The commission shall establish standards concerning the data required to be set forth in the application in order for it to be deemed a completed application. The consumer advocate may, within twenty-one days after receipt, object to the sufficiency of any application, and the commission shall hear and determine any ~~[such]~~ objection within twenty-one days after ~~[the same]~~ it is filed. If the commis-

sion finds that the objections are without merit, the application shall be deemed to have been completed upon original filing. If the commission finds the application to be incomplete, it shall require the applicant to submit an amended application consistent with its findings, and the nine-month period shall not commence until the amended application is filed.

(e) In any case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the State of Hawaii, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the commission may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among the organizations, trades, or businesses, if it determines that the distribution, apportionment, or allocation is necessary [in order] to adequately reflect the income of any such organizations, trades, or businesses to carry out the regulatory duties imposed by this section.

(f) Notwithstanding any law to the contrary, for public utilities having annual gross revenues of less than \$2,000,000, the commission may make and amend its rules and procedures [~~which will~~] to provide the commission with sufficient facts necessary to determine the reasonableness of the proposed rates without unduly burdening the utility company and its customers. In the determination of the reasonableness of the proposed rates, the commission shall:

- (1) Require the filing of a standard form application to be developed by the commission. The standard form application for general rate increases shall describe the specific facts that [~~must~~] shall be submitted to support a determination of the reasonableness of the proposed rates, and require the submission of financial information in conformance with a standard chart of accounts to be approved by the commission, and other commission guidelines to allow expeditious review of a requested general rate increase application;
- (2) Hold a public hearing as prescribed in section 269-12(c) at which the consumers or patrons of the public utility may present testimony to the commission concerning the increase. The public hearing shall be preceded by proper notice, as prescribed in section 269-12; and
- (3) Make every effort to complete its deliberations and issue a proposed decision and order within six months from the date the public utility files a completed application with the commission[;]; provided that all parties to the proceeding strictly comply with the procedural schedule established by the commission and no person is permitted to intervene. If a proposed decision and order is rendered after the six-month period, the commission shall report in writing the reasons therefor to the legislature within thirty days after rendering the proposed decision and order. Prior to the issuance of the commission's proposed decision and order, the parties shall not be entitled to a contested case hearing.

If all parties to the proceeding accept the proposed decision and order, the parties shall not be entitled to a contested case hearing, and section 269-15.5 shall not apply. If the commission permits a person to intervene, the six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed, pursuant to subsections (b), (c), and (d).

If a party does not accept the proposed decision and order, either in whole or in part, that party shall give notice of its objection or nonacceptance within the timeframe prescribed by the commission in the proposed decision and order, setting forth the basis for its objection or nonacceptance; provided that the proposed decision and order shall

have no force or effect pending the commission's final decision. If notice is filed, the above six-month period shall not apply and the commission shall make every effort to complete its deliberations and issue its decision within the nine-month period from the date the public utility's completed application was filed as set forth in subsection (d). Any party that does not accept the proposed decision and order under this paragraph shall be entitled to a contested case hearing; provided that the parties to the proceeding may waive the contested case hearing.

Public utilities subject to this subsection shall follow the standard chart of accounts to be approved by the commission for financial reporting purposes. The public utilities shall file a certified copy of the annual financial statements in addition to an updated chart of accounts used to maintain their financial records with the commission and consumer advocate within ninety days from the end of each calendar or fiscal year, as applicable, unless this timeframe is extended by the commission. The owner, officer, general partner, or authorized agent of the utility shall certify that the reports were prepared in accordance with the standard chart of accounts.

(g) Any automatic fuel rate adjustment clause requested by a public utility in an application filed with the commission shall be designed, as determined in the commission's discretion, to:

- (1) Fairly share the risk of fuel cost changes between the public utility and its customers;
- (2) Provide the public utility with sufficient incentive to reasonably manage or lower its fuel costs and encourage greater use of renewable energy;
- (3) Allow the public utility to mitigate the risk of sudden or frequent fuel cost changes that cannot otherwise reasonably be mitigated through other commercially available means, such as through fuel hedging contracts;
- (4) Preserve, to the extent reasonably possible, the public utility's financial integrity; and
- (5) Minimize, to the extent reasonably possible, the public utility's need to apply for frequent applications for general rate increases to account for the changes to its fuel costs."

SECTION 3. Section 269-27.2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The rate payable by the public utility to the producer for the nonfossil fuel generated electricity supplied to the public utility shall be as agreed between the public utility and the supplier and as approved by the public utilities commission; provided that in the event the public utility and the supplier fail to reach an agreement for a rate, the rate shall be as prescribed by the public utilities commission according to the powers and procedures provided in this chapter.

In the exercise of its authority to determine the just and reasonable rate for the nonfossil fuel generated electricity supplied to the public utility by the producer, the commission shall establish that the rate for purchase of electricity by a public utility shall not be more than one hundred per cent of the cost avoided by the utility when the utility purchases the electrical energy rather than producing the electrical energy.

The commission's determination of the just and reasonable rate shall be accomplished by establishing a methodology that removes or significantly reduces any linkage between the price of fossil fuels and the rate for the nonfossil fuel generated electricity to potentially enable utility customers to share in the benefits of fuel cost savings resulting from the use of nonfossil fuel generated electricity. As the

commission deems appropriate, the just and reasonable rate for nonfossil fuel generated electricity supplied to the public utility by the producer may include mechanisms for reasonable and appropriate incremental adjustments, such as adjustments linked to consumer price indices for inflation or other acceptable adjustment mechanisms.’’

SECTION 4. Section 269-91, Hawaii Revised Statutes, is amended as follows:

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

“‘‘Biofuels’’ means liquid or gaseous fuels produced from organic sources such as biomass crops, agricultural residues and oil crops, such as palm oil, canola oil, soybean oil, waste cooking oil, grease, and food wastes, animal residues and wastes, and sewage and landfill wastes.

‘‘Renewable electrical energy’’ means:

- (1) Electrical energy generated using renewable energy as the source;
- (2) Electrical energy savings brought about by the use of renewable displacement or off-set technologies, including solar water heating, seawater air-conditioning district cooling systems, solar air-conditioning, and customer-sited, grid-connected renewable energy systems; or
 (C)² Electrical energy savings brought about by the use of energy efficiency technologies, including heat pump water heating, ice storage, ratepayer-funded energy efficiency programs, and use of rejected heat from co-generation and combined heat and power systems, excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies and central station power projects.’’

2. By amending the definitions of ‘‘cost effective’’, ‘‘renewable energy’’, and ‘‘renewable portfolio standard’’ and ‘‘renewable portfolio standard’’² to read:

‘‘‘‘Cost-effective’’ means the ability to produce or purchase electric energy or firm capacity, or both, from renewable energy resources at or below avoided costs[-] consistent with the methodology set by the public utilities commission in accordance with section 269-27.2.

‘‘Renewable energy’’ means [electrical energy produced by wind, solar energy, hydropower, landfill gas, waste to energy, geothermal resources, ocean thermal energy conversion, wave energy, biomass, including municipal solid waste, biofuels, or fuels derived from organic sources, hydrogen fuels derived from renewable energy, or fuel cells where the fuel is derived from renewable sources. Where biofuels, hydrogen, or fuel cell fuels are produced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy. Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to produce renewable electricity in direct proportion to the percentage of the total heat value represented by the heat value of the renewable fuels. ‘‘Renewable energy’’ also means electrical energy savings brought about by the use of solar and heat pump water heating, seawater air-conditioning district cooling systems, solar air-conditioning and ice storage, quantifiable energy conservation measures, use of rejected heat from co-generation and combined heat and power systems excluding fossil-fueled qualifying facilities that sell electricity to electric utility companies, and central station power projects] energy generated or produced utilizing the following sources:

- (1) Wind;
- (2) The sun;

- (3) Falling water;
- (4) Biogas, including landfill and sewage-based digester gas;
- (5) Geothermal;
- (6) Ocean water, currents and waves;
- (7) Biomass, including biomass crops, agricultural and animal residues and wastes, and municipal solid waste;
- (8) Biofuels; and
- (9) Hydrogen produced from renewable energy sources.

“Renewable portfolio standard” means the percentage of electrical energy sales that is represented by renewable electrical energy.”

SECTION 5. Section 269-92, Hawaii Revised Statutes, is amended to read as follows:

“§269-92 Renewable portfolio standards. (a) Each electric utility company that sells electricity for consumption in the State shall establish a renewable portfolio standard of:

- ~~(1) Seven per cent of its net electricity sales by December 31, 2003;~~
- ~~(2) Eight per cent of its net electricity sales by December 31, 2005;~~
- ~~(3) (1) Ten per cent of its net electricity sales by December 31, 2010;~~
- ~~(4) (2) Fifteen per cent of its net electricity sales by December 31, 2015;~~
and
- ~~(5) (3) Twenty per cent of its net electricity sales by December 31, 2020.~~

~~[The public utilities commission shall determine if an electric utility company is unable to meet the renewable portfolio standards in a cost-effective manner, or as a result of circumstances beyond its control which could not have been reasonably anticipated or ameliorated. If this determination is made, the electric utility company shall be relieved of responsibility for meeting the renewable portfolio standard for the period of time that it is unable to meet the standard.]~~

(b) The public utilities commission may establish standards for each utility that prescribe what portion of the renewable portfolio standards shall be met by specific types of renewable electrical energy resources; provided that:

- (1) At least fifty per cent of the renewable portfolio standards shall be met by electrical energy generated using renewable energy as the source;
- (2) Where electrical energy is generated or displaced by a combination of renewable and nonrenewable means, the proportion attributable to the renewable means shall be credited as renewable energy; and
- (3) Where fossil and renewable fuels are co-fired in the same generating unit, the unit shall be considered to generate renewable electrical energy (electricity) in direct proportion to the percentage of the total heat value represented by the heat value of the renewable fuels.

(c) If the public utilities commission determines that an electric utility company failed to meet the renewable portfolio standard, after a hearing in accordance with chapter 91, the utility shall be subject to penalties to be established by the public utilities commission; provided that if the commission determines that the electric utility company is unable to meet the renewable portfolio standards due to reasons beyond the reasonable control of an electric utility, as set forth in subsection (d), the commission, in its discretion, may waive in whole or in part any otherwise applicable penalties.

(d) Events or circumstances that are outside of an electric utility company’s reasonable control may include, to the extent the event or circumstance could not be reasonably foreseen and ameliorated:

- (1) Weather-related damage;
- (2) Natural disasters;

- (3) Mechanical or resource failure;
- (4) Failure of renewable electrical energy producers to meet contractual obligations to the electric utility company;
- (5) Labor strikes or lockouts;
- (6) Actions of governmental authorities that adversely affect the generation, transmission, or distribution of renewable electrical energy under contract to an electric utility company;
- (7) Inability to acquire sufficient renewable electrical energy due to lapsing of tax credits related to renewable energy development;
- (8) Inability to obtain permits or land use approvals for renewable electrical energy projects;
- (9) Inability to acquire sufficient cost-effective renewable electrical energy;
- (10) Substantial limitations, restrictions, or prohibitions on utility renewable electrical energy projects; and
- (11) Other events and circumstances of a similar nature.”

SECTION 6. Section 269-95, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§269-95~~ **Renewable portfolio standards study.** The public utilities commission shall:

- (1) By December 31, ~~[2006,]~~ 2007, develop and implement a utility ratemaking structure, which may include ~~[but is not limited to]~~ performance-based ratemaking, to provide incentives that encourage Hawaii’s electric utility companies to use cost-effective renewable energy resources found in Hawaii to meet the renewable portfolio standards established in section 269-92, while allowing for deviation from the standards in the event that the standards cannot be met in a cost-effective manner~~;~~ or as a result of events or circumstances, such as described in section 269-92(d), beyond the control of the utility ~~[which]~~ that could not have been reasonably anticipated or ameliorated;
- (2) Gather, review, and analyze empirical data to determine the extent to which any proposed utility ratemaking structure would impact electric utility companies’ profit margins~~;~~ and to ensure that ~~[these profit margins do not decrease as a result of the implementation of the proposed ratemaking structure;]~~ the electric utility companies’ opportunity to earn a fair rate of return is not diminished;
- (3) Using funds from the public utilities special fund, contract with the Hawaii natural energy institute of the University of Hawaii to conduct independent studies to be reviewed by a panel of experts from entities such as the United States Department of Energy, National Renewable Energy Laboratory, Electric Power Research Institute, Hawaii electric utility companies, environmental groups, and other similar institutions with the required expertise. These studies shall include findings and recommendations regarding:
 - (A) The capability of Hawaii’s electric utility companies to achieve renewable portfolio standards in a cost-effective manner~~;~~ and shall assess factors such as the impact on consumer rates, utility system reliability and stability, costs and availability of appropriate renewable energy resources and technologies, permitting approvals, ~~[impacts]~~ effects on the economy, balance of trade, culture, community, environment, land and water, climate

- change policies, demographics, and other factors deemed appropriate by the commission; and
- (B) Projected renewable portfolio standards to be set five and ten years beyond the then current standards;
 - (4) Revise the standards based on the best information available at the time if the results of the studies conflict with the renewable portfolio standards established by section 269-92; and
 - (5) Report its findings and revisions to the renewable portfolio standards, based on its own studies and those contracted under paragraph (3), to the legislature no later than twenty days before the convening of the regular session of 2009, and every five years thereafter.’’

SECTION 7. 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 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

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

(Approved June 2, 2006.)

Notes

- 1. Semicolon should be underscored.
- 2. So in original.
- 3. Edited pursuant to HRS §23G-16.5.

ACT 163

H.B. NO. 2848

A Bill for an Act Relating to Energy.

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

SECTION 1. In May 2002, the University of Hawaii gathered major energy and policy stakeholders in Hawaii to convene as the Hawaii energy policy forum. The purpose of the policy forum was to develop an energy vision for Hawaii through the year 2030 and to formulate strategies consistent with implementing that vision. Accordingly, facilitated discussions were conducted on Hawaii’s preferred energy future and the issues and constraints that would be encountered in achieving that preferred future. Incorporating a science- and fact-based approach, policy studies were conducted to provide baseline information and review of various environmental, regulatory, economic, social, and cultural issues relating to Hawaii’s energy future.

In December 2003, the policy forum convened a policy summit to provide a community-based forum for review of its work and recommendations. The final report of the policy forum, “Hawaii at the Crossroads: A Long Term Energy Strategy,” sets forth recommended guiding principles and policy options to meet Hawaii’s long term energy needs.

The purpose of this Act is to:

- (1) Appropriate funds to reconvene the policy forum for the purpose of implementing the vision, concepts, and recommendations of the policy forum’s final report, and the resulting “Ten Point Plan” to meet Hawaii’s energy goals. This will provide a unique opportunity for

stakeholders to continue their work from planning to implementation and for further engagement of policy- and decision-makers and consumers on issues relevant to creating Hawaii’s preferred energy future; and

- (2) Assess the feasibility of the State becoming a participant in the Chicago Climate Exchange.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2006-2007 to reconvene the Hawaii energy policy forum for the purpose of:

- (1) Developing a detailed action plan and timeline to implement the recommendations of the Hawaii energy policy forum’s ‘‘Ten Point Plan’’ to meet Hawaii’s energy goals;
- (2) Developing tangible goals, objectives, desired outcomes, and actions to implement the energy vision and strategy of the Hawaii energy policy forum;
- (3) Developing benchmarks for measuring outcomes of energy implementation strategies;
- (4) Further engaging Hawaii’s business, government, labor, and community leaders and integrating them into the policy activities and discussions of the Hawaii energy policy forum;
- (5) Assessing the feasibility of the State becoming a participant in the Chicago Climate Exchange, specifically examining the advantages and risks in terms of advancing Hawaii’s development and use of renewable energy;
- (6) Developing greater community and public awareness about Hawaii’s energy needs and the goals and activities of the Hawaii energy policy forum; and
- (7) Seeking additional funding for statewide implementation of, and public education regarding, the recommendations and goals of the Hawaii energy policy forum.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the Hawaii energy policy forum administered by the social sciences public policy center, University of Hawaii at Manoa, to implement the purposes of this Act.

SECTION 3. The Hawaii energy policy forum shall submit a report on the detailed action plan and timeline to the legislature no later than twenty days prior to the convening of the regular session of 2007.

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved June 2, 2006.)

ACT 164

H.B. NO. 1878

A Bill for an Act Relating to Investment Securities Act.

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

SECTION 1. Section 485-25, Hawaii Revised Statutes, is amended to read as follows:

“§485-25 Fraudulent and other prohibited practices. (a) It is unlawful for any person, in connection with the offer, sale, or purchase (whether in a transaction described in section 485-6 or otherwise) of any security (whether or not of a class described in section 485-4), in the State, directly or indirectly:

- (1) To employ any device, scheme, or artifice to defraud;
- (2) To make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading;
- (3) To engage in any act, practice, or course of business [~~which~~] that operates or would operate as a fraud or deceit upon any person;
- (4) To issue, circulate, or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet, or other literature (in this chapter sometimes referred to collectively as “advertising matter”) [~~which shall contain~~] that contains an untrue statement of a material fact or [~~omit~~] omits to state a material fact necessary [~~in order~~] to make the statements therein made, in the light of the circumstances under which they are made, not misleading;
- (5) To issue, circulate, or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating, publishing, or making the same and the fact that the person is issuing, circulating, or making the same [~~shall be~~] is clearly indicated thereon;
- (6) To make any statement or representation, or issue, circulate, or publish any advertising matter containing any statement, to the effect that the security has been in any way approved or endorsed by the commissioner of securities; or
- (7) To issue, circulate, or publish any advertising matter unless a copy thereof has been previously filed with the office of the commissioner, or unless the commissioner has by rule or order exempted the filing of any advertising material.

(b) It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

- (1) To employ any device, scheme, or artifice to defraud the other person; or
- (2) To engage in any act, practice, or course of business [~~which~~] that operates or would operate as a fraud or deceit upon the other person.

(c) It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract unless it provides in writing:

- (1) [~~That~~] Except as provided in subsection (d), that the investment adviser shall not be compensated on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;
- (2) That no assignment of the contract may be made by the investment adviser without the consent of the other party to the contract;
- (3) That the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change;
- (4) That the investment adviser and investment adviser representative shall disclose to the client, in a separate disclosure statement, the capacity in which the investment adviser and investment adviser representative are acting and the compensation to be received in situations where:

- (A) The investment adviser is acting as principal for the investment adviser’s own account and knowingly sells any security to or

purchases any security from a client for whom the investment adviser is acting as investment adviser; or

- (B) The investment adviser is acting as broker for a person other than the client and knowingly effects any sale or purchase of securities, real estate, insurance contracts, annuities contracts, or any types of real or personal property for the account of the client; and

- (5) That the investment adviser and investment adviser representative shall provide the disclosure statement described in subsection (c)(4) and obtain the written consent of the client to the transactions described in the disclosure statement prior to the closing of the transactions.

~~[Paragraph]~~ (d) Subsection (c)¹ does not prohibit an investment advisory contract ~~[which provides]~~ that:

- (1) Provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates or taken as of a definite date[-]; or

- (2) Provides for compensation to the investment adviser on the basis of a share of capital gains or capital appreciation of the funds of the client; provided that:

- (A) The conditions and requirements as defined in rule 205-3 under the Investment Advisers Act of 1940 (17 C.F.R. section 275.205-3) are met; and

- (B) Before entering into the advisory contract, and in addition to the requirements of United States Securities and Exchange Commission Form ADV, the investment adviser shall disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement.

(e) "Assignment", as used in ~~[paragraph]~~ subsection (c) (2), includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business.

~~[(d)]~~ (f) It is unlawful for any investment adviser to use any scheme, device, or artifice to circumvent or attempt to circumvent the prohibitions or limitations in subsection (c).

~~[(e)]~~ (g) Subsection (a)(5) and (7) shall not apply to any advertising matter that is covered by section 18(a) of the Securities Act of 1933, which relates to or is used in connection with the offer or sale of a federal covered security."

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 2, 2006.)

Note

- 1. Should be underscored.

ACT 165

H.B. NO. 1880

A Bill for an Act Relating to Harbors.

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

SECTION 1. The legislature finds that maritime lands are a finite resource of the State. In particular, Honolulu Harbor Piers 1 and 2 contain vital and unique maritime cargo facilities that cannot be easily relocated. Any relocation of these facilities would be prohibitively expensive. Piers 1 and 2 and the contiguous backup fast lands and access roads, comprising approximately sixty-five acres, must be protected and preserved to accommodate the predicted growth of future cargo requirements and to permit for the safe and efficient berthing of major cargo vessels. Projections made by the department of transportation, harbors division, indicate that foreign cargo capacity will be exhausted within five years at the present rate of growth.

Piers 1 and 2 are currently used for cargo yard storage space. This area is expected to decrease by approximately five acres with the development of part of Pier 2 as a passenger cruise ship terminal.

The purpose of this Act is to change the boundaries of the Kakaako community development district to exclude Piers 1 and 2 and the contiguous backup fast lands from that district and give the department of transportation, harbors division, and the department of business, economic development, and tourism, foreign trade zone division, jurisdiction and administrative authority over the area.

SECTION 2. Chapter 212, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§212- Foreign trade zone; jurisdiction. Anything to the contrary notwithstanding, the department of business, economic development, and tourism shall have jurisdiction and administrative authority over the area in the vicinity of Piers 1 and 2 currently being used as a foreign trade zone. This area is defined as all of parcels 2 and 3-A of the Forrest Avenue subdivision, as shown on the map filed in the bureau of conveyances of the State of Hawaii, as file plan 2335, and lot A-1, as shown on map 2, filed in the office of the assistant registrar of the land court of the State of Hawaii with land court application 1328; provided that all existing easements affecting and appurtenant to the parcels to be deleted from the Kakaako community development district boundaries shall not be affected by this change.”

SECTION 3. Chapter 266, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§266- Honolulu harbor Piers 1 and 2; jurisdiction. Any law to the contrary notwithstanding, the department of transportation shall have jurisdiction and administrative authority over Honolulu harbor Piers 1 and 2 and the contiguous backup fast lands currently used for manifested cargo and passenger operations. This area is defined as all of lot 3 and parcels A and B of the Forrest Avenue subdivision, as shown on the map filed with the bureau of conveyances of the State of Hawaii, as file plan 2335, and lot A-2, as shown on map 2, filed in the office of the assistant registrar of the land court of the State of Hawaii with land court application 1328; provided that all existing easements affecting and appurtenant to the parcels to be deleted from the Kakaako community development district boundaries shall not be affected by this change.”

SECTION 4. Section 206E-32, Hawaii Revised Statutes, is amended to read as follows:

“§206E-32 District; established, boundaries. The Kakaako community development district is established. The district shall include that area bounded by King Street; Piikoi Street from its intersection with King Street to Ala Moana Boulevard; Ala Moana Boulevard, inclusive, from Piikoi Street to its intersection with the Ewa boundary of Ala Moana Park also identified as the Ewa boundary of tax map key 2-3-37:01; the Ewa boundary of tax map key 2-3-37:01 from its intersection with Ala Moana Boulevard to the shoreline; the shoreline from its intersection with the property line representing the Ewa boundary of property identified by tax map key 2-3-37:01 to the property line between Pier 2 and Pier 4; the property line between Pier 2 and Pier 4 from its intersection with the shoreline to Ala Moana Boulevard; Ala Moana Boulevard from its intersection with the property line between lands identified by Pier 2 and Pier 4 to Punchbowl Street; and Punchbowl Street to its intersection with King Street[-]; provided that the following parcels at Pier 1 and Pier 2 shall be deleted from the Kakaako community development district boundaries and conveyed to the department of land and natural resources to be set aside for the department of transportation and the foreign trade zone division of the department of business, economic development, and tourism, to ensure continued maritime and foreign commerce use: all of lot 3 and parcels 2, 3-A, A, and B of the Forrest Avenue subdivision, as shown on the map filed with the bureau of conveyances of the State of Hawaii as file plan 2335; and lots A-1 and A-2, as shown on map 2, filed in the office of the assistant registrar of the land court of the State of Hawaii with land court application 1328; and provided further that all existing easements affecting and appurtenant to the parcels to be deleted from the Kakaako community development district boundaries shall not be affected by this change.

The district shall also include that parcel of land identified by tax map key 2-1-14:16, situated mauka of Pier 6 and Pier 7 and makai of Nimitz Highway, being the site for the existing Hawaiian Electric power plant and related facilities.”

SECTION 5. (a) To implement this Act, the Hawaii community development authority is directed to deed over to the department of land and natural resources the following:

- (1) Lot 3 and parcels 2, 3-A, A, and B of the Forrest Avenue subdivision, as shown on the map filed with the bureau of conveyances of the State of Hawaii, as file plan 2335; and
- (2) Lots A-1 and A-2, as shown on map 2, filed in the office of the assistant registrar of the land court of the State of Hawaii with land court application 1328.

(b) To further implement this Act, the governor is directed to set aside the following lands:

- (1) Lot 3 and parcels A and B of the Forrest Avenue subdivision, as shown on the map filed in the bureau of conveyances of the State of Hawaii, as file plan 2335, and lot A-2, as shown on map 2, filed in the office of the assistant registrar of the land court of the State of Hawaii with land court application 1328 to the department of transportation; and
- (2) Parcels 2 and 3-A of the Forrest Avenue subdivision, as shown on the map filed in the bureau of conveyances of the State of Hawaii, as file plan 2335, and lot A-1, as shown on map 2, filed in the office of the assistant registrar of the land court of the State of Hawaii with land court application 1328, to the department of business, economic development, and tourism, foreign trade zone division.

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 July 1, 2006.

(Approved June 2, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 166

H.B. NO. 2075

A Bill for an Act Relating to Transportation.

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

SECTION 1. The legislature finds that bicycling is growing in importance as a mode of transportation. Bicycling has many benefits, including:

- (1) Improved mobility, especially for those who cannot or choose not to drive;
- (2) Lower road maintenance costs;
- (3) Less traffic congestion;
- (4) Less road widening and fewer parking lots;
- (5) Improved air quality; and
- (6) Improved health and reduced medical costs.

With rising gasoline prices, many people are looking for an alternative method of transportation. It is far less expensive to operate a bicycle than an automobile.

The purpose of this Act is to ensure the implementation of a safe, continuous, and coordinated system of bikeways by earmarking a percentage of the state highway fund for bikeways.

SECTION 2. Section 248-9, Hawaii Revised Statutes, is amended to read as follows:

“§248-9 State highway fund. (a) Moneys in the state highway fund may be expended for the following purposes:

- (1) To pay the costs of operation, maintenance, and repair of the state highway system, including without limitation, the cost of equipment and general administrative overhead;
- (2) To pay the costs of acquisition (including real property and interests therein), planning, designing, construction, and reconstruction of the state highway system[,] and bikeways, including, without limitation, the cost of equipment and general administrative overhead; provided that the director of transportation shall allot and expend two per cent of federally eligible moneys in the state highway fund for bikeways; and
- (3) To reimburse the general fund for interest on and principal of general obligation bonds issued to finance highway projects where the bonds are designated to be reimbursable out of the state highway fund.

(b) At any time, the director of transportation may transfer from the state highway fund all or any portion of available moneys determined by the director of transportation to ~~[be in excess of]~~ exceed one hundred thirty-five per cent of the requirements for the ensuing twelve months for the state highway fund as permitted by and in accordance with section 37-53. For purposes of the determination, the director of transportation shall take into consideration:

- (1) The amount of federal funds and bond funds on deposit in, and budgeted to be expended from, the state highway fund during the period;

- (2) Amounts on deposit in the state highway fund [~~which~~] that are encumbered or otherwise obligated;
- (3) Budgeted amounts payable from the state highway fund during the period;
- (4) Revenues anticipated to be received by and expenditures to be made from the state highway fund during the period based on existing agreements and other information for the ensuing twelve months; and
- (5) Any other factors as the director of transportation shall deem appropriate.”

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, 2006.

(Approved June 2, 2006.)

ACT 167

S.B. NO. 2021

A Bill for an Act Relating to the Employer-Union Health Benefits Trust Fund.

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

SECTION 1. Chapter 87A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§87A- State and county contribution; reimbursement for retired employees. Effective July 1, 2007, an employee-beneficiary who retires and relocates outside of the state shall be reimbursed for the premiums paid by the employee-beneficiary for a personal health insurance policy; provided that the board shall determine which employee-beneficiaries and what types of personal health insurance policies shall be eligible for reimbursement and may set other conditions that shall be met for the employee-beneficiary to receive the reimbursements provided under this section.

The reimbursement shall be the lesser of:

- (1) The actual cost of the personal health insurance policy; or
- (2) The amount of the state or county contribution for the most comparable health benefits plan.

Reimbursements shall be paid by the fund on a quarterly basis upon the presentation of documentation that the premiums for the personal health insurance policy have been paid by the employee-beneficiary. This section shall apply to all employee-beneficiaries who retire and relocate outside of the state, regardless of their date of retirement.”

SECTION 2. New statutory material is underscored.¹

SECTION 3. This Act shall take effect on July 1, 2007.

(Approved June 2, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 168

S.B. NO. 2248

A Bill for an Act Relating to Solicitation of Funds for Charitable Purposes.

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

SECTION 1. Chapter 467B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§467B- Professional solicitors; required disclosures. A professional solicitor who makes an oral solicitation by telephone, door-to-door, or otherwise shall furnish to each contributor, prior to collecting or attempting to collect any contribution, a written confirmation of the expected contribution, containing the following information clearly and conspicuously:

- (1) The full legal name, address, and telephone number of the individual professional solicitor who directly communicated with the contributor; and
- (2) A disclosure that the contribution is not tax-deductible, if applicable, or, if the professional solicitor maintains that the contribution is tax-deductible in whole or in part, the portion of the contribution that the professional solicitor maintains is tax-deductible.”

SECTION 2. Section 467B-1, Hawaii Revised Statutes, is amended by amending the definitions of “contribution”, “professional fund-raising counsel” or “professional fundraising counsel”, and “professional solicitor” to read as follows:

““Contribution” means the promise or grant of any money or property of any kind or value, including the promise to pay, except payments by members of a charitable organization for membership fees, dues, fines, or assessments, or for services rendered to individual members, if membership in the charitable organization confers a bona fide right, privilege, professional standing, honor, or other direct benefit, other than the right to vote, elect officers, or hold offices, and except money or property received from any governmental authority[-], or a grant or subsidy from any organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

“Professional fund-raising counsel” or “professional fundraising counsel” means any person who, for ~~[a fee,]~~ compensation, plans, conducts, manages, ~~[carries on,]~~ advises, consults, or [acts as a consultant, whether directly or indirectly, in connection with soliciting] prepares material for, or with respect to, the solicitation of contributions in this state for [or on behalf of any] a charitable organization, but who actually solicits no contributions as a part of the person’s services[-], and who does not employ, procure, or engage any compensated person to solicit contributions. The term ~~[includes]~~ shall not include a bona fide volunteer, salaried officer, or employee of a charitable organization ~~[if the bona fide volunteer, salaried officer, or employee of the charitable organization receives percentage compensation].~~

“Professional solicitor” means any person who, for a financial or other consideration, solicits contributions in this state for [or on behalf of] a charitable organization[-], or any person with whom the professional solicitor independently contracts to solicit for contributions. A person who is otherwise a professional fundraising counsel shall be deemed a professional solicitor if the person’s compensation is related to the amount of contributions received. The term does not include a bona fide volunteer. The term includes a ~~[bona fide volunteer,]~~ salaried officer[-] or employee of a charitable organization if the [bona fide volunteer,-] salaried officer[-] or employee of the charitable organization receives percentage compensation. The

term does not include an attorney, investment counselor or advisor, financial advisor, or banker, or other person who:

- (1) Advises another person to make a contribution to a charitable organization as part of the person's employment; and
- (2) Does not receive compensation from the charitable organization for that advice."

SECTION 3. Section 467B-2.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Within ninety days after a solicitation campaign or event has been completed and on the anniversary of the commencement of a solicitation campaign lasting more than one year, a professional solicitor shall file with the attorney general a financial report for the campaign, including gross revenue and an itemization of all expenses incurred. This report shall be signed ~~[and sworn to]~~ under penalty provided by section 710-1063 by the authorized contracting agent for the professional solicitor and two authorized officials of the charitable organization. A professional solicitor shall maintain during each solicitation campaign and for not less than three years after the completion of that campaign the following records, which shall be available for inspection upon demand by the attorney general:

- (1) The date and amount of each contribution received and the name and address of each contributor;
- (2) The name and residence of each employee, agent, or other person involved in the solicitation;
- (3) Records of all revenue received and expenses incurred in the course of the solicitation campaign; and
- (4) The location and account number of each bank or other financial institution account in which the professional solicitor has deposited revenue from the solicitation campaign."

SECTION 4. Section 467B-9.7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) The attorney general may refuse to register, may revoke, or may suspend the registration of any charitable organization, professional fundraising counsel, or professional solicitor whenever the attorney general finds that a charitable organization, professional fundraising counsel, or professional solicitor, or an agent, servant, or employee thereof:

- (1) Has violated or is operating in violation of ~~[any provision of]~~ this chapter, the rules of the attorney general, or an order issued by the attorney general;
- (2) Has refused or failed, after notice, to produce any records of the organization or to disclose any information required to be disclosed under this chapter or the rules of the attorney general; ~~[or]~~
- (3) Has made a material false statement in an application, statement, or report required to be filed under this chapter~~[-];~~ or
- (4) Has failed to file the financial report required by section 467B-2.5, or filed an incomplete financial report."

2. By amending subsection (c) to read:

~~"(c) [All actions of the attorney general shall be taken subject to the right of notice, hearing, and adjudication and the right of appeal therefrom in accordance with chapter 91.] Any person aggrieved by an action of the attorney general under this section may request a hearing to review that action in accordance with chapter~~

91 and rules adopted by the attorney general. Any request for hearing shall be made within ten days after the attorney general has served the person with notice of the action, which notice shall be deemed effective upon mailing.”

SECTION 5. Section 467B-12, Hawaii Revised Statutes, is amended to read as follows:

“§467B-12 Filing requirements for professional fundraising counsel and professional solicitors. (a) Every professional fundraising counsel or professional solicitor, prior to any solicitation, shall ~~file a registration statement~~ register with the department. The registration statement shall be ~~[in writing under oath or affirmation]~~ in the form prescribed by the attorney general and shall contain the information as the attorney general may require. The registration statement shall be accompanied by a fee in the amount of \$250, or in the amount and with any additional sums as may be prescribed by the attorney general. The statement shall list the names~~;~~ and addresses~~;~~ and social security numbers] of all owners, officers, ~~[agents, servants, employees,]~~ and directors~~;~~ and independent contractors] of a professional fundraising counsel, and the names~~;~~ and addresses~~;~~ and social security numbers] of all owners, officers, ~~[agents, servants, employees,]~~ and directors~~;~~ and independent contractors] of a professional solicitor. Renewal statements shall be filed with the department on or before July 1 of each calendar year ~~[in which the]~~ by each professional fundraising counsel or professional solicitor ~~[does business in or from the State]~~ and shall be effective until June 30 of the next calendar year. The renewal statement shall be in a form prescribed by the attorney general. A renewal fee of \$250, or in any amount and with any additional sums as may be prescribed by the attorney general, shall accompany the renewal statement.

(b) The professional fundraising counsel or professional solicitor, at the time of each filing, shall file with and have approved by the attorney general a bond in which the applicant is the principal obligor in the penal sum of \$25,000 issued with good and sufficient surety or sureties approved by the attorney general and which shall remain in effect for one year. The bond shall inure to the benefit of the State, conditioned that the applicant, its officers, directors, employees, agents, servants, and independent contractors shall not violate this chapter. A partnership or corporation that is a professional fundraising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers, and employees.

(c) The attorney general shall examine each registration statement and supporting document filed by a professional fundraising counsel or professional solicitor and shall determine whether the registration requirements are satisfied. If the attorney general determines that the registration requirements are not satisfied, the attorney general shall notify the professional fundraising counsel or professional solicitor in writing within fifteen business days of its receipt of the registration statement; otherwise the registration statement is deemed to be approved. Within seven business days after receipt of a notification that the registration requirements are not satisfied, the professional fundraising counsel or professional solicitor may request a hearing.

(d) The attorney general may adopt rules to provide for:

- (1) The extension of filing deadlines;
- (2) The online availability of forms required to be filed;
- (3) The electronic filing of required registration statements, contracts, forms, and reports; and
- (4) The acceptance of electronic signatures.”

SECTION 6. Section 467B-12.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There shall be a written contract between a charitable organization and a professional fundraising counsel or professional solicitor that shall be filed by the professional fundraising counsel or professional solicitor with the attorney general at least ten business days prior to the performance by the professional fundraising counsel or professional solicitor of any service. No solicitation or service pursuant to the contract shall begin before the contract is filed with the attorney general. The contract shall be signed by two authorized officials of the charitable organization, one of whom shall be a member of the organization’s governing body, and the authorized contracting officer for the professional fundraising counsel or professional solicitor. The contract shall contain all of the following provisions:

- (1) The legal name and address of the charitable organization;
- (2) A statement of the charitable purpose for which the solicitation campaign is being conducted;
- (3) A statement of the respective obligations of the professional fundraising counsel or professional solicitor and the charitable organization;
- (4) A statement of the guaranteed minimum percentage of the gross receipts from contributions that will be remitted to or retained by the charitable organization, if any, or, if the solicitation involves the sale of goods, services, or tickets to a fundraising event, the percentage of the purchase price that will be remitted to the charitable organization, if any. The stated percentage shall exclude any amount that the charitable organization is to pay as fundraising costs;
- (5) Information concerning the compensation of the professional solicitor and fundraising counsel as follows:
 - (A) If the compensation of the professional fundraising counsel or professional solicitor is contingent upon the number of contributions or the amount of revenue received, a statement shall be included specifying the percentage of the gross revenue that is the basis for that compensation. The stated percentage shall include any amount that the professional fundraising counsel or professional solicitor is to be reimbursed for fundraising costs;
 - (B) If the compensation of the professional solicitor is not contingent upon the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be expressed as a reasonable estimate of the percentage of the gross revenue, and the contract shall clearly disclose the assumptions upon which the estimate is based. The stated assumptions shall be based upon all of the relevant facts known to the professional solicitor regarding the solicitation to be conducted by the professional solicitor; or
 - (C) If the compensation of the fundraising counsel is not contingent on the number of contributions or amount of revenue received from the solicitation campaign, the compensation shall be stated in a dollar amount;
- (6) The effective and termination dates of the contract or, if the contract does not have a set termination date, a clause allowing either party a reasonable period to terminate the contract or notify the other party if either party chooses not to renew. The contract shall also contain the date services will commence with respect to solicitation in this State of contributions for a charitable organization;
- (7) [A] In the case of a professional fundraising counsel, a statement that the professional fundraising counsel [~~or professional solicitor~~] will not at any time have custody or control of contributions;

- (8) A statement that the charitable organization exercises control and approval over the content and volume of any solicitation; and
- (9) Any other information required by the rules of the attorney general.”

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 approval.

(Approved June 5, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 169

S.B. NO. 2273

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 88-21, Hawaii Revised Statutes, is amended by adding four new definitions to be appropriately inserted and to read as follows:

““Accidental death”: death that is the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or due to the result of some occupational hazard, and not caused by wilful negligence on the part of the member.

“Active member”: a member who is an employee.

“Child or children”:

(1) A natural child of a member;

(2) A legally adopted child of a member; or

(3) A foster child or stepchild of a member:

(A) Who lives with a member in a regular parent-child relationship;
and

(B) For whom the member has become the child's legal guardian or has been awarded legal and physical custody of the child pursuant to a valid court order.

“Ordinary death”: death that is not accidental and that occurs while in service or on authorized leave without pay.”

SECTION 2. Section 88-1, Hawaii Revised Statutes, is amended to read as follows:

“**§88-1 Restrictions.** The provisions of this section shall be applicable to every pension and to every recipient or beneficiary thereof, granted or provided for by any special act of the legislature (other than benefits, or the recipients thereof, payable to beneficiaries or retirants of the employees' retirement system under [~~part~~ parts II]), VII, and VIII) whether the pension be payable by the State or by any county, or by any board, commission, bureau, department, or other agency thereof:

- (1) No recipient or beneficiary shall be permitted to draw any pension, or any portion thereof, in excess of \$50 per month, while the recipient or beneficiary is holding any salaried position or office in, under or by authority of the United States, the State, or any political subdivision

thereof. This paragraph shall not apply to any recipient or beneficiary who is elected to the legislature or to the council of any county.

- (2) If the recipient or beneficiary is a surviving spouse or reciprocal beneficiary, the pension so granted shall cease when the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship.
- (3) Any pension payable to any minor shall cease when the minor reaches the age of eighteen years.
- (4) If any recipient or beneficiary of a pension, having a spouse or reciprocal beneficiary at the time the pension was first granted to the recipient or beneficiary dies, then the spouse or reciprocal beneficiary, as long as the spouse or reciprocal beneficiary remains unmarried or not in a reciprocal beneficiary relationship, shall be paid sixty per cent of the amount of the pension payable to the beneficiary.”

SECTION 3. Section 88-2, Hawaii Revised Statutes, is amended to read as follows:

“**§88-2 Minimum pension.** Every pension of less than \$50 per month payable under or pursuant to any law of the State by the State or by any county or independent public board or commission, other than benefits payable to members of the employees’ retirement system or to the dependents or beneficiaries of [sueh] members under [part] parts II, VII, and VIII, shall be increased to \$50 per month, any provision in any other law to the contrary notwithstanding; provided that where the dependents of a deceased pensioner are receiving pensions by reason of the pensioner’s death, the total only of all amounts paid to the dependents shall be so increased.

The council of each county, and each independent board or commission affected, shall appropriate the funds necessary to pay the increases hereby allowed of pensions payable by their respective counties, boards and commissions. Sufficient funds to cover these increases hereby allowed of pensions payable by the State are hereby appropriated from the general revenues of the State not otherwise appropriated, and the State comptroller shall issue warrants to pay these increases.”

SECTION 4. Section 88-21, Hawaii Revised Statutes, is amended by amending the definitions of “beneficiary” and “retirement allowance” to read as follows:

““Beneficiary”: the recipient of any benefit from the system or, as¹ context may indicate, the [natural] person or persons designated by a member to receive the benefits payable in the event of the member’s death.

“Retirement allowance”: the benefit payable for life as originally computed and paid a member at the point of the member’s retirement in accordance with the [mode-of] retirement allowance option selected by the member, exclusive of any bonus or bonuses.”

SECTION 5. Section 88-31, Hawaii Revised Statutes, is amended to read as follows:

“**§88-31 Medical board.** The board [~~of trustees~~] shall designate a medical board to be composed of three physicians not eligible to participate in the system. If required, other physicians may be employed to report on special cases. The medical board shall arrange for and pass upon all medical examinations required under this part and [part] parts VII and VIII of this chapter, shall investigate all essential statements and certificates by or on behalf of a member in connection with applica-

tion for disability retirement, and shall report in writing to the board its conclusions and recommendations upon all the matters referred to it.”

SECTION 6. Section 88-59.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Notwithstanding any other law to the contrary, any judge who retires under section 88-61(c) and continues in service as a judge shall be allowed membership in the system and entitlement to membership service credit for any eligible class A service; provided that ~~[such]~~ the membership service shall be credited in accordance with section 88-59; and provided further that when the judge retires, it shall be as if it were for the first time, and sections ~~[88-73(1);]~~ 88-73(a), 88-74(3), and 88-76 shall be used to determine the retirement allowance.”

SECTION 7. Section 88-61, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided by section 88-96, any member absent from service for four calendar years following the calendar year in which the member’s employment terminated shall cease to be a member~~[-]~~, and the former member’s credited service shall be forfeited.”

SECTION 8. Section 88-61, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The membership of an elective officer or judge in the system may be terminated upon election of the member to retire whenever the allowance for ~~[such]~~ the member reaches seventy-five per cent of the member’s average final compensation. The member’s right to receive the retirement allowance prescribed in section 88-74 after the member’s future separation from service as provided in section 88-73 shall vest on the date of the election. Upon the date of the election, the member shall be entitled to receive the portion of the accumulated contributions, if any, which would be required to be returned to the member under section ~~[88-74(3)(B)]~~ 88-74(3) as if the member’s retirement allowance had commenced on that date, and after the date of the election the member shall not be allowed or required to make any future contributions.”

SECTION 9. Section 88-62, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) If a former member who has less than five years of credited service and who has been out of service for a period of four full calendar years or more after the year in which ~~[he]~~ the former member left service, or if a former member who withdrew ~~[his]~~ the former member’s accumulated contributions returns to service, ~~[he]~~ the former member shall become a member in the same manner and under the same conditions as anyone first entering service; however, ~~[he]~~ the former member may obtain membership service credit in the manner provided by applicable law for ~~[his former]~~ credited service ~~[as provided in section 88-59.]~~ that was forfeited by the member upon termination of the member’s previous membership. If ~~[such]~~ the member did not withdraw ~~[his]~~ the former member’s accumulated contributions prior to ~~[his]~~ the former member’s return to service, ~~[such]~~ the accumulated contributions shall be returned to ~~[him]~~ the member as part of the process of enrolling ~~[him]~~ the member in the system~~[-]~~ if the member’s accumulated contributions are \$1,000 or less at the time of distribution. If the accumulated contributions for the service the member had when the member previously terminated employment are greater than \$1,000 and the member does not make written application,

prior to or contemporaneously with the member's return to service, for return of the accumulated contributions, the member may not withdraw the member's accumulated contributions, except as provided by section 88-96 or 88-341, until the member retires or attains age sixty-two. The member shall not be entitled to service credit by reason of the system's retention of the member's accumulated contributions for the service the member had when the member previously terminated employment.

~~[In order to]~~ To be eligible for any benefit, ~~[he must]~~ the member shall fulfill the membership service requirements for ~~[such]~~ the benefit through membership service after again becoming a member, in addition to meeting any other eligibility requirement established for ~~[such]~~ the benefit; provided that the membership service requirement shall be exclusive of any former service acquired in accordance with section 88-59 or any other section in this part."

SECTION 10. Section 88-74.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The system shall finalize a ~~[retiree's]~~ retirant's pension benefit within six calendar months following the month of the ~~[retiree's]~~ retirant's retirement. For pension benefits finalized after the sixth calendar month following the month of the ~~[retiree's]~~ retirant's retirement, an interest payment amounting to four and one-half per cent per annum shall be paid to the ~~[retiree.]~~ retirant. Interest shall be calculated on the difference between the amount the ~~[retiree]~~ retirant is entitled to receive from the ~~[retiree's]~~ retirant's retirement date up to the day the payment is made and the amount the ~~[retiree]~~ retirant 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]~~ retirant'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."

SECTION 11. Section 88-76, Hawaii Revised Statutes, is amended to read as follows:

"§88-76 Allowance on ordinary disability retirement. Upon retirement for ordinary disability, a member shall receive a maximum retirement allowance of one and three-fourths per cent of the member's average final compensation for each ~~[full]~~ year of credited service; except that for each year of credited service as a judge, an elective officer, or a legislative officer, the member shall receive a maximum retirement allowance computed as provided in section 88-74(3) or (4), as applicable. The minimum retirement allowance payable under this section shall be thirty per cent of the member's average final compensation."

SECTION 12. Section 88-81.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Notwithstanding subsection (a), any member who accrued a benefit prior to July 1, 2004, based on annual compensation in excess of the limit set forth in section 401(a)(17) of the Internal Revenue Code of 1986, as amended, shall receive a nontax-qualified benefit equal to the difference between:

- (1) The pension benefit that would be payable at the earliest age the member could retire with an unreduced benefit, based on the member's years of credited service, the member's class of service, and the member's average final compensation as of June 30, 2004, without regard to the limit under section 401(a)(17); and
- (2) The tax-qualified pension benefit that would be payable at the earliest age the member could retire with an unreduced benefit, based on the member's years of credited service and the member's class of service as of June 30, 2004, and the member's average final compensation as limited by section 401(a)(17) as of the earliest age the member could retire with an unreduced benefit, or, upon the member's termination of service, if earlier."

SECTION 13. Section 88-83, Hawaii Revised Statutes, is amended to read as follows:

“§88-83 Election of ~~mode of~~ retirement allowance[-] option. (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 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 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 those allowances, including cumulative post retirement allowances, if applicable, continued after the member's death to the member's beneficiary ~~[during the lifetime of the person. In the event of death of]~~ designated at the time of the member's retirement, for the life of the beneficiary. If the beneficiary dies prior to [that of] the retirant, all further payments shall cease upon the death of the retirant; provided that for members retiring after November 30, 2004, [in the event that] if the retirant's beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant's beneficiary, shall receive a retirement allowance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the member is entitled. Only one beneficiary shall be designated under this option. The beneficiary designated under this option shall be a natural person, and benefits under this option shall only be paid to a natural person.

Option 3: The member may elect to receive a lesser retirement allowance during the member's lifetime and have one-half of ~~[such]~~ the 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 that

~~person. In the event of death of] designated at the time of the member's retirement, for the life of the beneficiary. If the beneficiary dies prior to [that of] the retirant, all further payments shall cease upon the death of the retirant; provided that for members retiring after November 30, 2004, [in the event that] if the retirant's beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant's beneficiary, shall receive a retirement allowance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the member is entitled. Only one beneficiary shall be designated under this option. The beneficiary designated under this option shall be a natural person, and benefits under this option shall only be paid to a natural person.~~

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 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 from service having at least ten years of credited service or for disability may elect this ~~[mode of] retirement[-] option.~~

To receive benefits, the beneficiary must have been designated by the member in the form and manner prescribed by the board.

~~[Any election of a mode of retirement allowance shall be irrevocable and subject to the spousal or reciprocal beneficiary notification requirement under subsection (e).]~~

(b) 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 retirement date designated by the member, and, if the member was eligible to retire on the date of the member's death, the member's designated beneficiary~~[- if the member was eligible to retire on the date of the [member's] death,]~~ may elect to receive either death benefits under section 88-84 or the allowance under the option selected by the member that would have been payable had the member retired. The effective date of the member's retirement shall be [a] the first day of a month, except for the month of December when the effective date of retirement may be on the first or last day of the month, and shall be no earlier than the later of thirty days from the date the member's retirement application was filed or the day following the member's date of death. The election may not be made if, at the time of the member's death, there are individuals who are eligible to receive death benefits under section 88-85 who have made a claim for the benefits; provided that, if the designated beneficiary is an individual eligible to receive benefits under section 88-85, the designated beneficiary may receive benefits pursuant to an election made under this section pending disposition of the claim for benefits under section 88-85.

(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 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 the 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 to the system by the member[-] or by the member's employer.
- (f) In the event of the death of the retirant within one year after the date of retirement, the retirant's designated beneficiary may elect to receive either the death benefit under the retirement allowance option selected by the retirant, or [such] the benefits as would have been paid under section 88-84 had the retirant died immediately prior to retirement, less any payments which the retirant received.
- (g) The increase in the retirant's benefit under options 2, 3, and, if applicable, 4 upon the death of the retirant's designated beneficiary shall be effective the first day of the month following the date of death of the designated beneficiary. The retirant shall notify the system in writing and provide a certified copy of the beneficiary's death certificate. The system shall make retroactive benefit payments to the retirant, not to exceed six months from the date the written notification and the certified copy of the death certificate are received by the system. The retroactive payments shall be without interest.
- (h) Upon a member's retirement:
- (1) The member's election of a retirement allowance option shall be irrevocable; and
 - (2) The member's designation of a beneficiary shall be irrevocable if the retirement option elected by the member is:
 - (A) Option 2 or 3;
 - (B) An option that includes option 2 or 3 in combination with some other form of benefit payment; or
 - (C) Any other option for which the actuarial equivalent of the option to the maximum retirement allowance is determined at the time of the member's retirement in whole or in part on the age of the member's designated beneficiary."

SECTION 14. Section 88-84, Hawaii Revised Statutes, is amended to read as follows:

“§88-84 Ordinary death benefit. (a) Upon receipt by the system of proper proof of a member’s death occurring in service or while on authorized leave without pay, there shall be paid to the member’s designated beneficiary an ordinary death benefit consisting of:

- (1) The member’s accumulated contributions and, if no pension is payable under section 88-85, an amount equal to fifty per cent of the compensation earned by the member during the year immediately preceding the member’s death if the member had at least one year but not more than ten full years of credited service, which amount shall increase by five per cent for each full year of service in excess of ten years, to a maximum of one hundred per cent of the compensation; provided that if the member had at least one year of credited service, the amount, together with the member’s accumulated contributions shall not be less than one hundred per cent of the compensation;
- (2) If the member had ten or more years of credited service at the time of death in service, and the death occurred after June 30, 1988, the member’s designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired on the first day of a month following the member’s death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 3 of section 88-83 and computed on the basis of section 88-76; or
- (3) If the member was eligible for service retirement at the time of death in service, the member’s designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired on the first day of a month following the member’s death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 2 of section 88-83.

(b) If the member’s designation of beneficiary is void as specified in section 88-93, or if the member did not designate a beneficiary, there shall be payable:

- (1) To the surviving spouse or reciprocal beneficiary, a benefit as specified under subsection (a)(1), (2), or (3);
- (2) To the deceased member’s [~~dependent child, or~~] children under age eighteen, if there is no surviving spouse or reciprocal beneficiary, an equally divided benefit as specified under subsection (a)(1); or
- (3) To the deceased member’s estate, if there is no surviving spouse or reciprocal beneficiary [~~or dependent child or~~] and no children^[s] under the age of eighteen, a benefit as specified under subsection (a)(1).

(c) For the purposes of this section, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.

(d) The application for ordinary death benefits shall be filed no later than three years from the date of the member’s death.”

SECTION 15. Section 88-85, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

~~“(a) [Upon the receipt of proper proofs of a member’s death by the board of trustees,] In the case of an accidental death as determined by the board pursuant to section 88-85.5, there shall be paid to the member’s designated beneficiary or to the member’s estate the amount of the member’s accumulated contributions and [if, upon the receipt of evidence or proofs that the death was the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member,] there shall be paid in lieu of the ordinary death benefit payable under section 88-84, [effective on the first day of a month following the member’s death, except for the month of December when benefits shall be effective on the first or last day of the month,] a pension of one-half of the average final compensation of the member:~~

- ~~(1) To the surviving spouse or reciprocal beneficiary of the member to continue until the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship;~~
- ~~(2) If there be no surviving spouse or reciprocal beneficiary, or if the surviving spouse or reciprocal beneficiary dies or remarries, marries, or enters into a new reciprocal beneficiary relationship before any child of the deceased member shall have attained the age of eighteen years, then to the deceased member’s child or children under [sueh] the age of eighteen, divided in [sueh] the manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half of the deceased member’s final compensation until every child dies, or attains [sueh] the age of eighteen; or~~
- ~~(3) If there is no surviving spouse or reciprocal beneficiary or child under the age of eighteen years surviving the deceased member, then to the deceased member’s dependent father or dependent mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no [sueh] nomination, then to the deceased member’s dependent father or to the deceased member’s dependent mother as the board, in its discretion, shall direct to continue for life.~~

The pension shall be effective on the first day of the month following the member’s death, except for the month of December, when benefits shall be effective on the first or last day of the month.”

SECTION 16. Section 88-85.5, Hawaii Revised Statutes, is amended to read as follows:

“§88-85.5 [Accidental death claims.] Applications for accidental death benefits; approval by the board. (a) An application for service-connected accidental death benefits may be filed with the system by or on behalf of the claimant [as specified in sections] pursuant to section 88-85, 88-286, [and] or 88-339[-], on a form provided by the system. The application shall be filed no later than [two] three years from the date of [receipt of the written notification from the system.] the member’s death.

(b) ~~[If a claim is filed,] After the claimant files an application for service-connected accidental death benefits, the system shall obtain the following:~~

- (1) A copy of the employer’s report of the accident submitted by the employer to the department of labor and industrial relations, workers’ compensation division, and other reports relating to the accident;

- (2) A certified statement from the head of the department in which the deceased member was employed, stating the date, time, and place of the accident, and the nature of the service being performed when the accident occurred. The statement shall also include an opinion as to whether or not the accident was the result of wilful negligence on the deceased member's part;
- (3) A copy of the latest position description of the deceased member's duties and responsibilities;
- (4) A certified copy of the death certificate; and
- (5) A copy of an autopsy report, if performed.

~~[(e) If the medical board certifies that the death was the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member.]~~

(c) Upon the system's receipt of the application and documents specified in subsection (b), the medical board shall determine and certify to the board whether the member's death was an accidental death as defined in section 88-21.

(d) The board may accept as conclusive as to whether or not the member's death was caused by wilful negligence on the part of the member:

- (1) A certification made by the head of the agency in which the member is employed; or
- (2) A finding by the medical board.

~~[(d)]~~ (e) After the medical board submits its certification to the system, the board shall approve or disapprove the application. Upon approval^[5] of an application, benefits shall be paid [effective the date the claim was filed with the system, in accordance with sections] as provided in section 88-85, 88-286, [and] or 88-339."

SECTION 17. Section 88-93, Hawaii Revised Statutes, is amended to read as follows:

"§88-93 Named beneficiaries by [active] members^[5] and by former employees with vested benefit status; effect of marriage, entry into reciprocal beneficiary relationship, divorce, termination of reciprocal beneficiary relationship, or death. (a) All [nominations by] written [designation] designations of beneficiaries for members and for former employees with vested benefit status shall become null and void when:

- (1) The beneficiary predeceases the member^[5] or former employee;
- (2) The member or former employee is divorced from the beneficiary;
- (3) The member or former employee is unmarried, and subsequently marries; or
- (4) The member or former employee enters into or terminates a reciprocal beneficiary relationship.

Any of the above events shall operate as a complete revocation of ~~[such] the~~ designation and, except as provided in sections 88-84(b) and 88-333(b), all benefits payable by reason of the death of the member or former employee shall be payable to the member's [legal representatives] or former employee's estate unless, after the death, divorce or marriage, or entry into or termination of reciprocal beneficiary relationship, the member or former employee makes other provision in a written designation duly executed and filed with the board [of trustees].

(b) Subsection (a) shall not apply to active members who are former retirants who have returned to service. The beneficiaries of retirants who return to service

may not be changed except to the extent provided under the retirement allowance option selected by the former retirant when the former retirant first retired.”

SECTION 18. Section 88-95, Hawaii Revised Statutes, is amended to read as follows:

“§88-95 Withholding of dues and insurance premiums. A retired member, if the retired member requests in writing, may have withheld from the retired member’s pension, annuity, or retirement allowance, payments to the ~~[Hawaii public employees health]~~ employer-union health benefits trust fund and employee organizations for dues and insurance premiums.”

SECTION 19. Section 88-96, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Any member who ceases to be an employee and who has fewer than five years of credited service [shall], excluding unused sick leave, upon application to the board [of trustees], shall be paid all of the member’s accumulated contributions and the member’s membership shall thereupon terminate[;] and all credited service shall be forfeited; provided that [any such] a member shall not be paid the member’s accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or
- (2) If, at the time the application for return of accumulated contributions is received by the board ~~[of trustees]~~, the member has become an employee again.

[The former employee’s membership shall not continue after the fourth full year following the calendar year in which the individual’s employment terminates. The system, as soon as possible after termination of a former employee’s membership, shall return to the former employee the former employee’s accumulated contributions.] Regular interest shall be credited to the former employee’s account until the former employee’s accumulated contributions are returned to the former employee[.]; provided that the former employee’s membership shall not continue after the fourth full year following the calendar year in which the individual’s employment terminates. Upon termination of the former employee’s membership, the former employee’s credited service shall be forfeited and, if the former employee’s accumulated contributions are \$1,000 or less at the time of distribution, the system shall return the former employee’s contributions to the former employee. If the former employee does not become an employee again and if the former employee’s accumulated contributions have not been withdrawn by the former employee or previously returned by the system to the former employee, the system shall return the former employee’s accumulated contributions to the former employee as soon as possible after the former employee attains age sixty-two.

(b) Any member having five or more years of credited service who ceases to be an employee, upon application to the board ~~[of trustees]~~, shall be paid all of the member’s accumulated contributions[;] and thereupon the former employee’s membership shall terminate and all credited service shall be forfeited; provided that [any such] a member shall not be paid the member’s accumulated contributions:

- (1) If the member becomes an employee again within fifteen calendar days from the date the member ceased to be an employee; or
- (2) If, at the time the application for return of accumulated contributions is received by the board ~~[of trustees]~~, the member has become an employee again.

If the contributions are not withdrawn by the ~~[member]~~ former employee within four calendar years following the calendar year in which the ~~[member's]~~ former employee's employment terminates, the ~~[member]~~ former employee shall have established vested benefit status and shall be eligible for the service retirement benefit in effect at the time of the ~~[member's]~~ former employee's retirement, payable in accordance with this chapter² ~~[and the contributions shall not be withdrawn by the member thereafter.]; provided that if the former employee withdraws the former employee's accumulated contributions, the former employee's vested benefit status shall terminate and all credited service shall be forfeited.]~~

SECTION 20. Section 88-98, Hawaii Revised Statutes, as amended, is amended to read as follows:

“§88-98 Return to service of a retirant. (a) Any retirant who returns to employment requiring active membership shall be reenrolled as an active member of the system in the same class from which the retirant originally retired and the retirant's retirement allowance shall be suspended.

(1) If the retirant returns to service before July 1, 1998, and again retires, the retirant's retirement allowance shall consist of:

(A) For members with fewer than three years of credited service during the member's period of reemployment, the allowance to which the member was entitled under the ~~[mode-of]~~ retirement allowance option selected when the member previously retired and which was suspended; plus, for the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the ~~[mode-of]~~ retirement allowance option initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula in existence at the time of the member's latest retirement; or

(B) For members with three or more years of credited service during the member's period of reemployment, the allowance computed as if the member were retiring for the first time; provided that in no event shall the allowance be less than the amount determined in accordance with subparagraph (A); and

(2) If the retirant returns to service after June 30, 1998, and again retires, the retirant's retirement allowance shall be computed in accordance with paragraph (1)(A), regardless of the number of years of service in the reemployment period~~]; and].~~

~~[(3)]~~ (b) Any retirant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, and is reemployed by the State or a county in any capacity shall:

- ~~[(A)]~~ (1) Have the retirant's retirement allowance suspended;
- ~~[(B)]~~ (2) Forfeit the special retirement incentive benefit and any related benefit provided by chapter 88; and
- ~~[(C)]~~ (3) Be subject to the age and service requirements under section 88-73 when the member again retires.

(c) If a retirant's designation of beneficiary was irrevocable upon the retirant's initial retirement, the retirant may not change the retirant's designated beneficiary when the retirant returns to service or when the former retirant again retires.

(d) The board ~~[of trustees]~~ shall adopt ~~[such]~~ any rules as may be required to administer the purposes of this section.”

SECTION 21. Section 88-119, Hawaii Revised Statutes, is amended to read as follows:

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

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

the value of the leasehold interest and improvements mortgaged to secure it. The insurance coverage shall remain in force until the principal amount of the obligation is reduced to eighty per cent of the market value of the leasehold interest and improvements mortgaged to secure it, at which time the coverage shall be subject to cancellation solely at the option of the board [~~of trustees~~];

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

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

- (2) Government obligations, etc. Obligations of any of the following classes:
 - (A) Obligations issued or guaranteed as to principal and interest by the United States or by any state thereof or by any municipal or political subdivision or school district of any of the foregoing; provided that principal of and interest on [~~sueh~~] the obligations are payable in currency of the United States; or sovereign debt instruments issued by agencies of, or guaranteed by foreign governments;
 - (B) Revenue bonds, whether or not permitted by any other provision hereof, of the State or any municipal or political subdivision thereof, including the board of water supply of the city and county of Honolulu, and street or improvement district bonds of any district or project in the State; and
 - (C) Obligations issued or guaranteed by any federal home loan bank including consolidated federal home loan bank obligations, the Home Owner's Loan Corporation, the Federal National Mortgage Association, or the Small Business Administration;
- (3) Corporate obligations. Below investment grade or nonrated debt instruments, foreign or domestic, in accordance with investment guidelines adopted by the board [~~of trustees~~];
- (4) Preferred and common stocks. Shares of preferred or common stock of any corporation created or existing under the laws of the United States or of any state or district thereof or of any country;
- (5) Obligations eligible by law for purchase in the open market by federal reserve banks;

- (6) Obligations issued or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the Asian Development Bank, or the African Development Bank;
- (7) Obligations secured by collateral consisting of any of the securities or stock listed above and worth at the time the investment is made at least fifteen per cent more than the amount of the respective obligations;
- (8) Insurance company obligations. Contracts and agreements supplemental thereto providing for participation in one or more accounts of a life insurance company authorized to do business in Hawaii, including its separate accounts, and whether the investments allocated thereto are comprised of stocks or other securities or of real or personal property or interests therein;
- (9) Interests in real property. Interests in improved or productive real property in which, in the informed opinion of the board [~~of trustees~~], it is prudent to invest funds of the system. For purposes of this paragraph, "real property" includes any property treated as real property either by local law or for federal income tax purposes. Investments in improved or productive real property may be made directly or through pooled funds, including common or collective trust funds of banks and trust companies, group or unit trusts, limited partnerships, limited liability companies, investment trusts, title-holding corporations recognized under section 501(c) of the Internal Revenue Code of 1986, as amended, similar entities that would protect the system's interest, and other pooled funds invested on behalf of the system by investment managers retained by the system;
- (10) Other securities and futures contracts. Securities and futures contracts in which in the informed opinion of the board [~~of trustees~~] it is prudent to invest funds of the system, including currency, interest rate, bond, and stock index futures contracts and options on [~~such~~] the contracts to hedge against anticipated changes in currencies, interest rates, and bond and stock prices that might otherwise have an adverse effect upon the value of the system's securities portfolios; covered put and call options on securities; and stock; whether or not the securities, stock, futures contracts, or options on futures are expressly authorized by or qualify under the foregoing paragraphs, and notwithstanding any limitation of any of the foregoing paragraphs (including paragraph (4)); and
- (11) Private placements. Investments in institutional blind pool limited partnerships, limited liability companies, or direct investments that make private debt and equity investments in privately held companies, including but not limited to investments in Hawaii high technology businesses or venture capital investments that, in the informed opinion of the board [~~of trustees~~], are appropriate to invest funds of the system. In evaluating venture capital investments, the board [~~of trustees~~] shall consider, among other things, the impact an investment may have on job creation in Hawaii and on the state economy."

SECTION 22. Section 88-132, Hawaii Revised Statutes, is amended to read as follows:

"§88-132 Service credit; payment of contributions. (a) Every active member of the system who leaves active service of the State or any county for the purpose of entering the military service of the United States in time of war or declared national or state emergency, or is called involuntarily to active duty after June 24, 1950, shall, so long as the member remains in military service, be allowed

service credit in the system to the same extent as if the member were continuously in the active service of the State or county, as the case may be, in the position which the member held immediately prior to the member's entry into military service; provided that in no event shall the allowance of service credit exceed a period of four years.

(b) The State or county, as the case may be, in whose service the member was employed immediately prior to the member's induction into military service shall, ~~so long as the member remains in military service,~~ pay all contributions to the pension accumulation fund and to the annuity savings fund, and any other payment to the system, which would otherwise be payable to the system by the State, the county, or the member if the member ~~were~~ had remained continuously in the active service of the State or county, as the case may be, ~~so long as the member remains continuously in~~ during the period of the member's military service, ~~but in no event shall~~; provided that:

- (1) The cumulative length of time for which a member shall be entitled to payment ~~be made for more than~~ of the contributions shall not exceed four years. ~~This section shall apply only to members who return;~~
- (2) The member returns to state or county government service within ninety days of release from active duty or dies in the performance of the member's military service; and
- (3) The member's release from active duty was under honorable conditions.

(c) The State or county, as the case may be, shall pay all contributions required to be made under subsection (b) within sixty days after:

- (1) The member returns to State or county government service; or
- (2) The State or county, as the case may be, receives notice of the member's death in the performance of the member's military duty.

(d) If the State or county, as the case may be, fails to pay the contributions within the time specified in subsection (c), the State or county, as the case may be, shall also pay to the system interest at the rate of four and one-half per cent a year compounded annually from the date the member returned to state or county government service or the date of the member's death in the performance of the member's military duty until payment is made. Interest paid on the portion of the contributions that would have been payable by the member shall be included in the member's accumulated contributions."

SECTION 23. Section 88-137, Hawaii Revised Statutes, is amended to read as follows:

"§88-137 Ordinary death benefit. If any service member dies, the service member shall be deemed to be on authorized leave without pay for the purposes of the ordinary death benefit provided in sections 88-84, 88-286(b), and 88-338 ~~[shall be paid to the service member's estate or the service member's designated beneficiary]."~~

SECTION 24. Section 88-138, Hawaii Revised Statutes, is amended to read as follows:

"§88-138 Accidental death benefit. ~~[The estate or designated beneficiary of a]~~ If a service member [who] dies by accident, act of war, or other cause, occurring while the service member is not in the active service of the State or any county, [shall not be entitled to] the death shall not be an accidental death [benefit provided by] and shall not be eligible for accidental death benefits under sections 88-85, 88-286(c), and 88-339; however, the [estate or the beneficiary shall be entitled to the] ordinary death benefit shall be payable as provided in section 88-137."

SECTION 25. Section 88-140, Hawaii Revised Statutes, is amended to read as follows:

~~“§88-140 Duration of service member’s status. [A service member shall continue to be entitled to the benefits of the Servicemen’s Act until the expiration of ninety days after the termination of the service member’s service in the armed forces unless the service member shall within the ninety day period have reentered the service of the State or any county, in a position which constitutes the service member an employee as defined by section 88-21, in which latter event the service member’s status thenceforth shall be the same as that of any other regular member of the system in the service without any loss of the service credit preserved and allowed to the service member under the Servicemen’s Act, or unless the service member shall have resigned before the expiration of the ninety day period and waived the service member’s right to such reemployment. In the event the service member fails to reenter the service of the State or any county within the ninety day period, and shall not have resigned from the system and waived the service member’s right to reemployment, the service member’s status thereafter shall be the same as that of a regular member who terminated the regular member’s employment as such an employee and such termination shall be deemed to have occurred on the ninetieth day after the termination of the service member’s service in the armed forces.~~

~~A service member who voluntarily extends the service member’s period of service in the armed forces ninety or more days beyond the expiration date of the service member’s initial enlistment or the period for which the service member was inducted or the period for which the service member was ordered to active duty shall be deemed to be on the same status as that of a regular member who terminates the regular member’s employment as an employee, and the termination shall be deemed to have occurred on the ninetieth day following the expiration date of the service member’s enlistment or the period for which the service member was inducted or the period for which the service member was ordered to active duty.] (a) An active member of the system who leaves active service of the State or any county for the purpose of entering the military service of the United States in time of war or declared national or state emergency, or is called involuntarily to active duty after June 24, 1950, shall be entitled to the benefits of sections 88-134, 88-135, and 88-137:~~

- ~~(1) For so long as the member remains in active full-time military service, up to an aggregate of five years; and~~
- ~~(2) For an additional period ending on the earlier of:

 - ~~(A) The ninety-first day after the termination of the member’s eligibility for benefits pursuant to paragraph (1); or~~
 - ~~(B) The day the member returns to the active service of the State or a county.~~~~

~~(b) If a service member resigns from employment by the State or a county and waives the service member’s right to reemployment, the service member’s status shall be the same as a regular member who terminated the regular member’s employment as of the earlier of:~~

- ~~(1) The effective date of the service member’s resignation from employment; or~~
- ~~(2) The expiration of the service member’s rights under subsection (a).”~~

SECTION 26. Section 88-251, Hawaii Revised Statutes, is amended to read as follows:

“§88-251 Applicability. The following provisions of part II shall apply to this part:

- (1) Subpart A, except the definitions provided in section 88-21, unless expressly adopted in section 88-261;
- (2) Subpart B, except sections 88-45, 88-45.5, 88-46, 88-48, 88-52, 88-59, 88-59.5, 88-59.6, 88-61, and 88-62;
- (3) Subpart C, except sections 88-71 [tø], 88-72, 88-73, 88-74, 88-74.6, 88-75, 88-76, 88-79, 88-80, 88-83, 88-84 [tø], 88-85, 88-87 [tø], 88-88, 88-89, 88-96, 88-97, and 88-98;
- (4) Subpart D, except sections 88-112 and 88-113; and
- (5) Subpart E.”

SECTION 27. Section 88-271, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any class A or class B member who:

- (1) Is in service on June 30, 1984, or who returns to service after June 30, 1984, but before July 1, 2006, and has vested benefit status as provided in section 88-96(b); and
- (2) Is in a position covered by Title II of the Social Security Act, may elect to become a class C member effective January 1, 1985; or upon return to service, by filing an election form with the board. The election shall be made prior to December 1, 1984, or within thirty days of return to service and shall be irrevocable. A class A or class B member who makes [sueh] an election shall be refunded all accumulated contributions and shall not be required to make further contributions upon becoming a class C member. The refund shall be made by March 31, 1985, or within ninety days after return to service. Upon the effective date of the election, all rights as a class A or class B member shall be extinguished.”

SECTION 28. Section 88-273, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) Any retirant who retired under the provisions of part VII of this chapter and returns to service requiring membership in the system as a class C member shall be reenrolled as an active member, and the retirant’s retirement allowance shall be suspended. [~~At such time as~~] When the member again retires, the retirement allowance shall be the allowance to which the member was entitled under the [~~mode of~~] retirement allowance option selected when the member previously retired and which was suspended; plus, for the period of service during the member’s reemployment, the allowance to which the member is entitled for that service based on the [~~mode of~~] retirement allowance option initially selected and computed for the member’s age, average final compensation, and other factors in accordance with the benefit formula of a class C member in existence at the time of the member’s final retirement. If the member’s designation of beneficiary was irrevocable upon the member’s initial retirement, the member may not change the member’s designated beneficiary when the member returns to service or when the member again retires.

(d) Any retirant who retired under part VII and returns to service requiring membership in the system as a class A or class B member shall be reenrolled as an active member, and the retirant’s retirement allowance shall be suspended. [~~At such time as~~] When the member again retires, the retirement allowance shall be the allowance to which the member was entitled under the [~~mode of~~] retirement allowance option selected when the member previously retired and which was suspended; plus, for the period of service during the member’s reemployment, the allowance to which the member is entitled for that service based on the [~~mode of~~] retirement allowance option initially selected and computed for the member’s age, average final compensation, and other factors in accordance with the benefit formula of a class A or class B member in existence at the time of the member’s final

retirement. If the member's designation of beneficiary was irrevocable upon the member's initial retirement, the member may not change the member designated beneficiary when the member returns to service or when the member again retires."

SECTION 29. Section 88-283, Hawaii Revised Statutes, is amended as follows:

1. By amending its title and subsections (a) and (b) to read:

"§88-283 [Retirement] Election of retirement allowance [options.] option.

(a) Upon retirement, any member may elect to receive the maximum retirement allowance to which the member is entitled, computed in accordance with section 88-282, 88-284, or 88-285, and, if the member elects to receive the maximum retirement allowance, the member's beneficiary shall not be entitled to any benefit upon the member's death, except as provided in subsection (g). 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; provided that for members retiring after November 30, 2004, [in the event that] if the retirant's designated beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant's designated beneficiary, shall receive a retirement allowance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the retirant is entitled;**
- (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; provided that for members retiring after November 30, 2004, [in the event that] if the retirant's designated beneficiary dies at any time after the retirant retired, but before the death of the retirant, the retirant, upon the death of the retirant's designated beneficiary, shall receive a retirement allowance, including cumulative post retirement allowances, calculated as if the retirant had selected the maximum retirement allowance to which the retirant is entitled; 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.**

Only one beneficiary shall be designated under options A and B. The beneficiary designated under option A or B shall be a natural person, and benefits under option A or B shall only be paid to a natural person. To receive benefits, the beneficiary shall have been designated by the member in the form and manner prescribed by the board.

(b) [Any] Upon a member's retirement:

- (1) The member's election of a [mode of] retirement allowance option shall be irrevocable [and subject to the spousal or reciprocal beneficiary notification requirement under subsection (c).]; and**

(2) The member's designation of a beneficiary shall be irrevocable if the retirement option elected by the member is option A or B."

2. By amending subsections (e), (f), and (g) to read:

“(e) The system shall not be liable for any false statements made to the system by the member[-] or by the member's employer.

(f) ~~[In the event of the death of]~~ If a member dies after the date of the filing of the member's written application to retire, but prior to the retirement date designated by the member, and, if the member was eligible to retire on the date of the member's death, the member's designated beneficiary, ~~[if the member was eligible to retire on the date of the member's death,]~~ may elect to receive either:

- (1) An allowance that would have been payable if the member had retired and had elected to receive a retirement allowance under option B; or
- (2) The allowance under the option selected by the member which would have been payable had the member retired.

The effective date of the member's retirement shall be [a] the first day of a month, except for the month of December when the effective date of retirement may be on the first or last day of the month, and shall be no earlier than the later of thirty days from the date the member's retirement application was filed or the day following the member's date of death. The election may not be made if, at the time of the member's death, there are individuals who are eligible to receive death benefits under section 88-286(c) who have made a claim for the benefits; provided that, if the designated beneficiary is an individual eligible to receive benefits under section 88-286(c), the designated beneficiary may receive benefits pursuant to an election under this section pending disposition of the claim for benefits under section 88-286(c). No death benefits will be payable under section 88-286(c) while benefits are paid pursuant to an election made under this section.

(g) ~~[In the event of the death of]~~ If the retirant dies within one year after the date of retirement, the retirant's designated beneficiary may elect to receive either:

- (1) The death benefit under the retirement option selected by the retirant; or
- (2) The death benefit under option B; provided that the difference between the benefit that the retirant received and the benefit that would have been payable to the retirant had the retirant elected to receive a retirement allowance under option B shall be returned to the system."

SECTION 30. Section 88-286, Hawaii Revised Statutes, is amended by amending subsections (a), (b), and (c) to read as follows:

“(a) The surviving spouse or reciprocal beneficiary and ~~[dependent child or]~~ children under the age of eighteen of a member at the time of the member's death shall be eligible for a death benefit if the member suffers either an ordinary death while in service or on authorized leave without pay after accumulating ten years of credited service or an accidental death.

(b) In the case of ordinary death, the death benefit shall be as follows:

- (1) For the surviving spouse or reciprocal beneficiary, an allowance equal to one-half of the member's accrued maximum retirement allowance unreduced for age, payable until remarriage, marriage, or entry into a new reciprocal beneficiary relationship, as if the member had retired on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed; and for each ~~[dependent]~~ child under the age of eighteen an allowance equal to ten per cent of the member's accrued maximum retirement allowance unreduced for age, payable until the

- [dependent] child attains age eighteen; provided that the aggregate death benefits for all the [dependent] children under the age of eighteen shall not exceed twenty per cent of the member's accrued retirement allowance unreduced for age; or
- (2) For the surviving spouse or reciprocal beneficiary, if the member was eligible for retirement at the time of death in service, and death occurred after June 30, 1990, an allowance that would have been payable as if the member had retired on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed and had elected to receive a retirement allowance under option B of section 88-283; and
 - (3) If there is no surviving spouse or reciprocal beneficiary, each [dependent] child under the age of eighteen shall receive an allowance equal to twenty per cent of the member's accrued maximum retirement allowance unreduced for age, payable on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed, until the [dependent] child attains age eighteen; provided that the aggregate death benefits for all the [dependent] children under the age of eighteen shall not exceed forty per cent of the member's accrued maximum retirement allowance unreduced for age.

For the purpose of determining eligibility for the ordinary death benefit, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year. The application for ordinary death benefits shall be filed no later than three years from the date of the member's death.

(c) In the case of accidental death[;] as determined by the board pursuant to section 88-85.5, the death benefit shall be effective on the first day of [a] the month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed, as follows:

- (1) For the surviving spouse or reciprocal beneficiary, an allowance equal to thirty per cent of the member's average final compensation, payable until remarriage, marriage, or upon entry into a new reciprocal beneficiary relationship;
- (2) If there is a surviving spouse or reciprocal beneficiary, each [dependent] child under the age of eighteen shall receive an allowance equal to the greater of:
 - (A) Ten per cent of the member's accrued maximum retirement allowance unreduced for age; provided that the aggregate death benefits for all the [dependent] children under the age of eighteen shall not exceed twenty per cent of the member's accrued maximum retirement allowance unreduced for age; or
 - (B) Three per cent of the member's average final compensation; provided that the aggregate death benefits for all the [dependent] children under the age of eighteen shall not exceed six per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each [dependent] child until the [dependent] child attains age eighteen; and

- (3) If there is no surviving spouse or reciprocal beneficiary, each [dependent] child under the age of eighteen shall receive an allowance equal to the greater of:

- (A) Twenty per cent of the member's accrued maximum retirement allowance unreduced for age; provided that the aggregate death benefits for all the [dependent] children under the age of eighteen shall not exceed forty per cent of the member's accrued maximum retirement allowance unreduced for age; or
- (B) Six per cent of the member's average final compensation; provided that the aggregate death benefits for all the [dependent] children under the age of eighteen shall not exceed twelve per cent of the member's average final compensation.

The death benefit under this paragraph shall be payable to each [dependent] child until the [dependent] child attains age eighteen."

SECTION 31. Section 88-301, Hawaii Revised Statutes, is amended to read as follows:

"[~~§88-301~~] **Applicability.** The following provisions of part II of this chapter shall apply to this part:

- (1) Subpart A;
- (2) Subpart B, except sections 88-45, 88-46, 88-48, 88-52, 88-59, 88-59.5, 88-59.6, 88-61, and 88-62;
- (3) Subpart C, except sections 88-71 [tø], 88-72, 88-73, 88-74, 88-74.6, 88-75, 88-76, 88-79, 88-80, 88-83, 88-84, 88-85, 88-88, 88-89, 88-96, 88-97, and 88-98;
- (4) Subpart D; and
- (5) Subpart E."

SECTION 32. Section 88-321, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any member, except for [members] a member described in subsection (c), who is in service on June 30, 2006, or who returns to service after June 30, 2006, and has vested benefit status in accordance with section 88-96(b), may elect to become a class H member effective July 1, 2006, or upon return to service, by filing an election form with the system in accordance with this section. The election shall be made prior to April 1, 2006, by members in service on February 28, 2006[.]; provided that any member in service on February 28, 2006, who is absent from the state on that date while in the military service of the United States, shall have thirty days after the member returns to the member's regular employment with the State or a county to make the election. The election shall be made by members entering or returning to service from March 1, 2006, through June 30, 2006, within sixty days of entering or returning to service. The election shall be made by members entering or returning to service after [February 28,] June 30, 2006, within thirty days of entering or returning to service. The election shall be irrevocable."

SECTION 33. Section 88-321, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- "(b) Notwithstanding any other law to the contrary, after June 30, 2006:
- (1) A class C member who returns to service and who does not return to service as a class A or a class B member shall become a class H member upon return to service; provided that, if the member is a former class A or class B member who received a refund of contributions picked up and paid by the member's employer pursuant to section 88-46(b), the member may not become a class H member and shall

return to service as a class C member, unless the refund was made pursuant to section 88-96 or 88-271(b); and

- (2) A class A or a class B member, who returns to service but does not have vested benefit status as provided in section 88-96(b) and who does not return to service as a class A or class B member, shall become a class H member upon return to service~~[-The system shall return to the member the member's accumulated contributions]~~ and the member's credited service as a class A or B member shall be converted to class C credited service. The system shall return to the member the member's accumulated contributions if the member's accumulated contributions are \$1,000 or less at the time of distribution. If the member's accumulated contributions for the class A or B credited service that was converted to class C credited service are greater than \$1,000 and the member does not make written application, contemporaneously with the member's return to service, for return of such contributions, the member, except as provided by section 88-341, may not withdraw the member's accumulated contributions for the class A or B credited service that was converted to class C credited service until the member retires or attains age sixty-two."

SECTION 34. Section 88-322, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) Class C members who are in service on June 30, 2006, and make the election to become class H members pursuant to section 88-321(a), shall have the option to convert some or all of their class C credited service, as of June 30, 2006, to class H credited service by paying the full actuarial cost of the conversion as of June 30, 2006, in the manner provided in subsection (d). The option to convert class C credited service to class H credited service shall ~~[not]~~ also apply:

- (1) To forfeited credit for previous service ~~[not]~~ that a member is eligible to have restored as of June 30, 2006; ~~[or]~~ and
- (2) to membership service credit that a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006~~[- which the member has failed to claim by June 30, 2006.];~~

provided that the member shall claim the forfeited service credit and the membership service credit by the date established by the board at a meeting held pursuant to chapter 92.

(b) All class A and class B credited service of class A or class B members who make the election to become class H members pursuant to section 88-321(a) shall be converted to class H credited service. The cost of the conversion of class A or class B credited service shall be the member's accumulated contributions as of the date of conversion. Verified membership service credit paid for pursuant to section 88-59 under an irrevocable payroll authorization entered into prior to July 1, 2006, shall be credited as class H credited service. Class A and class B members who are in service on June 30, 2006, and make the election to become class H members pursuant to section 88-321(a) shall have the option to convert some or all of their class C credited service, as of June 30, 2006, to class H credited service by paying, in the manner provided in subsection (d), the full actuarial cost of the conversion as of June 30, 2006. The option to convert class C credited service to class H credited service shall ~~[not]~~ also apply:

- (1) To forfeited credit for previous service ~~[not]~~ that a member is eligible to have restored as of June 30, 2006; ~~[or]~~ and

- (2) To membership service credit that a member is eligible to claim under section 88-272(4) to (6) as of June 30, 2006~~[- which the member has failed to claim by June 30, 2006.];~~

provided that the member shall claim the forfeited service credit and the membership service credit by the date established by the board at a meeting held pursuant to chapter 92.”

SECTION 35. Section 88-324, Hawaii Revised Statutes, is amended by amending subsections (c), (d), and (e) to read as follows:

“(c) Verified membership service for which a former class A or class B member in service on June 30, 2006, was eligible as of June 30, 2006, but failed to claim by ~~[June 30, 2006,]~~ the date established by the board pursuant to section 88-322(b), shall be paid for in any one of the following methods, at the member’s option:

- (1) By deductions from the member’s compensation pursuant to section 414(h)(2) of the Internal Revenue Code of 1986, as amended, under the employer pick up plan under section 88-326. An irrevocable payroll authorization filed by the member for a period not to exceed sixty months shall remain in effect until the completion of the payroll payments or termination of employment, whichever is earlier. The amount of service credit that may be acquired pursuant to this method shall not exceed the period over which the payroll payments are made. The member may elect to have:
 - (A) Deductions from the member’s compensation of twice the contribution rate applicable to the member under section 88-45 as of June 30, 2006, over a period equal to the period for which membership service credit is allowable, not to exceed sixty months; or
 - (B) Deductions from the member’s compensation of one and one-half times the contribution rate applicable to the member under section 88-45 as of June 30, 2006, over a period equal to twice the period for which membership service credit is allowable, not to exceed sixty months; or
- (2) By lump sum payment of contributions computed at the contribution rate applicable to the member under section 88-45 as of June 30, 2006, applied to the member’s monthly rate of compensation at the time of payment, multiplied by the number of months for which membership service credit is allowable.

The deductions from compensation or lump sum payment shall be paid to the system and shall be credited to the member’s individual account and become part of the member’s accumulated contributions.

Class H membership service credit in addition to any other service credited to the member shall be allowed for the period for which the deductions from compensation or lump sum payment have been made in accordance with this subsection.

(d) Verified prior service and verified membership service for which a former class C member in service on June 30, 2006, was eligible as of June 30, 2006, but failed to claim by ~~[June 30, 2006,]~~ the date established by the board pursuant to section 88-322(a), shall be credited at no cost as class C credited service.

- (e) Except as provided in subsection (f)~~[-]~~ or in section 88-322:
- (1) Class A, class B, or class C credited service shall not be acquired as class H credited service; and

- (2) Class A, class B, or class C credited service shall be restored as class C credited service at the rate of one month of service credit for each month of service rendered following the later of conversion to class H membership or the return to membership as a class H member. Forfeited class H membership service shall not be restored.”

SECTION 36. Section 88-333, Hawaii Revised Statutes, is amended to read as follows:

“§88-333 [Retirement] Election of retirement allowance [options.] option. (a) Upon retirement:

- (1) Any class H member may elect to receive the maximum retirement allowance to which the member is entitled, computed in accordance with the provisions described under section 88-332, 88-335, or 88-337, and if the member elects to receive the maximum retirement allowance, in the event of the member’s death, there shall be paid to the member’s beneficiary, or 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; or
- (2) In lieu of the maximum allowance to which the member is entitled, computed in accordance with the provisions described under section 88-332, 88-335, or 88-337, the member may elect to receive the member’s retirement allowance under any one of the [optional plans] options described in section 88-83, which shall be actuarially equivalent to the maximum allowance.

To receive benefits, the beneficiary shall have been designated by the member in the form and manner prescribed by the board.

(b) If a class H member dies after the date of the filing of the member’s written application to retire but prior to the retirement date designated by the member, and, if the member was eligible to retire on the date of the member’s death, the member’s designated beneficiary, or otherwise the personal representative of the member’s estate, [if the member was eligible to retire on the date of the member’s death,] may elect to receive either the death benefit under section 88-338 or the allowance under the option selected by the member that would have been payable had the member retired. The effective date of the member’s retirement shall be [a] the first day of a month, except for the month of December when the effective date of retirement may be on the first or last day of the month, and shall be no earlier than the later of thirty days from the date the member’s retirement application was filed or the day following the member’s date of death.

(c) If a retirant dies within one year after the date of retirement, the retirant’s designated beneficiary may elect to receive either the death benefit under the retirement allowance option selected by the member, or the benefits that would have been paid under section 88-338 had the retirant died immediately prior to retirement, less any payments received by the retirant.

(d) [Any] Upon a member’s retirement:

- (1) The member’s election of a [mode of] retirement allowance option shall be irrevocable[-]; and
- (2) The member’s designation of a beneficiary shall be irrevocable if the retirement allowance option elected by the member is:
 - (A) Option 2 or 3 described in section 88-83;
 - (B) An option that includes option 2 or 3 in combination with some other form of benefit payment; or

(C) Any other option for which the actuarial equivalent of the option to the maximum retirement allowance is determined at the time of the member's retirement in whole or in part on the age of the member's beneficiary.

(e) 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 adopted by the board in accordance with chapter 91;
- (2) The member selects option 2 or option 3 under section 88-83 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 board rules adopted in accordance with 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. The system shall not be liable for any false statements made by the member.

(f) 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 the member's spouse or reciprocal beneficiary under subsection (e) 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.

(g) The system shall not be liable for any false statements made to the system by the member or by the member's employer."

SECTION 37. Section 88-338, Hawaii Revised Statutes, is amended to read as follows:

“~~[§88-338]~~ Ordinary death benefit. (a) Upon receipt by the ~~[board]~~ system of proper proof of a class H member's death occurring in service or while on authorized leave without pay and if no pension is payable under section 88-339, there shall be paid to the member's designated beneficiary an ordinary death benefit as follows:

- (1) If the member had less than five years of credited service at the time of death, the member's accumulated contributions shall be paid to the member's designated beneficiary;

- (2) If the member had five or more years of credited service at the time of death, an amount equal to the member's hypothetical account balance shall be paid to the member's designated beneficiary;
 - (3) If the member had ten or more years of credited service at the time of death, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 3 of section 88-83 and computed on the basis of section 88-335; or
 - (4) If the member was eligible for service retirement at the time of death, the member's designated beneficiary may elect to receive in lieu of any other payment provided in this section, the allowance that would have been payable as if the member had retired on the first day of a month following the member's death, except for the month of December when retirement on the first or last day of the month shall be allowed. Benefits payable under this paragraph shall be calculated under option 2 of section 88-83.
- (b) If the member's designation of beneficiary is void as specified in section 88-93, or if the member did not designate a beneficiary, the death benefit in the case of ordinary death shall be payable:
- (1) To the surviving spouse or reciprocal beneficiary, a benefit as specified under subsection (a);
 - (2) To the deceased member's [~~dependent child, or~~] children under age eighteen, if there is no surviving spouse or reciprocal beneficiary, an equally divided benefit as specified under paragraph (1) or (2) of subsection (a); or
 - (3) To the deceased member's estate, if there is no surviving spouse or reciprocal beneficiary or [~~dependent child or~~] children[;] under the age of eighteen, a benefit as specified under paragraph (1) or (2) of subsection (a).
- (c) For the purposes of this section, a year round school employee shall be considered in service during the July and August preceding a transfer to a traditional school schedule if the employee was in service for the entire prior school year and has a contract for the upcoming traditional school year.
- (d) The application for ordinary death benefits shall be filed no later than three years from the date of the member's death."

SECTION 38. Section 88-339, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) [Upon the receipt by the board of trustees, of proper proof of a class H member's death,] In the case of an accidental death as determined by the board pursuant to section 88-85.5, there shall be paid to the member's designated beneficiary or to the member's estate the amount of the member's accumulated contributions and [if, upon the receipt of evidence or proof that the death was the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or that the death was due to the result of some occupational hazard, the board shall decide that the death was the result of an accident in the performance of duty and not caused by wilful negligence on the part of the member,] there shall be paid in lieu of the ordinary death benefit payable under section 88-338[; effective on the first day of a month following the member's

death, ~~except for the month of December when benefits shall be effective on the first or last day of the month,~~] a pension of one-half of the average final compensation of the member:

- (1) To the surviving spouse or reciprocal beneficiary of the member to continue until the surviving spouse or reciprocal beneficiary remarries, marries, or enters into a new reciprocal beneficiary relationship;
- (2) If there be no surviving spouse or reciprocal beneficiary, or if the surviving spouse or reciprocal beneficiary dies or remarries, marries, or enters into a new reciprocal beneficiary relationship before any child of the deceased member shall have attained the age of eighteen years, then to the deceased member's child or children under that age, divided in a manner as the board in its discretion shall determine, to continue as a joint and survivor pension of one-half of the deceased member's final compensation until every child dies, or attains that age; or
- (3) If there is no surviving spouse or reciprocal beneficiary ~~[or]~~ and no child under the age of eighteen years surviving the deceased member, then to the deceased member's dependent father or dependent mother, as the deceased member shall have nominated by written designation duly acknowledged and filed with the board, or if there is no ~~[such]~~ nomination, then to the deceased member's dependent father or to the deceased member's dependent mother as the board, in its discretion, shall direct to continue for life.

The pension shall be effective on the first day of the month following the member's death, except for the month of December, when benefits shall be effective on the first or last day of the month."

SECTION 39. Section 88-341, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Any class H member who ceases to be an employee and who has fewer than five years of credited service ~~[shall]~~, excluding unused sick leave, shall upon application to the board, be paid all of the former employee's accumulated contributions, and the former employee's membership shall thereupon terminate and all credited service shall be forfeited; provided that ~~[any such]~~ an individual shall not be paid the individual's accumulated contributions if either:

- (1) The individual becomes an employee again within fifteen calendar days from the date the individual ceased to be an employee; or
- (2) At the time the application for return of accumulated contributions is received by the board, the individual has become an employee again.

Regular interest shall be credited to the former employee's account until the former employee's accumulated contributions are withdrawn; provided that the former employee's membership shall not continue after the fourth full year following the calendar year in which the individual's employment terminates. If the former employee does not become an employee again and has not withdrawn the former employee's accumulated contributions, the system shall return the former employee's accumulated contributions to the former employee as soon as possible after the former employee attains age sixty-two.”

SECTION 40. Section 88-344, Hawaii Revised Statutes, is amended to read as follows:

“~~[§88-344]~~ **Return to service of a retirant.** (a) Any retirant who retired under the provisions of part VIII of this chapter and returns to service requiring membership in the system as a class H member shall be reenrolled as an active

member, and the retirant's retirement allowance shall be suspended. [At such time as] When the member again retires, the retirement allowance shall be the sum of:

- (1) The allowance to which the member was entitled under the ~~[mode of]~~ retirement allowance option selected when the member previously retired and which was suspended; and
- (2) For the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the ~~[mode of]~~ retirement allowance option initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula of a class H member in existence at the time of the member's final retirement.

(b) Any retirant who retired under part VIII and returns to service requiring membership in the system as a class A or class B member shall be reenrolled as an active member, and the retirant's retirement allowance shall be suspended. [At such time as] When the member again retires, the retirement allowance shall be the sum of:

- (1) The allowance to which the member was entitled under the ~~[mode of]~~ retirement allowance option selected when the member previously retired and which was suspended; and
- (2) For the period of service during the member's reemployment, the allowance to which the member is entitled for that service based on the ~~[mode of]~~ retirement allowance option initially selected and computed for the member's age, average final compensation, and other factors in accordance with the benefit formula of a class A or class B member in existence at the time of the member's final retirement.

(c) Any retirant who received the special retirement incentive benefit under Act 253, Session Laws of Hawaii 2000, and is reemployed by the State or a county in any capacity shall:

- (1) Have the retirant's retirement allowance suspended;
- (2) Forfeit the special retirement incentive benefit and any related benefit provided by chapter 88; and
- (3) Be subject to the age and service requirements under section 88-331 when the member again retires.

(d) If a retirant's designation of beneficiary was irrevocable upon the retirant's initial retirement, the retirant may not change the retirant's designated beneficiary when the retirant returns to service or when the former retirant again retires.

(e) The board shall adopt [such] any rules as may be required to administer the purposes of this section."

SECTION 41. Section 88-261, Hawaii Revised Statutes, is amended by repealing the definitions of "accidental death" and of "ordinary death".

~~[""Accidental death": death which is the natural and proximate result of an accident occurring at some definite time and place while the member was in the actual performance of duty, or due to the result of some occupational hazard, and not caused by recklessness on the part of the member.~~

~~""Ordinary death": death that is not accidental and that occurs while in service or on authorized leave without pay."']~~

SECTION 42. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 43. This Act shall take effect on July 1, 2006; provided that section 26 shall take effect retroactive to July 1, 2003, sections 31 and 39 shall take

effect retroactive to July 1, 2004, section 32 shall take effect retroactive to January 1, 2006, and sections 34 and 35 shall take effect on June 30, 2006.

(Approved June 5, 2006.)

Notes

1. Prior to amendment "the" appeared here.
2. Prior to amendment " ," appeared here.

ACT 170

H.B. NO. 2039

A Bill for an Act Relating to Decontamination of Illegal Drug Manufacturing Sites.

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

SECTION 1. The legislature finds that the contamination of properties used to illegally manufacture methamphetamines poses a threat to public health and welfare. The legislature also finds that there is no established protocol for the protection of first responders and for the subsequent decontamination and cleanup of these illegal manufacturing sites.

The purpose of this Act is to direct the department of health to establish interim procedures and guidelines for emergency and long-term decontamination and cleanup of illegal methamphetamine manufacturing sites.

SECTION 2. Notwithstanding the requirements of chapter 91, Hawaii Revised Statutes, within ninety days of the effective date of this Act, the department of health shall adopt interim rules for procedures and guidelines for emergency and long-term decontamination and cleanup of illegal methamphetamine manufacturing sites. These procedures and guidelines shall apply to properties that have been used to manufacture or store methamphetamine and its precursor hazardous materials, until the department of health develops permanent rules for a comprehensive program for emergency and long-term decontamination and cleanup of illegal methamphetamine manufacturing sites. The department shall oversee and implement the procedures and guidelines using current state statutes and rules to the extent feasible.

The interim and permanent rules for procedures and guidelines shall include but not be limited to the following areas:

- (1) Emergency response and inspection;
- (2) Decontamination;
- (3) Environmental cleanup; and
- (4) Disposal of hazardous materials and wastes associated with the unauthorized manufacturing or storage of methamphetamine.

The interim rules shall remain effective until the department adopts permanent rules, pursuant to chapter 91, Hawaii Revised Statutes, which shall be on or before December 31, 2007.

SECTION 3. (a) The department shall also identify and evaluate the requirements necessary to establish a statewide program for decontamination and cleanup of illegal methamphetamine sites to ensure that program procedures provide for decontamination, remediation, and safe reoccupancy and reuse that is prompt and efficient.

(b) The evaluation shall include:

- (1) An assessment of soil and groundwater impacts as a result of the illegal manufacturing of methamphetamine at selected residential and other buildings in Hawaii;
- (2) A review of cleanup procedures at actual locations where methamphetamine was illegally manufactured in Hawaii;

- (3) Recommended protocols for the first responder community that include the methods to be used in assessing the potential dangers of chemical contamination and protecting first responders;
- (4) A review of relevant department of health and Hawaii law enforcement records;
- (5) A review of standards and protocols used by other states and federal agencies or recommended by other organizations; and
- (6) Additional legislation necessary to permit the department to ensure that contaminated sites are promptly and efficiently cleaned up and made ready for safe reoccupancy and reuse, particularly in terms of the department's ability to enforce its rules.

The department shall submit its interim procedures and guidelines and a report of its evaluation of the requirements of a statewide program to decontaminate illegal methamphetamine manufacturing sites, together with any necessary legislation, to the legislature not later than twenty days prior to the convening of the regular session of 2007, and its permanent rules and evaluation no later than twenty days prior to the convening of the regular session of 2008.

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

(Approved June 5, 2006.)

ACT 171

H.B. NO. 2410

A Bill for an Act Relating to Controlled Substances.

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

SECTION 1. 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);
- (17) Diazepam;
- (18) Estazolam;
- (19) Ethchlorvynol;
- (20) Ethinamate;

- (21) Ethyl loflazepate;
- (22) Fludiazepam;
- (23) Flunitrazepam;
- (24) Flurazepam;
- (25) Halazepam;
- (26) Haloxazolam;
- (27) Ketazolam;
- (28) Loprazolam;
- (29) Lorazepam;
- (30) Lormetazepam;
- (31) Mebutamate;
- (32) Medazepam;
- (33) Meprobamate;
- (34) Methohexital;
- (35) Methylphenobarbital (mephorbarbital);
- (36) Midazolam;
- (37) Nimetazepam;
- (38) Nitrazepam;
- (39) Nordiazepam;
- (40) Oxazepam;
- (41) Oxazolam;
- (42) Paraldehyde;
- (43) Petrichloral;
- (44) Phenobarbital;
- (45) Pinazepam;
- (46) Prazepam;
- (47) Quazepam;
- (48) Temazepam;
- (49) Tetrazepam;
- (50) Triazolam;
- (51) Zaleplon; [and]
- (52) Zolpidem[.]; and
- (53) Zopiclone (Lunesta).”

SECTION 2. Section 329-64, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The requirements imposed by sections 329-62, [329-63,] 329-63(a), and 329-67 of this part shall not apply to any of the following:

- (1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian;
- (2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to patients;
- (3) Any manufacturer or wholesaler licensed by the State who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, or veterinarian; [and]
- (4) Any sale, transfer, furnishing, or receipt of any drug [which] that contains [~~ephedrine,] pseudoephedrine[;] or norpseudoephedrine[; or phenylpropanolamine and which] that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 United States Code Sec. 301 et seq.) or regulations adopted thereunder[;] as long as it complies with the requirements of sections 329-73, 329-74, and 329-75; and~~

- (5) Any “dietary supplement” as defined by the federal Food, Drug, and Cosmetic Act (21 United States Code Sec. 301) containing ephedrine alkaloids extracted from any species of Ephedra that meets all of the following criteria:
- (A) It contains, per dosage unit or serving, not more than twenty-five milligrams of ephedrine alkaloids and its labeling does not suggest or recommend a total daily intake of more than one hundred milligrams of ephedrine alkaloids;
 - (B) It contains no hydrochloride or sulfate salts of ephedrine alkaloids; and
 - (C) It is packaged with a prominent label securely affixed to each package that states all of the following:
 - (i) The amount in milligrams of ephedrine alkaloids in a dosage unit or serving;
 - (ii) The amount of the dietary supplement that constitutes a dosage unit or serving; and
 - (iii) The maximum recommended dosage of ephedrine alkaloids for a healthy adult human is not more than one hundred milligrams in a [twenty-four-hour] twenty-four-hour period.”

SECTION 3. Section 329-75, Hawaii Revised Statutes, is amended to read as follows:

“~~[§329-75]~~ **Sales of products, mixtures, or preparations containing pseudoephedrine; reporting requirement for wholesalers.** (a) Notwithstanding any other law to the contrary, a pharmacy or retailer may dispense, sell, or distribute to a person without a prescription not more than ~~[three packages or not more than nine]~~ 3.6 grams per [transaction,] day without regard to the number of transactions, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, as the only active ingredient or in combination with other active ingredients; provided that the pharmacy or retailer complies with the following conditions:

- ~~(1) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area that is in the direct line of sight of an employee at the checkout station or counter;~~
- ~~(2) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area that is under constant video monitoring with signage placed near the drug that warns that the area is under constant video monitoring; or~~
- ~~(3) (1) The product, mixture, or preparation shall be dispensed, sold, or distributed from an area not accessible by customers or the general public, such as behind the counter or in a locked display case[-] and where the seller delivers the product directly into the custody of the purchaser; and~~
- ~~(2) Any person purchasing or otherwise acquiring any product, mixture, or preparation shall:~~
 - ~~(A) Produce proper identification containing the photograph, printed name, and signature of the individual obtaining the controlled substance; and~~
 - ~~(B) Sign a written log, receipt, or other program or mechanism approved by the administrator, showing the date of the transaction, name and address of the person, and the amount of the compound, mixture, or preparation.~~

No person shall purchase, receive, or otherwise acquire more than nine grams of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine

or its salts, isomers, or salts of optical isomers within a thirty-day period, except that this limit shall not apply to any quantity of such product, mixture, or preparation dispensed pursuant to a valid prescription.

(b) The sales restriction in this section, as it applies to products, mixtures, or preparations containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, shall not apply to any products, mixtures, or preparations that are in liquid, liquid capsule, or gel capsule form if pseudoephedrine is not the only active ingredient.

(c) The department, by rule, may exempt other products from this section, [~~including extended-release pseudoephedrine combination products,~~] if the administrator finds that the products are not used in the illegal manufacture of methamphetamine or other controlled substances. A manufacturer of a drug product may apply for removal of the product from this section if the product is determined by the administrator to have been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine.

(d) Notwithstanding any other provision of this chapter to the contrary, every wholesaler shall report to the administrator all sales made to any retailer, of any product, mixture, or preparation containing any detectable quantity of pseudoephedrine, its salts, optical isomers, or salts of optical isomers, as the only active ingredient or in combination with other active ingredients. The department shall provide a common reporting form that contains at least the following information about the product, mixture, or preparation:

- (1) Generic or other name;
- (2) Quantity sold;
- (3) Date of sale;
- (4) Name and address of the wholesaler; and
- (5) Name and address of the retailer.

~~[(e) For purposes of this section, "extended-release pseudoephedrine combination product" means any product containing pseudoephedrine that also contains other ingredients that protect the pseudoephedrine from immediate release and prevent the pseudoephedrine from being extracted.]~~

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

SECTION 5. Section 3 of this Act shall take effect on October 1, 2006. All other sections of this Act shall take effect upon its approval.

(Approved June 5, 2006.)

ACT 172

H.B. NO. 1889

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

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

SECTION 1. The purpose of this Act is to establish an office of international affairs to coordinate and promote economic, social, cultural, and scientific relations with other countries.

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

“§201- Office of international affairs; established. (a) There is established, within the department of business, economic development, and tourism, an office of international affairs.

(b) The office shall:

- (1) Develop policies that promote and strengthen relations with other countries in the areas of international business, economy, culture, and the arts;
- (2) Develop policies that promote transportation between, and tourism with, other countries;
- (3) Develop and promote international telecommunications and high technology exchanges;
- (4) Encourage the development of international sister-city programs, pairing Hawaii cities with cities around the globe for artistic, cultural, economic, educational, and faith-based exchanges;
- (5) Develop and promote Hawaii as the economic, trade, commerce, transportation, banking, and tourism hub of the Pacific;
- (6) Develop an international affairs and peace education curriculum that includes studies of international affairs and peace initiatives and takes a proactive, strategic approach to the development of policies that promote the prevention of national and international conflict, nonviolent intervention, mediation, peaceful resolution of conflict, and structured mediation of conflict; and
- (7) Provide for exchanges of individuals between Hawaii and other nations to develop international and peace-based initiatives.

(c) Notwithstanding any other law to the contrary, if any of the responsibilities or duties of the office of international affairs under this section overlap with the responsibilities or duties of another agency or authority under this chapter, the office of international affairs shall have exclusive jurisdiction and authority over those responsibilities and duties.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved June 5, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 173

S.B. NO. 2237

A Bill for an Act Relating to State Risk Management.

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

SECTION 1. Section 41D-4, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) Money received from the settlement of claims or losses of the State as delineated in subsection (a) shall be deemed to be trust moneys and may be deposited into the state risk management revolving fund [-] or into a trust account with and under the control of the affected agency at the discretion of the comptroller. These moneys and any interest earned thereon shall be used for the purpose identified in any such settlement.”

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, 2006.

(Approved June 6, 2006.)

ACT 174

S.B. NO. 2358

A Bill for an Act Relating to Protection of Forest Reserves.

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

PART I

SECTION 1. Chapter 183, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§183- General administrative penalties. (a) Except as otherwise provided by law, the board or its authorized representative may:

- (1) Set, charge, and collect administrative fines;
- (2) Bring legal action to recover administrative fines, fees, and costs, including attorney’s fees and costs and costs associated with land or habitat restoration; and

(3) Collect administrative fees and costs pursuant to paragraph (2), resulting from a violation of this chapter, any rule adopted, or permit issued thereunder.

(b) The administrative fines for violation of this chapter shall be as follows:

- (1) For a first violation, or any violation not preceded within a five-year period by a violation of this chapter, a fine of not more than \$2,500 per violation;
- (2) For a second violation within five years of a previous violation of this chapter, a fine of not more than \$5,000 per violation; and
- (3) For a third or subsequent violation within five years of the last violation of this chapter, a fine of not more than \$10,000 per violation.

(c) In addition:

- (1) A fine of up to \$10,000 per violation of section 183-17 may be levied for each destroyed or harvested koa tree, or portion thereof, larger than six inches in diameter at ground level; and
- (2) A fine of up to \$2,000 per violation of section 183-17 may be levied for each destroyed or harvested tree or plant, other than koa, or portion thereof, larger than six inches in diameter at ground level.

(d) Any criminal prosecution for any violation of this chapter or any rule adopted thereunder shall not be deemed to preclude the State from recovering additional administrative fines, fees, and costs, including attorney’s fees and costs.

(e) No person shall be sanctioned pursuant to this section for the exercise of native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department pursuant to Article XII, Section 7 of the Hawaii State Constitution.

(f) The department shall submit an annual report outlining the revenues generated by the penalties to the legislature at least twenty days before the convening of each regular session.”

SECTION 2. Section 183-18, Hawaii Revised Statutes, is amended to read as follows:

“§183-18 [~~Penalty.~~] Criminal penalties. Any person who violates section 183-17, upon conviction thereof, is guilty of a misdemeanor and shall be fined not more than ~~[\$1,000]~~ \$2,000 or imprisoned not more than one year, or both. In addition to any other penalty imposed under this section, a fine of up to \$2,000 shall be levied for each tree illegally destroyed or harvested under section 183-17.”

PART II

SECTION 3. The legislature finds that the current statute requires that income from the harvest and sale of certain forest products and tree seedlings of the forest reserves be deposited into the forest stewardship fund, but provides that “other moneys accrued from any forest reserve or the products thereof” be deposited into the general fund.

The purpose of this part is to provide that all revenues derived from the forest reserves be deposited into the forest stewardship fund to, among other things, protect the forest reserves by:

- (1) Deleting confusing and contradictory language requiring the depository of “other moneys accrued from any forest reserve or the products thereof” into the general fund; and
- (2) Adding that other products, services, or values derived from the forest reserves and moneys from fines and penalties be deposited into the forest stewardship fund.

SECTION 4. Section 183-16, Hawaii Revised Statutes, is amended to read as follows:

“§183-16 [~~Income]~~ Revenue from forest reserves. [~~(a)~~] Any moneys accrued from:

- (1) The harvest of non-native forest products from forest reserves;
- (2) The harvest of native forest products from degraded forests as defined in section 186-5.5, within forest reserves;
- (3) The sale of forest products found dead and lying on the ground; [~~or~~]
- (4) The sale of tree seedlings from state nurseries;
- (5) The sale of any other products or services, or anything of value derived from forest reserves not described above; or
- (6) The imposition of fines or penalties for violations of this chapter and chapters 185 and 195F or any rule adopted thereunder,

shall be deposited into the forest stewardship fund.

~~[(b) Any other moneys accrued from any forest reserve or the products thereof shall be deposited into the general fund.]”~~

SECTION 5. Section 195F-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a special fund within the state treasury known as the forest stewardship fund which shall be used as follows:

- (1) Payments shall be made by the board pursuant to agreements entered into with qualified landowners to further the purposes of this chapter;
- (2) Moneys collected from [~~the~~]:
 - (A) The harvest of non-native forest products from forest reserves[;
from the];

- (B) The harvest of native forest products from degraded forests as defined in section 186-5.5, within forest reserves[; from];
 - (C) The sale of forest products found dead and lying on the ground[; or from the];
 - (D) The sale of tree seedlings from [the] state nurseries[;];
 - (E) The sale of any other products or services, or anything of value derived from forest reserves not described above; or
 - (F) The imposition of fines or penalties for violations of this chapter and chapters 185 and 195F or any rule adopted thereunder;
- shall be used for [the following activities: (A) Replanting,];
- (i) Replanting, managing, and maintaining designated timber management areas; [(B) Enhancing]
 - (ii) Enhancing the management¹ of public forest reserves with an emphasis on restoring degraded koa forests; and [(C) Developing]
 - (iii) Developing environmental education and training programs pertaining¹ to sustainable forestry;
- provided that the activities described in [subparagraphs (B) and (C)] clauses (ii) and (iii) may not be funded unless the activities described in approved management plans pertaining to [subparagraph (A)] clause (i) are adequately funded; and
- (3) Moneys deposited into the fund as authorized by section 247-7 may also be used by the department to administer the program[;] and manage the forest reserve system.”

PART III

SECTION 6. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

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

(Approved June 6, 2006.)

Notes

- 1. Should not be underscored.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 175

S.B. NO. 427

A Bill for an Act Relating to Child Passenger Safety.

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

SECTION 1. The legislature finds that while great strides have been made to protect infants and toddlers in motor vehicle crashes, preschoolers and young children under eight years of age remain at high risk of injury. These youngsters are often placed in standard adult safety belts that can cause internal injuries and death for children in a car crash. The legislature further finds that seat belts are designed for older children and adults, not for children in this age group whose size and physical development make seat belts less effective and, in some cases, unsafe. The legislature further finds that in Hawaii, although it is legal for children between the

ages of four and eight to ride restrained with seat belts, this practice exposes these children to unnecessary risk.

The purpose of this Act is to increase the safety of Hawaii's children by amending Hawaii's child passenger restraint law to require children four years of age or older but less than eight years of age, and under certain weight and height minimums, to be properly secured in a child safety or booster seat.

SECTION 2. Section 291-11.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Except as otherwise provided in this section, no person operating a motor vehicle on a public highway in the State shall transport a child under ~~four~~ eight years of age ~~[unless]~~ except under the following circumstances:

- (1) If the child is under four years of age, the person operating the motor vehicle [ensures] shall ensure that the child is properly restrained in a child passenger restraint system [approved by the United States Department of Transportation] that meets federal motor vehicle safety standards at the time of its manufacture[-]; or
- (2) If the child is four years of age or older but less than eight years of age, the person operating the motor vehicle shall ensure that the child is properly restrained in a child safety seat or booster seat that meets federal motor vehicle safety standards at the time of its manufacture; except as provided in paragraph (3); and
- (3) If the child is four years of age or older but less than eight years of age, the person operating the motor vehicle shall be exempt from properly restraining the child in a child safety seat or booster seat that meets federal motor vehicle safety standards at the time of manufacture if the child is restrained by a seat belt assembly and:
 - (A) Over four feet and nine inches in height; or
 - (B) Over forty pounds and traveling in a motor vehicle equipped only with lap belts, without shoulder straps, in the back seat.”

2. By amending subsections (c) and (d) to read:

“(c) This section shall not apply if the number of persons in a vehicle exceeds the greater of the following:

- (1) The number of seat belt assemblies available in the vehicle; or
 - (2) The number of seat belt assemblies originally installed in the vehicle;
- provided that all available seat belt assemblies are being used to restrain a passenger, and those children not restrained by an approved child passenger restraint system, a child safety seat, a booster seat, or a seat belt assembly are in the back seat of the motor vehicle.

(d) In no event shall failure ~~[of]~~ to restrain a child under the age of ~~[four]~~ eight years ~~[to be restrained or failure to restrain such a child in a child passenger restraint system or a seat belt assembly]~~ as required by this section be considered ~~[as]~~ contributory negligence, comparative negligence, or negligence per se.”

3. By amending subsection (f) to read as follows:

“(f) As used in this section~~[-~~“emergency]; “Emergency vehicle”, “mass transit vehicle”, ~~[and]~~ “restrained”, and “seat belt assembly” shall have the same meaning as provided in section 291-11.6. ~~[As used in this section, “commercial]~~ “Commercial vehicle” shall be defined as any motor vehicle that is being used for the transportation of persons for hire, compensation, or profit.”

SECTION 3. Section 291-11.6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Except as otherwise provided by law, no person:
 - (1) Shall operate a motor vehicle upon any public highway unless the person is restrained by a seat belt assembly and ~~[any]~~ all passengers in the front or back seat of the motor vehicle are restrained by a seat belt assembly if between the ages of ~~[four]~~ eight and fourteen, or are restrained pursuant to section 291-11.5 if under ~~[the age of four;]~~ eight years of age;
 - (2) If fifteen years of age or more shall be a passenger in the front seat of a motor vehicle being operated upon any public highway unless such person is restrained by a seat belt assembly; and
 - (3) If between the ages of fifteen and seventeen, shall be a passenger in the back seat of a motor vehicle being operated upon any public highway unless such person is restrained by a seat belt assembly.

As used in this section [~~“seat belt assembly”~~]:

“Restrained” means that the seat belt assembly is worn as it was designed and intended to be worn.

“Seat belt assembly” means the seat belt assembly that is required to be in the motor vehicle under any federal motor vehicle safety standard issued pursuant to Public Law 89-563, the [federal] National Traffic and Motor Vehicle Safety Act of 1966, as amended, unless original replacement seat belt assemblies are not readily available. If replacement assemblies are not readily available, seat belts of federally approved materials with similar protective characteristics may be used. Such replacement seat belt assemblies shall be permanently marked by the belt manufacturer indicating compliance with all applicable federal standards.”

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, 2007.

(Approved June 6, 2006.)

ACT 176

H.B. NO. 2211

A Bill for an Act Relating to Definitions for Workers’ Compensation.

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

SECTION 1. The legislature finds that, when it enacted Act 11, Special Session Laws of Hawaii 2005, the implementation of that Act had the unintended consequence of prolonging certain processes of the workers’ compensation law. For example, with the adoption of the department of labor and industrial relations’ definition of the terms “day” or “days” under section 1 of Act 11, Special Session Laws of Hawaii 2005, the law now defines these terms to mean working days, as opposed to calendar days. For injured workers waiting for payment of a claim or a decision on a contested claim, the change from calendar days to business days often unnecessarily prolongs the workers’ compensation process and, in some cases, requires the injured employee to wait longer for treatment of a work-related injury.

The purpose of this Act is to repeal the definition of the terms “day” or “days” in the State’s workers’ compensation law.

SECTION 2. Section 386-1, Hawaii Revised Statutes, is amended by repealing the definition of “day” or “days”.

[““Day” or “days” means working days, unless otherwise provided.”]

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

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved June 6, 2006.)

ACT 177

S.B. NO. 3119

A Bill for an Act Relating to Hawaiian Home Lands.

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

SECTION 1. Section 213.6 of the Hawaiian Homes Commission Act, 1920, as amended, is amended to read as follows:

“~~[[~~**§213.6.**~~]]~~ **Hawaiian home lands trust fund.** There is established ~~[in the treasury of the State]~~ a trust fund to be known as the Hawaiian home lands trust fund, into which shall be deposited all appropriations by the ~~[State]~~ state legislature specified to be deposited therein. Moneys of the Hawaiian home lands trust fund shall be expended by the department, as provided by law, upon approval by the commission and shall be used for capital improvements and other purposes undertaken in furtherance of the Act. The department shall have a fiduciary responsibility toward the trust fund~~[.]~~ and shall provide annual reports therefor to the legislature and to the beneficiaries of the trust.

The commission may deposit moneys from the trust fund into depositories other than the state treasury and may manage, invest, and reinvest moneys in the trust fund. The commission may hold, purchase, sell, assign, transfer, or dispose of any securities and investments in which any of the moneys have been invested, as well as the proceeds of the investments. Moneys from the trust fund that are deposited into depositories other than the state treasury shall be exempt from the requirements of chapters 36 and 38. Any interest or other earnings arising out of investments from the trust fund shall be credited to and deposited into the trust fund.”

SECTION 2. The provisions of the amendments made by this Act to the Hawaiian Homes Commission Act, 1920, as amended, are declared to be severable, and if any section, sentence, clause, or phrase, or the application thereof to any person or circumstances is held ineffective because there is a requirement of having the consent of the United States to take effect, then that portion only shall take effect upon the granting of consent by the United States and effectiveness of the remainder of these amendments or the application thereof shall not be affected.

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

SECTION 4. This Act shall take effect upon approval.

(Approved June 7, 2006.)

A Bill for an Act Relating to the Public Land Trust.

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

SECTION 1. In *Trustees of the Office of Hawaiian Affairs v. Yamasaki*, 69 Haw. 154, 737 P.2d 446 (1987), the Hawaii supreme court concluded that the issue of what constitutes the office of Hawaiian affairs' pro rata portion of all the revenues derived from the public land trust pursuant to article XII, section 6 of the Hawaii Constitution, is a political question for the legislature to determine. In *Yamasaki*, the office of Hawaiian affairs sought a pro rata portion of revenues arising out of the illegal mining of sand on Molokai and sales, leases, and other disposition of lands surrounding state harbors, and lands on Sand Island, the Honolulu International Airport, and the Aloha Tower complex. The supreme court declined to rule upon the substance of the case because it presented issues "of a peculiarly political nature and therefore not meet for judicial determination." *Id.*, at 175, 737 P.2d at 459.

In response to the *Yamasaki* decision, the legislature enacted Act 304, Session Laws of Hawaii 1990 (Act 304), to clarify the extent and scope of the State's constitutional obligation to provide a portion of the revenues derived from the public land trust to the office of Hawaiian affairs.

On September 12, 2001, the Hawaii supreme court ruled in *Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. 388, 31 P.3d 901 (2001), that Act 304 was effectively repealed by its own terms, so that once again, it was necessary for the legislature to specify what portion of which receipts, from which lands the office of Hawaiian affairs was to receive a portion of the revenues under the state constitution. In its decision, the supreme court affirmed *Yamasaki*, observing:

[T]he State's obligation to native Hawaiians is firmly established in our constitution. How the State satisfies that constitutional obligation requires policy decisions that are primarily within the authority and expertise of the legislative branch. As such, it is incumbent upon the legislature to enact legislation that gives effect to the right of native Hawaiians to benefit from the ceded lands trust. See Haw. Const. art. XVI, §7. Although this court cannot and will not judicially legislate a means to give effect to the constitutional rights of native Hawaiians, we will not hesitate to declare unconstitutional those enactments that do not comport with the mandates of the constitution. At this juncture, we believe it fitting to quote then-state Senator Neil Abercrombie's prophetic statement to the legislature at the time HRS §10-13.5 was first enacted:

I fear that for those who are interested in seeing [OHA] move forward that they have won a Pyrrhic victory, that this is merely a skirmish in a very large battle.

[A]lthough I would be delighted to say otherwise, I regret to say that I expect that the moment this passes into statute, there will be a suit and that the business of the Office of Hawaiian Affairs is, as a result, going to be tied up in court for God-knows how many years.

Now, more than twenty years later, as we continue to struggle with giving effect to that enactment, we trust that the legislature will re-examine the State's constitutional obligation to native Hawaiians and the purpose of HRS §10-13.5 and enact legislation that most effectively and responsibly meets those obligations. (*Office of Hawaiian Affairs v. State of Hawai'i*, 96 Haw. at 401, 31 P.3d at 914 (citations omitted; emphasis in original)).

The legislature acknowledges that the State's obligation to native Hawaiians is firmly established in the state constitution. (See Haw. Const. art. XII.) While many

complex issues require the legislature's further attention and consideration in the wake of the repeal of Act 304, the legislature finds, in furtherance of the decision in *Yamasaki*, that immediate action should be taken to clearly designate the pro rata share of revenues derived from the public land trust that the office of Hawaiian affairs is to receive annually.

The legislature also finds that information pertaining to revenue generated by the public land trust should be consolidated within a single state department or agency. In prior years, it has been difficult to account for revenues generated by the public land trust because basic revenue-generating data was and is dispersed among multiple state agencies. A single state department should be responsible for compiling and providing an accounting of such information.

Accordingly, the specific purposes of this Act are to:

- (1) Provide interim measures to ensure that an adequate amount of income and proceeds is made available to the office of Hawaiian affairs from the pro rata portion of the public land trust, for the betterment of the conditions of native Hawaiians; and
- (2) Identify revenue-generating public trust lands and the amounts derived from those lands by requiring that the department of land and natural resources provide an annual accounting to the legislature.

SECTION 2. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, including section 10-13.5, Hawaii Revised Statutes, and until further action is taken by the legislature for this purpose, the income and proceeds from the pro rata portion of the public land trust under article XII, section 6, of the state constitution for expenditure by the office of Hawaiian affairs for the betterment of the conditions of native Hawaiians for each fiscal year beginning with fiscal year 2005-2006 shall be \$15,100,000.

SECTION 3. Notwithstanding the provisions of chapter 10, Hawaii Revised Statutes, or the requirements of Executive Order No. 03-03, beginning in fiscal year 2005-2006, the departments of agriculture, accounting and general services, business, economic development, and tourism, education, land and natural resources, and transportation (for its harbors division), and any other department or agency that collects receipts from the lands within the public land trust, shall determine and transfer to the office of Hawaiian affairs that portion of their receipts from the use of lands within the public land trust collected during each fiscal quarter, necessary to ensure that a total of \$3,775,000 of revenues generated by the public land trust is transferred to the office of Hawaiian affairs, within thirty days of the close of each fiscal quarter; provided that for fiscal year 2005-2006, the departments shall have until thirty days after the close of the fiscal year to transfer a total of \$15,100,000 from their receipts from the use of lands within the public land trust collected during fiscal year 2005-2006, to the office of Hawaiian affairs whether by the procedures set out in Executive Order No. 03-03 or this Act.

The governor is expressly authorized to fix the amounts each agency shall transfer to the office of Hawaiian affairs in each quarter by executive order to implement the provisions of this section.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$17,500,000 or so much thereof as may be necessary for fiscal year 2005-2006 to pay to the office of Hawaiian affairs amounts received from the use of lands in the public land trust that the legislature has determined were underpaid between July 1, 2001, through June 30, 2005. The sum appropriated shall be expended by the department of budget and finance.

SECTION 5. Not later than January 1 of each year, the department of land and natural resources, with the cooperation of the department of budget and finance and any other state department or agency that uses or manages public lands, shall provide an accounting of all receipts from lands described in section 5(f) of the Admission Act for the prior fiscal year. With respect to each receipt, the department of land and natural resources shall identify:

- (1) The total gross amount;
- (2) The amount transferred to the office of Hawaiian affairs;
- (3) The amount retained by the State;
- (4) The account or fund in which the amount specified in paragraph (3) was transferred or deposited;
- (5) The parcel of land subject to section 5(f) of the Admission Act that generated the receipt, whether by tax map key number, department of land and natural resources inventory number, or other recognizable description; and
- (6) The state department or agency that received the total gross amount identified in paragraph (1).

The accounting shall also indicate whether any parcel of land described in section 5(f) of the Admission Act was sold or exchanged in the prior fiscal year and, if so, the amount of consideration that the State received for the respective parcels.

The office of Hawaiian affairs shall be consulted by the department of land and natural resources in determining the method in which the accounting shall be conducted.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2006-2007 to carry out the purpose of section 5.

The sum appropriated shall be expended by the department of land and natural resources. Should any additional funds be necessary to carry out the purpose of section 5 after the department of land and natural resources has expended the \$250,000 appropriated out of the general revenues of the State of Hawaii, the office of Hawaiian affairs shall provide the additional funds up to \$250,000.

SECTION 7. Nothing in this Act shall resolve or settle, or be deemed to acknowledge the existence of, the claims of native Hawaiians to the income and proceeds of a pro rata portion of the public land trust under article XII, section 6, of the state constitution.

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

(Approved June 7, 2006.)

ACT 179

S.B. NO. 2958

A Bill for an Act Relating to Housing.

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

PART I

SECTION 1. Act 196, Session Laws of Hawaii 2005 (Act 196), was passed by the legislature to address Hawaii’s affordable housing and homeless crisis. Act 196 provided a number of mechanisms and incentives to increase the supply of low-

income rental housing. In addition, the legislature, recognizing that more meaningful solutions to Hawaii's housing and homeless crisis were needed, established a joint legislative housing and homeless task force to further identify near-term solutions to Hawaii's affordable housing and homeless problem.

The task force spent many hours researching data and meeting with state and county officials, private developers, and nonprofit organizations in the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui, and also held public hearings and briefings in each county. The task force relied on the information collected in developing its recommendations.

The purpose of this Act is to implement several of the recommendations of the task force.

PART II

SECTION 2. Section 201G-3, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read as follows:

“(a) There is created a board consisting of [~~nine~~] eleven members, of whom [~~eight~~] ten shall be public members appointed by the governor as provided in section 26-34. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. At least one public member shall be a person who is directly assisted by the administration under the federal low-rent public housing or federal section 8 tenant-based housing assistance payments program while serving on the board. One public member shall be an advocate for low-income or homeless persons. One public member shall be a person with a disability or an advocate for persons with disabilities. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows: four¹ members to be appointed for four years; three² members to be appointed for three years; and three members to be appointed for two years. The director of human services, or a designated representative, shall be an ex officio voting member. The administration shall be headed by the board.”

2. By amending subsection (c) to read as follows:

“(c) [~~Five~~] Seven members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the administration. The members shall receive no compensation for services, but shall be entitled to necessary expenses, including travel expenses, incurred in the performance of their duties.”

SECTION 3. Section 201G-44, Hawaii Revised Statutes, is amended to read as follows:

“**§201G-44 Administration of state low-income public housing projects and programs.** (a) The administration [~~may~~] shall construct, develop, and administer property or housing for the purpose of state low-income public housing projects and programs.

(b) The administration [~~may~~] shall offer any decommissioned low-income public housing project, except for federal housing projects, to nonprofit or for-profit organizations or government agencies for rehabilitation into emergency or transitional shelter facilities for the homeless or rehabilitation into rental units that set aside at least fifty per cent of the units to persons or families with incomes at or below fifty per cent of the area median family income; provided that:

(1) The housing project is wholly owned by the State on either state-owned or ceded lands;

- (2) ~~[The administration has determined that the housing project is no longer suitable for its original use and intends to demolish the housing project;~~
- (3) The administration has determined that the housing project is not eligible for rehabilitation using the administration's current resources; and
- [(4)] (3) The nonprofit or for-profit organization or government agency demonstrates expertise in rehabilitation of housing projects and has community, public, and private resources to substantially pay for the rehabilitation.

The land and improvements may be leased to the nonprofit or for-profit organization or government agency for a period not to exceed ninety-nine years for a sum of \$1 per year.

(c) The administration shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the public housing projects or programs and to carry out any state program under subsection (a).”

PART III

SECTION 4. Chapter 201H, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§201H- Leases; self-help housing.** (a) The administration may lease parcels that it deems suitable for affordable housing at \$1 per year for up to fifty years to organizations or community trusts to develop the parcel with ownership units through self-help development.

(b) The administration may extend or modify the fixed rental period of the lease or extend the term of the lease.

(c) Parcels leased under this section may be transferred or assigned by devise, bequest, or intestate succession, and may be sublet with the approval of the administration.”

SECTION 5. The department of land and natural resources shall initiate transfer to the Hawaii housing finance and development administration, no later than December 1, 2006, of the lands identified as suitable for affordable housing development in Appendix F of the Joint Legislative Housing and Homeless Task Force Report to the 2006 Session of the Legislature.

PART IV

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.³

SECTION 7. This Act shall take effect on July 1, 2006.

(Approved June 9, 2006.)

Notes

1. Prior to amendment “three” appeared here.
2. Prior to amendment “two” appeared here.
3. Edited pursuant to HRS §23G-16.5.

ACT 180

H.B. NO. 2966

A Bill for an Act Relating to Housing.

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

SECTION 1. Act 196, Session Laws of Hawaii 2005, section 38, directed the housing and community development corporation of Hawaii to “prepare an implementation plan for the reorganization of the State’s housing functions” including “recommendations for any additional statutory amendments that may be necessary to fully effectuate the implementation plan and the purposes of this Act, and proposed legislation containing the recommended statutory amendments.”

The purpose of this Act is to effectuate the implementation plan prepared by the housing and community development corporation of Hawaii to create two separate state housing agencies, the Hawaii housing finance and development corporation, and the Hawaii public housing authority, and to make necessary technical and conforming amendments to relevant statutory provisions.

PART I

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
HAWAII PUBLIC HOUSING AUTHORITY**

PART I. GENERAL POWERS

§ -1 **Definitions.** The following terms, wherever used or referred to in this chapter shall have the following respective meanings, unless a different meaning clearly appears from the context:

“Authority” means the Hawaii public housing authority.

“Board” means the board of directors of the Hawaii public housing authority.

“Bonds” means any bonds, interim certificates, notes, debentures, participation certificates, pass-through certificates, mortgage-backed obligations, or other evidences of indebtedness of the authority issued pursuant to this chapter.

“Community facilities” includes real and personal property; buildings, equipment, lands, and grounds for recreational or social assemblies, and for educational, health, or welfare purposes; and necessary or convenient utilities, when designed primarily for the benefit and use of the authority or the occupants of the dwelling units.

“Contract” means any agreement of the authority with an obligee or a trustee for the obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

“Dwelling”, “dwelling unit”, or “unit” means any structure or room, for sale, lease, or rent, that provides shelter.

“Elder” or “elderly” means a person who is a resident of the state and has attained the age of sixty-two years.

“Elder or elderly households” means households in which at least one member is sixty-two years of age, the spouse or partner has attained eighteen years of age, and the remaining members have attained the age of fifty-five years at the time of application to the project.

“Elder or elderly housing” means:

- (1) A housing project intended for and occupied by elder or elderly households; or
- (2) Housing provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elder or elderly persons, or if the Secretary makes a determination, the project may also be occupied by persons with disabilities who have reached eighteen years of age.

“Executive director” means the executive director of the Hawaii public housing authority.

“Federal government” includes the United States and any agency or instrumentality, corporate or otherwise, of the United States.

“Government” or “government agency” includes the State and the United States and any political subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

“Household member” means a person who:

- (1) Is a co-applicant; or
- (2) Will reside in the dwelling unit leased or rented from the authority.

“Land” or “property” includes vacant land or land with site improvements whether partially or entirely finished in accordance with governmental subdivision standards, or with complete dwellings.

“Live-in aide” means a person who:

- (1) Is eighteen years of age or older;
- (2) Is living in the unit solely to assist the elder or elderly person in daily living activities including bathing, meal preparation and delivery, medicinal care, transportation, and physical activities;
- (3) Is not legally obligated to support the elder or elderly person; and
- (4) Is verified by the authority as meeting these requirements.

“Mortgage holder” includes the United States Department of Housing and Urban Development, Federal Housing Administration, the United States Department of Agriculture, or other federal or state agency engaged in housing activity, United States Department of Veterans Affairs, Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, private mortgage lender, private mortgage insurer, and their successors, grantees, and assigns.

“Mortgage lender” means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, that:

- (1) Is authorized to do business in the state;
- (2) Customarily provides service or otherwise aids in the financing of mortgages on single-family or multifamily residential property; and
- (3) Is a financial institution whose accounts are federally insured or is an institution that is an approved mortgagee for the Federal Housing Administration, an approved lender for the United States Department of Veterans Affairs or the United States Department of Agriculture, or an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Nonprofit organization” means a corporation, association, or other duly chartered entity that is registered with the State and has received a written determination from the Internal Revenue Service that it is exempt under either Section 501(c)(3), Section 501(c)(4), or so much of Section 501(c)(2) as applies to title holding corporations that turn over their income to organizations that are exempt

under either Section 501(c)(3) or 501(c)(4), of the Internal Revenue Code of 1986, as amended.

“Obligee of the authority” or “obligee” includes any bondholder, trustee or trustees for any bondholders, any lessor demising property to the authority used in connection with a housing project, or any assignee or assignees of the lessor’s interest or any part thereof, and the United States, when it is a party to any contract with the authority.

“Public housing project”, “housing project”, or “complex” means a housing project directly controlled, owned, developed, or managed by the authority pursuant to the federal low-rent public housing program.

“Real property” includes lands, land under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

“Trustee” means a national or state bank or trust company located within or outside the State that enters into a trust indenture.

“Trust indenture” means an agreement by and between the authority and the trustee, that sets forth the duties of the trustee with respect to the bonds, the security therefor, and other provisions as deemed necessary or convenient by the authority to secure the bonds.

§ -2 Hawaii public housing authority; establishment, staff. (a) There is established the Hawaii public housing authority to be placed within the department of human services for administrative purposes only. The authority shall be a public body and a body corporate and politic.

(b) The authority shall employ, exempt from chapter 76 and section 26-35(a)(4), an executive director and an executive assistant. The executive director shall be paid a salary not to exceed eighty-five per cent of the salary of the director of human resources development. The executive assistant shall be paid a salary not to exceed ninety per cent of the executive director’s salary. The authority may employ, subject to chapter 76, technical experts and officers, agents, and employees, permanent or temporary, as required. The authority may also employ officers, agents, and employees; prescribe their duties and qualifications; and fix their salaries, not subject to chapter 76, when in the determination of the authority, the services to be performed are unique and essential to the execution of the functions of the authority; provided that if the authority hires an officer, agent, or employee in a capacity not subject to chapter 76, the authority shall include in an annual report to the legislature, to be submitted not later than twenty days prior to the convening of each regular session, the position descriptions and reasons for hiring the personnel in a civil service exempt capacity. The authority may call upon the attorney general for legal services as it may require. The authority may delegate to one or more of its agents or employees the powers and duties it deems proper.

§ -3 Board; establishment, functions, duties. (a) There is created a board of directors consisting of nine members, of whom seven shall be public members appointed by the governor as provided in section 26-34. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. At least one public member shall be a person who is directly assisted by the authority under the federal low-rent public housing or federal section 8 tenant-based housing assistance payments program while serving on the board. The director of human services, or a designated representative, and a representative of the governor’s office, shall be ex officio voting members. The authority shall be headed by the board.

(b) The board of directors shall select a chairperson and vice-chairperson from among its members. The director of human services and the governor's representative shall be ineligible to serve as chairperson of the board.

§ -4 **General powers of the authority.** (a) The authority may:

- (1) Sue and be sued;
- (2) Have a seal and alter the same at pleasure;
- (3) Make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and
- (4) Adopt bylaws and rules in accordance with chapter 91 for its organization, internal management, and to carry into effect its purposes, powers, and programs.

(b) In addition to other powers conferred upon it, the authority may do all things necessary and convenient to carry out the powers expressly provided in this chapter.

§ -5 **Resident advisory boards; establishment.** (a) The authority may establish a resident advisory board or boards, which shall be comprised of federal public housing residents or section 8 tenant-based housing assistance recipients, to assist and make recommendations to the authority regarding the development of the public housing agency plan and any significant amendments or modifications to it. The members of the resident advisory board or boards shall adequately reflect and represent residents of federal public housing projects and recipients of section 8 tenant-based assistance administered by the authority.

(b) The members of the resident advisory board shall not be compensated for their services but shall be reimbursed for necessary expenses, including travel expenses, incurred while engaged in business for the resident advisory board.

(c) The authority may adopt rules in accordance with chapter 91 with respect to the establishment of the resident advisory board or boards, including rules concerning the composition, eligibility, selection, and term of members. This section shall not apply if it conflicts with any federal law.

§ -6 **Nomination of resident board member.** (a) If a vacancy occurs for the resident member seat on the board, the resident advisory board shall compile a list of five individuals for the governor's consideration for appointment to the board; provided the nominees to the board shall be:

- (1) Participants who are directly assisted by the authority under the federal public housing or section 8 tenant-based programs and who need not be members of the resident advisory board;
- (2) At least eighteen years of age; and
- (3) Authorized members of the assisted household.

(b) Any individual satisfying the requirements of subsection (a) may also submit that individual's name for the governor's consideration for appointment to the board of directors.

§ -7 **Fair housing law to apply.** Notwithstanding any law to the contrary, chapter 515 shall apply in administering this chapter.

§ -8 **Acquisition, use, and disposition of property.** (a) The authority may acquire any real or personal property or interest therein by purchase, exchange, gift, grant, lease, or other means from any person or government to provide public housing. Exchange of real property shall be in accordance with section 171-50.

(b) The authority may own or hold real property. All real property owned or held by the authority shall be exempt from mechanics' or materialmen's liens and also

from levy and sale by virtue of an execution, and no execution or other judicial process shall issue against the property of the authority nor shall any judgment against the authority be a charge or lien upon its real property; provided that this subsection shall not apply to nor limit the right of obligees to foreclose or otherwise enforce any mortgage of the authority or the right of obligees to pursue any remedies for the enforcement of any pledge or lien given by the authority on its rents, fees, or revenues. The authority and its property shall be exempt from all taxes and assessments.

(c) The authority may lease or rent all or a portion of any public housing project and establish and revise the rents or charges therefor. The authority may sell, exchange, transfer, assign, or pledge any property, real or personal, or any interest therein to any person or government.

(d) The authority may insure or provide for the insurance of its property or operations against risks as it deems advisable.

§ -9 Cooperative agreements with other government agencies. (a) The authority may:

- (1) Obtain the aid and cooperation of other government agencies in the planning, construction, and operation of public housing projects and enter into agreements and arrangements as it deems advisable to obtain aid and cooperation;
- (2) Arrange or enter into agreements with any government agency for the acquisition by that agency of property, options, or property rights; for the furnishing, installing, opening, or closing of streets, roads, alleys, sidewalks, or other places; for the furnishing of property, services, parks, sewage, water, and other facilities in connection with public housing projects; or for the changing of the map of a political subdivision or the planning, replanning, zoning, or rezoning of any part of a political subdivision;
- (3) Procure insurance or guarantees from any government agency for the payment of any debts or parts thereof incurred by the authority, including the power to pay premiums on any such insurance; and
- (4) Agree to make payments to the state or county government, if the government is authorized to accept payments, as the authority deems consistent with the maintenance of the character of public housing projects or the purposes of this chapter.

(b) For the purpose of aiding and cooperating in the planning, construction, and operation of public housing projects located within their respective territorial boundaries, the state or county government, upon those terms, with or without consideration, as it determines, may:

- (1) Dedicate, grant, sell, convey, or lease any of its property, or grant easements, licenses, or any other rights or privileges therein to the authority or to the federal government;
- (2) To the extent that it is within the scope of each of their respective functions:
 - (A) Cause the services customarily provided by each of them to be rendered for the benefit of public housing projects and the occupants thereof;
 - (B) Provide and maintain parks; and sewage, water, lights, and other facilities adjacent to or in connection with public housing projects;
 - (C) Open, close, pave, install, or change the grade of streets, roads, roadways, alleys, sidewalks, or other related facilities; and
 - (D) Change the map of a political subdivision or plan, replan, zone, or rezone any part of a political subdivision;

- (3) Enter into agreements with the authority with respect to the exercise of the State or county's powers relating to the repair, closing, or demolition of unsafe, unsanitary, or unfit dwellings;
- (4) Employ, notwithstanding any other law as to what constitutes legal investments, any available funds belonging to them or within their control, including funds derived from the sale or furnishing of property or facilities to the authority, in the purchase of the bonds or other obligations of the authority, and exercise all the rights of any holder of the bonds or other obligations;
- (5) Do any and all things necessary or convenient to aid and cooperate in the planning, undertaking, and construction of public housing projects; and
- (6) Enter into contracts with the authority or the federal government for any period agreeing to exercise any of the powers conferred by this subsection or to take any other action in aid of public housing projects.

In connection with the exercise of the powers conferred by this subsection, any political subdivision may incur the entire expense of any public improvements located within its territorial boundaries without assessment against abutting property owners.

For the purpose of aiding and cooperating in the planning, construction, and operation of public housing projects, the department of land and natural resources, the Hawaiian homes commission, and any other agency of the State having power to manage or dispose of its public lands, with the approval of the governor and with or without consideration, may grant, sell, convey, or lease for any period, any parts of such public lands, without limit as to area, to the authority or to the federal government.

Any law to the contrary notwithstanding, any gift, grant, sale, conveyance, lease, or agreement provided for in this section may be made by the state or county government without appraisal, public notice, advertisement, or public bidding.

If at any time title to, or possession of, any public housing project is held by any government authorized by law to engage in the development or administration of low-income housing or slum clearance projects, any agreement made under this section relating to the project shall inure to the benefit of and may be enforced by that government.

Insofar as this subsection is inconsistent with the provisions of any other law, this subsection shall control.

(c) Any county in which a public housing project is located or is about to be located may make donations or advances to the authority in sums as the county in its discretion may determine. The advances or donations shall be made for the purpose of aiding or cooperating in the construction and operation of the public housing project. The authority, when it has money available therefor, shall reimburse the county for all advances made by way of a loan to it.

§ -10 Agents, including corporations. The authority may exercise any or all of the powers conferred upon it, either generally or with respect to any specific public housing project through an agent that it may designate, including any corporation that is formed under the laws of this State, and for those purposes the authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee, may to the extent permitted by law, exercise any of the powers conferred upon the authority in this chapter.

§ **-11 Development of property.** (a) The authority, in its own behalf or on behalf of any government, may:

- (1) Clear, improve, and rehabilitate property; and
- (2) Plan, develop, construct, and finance public housing projects.

(b) The authority may develop public land in an agricultural district subject to the prior approval of the land use commission when developing lands greater than five acres in size, and public land in a conservation district subject to the prior approval of the board of land and natural resources. The authority shall not develop state monuments, historical sites, or parks. When the authority proposes to develop public land, it shall file with the department of land and natural resources a petition setting forth such purpose. The petition shall be conclusive proof that the intended use is a public use superior to that to which the land had been appropriated.

(c) The authority may develop or assist in the development of federal lands with the approval of appropriate federal authorities.

(d) The authority shall not develop any public land where the development may endanger the receipt of any federal grant, impair the eligibility of any government agency for a federal grant, prevent the participation of the federal government in any government program, or impair any covenant between the government and the holder of any bond issued by the government.

(e) The authority may contract or sponsor with any county, housing authority, or person, subject to the availability of funds, an experimental or demonstration housing project designed to meet the needs of elders, disabled, displaced or homeless persons, low- and moderate-income persons, government employees, teachers, or university and college students and faculty.

§ **-12 Development of property; additional powers.** Notwithstanding any other law to the contrary, whenever the bids submitted for the development or rehabilitation of any public housing project authorized pursuant to this chapter exceed the amount of funds available for that project, the authority, with the approval of the governor, may disregard the bids and enter into an agreement to carry out the project, undertake the project, or participate in the project under the agreement; provided that:

- (1) The total cost of the agreement and the authority's participation, if any, shall not exceed the amount of funds available for the project; and
- (2) If the agreement is with a nonbidder, the scope of the project under agreement shall remain the same as that for which bids were originally requested.

§ **-13 Administration of federal programs.** (a) The authority may carry out federal programs designated to be carried out by a public housing agency, or entity designated by the authority.

(b) The authority shall adopt necessary rules in accordance with chapter 91, including the establishment and collection of reasonable fees for administering the program, to carry out any federal program in subsection (a).

(c) All fees collected for administering the program may be deposited into an appropriate special fund of the authority and may be used to cover the administrative expenses of the authority.

§ **-14 Federal funds outside of state treasury.** Notwithstanding chapter 38, the authority may establish and manage federal funds outside of the state treasury to be used for federal housing programs. The authority shall invest the funds in permitted investments in accordance with chapter 36.

§ -15 Eminent domain, exchange, or use of public property. (a) The authority may acquire any real property, including fixtures and improvements, or interest therein, through:

- (1) Voluntary negotiation;
- (2) Exchange of land in accordance with section 171-50, provided that the public land to be exchanged need not be of like use to that of the private land; or
- (3) By the exercise of the power of eminent domain which it deems necessary by the adoption of a resolution declaring that the acquisition of the property described therein is in the public interest and required for public use.

The authority shall exercise the power of eminent domain granted by this section in the same manner and procedure as is provided by chapter 101, and otherwise in accordance with all applicable provisions of the general laws of the State; provided that condemnation of parcels greater than fifteen acres shall be subject to legislative disapproval expressed in a concurrent resolution adopted by majority vote of the senate and the house of representatives in the first regular or special session following the date of condemnation.

(b) The authority may acquire by the exercise of the power of eminent domain property already devoted to a public use; provided that no property belonging to any government may be acquired without its consent, and that no property belonging to a public utility may be acquired without the approval of the public utilities commission; and provided further that the acquisition is subject to legislative disapproval expressed in a concurrent resolution adopted by majority vote of the senate and the house of representatives in the first regular or special session following the date of condemnation.

§ -16 Contracts with the federal government. (a) The authority may:

- (1) Borrow money or accept grants from the federal government for or in aid of any public housing project that the authority is authorized to undertake;
- (2) Take over any land acquired by the federal government for the construction or operation of a public housing project;
- (3) Take over, lease, or manage any public housing project constructed or owned by the federal government, and to these ends, enter into contracts, mortgages, leases, or other agreements as the federal government may require, including agreements that the federal government shall have the right to supervise and approve the construction, maintenance, and operation of the public housing project;
- (4) Procure insurance or guarantees from the federal government for the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any public housing project;
- (5) Agree to any conditions attached to federal financial assistance relating to the determination of prevailing salaries or wages, payment of not less than prevailing salaries or wages, or compliance with labor standards, in the development or administration of public housing projects, and include in any construction contract let in connection with a project stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum salaries or wages and maximum hours of labor;
- (6) Comply with any conditions required by the federal government in any contract for financial assistance; and
- (7) Execute contracts with the federal government.

(b) In any contract for annual contributions with the federal government, the authority may obligate itself to convey to the federal government possession of or title to the public housing project to which the contract relates, if a substantial default, as defined by contract, occurs. Notwithstanding any other law to the contrary, this obligation shall be specifically enforceable and shall not constitute a mortgage.

The contract may provide further that if a conveyance occurs, the federal government may complete, operate, manage, lease, convey, or otherwise deal with the project in accordance with the terms of the contract; provided that the contract shall require that as soon as practicable after the federal government is satisfied that all defaults with respect to the project have been cured and that the project will thereafter be operated in accordance with the terms of the contract, the federal government shall reconvey to the authority the project as then constituted.

(c) It is the purpose and intent of this section to authorize the authority to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the undertaking, construction, maintenance, and operation of any public housing project that the authority is empowered to undertake.

§ **-17 Public works contracts.** The authority may make, execute, and carry out contracts for, or in connection with, any public housing project in the manner provided in chapter 103D and section 103-53; and, with regard to the contracts, the term "procurement officer", as used in chapter 103D, shall mean the authority or officer authorized by the authority to act as its contracting officer. Unless made and executed in the name of the State, each contract made and executed as authorized in this section shall state therein that it is so made and executed.

§ **-18 Remedies of an obligee; mandamus; injunction; possessory action; receiver; accounting; etc.** An obligee of the authority shall have the right, in addition to all other rights that may be conferred on the obligee subject only to any contractual restrictions binding upon the obligee, and subject to the prior and superior rights of others:

- (1) By mandamus, suit, action, or proceeding in law or equity to compel the authority, and the members of the board, officers, agents, or employees thereof to perform each and every item, provision, and covenant contained in any contract of the authority, and to require the carrying out of any or all covenants and agreements of the authority and the fulfillment of all duties imposed upon the authority by this chapter;
- (2) By suit, action, or proceeding in equity to enjoin any acts or things which may be unlawful, or the violation of any of the rights of the obligee of the authority;
- (3) By suit, action, or proceeding in any court of competent jurisdiction to cause possession of any public housing project or any part thereof to be surrendered to any obligee having the right to possession pursuant to any contract of the authority;
- (4) By suit, action, or proceeding in any court of competent jurisdiction, upon the happening of an event of default (as defined in a contract of the authority), to obtain the appointment of a receiver for any public housing project of the authority or any part or parts thereof. If a receiver is appointed, the receiver may enter and take possession of the public housing project or any part or parts thereof, operate and maintain the project, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom in the same manner as the authority itself might do and shall keep the moneys in a separate account or

accounts and apply the moneys in accordance with the obligations of the authority as the court shall direct; and

- (5) By suit, action, or proceeding in any court of competent jurisdiction to require the authority and the members of the board thereof to account as if it and they were the trustees of an express trust.

§ **-19 Subordination of mortgage to agreement with government.** The authority may agree in any mortgage made by it that the mortgage shall be subordinate to a contract for the supervision by a government agency of the operation and maintenance of the mortgaged property and the construction of improvements thereon. In that event, any purchaser or purchasers at a sale of the property of the authority pursuant to a foreclosure of the mortgage or any other remedy in connection therewith shall obtain title subject to the contract.

§ **-20 Duty to make reports.** Except as otherwise provided by law, the authority shall be responsible for the following reports:

- (1) The authority shall file at least once a year with the governor a report of its activities for the preceding fiscal year;
- (2) The authority shall report to the comptroller on moneys deposited in depositories other than the state treasury under section 40-81, and rules adopted thereunder; and
- (3) The authority shall submit an annual report to the legislature on all program areas no later than twenty days prior to the convening of each regular session, that shall provide the following information on the status of its programs and finances:
 - (A) A financial audit and report conducted on an annual basis by a certified public accounting firm; and
 - (B) Recommendations with reference to any additional legislation or other action that may be necessary to carry out the purposes of this chapter.

§ **-21 Bonds; authorization.** (a) The authority, with the approval of the governor, may issue from time to time bonds (including refunding bonds to pay, retire, or provide for the retirement of bonds previously issued by the authority) in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for any of its corporate purposes.

(b) All bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The bonds shall be issued in the name of the authority, and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding sixty years from the date of issuance.

(d) The authority may issue bonds as it may determine, including without limitation bonds payable from and secured, in whole or in part, by:

- (1) Income and revenues derived from the public housing project or projects financed from the proceeds of bonds;
- (2) Receipts derived from any grant from the federal government made in aid of a public housing project or projects financed from the proceeds of bonds;
- (3) Income and revenues derived from a particular designated public housing project or projects whether or not financed, in whole or in part, from the proceeds of bonds;
- (4) Income and revenues of the authority generally; or
- (5) Any combination of paragraphs (1) through (4).

(e) Any pledge made by the authority shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the authority from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon the filing, the revenues, moneys, or property so pledged and thereafter received by the authority shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of the pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this part.

(f) Any public housing project or projects authorized by, and undertaken pursuant to, this chapter shall constitute an "undertaking" within the meaning of that term as defined and used in part III, chapter 39. The authority shall constitute a "department" and the board shall constitute a "governing body" within the meaning of those terms as defined and used in part III, chapter 39.

(g) Neither the members of the board nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

§ -22 Bonds; interest rate, price, and sale. (a) The bonds shall bear interest at rates payable at times that the authority, with the approval of the governor, may determine except for deeply discounted bonds that are subject to redemption or retirement at their accreted value; provided that the discounted value of the bonds shall not exceed ten per cent of any issue; and provided further that no bonds may be issued without the approval of the director of finance and the governor. Notwithstanding any other law to the contrary, the authority may, subject to the approval of the director of finance and the governor, issue bonds pursuant to section -21, in which the discounted value of the bonds exceeds ten per cent of the issue.

(b) The authority may include the costs of undertaking and maintaining any public housing project or projects for which the bonds are issued in determining the principal amount of bonds to be issued. In determining the cost of undertaking and maintaining the public housing project, the authority may include the cost of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and other services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period determined by the authority.

§ -23 Trustee; designation, duties. (a) The authority may designate a trustee for each issue of bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the authority to receive and receipt for, hold, and administer the proceeds of the bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the authority to hold and administer any housing project bond special funds established pursuant to section -28, and to receive and receipt for, hold, and administer the revenues derived by the authority from any public housing project or projects for which the bonds are issued or the projects pledged to the payment of the bonds, and to apply the revenues to the payment of the cost of administering, operating, and maintaining the public housing project or projects, to pay the principal of and the interest on the bonds, to the establishment of reserves, and to other purposes as may be authorized in the proceedings providing for the issuance of the bonds.

(d) Notwithstanding section 39-68, the director of finance may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the bonds and coupons, if any, that have been paid and the supervision of their destruction in accordance with law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3, 39-13, and 39-68(a), to appoint the trustee or others as fiscal agents, paying agents, and registrars for the bonds or to authorize and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections.

§ -24 Trust indenture. (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the authority for the purposes of this part.

(b) A trust indenture may allow the authority to pledge and assign to the trustee agreements related to the public housing project or projects and the rights of the authority thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the bonds required by section 39-56 may be facsimiles of their signatures.

(d) A trust indenture shall also contain provisions as to:

- (1) The investment of the proceeds of the bonds, the investment of any reserve for the bonds, the investment of the revenues of the public housing project or system of public housing projects, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the bonds or any portion of them or any trustee thereof may institute proceedings for the enforcement of any agreement or any note or other undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived therefrom.

(e) A trust indenture may also contain provisions deemed necessary or desirable by the authority to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the public housing projects or in the financing of the costs of administering, operating, or maintaining the public housing projects.

§ -25 Investment of reserves, etc. The authority may invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, including the proceeds of bonds, in property or securities in which the director of finance may legally invest, as provided in section 36-21; provided that funds held outside the state treasury may be invested for terms not to exceed thirty-five years. No provisions with respect to the acquisition, operation, or disposition of property by other government agencies shall be applicable to the authority unless the legislature shall specifically so state.

§ -26 Security for funds deposited by the authority. The authority, by resolution, may provide that all moneys deposited by it shall be secured:

- (1) By any securities by which funds deposited by the director of finance may be legally secured as provided in section 38-3; or
- (2) By an undertaking with sureties as are approved by the authority faithfully to keep and pay over upon the order of the authority any deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for those deposits.

§ -27 Arbitrage provisions; interest rate. (a) Notwithstanding any other law to the contrary, neither the authority nor the director of finance shall make loans or purchase mortgages with the proceeds of general obligation bonds of the State or from a revolving fund established or maintained from the proceeds of bonds, at a rate of interest or upon terms and conditions that would cause any general obligation bond of the State or any bond to be an "arbitrage bond" within the meaning of that term as defined in the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service adopted pursuant thereto.

(b) The rate of interest on loans made under this chapter from the proceeds of general obligation bonds of the State shall be established by the authority, with the approval of the director of finance, after each sale of general obligation bonds of the State, the proceeds of which are to be used for the purposes of making loans or purchasing mortgages under this chapter. If no sale of general obligation bonds of the State intervenes in a twelve-month period after the last rate fixing, the authority may review the then existing rates on loans or mortgages made under this chapter from the proceeds of general obligation bonds of the State and retain the existing rate or, with the approval of the director of finance, establish different rates.

(c) The director of finance shall approve those rates so as to produce up to, but not in excess of, the maximum yield to the State or the authority permitted under the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service adopted pursuant thereto, on the assumption that the general obligation bonds of the State, the proceeds of which have been or are to be used for the purposes of making loans or purchasing mortgages under this chapter, would otherwise be "arbitrage bonds" under the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service adopted pursuant thereto, were the maximum yield to be exceeded. The establishment of the rates of interest shall be exempt from chapter 91.

§ -28 Public housing revolving fund; housing project bond special funds. (a) There is established the public housing revolving fund to be administered by the authority. Notwithstanding section 36-21, the proceeds in the fund shall be used for long-term and other special financings of the authority and for necessary expenses in administering this chapter.

(b) All moneys received and collected by the authority, not otherwise pledged, obligated, or required by law to be placed in any other special fund, shall be deposited into the public housing revolving fund.

(c) A separate special fund shall be established for each public housing project or projects financed from the proceeds of bonds secured under the trust indenture. Each fund shall be designated "housing project bond special fund" and shall bear any additional designation as the authority deems appropriate to properly identify the fund.

(d) Notwithstanding any other law to the contrary, all revenues, income, and receipts derived from a public housing project or projects financed from the proceeds of bonds or pledged to the payment of principal of and interest and premium on bonds, shall be paid into the housing project bond special fund established for the public housing project or projects and applied as provided in the proceedings authorizing the issuance of bonds.

§ -29 **Quitclaim deeds.** Unless otherwise provided by law, the authority shall issue quitclaim deeds and leases whenever it conveys, transfers, sells, or assigns any property developed, constructed, or sponsored under this chapter.

PART II. FEDERAL LOW-INCOME HOUSING

§ -31 **Rentals and tenant selection.** (a) In the operation or management of federal public housing projects, the authority (acting directly or by an agent or agents) at all times shall observe the following duties with respect to rentals and tenant selection:

- (1) It may establish maximum limits of annual net income for tenant selection in any public housing project, less such exemptions as may be authorized by federal regulations pertaining to public housing. The authority may agree to conditions as to tenant eligibility or preference required by the federal government pursuant to federal law in any contract for financial assistance with the authority;
- (2) It may rent or lease the dwelling units therein only at rentals within the financial reach of persons who lack the amount of income that it determines to be necessary to obtain safe, sanitary, and uncongested dwelling accommodations within the area of operation of the authority and to provide an adequate standard of living; and
- (3) It may rent or lease to a tenant a dwelling consisting of the number of rooms (but no greater number) that it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding.

(b) Nothing in this part shall be construed as limiting the power of the authority to:

- (1) Vest in an obligee the right, in the event of a default by the authority, to take possession of a public housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this part with respect to rentals, tenant selection, manner of operation, or otherwise; or
- (2) Vest in obligees the right, in the event of a default by the authority, to acquire title to a public housing project or the property mortgaged by the authority, free from all the restrictions imposed by this part.

§ -32 **Delinquent accounts.** (a) Notwithstanding section 40-82, the authority, with the approval of the attorney general, may delete from its accounts receivable records delinquent accounts for vacated units within federal low-income public housing projects that have been delinquent for at least ninety days.

(b) The delinquent accounts may be assigned to a collection agency.

(c) When the authority seeks eviction of a tenant due to delinquency in payment of rent, the authority shall comply with the procedures set forth in section -92(b) before proceeding with the eviction hearing.

§ -33 **Investigatory powers.** (a) The authority may:

- (1) Investigate living, dwelling, and housing conditions and the means and methods of improving the conditions;
- (2) Enter upon any building or property to conduct investigations or to make surveys or soundings;
- (3) Conduct examinations and investigations and hear testimony and take proof under oath at public or private hearings on any matter material for its information;

- (4) Issue subpoenas requiring the attendance of witnesses or the production of books and papers, and order the examination of witnesses who are unable to attend before the authority, are excused from attendance, or by leave of courts as provided by chapter 624, are out of the State; and
- (5) Make available to any government agency charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist that are dangerous to the public health, morals, safety, or welfare.

(b) Investigations or examinations may be conducted by the authority, by a committee appointed by it consisting of one or more members of the board, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any person designated by the authority to conduct an investigation or examination shall have the power to administer oaths, take affidavits, and issue subpoenas or orders for the taking of depositions.

§ -34 **Additional powers.** The powers conferred upon the authority by this part shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

PART III. STATE LOW-INCOME HOUSING

A. State Low-Income Housing; Administration

§ -41 **Definitions.** As used in this subpart, unless a different meaning clearly appears from the context:

“Administer” or “administration” means the management, operation, maintenance, and regulation of any state low-income housing project. It also includes any and all undertakings necessary therefor.

“Veteran” includes any person who served in the military or naval forces of the United States during World War II and who has been discharged or released therefrom under conditions other than dishonorable. The term “veteran” also includes Filipino World War II veterans who served honorably in an active duty status under the command of the United States Armed Forces in the Far East (USAFFE), or within the Philippine Army, the Philippine Scouts, or recognized guerilla units. The Filipino World War II veterans must have: served at any time between September 1, 1939, and December 31, 1946; been born in the Philippines; and resided in the Philippines prior to the military service.

§ -42 **Housing; tenant selection.** Subject to the following limitations and preferences, the authority shall select tenants upon the basis of those in greatest need for the particular housing. The authority may limit the tenants of any state low-income housing project to classes of persons when required by federal law or regulation as a term or condition of obtaining assistance from the federal government. Within the priorities established by the authority recognizing need, veterans with a permanent disability of ten per cent or more as certified by the United States Department of Veterans Affairs, the dependent parents of the veteran, and the deceased veteran’s widow shall be given first preference.

§ -43 **Rentals.** (a) Notwithstanding any other law to the contrary, the authority shall fix the rates of the rentals for dwelling units and other facilities in state low-income housing projects provided for by this subpart, at rates that will

produce revenues that will be sufficient to pay all expenses of management, operation, and maintenance, including the cost of insurance, a proportionate share of the administrative expenses of the authority to be fixed by it, and the costs of repairs, equipment, and improvements, to the end that the state low-income housing projects shall be and always remain self-supporting. The authority, in its discretion, may fix the rates in amounts as will produce additional revenues (in addition to the foregoing) sufficient to amortize the cost of the state low-income housing project or projects, including equipment, over a period or periods of time that the authority may deem advisable.

(b) Notwithstanding any other law to the contrary, if:

- (1) Any state low-income housing project or projects have been specified in any resolution of issuance adopted pursuant to part I;
- (2) The income or revenues from any project or projects have been pledged by the authority to the payment of any bonds issued under part I; or
- (3) Any of the property of any state low-income housing project or projects is security for the bonds,

the authority shall fix the rates of the rentals for dwelling units and other facilities in the state low-income housing project or projects so specified or encumbered at increased rates that will produce the revenues required by subsection (a) and, in addition, those amounts that may be required by part I, by any resolution of issuance adopted under part I, and by any bonds or mortgage or other security issued or given under part I.

§ -44 Administration of state low-income housing projects and programs. (a) The authority may construct, develop, and administer property or housing for the purpose of state low-income housing projects and programs.

(b) The authority may offer any decommissioned low-income public housing project, except for federal housing projects, to nonprofit or for-profit organizations or government agencies for rehabilitation into emergency or transitional shelter facilities for the homeless or rehabilitation into rental units that set aside at least fifty per cent of the units to persons or families with incomes at or below fifty per cent of the area median family income:

- (1) The housing project is wholly owned by the State on either state-owned or ceded lands;
- (2) The authority has determined that the housing project is not eligible for rehabilitation using the authority's current resources; and
- (3) The nonprofit or for-profit organization or government agency demonstrates expertise in rehabilitation of housing projects and has community, public, and private resources to substantially pay for the rehabilitation.

The land and improvements may be leased to the nonprofit or for-profit organization or government agency for a period not to exceed ninety-nine years for a sum of \$1 per year.

(c) State low-income housing projects shall be subject to chapter 521.

(d) The authority shall adopt rules in accordance with chapter 91 including the establishment and collection of reasonable fees for administering the state low-income housing projects or programs and to carry out any state program under subsection (a).

§ -45 State low-income housing revolving fund. There is established a revolving fund to be known as the state low-income housing revolving fund. Notwithstanding any law to the contrary, moneys received by the authority under or pursuant to this subpart, including refunds, reimbursements, rentals, fees, and charges received from tenants, shall be deposited in the state low-income housing

revolving fund. Except as otherwise provided in this chapter, the state low-income housing revolving fund may be expended by the authority for any and all of the purposes of this subpart, including without prejudice to the generality of the foregoing, the expenses of management, operation, and maintenance of state low-income housing projects, including but not limited to:

- (1) The cost of insurance, a proportionate share of the administrative expenses of the authority, and the cost of repairs, equipment, and improvement;
- (2) The acquisition, clearance, and improvement of property;
- (3) The construction and reconstruction of building sites;
- (4) The construction, reconstruction, repair, remodeling, extension, equipment, and furnishing of any state low-income housing project;
- (5) Administration and other expenses;
- (6) The payment of rentals; and
- (7) The development and administration of any state low-income housing project.

§ -46 Investigatory powers. (a) The authority may:

- (1) Investigate living, dwelling, and housing conditions and the means and methods of improving those conditions;
- (2) Enter upon any building or property to conduct investigations or to make surveys or soundings;
- (3) Conduct examinations and investigations, and hear testimony and take proof under oath at public or private hearings on any matter material for its information;
- (4) Issue subpoenas requiring the attendance of witnesses or the production of books and papers, and order the examination of witnesses who are unable to attend before the authority, are excused from attendance, or by leave of courts as provided by chapter 624, are out of the State; and
- (5) Make available to any government agency charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or unsanitary structures within its jurisdictional limits, its findings and recommendations with regard to any building or property where conditions exist that are dangerous to the public health, safety, or welfare.

(b) Investigations or examinations may be conducted by the authority, or by a committee appointed by it consisting of one or more members of the board, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any person designated by the authority to conduct an investigation or examination may administer oaths, take affidavits, and issue subpoenas or orders for the taking of depositions.

§ -47 Government aid; political subdivisions. Any political subdivision may appropriate moneys for the purposes of meeting any local participation in housing costs or expenses required to obtain assistance from the federal government in the development and administration of state low-income housing projects and programs under this subpart, or of providing funds for use by the authority in developing and administering state low-income housing projects.

§ -48 Additional powers. The powers conferred upon the authority by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities conferred.

B. State Low-Income Housing; Liens

§ **-51 Definitions.** As used in this subpart, unless a different meaning clearly appears from the context:

“State low-income housing project” means any state low-income housing project or projects owned, managed, administered, or operated by the authority.

“Tenant” includes any person occupying a room, dwelling unit, living quarters, or space in any state low-income housing project, under or by virtue of any tenancy lease, license, or permit under or from the authority.

§ **-52 Lien on personalty for rent, etc.** (a) The authority shall have a statutory lien on all personal property, not exempt from execution, belonging to, or in the lawful possession of, every tenant while the personal property is in or upon any state low-income housing project, for the amount of its proper charges against the tenant for rent of a room, dwelling unit, living quarters, or space in the state low-income housing project, or for utilities, facilities, or services in the state low-income housing project. The lien shall commence with the tenancy or occupancy of the tenant and continue for one year after the charge or charges are due and owing to the authority.

(b) Whenever any tenant fails or refuses to pay the charge or charges after the same are so due and owing, the authority shall have the right and power, acting by its authorized agents or representatives, without process of law and without any liability for the taking, seizure, and retention of the personal property, to take and seize any of the personal property belonging to, or in the lawful possession of, the tenant that is found in or upon the public housing project. The authority may hold and retain the property as security for the payment of the charge or charges, until the amount of the charge or charges is paid and discharged. If the charge or charges, so due and owing, are not paid and discharged within thirty days after the taking and seizure, the authority may sell the personal property in the manner provided in section -53.

§ **-53 Foreclosure of lien, notice, etc.** (a) The lien of the authority upon personal property that has been taken and retained by it as provided in section -52 may be foreclosed by the authority by selling the property at public auction:

- (1) After first mailing by United States mail, postage prepaid, a notice of the foreclosure addressed to the tenant who owns, or was in possession of, the personal property at the tenant’s last address shown on the records of the authority. The notice shall state that, unless the charge or charges then due and owing from the tenant to the authority are paid within ten days from the time of mailing the notice, the personal property will be sold at public auction; and
- (2) After first giving public notice of the foreclosure and sale at least two times in the county in which the personal property is located. Each notice shall contain a brief description of the personal property; the name of the tenant, if known; the name of the owner of the personal property, if known; the amount of the charge or charges; and the time and place of the sale. Notices of several foreclosures and sales may be combined in one notice; and whenever so combined and given, the expenses of notice and sale shall be a statutory lien upon the property described in the notice in a ratable proportion according to the amount received for each lot of property so noticed for sale.

(b) If the tenant fails to pay to the authority within ten days after the mailing of the notice of foreclosure the charge or charges, the authority may sell the property at public auction at the time and place stated in the notice, or at a time or times or place or places to which the sale may be postponed or adjourned at the time and

place stated in the notice, and may apply the proceeds thereof to the payment of the charge or charges and the expenses of notice and sale. The balance, if any remaining, shall be paid over to the tenant who formerly owned, or was in possession of, the property. If the balance is not claimed by the tenant within thirty days after the sale, then the balance shall be paid over to the director of finance and it shall be kept by the director in a special deposit for a period not to exceed six months. If claimed by the tenant during that period, it shall be paid to the tenant. If no claim is made during the period, the sum shall become a government realization and be paid into the general fund.

§ **-54 Sheriff or police to assist.** The authority, in taking, seizing, holding, retaining, or selling any personal property pursuant to sections -52 and -53, may require the assistance of the sheriff or any authorized police officer of any county. Any sheriff or officer, when required, shall assist the authority.

§ **-55 Existing contracts not impaired.** Sections -52 and -53 shall not be construed as to impair or affect the obligation of any contract existing on or before May 9, 1949.

§ **-56 Lien on abandoned personalty, sale, etc.** Whenever the authority has in its possession for four months after the termination of any residency or occupancy mentioned in this subpart, any personal property that has been left in or about any state low-income housing project by any person who formerly resided in, or occupied a room, dwelling unit, living quarters, or space in the state low-income housing project, the authority may sell the same at public auction. The proceeds of sale shall be applied to the payment of its charges for storage of the personal property, for public notice and sale, and to the payment of other amounts, if any, then due and owing to it from the former resident or occupant for rent or for any utility or service. Before any sale is made, the authority shall first give public notice of the time and place of sale at least two times in the county in which the personal property is located. The notice shall contain a brief description of the property; the name, if known, of the former resident or occupant who left the property in or about the housing project; the amount of the charges for storage, if any; and the indebtedness, if any; and the time and place of the sale. The charges for storage, if any, and for notice and sale, and the indebtedness, if any, shall be a lien upon the personal property. Notices of several sales may be combined and given in one notice, and whenever combined and given, the expenses of notice and sale shall be a lien and shall be satisfied in ratable proportion according to the amount received for each lot of property so noticed for sale.

§ **-57 Disposition of surplus proceeds.** After the sale, the authority shall apply the proceeds as provided in section -56. The balance, if any remaining, shall be paid over to the former resident or occupant. If the balance is not claimed by the former resident or occupant within thirty days after the sale thereof, then the balance shall be paid over to the director of finance and shall be kept by the director in a special deposit for a period not to exceed six months. If claimed by the former resident or occupant during that period, it shall be paid to the former resident or occupant. If no claim is made during the period, the sum shall become a government realization and shall be paid into the general fund.

§ **-58 Lien attaches to personalty in possession.** Sections -56 and -57 shall also apply to any personal property which, before May 2, 1949, was left in or about any public housing project, and was taken into the possession of the authority or its predecessor in interest, as herein set forth and provided.

§ -59 **Priority of housing lien.** The statutory liens provided for in this subpart shall be preferred and have priority over all other liens or claims and over all attachments or other process.

§ -60 **Rights and powers; supplemental.** The rights and powers conferred upon the authority by this subpart shall be in addition and supplemental to the rights and powers conferred upon the authority by any other law.

PART IV. HOUSING FOR ELDERS AND TEACHERS

A. Housing for Elders

§ -71 **Resident selection; dwelling units; rentals.** In the administration of elder or elderly housing, the authority shall observe the following with regard to resident selection, dwelling units, and rentals:

- (1) Except as provided in this section, the authority shall accept elder or elderly households as residents in the housing projects;
- (2) It may accept as residents in any dwelling unit one or more persons, related or unrelated by blood or marriage. It may also accept as a resident in any dwelling unit or in any housing project, in the case of illness or other disability of an elder who is a resident in the dwelling unit 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 authority, 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 unit consisting of any number of rooms as the authority deems necessary or advisable to provide safe and sanitary accommodations to the proposed resident or residents without overcrowding;
- (4) Notwithstanding that the elder has no written rental agreement or that the agreement has expired, during hospitalization of the elder due to illness or other disability so long as the elder continues to tender the usual rent to the authority 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 authority 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; and
- (5) Elder or elderly housing shall be subject to chapter 521.

§ -72 **Housing for elders revolving fund.** There is created a housing for elders revolving fund to be administered by the authority. Notwithstanding any law to the contrary, moneys received or collected by the authority pursuant to this subpart shall be deposited into the revolving fund. Revenues from the fund may be used to pay the expenses of management, operation, and maintenance of housing projects for elders, including but not limited to the cost of insurance, a proportionate share of the administrative expenses of the authority, and the costs of repairs, equipment, and improvements.

§ -73 **Additional powers.** The powers conferred upon the authority by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

B. Housing for Teachers

§ **-81 Purpose.** The purpose of this subpart is to create a special fund for the accounting and control of receipts and disbursements in connection with the authority's functions of planning, construction, repair, maintenance, and operation of housing for teachers employed and assigned by the department of education. Teachers' housing shall be provided only if the community does not have adequate housing for teachers at reasonable cost.

§ **-82 Teachers' housing revolving fund.** There is established a revolving fund to be known as the teachers' housing revolving fund. All unexpended balances of appropriations, allocations, allotments, special or revolving funds or other funds heretofore created and made available for the purposes of developing or administering teachers' housing projects shall be transferred to the teachers' housing revolving fund. Notwithstanding any law to the contrary, all moneys, including refunds, reimbursements, and rentals for housing from teacher tenants shall be deposited in the revolving fund.

The revolving fund may be used by the authority for any and all of the purposes of teachers' housing, including without prejudice to the generality of the foregoing, the planning, construction, maintenance, and operation of teachers' housing, as well as for the salaries of the necessary personnel in charge thereof.

Whenever the governor determines that the amount in the teachers' housing revolving fund is in excess of the requirements of the teachers' housing program, the authority shall transfer that excess to the state general fund.

§ **-83 Annual statements.** The authority shall annually forward to the director of human services and the director of finance a full, detailed description and financial statement of the planning, construction, repair, maintenance, and operation of teachers' housing.

§ **-84 Rules.** The authority may adopt rules pursuant to chapter 91 necessary or desirable for the purpose of this subpart.

§ **-85 Annual review; disposal of units.** The authority, in consultation with the department of education, shall annually review the status of and necessity for subsidized teachers' housing throughout the state and upon determination that any particular housing unit is no longer necessary shall have all necessary power and shall proceed to dispose of that unit by sale, demolition, or otherwise. Any net proceeds from the disposal of each teacher housing unit shall be paid to the government agency vested with fee title to the unit at the time of disposition and any deficit incurred in the disposal shall be paid by the State.

§ **-86 Additional powers.** The powers conferred upon the authority by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

PART V. PUBLIC HOUSING; EVICTIONS

§ **-91 Definitions.** As used in this part unless the context otherwise requires:

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party in any court or agency proceeding.

“Public housing project” or “complex” means a housing project directly controlled, owned, developed, or managed by the authority pursuant to part II.

“Tenant” means any person occupying a room, dwelling unit, living quarters, or space in any public housing project, under or by virtue of any tenancy, lease, license, or permit under or from the authority.

§ -92 Termination and eviction. (a) Except as otherwise provided, the authority may terminate any lease, rental agreement, permit, or license covering the use and occupation of any dwelling unit or other premises located within a public housing project and evict from any premises any tenant, licensee, or other occupant for any of the following reasons:

- (1) Failure to pay rent when due;
- (2) Violation of any of the provisions of a lease, rental agreement, permit, or license;
- (3) Violation of any of the rules of the authority;
- (4) Failure to maintain the dwelling unit in a clean, sanitary, and habitable condition; or
- (5) The existence of any other circumstances giving rise to an immediate right to possession by the authority.

(b) When any tenant has been delinquent in payment of rent, the authority, either directly or through its managing agent, shall provide the tenant with a written notice no later than forty-five days from the date of delinquency that shall inform the tenant of the delinquency and schedule a meeting between the tenant and the authority or its agent. The written notice shall:

- (1) Inform the tenant that continued delinquency shall result in the tenant’s eviction;
- (2) Inform the tenant of the tenant’s right to apply for an interim adjustment in rent;
- (3) Explain to the tenant the steps of the grievance and eviction processes and how the processes protect the tenant;
- (4) Provide the tenant with a sample letter for demanding a grievance hearing;
- (5) Set forth the location, date, and time, which shall be no earlier than fourteen days from the date of the written notice, at which the tenant may meet with the authority or its agent to discuss the delinquency in rent; and
- (6) Inform the tenant that the tenant shall either attend the meeting or, if applicable, contact the authority or the authority’s agent before the meeting time to reschedule the meeting.

(c) At the meeting described in subsection (b), the authority or its agent shall:

- (1) Inquire into the cause of the tenant’s delinquency and offer suggestions, if any, that the authority may feel appropriate to address the causes of delinquency;
- (2) Consider whether a reasonable payment plan is appropriate for the tenant’s situation and, if appropriate, offer a payment plan to the tenant; and
- (3) Inform the tenant of and explain the issues as required under subsection (b)(1), (2), and (3).

(d) The authority shall develop a checklist outlining all of the requirements listed in subsection (c). The authority or its agent and the tenant shall complete, sign, and date the checklist to memorialize the meeting.

(e) If the tenant fails to attend or reschedule the meeting provided for in subsection (b), the authority shall provide the tenant with a second written notice. The notice shall inform the tenant that:

- (1) The authority shall proceed to terminate the tenant's tenancy because of the tenant's outstanding rent delinquency and the tenant's failure to respond to the authority's written notice issued pursuant to subsection (b);
- (2) The tenant has ten business days from receipt of the second written notice to request a grievance hearing; and
- (3) If the tenant fails to request a grievance hearing within ten business days, the authority has the right to proceed with the eviction hearing pursuant to section -93.

(f) If the tenant meets with the authority as provided for in subsection (b), the authority shall decide, based upon the facts discussed at the meeting, what action is appropriate to address the tenant's case. The authority shall notify the tenant of its decision in writing. If the authority decides to proceed with an action to terminate the tenancy, the authority shall further inform the tenant in the same written notice that:

- (1) The tenant has thirty days from receipt of this notice to request a grievance hearing; and
- (2) If the tenant fails to request a grievance hearing within thirty days, the authority has the right to proceed with the eviction hearing pursuant to section -93.

§ -93 Hearings. (a) Where the authority proposes to terminate a lease or rental agreement and evict a tenant under section -92, a hearing shall be held to determine whether cause exists for the action. The authority shall give written notice to the person concerned specifying the reason for which the eviction is proposed and fixing the date and place of hearing. The written notice shall further inform the tenant of the right to inspect and copy the tenant file at the tenant's expense before the hearing is held. The notice shall be given at least five days before the date set for the hearing. At the hearing, before final action is taken, the person concerned shall be entitled to be heard in person or through counsel, and shall be accorded a full and fair hearing in accordance with the requirements of a contested case hearing provided for under sections 91-9 and 91-10 to 91-13. This full and fair hearing shall be deemed to be a contested case hearing before the authority that is required pursuant to chapter 91.

(b) Hearings shall be conducted by an eviction board appointed by the authority. The eviction board shall consist of not fewer than three persons, of which one member shall be a tenant. At least one eviction board shall be established in each county of the State. The findings, conclusions, decision, and order of the eviction board shall be final unless an appeal is taken as hereinafter provided.

(c) The eviction board shall have the same powers respecting administering oaths, compelling the attendance of witnesses and the production of documentary evidence, and examining witnesses, as are possessed by circuit courts. In case of disobedience by any person of any order of the eviction board, or of any subpoena issued by the eviction board, or the refusal of any witness to testify to any matter regarding which the witness may lawfully be questioned, any circuit judge, on application by the eviction board, shall compel obedience as in the case of disobedience of the requirements of a subpoena issued by a circuit court, or a refusal to testify therein.

§ -94 Eviction. (a) If it is proven to the satisfaction of the eviction board that there is cause to terminate a lease or rental agreement and evict the tenant, the authority shall provide the tenant with a written notice of the authority's decision to terminate the tenancy. The notice shall inform the tenant that a writ of possession may be issued by the authority within ten business days. The notice shall also inform the tenant whether the grounds for eviction are considered curable and, if so, what

the tenant must do to remedy the grounds, by when it must be done, and what the tenant must do to document for the authority that the grounds have been remedied.

(b) When the grounds for termination of the tenancy may be cured by the tenant, the tenant shall have ten business days from receipt of the notice provided for in subsection (a) to cure the grounds. If the grounds are cured within the ten-day period, no writ of possession may be issued. If the grounds are not cured within the ten-day period, the authority may issue a writ of possession forthwith.

(c) The authority may adopt rules pursuant to chapter 91 to define curable and noncurable grounds for eviction. The authority may consider a tenant's history in determining noncurable grounds for eviction. A tenant's history may include chronic or consistent delinquency, or repeated violations of the terms of the rental agreement.

(d) Enforcement of the order by a writ of possession shall be effected either by an officer appointed by the authority, who shall have all of the powers of a police officer for all action in connection with the enforcement of the order, or by a sheriff or any other law enforcement officer of the State or any county, whose duty it shall be to carry out the order. The person enforcing the order shall remove all persons from the premises and put the authority in full possession thereof.

(e) Upon eviction, the household goods and personal effects of the person against whom the order is entered, and those of any persons using the premises incident to the person's holding, may be removed from the premises and stored by the authority. If the action is taken, the authority shall have a lien on the property so taken for the expenses incurred by it in moving and storing the same, and the authority is authorized to sell or otherwise dispose of the property if unclaimed after thirty days.

§ -95 **Ex parte motion.** If a tenant cannot be served with an order of eviction or writ of possession, and the facts shall appear by affidavit to the authority, service to the tenant may be made according to the special order of the authority. The order shall require the officer to affix a certified copy of the order of eviction or writ of possession in a conspicuous place upon the premises such as the door or wall of the dwelling unit.

§ -96 **Judicial review.** (a) Any person aggrieved by a final decision and order of the authority or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive the appellant of adequate relief is entitled to judicial review thereof under this part.

(b) Except as otherwise provided in this section, proceedings for review shall be instituted in the circuit court within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the authority pursuant to the rules of court, except where a statute provides for a direct appeal to the intermediate appellate court. In such cases, the appeal shall be treated in the same manner as an appeal from the circuit court, including payment of the fee prescribed by section 607-5 for filing the notice of appeal. The court in its discretion may permit other interested persons to intervene.

(c) The proceedings for review shall not stay enforcement of the decision of the authority; provided that the authority or the reviewing court may order a stay upon such terms as it deems proper.

(d) Within twenty days after the determination of the contents of the record on appeal in the manner provided by the rules of court, or within such further time as the court may allow, the authority shall transmit to the reviewing court the record of the proceeding under review. The court may require or permit subsequent corrections or additions to the record when deemed desirable.

(e) If, before the date set for hearing, application is made to the court for leave to present additional evidence and the evidence is material and good cause exists for the failure to present the evidence in the proceeding before the authority, the court may order the authority to hear the evidence upon the conditions as the court deems proper. The authority may modify its findings, decision, and order by reason of the additional evidence and shall file with the reviewing court, to become a part of the record, the additional evidence, together with any modification of its findings or decision.

(f) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the authority and not shown in the record, testimony thereon may be taken in court. The court, upon request by any party, may hear oral argument and receive written briefs.

(g) Upon review of the record, the court may affirm the decision of the authority or remand the case with instructions for further proceedings, or it may reverse or modify the decision and order if the substantial rights of the petitioners may have been prejudiced because the administrative findings, conclusions, decisions, or orders are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority or jurisdiction of the authority;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary, capricious, or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§ **-97 Appeals.** An aggrieved party may secure a review of any final judgment of the circuit court under this part by appeal to the intermediate appellate court, subject to chapter 602. The appeal shall be taken in the manner provided in the rules of court.

§ **-98 Rules.** The authority may adopt rules pursuant to chapter 91 necessary for the purposes of this part.

PART VI. AUTHORITY-COUNTY COOPERATION

§ **-101 Gifts, etc., to counties from authority.** The authority may make and pay gifts or donations of money directly to any county. Any county may receive the gifts or donations as a general fund realization, and expend the funds for any purpose authorized by law.

§ **-102 Facilities and services by counties to authority and tenants.** Each county within which the authority may own, operate, or administer any public housing project or complex and to which, or for whose benefit, the authority or its predecessors in interest has made (by payment to the county) or may hereafter make, gifts or donations including any payment in lieu of taxes, upon request of the authority, shall provide and furnish to the authority in regard to every public housing project or complex, and to the tenants and other occupants of the housing project, free of charge and without condition or other requirement, all the facilities, services, and privileges as it provides or furnishes, with or without charge or other consideration, to any person or persons. The facilities and services may include police protection, fire protection, street lighting, paving maintenance, traffic control, garbage or trash collection and disposal, use of streets or highways, use of county incinerators or garbage dumps, storm drainage, and sewage disposal. In addition,

each county, upon request of the authority and free of charge and without condition or other requirement, shall open or close, but not construct or reconstruct, streets, roads, highways, alleys, or other facilities within any public housing project or complex within the county. Nothing in this section shall be construed to restrict or limit the power of the authority to agree to pay, or to pay, for any and all of the facilities, services, and privileges, if in its discretion it deems the payment advisable.

§ -103 **Construction of additional powers.** Sections -101 and -102 shall not be construed as abrogating, limiting, or modifying parts II, III, or IV, including amendments thereto.

§ -104 **Charges for prior services by counties to authority.** Every county (including departments, boards, or instrumentalities thereof) which has, prior to May 14, 1949, provided or furnished any facilities, services, or privileges, including, without limitation to the generality of the foregoing, garbage and trash collection and disposal, use of streets or highways, and use of county incinerators or garbage dumps, to the authority or its predecessors in interest in regard to any public housing project or complex owned, operated, or administered by the authority under any law or laws, or to the tenants or occupants of the public housing project or complex, for which facilities, services, or privileges the authority, or the tenants or occupants have not paid, is prohibited from charging, collecting, or receiving any privileges, except such sum or sums as the authority, in its discretion, may hereafter agree to pay for the same.

§ -105 **Garbage and trash disposal.** Every county that maintains or operates any garbage or trash collection and disposal service shall collect, free of charge, and dispose of garbage and trash at and from any public housing project or complex located within the county, which is owned, operated, or administered by the authority. Upon request of the authority, each county shall allow the authority to establish, maintain, or operate its own garbage and trash collection and disposal service for any or all public housing projects or complexes located within the county, and in regard to the service, shall allow the authority to use, free of charge, all incinerators, garbage dumps, and other facilities that the county may own, control, or operate.

Nothing in this section shall prohibit or prevent the authority from paying, and any county from receiving, any sum or sums that the authority in its discretion may agree to pay as reasonable compensation for the services or facilities provided by any county pursuant to this section.

§ -106 **Furnishing of free water not required.** Sections -102 to -105 shall not be construed to require the furnishing of any free water to the authority or to the tenants or occupants of any public housing project or complex owned, operated, or administered by the authority.

§ -107 **Regulation of traffic within public housing projects in the various counties.** (a) Any law to the contrary notwithstanding, the council of the city and county of Honolulu may regulate traffic within the various public housing projects of the authority in that county by ordinance.

(b) Any law to the contrary notwithstanding, the county councils of the counties of Hawaii, Maui, and Kauai may regulate traffic within the various public housing projects of the authority within their respective counties by ordinance.

(c) No ordinance or regulations enacted by the council of any county regulating traffic within the public housing projects of the authority within the county shall be valid or effective unless prior thereto, the authority has entered into a

written contract with the county absolving the county from any and all responsibility or liability for the construction, maintenance, and repair of any streets, lanes, alleys, or highways or street markers, traffic signs, or signal devices within the public housing projects of the authority.

§ **-108 Additional powers.** The powers conferred upon the authority by this part shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities of the authority.

PART VII. HOMELESS ASSISTANCE

A. General Provisions

§ **-121 Definitions.** As used in this part, unless the context otherwise requires:

“Donor” means any individual, partnership, corporation, joint-stock company, unincorporated organization, foundation, estate, trust, or any other person or firm that donates money, real property, goods, or services to a homeless facility, or any other program for the homeless authorized by this part, including members of any governing body, trustees, officers, partners, principals, stockholders, members, managers, employees, contractors, agents of these entities, or any person who was involved with the donation.

“Emergency shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for up to six weeks.

“Homeless” means:

- (1) An individual or family who lacks a fixed, regular, and adequate night-time residence; or
- (2) An individual or family who has a primary night-time residence that is:
 - (A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations;
 - (B) An institution that provides temporary residence for individuals intended to be institutionalized; or
 - (C) A public or private place not designed for or ordinarily used as sleeping accommodations for human beings.

This term does not include any individual imprisoned or otherwise detained under an Act of Congress or a state law.

“Homeless facility” means a development designed to provide shelter for homeless families or individuals pursuant to this part, or to facilitate any other homeless program authorized by this part, and may include emergency or transitional shelters.

“Homeless shelter stipend” means a payment to a provider agency or to the authority on behalf of a homeless family or individual to assist with the costs of operating a homeless facility and providing appropriate services.

“Provider agency” means an organization, including its governing board, officers, employees, contractors, or agents, contracted by the authority to provide labor and services to any homeless facility, or any other program for the homeless authorized by this part, that is:

- (1) A for-profit organization incorporated under the laws of the State or a nonprofit organization determined by the Internal Revenue Service to be exempt from the federal income tax; or
- (2) A nonprofit organization, with a governing board whose members have no material conflict of interest and who serve without compensation,

with bylaws or policies that describe the manner in which business is conducted and policies that relate to nepotism and management of potential conflict of interest situations.

“Transitional shelter” means a homeless facility designed to provide temporary shelter and appropriate and available services to homeless families or individuals for up to twenty-four months, pursuant to rule.

§ **-122 Duties.** (a) In addition to any other power or duty prescribed by law, the authority shall administer and operate homeless facilities and any other program for the homeless authorized by this part; establish programs for the homeless; and take any other actions necessary to effectuate the purposes of this part.

(b) The authority shall adopt rules pursuant to chapter 91 for the purposes of this part; provided that these rules or any rules relating directly to homelessness authorized by any statute, shall be exempt from the public notice, public hearing, and gubernatorial approval requirements of chapter 91, and shall take effect immediately upon filing with the office of the lieutenant governor.

§ **-123 Exception to liability for donors.** (a) Any donor who gives money to a provider agency, to a homeless facility to or through the authority, or for any other program for the homeless authorized by this part, shall not be liable for any civil damages resulting from the donation.

(b) Any donor who gives land and improvements, or who leases land and improvements at a nominal consideration, to a provider agency, to a homeless facility to or through the authority, or for any other program for the homeless authorized by this part, shall not be liable for any civil damages resulting from the donation except as may result from the donor’s gross negligence or wanton acts or omissions; provided that, if the donor at the time of donation gave the authority a full accounting of all the dangers concerning the land and improvements known to the donor, then the donor shall not be liable for any civil damages resulting from the donation.

(c) Any donor who in good faith and without remuneration or expectation of remuneration provides services or materials used to build and construct a facility for the homeless, or who renovates, repairs, or maintains an existing or acquired facility for the homeless, or who provides shelter to homeless persons, shall not be liable for any civil damages resulting from the donor’s acts or omissions, except for damages resulting from the donor’s gross negligence relating to the donation.

(d) The authority shall be responsible for inspecting, reviewing, analyzing, qualifying, and determining that the land, structures, materials, or services donated to the authority for use by the authority in facilities for the homeless are reasonably safe for public use.

§ **-124 Contract or conveyance to the authority.** Notwithstanding any other law to the contrary, the board of land and natural resources or other state agency holding lands and improvements, may contract or otherwise convey at a nominal consideration, by direct negotiation and without recourse to public auction, the land and improvements, or the management, operation, and administrative responsibility over the land and improvements, to the authority or its designee. The land and improvements shall be used by the authority or its designee for homeless facilities or for any other program for the homeless authorized by this part.

§ **-125 Program administration.** To the extent that appropriations are made available, the authority may contract with a provider agency to administer homeless facilities, or any other program for the homeless created by this part. The

selection of provider agencies to administer homeless facilities, or any other program for the homeless authorized by this part, shall not be subject to chapters 42F, 102, 103, and 103F. The selection of provider agencies shall be subject to qualifying standards and criteria established by rule.

In addition, the provider agency shall be qualified by the authority to operate and manage a homeless facility, or any other program for the homeless authorized by this part, pursuant to standards and criteria established by rules for eligibility.

§ -126 **Time limits.** To the extent that appropriations are made available, a provider agency shall provide shelter or any other program assistance authorized by this part to eligible homeless families and homeless individuals not later than two days, or such time as is set by rule which shall not be later than seven days, after they apply and qualify for the shelter or other program assistance. These time limits may be waived at the discretion of the authority for a maximum period of fourteen days for the purpose of implementing repairs to the subject shelter, that the authority deems major or extensive.

§ -127 **Determination of eligibility and need.** (a) The provider agency operating and managing a homeless facility, or any other program for the homeless authorized by this part, or the authority operating and managing its own homeless facility, shall be responsible for determining if an applicant is eligible for shelter or other services at the homeless facility or through any other program for the homeless, pursuant to standards and criteria established by rule.

(b) The provider agency or the authority operating and managing its own homeless facility shall determine the degree of need for each homeless family or individual and in its determination shall consider the resources available and the number of potential eligible applicants in the area served by the homeless facility or other program for the homeless authorized by this part.

(c) The authority may establish by rule standards and criteria for eligibility, need, and priority for each program; provided that the authority may establish by rule exceptions to these eligibility requirements based on special circumstances.

§ -128 **Abuse of assistance.** (a) The provider agency operating and managing a homeless facility, or any other program for the homeless authorized by this part, or the authority operating and managing its own homeless facility, shall be responsible for determining whether a participant is no longer eligible for shelter or other services at the homeless facility or through any other program for the homeless, pursuant to standards and criteria established by rule.

(b) Pursuant to rule and the right of due process, the authority or its designee, or provider agencies together with the authority, may act to bar homeless families or individuals from participating further in any homeless facility, may issue a writ of possession, and take such other actions as provided by rule.

The enforcement of a writ of possession shall be effected either by an officer appointed by the authority, who shall have all of the powers of a police officer for all action in connection with the enforcement of the writ, or any other law enforcement officer of the State or any county, whose duty it shall be to enforce the writ. The person enforcing the writ shall remove all persons from the premises and put the authority or its designee, or the provider agency designated by the authority, in full possession thereof.

Upon eviction, the household goods and personal effects of the person against whom the writ is entered, and those of any persons using the premises incident to the person's holding, may be removed from the premises immediately and sold or otherwise disposed of by the authority or its designee, or the provider agency. If the action is taken, the authority or its designee, or the provider agency,

shall have a lien on the property so removed for the expenses incurred by it in moving the property.

(c) Any person who enters or remains unlawfully in or upon the premises or living quarters of any homeless facility, or any other program for the homeless authorized by this part, after reasonable warning or request to leave by that provider agency's agents, the authority or its designee, or a police officer, shall be guilty of a misdemeanor; provided that the offense in this subsection shall be in addition to any other applicable offense in the Hawaii Penal Code. A warning or request shall only be issued if the person has engaged in unlawful conduct or has violated house rules and regulations; provided that the warning or request related to a violation of house rules shall be issued only if that provider agency, or the authority or its designee, has filed a copy of its current house rules governing tenancy or participation at the shelter, facility, or program, and any changes thereto, with the director of commerce and consumer affairs. The house rules shall be reasonable and a copy shall be provided to each tenant or participant. The warning or request shall supersede any invitation by a tenant or participant at the shelter, facility, or program to that person to visit the premises or living quarters.

§ -129 Exemptions. (a) Any compensation received by a provider agency for services rendered to homeless families or individuals, or in operating or managing a homeless facility authorized by this part, is exempt from taxation under chapter 237.

(b) Any county mayor may exempt, by executive order, donors and provider agencies from real property taxes, water and sewer development fees, rates collected for water supplied to consumers and for use of sewers, and any other county taxes, charges, or fees; provided that any county may enact ordinances to regulate the exemptions granted by this subsection.

(c) Any provider agency operating or managing a homeless facility, or any other program for the homeless authorized by this part, is exempt, for purposes of those facilities or programs, from any requirements contained in part VIII of chapter 346 and chapters 467 and 521.

§ -130 Emergency or transitional shelter volunteers. (a) For the purposes of this section, "emergency or transitional shelter volunteer" means an individual who:

- (1) Is a tenant at an emergency or transitional shelter administered pursuant to this part;
- (2) Is not an employee of the provider agency operating or managing the shelter;
- (3) Is under the direction of the provider agency operating or managing the shelter and not the authority or the State; and
- (4) Provides up to eighty hours of volunteer labor or services per month to the provider agency operating or managing the shelter, notwithstanding payment of stipends or credits for the labor and services.

(b) Provider agencies may accept labor and services from emergency or transitional shelter volunteers.

(c) In addition to any exemptions granted to nonpaid labor, emergency or transitional shelter volunteers who acknowledge in writing that they are emergency or transitional shelter volunteers, shall not be construed to be in the employ of the provider agency operating or managing the shelter. The volunteers' labor and services provided to the provider agency operating or managing the shelter shall not be construed to constitute employment, and the volunteers shall not be construed to be employees of the provider agency operating or managing the shelter, under any labor law.

§ -131 **Annual performance audits.** (a) The authority shall require any provider agency that dispensed shelter or assistance for any homeless facility or any other program for the homeless authorized by this part to submit to the authority a financial audit and report on an annual basis conducted by a certified public accounting firm. This audit and report shall contain information specific to the funds received under state homeless program contracts. The audit shall include recommendations to address any problems found.

(b) Continuing contracts with provider agencies to participate in any program for the homeless authorized by this part shall require that the provider agency address the recommendations made by the auditing agency, subject to exceptions as set by the authority.

(c) Failure to carry out the recommendations made by the auditing agency may be grounds for the authority to bar a provider agency from further contracts for programs authorized by this part until the barred provider has addressed all deficiencies.

§ -132 **Provider agency and donor cooperation are not in restraint of trade.** No provider agency or any other agency, or donor or donors, or method or act thereof that complies with this part, shall be deemed a conspiracy or combination in restraint of trade or an illegal monopoly, or an attempt to lessen competition or fix prices arbitrarily, or the creation of a combination or pool, or to accomplish any improper or illegal purpose. Any cooperation or agreement established pursuant to rule shall not be considered as illegal, in restraint of trade, or as part of a conspiracy or combination to accomplish an illegal purpose or act.

§ -133 **Construction of part.** If there is any conflict between this part and any other law, this part shall control.

§ -134 **Homeless shelter stipends.** (a) The stipend limits per shelter unit of zero bedrooms shall be adjusted by the authority annually on the first day of July pursuant to standards established by rule which may consider changes in the cost of operating homeless facilities, the fair market rents, the consumer price index, or other relevant factors. A "shelter unit of zero bedrooms" means a living unit that is a studio unit or a single-room occupancy unit. The homeless shelter stipend at transitional shelters for larger shelter units shall be related to the difference in unit size, pursuant to standards established by rule.

(b) The authority may make or may contract to make homeless shelter stipend payments on behalf of one or more homeless families or individuals to a provider agency operating or managing an emergency or transitional shelter or, in the case that the authority itself operates and manages a homeless facility, to the authority in amounts and under circumstances as provided by rule. The contract may specify a minimum total amount of homeless shelter stipends to be received by a provider agency for making its shelter and services available to eligible homeless families or individuals, pursuant to rule.

(c) In making homeless shelter stipend payments to a provider agency, the authority may establish minimum services to be provided by the provider agency to homeless families or individuals at the agency's shelter. The authority may also direct provider agencies to establish and manage a savings account program as described in subsection (d). Additionally, the authority may direct provider agencies to subcontract for outreach services from other private agencies specializing in programs for the unsheltered homeless.

(d) Provider agencies and the authority may establish and collect shelter and services payments from homeless families or individuals in addition to the amount received in homeless shelter stipend payments pursuant to rule. Provider agencies and the authority may also set aside a portion of the payments in a savings account to

be made available to homeless families or individuals when these families and individuals vacate the shelter.

§ -135 **Additional powers.** The powers conferred upon the authority by this part shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities conferred.

B. Hale Kokua Program

§ -141 **Findings and purpose.** The legislature finds that the issue of homelessness should be regarded as one of the State's most significant social problems. The severity of the problem is visible in every area of the state, and evidence that the problem is escalating is becoming more and more apparent. The problem of homelessness impacts everyone, and the burden of rectifying this problem should be approached comprehensively and as a collective responsibility.

The purpose of this subpart is to establish a homeless assistance program known as the Hale Kokua program that would authorize the payment of a state grant and a monthly rent supplement to an interested property owner who sets aside any existing rental space or undertakes the improvement or construction of an adjoining or separate dwelling unit, for the purpose of renting the unit to any family or individual classified as employed but homeless under the program, for a period of five years.

The program will place a priority on assisting homeless families in the greatest need. To ensure that no particular district or community of the State is unduly burdened by the sudden influx of homeless families holding rental contracts with qualified homeowners under the program, the number of homeowners authorized to take part in the Hale Kokua program will be limited to ten per census tract.

The Hale Kokua program shall assist homeless families and individuals who are willing to engage in self-improvement programs and regular employment by providing an alternative to living in homeless shelters where homeless families as well as the special needs homeless are indiscriminately grouped together. Developing the employment skills of participating tenants is an integral component of the program.

The program will also allow other available programs to focus more intently on the special needs of the homeless. The Hale Kokua program calls for a cooperative effort between the State, the counties, and the federal government to provide the community and the Hale Kokua program with the resources and the incentives needed to eliminate the condition of homelessness. Since the Hale Kokua program involves the public and private sectors, the cost of implementing this program should be far less than the cost of building new homeless shelter facilities.

The program has the potential to drastically reduce the number of homeless families and individuals living in public areas, and to ultimately provide full and free access to Hawaii's malls, streets, parks, and campgrounds. As a result, Hawaii's overall quality of life will be enriched and Hawaii's reputation as one of the most beautiful visitor destinations will be enhanced.

§ -142 **Definitions.** As used in this subpart, unless the context clearly requires otherwise:

“Employed but homeless” means any person who is homeless as defined in subpart A who is employed at least nineteen hours a week or participates in an employment training program and does volunteer work for a total of nineteen hours per week until employment can be found.

§ -143 **Hale Kokua program; established.** There is established, within the authority, a homeless assistance program known as the Hale Kokua program, to

provide incentives and assistance to private homeowners throughout the state who set aside existing dwelling units, or construct or renovate dwelling units, for rental for a period of five years by families or individuals classified as employed but homeless. The authority shall administer the Hale Kokua program and adopt the standards and framework necessary to implement the program.

§ -144 Powers and duties. (a) The authority may contract with private sector agencies to carry out the duties and responsibilities of the program.

Notwithstanding any other law to the contrary, any contracts entered into by the authority with a private sector agency pursuant to this subsection shall not be subject to chapters 76 and 89.

(b) The duties of the authority or contracted agency shall include:

- (1) Carrying out the requirements of the Hale Kokua program under this subpart;
- (2) Developing and adopting the requirements, eligibility, registration, background check, initial screening procedures, and procedures for follow-up after placement to determine the ability to make rental payments and the need for social services and referrals for homeless families and individuals to qualify them as tenants under this program;
- (3) Developing and adopting the requirements, qualifications, and registration procedures for property owners who provide rental housing to qualified homeless tenants; provided that priority shall be given to those not requesting construction grants;
- (4) Developing appropriate procedures to address potential liabilities of the State;
- (5) Adopting procedures to place qualified homeless tenants with property owners participating in the program. Participating property owners shall interview and make final tenant selection from lists of prospective tenants compiled by the authority or the contracted agency;
- (6) Establishing the procedures and requirements for the disbursement of building improvement grants and rental subsidies and the amounts thereof to property owners participating in the program;
- (7) Working with the counties to develop and propose uniform incentives to encourage and facilitate the participation of property owners, including real property tax waivers or reductions, and exemptions in zoning or building code requirements which shall be conditioned on participation in the program and which shall lapse when program participation ends;
- (8) Monitoring the financial status and progress of homeless tenants and cooperating with other agencies in establishing and coordinating job training and other programs to help tenants to progress toward self-sufficiency;
- (9) Promoting and assisting in the development of employer-employee relationships between homeless tenants and participating property owners, including but not limited to tenant caretaker, housekeeper, or groundskeeper employment situations;
- (10) Working towards securing financial, in-kind, and administrative assistance from law enforcement and other state and county agencies and the private sector to implement the program;
- (11) Working towards securing funding assistance from federal agencies and programs involved in housing development, job-training, or homeless assistance;
- (12) Monitoring the progress of the Hale Kokua program, and collecting annual statistics showing the numbers of homeless people, homeless

- families, and homeless children, using appropriate measurement systems; and
- (13) Preparing recommendations to improve and expand the program, including but not limited to incentives for participating property owners to sign up for additional terms.

§ -145 Homeowner participation; limitation; payments and assistance. (a) The authority shall limit participation to not more than ten property owners within each census tract at any given period in time, without regard to the existence or operation of shelters and other facilities to aid the homeless in the tract. The authority or contracted agency shall notify prospective participants registered on the waiting list in each census tract of the opportunity to participate in the program as these opportunities may arise in each tract.

(b) Assistance to any qualified property owner providing rental housing to any homeless tenant under this subpart for a period of five years shall include but not be limited to at least one of the following:

- (1) The payment of a state grant to offset the cost of renovating, building any adjoining addition, or constructing any separate structure upon the premises of the owner's property in preparation for its use as a homeless assistance unit under the program;
- (2) The payment of a monthly state rent subsidy to supplement the monthly rental payments made by the homeless tenant;
- (3) Real property tax rate waivers or reductions proposed by the authority and approved by the council of the county in which the property is located;
- (4) Zoning and building code exemptions applicable to the construction of adjoining or separate dwelling units on the owner's property, provided that the county, by ordinance, may establish minimum development and construction standards for these units and procedures for approval thereto; and
- (5) Other incentives consistent with the purposes of this subpart to assist in the participation of property owners under the program.

§ -146 Early withdrawal from program; recovery of grant. (a) Any property owner who withdraws without just cause from the Hale Kokua program prior to the end of the five-year period shall return the state grant for construction improvements within ninety days of the date of withdrawal. The authority shall effect the recovery of the grant, including but not limited to the filing of liens against the real property of withdrawing property owners. The authority shall be awarded reasonable attorneys' fees and costs as determined by the court in any action brought to enforce this subpart.

(b) The county government whose jurisdiction includes the site shall determine the disposition of the additional unit constructed with the grant in accordance with the due process of law.

§ -147 Availability of funding. All rental subsidies, grants, and payments allocated by the Hale Kokua program under this subpart shall be subject to the availability of funds.

PART VIII. STATE RENT SUPPLEMENT PROGRAM

§ -151 Rent supplements. The authority is authorized to make and contract to make annual payments to a "housing owner" on behalf of a "qualified tenant", as those terms are defined in this part, in amounts and under circumstances

as prescribed in or pursuant to this part. No payment on behalf of a qualified tenant shall exceed a segregated amount of \$160 a month.

§ **-152 Housing owner; defined.** As used in this part, the term “housing owner” means:

- (1) A private nonprofit corporation or other private nonprofit legal entity, a limited dividend corporation or other limited dividend legal entity, or a cooperative housing corporation, that is a mortgagor under Section 202, 207, 213, 221(d)(3), 221(d)(5), or 231 of the United States Housing Act of 1937, as amended, or that conforms to the standards of those sections but that is not a mortgagor under those sections or any other private mortgagor under the United States Housing Act of 1937, as amended, for very low-income, low-income, or moderate-income family housing, regulated or supervised under federal or state laws or by political subdivisions of the State, or agencies thereof, as to rents, charges, capital structure, rate of return, and methods of operation, from the time of issuance of the building permit for the project;
- (2) Any other owner of a standard housing unit or units deemed qualified by the authority; and
- (3) The authority.

§ **-153 Qualified tenant; defined.** As used in this part, the term “qualified tenant” means any single person or family, pursuant to criteria and procedures established by the authority, who has been determined to have an income not exceeding the very low-income limit as determined by the authority pursuant to rules adopted by the authority; provided that the qualified tenant’s primary place of residence shall be in the state or the qualified tenant intends to make the state the qualified tenant’s primary place of residence. The terms “qualified tenant” and “tenant” include a member of a cooperative who satisfies the foregoing requirements and who, upon resale of the member’s membership to the cooperative, will not be reimbursed for more than fifty per cent of any equity increment accumulated through payments under this part. With respect to members of a cooperative, the terms “rental” and “rental charges” mean the charges under the occupancy agreements between the members and the cooperative.

§ **-154 Relationship of annual payment to rental and income.** The amount of the annual payment with respect to any dwelling unit shall not exceed the amount by which the fair market rental for that unit exceeds thirty per cent of the tenant’s income as determined by the authority pursuant to procedures and rules pursuant to chapter 91.

§ **-155 Determination of eligibility of tenants and rental charges.** (a) For purposes of carrying out this part, the authority shall establish criteria and procedures for determining the eligibility of tenants and rental charges, including criteria and procedures with respect to periodic review of the tenant’s income and periodic adjustment of rental charges. The authority shall issue, upon the request of a housing owner, certificates as to the income of the individuals and families applying for admission to, or residing in, dwellings of that owner.

(b) Procedures adopted by the authority hereunder shall provide for recertification of the incomes of tenants, except elders, at intervals of two years, or at shorter intervals, for the purpose of adjusting rental charges and annual payments on the basis of tenants’ incomes, but in no event shall rental charges adjusted under this part for any dwelling exceed the fair market rental of the dwelling.

(c) No payments under this part may be made with respect to any property for which the costs of operation, including wages and salaries, are determined by the authority to be greater than similar costs of operation of similar housing in the community where the property is situated.

§ -156 **Rules.** The authority may adopt under chapter 91 all rules necessary to carry out the purpose of this part, including rules relating to determining preference among applicants for state rent supplements.

§ -157 **Additional powers.** The powers conferred upon the authority by this part shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

PART IX. STATE SALES HOUSING PROGRAM

§ -161 **State sales housing.** Notwithstanding any law to the contrary, the authority shall have and may exercise the same powers, subject to applicable limitations, as those granted the Hawaii housing finance and development corporation pursuant to the sales provisions of sections 201H-O through 201H-T, and may permit any member of a tenant family of a public housing project, or any qualified individual meeting the income standards under Section 221(d)(3) of the United States Housing Act of 1937, as amended, to enter into a contract for the acquisition of a dwelling unit and lot or the acquisition of a dwelling unit and the lease of its lot, the lease to conform to chapter 171 with the exception that the lease shall not require bid, auction, or negotiation, in any public housing project, state low-income housing project, or elderly housing project that is suitable for sale and for occupancy by the purchaser or a member or members of the purchaser's family.

§ -162 **Additional powers.** The powers conferred upon the authority by this part shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities so conferred."

PART II

SECTION 3. Chapter 201H, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

"PART . HOUSING DEVELOPMENT PROGRAMS

§201H-A **Criteria.** In administering this chapter and other laws of the State applicable to the supplying of housing or the assistance in obtaining housing, the corporation shall give preference to those applicants most in need of assistance in obtaining housing, in light of the amount of moneys available for the various programs. In doing so, the corporation shall take into consideration the applicant's household income and number of dependents; the age of the applicant; the physical disabilities of the applicant or those living with the applicant; whether or not the present housing of the applicant is below standard; whether or not the applicant's need for housing has arisen by reason of displacement of the applicant by governmental actions; and other factors as it may deem pertinent.

§201H-B Definitions. The following terms, wherever used or referred to in this part, shall have the following respective meanings unless a different meaning clearly appears from the context:

“Develop” or “development” means the planning, financing and acquisition of real and personal property; demolition of existing structures and clearance of real property; construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services, or other site improvements; construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures; or any combination of the foregoing, of any housing project. It also includes any and all undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

“Eligible bidder” means a person, partnership, firm, or corporate entity determined by the corporation:

- (1) To be qualified by experience and financial responsibility to construct housing of the type proposed to be contracted; and
- (2) To have submitted the lowest acceptable bid.

“Eligible developer” means any person, partnership, cooperative including limited-equity housing cooperatives as defined in chapter 421H, firm, nonprofit or for-profit entity, or public agency determined by the corporation:

- (1) To be qualified by experience, financial responsibility, and support to construct housing of the type described and of the magnitude encompassed by the given project;
- (2) To have submitted plans for a housing project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and
- (3) To meet all other requirements the corporation deems to be just and reasonable, and all requirements stipulated in this chapter.

“Purchaser’s equity” means the difference between the original cost of the dwelling unit to the purchaser, and the principal amount of any mortgages, liens, or notes outstanding.

“Qualified resident” means a person who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is domiciled in the state and physically resides in the dwelling unit purchased or rented under this chapter;
- (4) In the case of the purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; or in the case of a rental, demonstrates an ability to pay rent as determined by the corporation and meets any additional criteria established by the corporation for the respective rental housing development for which the applicant is applying; and
- (5) Meets the following qualifications:
 - (A) Is a person who either by the person’s self, or together with spouse or household member, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land; and
 - (B) Is a person whose spouse or household member does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes or more than a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land, except when

husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71;

provided that for purchasers of market-priced units in an economically integrated housing project, the term “qualified resident” means a person who is a citizen of the United States or a resident alien; is domiciled in the state and shall physically reside in the dwelling unit purchased; is at least eighteen years of age; and meets other qualifications as determined by the developer.

“Short term project notes” means evidences of indebtedness issued by the State for specified housing projects and secured by the projects, the terms of which call for complete repayment by the State of the face amount in not less than two nor more than ten years.

§201H-C Powers and duties, generally. (a) The corporation may develop fee simple or leasehold property, construct dwelling units thereon, including condominiums, planned units, and cluster developments, and sell, lease, or rent or cause to be leased or rented, at the lowest possible price to qualified residents, nonprofit organizations, or government agencies, with an eligible developer or in its own behalf:

- (1) Fully completed dwelling units with the appropriate interest in the land on which the dwelling unit is located;
- (2) Dwelling units that are substantially complete and habitable with the appropriate interest in the land on which the dwelling unit is located; or
- (3) The land with site improvements (other than the dwelling unit) either partially or fully developed.

(b) The corporation shall require all applicants for the purchase of dwelling units to make application therefor under oath, and may require additional testimony or evidence under oath in connection with any application. The determination of any applicant’s eligibility under this chapter by the corporation shall be conclusive as to all persons thereafter dealing with the property; provided that the making of any false statement knowingly by the applicant or other person to the corporation in connection with any application shall constitute perjury and be punishable as such. The corporation shall establish a system to determine preferences by lot in the event that it receives more qualified applications than it has dwelling units available.

(c) The corporation shall adopt, pursuant to chapter 91, rules on health, safety, building, planning, zoning, and land use that relate to the development, subdivision, and construction of dwelling units in housing projects in which the State, through the corporation, shall participate. The rules shall not contravene any safety standards or tariffs approved by the public utilities commission, and shall follow existing law as closely as is consistent with the production of lower cost housing with standards that meet minimum requirements of good design, pleasant amenities, health, safety, and coordinated development.

When adopted, the rules shall have the force and effect of law and shall supersede, for all housing projects in which the State, through the corporation, shall participate, all other inconsistent laws, ordinances, and rules relating to the use, zoning, planning, and development of land, and the construction of dwelling units thereon. The rules, before becoming effective, shall be presented to the legislative body of each county in which they will be effective and the legislative body of any county may within forty-five days approve or disapprove, for that county, any or all of the rules by a majority vote of its members. On the forty-sixth day after submission, any rules not disapproved shall be deemed to have been approved by the county.

(d) The corporation may acquire, by eminent domain, exchange, or negotiation, land or property required within the foreseeable future for the purposes of this

chapter. Whenever land with a completed or substantially complete and habitable dwelling or dwellings thereon is acquired by exchange or negotiation, the exchange value or purchase price for each dwelling, including land, shall not exceed its appraised value. Land or property acquired in anticipation of future use may be leased for the interim period by the corporation for such term and rent as it deems appropriate.

(e) Upon authorization by the legislature, the corporation shall cause the State to issue general obligation bonds to finance:

- (1) Land acquisition;
- (2) The development and improvement of land;
- (3) The construction of dwelling units;
- (4) The purchase, lease, or rental of land and dwelling units by qualified residents, nonprofit organizations, or government agencies under this chapter;
- (5) Payment for any services contracted for under this chapter, including profit or recompense paid to partners, and including community information and advocacy services deemed necessary by the corporation to provide for citizen participation in the development of housing projects, the implementation of this chapter, and the staffing of any citizen advisory committee the corporation may establish;
- (6) The cost of the repurchase of units under section 201H-Q;
- (7) Loans for the rehabilitation and renovation of existing housing; and
- (8) Any other moneys required to accomplish the purposes of this chapter.

(f) The corporation shall do all other things necessary and convenient to carry out the purposes of this chapter.

§201H-D Additional powers; development. Notwithstanding section 103-7, but with the approval of the governor, the corporation may enter into and carry out agreements and undertake projects or participate in projects authorized by this chapter.

§201H-E Bond financing. The director of finance may issue general obligation bonds and short term project notes of the State in an aggregate amount not to exceed \$105,000,000 for the dwelling unit revolving fund created by section 201H-EEEE. Pending the receipt of funds from the issuance and sale of the bonds and notes, the amount required for the purposes of this chapter shall be advanced from the general fund of the State. Upon the receipt of the bond or note funds, the general fund shall be reimbursed. The director of finance may sequester and separate the proceeds from the sale of the bonds and notes into separate funds and the amounts in either fund may be used for any of the purposes set forth in this chapter.

§201H-F Exemption from general excise taxes. (a) In accordance with section 237-29, the corporation may approve and certify for exemption from general excise taxes any qualified person or firm involved with a newly constructed, or moderately or substantially rehabilitated project:

- (1) Developed under this part;
- (2) Developed under a government assistance program approved by the corporation, including but not limited to the United States Department of Agriculture 502 program and Federal Housing Administration 235 program;
- (3) Developed under the sponsorship of a private nonprofit organization providing home rehabilitation or new homes for qualified families in need of decent, low-cost housing; or

- (4) Developed by a qualified person or firm to provide affordable rental housing where at least fifty per cent of the available units are for households with incomes at or below eighty per cent of the area median family income as determined by the United States Department of Housing and Urban Development, of which at least twenty per cent of the available units are for households with incomes at or below sixty per cent of the area median family income as determined by the United States Department of Housing and Urban Development.
- (b) All claims for exemption under this section shall be filed with and certified by the corporation and forwarded to the department of taxation. Any claim for exemption that is filed and approved, shall not be considered a subsidy for the purpose of this part.
- (c) For the purposes of this section:
 - “Moderate rehabilitation” means rehabilitation to upgrade a dwelling unit to a decent, safe, and sanitary condition, or to repair or replace major building systems or components in danger of failure.
 - “Substantial rehabilitation”’:
 - (1) Means the improvement of a property to a decent, safe, and sanitary condition that requires more than routine or minor repairs or improvements. It may include but is not limited to the gutting and extensive reconstruction of a dwelling unit, or cosmetic improvements coupled with the curing of a substantial accumulation of deferred maintenance; and
 - (2) Includes renovation, alteration, or remodeling to convert or adapt structurally sound property to the design and condition required for a specific use, such as conversion of a hotel to housing for elders.
 - (d) The corporation may establish, revise, charge, and collect a reasonable service fee, as necessary, in connection with its approvals and certifications under this section. The fees shall be deposited into the dwelling unit revolving fund.

§201H-G Exemption from tax on income and obligations. Income earned and obligations issued by a nonprofit entity determined to constitute a “public housing agency” pursuant to Section 3(6) of the United States Housing Act of 1937, as amended, and which income and obligations are declared by the United States Department of Housing and Urban Development to be exempt from all taxation imposed by the United States pursuant to Section 11(b) of the Act, shall be exempt from all taxation now or hereafter imposed by the State.

§201H-H Housing development; exemption from statutes, ordinances, charter provisions, and rules. (a) The corporation may develop on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of, housing projects that shall be exempt from all statutes, ordinances, charter provisions, and rules of any government agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of dwelling units thereon; provided that:

- (1) The corporation finds the housing project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- (2) The development of the proposed housing project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or of the various boards of water supply authorized under chapter 54;
- (3) The legislative body of the county in which the housing project is to be situated shall have approved the project:

- (A) The legislative body shall approve or disapprove the project by resolution within forty-five days after the corporation has submitted the preliminary plans and specifications for the project to the legislative body. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body;
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them in reviewing, approving, or disapproving the plans and specifications; and
 - (C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85 and 502-17, the executive director of the corporation or the responsible county official may certify maps and plans of lands connected with the project as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar; and
- (4) The land use commission shall approve or disapprove a boundary change within forty-five days after the corporation has submitted a petition to the commission as provided in section 205-4. If on the forty-sixth day the petition is not disapproved, it shall be deemed approved by the commission.

(b) For the purposes of this section, “government assistance program” means a housing program qualified by the corporation and administered or operated by the corporation or the United States or any of their political subdivisions, agencies, or instrumentalities, corporate or otherwise.

§201H-I Starter homes; design standards; applicant eligibility; authority to incorporate starter homes into housing projects of the corporation. (a) The corporation shall adopt rules in accordance with chapter 91 to establish design and construction standards for starter homes configured to expand incrementally over time. For the purposes of this section, “starter home” means a dwelling unit that is designed to meet the basic living capacity requirements of homebuyers with families of limited size by eliminating unnecessary design and space amenities, but which nonetheless enables future expansion, modification, and improvement by the owner to accommodate increased occupancy over time as may be necessary. The rules shall include building, setback, minimum lot size, infrastructure, and architectural standards for the construction and development of starter homes.

(b) In addition to the requirements of subsection (a), the corporation shall adopt rules in accordance with chapter 91 to establish the basic requirements for families eligible to purchase starter homes under this section. The rules shall include guidelines and restrictions on occupancy standards initially permitted in a starter home, as well as the income ranges of families eligible to qualify for purchases under this section.

(c) The corporation may incorporate starter homes into any affordable housing project developed by the corporation under this chapter. The corporation shall determine on a project-by-project basis the number of starter home units to be included in each particular project.

(d) The corporation shall include in its annual report to the legislature a report on the number of starter homes constructed and developed by the corporation in accordance with the authorization provided in this section.

§201H-J Housing projects; construction and sponsorship. (a) The corporation, on behalf of the State or with eligible developers and contractors, shall develop real property and construct dwelling units thereon; provided that not less than ten per cent of the total number of units in single-family projects consisting of fifty units or more sponsored by the corporation shall be first offered to owner-builders or to nonprofit organizations assisting owner-builders in the construction of units thereon. Qualifications for developers and contractors shall be provided by rules adopted by the corporation in accordance with chapter 91. Any person, if qualified, may act as both the developer and the contractor.

(b) In selecting the eligible developers or in contracting any services or materials for the purposes of this chapter, the corporation shall not be subject to the competitive bidding laws.

(c) If working in partnership with an eligible developer, the corporation shall have sole control of the partnership, shall keep all books of the partnership, and shall ascertain all costs of the partnership, including the cost of services performed by any other partners, and the corporation shall audit the same. The other partners shall perform services for the partnership under the direction of the corporation and shall be reimbursed for all costs relating to the project as certified by the corporation, including administrative and overhead costs. Additionally, the other partners, upon transfer of title by the corporation to the purchaser, shall be entitled to a guaranteed gross share if the actual cost of the project does not exceed the original project cost. The gross share shall not exceed fifteen per cent of the original project cost prorated to the dwelling units, less any amount subsidized by the State. Subsidies shall include unrecovered development and land costs and any other subsidized items as defined in rules adopted by the corporation pursuant to chapter 91. The percentage of the share shall be determined by the corporation by contract with the partners based upon the nature of the services rendered by them. For purposes of this subsection, "original project cost" means the original budget of a project as approved by the corporation without modification at a later date.

(d) The corporation may require that performance bonds be posted to the benefit of the State with surety satisfactory to the corporation guaranteeing performance by the other partners, or the State may act as a self-insurer requiring security, if any, from the other partners, as the corporation shall deem necessary.

§201H-K Independent development of projects. (a) In any county, the corporation may develop or may enter into agreements to develop housing projects with an eligible developer if in the corporation's reasonable judgment a project is primarily designed for lower income housing. The agreement may provide for the housing to be placed under the control of the corporation, or to be sold by the corporation, or to be sold to the corporation as soon as the units are completed and shall contain terms, conditions, and covenants as the corporation, by rules, deems appropriate. Every agreement shall provide for the developer to furnish a performance bond in favor of the corporation, assuring the timely and complete performance of the housing project. Sureties on the bond shall be satisfactory to the corporation.

- (b) The plans and specifications for the housing project shall:
- (1) Provide for economically integrated housing by stipulation and design;
 - (2) Provide for the sale of all dwelling units in fee simple or in leasehold either to the corporation or to the purchaser and in all cases subject to all of the provisions of sections 201H-Q, 201H-S, and 201H-T excepting units sold at market price; and

- (3) Encompass the use of lands adequately suited to the size, design, and types of occupancies designated in subsection (a), properly located for occupancy by the group for which the project was primarily designed, properly districted for the use intended prior to the agreement, and appropriately zoned within an urban land use district or appropriate in its situation and surroundings for more intensive or denser zoning.

(c) The corporation may accept and approve housing projects independently initiated by private developers that fully comply with subsections (a) and (b). The corporation may review the plans, specifications, districting, and zoning of the project for the purpose of exempting the project from all statutes, ordinances, charter provisions, and rules of any government agency relating to zoning and construction standards for subdivisions, development, and improvement of land and the construction, improvement, and sale of dwelling units thereon; provided that the procedures in section 201H-H(a)(1), (2), and (3) have been satisfied.

§201H-L Private development of projects. (a) The corporation may enter into contracts with any eligible bidder to provide for the construction of a housing project or projects. Each contract shall provide that the housing project or projects shall be placed under the control of the corporation as soon as the unit is available for occupancy. Each contract also shall provide that the capital stock of the mortgagor (where the mortgagor is a corporate entity) be transferred to the corporation when the housing project or projects have been completed. Each contract shall contain terms and conditions that the corporation may determine to be necessary to protect the interests of the State. Each contract shall provide for the furnishing by the contractor of a performance bond and a payment bond with sureties satisfactory to the corporation, and the furnishings of the bonds shall be deemed a sufficient compliance with the provisions of law and no additional bonds shall be required. Before the corporation shall enter into any contract as authorized by this section for the construction of a housing project or projects, it shall invite the submission of competitive bids after giving public notice in the manner prescribed by law.

(b) Notwithstanding any other law to the contrary, the corporation may:

- (1) Acquire the capital stock of mortgagors holding property covered by a mortgage guarantee under this chapter and established by this section; to exercise the rights as holder of the capital stock during the life of the mortgage and, upon the termination of the mortgage, to dissolve the mortgagor;
- (2) Guarantee the payment of notes or other legal instruments of the mortgagors; and
- (3) Make payments thereon.

All housing projects placed under the control of the corporation pursuant to this section shall be deemed to be housing projects under the jurisdiction of the State.

(c) On request by the corporation, the attorney general shall furnish to the corporation an opinion as to the sufficiency of title to any property on which a housing project is proposed for construction, or on which housing projects have been constructed, under this section. If the opinion of the attorney general is that the title to the property is good and sufficient, the corporation is authorized to guarantee, or enter into a commitment to guarantee, the mortgagee against any losses that may thereafter arise from adverse claims to the title. None of the proceeds of any mortgage loan hereafter insured shall be used for title search and title insurance costs; provided that, if the corporation determines in the case of any housing project that the financing of the construction of the project is impossible unless title insurance is provided, the corporation may provide for the payment of the reasonable costs necessary for obtaining title search and title insurance. Any determination by

the corporation under this subsection shall be set forth in writing, together with the reasons therefor.

(d) The State shall be authorized to guarantee the repayment of one hundred per cent of the principal and interest of loans from commercial lenders for the purposes of this section pursuant to rules adopted by the corporation which shall conform as closely as is possible to the practices of the Federal Housing Administration in insuring loans under Sections 203 and 207 of the United States Housing Act of 1937, as amended; provided that at no time shall the State's liability, contingent or otherwise, on the guarantees exceed \$10,000,000.

§201H-M Interim financing of projects. (a) The corporation may provide interim construction loans to eligible developers. In addition to the rate of interest charged on interim loans, the corporation may charge loan commitment fees to be determined by rules adopted by the corporation.

(b) The interim loans shall be secured by a duly recorded primary or secondary mortgage upon the fee simple or leasehold interest in the land upon which the dwelling units are constructed, or the corporation may require other security interests and instruments as it deems necessary to secure the indebtedness and such other conditions consistent with the production and marketing of dwelling units at the lowest possible prices. The corporation may also set the conditions of a loan in a building and loan agreement between the eligible developer and the corporation to secure the loan and the performance of the developer to complete the project.

§201H-N Commercial, industrial, and other uses. (a) In connection with the development of any dwelling units under this chapter, the corporation may also develop commercial, industrial, and other properties if it determines that the uses can be an integral part of the development and can help to preserve the lifestyles of the purchasers of dwelling units in the development. The corporation may designate any portions of the development for commercial, industrial, or other use and shall have all the powers granted under this chapter with respect thereto, including the power to bypass statutes, ordinances, charter provisions, and rules of any government agency pursuant to section 201H-H. For this purpose, the corporation may use any of the funds authorized under this chapter.

(b) The corporation shall adopt rules that shall provide the manner in which the uses of properties shall be designated, and shall provide that any commercial, industrial, or other properties so developed shall be sold or leased at cost or at economic rents or sales prices. Sale or lease shall be made at cost to owners of commercial, industrial, or other facilities displaced by the corporation. All other leases or sales shall be at economic rents or sales prices determined by the corporation, after appraisal, to be consistent with rents or sales prices in similar locations or with similar terms. The net proceeds of all such sales or leases, less costs to the corporation, shall be deposited in the dwelling unit revolving fund.

The rules may also provide that during the first twenty years after its purchase, any commercial, industrial, or other property so developed and sold may be resold or assigned only to the corporation at the original purchase price plus the cost of any improvements made by the purchaser together with simple interest on all of the purchaser's equity in the property at the rate of seven per cent a year. Rules may also provide that ownership of the commercial, industrial, or other property cannot be separated from ownership of the residential property in connection with which it was sold or leased.

§201H-O Sale; mortgage, agreement of sale, and other instruments. (a) The corporation shall sell completed dwelling units or dwelling units that are substantially completed and habitable, developed and constructed hereunder, to

qualified residents in fee simple, or shall cause them to be leased or rented to qualified residents at a price or rental based on costs as determined by the corporation. The gross share to the other partners or contract payments and any amounts subsidized by the State, including but not limited to the land, need not be counted as cost so as to increase the price. These costs may be borne by the State, pursuant to rules adopted by the corporation subject to reimbursement upon sale as provided in section 201H-Q.

(b) If a qualified purchaser is unable to obtain sufficient funds at reasonable rates from private lenders, the corporation, by way of mortgage, agreement of sale, or other instrument to secure the indebtedness, may loan to the purchaser up to one hundred per cent of the purchase price. The purchaser in that event shall execute with the corporation an agreement of sale, mortgage, or other instrument under the terms of which the unpaid principal and the interest thereon shall be paid in monthly installments over a period of not more than forty years.

(c) Every mortgage, agreement of sale, other instrument to secure the indebtedness, or instrument of indebtedness executed by the corporation may contain other provisions as are usually found in such instruments and shall provide that the purchaser may repay the whole or any part of the unpaid balance of the purchase price plus accrued interest at any time without prepayment penalty.

(d) If the purchaser defaults on the payment of any loan, the corporation shall take all necessary action to collect the delinquent principal and interest on the loan and may take all actions allowed to holders of obligations, including the power to repossess, lease, rent, repair, renovate, modernize, and sell the property foreclosed, subject to the restrictions described in this section.

(e) The mortgages, agreements of sale, and other instruments of indebtedness, at the direction of the corporation, may be assigned to and serviced by commercial banks and other lending institutions doing business in the state at a fee of not more than one-half of one per cent of the amount loaned to the purchaser.

(f) Subsections (a) to (e) need not apply to market-priced dwelling units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

§201H-P Co-mortgagor. For purposes of qualifying for a mortgage loan to finance the purchase of a dwelling unit under this part, a “qualified resident” as defined in section 201H-B may be assisted by a co-mortgagor who is a family member as defined by the corporation, who may own other lands in fee simple or leasehold suitable for dwelling purposes, whose interest in the dwelling unit to be purchased is limited to no more than one per cent, and who certifies that the co-mortgagor does not intend to reside in the dwelling unit. The income and assets of the co-mortgagor shall not be counted in determining the eligibility of the “qualified resident” under this chapter.

§201H-Q Real property; restrictions on transfer; waiver of restrictions.

(a) The following restrictions shall apply to the transfer of real property developed and sold under this chapter, whether in fee simple or leasehold:

(1) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum of:

(A) The original cost to the purchaser, as defined in rules adopted by the corporation;

- (B) The cost of any improvements added by the purchaser, as defined in rules adopted by the corporation; and
 - (C) Simple interest on the original cost and capital improvements to the purchaser at the rate of one per cent a year;
- (2) The corporation may purchase the real property either:
- (A) By conveyance free and clear of all mortgages and liens; or
 - (B) By conveyance subject to existing mortgages and liens.

If the real property is conveyed in the manner provided in subparagraph (A), it shall be conveyed to the corporation only after all mortgages and liens are released. If the real property is conveyed in the manner provided in subparagraph (B), the corporation shall acquire the property subject to any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller; and any mortgage or lien created for any other purpose provided that the corporation has previously consented to it in writing.

The corporation's interest created by this paragraph shall constitute a statutory lien on the real property and shall be superior to any other mortgage or lien except for:

- (i) Any first mortgage created for the purpose of securing the payment of a loan of funds expended solely for the purchase of the real property by the seller;
- (ii) Any mortgage insured or held by a federal housing agency; and
- (iii) Any mortgage or lien created for any other purpose; provided that the corporation has previously consented to it in writing.

The amount paid by the corporation to the seller shall be the difference, if any, between the purchase price determined by paragraph (1)(A) to (C), and the total of the outstanding principal balances of the mortgages and liens assumed by the corporation;

- (3) A purchaser may refinance real property developed and sold under this chapter provided that the purchaser shall not refinance the real property within ten years from the date of purchase for an amount in excess of the purchase price as determined by paragraph (1)(A) to (C);
- (4) After the end of the tenth year from the date of purchase or execution of an agreement of sale, the purchaser may sell the real property and sell or assign the property free from any price restrictions; provided that the purchaser shall be required to pay to the corporation the sum of:
 - (A) The balance of any mortgage note, agreement of sale, or other amount owing to the corporation;
 - (B) Any subsidy or deferred sales price made by the corporation in the acquisition, development, construction, and sale of the real property, and any other amount expended by the corporation not counted as costs under section 201H-O but charged to the real property by good accounting practice as determined by the corporation whose books shall be prima facie evidence of the correctness of the costs;
 - (C) Interest on the subsidy or deferred sales price, if applicable, and any other amount expended at the rate of seven per cent a year computed as to the subsidy or deferred sales price, if applicable, from the date of purchase or execution of the agreement of sale, and as to any amount expended, from the date of expenditure; provided that the computed interest shall not extend beyond thirty

years from the date of purchase or execution of the agreement of sale of the real property. If any proposed sale or transfer will not generate an amount sufficient to pay the corporation the sum as computed under this paragraph, the corporation shall have the first option to purchase the real property at a price that shall not exceed the sum as computed under paragraphs (1) and (2); and

(D) The corporation's share of appreciation in the real property as determined under rules adopted pursuant to chapter 91, when applicable; and

(5) Notwithstanding any provision above to the contrary, pursuant to rules adopted by the corporation, the subsidy or deferred sales price described in paragraph (4)(B) and any interest accrued pursuant to paragraph (4)(C) may be paid, in part or in full, at any time.

(b) For a period of ten years after the purchase, whether by lease, assignment of lease, deed, or agreement of sale, if the purchaser wishes to transfer title to the real property, and if the corporation does not exercise the option to purchase the real property as provided in subsection (a), then the corporation shall require the purchaser to sell the real property to a "qualified resident" as defined in section 201H-B, and upon the terms that preserve the intent of this section and sections 201H-S and 201H-T, and in accordance with rules adopted by the corporation.

(c) The corporation may waive the restrictions prescribed in subsection (a) or

(b) if:

(1) The purchaser wishes to transfer title to the real property by devise or through the laws of descent to a family member who would otherwise qualify under rules established by the corporation; or

(2) The sale or transfer of the real property would be at a price and upon terms that preserve the intent of this section without the necessity of the State repurchasing the real property; provided that, in this case, the purchaser shall sell the unit or lot and sell or assign the property to a person who is a "qualified resident" as defined in section 201H-B; and provided further that the purchaser shall pay to the corporation its share of appreciation in the unit as determined in rules adopted pursuant to chapter 91, when applicable.

(d) The corporation may release the restrictions prescribed in subsection (a) or (b) if the real property is financed under a federally subsidized mortgage program and the restrictions would jeopardize the federal government's ability to recapture any interest credit subsidies provided to the homeowner.

(e) The restrictions prescribed in this section and sections 201H-S to 201H-U shall be automatically extinguished and shall not attach in subsequent transfers of title when a mortgage holder or other party becomes the owner of the real property pursuant to a mortgage foreclosure, foreclosure under power of sale, or a conveyance in lieu of foreclosure after a foreclosure action is commenced; or when a mortgage is assigned to a federal housing agency. Any law to the contrary notwithstanding, a mortgagee under a mortgage covering real property or leasehold interest encumbered by the first option to purchase in favor of the corporation, prior to commencing mortgage foreclosure proceedings, shall notify the corporation in writing of:

(1) Any default of the mortgagor under the mortgage within ninety days after the occurrence of the default; and

(2) Any intention of the mortgagee to foreclose the mortgage under chapter 667;

provided that the mortgagee's failure to provide written notice to the corporation shall not affect the mortgage holder's rights under the mortgage. The corporation shall be a party to any foreclosure action, and shall be entitled to all proceeds

remaining in excess of all customary and actual costs and expenses of transfer pursuant to default, including liens and encumbrances of record; provided that the person in default shall be entitled to an amount which shall not exceed the sum of amounts determined pursuant to subsection (a)(1)(B) and (C).

(f) The provisions of this section shall be incorporated in any deed, lease, agreement of sale, or any other instrument of conveyance issued by the corporation. In any sale by the corporation of real property for which a subsidy or deferred sales price was made by the corporation, the amount of the subsidy or deferred sales price described in subsection (a)(4)(B), a description of the cost items that constitute the subsidy or deferred sales price, and the conditions of the subsidy or deferred sales price shall be clearly stated at the beginning of the contract document issued by the corporation.

(g) This section need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

(h) The corporation is authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal law or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

§201H-R Exception of current owners in corporation projects. The corporation may allow a person who is a current owner of a dwelling unit in a multifamily housing project sponsored by the corporation to apply for the purchase of a larger dwelling unit in a project sponsored by the corporation if the applicant's current family size exceeds the permissible family size for the applicant's current dwelling unit, as determined by prevailing county building or housing codes. The applicant shall be required to sell the applicant's current dwelling unit back to the corporation. Notwithstanding any law to the contrary, any applicant, as it pertains to for-sale housing, shall be a "qualified resident" who:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is domiciled in the state and shall physically reside in the dwelling unit purchased under this section;
- (4) In the case of purchase of real property in fee simple or leasehold, has a gross income sufficient to qualify for the loan to finance the purchase; and
- (5) Except for the applicant's current residence, meets the following qualifications:
 - (A) Is a person who either oneself or together with the person's spouse or a household member, does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land; and
 - (B) Is a person whose spouse or a household member does not own a majority interest in fee simple or leasehold lands suitable for dwelling purposes, or a majority interest in lands under any trust agreement or other fiduciary arrangement in which another person holds the legal title to the land, except when husband and wife are living apart under a decree of separation from bed and board issued by the family court pursuant to section 580-71.

§201H-S Real property; restrictions on use. (a) Real property purchased under this chapter shall be occupied by the purchaser at all times during the ten-year restriction period set forth in section 201H-Q, except in hardship circumstances where the inability to reside on the property arises out of unforeseeable job or military transfer, a temporary educational sabbatical, serious illness of the person, or in other hardship circumstances as determined by the corporation on a case-by-case basis.

The corporation may waive the owner-occupancy requirement for a total of not more than ten years after the purchase of the dwelling, during which time the dwelling unit may be rented or leased. Waivers may be granted only to qualified residents who have paid resident state income taxes during all years in which they occupied the dwelling, who continue to pay resident state income taxes during the waiver period, and whose inability to reside on the property does not stem from a natural disaster. The ten-year owner-occupancy requirement shall be extended by one month for every month or fraction thereof that the owner-occupancy requirement is waived.

The corporation shall adopt rules under chapter 91 to implement the letter and spirit of this subsection and to prescribe necessary terms and conditions. The rules shall include:

- (1) Application and approval procedures for the waivers;
- (2) Exceptions authorized by this subsection;
- (3) The amounts of rents that may be charged by persons allowed to rent or lease a dwelling unit; and
- (4) Schedules of fees needed to cover administrative expenses and attorneys' fees.

No qualified resident who fails to reoccupy a dwelling unit after any waiver period shall receive more than the maximum to which the person would be entitled under section 201H-Q. Any person who disagrees with the corporation's determination under this section shall be entitled to a contested case proceeding under chapter 91.

(b) From time to time the corporation may submit a verification of owner-occupancy form to the purchaser. Failure to respond to the verification in a timely manner or violation of subsection (a) shall be sufficient reason for the corporation, at its option, to purchase the unit as provided in section 201H-Q(a)(1), (2), or (4), as applicable.

(c) Any deed, lease, agreement of sale, or other instrument of conveyance issued by the corporation shall expressly contain the restrictions on use prescribed in this section.

(d) The restrictions prescribed in subsection (a) shall terminate and shall not attach in subsequent transfers of title if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(e) Subsections (a) to (c) need not apply to market-priced units in an economically integrated housing project, except as otherwise determined by the developer of the units; provided that preference shall be given to qualified residents in the initial sale of market-priced units.

(f) The corporation shall be authorized to waive any of the restrictions set forth in this section in order to comply with or conform to requirements set forth in federal law or regulations governing mortgage insurance or guarantee programs or requirements set forth by federally chartered secondary mortgage market participants.

§201H-T Restrictions on use, sale, and transfer of real property; effect of amendment or repeal. (a) Restrictions on the use, sale, and transfer of real property shall be made as uniform as possible in application to purchasers of all real property,

and restrictions shall be conformed with agreement of the purchaser to reflect change or repeal made by any subsequent legislative act, ordinance, rule, or regulation. Purchasers shall be permitted at their election to sell or transfer real property subject to restrictions in effect at the time of their sale or transfer.

(b) The corporation, any department of the State, or any county housing agency maintaining restrictions, through contract, deed, other instrument, or by rule, shall notify purchasers of any substantial change in restrictions made by law, ordinance, rule, or regulation not more than one hundred eighty days after a change in restrictions. The notice shall clearly state the enacted or proposed new provisions, the date or dates upon which they are to be effective, and offer to each purchaser of real property constructed and sold prior to the effective date an opportunity to modify the existing contract or other instrument to incorporate the most recent provisions. Public notice shall also be given at least three times in the State for state agencies and at least three times in a county for county agencies.

(c) For all purchasers of real property prior to June 25, 1990, where the restrictions on use and transfer of property apply for a period of time, the period of time shall not be increased beyond the date calculated from the date of original purchase.

(d) No purchaser shall be entitled to modify the restrictions on use, transfer, or sale of the real property, without the written permission of the holder of a duly-recorded first mortgage on the dwelling unit and the owner of the fee simple or leasehold interest in the land underlying the unit, unless the holder of the first mortgage or the owner is an agency of the State or its political subdivisions.

(e) This section shall apply to all real property developed, constructed, and sold pursuant to this chapter and similar programs in the State or its political subdivisions and which are sold on the condition that the purchaser accepts restrictions on the use, sale, or transfer of interest in the real property purchased.

(f) The provisions of this section shall be incorporated in any deed, lease, instrument, rule, or regulation relating to restrictions on use, sale, or transfer of dwelling units, entered into after June 20, 1977.

(g) The restrictions of this section shall terminate as to a particular real property and shall not attach in subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

§201H-U Corporation's right to repurchase or rent real property; authority to seek recovery. (a) Notwithstanding any provisions to the contrary, during the period in which the restrictions in section 201H-Q are in effect, the following provisions shall apply when dwelling units developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial construction defect, or when vacant lands developed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, are found to have a substantial soil defect:

(1) The corporation shall have the right, but not the obligation, to repurchase a dwelling unit or land that has a defect, regardless of whether or not the owner wishes to sell; provided that those repurchases shall be in accordance with the following provisions:

- (A) The corporation may repurchase a dwelling unit or land if:
 - (i) The dwelling unit or land is deemed unsafe by the county building department;
 - (ii) The defects are irreparable; or
 - (iii) In the opinion of the corporation, the defect is of such magnitude that it will take longer than one year to repair;

- (B) The corporation's purchase price shall be based on the formula set forth in section 201H-Q(a)(1);
 - (C) After repairs to the unit or land are completed, the former owner shall have the first right of refusal to repurchase the real property;
 - (D) The corporation shall give preference in all other projects of the corporation to all owners whose real property is repurchased by the corporation under this subsection, and the corporation may waive certain eligibility requirements for these owners; and
 - (E) If the corporation exercises its right to repurchase defective real property against an owner's wishes pursuant to this paragraph, the corporation shall provide relocation assistance to that owner as provided in chapter 111;
- (2) If the corporation does not opt to repurchase defective real property, the corporation shall also have the right, but not the obligation, to enter into a contract to repair a dwelling unit which has a construction defect or land which has a soil defect. During the period that the real property is being repaired, the corporation shall rent that real property from the owner for an amount not to exceed the owner's present mortgage payments; and
 - (3) If the corporation does not execute either a contract to repurchase the real property or an agreement to repair and rent the real property within ninety days after written notice is given to the corporation of a construction defect, the owner may pursue any other available legal remedies.

For the purposes of this section:

"Substantial construction defect" includes but is not limited to:

- (1) Structural defects such as shifting foundations and bearing walls;
- (2) Structural deficiencies due to the use of defective or undersized materials; and
- (3) Defects affecting the health and safety of occupants.

"Substantial soil defect" means shifting, sliding, or sinking ground of such degree as to affect the dwelling unit on the land or the health and safety of the occupants of the land.

(b) If moneys are expended by the corporation pursuant to subsection (a)(1) and (2), the corporation shall have the authority to take necessary legal action against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding chapter 657.

(c) If real property developed, constructed, financed, purchased, or sold pursuant to Act 105, Session Laws of Hawaii 1970, as amended, is found to have a substantial construction or soil defect, the corporation shall have the right, but not the obligation, to file or cause to be filed a legal action on behalf of or by the owner or lessee of the real property for the recovery of damages or for injunctive relief against the developer, co-developer, general contractor, and their subcontractors, consultants, and other parties notwithstanding chapter 657. Additionally, notwithstanding any provision of rule 23 of the Hawaii rules of civil procedure, the corporation may file or cause to be filed a legal action brought under this subsection as a class action on behalf of or by at least two owners or lessees of real property that have similar substantial construction or soil defects.

(d) Nothing in this chapter shall be construed to diminish the rights or remedies of the corporation otherwise provided under common law, by law, or by contract.

(e) The corporation shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.

(f) This section shall not apply to a particular real property and shall not apply after subsequent transfers of title of that real property if the corporation releases the restrictions when the real property is financed under a federally subsidized mortgage program.

(g) If any subsection, sentence, clause, or phrase of this section, or its application to any person or transaction or other circumstances, is for any reason held to be unconstitutional or invalid, the remaining subsections, sentences, clauses, and phrases of this section, or the application of this section to other persons or transactions or circumstances, shall not be affected. The legislature hereby declares that it would have passed this section and each subsection, clause, or phrase thereof, irrespective of the fact that any one or more subsections, sentences, clauses, or phrases of this section, or its application to any person or transaction or other circumstance, may be declared unconstitutional or invalid.

§201H-V Nonprofit organizations and government agencies. (a) The corporation may retain dwelling units in a project to the extent it determines necessary and appropriate, for sale, lease, or rental to nonprofit organizations and government agencies. The dwelling units shall be used by the nonprofit organizations and government agencies to provide housing opportunities and related support services to special needs individuals or families. These purposes include but are not limited to the use of dwelling units for group homes and congregate living facilities and for government employees in special situations. The corporation, in consultation with other appropriate government agencies, shall adopt rules pursuant to chapter 91 necessary to implement this subsection, including but not limited to rules relating to the eligibility and qualifications of nonprofit organizations and government agencies; the eligibility and qualifications of clients of nonprofit organizations and government agencies to whom housing opportunities may be made available; and restrictions on the use, sale, or transfer of, and authorizing repurchase of, dwelling units sold, leased, or rented pursuant to this subsection.

The corporation, to the extent appropriate, shall have the same powers with respect to nonprofit organizations and government agencies purchasing, leasing, or renting dwelling units as the corporation has with respect to qualified residents purchasing, leasing, or renting dwelling units.

(b) In connection with the development of any residential units under this chapter, the corporation may provide for the development of appropriate community facilities. The corporation may:

- (1) Sell, lease, or rent vacant land or land with site improvements to nonprofit organizations or government agencies to develop community facilities; or
- (2) Develop, on behalf of the State or with an eligible developer, the community facilities and then sell, lease, rent, or otherwise transfer or make available these facilities to nonprofit organizations or government agencies.

The corporation shall adopt rules pursuant to chapter 91 necessary to implement this subsection.

§201H-W Rate of wages for laborers and mechanics. The corporation shall require an eligible bidder or eligible developer of a housing project developed under this part to comply with the requirements of section 104-2 for those laborers and mechanics hired to work on that housing project; provided that this section shall not apply to a housing project developed under this part if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit organization.

201H-X Additional powers. The powers conferred upon the corporation by this part shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities so conferred.”

PART III

SECTION 4. Chapter 201H, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . FINANCING PROGRAMS

A. General Provisions

§201H-Y Bonds; authorization. (a) The corporation, with the approval of the governor, may issue from time to time bonds (including refunding bonds to pay, retire, or provide for the retirement of bonds previously issued by the corporation) in amounts not exceeding the total amount of bonds authorized to be issued by the legislature for any of its corporate purposes. Bonds may also be issued in connection with any program whose primary purpose is to provide housing for active or retired United States military personnel, their families, and other persons authorized by any branch of the United States military to reside in the housing; provided that the aggregate principal amount of all outstanding bonds issued by the corporation for military housing projects shall total no more than \$2,000,000,000.

(b) All bonds shall be issued pursuant to part III of chapter 39, except as provided in this part.

(c) The bonds shall be issued in the name of the corporation, and not in the name of the State. The final maturity date of the revenue bonds may be any date not exceeding sixty years from the date of issuance.

(d) The corporation may issue such types of bonds as it may determine, including without limitation bonds payable from and secured, in whole or in part, by:

- (1) Income and revenues derived from the housing project or projects financed from the proceeds of bonds;
- (2) Receipts derived from any grant from the federal government made in aid of a housing project or projects financed from the proceeds of bonds;
- (3) Income and revenues derived from a particular designated housing project or projects whether or not financed, in whole or in part, from the proceeds of bonds;
- (4) Receipts derived from any payment for “eligible loans”, “eligible improvement loans”, or “eligible project loans”, as the terms are defined in subpart B, or any other agreement or agreements entered into for a “housing loan program”, as the term is defined in subpart B or D, or any other loan program administered by the corporation and financed from the proceeds of bonds;
- (5) Receipts derived from loans to mortgage lenders or from the payment on account of principal of or interest on loans purchased from mortgage lenders, as provided in subpart B which loans to mortgage lenders or loans purchased are financed from the proceeds of bonds;
- (6) Moneys in any funds or accounts established in connection with the issuance of bonds, and any earnings thereon;
- (7) Proceeds derived from any insurance;
- (8) Income and revenues of the corporation generally; or
- (9) Any combination of paragraphs (1) through (8).

The term “income and revenues” includes income and revenues derived from the sale of land or from both land and improvements thereon serviced from infrastructure financed from the proceeds of bonds as permitted by this subpart. The provisions of this subsection are in addition and supplemental to part III of chapter 39.

(e) Any of the bonds may be additionally secured by a pledge of any revenues or a mortgage of any housing project, other property of the corporation, the pledge or assignment of any loans or other agreements, or any note or other undertaking, obligation, or property held by or on behalf of the corporation to secure loans made from the proceeds of bonds for any “housing loan program”, as the term is defined in subpart B or D, or any other loan program administered by the corporation and financed from the proceeds of bonds.

(f) Any pledge made by the corporation shall create a perfected security interest in the revenues, moneys, or property so pledged and thereafter received by the corporation from and after the time that a financing statement with respect to the revenues, moneys, or property so pledged and thereafter received shall be filed with the bureau of conveyances. Upon the filing, the revenues, moneys, or property so pledged and thereafter received by the corporation shall immediately be subject to the lien of the pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be prior to the lien of all parties having claims of any kind in tort, contract, or otherwise against the corporation, irrespective of whether the parties have notice thereof. This section shall apply to any financing statement heretofore or hereafter filed with the bureau of conveyances with respect to any pledge made to secure revenue bonds issued under this part.

(g) Any housing project or projects authorized by, and undertaken pursuant to, this chapter shall constitute an “undertaking” within the meaning of that term as defined and used in part III, chapter 39. Any loan program authorized by, and undertaken pursuant to, this chapter, including without limitation “housing loan programs” defined in and authorized by subparts B and D, shall constitute a “loan program” within the meaning of that term as defined and used in part III, chapter 39. The corporation shall constitute a “department” and the board shall constitute a “governing body” within the meaning of those terms as defined and used in part III, chapter 39.

(h) Neither the members of the board nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

§201H-Z Issuance of bonds for the development of infrastructure. Without limiting section 201H-Y, the corporation, pursuant to and in accordance with this subpart, is hereby authorized to issue bonds for the purpose of financing the development of infrastructure on land owned by the corporation.

§201H-AA Issuance of bonds for the preservation of low-income housing projects. The corporation, pursuant to and in accordance with this subpart, may issue bonds to purchase low-income housing projects financed by the United States Department of Housing and Urban Development to preserve these projects. Upon the payment of all interest and principal stemming from the issuance of these bonds, the corporation may transfer title to these projects to qualified nonprofit organizations. Nothing in this section shall be construed to:

- (1) Prohibit qualified nonprofit or for-profit organizations from operating these projects on behalf of the corporation, or providing for the repair and maintenance of these projects, before the payment of all interest and principal stemming from the issuance of these bonds; or
- (2) Prohibit the corporation from transferring title to these projects to qualified nonprofit or for-profit organizations if these bonds can be secured to the satisfaction of the bondholders.

As used in this section, “qualified nonprofit organization” includes community-based nonprofit organizations and resident councils.

§201H-BB Bonds; interest rate, price, and sale. (a) The bonds shall bear interest at rates payable at times that the corporation, with the approval of the governor, may determine except for deeply discounted bonds that are subject to redemption or retirement at their accreted value; provided that the discounted value of the bonds shall not exceed ten per cent of any issue; and provided further that no bonds may be issued without the approval of the director of finance and the governor. Notwithstanding any other law to the contrary, the corporation, subject to the approval of the director of finance and the governor, may issue bonds pursuant to section 201H-Z, in which the discounted value of the bonds exceeds ten per cent of the issue.

(b) The corporation may include the costs of undertaking and maintaining any housing project or projects or loan program for which the bonds are issued in determining the principal amount of bonds to be issued. In determining the costs of undertaking and maintaining the housing projects, the corporation may include the cost of studies and surveys; insurance premiums; underwriting fees; financial consultant, legal, accounting, and other services incurred; reserve account, trustee, custodian, and rating agency fees; and interest on the bonds for a period determined by the corporation, or the estimated expenditure of borrowed funds for any loan program for which the bonds are issued.

§201H-CC Trustee; designation, duties. (a) The corporation may designate a trustee for each issue of bonds secured under the same trust indenture; provided that the trustee shall be approved by the director of finance.

(b) The trustee shall be authorized by the corporation to receive and receipt for, hold, and administer the proceeds of the bonds, and to apply the proceeds to the purposes for which the bonds are issued.

(c) The trustee shall also be authorized by the corporation to hold and administer any housing project bond special funds and housing loan program revenue bond special funds established pursuant to section 201H-HH. The trustee may receive and receipt for, hold, and administer the revenues derived by the corporation from any housing project or projects or loan program for which the bonds are issued or the projects or loan programs pledged to the payment of the bonds. The trustee shall apply the revenues to the payment of the cost of administering, operating, and maintaining the housing project or projects or loan program; to pay the principal of and the interest on the bonds; to the establishment of reserves; and to other purposes as may be authorized in the proceedings providing for the issuance of the bonds.

(d) Notwithstanding section 39-68, the director of finance may appoint the trustee to serve as fiscal agent for:

- (1) The payment of the principal of and interest on the bonds; and
- (2) The purchase, registration, transfer, exchange, and redemption of the bonds.

(e) The trustee shall perform additional functions with respect to the payment, purchase, registration, transfer, exchange, and redemption, as the director of finance may deem necessary, advisable, or expeditious, including the holding of the bonds and coupons, if any, that have been paid and the supervision of their destruction in accordance with law.

(f) Nothing in this part shall limit or be construed to limit the powers granted to the director of finance in sections 36-3, 39-13, and 39-68(a), to appoint the trustee or others as fiscal agents, paying agents, and registrars for the bonds or to authorize

and empower those fiscal agents, paying agents, and registrars to perform the functions referred to in those sections.

§201H-DD Trust indenture. (a) A trust indenture may contain covenants and provisions authorized by part III of chapter 39, and as deemed necessary or convenient by the corporation for the purposes of this part.

(b) A trust indenture may allow the corporation to pledge and assign to the trustee agreements related to the housing project or projects or loan program and the rights of the corporation thereunder, including the right to receive revenues thereunder and to enforce the provision thereof.

(c) Where a trust indenture provides that any bond issued under that trust indenture is not valid or obligatory for any purpose unless certified or authenticated by the trustee, all signatures of the officers of the State upon the bonds required by section 39-56 may be facsimiles of their signatures.

(d) A trust indenture shall also contain provisions as to:

- (1) The investment of the proceeds of the bonds, the investment of any reserve for the bonds, the investment of the revenues of the housing project or system of housing projects or the loan program, and the use and application of the earnings from investments; and
- (2) The terms and conditions upon which the holders of the bonds or any portion of them or any trustee thereof may institute proceedings for the enforcement of any agreement or any note or other undertaking, obligation, or property securing the payment of the bonds and the use and application of the moneys derived therefrom.

(e) A trust indenture may also contain provisions deemed necessary or desirable by the corporation to obtain or permit, by grant, interest subsidy, or otherwise, the participation of the federal government in the housing projects or loan programs or in the financing of the costs of administering, operating, or maintaining the housing projects or loan programs.

§201H-EE Investment of reserves, etc. The corporation may invest any funds held in reserves or sinking funds or any funds not required for immediate disbursement, including the proceeds of bonds, in property or securities in which the director of finance may legally invest, as provided in section 36-21, except that funds held outside the state treasury may be invested for terms not to exceed thirty-five years. No provisions with respect to the acquisition, operation, or disposition of property by other government agencies shall be applicable to the corporation unless the legislature shall specifically so state.

§201H-FF Security for funds deposited by the corporation. The corporation may by resolution provide that all moneys deposited by it shall be secured by:

- (1) Any securities by which funds deposited by the director of finance may be legally secured as provided in section 38-3; or
- (2) An undertaking with sureties as are approved by the corporation faithfully to keep and pay over upon the order of the corporation any deposits and agreed interest thereon, and all banks and trust companies are authorized to give any such security for those deposits.

§201H-GG Arbitrage provisions, interest rate. (a) Any other provision of law to the contrary notwithstanding, neither the corporation nor the director of finance shall make loans or purchase mortgages with the proceeds of general obligation bonds of the State or from a revolving fund established or maintained from the proceeds of bonds, at a rate of interest or upon terms and conditions that would cause any general obligation bond of the State or any bond to be an "arbitrage

bond” within the meaning of that term as defined in the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto.

(b) The rate of interest on loans made under this chapter from the proceeds of general obligation bonds of the State shall be established by the corporation, with the approval of the director of finance, after each sale of general obligation bonds of the State, the proceeds of which are to be used for the purposes of making loans or purchasing mortgages under this chapter. If no sale of general obligation bonds of the State intervenes in a twelve-month period after the last rate fixing, the corporation may review the then existing rates on loans or mortgages made under this chapter from the proceeds of general obligation bonds of the State and retain the existing rate or, with the approval of the director of finance, establish different rates.

(c) The director of finance shall approve those rates so as to produce up to, but not in excess of, the maximum yield to the State or the corporation permitted under the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto, on the assumption that the general obligation bonds of the State, the proceeds of which have been or are to be used for the purposes of making loans or purchasing mortgages under this chapter, would otherwise be “arbitrage bonds” under the Internal Revenue Code of 1986, as amended, and the regulations of the Internal Revenue Service promulgated pursuant thereto, were the maximum yield to be exceeded. The establishment of the rates of interest shall be exempt from chapter 91.

§201H-HH Housing finance revolving fund; bond special funds. (a)

There is created a housing finance revolving fund to be administered by the corporation. Notwithstanding sections 36-21 and 201H-EEEE, the proceeds in the fund shall be used for long-term and other special financings of the corporation and for the necessary expenses in administering this part.

(b) All moneys received and collected by the corporation, not otherwise pledged or obligated nor required by law to be placed in any other special fund, shall be deposited in the housing finance revolving fund.

(c) A separate special fund shall be established for each housing project or system of housing projects or loan program financed from the proceeds of bonds secured under the same trust indenture. Each fund shall be designated “housing project bond special fund” or “housing loan program revenue bond special fund”, as appropriate, and shall bear any additional designation as the corporation deems appropriate to properly identify the fund.

(d) Notwithstanding any other law to the contrary, all revenues, income, and receipts derived from a housing project or system of projects or loan program financed from the proceeds of bonds or pledged to the payment of the principal of and interest and premium on bonds, shall be paid into the housing project bond special fund or housing loan program revenue bond special fund established for the housing project or system of projects or loan program and applied as provided in the proceedings authorizing the issuance of the bonds.

§201H-II Kikala-Keokea housing revolving fund; established. (a) There is established in the state treasury the Kikala-Keokea housing revolving fund to provide low interest loans for home construction for Kikala-Keokea leaseholders who have been denied loans from traditional financial institutions. The revolving fund shall be administered by the corporation.

(b) The rate of interest on loans executed pursuant to this section shall not exceed three per cent per year and interest earnings on loans made pursuant to this section may be used for administrative and other expenses necessary for administering the loan program. Guidelines shall be established by the corporation with respect

to loan terms and loan qualification criteria. Moneys appropriated for the purposes of this section shall be deposited into the Kikala-Keokea housing revolving fund; provided that upon fulfillment of the purposes of this section, all unencumbered moneys shall lapse into the general fund.

(c) The corporation shall adopt rules in accordance with chapter 91 to effectuate the purposes of this section.

§201H-JJ Rate of wages for laborers and mechanics. The corporation shall require an eligible bidder or eligible developer of a housing project developed under this subpart to comply with the requirements of section 104-2 for those laborers and mechanics hired to work on that housing project; provided that this section shall not apply to a housing project developed under this chapter if the entire cost of the project is less than \$500,000 and the eligible bidder or eligible developer is a private nonprofit organization.

§201H-KK Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

B. Housing Loan and Mortgage Program

§201H-LL Definitions. The following words or terms as used in this subpart shall have the following meanings unless a different meaning clearly appears from the context:

“Eligible borrower” means a person or family, without regard to race, creed, national origin, or sex, who:

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

“Eligible improvement” means alterations, repairs, or improvements to an existing dwelling unit that substantially protect or improve the basic livability of the unit.

“Eligible improvement loan” means a loan to finance an eligible improvement to the owner of the dwelling unit, which may be a condominium unit, where the

eligible improvement is to be made; provided that the owner meets the requirements of an eligible borrower, except that the requirements of paragraph (4) of the definition of "eligible borrower" shall not apply, the unit to be financed is located in the state, the unit will be occupied as the principal place of residence of the borrower, and meets other requirements as established by rules adopted by the corporation.

"Eligible loan" means a loan to an eligible borrower for the permanent financing of a dwelling unit, including a condominium unit; provided that the property financed is located in the state, will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the corporation.

"Eligible project loan" means an interim or permanent loan, which may be federally insured or guaranteed, made to a qualified sponsor for the financing of a rental housing project, and which meets other requirements as established by rules adopted by the corporation.

"Housing loan programs" includes all or any part of the loans to lenders program, the purchase of existing loans program, the advance commitments program, and the loan funding programs authorized under this subpart.

"Qualified sponsor" means any person or entity determined by the corporation:

- (1) To be qualified by experience, financial responsibility, and support to construct a housing project of the type and magnitude described;
- (2) To have submitted plans for a housing project adequately meeting the objectives of this chapter, the maintenance of aesthetic values in the locale of the project, and the requirements of all applicable environmental statutes and rules; and
- (3) To meet other qualifications as established by rules adopted by the corporation pursuant to chapter 91.

§201H-MM Owner-occupancy requirement. (a) An eligible borrower shall use the dwelling unit purchased under this subpart as the eligible borrower's permanent and primary residence.

(b) From time to time, the corporation may submit a verification of owner-occupancy form to the eligible borrower. Failure to respond to this verification in a timely manner may result in an immediate escalation of the interest rate or acceleration of the eligible loan.

(c) For eligible borrowers in the process of selling or transferring title to their property, the corporation may grant a waiver of subsection (a) for a period not to exceed three years and for reasons set forth in section 201H-S on a case-by-case basis.

§201H-NN Eligible borrowers. (a) The corporation shall establish the qualifications of the eligible borrower, and may consider the following:

- (1) The proportion of income spent for shelter;
- (2) Size of the family;
- (3) Cost and condition of housing available to the total housing market; and
- (4) Ability of the person to compete successfully in the normal housing market and to pay the amounts on which private enterprise is providing loans for safe, decent, and sanitary housing in the state.

(b) The family income of an eligible borrower shall not exceed the income requirements of Section 143(f) of the Internal Revenue Code of 1986, as amended.

(c) For the purpose of determining the qualification of an eligible borrower for an eligible improvement loan:

- (1) The dwelling unit for which the eligible improvement loan is to be made and the property on which the dwelling unit is situated shall not be included in the calculation of the eligible borrower's assets; and
 - (2) The mortgage secured by the dwelling unit and property shall not be included in the calculation of the eligible borrower's liabilities.
- (d) For the purpose of determining the qualification of an eligible borrower for an eligible loan for a targeted area residence:
- (1) The dwelling unit being replaced and the property on which the dwelling unit is situated shall not be included in the calculation of the eligible borrower's assets; and
 - (2) The mortgage secured by the dwelling unit and the property shall not be included in the calculation of the eligible borrower's liabilities.

§201H-OO Eligible loans. (a) The corporation shall establish requirements for property financed by an eligible loan, and may consider the location, age, condition, and other characteristics of the property.

(b) The corporation shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible loans.

(c) All eligible loans made shall comply with applicable state and federal laws.

§201H-PP Eligible project loans. (a) The corporation shall establish requirements for rental housing projects to be financed by an eligible project loan, and may consider the location, age, condition, and other characteristics of the project.

(b) The corporation shall establish restrictions on the terms, maturities, interest rates, and other requirements for eligible project loans.

(c) The corporation shall establish restrictions on the prepayment of eligible project loans and on the transfer of ownership of the projects securing eligible project loans.

(d) The corporation shall require that any sums deferred on land leased at nominal rates by the corporation to the owner of a rental housing project shall be recovered by the corporation at the time an eligible project loan is prepaid, whether as a result of refinancing of the eligible project loan or otherwise, to the extent that funds are available from the refinancing or other method by which the eligible project loan is paid in full prior to its due date.

(e) The corporation shall enter into an agreement with the owner of a rental housing project to be financed with an eligible project loan which shall provide that in the event that the eligible project loan is at any time prepaid for the purpose of converting the rental units of such project to ownership units, all tenants at the time of the proposed conversion shall have the first option to purchase their units.

(f) All eligible project loans shall comply with applicable state and federal laws.

§201H-QQ Eligible improvement loans. (a) The corporation shall establish requirements for property financed by an eligible improvement loan, and may consider the location, age, condition, value, and other characteristics of the property.

(b) The corporation shall establish restrictions on the terms, maturities, interest rates, collateral, and other requirements for eligible improvement loans.

(c) All eligible improvement loans made shall comply with applicable state and federal laws.

§201H-RR Housing loan programs; procedures and requirements. (a) The corporation shall establish procedures for:

- (1) The submission of requests or the invitation of proposals for loans to mortgage lenders;
 - (2) The purchase of existing loans by auction, invitation of tenders, or negotiation;
 - (3) The making of advance commitments to purchase and the purchasing of eligible loans, eligible improvement loans, or eligible project loans to be made by mortgage lenders by auction, invitation of tenders, or negotiation; and
 - (4) Loan applications made through mortgage lenders to eligible borrowers or qualified sponsors.
- (b) The corporation shall establish standards and requirements for:
- (1) The allocation of loans to mortgage lenders;
 - (2) The allocation of funds to purchase existing loans from mortgage lenders;
 - (3) The making of advance commitments and allocation of funds to purchase eligible loans, eligible improvement loans, or eligible project loans from mortgage lenders; and
 - (4) The participation by mortgage lenders as originators and processors of eligible loans, eligible improvement loans, or eligible project loans on behalf of the corporation.
- (c) The standards and requirements for the allocation of funds to mortgage lenders shall be adopted by the corporation and shall be designed to include the maximum number of qualified mortgage lenders as participants in the housing loan programs.

§201H-SS Housing loan programs; general powers. (a) The corporation may make, enter into, and enforce all contracts or agreements that are necessary, convenient, or desirable in the performance of its duties in executing the housing loan programs.

(b) The corporation may require representations and warranties as it determines necessary to secure its loans.

§201H-TT Housing loan programs; self-supporting. The interest rate, fees, charges, premiums, and other terms of the loans made under the housing loan programs shall be at least sufficient to pay the cost of administering and maintaining the portion of the specific housing loan programs for which the bonds have been issued, and to assure payment of the principal of and interest on the bonds as they become due.

§201H-UU Housing loan programs; fees. The corporation may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient, for its housing loan programs. The fees, premiums, and charges shall be deposited into the housing loan program revenue bond special fund established for the particular housing loan program or part thereof from which the fees, premiums, and charges are derived as determined by the corporation.

§201H-VV Housing loan programs; evidence of eligible loan, eligible improvement loan, or eligible project loan. (a) Each mortgage lender who participates in any housing loan program shall submit evidence, as deemed satisfactory by the corporation, that eligible loans, eligible improvement loans, or eligible project loans have been made from the proceeds of the bonds.

(b) The corporation may inspect the books and records of the mortgage lenders as may be necessary for the purposes of this section.

§201H-WW Loans to lenders program. (a) The corporation may make loans to mortgage lenders under terms and conditions requiring that the loan proceeds be used within a time period prescribed by the corporation to make eligible loans, eligible improvement loans, and eligible project loans in an aggregate principal amount substantially equal to the amount of the loan.

(b) The loan made to a mortgage lender shall be a general obligation of the respective mortgage lender.

(c) The loan as determined by the corporation shall:

- (1) Bear a date or dates;
- (2) Mature at a time or times;
- (3) Be evidenced by a note, bond, or other certificate of indebtedness;
- (4) Be subject to prepayment; and
- (5) Contain other provisions consistent with this part.

(d) Subject to any agreement with the holders of its bonds, the corporation may consent to any modification to the rate of interest, time and payment of any installment of principal or interest, security, or any other term of any loan to a mortgage lender or any bond, note, contract, or agreement of any kind to which the corporation is a party.

§201H-XX Loans to lenders program; collateral security. (a) Loans made to mortgage lenders shall be additionally secured by a pledge of a lien upon collateral security in an amount as the corporation deems necessary to assure the payment of the principal of and interest on the loans as they become due.

(b) The corporation shall determine the nature and type of collateral security required.

(c) A statement designating the collateral security pledged, the mortgage lender pledging the collateral, and the corporation's interest in the pledged collateral may be filed with the bureau of conveyances. Where a statement has been filed, no possession, further filing, or other action under any state law shall be required to perfect any security interest which may be deemed to have been created in favor of the corporation. The mortgage lender shall be deemed the trustee of an express trust for the benefit of the corporation in all matters relating to the pledged collateral.

(d) Subject to any agreement with the holders of its bonds, the corporation may collect, enforce the collection of, and foreclose on any collateral securing its loans to mortgage lenders. The corporation may acquire, take possession of, sell at public or private sale with or without bidding, or otherwise deal with the collateral to protect its interests.

§201H-YY Purchase of existing loans program. (a) The corporation may contract with a mortgage lender to purchase, in whole or in part, existing loans, whether or not eligible loans, eligible improvement loans, or eligible project loans. The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its bonds, including but not limited to provisions requiring the:

- (1) Repurchase of the loans, in whole or in part, by mortgage lenders at the option of the corporation;
- (2) Payments of premiums, fees, charges, or other amounts by mortgage lenders to provide a reserve or escrow fund for the purposes of protecting against loan defaults; and
- (3) Guarantee by, or for recourse against, mortgage lenders, with respect to defaults on these loans of the corporation.

(b) The corporation shall require, as a condition of each purchase of existing loans from a mortgage lender, that the mortgage lender proceed to make and disburse eligible loans, eligible improvement loans, or eligible project loans in an

aggregate principal amount substantially equal to the amount of the proceeds from the purchase by the corporation of loans therefrom.

§201H-ZZ Advance commitments program. (a) The corporation may contract with a mortgage lender for the advance commitment to purchase eligible loans, eligible improvement loans, or eligible project loans.

(b) The contract may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its bonds. Notwithstanding any other law to the contrary, project loans may be made available for housing projects on Hawaiian home lands pursuant to the Hawaiian Homes Commission Act, 1920, as amended.

§201H-AAA Loan funding programs. (a) The corporation may contract with mortgage lenders to fund eligible loans and eligible improvement loans and may directly make or contract with mortgage lenders to fund eligible project loans.

(b) Any contract in subsection (a) with a mortgage lender may contain provisions as determined by the corporation to be necessary or appropriate to provide security for its revenue bonds.

§201H-BBB Loans; service and custody. The corporation may contract for the service and custody of its loans. The contract may provide for the payment of fees or charges for the services rendered; provided that the fees or charges shall not exceed the usual, customary, and reasonable charges for the services rendered.

§201H-CCC Loans; sale, pledge, or assignment. (a) Subject to any agreements with the holders of its revenue bonds, the corporation may sell its loans at public or private sale at a price and upon terms and conditions as it determines.

(b) Subject to any agreements with holders of its revenue bonds, the corporation may pledge or assign its loans, other agreements, notes, or property to secure the loans or agreements.

§201H-DDD Loans; insurance and guarantees. The corporation may procure insurance or guarantees against any default of its loans, in amounts and from insurers or guarantors, as it deems necessary or desirable.

§201H-EEE Loans; default. The corporation may renegotiate, refinance, or foreclose any loan in default.

The corporation may waive any default or consent to the modification of the terms of any loan or security agreement.

The corporation may commence any action to protect or enforce any right conferred upon it by any law, mortgage, insurance policy, contract, or other agreement.

The corporation may bid for and purchase the property secured by the loan at any foreclosure or other sale, or acquire or take possession of the property secured by the loan.

The corporation may operate, manage, lease, dispose of, or otherwise deal with the property secured by the loan.

§201H-FFF Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

C. Rental Assistance Program

§201H-GGG Purpose; findings and determinations. The legislature finds and declares that the health and general welfare of the people of this state require that the people of this state have safe and sanitary rental housing accommodations available at affordable rents; that a grave shortage in the number of such accommodations affordable by families and individuals of low- and moderate-income in the state exists; and that it is essential that owners of rental housing accommodations be provided with appropriate additional means to assist in reducing the cost of rental housing accommodations to the people of this state.

The legislature further finds that the high cost of infrastructure development and the obtaining of interim construction financing are two of the greatest impediments to the production of affordable rental housing in this state. It is especially difficult for private nonprofit and for-profit entities to participate in the development of affordable housing due to the difficulty in amassing the capital necessary to plan and carry out a project to completion.

It is the purpose of this subpart to:

- (1) Assist owners in maintaining rentals at levels affordable to low- and moderate-income families and individuals by providing owners with rental assistance payments which, together with rental payments received from low- and moderate-income tenants, will provide owners with limited but acceptable rates of return on their investments in rental housing accommodations. Assisting owners by entering into contracts with them to provide for rental assistance payments is a valid public purpose and in the public interest; and
- (2) Provide a funding source for interim construction financing for the development of affordable rental housing by private nonprofit and for-profit entities, as well as the corporation; provided that in allotting this financing, the corporation shall give preference to qualified sponsors who are private nonprofit and for-profit entities.

§201H-HHH Definitions. The following terms as used in this subpart shall have the following meanings unless a different meaning clearly appears from the context:

“Eligible project” means a rental housing project that:

- (1) Is financed by the corporation pursuant to subpart B or D, or that the corporation determines will require rental assistance to make it financially feasible;
- (2) Is subject to a regulatory agreement with the corporation;
- (3) Maintains at least twenty per cent of its units for eligible tenants; and
- (4) Meets other qualifications as established by rules adopted by the corporation.

Notwithstanding any provision to the contrary, “eligible project” may also include a rental housing project that is financed by the corporation pursuant to subpart A.

“Eligible tenant” means a family or an individual whose income does not exceed eighty per cent of the area median income as determined by the United States Department of Housing and Urban Development.

“Owner” means the owner of an eligible project.

“Regulatory agreement” means an agreement between the corporation and the owner relating to an eligible project that includes provisions relating to rents, charges, profits, return on owner’s equity, development costs, and methods of operation.

“Rental assistance contract” means an agreement between an owner and the corporation providing for periodic rental assistance payment for units in an eligible project.

§201H-III Rental assistance revolving fund. (a) There is created a rental assistance revolving fund to be administered by the corporation.

(b) The rental assistance revolving fund may include sums made available from any government program or grant, from private grants or contributions, from the proceeds of any bond issue, or from appropriations to the fund. The aggregate principal in the fund shall be invested by the corporation in a manner that will maximize the rate of return on investment of the fund; provided that any investment made shall be consistent with section 201H-EE but need not comply with section 36-21.

(c) The corporation may use, as needed, the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund to make payments under rental assistance contracts or to subsidize tenants’ rents in eligible projects developed under this part; provided that the corporation shall use up to \$25,000,000 plus any bond proceeds to provide interim construction financing to:

- (1) Qualified sponsors who are private nonprofit or for-profit entities; or
 - (2) The corporation, for the development of affordable rental housing;
- provided further that the corporation, in allotting interim construction financing moneys pursuant to this subpart, shall give preference to rental housing projects developed by qualified sponsors who are private nonprofit or for-profit entities.

§201H-JJJ Rental assistance contracts. (a) The corporation may enter into a rental assistance contract and a regulatory agreement with the owner of an eligible project, when the owner of an eligible project is other than the corporation.

(b) Prior to the execution of a rental assistance contract, the corporation may execute an agreement to enter into a rental assistance contract with an owner. The agreement shall provide for the execution of a rental assistance contract upon satisfaction of the terms set forth in the agreement and otherwise established by the corporation. Each rental assistance contract heretofore entered into by the corporation that provided that rental assistance payments shall be made solely from the earnings on the investment of the rental assistance revolving fund shall hereafter, without modification of the contracts, be payable from the aggregate principal sum and the accumulated earnings in the rental assistance revolving fund.

(c) A rental assistance contract and any subsidy of tenants’ rents in projects developed under this subpart shall be for a term not in excess of thirty-five years and shall be approved by the board of directors of the corporation. Upon that approval by the corporation, the director of finance shall be authorized to guarantee the obligation of the corporation for the term of the rental assistance contract or the subsidy of tenants’ rents in an amount equal to the aggregate obligation of the corporation to make assistance payments; provided that the aggregate of all of the outstanding guarantees shall not exceed \$100,000,000. Pursuant to that guarantee, the corporation shall make annual rental payments to the owner in accordance with the approved rental assistance contract or to the tenants in accordance with the approved subsidy.

(d) Each rental assistance contract shall set forth a maximum annual rental assistance payment amount. The corporation shall establish procedures for determining the maximum annual rental assistance payment amount and may consider the following:

- (1) The cost of constructing the eligible project;
- (2) The estimated annual operating cost of the eligible project;

- (3) The estimated maximum rentals that may be charged for dwelling units in the eligible project;
- (4) The amount of funds available for the funding of rental assistance contracts;
- (5) The number of eligible projects requiring assistance under this subpart; and
- (6) A restricted rate of return on equity to the owner, which rate shall be established by the corporation by rule.

§201H-KKK Rental assistance program. (a) Prior to the execution of a rental assistance contract and annually thereafter, the owner shall submit a proposed rental schedule to the corporation for approval. The schedule shall list every rental unit in the project and shall designate which units are to be maintained for eligible tenants.

(b) The corporation shall establish procedures for evaluating the rental schedules submitted pursuant to this section, and may consider the following:

- (1) The size of and number of bedrooms in the units comprising the eligible project;
- (2) The location of the project and its type (whether high-rise, mid-rise, or low-rise);
- (3) The percentage of units being maintained for eligible tenants; and
- (4) The rentals prevalent in the open market for comparable units.

(c) Annually, following the approval of the rental schedule submitted pursuant to subsection (a), the corporation shall determine the amount of rental assistance payments payable to the owner for the forthcoming year; provided that the amount shall not exceed the maximum annual rental assistance payment amount determined in accordance with section 201H-JJJ. The amount determined pursuant to this subsection shall take into account the estimated amount to be derived by the owner from rentals to be charged for the forthcoming year and the limited rate of return on equity permitted in accordance with section 201H-JJJ(d)(6).

(d) The corporation shall establish standards and requirements for:

- (1) The awarding of rental assistance contracts and the allocation of annual rental assistance payments;
- (2) The form of lease to be utilized by the owner in renting units in an eligible project;
- (3) The marketing and tenant selection and admission processes to be employed by the owner with respect to an eligible project; and
- (4) The maintenance and operation of eligible projects.

(e) The corporation shall establish procedures for:

- (1) The annual review of rental schedules for eligible projects;
- (2) The periodic review of the income of tenants renting units in eligible projects; and
- (3) The periodic inspection of eligible projects to monitor the owners' compliance with the terms and conditions of their rental assistance contracts.

(f) When an eligible project is not owned by the corporation, the corporation shall be entitled to share in the appreciation in value of units maintained for eligible tenants within an eligible project realized at the time of refinancing or prepayment of the eligible project loan. The corporation's share shall be calculated by multiplying the appreciation in value of units maintained for eligible tenants realized upon refinancing or prepayment by the ratio of the owner's equity to the discounted value of the aggregate rental assistance payments. The discount rate shall be established by rules adopted by the corporation.

The corporation shall exempt projects owned by a county from the shared appreciation requirement set forth in this subsection if all of the following requirements are met:

- (1) The funds derived by the county as a result of appreciation in value of the units are used for housing projects wherein:
 - (A) At least sixty per cent of the project is affordable to families earning one hundred per cent or below of the applicable area median income; and
 - (B) At least half of the foregoing sixty per cent is affordable to families earning eighty per cent or below of the applicable area median income; and
- (2) The project from which the appreciation in value is derived remains as affordable as it was prior to the refinancing or prepayment of the eligible project loan.

§201H-LLL Benefits of program not exclusive. Nothing in this subpart shall be construed to prohibit, with respect to an eligible project, the operation of the rental assistance program in conjunction with other state or federal programs including the state rent supplements provided for in part VIII of chapter .

§201H-MMM Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

D. Taxable Mortgage Securities Programs

§201H-NNN Definitions. Whenever used in this subpart, unless the context otherwise requires:

“Eligible borrower” means:

- (1) Any person or family, without regard to race, creed, national origin, or sex, who:
 - (A) Is a citizen of the United States or a resident alien;
 - (B) Is a bona fide resident of the State;
 - (C) Is at least eighteen years of age;
 - (D) Does not personally, or whose spouse does not if the person is married, own a majority interest in any residential property in the state; and
 - (E) Meets other qualifications as established by rules adopted by the corporation; or
- (2) A qualified sponsor of an affordable housing project who meets the qualification requirements as established by rules adopted by the corporation.

“Eligible loan” or “loan” means:

- (1) A loan to an eligible borrower for the purchase of a dwelling unit, including a condominium unit; provided that the property financed is located in the state, will be occupied as the principal place of residence by the eligible borrower, and meets other requirements as established by rules adopted by the corporation; or
- (2) An interim or permanent loan, which may be federally insured or guaranteed, made to a qualified sponsor for the financing of an affordable housing project, and which meets other requirements as established by rules adopted by the corporation.

“Housing loan programs” include all or any part of the loan programs authorized in section 201H-000.

§201H-000 Housing loan programs; authorization. (a) The corporation may establish under this subpart one or more eligible loan programs.

(b) The corporation may invest in, make, purchase, take assignments of, or otherwise acquire or make commitments to invest in, make, purchase, take assignments of, or otherwise acquire any eligible loans or any partial interest or participation therein held by or on behalf of the corporation.

(c) The corporation may sell, assign, or otherwise dispose of or enter into commitments to sell, assign, or otherwise dispose of any eligible loans or any partial interest or participation therein held by or on behalf of the corporation.

(d) The corporation may acquire any obligation under conditions which require the seller of the obligation to use the proceeds of the sale for the purpose of financing eligible loans.

§201H-PPP Housing loan programs; procedures and requirements. (a) The corporation may establish procedures and requirements for:

- (1) The purchase of loans from mortgage lenders by auction, invitation of tender, advance commitment, or other negotiation;
- (2) The making of loans through mortgage lenders to eligible borrowers or qualified sponsors;
- (3) The allocation to mortgage lenders of money made available under this subpart; and
- (4) The participation by mortgage lenders as originators and processors of loans on behalf of the corporation under this subpart.

(b) The corporation may adopt rules under chapter 91 necessary or convenient for the operation of the housing loan programs established under this subpart.

§201H-QQQ Housing loan programs; general powers. (a) The corporation may make, enter into, and enforce all contracts or agreements which are necessary, convenient, or desirable for the purpose of the performance of its powers under this subpart.

(b) The corporation may establish, revise, charge, and collect fees, premiums, and charges as necessary, reasonable, or convenient in connection with its housing loan programs established under this subpart. The fees, premiums, and charges shall be deposited into funds as determined by the corporation.

(c) The corporation may contract for the servicing and custody of any loans or other obligations acquired under this subpart.

(d) The corporation may procure insurance against any default of its loans from insurers in amounts deemed necessary or desirable.

(e) Subject to any agreements with the holders of its bonds, the corporation may:

- (1) Renegotiate, refinance, or foreclose any loan in default;
- (2) Commence any action to protect or enforce any right conferred upon it by any law, or as provided in any mortgage, insurance policy, contract, or other agreement; and
- (3) Bid for and purchase the property secured by the loan at any foreclosure or other sale; or acquire, or take possession of the property secured by the loan and may operate, manage, lease, dispose of, or otherwise deal with the property securing the loan.

§201H-RRR Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by

any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

E. State Mortgage Guarantee Program

§201H-SSS State mortgage guarantee. (a) The corporation may guarantee:

- (1) Up to the top twenty-five per cent of the principal balance of real property mortgage loans for the purchase of qualified single-family or multifamily dwelling units;
- (2) Up to one hundred per cent of the principal balance of real property mortgage loans of qualified single-family housing under section 213 of the Hawaiian Homes Commission Act, 1920, as amended; or
- (3) Up to one hundred per cent of the principal balance of real property mortgage loans of single-family or multifamily housing developed under self-help or shell housing programs;

plus the interest due thereon, made to qualified borrowers by qualified private lenders; provided that at no time shall the corporation's liability, contingent or otherwise, on these guarantees exceed \$10,000,000.

For purposes of this section:

"Self-help housing program" means development or preservation of housing in which prospective homeowners have contributed labor, materials, or real property; provided that at least two-thirds of the participating homeowners are qualified by income for assistance under this subpart and that the program is carried out under the sponsorship of a nonprofit community development organization.

"Shell housing program" means development of housing which is habitable but unfinished and can be completed or expanded; provided that one hundred per cent of the participating homeowners are qualified by income for assistance under this subpart and that the program is carried out under the sponsorship of a public, nonprofit, or private organization.

(b) The loans shall be secured by a duly recorded first mortgage upon the fee simple or leasehold interest of the borrower in the single-family or multifamily dwelling owned and occupied by the borrower and the borrower's permitted assigns. Private lenders shall include all banks, savings and loan associations, mortgage companies, and other qualified companies and trust funds whose business includes the making of loans in the state.

(c) Loans guaranteed under this section shall be in accordance with rules adopted by the corporation.

(d) To be eligible for loans under this section, a qualified borrower shall be:

- (1) A citizen of the United States or a resident alien;
- (2) Qualified under the rules adopted by the corporation; and
- (3) Willing to comply with the rules as may be adopted by the corporation.

The corporation may secure the services of a private lender to process all applications and determine the qualification of borrowers under this subpart.

(e) When the application for an insured loan has been approved by the corporation, the corporation shall issue to the lender a guarantee for that percentage of the loan on which it guarantees payment of principal and interest. The private lender shall collect all payments from the borrower and otherwise service the loan.

(f) In return for the corporation's guarantee, the private lender shall remit out of monthly payments collected an insurance fee as established by the corporation. The funds remitted shall be deposited to the credit of the state general fund.

(g) When any installment of principal and interest has been due for sixty days and has not been paid by the borrower, the private lender may file a claim for the guaranteed portion of the overdue payments with the corporation which may then authorize vouchers for these payments, thereby acquiring a division of interest in the

collateral pledged by the borrower in proportion to the amount of the payment. The corporation shall be reimbursed for any amounts so paid plus the applicable interest rate when payment is collected from the borrower.

(h) If there is any default in any payment to be made by the borrower, the lender shall notify the corporation within fifteen days. Should the lender deem that foreclosure proceedings are necessary to collect moneys due from the borrower, it shall notify the corporation. Within thirty days of either notification, the corporation may elect to request an assignment of the loan on payment in full to the lender of the principal balance and interest due. Foreclosure proceedings shall be held in abeyance in the interim.

(i) Every qualified borrower who is granted a loan under this section shall comply with the following conditions:

- (1) Expend no portion of the qualified borrower's loan for purposes other than those sanctioned by the corporation;
- (2) Not sell or otherwise dispose of the mortgaged property except upon the prior written consent of the corporation and except upon any conditions that may be prescribed in writing by the private lender;
- (3) Undertake to pay when due all taxes, liens, judgments, or assessments that may be lawfully assessed against the property mortgaged, together with the costs and expenses of any foreclosure of the mortgage;
- (4) Keep insured to the satisfaction of the private lender all improvements and other insurable property covered by the mortgage. Insurance shall be made payable to the mortgagee as its interest may appear at the time of the loss. At the option of the private lender, subject to the rules and standards of the corporation, sums so received may be used to pay for reconstruction of the improvements destroyed, or for decreasing the amount of the indebtedness;
- (5) Keep the improvements in good repair; and
- (6) The private lender may impose any other conditions in its mortgage; provided the form of the mortgage has received the prior approval of the corporation.

All of the conditions in paragraphs (1) through (6) shall be held and construed to be provisions of any mortgage executed by virtue of this section regardless of whether or not the conditions are expressly incorporated in the mortgage document.

(j) Loans guaranteed and made under this subpart shall be repaid in accordance with a payment schedule specified by the private lender with payments applied first to interest and then to principal. Additional payments in any sums and the payment of the entire principal may be made at any time within the period of the loan. The private lender for satisfactory cause and at its discretion, may extend the time within which the installments of principal may be made for a period not to exceed two years.

(k) All interest and fees collected under this subpart by the corporation shall be deposited into the general fund. All moneys necessary to guarantee payment of loans made under this subpart and to carry on the operations of the corporation in administering and granting loans under this subpart shall be appropriated by the legislature out of the proceeds of the general fund. The corporation shall include in its legislative budgetary request for the upcoming fiscal period, the amounts necessary to effectuate the purposes of this section.

§201H-TTT Mortgage guarantee agreements. (a) To induce appropriate officials of any agency or instrumentality of the United States to commit to insure and to insure mortgages under the provisions of the United States Housing Act of 1937, as amended, the corporation may enter into guarantee agreements with those officials whenever:

- (1) The purchaser-mortgagor in question is ineligible for mortgage insurance purposes under the United States Housing Act of 1937, as amended, because of credit standing, debt obligation, or income characteristics;
 - (2) The purchaser-mortgagor in question is a "displaced person" as defined in chapter 111 and the guarantee agreement will enable the purchaser-mortgagor to obtain suitable replacement housing in accordance with chapter 111; or
 - (3) The corporation finds that the purchaser-mortgagor would be a satisfactory credit risk with ability to repay the mortgage loan if the purchaser-mortgagor were to receive budget, debt management, and related counseling.
- (b) Guarantee agreements under subsection (a) may obligate the corporation to:
- (1) Provide or cause to be provided counseling under subsection (a)(3); and
 - (2) Indemnify an agency or instrumentality of the United States for a period not to exceed five years for any loss sustained by the agency or instrumentality by reason of insurance of a mortgage.
- (c) The total of guarantees made pursuant to this section and guarantees made pursuant to section 201H-SSS shall not exceed \$10,000,000.

§201H-UUU Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

F. Downpayment Loan Program

§201H-VVV Downpayment loans. (a) The corporation may make direct downpayment loans to eligible borrowers who qualify for loans under section 201H-WWW. The downpayment loan to any one borrower shall not exceed thirty per cent of the purchase price of the residential property or \$15,000, whichever is less. The interest rate on the loans may range from zero per cent to eight per cent, depending on the buyer's income.

(b) The repayment of every downpayment loan shall be secured by a duly recorded second mortgage executed by the borrower to the State on the residential property purchased with the downpayment loan.

(c) The principal of the downpayment loan, together with accrued interest, shall be due and payable upon the sale, transfer, or refinancing of the property, or shall be repaid by the borrower in installments as determined by the corporation; provided that the corporation may provide a period in which payments may be waived. The period over which the principal and interest shall be paid need not coincide with the period over which the loan from the mortgage lender for the balance of the purchase price must be repaid. The borrower may repay the whole or any part of the unpaid balance of the downpayment loan, plus accrued interest, at any time without penalty.

(d) The corporation may secure the services of the mortgage lender who loans to the borrower the balance of the purchase price of the residential property or the services of any other mortgage lender doing business in the state to collect, on behalf of the State, the principal and interest of the downpayment loan and otherwise to service the downpayment loan, for a servicing fee not in excess of the prevailing loan servicing fees.

(e) The corporation shall adopt rules pursuant to chapter 91 to carry out the purposes of this subpart.

§201H-WWW Qualifications for downpayment loans. (a) No person shall be qualified for a downpayment loan unless the person:

- (1) Is a citizen of the United States or a resident alien;
- (2) Is at least eighteen years of age;
- (3) Is a bona fide resident of the state;
- (4) Will physically reside in the residential property to be purchased for the term of the loan;
- (5) Is accepted by a mortgage lender as a person to whom it is willing to lend money for the purchase of the residential property provided the required downpayment is made; and
- (6) Provides a portion of the downpayment which shall be equal to at least three per cent of the sales price.

(b) No person who owns in fee simple or in leasehold any other residential property within the state shall be eligible to become a borrower under this section. A person shall be deemed to own a residential property if the person, the person's spouse, or both (unless separated and living apart under a decree of a court of competent jurisdiction) own a majority interest in a residential property.

§201H-XXX Restrictions on borrower. Every loan made under this subpart shall be subject to the following conditions:

- (1) The borrower shall expend no portion of the borrower's downpayment loan for purposes other than to make a downpayment for the purchase of a residential property;
- (2) The residential property purchased with the downpayment loan and mortgaged to the State to secure the repayment of the loan shall not be sold or assigned without the prior approval in writing of the corporation and the first mortgage lender;
- (3) The borrower shall pay when due all taxes, liens, judgments, or assessments that may be lawfully levied against the residential property and all costs and expenses of any foreclosure of the mortgage made to the State;
- (4) The borrower shall maintain fire and casualty insurance in amounts equal to the replacement value of all improvements and insurable portions of the residential property with an insurance company authorized to do business in the state. All proceeds of that insurance shall be made payable to the first mortgage lender and the corporation as their respective interests may appear at the time of any loss or damage. Subject to the rules of the corporation, in the event of any loss or damage to the improvements or property covered by the insurance, the proceeds receivable by the State shall be applied toward the reconstruction of the improvements or property destroyed or damaged, unless otherwise determined by the corporation on behalf of the State; and
- (5) The borrower shall maintain the improvements in good repair.

All of the conditions in paragraphs (1) through (5) shall be a part of any downpayment mortgage executed under this subpart, regardless of whether or not they are expressly incorporated in the mortgage document.

§201H-YYY Default. If the borrower defaults in the payment of any installment of principal or interest of the downpayment loan, the corporation or mortgage lender shall take all necessary action to collect the delinquent amounts and may take all actions generally allowed holders of mortgages, including the power to foreclose. Upon any foreclosure of the second mortgage, the corporation or mortgage lender on behalf of the corporation, may purchase the interest of the borrower in and to the residential property, take possession thereof and assume all of the

obligations of the borrower under the first mortgage held by the private lender and any other liens having priority over the second mortgage that may then exist. On the acquisition of the borrower's interest, the corporation, at its option, may pay in full the unpaid balance of the borrower's obligation secured by the first mortgage and other prior liens; repair, renovate, modernize, or improve the residential property; and, with or without clearing the property of all prior mortgages and liens, sell, lease, or rent the property or use or dispose of the same in any manner authorized by law.

§201H-ZZZ Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

G. Homebuyers' Club Program

§201H-AAAA Homebuyers' club program. (a) The corporation may establish a homebuyers' club program for participants who are desirous of purchasing a home and who have adequate incomes but who lack sufficient funds for the downpayment and closing costs. The primary focus of this program is to facilitate the purchase of homes by providing participants with strategies to save money, to resolve credit problems, and to educate participants on how to shop for and purchase a home.

(b) In establishing such a program, the corporation shall adopt rules pursuant to chapter 91 relating to establishing a savings program for participants based upon individual analyses of income and family expenses. The rules may also provide for integration of the homebuyers' club program with other governmental programs including but not limited to individual housing accounts under section 235-5.5, the state mortgage guarantee program under subpart E, the downpayment loan program established under subpart F, and the rent-to-own program established under subpart H.

(c) The corporation may secure the services of another public or private entity to carry out the purposes of this section.

§201H-BBBB Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

H. Rent-to-Own Program

§201H-CCCC Rent-to-own program. (a) The corporation may establish a rent-to-own program under which dwelling units that are for sale may be rented to program participants. Under this program, the corporation shall credit a portion of the rent received toward the purchase of the unit.

(b) The sales price shall be established at the beginning of the rental term and shall remain fixed for the first five years after the rental agreement is executed. During this period, the participant shall have the option of purchasing the unit at the designated sales price. If the participant does not elect to purchase the unit within the five-year period, the renter shall forfeit the right to continue living in the unit and the unit shall be made available to another purchaser or renter.

(c) The corporation shall have the right to reestablish the sales price upon expiration of the option period or upon resale of the unit.

§201H-DDDD Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

I. Dwelling Unit Revolving Fund

§201H-EEEE Dwelling unit revolving fund. There is created a dwelling unit revolving fund. The funds appropriated for the purpose of the dwelling unit revolving fund and all moneys received or collected by the corporation for the purpose of the revolving fund shall be deposited in the revolving fund. The proceeds in the revolving fund shall be used to reimburse the general fund to pay the interest on general obligation bonds issued for the purposes of the revolving fund, for the necessary expenses in administering housing development programs, and for carrying out the purposes of housing development programs, including but not limited to the expansion of community facilities constructed in conjunction with housing projects, permanent primary or secondary financing, and supplementing building costs, federal guarantees required for operational losses, and all things required by any federal agency in the construction and receipt of federal funds or low-income housing tax credits for housing projects.

§201H-FFFF Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities so conferred.

J. Rental Housing Trust Fund

§201H-GGGG Definitions. As used in this subpart, unless a different meaning is clearly required by the context:

“Develop” or “development” means the planning, financing, or acquisition of real and personal property; demolition of existing structures; clearance of real property; construction, reconstruction, alteration, or repairing of approaches, streets, sidewalks, utilities, and services, or other site improvements; construction, reconstruction, repair, remodeling, extension, equipment, or furnishing of buildings or other structures; or any combination of the foregoing, of any housing project. It also includes any undertakings necessary therefor, and the acquisition of any housing, in whole or in part.

“Fund” means the rental housing trust fund established in this subpart.

§201H-HHHH Rental housing trust fund. (a) There is established the rental housing trust fund to be administered by the corporation.

(b) An amount from the fund, to be set by the corporation and authorized by the legislature, may be used for administrative expenses incurred by the corporation in administering the fund; provided that fund moneys may not be used to finance day-to-day administrative expenses of projects allotted fund moneys.

(c) The following may be deposited into the fund: appropriations made by the legislature, private contributions, repayment of loans, interest, other returns, and moneys from other sources.

(d) The fund shall be used to provide loans or grants for the development, pre-development, construction, acquisition, preservation, and substantial rehabilitation of rental housing units. Permitted uses of the fund may include but are not limited to planning, design, land acquisition, costs of options, agreements of sale, downpayments, equity financing, capacity building of nonprofit housing developers,

or other housing development services or activities as provided in rules adopted by the corporation pursuant to chapter 91. The rules may provide for a means of recapturing loans or grants made from the fund if a rental housing project financed under the fund is refinanced or sold at a later date. The rules may also provide that moneys from the fund shall be leveraged with other financial resources to the extent possible.

(e) Moneys available in the fund shall be used for the purpose of providing, in whole or in part, loans or grants for rental housing projects in the following order of priority:

- (1) Projects or units in projects that are allocated low-income housing credits pursuant to the state housing credit ceiling under Section 42(h) of the Internal Revenue Code of 1986, as amended, or projects or units in projects that are funded by programs of the United States Department of Housing and Urban Development and United States Department of Agriculture Rural Development wherein:
 - (A) At least fifty per cent of the available units are for persons and families with incomes at or below eighty per cent of the median family income of which at least five per cent of the available units are for persons and families with incomes at or below thirty per cent of the median family income; and
 - (B) The remaining units are for persons and families with incomes at or below one hundred per cent of the median family income; provided that the corporation may establish rules to ensure full occupancy of fund projects; and
- (2) Mixed-income rental projects or units in a mixed-income rental project wherein all of the available units are for persons and families with incomes at or below one hundred forty per cent of the median family income.

(f) The corporation shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session describing the projects funded and, with respect to rental housing projects targeted for persons and families with incomes at or below thirty per cent of the median family income, its efforts to develop those rental housing projects, a description of proposals submitted for this target group and action taken on the proposals, and any barriers to developing housing units for this target group.

(g) For the purposes of this subpart, the applicable median family income shall be the median family income for the county or standard metropolitan statistical area in which the project is located as determined by the United States Department of Housing and Urban Development, as adjusted from time to time.

(h) The corporation may provide loans and grants under this section; provided that the corporation shall establish loan-to-value ratios to protect the fund from inordinate risk and that under no circumstances shall the rules permit the loan-to-value ratio to exceed one hundred per cent; and provided further that the underwriting guidelines include a debt-coverage ratio of not less than 1.0 to 1.

(i) For the period commencing July 1, 2005, through June 30, 2007, the fund may be used to provide grants for rental units set aside for persons and families with incomes at or below thirty per cent of the median family income in any project financed in whole or in part by the fund in proportion of those units to the total number of units in the project. At the conclusion of the period described in this subsection, the corporation shall report to the legislature on the number and use of grants provided and whether the grants were an effective use of the funds for purposes of developing rental housing for families at or below thirty per cent of the median family income.

§201H-III Eligible applicants for funds. Eligible applicants for funds shall include nonprofit and for-profit organizations, limited liability companies, partnerships, and government agencies, who are qualified in accordance with rules adopted by the corporation pursuant to chapter 91.

§201H-JJJJ Eligible projects. (a) Activities eligible for assistance from the fund shall include but not be limited to:

- (1) New construction, rehabilitation, or preservation of low-income rental housing units that meet the criteria for eligibility described in subsection (c);
- (2) The leveraging of moneys with the use of fund assets;
- (3) Pre-development activity grants or loans to nonprofit organizations; and
- (4) Acquisition of housing units for the purpose of preservation as low-income or very low-income housing.

(b) Preference shall be given to projects producing units in at least one of the following categories:

- (1) Multifamily units;
- (2) Attached single-family units;
- (3) Apartments;
- (4) Townhouses;
- (5) Housing units above commercial or industrial space;
- (6) Single room occupancy units;
- (7) Accessory apartment units;
- (8) Employee housing;
- (9) United States Department of Housing and Urban Development mixed finance development of public housing units; and
- (10) Other types of units meeting the criteria for eligibility set forth in subsection (c).

(c) The corporation shall establish an application process for fund allocation that gives preference to projects meeting the following criteria that are listed in descending order of priority:

- (1) Serve the original target group;
- (2) Provide at least five per cent of the total number of units for persons and families with incomes at or below thirty per cent of the median family income;
- (3) Provide the maximum number of units for persons or families with incomes at or below eighty per cent of the median family income;
- (4) Are committed to serving the target group over a longer period of time;
- (5) Increase the integration of income levels of the immediate community area;
- (6) Meet the geographic needs of the target group of the proposed rental housing project, such as proximity to employment centers and services; and
- (7) Have favorable past performance in developing, owning, managing, or maintaining affordable rental housing.

The corporation may include other criteria as it deems necessary to carry out the purposes of this subpart.

If the corporation, after applying the process described in this subsection, finds a nonprofit project equally ranked with a for-profit or government project, the corporation shall give preference to the nonprofit project in allotting fund moneys.

§201H-KKKK Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred

by any other law, and nothing in this subpart shall be construed as limiting any powers, rights, privileges, or immunities conferred.”

PART IV

SECTION 5. Chapter 201H, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . EXPENDITURES OF REVOLVING FUNDS UNDER THE CORPORATION EXEMPT FROM APPROPRIATION AND ALLOTMENT

§201H-LLLL Expenditures of revolving funds under the corporation exempt from appropriation and allotment. Except as to administrative expenditures, and except as otherwise provided by law, expenditures from the revolving funds administered by the corporation under subparts I and J of part , relating to financing programs, or sections 201H-HH, 201H-II, 201H-III, or 516-44 may be made by the corporation without appropriation or allotment by the legislature; provided that no expenditure shall be made from and no obligation shall be incurred against any revolving fund in excess of the amount standing to the credit of the fund or for any purpose for which the fund may not lawfully be expended. Nothing in sections 37-31 to 37-41 shall require the proceeds of the revolving funds identified in subparts I and J of part III, or sections 201H-HH, 201H-II, 201H-III, or 516-44 to be reappropriated annually.

§201H-MMMM Additional powers. The powers conferred upon the corporation by this subpart shall be in addition and supplemental to the powers conferred by any other law, and nothing in this part shall be construed as limiting any powers, rights, privileges, or immunities so conferred.”

PART V

SECTION 6. Section 201H-1, Hawaii Revised Statutes, is amended to read as follows:

“**[§201H-1] Definitions.** The following terms, wherever used or referred to in this chapter, shall have the following respective meanings, unless a different meaning clearly appears from the context:

~~“Administration” means the Hawaii housing finance and development administration.~~

“Board” means the board of directors of the Hawaii housing finance and development ~~administration.~~ corporation.

“Bonds” means any bonds, interim certificates, notes, debentures, participation certificates, pass-through certificates, mortgage-backed obligations, or other evidences of indebtedness of the ~~administration~~ corporation issued pursuant to this chapter.

“Community facilities” ~~includes;~~ include real and personal property; buildings, equipment, lands, and grounds for recreational or social assemblies, or educational, health, or welfare purposes; and necessary or convenient utilities, when designed primarily for the benefit and use of the ~~administration~~ corporation or the occupants of the dwelling.

“Contract” means any agreement of the ~~administration~~ corporation with an obligee or a trustee for the obligee, whether contained in a resolution, trust indenture, mortgage, lease, bond, or other instrument.

“Corporation” means the Hawaii housing finance and development corporation.

“Dwelling”, “dwelling unit”, or “unit” means any structure or room[;] for sale, lease, or rent, that provides shelter.

~~“Elder” or “elderly” means a person who is a resident of the State and has attained the age of sixty-two years.~~

~~“Elder or elderly households” means households in which at least one member is at least sixty-two years of age, the spouse or partner of that member has attained the age of majority, and the remaining members have attained the age of fifty-five years at the time of application to a public housing project. A live-in aide shall cease to be a resident therein upon the recovery of, or removal from the project of, the elder.~~

~~“Elder or elderly housing” means:~~

- ~~(1) A housing project intended for and occupied by elder or elderly households; or~~
- ~~(2) Housing provided under any state or federal program that the Secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elders or elderly persons, which, upon a determination by the Secretary, may also be occupied by persons with disabilities who have reached the age of majority.]~~

“Executive director” means the executive director of the Hawaii housing finance and development [administration.] corporation.

“Federal government” includes the United States and any agency or instrumentality, corporate or otherwise, of the United States.

“Government” or “government agency” includes the State and the United States and any political subdivision, agency, or instrumentality, corporate or otherwise, of either of them.

“Household member” means a person who:

- (1) Is a co-applicant; or
- (2) Will reside in the dwelling unit purchased or leased from the corporation.

“Housing project” or “project” [includes]:

- (1) Includes all real and personal property, buildings and improvements, commercial spaces, lands for farming and gardening, and community facilities acquired or constructed or to be acquired or constructed, and all tangible or intangible assets held or used in connection with the housing project[-]; and
- (2) May [The term “housing project” or “project” may] also be applied to the planning of the buildings and improvements, the acquisition of property by purchase, lease, or otherwise, the demolition of existing structures, the construction, reconstruction, alteration, and repair of the improvements, and all other work in connection therewith.

“Land” or “property” includes vacant land or land with site improvements, whether partially or entirely finished in accordance with governmental subdivision standards, or with complete dwellings.

~~“Live-in aide” means a person who:~~

- ~~(1) Is eighteen years of age or older;~~
- ~~(2) Is living in the unit solely to assist the elder or elderly person in daily living activities, including bathing, meal preparation and delivery, medicinal care, transportation, and physical activities;~~
- ~~(3) Is not legally obligated to support the elder or elderly person; and~~
- ~~(4) Is verified by the administration as meeting these requirements.]~~

“Mortgage holder” includes the United States Department of Housing and Urban Development, Federal Housing Administration, the United States Department of Agriculture, or other federal or state agency engaged in housing activity, [Administrator] United States Department of Veterans Affairs, Federal National

Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, private mortgage lender, private mortgage insurer, and their successors, grantees, and assigns.

“Mortgage lender” means any bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, credit union, insurance company, or any other financial institution, or a holding company for any of the foregoing, that:

- (1) Is authorized to do business in the [State;] state;
- (2) Customarily provides service or otherwise aids in the financing of mortgages on single-family or multifamily residential property; and
- (3) Is a financial institution whose accounts are federally insured or is an institution that is an approved mortgagee for the Federal Housing Administration, an approved lender for the United States Department of Veterans Affairs or the United States Department of Agriculture, or an approved mortgage loan servicer for the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

“Nonprofit organization” means a [~~corporation~~] corporate entity, association, or other duly chartered entity that is registered with the State and has received a written determination from the Internal Revenue Service that it is exempt under either section 501(c)(3), section 501(c)(4), or so much of section 501(c)(2) as applied to title holding [~~corporations~~] entities that turn over their income to organizations that are exempt under either section 501(c)(3) or 501(c)(4), of the Internal Revenue Code of 1986, as amended.

“Obligee of the [~~administration~~] corporation” or “obligee” includes any bondholder, trustee or trustees for any bondholders, any lessor demising property to the [~~administration~~] corporation used in connection with a housing project, or any assignee or assignees of the lessor’s interest or any part thereof, and the United States, when it is a party to any contract with the [~~administration~~] corporation.

“Real property” includes lands, land under water, structures, and any and all easements, franchises, and incorporeal hereditaments and every estate and right therein, legal and equitable, including terms for years and liens by way of judgment, mortgage, or otherwise.

“Trustee” means a national or state bank or trust company located within or outside the State that enters into a trust indenture.

“Trust indenture” means an agreement by and between the [~~administration~~] corporation and the trustee, which sets forth the duties of the trustee with respect to the bonds, the security therefor, and other provisions as deemed necessary or convenient by the corporation to secure the bonds.”

SECTION 7. Section 201H-2, Hawaii Revised Statutes, is amended to read as follows:

“[~~§201H-2~~] **Hawaii housing finance and development [~~administration~~] corporation; establishment, staff.** (a) There is established the Hawaii housing finance and development [~~administration~~] corporation to be placed within the department of business, economic development, and tourism for administrative purposes only. The [~~administration~~] corporation shall be a public body and a body corporate and politic.

(b) The [~~administration~~] corporation shall employ, exempt from chapter 76 and section 26-35(a)(4), an executive director and an executive assistant. The executive director shall be paid a salary not to exceed eighty-five per cent of the salary of the director of human resources development. The executive assistant shall be paid a salary not to exceed ninety per cent of the executive director’s salary. The [~~administration~~] corporation may employ, subject to chapter 76, technical experts and officers, agents,

and employees, permanent and temporary, as required. The ~~[administration]~~ corporation may also employ officers, agents, and employees, prescribe their duties and qualifications, and fix their salaries, not subject to chapter 76, when in the determination of the ~~[administration,]~~ corporation, the services to be performed are unique and essential to the execution of the functions of the ~~[administration,]~~ corporation. The ~~[administration]~~ corporation may call upon the attorney general for legal services as it may require. The ~~[administration]~~ corporation may delegate to one or more of its agents or employees its powers and duties as it deems proper.”

SECTION 8. Section 201H-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§201H-3**~~]]~~ **Board; establishment, functions, duties.** (a) There is created a board of directors of the Hawaii housing finance and development ~~[administration]~~ corporation consisting of nine members, of whom six shall be public members appointed by the governor as provided in section 26-34. At least four of the public members shall have knowledge and expertise in public or private ~~[finance]~~ financing and development of affordable housing. Public members shall be appointed from each of the counties of Honolulu, Hawaii, Maui, and Kauai. At least one public member shall represent community advocates for low-income housing, affiliated with private nonprofit organizations that serve the residents of low-income housing. The public members of the board shall serve four-year staggered terms; provided that the initial appointments shall be as follows:

- (1) Two members to be appointed for four years;
- (2) Two members to be appointed for three years; and
- (3) Two members to be appointed for two years.

The director of business, economic development, and tourism and the director of finance, or their designated representatives, and a representative of the governor’s office, shall be ~~[an]~~ ex officio voting ~~[member,]~~ members. The ~~[administration]~~ corporation shall be headed by the board.

(b) The board of directors shall select a chairperson and vice chairperson from among its members; provided that the chairperson shall be a public member. The director of business, economic development, and tourism, director of finance, and the governor’s representative shall be ineligible to serve as chairperson of the board.

(c) Five members shall constitute a quorum, whose affirmative vote shall be necessary for all actions by the ~~[administration,]~~ corporation. The members shall receive no compensation for services, but shall be entitled to necessary expenses, including travel expenses, incurred in the performance of their duties.”

SECTION 9. Section 201H-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§201H-7**~~]]~~ **Housing research.** (a) The ~~[administration]~~ corporation may study the plans of any government ~~[in relation to the problem of]~~ regarding the clearing, replanning, or ~~[reconstructing]~~ reconstruction of an area ~~[in which]~~ where unsafe or unsanitary ~~[public]~~ dwelling or ~~[public]~~ housing conditions exist.

(b) The ~~[administration]~~ corporation may purchase materials for the development of land and the construction of dwelling units in the manner it concludes to be most conducive to lower costs, including purchase from other states or from foreign countries for drop shipment in the State or on cost-plus contracts for materials with persons or firms doing business in the State, or otherwise.

(c) The ~~[administration]~~ corporation may conduct, or cause to be conducted, research on housing needs, materials, design, or technology, and apply the findings of the investigation to housing projects, including the following:

- (1) Sociocultural investigation of housing and community utilization, preferences, or needs of residents within the housing need classification of the housing functional plan;
- (2) Development of technology for the application of innovative building systems or materials, to provide energy or resource conservation or cost savings in the construction or operation of a housing project;
- (3) Investigation of the applicability of locally-produced building materials and systems to dwelling unit construction;
- (4) Investigation of new forms of project construction, maintenance, operation, financing, or ownership, involving tenants, homeowners, financing agencies, and others; or
- (5) Other necessary or appropriate research that may lower the long-term costs of housing, conserve resources, or create communities best suited to the needs of residents.

(d) In the development and construction of a housing project, the [administration] corporation may provide for an on-the-job training program or other projects as it may deem justifiable, including innovative projects to develop a larger qualified work force in the [State.] state.”

SECTION 10. Section 201H-12, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§201H-12**~~]]~~ **Development of property.** (a) The [administration,] corporation, in its own behalf or on behalf of any federal, state, or county agency, may:

- (1) Clear, improve, and rehabilitate property;
- (2) Plan, develop, construct, and finance housing projects; and
- (3) In cooperation with the department of education and department of accounting and general services, plan educational facilities and related infrastructure as a necessary and integral part of its [public] housing projects, using all its innovative powers toward achieving that end expeditiously and economically; provided that the educational facilities comply with the department of education’s educational specifications, timelines, and siting requirements.

(b) The [administration] corporation may develop public land in an agricultural district subject to the prior approval of the land use commission, when developing lands greater than fifteen acres in size, and public land in a conservation district subject to the prior approval of the board of land and natural resources. The [administration] corporation shall not develop state monuments ~~[or]~~, historical sites, or parks. When the [administration] corporation proposes to develop public land, it shall file with the department of land and natural resources a petition setting forth ~~[such] the purpose[-] for the development.~~ The petition shall be conclusive proof that the intended use is a public use superior to that which the land has been appropriated.

(c) The [administration] corporation may develop or assist in the development of federal lands with the approval of appropriate federal authorities.

(d) The [administration] corporation shall not develop any public land where the development may endanger the receipt of any federal grant, impair the eligibility of any [public body] government agency for a federal grant, prevent the participation of the federal government in any government program, or impair any covenant between the government and the holder of any bond issued by the government.

(e) The [administration] corporation may contract or sponsor with any county, housing authority, or person, subject to the availability of funds, an experimental or demonstration housing project designed to meet the needs~~[-]~~ of elders; the disabled; displaced or homeless persons; low- and moderate-income persons; teachers or other government employees; or university and college students and faculty.”

SECTION 11. Section 201H-14, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]§201H-14~~ **Contracts with the federal government**. (a) The ~~[admin-~~ istration] corporation may:

- (1) Borrow money or accept grants from the federal government for or in aid of any housing project that the ~~[administration] corporation~~ is authorized to undertake;
- (2) Take over any land acquired by the federal government for the construction or operation of a housing project with the approval of the federal government or at the request of the federal government;
- (3) Procure insurance or guarantees from the federal government ~~[of]~~ for the payment of any debts or parts thereof secured by mortgages made or held by the ~~[administration] corporation~~ on any property included in any housing project; ~~[and]~~
- (4) Comply with any conditions required by the federal government in any contract for financial assistance~~[-]; and~~
- (5) Execute contracts with the federal government.

(b) It is the purpose and intent of this ~~[chapter]~~ part to authorize the ~~[admin-~~ istration] corporation to do any and all things necessary to secure the financial aid and the cooperation of the federal government in the undertaking, construction, maintenance, and operation of any housing project that the ~~[administration] corporation~~ is empowered to undertake.”

PART VI

SECTION 12. The purpose of this part is to:

- (1) Make technical and conforming amendments to ensure that references to chapter throughout the Hawaii Revised Statutes are amended to reflect the “Hawaii public housing authority”;
- (2) Make technical and conforming amendments to ensure that references to chapter 201H throughout the Hawaii Revised Statutes are amended to reflect the “Hawaii housing finance and development corporation”;
- (3) Transfer appropriate housing functions to the Hawaii public housing authority; and
- (4) Amend Act 196, Session Laws of Hawaii 2005, to transfer appropriate housing functions to the Hawaii housing finance and development corporation.

SECTION 13. Section 53-1, Hawaii Revised Statutes, is amended by amending the definition of “housing and community development corporation of Hawaii”, “corporation”, “government”, “federal government”, and “real property” to read as follows:

“~~[“Housing and community development corporation of Hawaii”;~~ “Hawaii housing finance and development corporation”, “corporation”, “government”, “federal government”, and “real property” have the respective meanings set forth for these terms in chapter ~~[201G.] 201H.~~”

SECTION 14. The legislative reference bureau shall prepare proposed legislation that substitutes references made to “chapter 201G” or any specific section or part of chapter 201G, as the case may be, in sections 10-13.6, 26-14.6, 29-15.5, 46-1.5, 46-4, 46-15.1, 46-15.2, 53-1, 53-17, 104-2, 171-18.5, 171-19.5, 201H-10, 205-4, 206-1, 237-23, 237-29, 247-7, 321-15.6, 346-152, 467-2, 480-11, 514A-14.5, 514A-108, 514B-99.5, 516-1, 516-31, 516-104, and 521-7, Hawaii

Revised Statutes, with the corresponding chapter, part, or section number of the new law created and codified under this Act, as appropriate.

The legislative reference bureau shall submit the proposed legislation to the legislature not later than twenty days prior to the convening of the 2007 regular session.

SECTION 15. Act 196, Session Laws of Hawaii 2005, is amended by amending sections 20, 21, 22, 23, 24, and 25 by substituting the words “Hawaii housing finance and development corporation”, or like term, wherever the words “Hawaii housing finance and development administration”, or like term, appears, as the context requires.

SECTION 16. Act 196, Session Laws of Hawaii 2005, is amended by amending section 26 to read as follows:

“SECTION 26. (a) All references to the “housing and community development corporation of Hawaii”, or “corporation”¹ or similar terms as the case may be in [~~chapter 201G, and~~] sections 27-11, 53-6, 76-16, 209-16(b), 290-1(b), 290-8, and 521-7, Hawaii Revised Statutes, shall be amended to “Hawaii public housing [~~administration~~”]; authority”, [~~administration~~”]; authority”, or similar terms, as the case may be, as the context requires.

(b) All references to the “housing and community development corporation of Hawaii”, or “corporation”, or similar terms as the case may be in chapter 516, and sections [~~40-2,~~] 10-13.6, 36-24, 46-15.1, 53-17, 53-22(e), 111-8, 111-9, 171-2, 171-18.5, 171-50.2, 206E-15, 209-16(a), 209-17, 237-29, 247-3, [~~290-1(e),~~] 519-2(b), and 519-3(b), Hawaii Revised Statutes, shall be amended to [~~“Hawaii housing finance and development administration”, “administration”,~~] “Hawaii housing finance and development corporation”, “corporation”, or similar terms, as the case may be, as the context requires.”

SECTION 17. Act 196, Session Laws of Hawaii 2005, is amended by amending section 41 to read as follows:

- “SECTION 41. This Act shall take effect on July 1, 2005; provided that:
- (1) Sections 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30 shall take effect on July 1, 2006;
 - (2) Section 37 shall take effect upon the date specified by the governor pursuant to the notice provided under section 36 of this Act if, prior to July 1, 2007, the United States Department of Housing and Urban Development declares the housing and community development corporation of Hawaii to be in substantial default of the Memorandum of [~~Understanding~~] Agreement dated September 30, 2004; and
 - (3) Sections 36 and 37 shall be repealed on [~~July 1, 2007; and~~] July 1, 2007.
 - [(4) Section 5 shall be repealed on June 30, 2010, and section 201G-432, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day prior to the effective date of this Act.]”

SECTION 18. Act 204, Session Laws of Hawaii 2005, is amended by amending section 2 to read as follows:

“SECTION 2. The department of education shall meet with the [~~housing and community development corporation of Hawaii~~] Hawaii public housing authority to discuss the transfer of management of the teacher housing program to the department of education. The department of education shall prepare a report detailing the

feasibility of the transfer and the department of education's capacity to assume the [corporation's] authority's responsibilities.

The department of education shall submit its findings to the legislature no later than twenty days prior to the convening of the regular session of 2007."

SECTION 19. Act 204, Session Laws of Hawaii 2005, is amended by amending section 4 to read as follows:

"SECTION 4. All rights, powers, functions, and duties with respect to the administration of teachers' housing [is] are transferred from the [housing and community development corporation of Hawaii] Hawaii public housing authority to the department of education.

All rules, policies, procedures, guidelines, and other material adopted or developed by the [corporation] authority with respect to teachers' housing shall remain in full force and effect until amended or repealed by the department of education. In the interim, every reference to the [corporation] authority or chair of the board of directors of the [corporation] authority in those rules, policies, procedures, guidelines, and other material is amended to refer to the department of education, or the superintendent, or the chair of the board of education, as the case may be.

All deeds, leases, contracts, loans, agreements, permits, or other documents executed or entered into by or on behalf of the [corporation] authority pursuant to the Hawaii Revised Statutes that are reenacted or made applicable to the department of education by this Act shall remain in full force and effect. Effective July 1, 2008, every reference to the [housing and community development corporation of Hawaii] Hawaii public housing authority or the chair of the board of directors of the [corporation,] authority, with respect to teachers' housing, shall be construed as a reference to the department of education, or the superintendent, or the chair of the board of education, as the case may be.

All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property made, used, acquired, or held by the [corporation,] authority, with respect to teachers' housing that relate to the functions transferred to the department of education, shall be transferred with the functions to which they relate."

SECTION 20. All rights, powers, functions, and duties of the housing and community development corporation of Hawaii under part II of chapter 201G, Hawaii Revised Statutes, relating to public housing, except for subpart F, and in subparts D and M of part III of chapter 201G, Hawaii Revised Statutes, relating to housing tenants, and in part IV of chapter 201G, Hawaii Revised Statutes, relating to homeless assistance, are transferred to the Hawaii public housing authority.

SECTION 21. 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 22. All appropriations, records, equipment, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the housing and community development corporation of Hawaii relating to the functions transferred to the Hawaii public housing authority shall be transferred with the functions to which they relate.

SECTION 23. All rules, policies, procedures, guidelines, and other material adopted or developed by the housing and community development corporation of Hawaii to implement provisions of the Hawaii Revised Statutes that are made applicable to the Hawaii public housing authority by this Act, shall remain in full force and effect until amended or repealed by the Hawaii public housing authority, pursuant to chapter 91, Hawaii Revised Statutes.

In the interim, every reference to the housing and community development corporation of Hawaii or the executive director of the housing and community development corporation of Hawaii in those rules, policies, procedures, guidelines, and other material is amended to refer to the Hawaii public housing authority or the executive director of the Hawaii public housing authority, as appropriate.

SECTION 24. All rental agreements made by the housing and community development corporation of Hawaii prior to July 1, 2006 that are made applicable to the Hawaii public housing authority by this Act shall remain in full force and effect until the completion of their lease terms.

PART VII

SECTION 25. There is appropriated out of the general revenues of the State of Hawaii the sum of \$708,300 or so much thereof as may be necessary for fiscal year 2006-2007 to be expended to purchase a computer network, printers, and faxes for the Hawaii housing finance and development corporation.

The sum appropriated shall be expended by the Hawaii housing finance and development corporation for the purposes of this Act.

SECTION 26. There is appropriated out of the special funds the sum of \$366,303 or so much thereof as may be necessary for fiscal year 2006-2007 as follows:

- (1) One full-time equivalent (1.00 FTE) executive director position;
- (2) One full-time equivalent (1.00 FTE) executive assistant position;
- (3) One full-time equivalent (1.00 FTE) secretary II position;
- (4) One full-time equivalent (1.00 FTE) clerk III position;
- (5) One full-time equivalent (1.00 FTE) account clerk V position; and
- (6) One full-time equivalent (1.00 FTE) secretary III position.

The sum appropriated shall be expended by the Hawaii housing finance and development corporation for the purposes of this Act.

PART VIII

SECTION 27. There is appropriated out of federal revenues of the State of Hawaii the sum of \$99,427 or so much thereof as may be necessary for fiscal year 2006-2007 as follows:

- (1) One full-time equivalent (1.00 FTE) clerk typist II position;
- (2) One full-time equivalent (1.00 FTE) account clerk III position; and
- (3) One full-time equivalent (1.00 FTE) clerk typist III position.

The sum appropriated shall be expended by the Hawaii public housing authority for the purposes of this Act.

SECTION 28. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,791,700 or so much thereof as may be necessary for fiscal year 2006-2007 for the purpose of renovations to the Hawaii public housing authority's School street office.

The sum appropriated shall be expended by the Hawaii public housing authority for the purposes of this Act.

PART IX

SECTION 29. Chapter 201G, Hawaii Revised Statutes, is repealed.

SECTION 30. Act 227, Session Laws of Hawaii 2002, is repealed.

SECTION 31. 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 under this Act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the State.

SECTION 32. 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 33. In codifying the new sections added by sections 3 through 5 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 34. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 35. This Act shall take effect on July 1, 2006; provided that subpart B of part IV relating to housing for teachers in section 2 of this Act shall be repealed on July 1, 2008.

(Approved June 9, 2006.)

Note

1. Prior to amendment, a comma appeared here.

ACT 181

S.B. NO. 951

A Bill for an Act Relating to Fire Protection.

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

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . ARSON

§708- Arson in the first degree. (1) A person commits the offense of arson in the first degree if the person intentionally or knowingly sets fire to or causes to be burned property and:

- (a) Knowingly places another person in danger of death or bodily injury; or
- (b) Knowingly or recklessly damages the property of another, without the other’s consent, in an amount exceeding \$20,000.

(2) Arson in the first degree is a class A felony.

§708- Arson in the second degree. (1) A person commits the offense of arson in the second degree if the person intentionally or knowingly sets fire to or causes to be burned property and:

- (a) Recklessly places another person in danger of death or bodily injury; or
- (b) Knowingly or recklessly damages the property of another, without the other’s consent, in an amount exceeding \$1,500.

(2) Arson in the second degree is a class B felony.

§708- Arson in the third degree. (1) A person commits the offense of arson in the third degree if the person intentionally or knowingly sets fire to or causes to be burned property and:

- (a) Negligently places another person in danger of death or bodily injury; or
- (b) Knowingly or recklessly damages the property of another, without the other’s consent, in an amount exceeding \$500.

(2) Arson in the third degree is a class C felony.

§708- Arson in the fourth degree. (1) A person commits the offense of arson in the fourth degree if the person intentionally or knowingly sets fire to or causes to be burned property and thereby damages the property of another without the other’s consent.

(2) Arson in the fourth degree is a misdemeanor.”

SECTION 2. Section 708-800, Hawaii Revised Statutes, is amended by amending the definition of “widely dangerous means” to read as follows:

““Widely dangerous means” includes explosion, [~~fire,~~] flood, avalanche, collapse of building, poison gas, radioactive material, or any other material, substance, force, or means capable of causing potential widespread injury or damage.”

SECTION 3. 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[:] by means other than fire:

- (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 4. 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[:] by means other than fire:

- (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 5. Section 708-822, Hawaii Revised Statutes, is amended to read as follows:

“§708-822 Criminal property damage in the third degree. (1) A person commits the offense of criminal property damage in the third degree if[:] by means other than fire:

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

SECTION 6. Section 708-823, Hawaii Revised Statutes, is amended to read as follows:

“§708-823 Criminal property damage in the fourth degree. (1) A person commits the offense of criminal property damage in the fourth degree if by means other than fire, the person intentionally damages the property of another without the other’s consent.

- (2) Criminal property damage in the fourth degree is a petty misdemeanor.”

SECTION 7. Section 708-823.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of aggravated criminal property damage if the person[:] by means other than fire:

- (a) Intentionally damages the property of another without the other’s consent; and
- (b) Has been convicted two or more times of an offense under section 708-822 or 708-823 in the preceding five years.”

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.

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

(Approved June 9, 2006.)

ACT 182

S.B. NO. 2941

A Bill for an Act Relating to Brush Fires.

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

SECTION 1. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§708- Special sentencing considerations for arson; other actions not prohibited. In addition to any other penalty imposed, a person convicted of arson involving fire set to brush, grass, vegetation on the land resulting in damage to 10,000 square feet of property, may be required to:

- (a) Pay any costs associated with extinguishing the fire; and
- (b) Perform community service work in the region in which the property damage occurred.

With regard to any fire¹ or monetary penalty that may be imposed on a minor convicted or adjudicated for an offense of arson, the parents or legal guardians of the minor shall be liable for the percentage of costs associated with extinguishing the fire based upon the apportionment of fire damage to real or personal property caused by the minor as a result of committing the offense of arson, regardless of whether the property is publicly or privately owned.

Nothing in this section shall prohibit a separate criminal action being brought by the State or a civil action being brought by the State or a third party for conduct that constitutes an offense of arson.”

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.²

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

(Approved June 9, 2006.)

Notes

1. So in original.

2. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Relating to Fireworks.

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

SECTION 1. The purpose of this Act is to use common terminology that is consistent with the regulations of the federal Bureau of Alcohol, Tobacco, Firearms, and Explosives; to delete all references to the defunct United States Bureau of Explosives; to include and define articles pyrotechnic so as to regulate the importation, storage, transfer, sale, and use of those devices; and to include articles pyrotechnic in the term "display".

SECTION 2. Section 132D-2, Hawaii Revised Statutes, is amended by adding two new definitions to be appropriately inserted and to read as follows:

"Aerial device" means any fireworks containing one hundred thirty milligrams or less of explosive materials that produces an audible or visible effect and is designed to rise into the air and explode or detonate in the air or to fly about above the ground, and that is prohibited for use by any person who does not have a permit for display issued by a county under section 132D-16. "Aerial devices" classified as fireworks under UN0336 and UN0337 by the United States Department of Transportation as set forth in Title 49 Code of Federal Regulations include firework items commonly known as bottle rockets, sky rockets, missile-type rockets, helicopters, torpedoes, daygo bombs, roman candles, flying pigs, and jumping jacks that move about the ground farther than a circle with a radius of twelve feet as measured from the point where the item was placed and ignited, aerial shells, and mines.

"Articles pyrotechnic" means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 by the United States Department of Transportation."

SECTION 3. Section 132D-2, Hawaii Revised Statutes, is amended by amending the definitions of "common fireworks", "fireworks", "public display", and "special fireworks" to read as follows:

~~"Common fireworks"~~ "Consumer fireworks" means any [firework] fireworks designed primarily for retail sale to the public during [prescribed] authorized dates [and which] and times, that produces visible or audible effects [through] by combustion, and [which] that is [classified as common fireworks by the United States Bureau of Explosives or contained in the regulations of the United States Department of Transportation and designated as UN 0336 1.4G.] designed to remain on or near the ground and, while stationary or spinning rapidly on or near the ground, emits smoke, a shower of colored sparks, whistling effects, flutter sparks, or balls of colored sparks, and includes combination items that contain one or more of these effects. "Consumer fireworks" shall comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission as set forth in Title 16 Code of Federal Regulations and fireworks classified as UN0336 and UN0337 by the United States Department of Transportation as set forth in Title 49 Code of Federal Regulations. "Consumer fireworks" include firework items commonly known as firecrackers that are single paper cylinders not exceeding one and one-half inches in length excluding the fuse and one quarter of an inch in diameter and contain a charge of not more than fifty milligrams of pyrotechnic composition, snakes, sparklers, fountains, and cylindrical or cone

fountains that emit effects up to a height not greater than twelve feet above the ground, illuminating torches, bamboo cannons, whistles, toy smoke devices, wheels, and ground spinners that when ignited remain within a circle with a radius of twelve feet as measured from the point where the item was placed and ignited, novelty or trick items, combination items, and other fireworks of like construction that are designed to produce the same or similar effects.

“Fireworks” means any combustible or explosive composition, or any substance or combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and ~~[classified as common]~~ that meets the definition of aerial device or consumer or ~~[special]~~ display fireworks ~~[by the United States Bureau of Explosives or]~~ as defined by this section and contained in the regulations of the United States Department of Transportation ~~[and designated as UN 0335 1.3G or UN 0336 1.4G.]~~ as set forth in Title 49 Code of Federal Regulations. The term “fireworks” shall not include any explosives or pyrotechnics regulated under chapter 396 or automotive safety flares, nor shall the term be construed to include toy pistols, toy cannons, toy guns, party poppers, pop-its, or other devices which contain twenty-five hundredths of a grain or less of ~~[explosives]~~ explosive substance. ~~[The term “fireworks” also shall not include any explosives and pyrotechnics regulated under chapter 396.]~~

~~[-“Public display”]~~ “Display” means ~~[a public exhibition and]~~ the use of ~~[fireworks]~~ aerial devices, display fireworks, or articles pyrotechnic for ~~[commercial activities]~~ any activity, ~~[(including such activities as movie or television production)].~~

“~~[Special] Display fireworks”~~ means any ~~[firework]~~ fireworks designed primarily for exhibition display by producing visible or audible effects and classified as ~~[special] display fireworks [by the United States Bureau of Explosives]~~ or contained in the regulations of the United States Department of Transportation and designated as ~~[UN 0335 1.3G and which are]~~ UN0333 or UN0335, and includes salutes containing more than two grains (one hundred and thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as “consumer fireworks”. This term also includes fused setpieces containing components, which together exceed fifty milligrams of salute power. The use of display fireworks shall be prohibited for use by any person who does not have a display permit issued by a county.”

SECTION 4. Section 132D-3, Hawaii Revised Statutes, is amended to read as follows:

“~~§132D-3 Permissible uses of [non-aerial common] consumer fireworks.~~ ~~[Non-aerial common] Consumer fireworks may be set off, ignited, discharged, or otherwise caused to explode within the State only:~~

- (1) From 9:00 p.m. on New Year’s Eve to 1:00 a.m. on New Year’s Day; from 7:00 a.m. to 7:00 p.m. on Chinese New Year’s Day; and from 1:00 p.m. to 9:00 p.m. on the Fourth of July; or
- (2) From 9:00 a.m. to 9:00 p.m. as allowed by permit pursuant to section 132D-10 if the proposed cultural use is to occur at any time other than during the periods prescribed in paragraph (1);

provided that the purchase of not more than ~~[5,000]~~ five thousand individual ~~[non-aerial common] consumer fireworks commonly known as firecrackers shall be allowed under each permit.”~~

SECTION 5. Section 132D-4, Hawaii Revised Statutes, is amended to read as follows:

“§132D-4 Permissible uses of [special] display fireworks, articles pyrotechnic, and aerial [common fireworks.] devices. [Special] Display fireworks, articles pyrotechnic, and aerial [common fireworks] devices may be purchased, set off, ignited, or otherwise caused to explode in the State only if for [public] display and permitted in writing pursuant to sections 132D-10 and 132D-16.”

SECTION 6. Section 132D-5, Hawaii Revised Statutes, is amended to read as follows:

“[§132D-5] General prohibitions. (a) It shall be unlawful for any person without a permit to:

- (1) Remove or extract the pyrotechnic contents from any fireworks;
- (2) Throw any ignited fireworks from a moving vehicle; or
- (3) Set off, ignite, discharge, or otherwise cause to explode any fireworks:
 - (A) At any time not within the periods for use prescribed in section 132D-3, unless permitted pursuant to section 132D-10;
 - (B) Within one thousand feet from any operating hospital, convalescent home, home for the elderly, or animal hospital;
 - (C) In any school building, or on any school grounds and yards without first obtaining authorization from appropriate school officials;
 - (D) On any highway, alley, street, sidewalk, or other public way; in any park; within fifty feet from a canefield; or within one thousand feet from any building used for public worship during the periods when services are held; except as may be permitted pursuant to section 132D-10; and
 - (E) Within five hundred feet from any hotel.

(b) It shall be unlawful to purchase consumer fireworks more than five calendar days before the time periods for permissible use under section 132D-3.

(c) It shall be unlawful to sell consumer fireworks after 12:01 a.m. on New Year’s Day, 6:00 p.m. on Chinese New Year’s Day, and 8:00 p.m. on the Fourth of July.”

SECTION 7. Section 132D-7, Hawaii Revised Statutes, is amended to read as follows:

“§132D-7 License or permit required. A person shall not:

- (1) Import, store, offer to sell, or sell, at wholesale or retail, aerial [~~common fireworks, special fireworks, or non-aerial common~~] devices, display fireworks, articles pyrotechnic, or consumer fireworks unless the person has a valid license issued by the county; or
- (2) Possess aerial [~~common fireworks or special~~] devices, display fireworks, or articles pyrotechnic without a valid license to import, store, or sell aerial [~~common fireworks or special~~] devices, display fireworks, or articles pyrotechnic, or a valid display permit as provided for in this chapter~~;~~ or
- (3) ~~Purchase non-aerial common fireworks with a permit under section 132D-10 more than five calendar days before the applicable time period for use prescribed in section 132D-3 in the county that issued the permit.”~~

SECTION 8. Section 132D-8, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) It shall be unlawful for any [person,] licensee, other than a wholesaler who is selling or transferring fireworks or articles pyrotechnic to a licensed retailer,

to sell or offer to sell, exchange for consideration, give, transfer, or donate any fireworks or articles pyrotechnic at any time to any person who does not present a permit duly issued as required by section 132D-10 or 132D-16. The permit shall be signed by the seller or transferor at the time of sale or transfer of the fireworks[,] or articles pyrotechnic, and the seller or transferor shall indicate on the permit the amount and type of fireworks or articles pyrotechnic sold or transferred. No person shall sell or deliver fireworks to any permittee in any amount in excess of the amount specified in the permit, less the amount shown on the permit [previously] to have been previously purchased; provided that no fireworks shall be sold to a permittee holding a permit issued for purposes of section 132D-3, more than five calendar days before the applicable time period under section 132D-3.

(d) Aerial [~~common fireworks, special~~] devices, display fireworks, or [both,] articles pyrotechnic shall only be sold or transferred by a wholesaler to a person with a valid permit under sections 132D-10 and 132D-16. No person with a valid permit under sections 132D-10 and 132D-16 shall sell or transfer aerial [~~common fireworks, or special~~] devices, display fireworks, [or both,] or articles pyrotechnic to any other person.”

SECTION 9. Section 132D-8.5, Hawaii Revised Statutes, is amended to read as follows:

“[~~§132D-8.5~~] **Importation of aerial [~~common fireworks, special~~] devices, display fireworks, or [both,] articles pyrotechnic for [public] display.** Aerial [~~common fireworks, special~~] devices, display fireworks, or [both,] articles pyrotechnic shall only be imported and stored, if necessary, in an amount sufficient for an anticipated three-month inventory; provided that if a licensee under section 132D-7 provides aerial [~~common fireworks, special~~] devices, display fireworks, or [both,] articles pyrotechnic for [public] displays as allowed under section 132D-16 more than once a month, the licensee may import or store, if necessary, sufficient aerial [~~common fireworks, special~~] devices, display fireworks, or [both,] articles pyrotechnic for a six-month inventory.”

SECTION 10. Section 132D-8.6, Hawaii Revised Statutes, is amended to read as follows:

“[~~§132D-8.6~~] **Requirements of licensee.**[~~] (a) Any person who has obtained a license under section 132D-7 and ships fireworks or articles pyrotechnic into the State shall:~~

- (1) Clearly designate the types of fireworks or articles pyrotechnic in each shipment on the bill of lading or shipping manifest with specificity;
- (2) Declare on the bill of lading or shipping manifest the gross weight of aerial [~~common fireworks, non-aerial common~~] devices, consumer fireworks, [and special] display fireworks, and articles pyrotechnic to be imported in each shipment and the location of the storage facility, if applicable, in which the fireworks or articles pyrotechnic are to be stored;
- (3) Prior to shipment and when booking each shipment of fireworks[,] or articles pyrotechnic notify the appropriate county official as determined by the county regarding whether the shipment will be distributed from:
 - (A) Pier to pier;
 - (B) Pier to warehouse or storage facility; or
 - (C) Pier to redistribution; and

(4) At the time shipping is booked, the importer or consignee shall notify the appropriate county official as determined by the county in writing of the expected shipment's landing date.

(b) The fire department of a county, in which a shipment of fireworks or articles pyrotechnic has landed and becomes subject to the jurisdiction of the fire department, shall be allowed to inspect, if it chooses, any shipment declared on the shipping manifest as fireworks[-] or articles pyrotechnic.

(c) The facility in which fireworks or articles pyrotechnic are to be stored ~~[must:]~~ shall:

(1) Have received approval fifteen days prior to the shipment's arrival from the appropriate county fire department; and

(2) Meet all state and county fire and safety codes.

(d) Any fireworks or articles pyrotechnic landed in the State shall be subject to seizure and forfeiture if:

(1) The importer or consignee does not have in the importer's or consignee's possession a valid license to import fireworks or articles pyrotechnic under section 132D-7;

(2) The consignee does not have a valid license to store fireworks or articles pyrotechnic under section 132D-7; or

(3) The fireworks or articles pyrotechnic have not been declared or have been misdeclared in violation of ~~[[]subsection[]]~~ (a).

(e) No person holding a retailer license to sell ~~[non-aerial-common]~~ consumer fireworks shall be allowed to sell ~~[non-aerial-common]~~ consumer fireworks commonly known as firecrackers in a packet size larger than ~~[5,000]~~ five thousand individual units. Any person violating this subsection shall be guilty of a misdemeanor.

(f) Any person violating ~~[subsections]~~ subsection (a), (c), or (d) shall be subject to the following for shipments of fireworks or articles pyrotechnic of:

(1) Twenty-five pounds or less gross weight shall be a petty misdemeanor;

(2) Over twenty-five pounds to three hundred pounds gross weight shall be a misdemeanor;

(3) Over three hundred pounds to ten thousand pounds gross weight shall be a class C felony; and

(4) More than ten thousand pounds gross weight shall be a class B felony."

SECTION 11. Section 132D-9, Hawaii Revised Statutes, is amended to read as follows:

"§132D-9 Application for permit. The permit required under section 132D-10 or 132D-16 shall be issued by the county and be nontransferable. The county shall issue all permits for which complete applications have been submitted and which contain only correct information. The permit shall specify the date of issuance or effect and the date of expiration but in no case for a period to exceed one year. The permit for the purchase of ~~[non-aerial-common]~~ consumer fireworks for the purposes of section 132D-3 shall not allow purchase for more than one event as set forth in section 132D-3. The application shall be made on a form setting forth the dates for which the permit shall be valid, the location where the permitted activity is to occur, and the name of the proprietor or, if a partnership, the name of the partnership and the names of all partners or, if a corporation, the name of the corporation and the names of its officers. The permit application may be denied if the proposed use of fireworks or articles pyrotechnic presents a substantial inconvenience to the public or presents an unreasonable fire or safety hazard. Any permit issued pursuant to this chapter shall be prominently displayed in public view at the site."

SECTION 12. Section 132D-10, Hawaii Revised Statutes, is amended to read as follows:

- “**§132D-10 Permits.** A permit shall be required for the purchase and use of:
- (1) Any ~~[non-aerial-common]~~ consumer fireworks commonly known as firecrackers upon payment of a fee of \$25; and
 - (2) Any aerial ~~[common fireworks and any special]~~ devices, display fireworks, or articles pyrotechnic for the purposes of section 132D-16[-] upon payment of a fee of \$110.”

SECTION 13. Section 132D-11, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The fee for the license required under section 132D-7 shall be \$3,000 for importers, \$2,000 for each wholesaler’s site, \$1,000 for each storage site, and \$500 for each retailer’s site[-, and \$110 for permits for public display under section 132D-16] for each year or fraction of a year in which the licensee plans to conduct business and shall be payable to the county. The license fees shall be used solely by each county fire department to pay for the salary of an auditor of fireworks and articles pyrotechnic records[-] and all expenses incurred to fulfill the duties required, including the inspection of inventory and storage facilities, maintenance of required records, and the training of the auditor. The auditor shall monitor strict inventory and recordkeeping requirements to ensure that sales of fireworks or articles pyrotechnic are made only to license or permit holders under this chapter. The county shall provide an exemption from the fees under this section to nonprofit community groups for importation and storage of fireworks or articles pyrotechnic for displays once a year.”

SECTION 14. Section 132D-12, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§132D-12**~~]]~~ **Sale to minors.** It shall be unlawful for any person to offer for sale, sell, or give any fireworks or articles pyrotechnic to minors, and for any minor to possess, purchase, or set off, ignite, or otherwise cause to explode any fireworks[-,] or articles pyrotechnic, except as provided in section 132D-13.”

SECTION 15. Section 132D-13, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§132D-13**~~]]~~ **Liability of parents or guardians.** The parents, guardian, and other persons having the custody or control of any minor, who knowingly permit the minor to possess, purchase, or set off, ignite, or otherwise cause to explode any fireworks[-,] or articles pyrotechnic, shall be deemed to be in violation of this chapter and shall be subject to the penalties thereunder, except that the parents or guardian may allow the minor to use consumer fireworks while under the immediate supervision and control of the parent or guardian, or under the supervision and control of another adult.”

SECTION 16. Section 132D-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) Any person:
- (1) Importing aerial [common fireworks or special] devices, display fireworks, or articles pyrotechnic without having a valid license under section 132D-7 shall be guilty of a class C felony;
 - (2) Purchasing, possessing, setting off, igniting, or discharging aerial [common fireworks or special] devices, display fireworks, or articles

pyrotechnic without a valid permit under sections 132D-10 and 132D-16, or storing, selling, or possessing aerial [~~common fireworks or special~~] devices, display fireworks, or articles pyrotechnic without a valid license under section 132D-7:

- (A) If the total weight of the aerial [~~common fireworks or special~~] devices, display fireworks, or articles pyrotechnic is twenty-five pounds or more, shall be guilty of a class C felony; or
- (B) If the total weight of the aerial [~~common fireworks or special~~] devices, display fireworks, or articles pyrotechnic is less than twenty-five pounds, shall be guilty of a misdemeanor[-];
- (3) Who transfers or sells aerial [~~common fireworks or special~~] devices, display fireworks, or articles pyrotechnic to a person who does not have a valid permit under sections 132D-10 and 132D-16, shall be guilty of a class C felony; and
- (4) Who removes or extracts the pyrotechnic contents from any fireworks or articles pyrotechnic and uses the contents to construct fireworks, articles pyrotechnic, or a fireworks or articles pyrotechnic related device shall be guilty of a misdemeanor.”

SECTION 17. Section 132D-16, Hawaii Revised Statutes, is amended to read as follows:

“**§132D-16 Permit for [public] display.** (a) Any person desiring to set off, ignite, or discharge aerial [~~common fireworks, special~~] devices, display fireworks, or [both,] articles pyrotechnic for a [public] display shall apply to, and obtain a permit as required by section 132D-10, from the county not less than twenty days before the date of the display.

(b) The application shall state, among other things:

- (1) The name, age, and address of the applicant;
- (2) The name, age, and address of the person who will operate the display, and verification that the person is a licensed pyrotechnic operator;
- (3) The time, date, and place of the display;
- (4) The type and quantity of aerial [~~common fireworks, special~~] devices, display fireworks, or [both,] articles pyrotechnic to be displayed; and
- (5) The purpose or occasion for which the display is to be presented.

(c) No permit shall be issued under this section unless the applicant presents, at the applicant’s option, either:

- (1) A written certificate of an insurance carrier, which has been issued to or for the benefit of the applicant, or a policy providing for the payment of damages in the amount of not less than \$5,000 for injury to, or death of, any one person, and subject to the foregoing limitation for one person; in the amount of not less than \$10,000 for injury to, or death of, two or more persons; and in the amount of not less than \$5,000 for damage to property, caused by reason of the authorized display and arising from any tortious acts or negligence of the permittee, the permittee’s agents, employees, or subcontractors. The certificate shall state that the policy is in full force and effect and will continue to be in full force and effect for not less than ten days after the date of the [public] display; or
- (2) The bond of a surety company duly authorized to transact business within the State, or a bond with not less than two individual sureties who together have assets in the State equal in value to not less than twice the amount of the bond, or a deposit of cash, in the amount of not less than \$10,000 conditioned upon the payment of all damages that may be caused to any person or property by reason of the authorized

display and arising from any tortious acts or negligence of the permittee, the permittee's agents, employees, or subcontractors. The security shall continue to be in full force and effect for not less than ten days after the date of the [public] display.

The county may require coverage in amounts greater than the minimum amounts set forth in paragraph (1) or (2) if deemed necessary or desirable in consideration of such factors as the location and scale of the display, the type of aerial [~~common fireworks, special~~] devices, special fireworks, or [both,] articles pyrotechnic to be used, and the number of spectators expected.

(d) The county, pursuant to duly adopted rules, shall issue the permit after being satisfied that the requirements of subsection (c) have been met, the display will be handled by a pyrotechnic operator duly licensed by the State, the display will not be hazardous to property, and the display will not endanger human life. The permit shall authorize the holder to display aerial [~~common fireworks, special~~] devices, display fireworks, or [both,] articles pyrotechnic only at the place and during the time set forth therein, and to acquire and possess the specified aerial [~~common fireworks, special~~] devices, display fireworks, or [both,] articles pyrotechnic between the date of the issuance of the permit and the time during which the display of those aerial [~~common fireworks, special~~] devices, display fireworks, or [both,] articles pyrotechnic is authorized."

SECTION 18. Section 132D-17, Hawaii Revised Statutes, is amended to read as follows:

"§132D-17 Inconsistent county ordinances, rules. Notwithstanding any other law to the contrary, no county shall enact ordinances or adopt any rules regulating fireworks[,] or articles pyrotechnic, except as required in this chapter, that is inconsistent with or more restrictive than, the provisions of this chapter. Any ordinances and rules regulating fireworks or articles pyrotechnic that were enacted or adopted by a county before March 31, 1995, except those provisions which are not inconsistent with, or more restrictive than those of this chapter, are declared void."

SECTION 19. Section 132D-21, Hawaii Revised Statutes, is amended to read as follows:

"[§132D-21] Health care facilities; report of fireworks and articles pyrotechnic incidents. Health care facilities in this State shall report all incidents of serious injuries and fatalities caused by legal and illegal fireworks or articles pyrotechnic to the department of health and the police department of the county in which the person was attended or treated. All reports shall be in writing or in the manner specified by the department of health.

As used in this section, "health care facilities" includes any outpatient clinic, emergency room, or [~~doctor's~~] physician's office, private or public, whether organized for profit or not, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person or persons. The term includes but is not limited to health care facilities that are commonly referred to as hospitals, extended care and rehabilitation centers, nursing homes, skilled nursing facilities, intermediate care facilities, hospices for the terminally ill that require licensure or certification by the department of health, kidney disease treatment centers, including freestanding hemodialysis units, outpatient clinics, organized ambulatory health care facilities, emergency care facilities and centers, home health agencies, health maintenance organizations, and others providing similarly organized services regardless of nomenclature."

SECTION 20. Section 132D-2, Hawaii Revised Statutes, is amended by repealing the definitions of “aerial common fireworks” and “non-aerial common fireworks”:

~~[“Aerial common fireworks” means any firework, classified as common fireworks by the United States Bureau of Explosives or contained in the regulations of the United States Department of Transportation and designated as UN 0336 1.4G, which produces an audible or visible effect and which is designed to rise into the air and explode or detonate in the air or to fly about above the ground and which is prohibited for use by any person who does not have a permit for public display issued by a county under section 132D-16. “Aerial common fireworks” include firework items commonly known as bottle rockets, sky rockets, missile-type rockets, helicopters, torpedoes, daygo bombs, roman candles, flying pigs, and jumping jacks, which move about the ground farther than inside a circle with a radius of twelve feet as measured from the point where the item was placed and ignited, aerial shells, and mines.~~

~~“Non-aerial common fireworks” means any firework, classified as common fireworks by the United States Bureau of Explosives or contained in the regulations of the United States Department of Transportation and designated as UN 0336 1.4G, which produces an audible or visible effect and which is designed to remain on or near the ground and which, while stationary or spinning rapidly on or near the ground, emits smoke, a shower of colored sparks, whistling effects, flutter sparks or balls of colored sparks and combination items which contain one or more of these effects. “Non-aerial common fireworks” include firework items commonly known as firecrackers which are single paper cylinders not exceeding one and one-half inches in length excluding the fuse and one-quarter of an inch in diameter containing a charge of not more than fifty milligrams of pyrotechnic composition, snakes, sparklers, fountains, and cylindrical or cone fountains which emit effects up to a height not greater than twelve feet above the ground, illuminating torches, bamboo canons, whistles, toy smoke devices, wheels, and ground spinners which when ignited remain within a circle with a radius of twelve feet as measured from the point where the item was placed and ignited, novelty or trick items, combination items, and other fireworks of like construction which are designed to produce the same or similar effects.”]~~

SECTION 21. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 22. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 23. This Act shall take effect on August 1, 2006.

(Approved June 9, 2006.)

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 425E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§425E- Personal liability and penalty. (a) Any general partner who neglects or fails to comply with any provision of this chapter shall severally forfeit to the State \$25 for each month the neglect or failure continues, to be recovered by action brought in the name of the State by the director; provided that as to the forfeiture penalty, the director, for good cause shown, may reduce or waive the penalty.

(b) Any person who signs or certifies as correct any statement or certificate filed pursuant to this chapter, knowing the same to be false in any material particular, shall be guilty of a class C felony.

(c) Any person who negligently, but without intent to defraud, signs or certifies as correct any statement or certificate, filed pursuant to this chapter, that is false in any material particular, shall be punished by a fine not exceeding \$500.”

SECTION 2. Section 414-3, Hawaii Revised Statutes, is amended by amending the definition of “individual” to read as follows:

““Individual” means a natural person [~~or the estate of an incompetent or deceased individual~~].”

SECTION 3. Section 414-64, Hawaii Revised Statutes, is amended by amending subsections (b) and (d)¹ to read as follows:

“(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and [~~in case~~] the corporation has not filed with the department director, pursuant to this chapter, the name of a registered agent upon whom legal notice and process from the courts of the State may be served, [~~and likewise if~~] or 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.

(c) Service using registered or certified mail is perfected at the earliest of:

- (1) The date the corporation receives the mail;
- (2) The date shown on the return receipt, if signed on behalf of the corporation; or
- (3) Five days after its deposit in the United States mail, as evidenced by the postmark, if mailed postpaid and correctly addressed.

[(e)] (d) Nothing contained [~~herein~~] in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a corporation in any other manner permitted by law.”

SECTION 4. Section 414-314, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Articles of merger shall be delivered to the department director for filing and shall set forth:

- (1) The name and jurisdiction of incorporation of the subsidiary corporation, and the name and jurisdiction of incorporation of the corporation owning at least ninety per cent of its shares, which is hereinafter designated as the surviving corporation;
- (2) A statement that the plan of merger has been approved by the board of directors of the surviving corporation;
- (3) The number of outstanding shares of each class of the subsidiary corporation and the number of shares of each class owned by the surviving corporation; [~~and~~]

- (4) The date a copy of the plan of merger [is] was mailed to shareholders of the subsidiary corporation entitled to receive the plan[-]; 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 that is to merge;
 - (B) An irrevocable appointment of a resident of this state as its agent to accept service of process in a proceeding under subparagraph (A), 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."

SECTION 5. Section 414-315, Hawaii Revised Statutes, is amended as follows:

“§414-315 Articles of merger or share exchange. (a) After a plan of merger or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, articles of merger or share exchange shall be signed on behalf of each corporation and each other entity that is a party to the merger and shall be delivered to the department director for filing. The articles of merger or share exchange shall set forth:

- (1) For a merger, the name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity [~~with or into which they propose to merge, which is hereinafter designated as the surviving entity~~];
- (2) For a share exchange, the name, address, and jurisdiction of both the corporation whose shares will be acquired and [~~the name of~~] the acquiring corporation;
- (3) A statement that the plan of merger or share exchange has been approved by each entity involved in the merger or share exchange;
- (4) 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
- (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~~] that 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;~~] a proceeding under subparagraph (A), 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.
- (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 department director articles of amendment that identify the articles of merger and set 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 department 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 operate as an amendment to the corporation's articles of incorporation.

~~[(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.]~~"

SECTION 6. Section 414-318, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) Mergers under this section shall also be subject to sections 414-313(k) and 414-315(a)~~[-(b), and -(d)-]~~ and (b)."

SECTION 7. Section 414-402, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (e) to read:

"(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, claimants, and shareholders of the dissolved corporation with full powers to settle its affairs."

2. By amending subsection (g) to read:

"(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~~[;]~~, and upon the amendment, the corporation may resume carrying on its business as if the dissolution had never occurred; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if ~~[such]~~ that 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]~~ the amendment provisions of this chapter."

SECTION 8. Section 414-436, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) If the corporate name of a foreign corporation does not satisfy the requirements of section ~~[414-51,]~~ 414-51(b), (c), and (d), the foreign corporation to obtain or maintain a certificate of authority to transact business in this State may use a fictitious name to transact business in this State if its real name is unavailable and it delivers to the department director for filing a copy of a certificate of registration of a

trade name by the foreign corporation under which the foreign corporation will transact business in this State.”

SECTION 9. Section 414D-14, Hawaii Revised Statutes, is amended by amending the definition of “individual” to read as follows:

““Individual” means a natural person [~~or the estate of an incompetent or deceased individual~~].”

SECTION 10. Section 414D-74, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If no officer, director, manager, superintendent, or other person in charge of the property, business, or office of the corporation can be found within the State, and [~~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~~] or 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~~].”

SECTION 11. Section 414D-203, Hawaii Revised Statutes, is amended as follows:

“**§414D-203 Articles of merger.** (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, articles of merger shall be signed on behalf of each corporation and each other entity that is a party to the merger and shall be delivered to the department director for filing. The articles of merger shall set forth:

- (1) The name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity;
 - (2) A statement that the plan of merger has been approved by each entity involved in 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; and
 - (4) 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~~] that 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~~], a proceeding under subparagraph (A), 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.
- (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 department director articles of amendment that identify the articles of merger and set 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 department director a certificate of termination that identifies the articles of merger and the plan of merger and states that the plan of merger has been terminated.

(c) Articles of merger operate as an amendment to the corporation's articles of incorporation.

~~[(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.]~~

SECTION 12. Section 414D-249, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) [Upon determining] If the department director determines 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.”

2. By amending subsection (e) to read:

“(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]~~, claimants, and members of the dissolved corporation with full powers to settle its affairs.”

3. By amending subsection (g) to read:

“(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] the~~ dissolution, may amend its articles of incorporation to extend its period of duration~~[.]~~ and, upon the amendment, the corporation may resume carrying on its business as if the dissolution had never occurred; provided that if the name of the corporation, or a name substantially identical is registered or reserved by another entity, or if ~~[such] that~~ 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] the~~ amendment provisions of this chapter.”

SECTION 13. Section 414D-250, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation administratively dissolved under section 414D-249 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) [State] Recite the name of the corporation and the effective date of its administrative dissolution;

- (2) [~~State that the ground or grounds for dissolution either did not exist or have been eliminated; and~~] Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees; and
- ~~[(3)]~~ (4) Contain a certificate from the department of taxation reciting that all taxes owed by the corporation have been paid.”

SECTION 14. Section 421-1, Hawaii Revised Statutes, is amended by amending the definitions of “individual” and “person” to read:

““Individual” means a natural person[~~, or the estate of an incompetent or deceased individual~~].

“Person” includes individuals, partnerships, corporations, limited liability companies, and associations.”

SECTION 15. Section 421-21.6, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) The articles of merger shall be [~~filed with~~] delivered to the director of commerce and consumer affairs[~~;~~] for filing. The articles of merger shall set forth:

- (1) The name and jurisdiction of each entity that is a party to the merger, and the name, address, and jurisdiction of the surviving entity;
- (2) A statement that the plan of merger has been approved by each entity involved in the merger [~~in accordance with the applicable laws of each entity~~];
- (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; and
- (4) 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~~] that 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.

~~[Articles of merger shall act as articles of dissolution or an application for a certificate of withdrawal for the respective domestic or foreign entity that is not the surviving entity in the merger.]”~~

SECTION 16. Section 425-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director of commerce and consumer affairs upon the filing of general partnership documents:

- (1) Partnership registration statement, \$25;
- (2) Partnership change of name statement, \$10;
- (3) Partnership dissolution statement, \$10;
- (4) Foreign general partnership registration statement, \$25;
- (5) Statement of change, \$10;
- (6) Application for certificate of withdrawal, \$5;
- (7) Statement of correction, \$10;

- (8) Reservation of name, \$10;
- (9) Transfer of reservation of name, \$10;
- (10) Annual statement for domestic or foreign general partnership, \$10;
- (11) Good standing certificate, \$5;
- (12) Articles of conversion or merger, \$100;
- (13) Any other statement, certificate, or other document for a domestic or foreign general partnership, \$10;
- (14) Special handling fee for review of any general partnership document, \$25;
- (15) Special handling fee for certificates issued by the director, \$10 per certificate;
- (16) Special handling fee for certification of documents, \$10;
- (17) Special handling fee for review of articles of conversion or merger, \$75; and
- (18) Agent's statement of change of address, \$10 for each affected domestic or foreign general partnership; provided that if more than two hundred simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic or foreign general partnership."

SECTION 17. Section 425-21, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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 ~~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~~ or 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~~.”

SECTION 18. Section 425-101, Hawaii Revised Statutes, is amended by amending the definition of “individual” to read as follows:

““Individual” means a natural person~~, or the estate of an incompetent or deceased individual~~.”

SECTION 19. Section 425-158, Hawaii Revised Statutes, is amended to read as follows:

“**§425-158 Statement of foreign qualification.** A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with:
 - (A) ~~The~~ the law of the state or other jurisdiction under which the foreign limited liability partnership is formed; ~~and~~
 - (B) ~~Section 425-151~~;
- (2) A statement that the partnership elects to be a foreign limited liability partnership; and
- (3) The mailing address of the partnership's initial principal office, the street address of the partnership's initial registered office in the State, and the name of its initial registered agent at its initial registered office in the State.”

SECTION 20. Section 425E-102, Hawaii Revised Statutes, is amended by amending the definition of "individual" to read as follows:

““Individual” means a natural person[~~; or the estate of an incompetent or deceased individual~~].”

SECTION 21. Section 425E-201, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) [~~In order to~~] 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)~~] (4) Whether the limited partnership is a limited liability limited partnership;
- [~~(6)~~] (5) Any additional information required by article 11; and
- [~~(7)~~] (6) Any other matter the general partners determine to include therein.”

SECTION 22. Section 425E-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The following fees shall be paid to the director upon the filing of limited partnership documents:

- (1) Certificate of limited partnership, \$50;
- (2) Any certificate of amendment, restatement, or correction, \$10;
- (3) [~~Certificate of cancellation,~~] Statement of termination, \$10;
- (4) Annual statement for domestic or foreign limited partnership, \$10;
- (5) Any other certificate or document of domestic or foreign limited partnership, \$10;
- (6) Application for [~~registration as a foreign limited partnership,~~] certificate of authority, \$100;
- (7) Any certificate of amendment or agent change for foreign limited partnership, \$10;
- (8) Application for certificate of withdrawal of foreign limited partnership, \$10;
- (9) Reservation of name, \$10;
- (10) Transfer of reservation of name, \$10;
- (11) Good standing certificate, \$5;
- (12) Articles of conversion or merger, \$100;
- (13) Special handling fee for review of articles of conversion or merger, \$75;
- (14) Special handling fee for review of any limited partnership document, \$25;
- (15) Special handling fee for certificates issued by the director, \$10 per certificate;
- (16) Special handling fee for certification of documents, \$10; and
- (17) Agent’s statement of change of address, \$10 for each affected domestic or foreign limited partnership; provided that if more than two hundred

simultaneous filings are made, the fee shall be reduced to \$1 for each affected domestic or foreign limited partnership.”

SECTION 23. Section 425E-801, Hawaii Revised Statutes, is amended to read as follows:

“~~[(H)§425E-801(H)]~~ **Nonjudicial dissolution.** Except as otherwise provided in section 425E-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]~~ cancellation by the director under section 425E-809.”

SECTION 24. Section 425E-809, Hawaii Revised Statutes, is amended to read as follows:

“~~[(H)§425E-809(H)]~~ **Administrative ~~[dissolution.]~~ cancellation.** (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]~~ cancellation 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]~~ canceled continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under sections 425E-803 and 425E-812 and to notify claimants under sections 425E-806 and 425E-807.

(c) The administrative ~~[dissolution]~~ cancellation of a limited partnership shall not terminate the authority of its agent for service of process.”

SECTION 25. Section 425E-810, Hawaii Revised Statutes, is amended to read as follows:

“~~[(1)]~~ **§425E-810** ~~[H]~~ Reinstatement following administrative ~~[dissolution.]~~ cancellation. (a) A limited partnership that has been administratively ~~[dissolved]~~ canceled may apply to the director for reinstatement within two years after the effective date of ~~[dissolution.]~~ cancellation. The application shall ~~[be delivered to the director for filing and]~~:

- (1) ~~[State]~~ Recite the name of the limited partnership and the effective date of its administrative ~~[dissolution;]~~ cancellation;
- ~~[(2) State that the grounds for dissolution either did not exist or have been eliminated;]~~
- (2) Contain all reports due and unfiled;
- (3) ~~[State that the limited partnership's name satisfies the requirements of section 425E-108;]~~ Contain the payment of all delinquent fees and penalties; and
- (4) ~~[Include]~~ Contain 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.]~~ 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 the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the limited partnership pursuant to the amendment provisions of this chapter.

(c) When the reinstatement ~~[becomes]~~ is effective, it relates back to and takes effect as of the effective date of the administrative ~~[dissolution]~~ cancellation, and the limited partnership may resume carrying on its [activities] business as if the administrative ~~[dissolution]~~ cancellation had never occurred.”

SECTION 26. Section 425E-811, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If the director denies a limited partnership’s application for reinstatement following administrative ~~[dissolution,]~~ cancellation, 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]~~ cancellation and attaching to the petition copies of the director’s declaration of ~~[dissolution,]~~ cancellation the limited partnership’s application for reinstatement, and the director’s notice of denial.”

SECTION 27. Section 425E-901, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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.”

SECTION 28. Section 425E-902, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 425E-108,]~~ sections 425E-108(d) and (e), an alternate name adopted pursuant to section 425E-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.”

SECTION 29. Section 425E-905, Hawaii Revised Statutes, is amended to read as follows:

“**§425E-905 Name.** (a) A foreign limited partnership whose name does not comply with ~~[section 425E-108]~~ sections 425E-108(d) and (e) 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 425E-108, by filing a copy of a certificate of registration of a trade name with the director. 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 425E-108,]~~ sections 425E-108(d) and (e), it shall not thereafter transact business in this State until it complies with subsection (a).”

SECTION 30. Section 425E-1107, Hawaii Revised Statutes, is amended to read as follows:

“**§425E-1107 Articles of merger.** (a) After ~~[approval of the]~~ a plan of merger~~[, unless the merger is terminated,]~~ is approved, articles of merger shall be signed on behalf of each limited partnership~~[,]~~ and each other entity that is a party to the merger, and shall be 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]~~ has been 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]~~ that 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]~~ a proceeding under subparagraph (A), 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.
- (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.]'~~

SECTION 31. Section 425E-1204, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(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 425E-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 425E-201(a)(4);~~

- (3) (2) Sections 425E-601 and 425E-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)]~~ (3) Section 425E-603(4) shall not apply;
- ~~[(5)]~~ (4) Section 425E-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)]~~ (5) Section 425E-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."

SECTION 32. Section 428-101, Hawaii Revised Statutes, is amended by amending the definition of "individual" to read as follows:

"'Individual' means a natural person~~, or the estate of an incompetent or deceased individual~~."

SECTION 33. Section 428-110, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) If no manager, member, or other person in charge of the property, business, or office of the limited liability company can be found within the State, and ~~if~~ the limited liability 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] or~~ the person named is not found within the State, service 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 principal office ~~[shown in its application for a certificate of authority or its most recent annual report]~~."

SECTION 34. Section 428-811, Hawaii Revised Statutes, is amended to read as follows:

"§428-811 Reinstatement following administrative termination. (a) A limited liability company administratively terminated under section 428-810 may apply to the director for reinstatement within two years after the effective date of termination. The application shall:

- (1) Recite the name of the limited liability company and the effective date of its administrative termination;
 - ~~[(2) State that all delinquent annual reports have been filed and that all delinquent fees, penalties, assessments, and costs have been paid; and]~~
 - (2) Contain all reports due and unfiled;
 - (3) Contain the payment of all delinquent fees and penalties; and
 - ~~[(3)]~~ (4) Contain a certificate from the director of taxation reciting that all taxes owed by the company have been paid.
- ~~[(b) The director shall issue an order of reinstatement if:~~
- (1) The application for reinstatement meets the requirements of subsection (a);
 - (2) ~~The name of the limited liability company satisfies the requirements of section 428-105;~~

- (3) ~~Articles of amendment to change the name of the limited liability company are filed if the name of the company does not satisfy the requirements of section 428-105; and~~
- (4) ~~The delinquent annual reports have been filed and the appropriate fees and penalties have been paid.]~~

(b) Within the applicable reinstatement period, should the name of the limited liability company 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 the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the administratively terminated company pursuant to the amendment provisions of this chapter.

(c) When [granted, the reinstatement] the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative termination and the limited liability company [may resume] resumes carrying on its business as if the administrative termination had never occurred.”

SECTION 35. Section 428-905, Hawaii Revised Statutes, is amended to read as follows:

“§428-905 Articles of merger. (a) After [approval of the] a plan of merger [under] is approved in accordance with 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 shall be 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] entity that [are parties] is a party to the merger, and the name, address, and jurisdiction of [organization of the 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] has been 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] that 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,] a proceeding under subparagraph (A), 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.
- (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 a 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 operate as an amendment to the limited liability company's organizing articles.

~~[(d) Articles of merger shall act as articles of termination or an application for cancellation for the respective domestic or foreign limited liability company that is not the surviving entity in the merger.]~~

SECTION 36. Section 428-1005, Hawaii Revised Statutes, is amended to read as follows:

1. By amending subsection (a) to read:

“(a) If the name of a foreign limited liability company does not satisfy the requirements of section ~~[428-105,]~~ 428-105(b), (c), and (d), the company, to obtain or maintain a certificate of authority to transact business in this State, shall use a fictitious name to transact business in this State if its real name is unavailable.”

2. By amending subsection (e) to read:

“(e) If a foreign limited liability company authorized to transact business in this State changes its name to one that does not satisfy the requirements of section ~~[428-105,]~~ 428-105(b), (c), and (d), it shall not transact business in this State under the name as changed until it adopts a name satisfying the requirements of section 428-105 and obtains an amended certificate of authority.”

SECTION 37. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 38. This Act shall take effect on July 1, 2006.

(Approved June 13, 2006.)

Notes

1. Should be “(c)”.
2. Edited pursuant to HRS §23G-16.5.

ACT 185

H.B. NO. 2678

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

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

SECTION 1. The legislature finds that under sections 88-75 and 88-284, Hawaii Revised Statutes, members of the employees' retirement system who are

granted approval for ordinary disability retirement are eligible to receive ordinary disability retirement benefits no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. However, section 6-26-2(2), Hawaii Administrative Rules, expands upon these provisions by adding that the effective date of retirement for ordinary disability retirement shall be no later than ninety days from the date of the notice informing the member of the employees' retirement system's board of trustees' approval of the application, and if the applicant fails to retire within ninety days after the mailing of that notice, the application shall be deemed canceled.

The legislature also finds that the ninety-day time limit is burdensome to employees' retirement system members who have applied for ordinary disability retirement, because the requirement imposes a deadline by which these members must cease their employment and, hence, their compensation at full pay. Furthermore, the ninety-day time limit prevents employees' retirement system members who are approved for ordinary disability retirement from using their earned paid sick leave and vacation leave of absence beyond ninety days.

The purpose of this Act is to nullify the effective date of retirement for ordinary disability retirement as contained in section 6-26-2(2), Hawaii Administrative Rules, and establish that, if an applicant who files an application for ordinary disability retirement continues to work at the applicant's regular job, or remains on payroll by taking paid sick or vacation leave of absence, the effective date of retirement shall be the first day of the month following the month the applicant terminates employment or goes off the payroll.

SECTION 2. Section 88-75, Hawaii Revised Statutes, is amended to read as follows:

“§88-75 Ordinary disability retirement. Upon application of a member in service or on leave without pay, or the person appointed by the family court as guardian of an incapacitated member, any member who has ten or more years of credited service shall be retired by the board of trustees on an ordinary disability retirement allowance if the medical board, after a medical examination of the member, certifies that:

- (1) The member is mentally or physically incapacitated for the further performance of duty at the time of application;
- (2) The incapacity is likely to be permanent; and
- (3) The member should be retired.

Upon approval by the board, the member shall be eligible to receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. [Retirement] A member whose application for an ordinary disability retirement allowance is approved by the board while the member is still in service may terminate service and retire at any time following such approval; provided that retirement shall become effective on the first day of [a] the month[,] following the month the applicant terminates employment or goes off the payroll, except for the month of December when retirement on the first or last day of the month shall be allowed.”

SECTION 3. Section 88-284, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon approval by the board, the member shall receive an ordinary disability retirement benefit no earlier than thirty days from the date the application was filed or the date the member terminated service, whichever is later. [Retirement] A member whose application for an ordinary disability retirement allowance is

approved by the board while the member is still in service may terminate service and retire at any time following such approval; provided that retirement shall become effective on the first day of [a] the month[,] following the month the applicant terminates employment or goes off the payroll, except for the month of December when retirement on the first or last day of the month shall be allowed.”

SECTION 4. This Act shall apply to any application for ordinary disability retirement filed after 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 on July 1, 2006.

(Approved June 13, 2006.)

Note

1. “The” should be underscored.

ACT 186

S.B. NO. 2298

A Bill for an Act Relating to Chapter 448E, Hawaii Revised Statutes.

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

SECTION 1. Section 448E-9, Hawaii Revised Statutes, is amended to read as follows:

“§448E-9 Unlicensed activity. (a) No person shall act or assume to act as a journey worker electrician, journey worker specialty electrician, supervising electrician, supervising specialty electrician, journey worker plumber, master plumber, maintenance electrician, journey worker industrial electrician, or supervising industrial electrician, or advertise or hold the person’s self out as an electrician or plumber, without a license previously obtained in compliance with this chapter and the rules of the board; provided that any person may perform emergency plumbing repair work in the person’s principal place of residence when such repairs do not involve or require rearrangement of valves, pipes, or fixtures; provided further that no such emergency repairs may be performed on sewer lines, drains, gas lines, and on fixtures being served with backflow devices which [~~includes~~] include heaters, water closets, dishwashers, and garbage disposal units.

For purposes of this subsection:

“Electrician” means any person who performs electrical work and includes but is not limited to any person who acts as a journey worker electrician, journey worker specialty electrician, supervising electrician, supervising specialty electrician, maintenance electrician, journey worker industrial electrician, or supervising industrial electrician.

“Plumber” means any person who performs plumbing work and includes but is not limited to any person who acts as a journey worker plumber or master plumber.

(b) An apprentice or trainee learning the trade of a person licensed under this chapter shall not be required to have a license if the apprentice or trainee acts under the supervision of a person appropriately licensed under this chapter.

(c) Upon entry of a judgment by a court of competent jurisdiction finding that the person has advertised in violation of this section, the entity furnishing voice communication service to the violator shall disconnect the telephone number contained in the advertisement or listing.”

SECTION 2. Section 448E-10, Hawaii Revised Statutes, is amended to read as follows:

“**§448E-10 Suspension; revocation; fine; denial of issuance or renewal of a license.** (a) In addition to any other actions authorized by law the board, after notice and hearing as provided in chapter 91, may suspend or revoke any license, or impose fines, or prior to the notice and hearing, deny the issuance or renewal of any license for any cause authorized by law, including but not limited to the following:

- (1) ~~[A license was or is sought to be obtained]~~ Obtaining, or attempting to obtain a license by fraud, misrepresentation, or deceit;
- (2) Gross negligence, incompetency, misconduct, or dishonesty in the practice of the profession;
- (3) False, fraudulent, or deceptive advertising;
- (4) Permitting an unlicensed person to perform activities requiring a license; [or]
- (5) Aiding or abetting an unlicensed person to violate this chapter;
- (6) Allowing a person’s license to be used by an unlicensed person;
- (7) Acting as an agent, partner, or associate of an unlicensed person engaging in an activity in violation of this chapter; or
- [~~(5) Violation of~~] (8) Violating any [provisions] provision of this chapter [and any rules] or rule of the board.

(b) Any person who violates any provision of this chapter shall be fined not less than \$100 and not more than ~~[\$1,000]~~ \$5,000 for each violation.”

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, 2006.

(Approved June 13, 2006.)

ACT 187

H.B. NO. 1280

A Bill for an Act Relating to Flood Control.

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

SECTION 1. The legislature finds that floods caused by heavy rainstorms have become increasingly detrimental to the health, safety, and general welfare of the people of this state. Floods endanger lives, destroy property, result in adverse effects to the ecosystem, and disrupt commerce, transportation, and communications.

It is in the best interests of the State to identify, design, and implement effective, integrated flood-control solutions consistent with comprehensive watershed management strategies to prevent property damage, loss of life, or environmental damage that results from severe flooding. The legislature further finds that flood prevention through comprehensive watershed management is many times more cost-effective than flood mitigation through traditional reactive and piecemeal approaches to flood control.

The purpose of this Act is to fund:

- (1) A comprehensive watershed management pilot project to develop comprehensive strategies that establish broad water management goals and targets for entire catchments consistent with comprehensive watershed management to control storm water runoff to levels that can be safely

and economically carried downstream by drainage systems in at least two of Hawaii's most severely flood-impacted watersheds; and

- (2) The coordinated implementation of those best management strategies identified and designed in the development of comprehensive strategies.

SECTION 2. (a) The center for conservation research and training of the University of Hawaii shall develop comprehensive watershed management plans to develop the best strategies to manage flooding caused by storm runoff in at least two of Hawaii's most severely flood-impacted watersheds as identified by the center. These plans shall identify alternatives and land-use strategies consistent with comprehensive watershed management practices and develop the best means to prevent flooding by controlling surface water runoff to reduce peak flows from storms to levels that can be safely and economically carried downstream by watershed drainage systems. The comprehensive watershed management plans shall include but not be limited to:

- (1) Physical and biological watershed characteristics;
- (2) Storm water structures and drainage ways;
- (3) Community-based participatory planning;
- (4) Existing and future watershed development;
- (5) Existing and future land use;
- (6) Relevant community organizations and functions;
- (7) Relevant state and federal institutional functions;
- (8) Traditional approaches based on ahupua'a; and
- (9) Identification of means to lessen the impact of urbanization on downstream waterways.

(b) The center for conservation research and training of the University of Hawaii shall coordinate the implementation of the best watershed management measures developed under the comprehensive watershed management plans.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the center for conservation research and training to develop, coordinate, and implement the best management strategies consistent with comprehensive watershed management strategies to control flooding in at least two of Hawaii's most severely flood-impacted watersheds as identified by the center.

The sum appropriated shall be expended by the center for conservation research and training of the University of Hawaii for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved June 13, 2006.)

ACT 188

S.B. NO. 1648

A Bill for an Act Relating to Tuition Assistance.

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

SECTION 1. Section 304-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The board may charge resident and nonresident tuition fees for regular courses of instruction at any University of Hawaii campus, including any community college.

The board may also charge other fees for special programs of instruction, as well as laboratory fees, course fees, fees for student activities, and an information technology user fee. The board may charge other fees for summer session or evening courses, including differential fees for nonresident students.

The board may [waive]:

- (1) Waive entirely or reduce the tuition fee or any of the other fees for graduate teaching and research assistants~~[-The board may enter];~~
- (2) Enter into agreements with government and university officials of any other state or foreign country to provide for reciprocal waiver of the nonresident tuition and fee differential~~[-The board may waive];~~
- (3) Waive the nonresident tuition and fee differential for selected students from Pacific and Asian jurisdictions when their presence would be beneficial to the university or the State~~[-The board may waive];~~
- (4) Waive entirely or reduce the tuition fee or any of the other fees for students, resident or nonresident[-]; and
- (5) Waive the nonresident tuition and fee differential for members in good standing of the following military units, regardless of their actual state of residence:
 - (A) The Hawaii national guard; and
 - (B) The federal reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard who attend drills with units located within the State.

The board shall determine the percentage of allowable tuition and fee waivers for financial need and other university priorities. These tuition waivers and waivers of the nonresident tuition and fee differential shall be awarded in accordance with guidelines established by the board.”

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, 2006.

(Approved June 14, 2006.)

ACT 189

S.B. NO. 2283

A Bill for an Act Relating to Insurance.

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

SECTION 1. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part II of article 10 to be appropriately designated and to read as follows:

“§431:10- Commercial general liability extended reporting requirements. (a) Any policy for commercial general liability coverage wherein the insurer shall offer and the insured may elect to purchase an extended reporting period for claims arising during the expiring policy period shall provide that:

- (1) In the event of a cancellation, there shall be a thirty-day period during which the insured may elect to purchase coverage for the extended reporting period;

- (2) The limit of liability in the policy aggregate for the extended reporting period shall be one hundred per cent of the expiring policy aggregate; and
- (3) The insurer shall provide the following loss information to the first named insured within thirty days of the insured's request or upon any notice of cancellation or nonrenewal:
 - (A) All information on closed claims including the date and description of occurrence and amount of payments, if any;
 - (B) All information on open claims including the date and description of occurrence, amount of payment, if any, and amount of reserves, if any; and
 - (C) All information on notices of occurrence including the date and description of occurrence and amount of resources, if any."

SECTION 2. Section 431:2-301.8, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) No cause of action shall arise nor shall any liability be imposed against any examiner appointed or otherwise designated as an examiner by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of the insurance code."

SECTION 3. Section 431:2-306, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The commissioner may assess all examination costs of any person subject to examination under section 431:2-303(1) and article 16 when there is a premium trust fund shortage due to substantial noncompliance with section ~~431:9-230. The commissioner, subject to chapter 91, shall adopt rules to carry out the purposes of this subsection. The rules shall include criteria for the levying of examination assessment costs and specific criteria for appealing assessment costs levied by the commissioner.~~ 431:9A-123.5."

SECTION 4. Section 431:3-201, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) Every certificate of authority shall ~~[specify:]~~ include but not be limited to:

- (1) The name of the insurer ~~[, the location of its principal office,]~~ and the classes of insurance it is authorized to transact in this State; or
- (2) The name of and location of the principal office of its attorney-in-fact if a reciprocal insurer."

SECTION 5. Section 431:9A-122, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) The licensee shall promptly notify the commissioner in writing of any change of business address."

SECTION 6. Section 431:9B-102, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) No person, firm, association, or corporation shall act as a reinsurance intermediary-broker in this State if the reinsurance intermediary-broker maintains an

office either directly or as a member or employee of a firm or association or as an officer, director, or employee of a corporation:

- (1) In this State, unless the reinsurance intermediary-broker is a licensed ~~[agent]~~ producer in this State; or
- (2) In another state, unless the reinsurance intermediary-broker is a licensed ~~[agent]~~ producer in this State or another state having a law substantially similar to this law, or such reinsurance intermediary-broker is licensed in this State as a nonresident reinsurance intermediary.”

2. By amending subsection (c) to read:

“(c) The commissioner shall require a reinsurance intermediary-manager subject to subsection (b) to:

- (1) File a bond from an insurance company licensed to do business within the State or with an insurance company approved by the commissioner in an amount equal to \$500,000 or ten per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the bond amount under this paragraph shall not exceed \$10,000,000, for the protection of the reinsurer; ~~[and]~~
- (2) Maintain an errors and omissions policy, with an insurance company licensed to do business within the State or with an insurance company approved by the commissioner, in an amount equal to \$250,000 or twenty-five per cent of the annual reinsurance premiums managed by the reinsurance intermediary-manager, whichever is greater, except that the policy limits under this paragraph shall not exceed \$10,000,000[-]; and
- (3) Provide any other report required by the commissioner.

At the time of application for licensure and each renewal, each reinsurance intermediary-manager shall provide the commissioner with proof of the bond and the policy, and appropriate documentation to show that the bond and the policy ~~[continues]~~ continue to be in effect or that a new bond and a new policy ~~[has]~~ have been secured.”

SECTION 7. Section 431:9C-102, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The commissioner shall require the managing general agent to furnish a bond in an amount 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[-]; and
- (3) Any other report required by the commissioner.

(d) The commissioner shall require the managing general agent to maintain an errors and omissions policy in an amount 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[-]; and
- (3) Any other report required by the commissioner.”

SECTION 8. Section 431:11-104.3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The preacquisition notification shall be in such form and contain such information as prescribed by the National Association of Insurance Commissioners, including information relating to those markets in which the acquisition would not be exempted pursuant to section 431:11-104.2(b)(5). The commissioner may require such additional material and information as the commissioner deems necessary to determine whether the proposed acquisition, if consummated, would violate the competitive standard of section 431:11-104.4. The required information may include an opinion of an economist as to the competitive impact of the acquisition in this State accompanied by a summary of the education and experience indicating that economist’s ability to render an informed opinion.”

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

SECTION 10. This Act shall take effect on July 1, 2006.

(Approved June 14, 2006.)

Note

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

ACT 190

H.B. NO. 2947

A Bill for an Act Relating to Employment Security.

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

SECTION 1. The purpose of this Act is to appropriate federal Reed Act moneys to the department of labor and industrial relations for the following initiatives:

- (1) As seed moneys to the department of labor and industrial relations to be used by the department of labor and industrial relations, in consultation with the local workforce investment boards of each of the four counties, to plan, develop, and implement a computer system that benefits workforce development activities and programs operated by the counties;
- (2) To provide funds to assist the State’s four local workforce investment boards. The funds will be used by the local boards to improve employer outreach and services, labor force pool expansion, capacity building, and to fund some shared costs for the operations of the one-stop career centers through the following:
 - (A) Employer outreach and services;
 - (B) Labor force pool expansion;
 - (C) Capacity building; and
 - (D) Servicing and maintaining the one-stop operating system; and
- (3) To provide funds to Oahu’s workforce investment board.

Further, this Act is also intended to conform to the provisions of P.L. 107-147, Temporary Extended Unemployment Compensation Act of 2002, signed by the President of the United States of America on March 9, 2002. This amendment is needed because the requirements for the Reed Act funds distributed in 2002 differ from the prior special Reed Act distribution made in 2002 under the Balanced Budget Act of 1997. Section 383-123, Hawaii Revised Statutes, must be amended to conform to the Temporary Extended Unemployment Compensation Act of 2002 Reed Act amendments before Hawaii can use the distribution of \$31,000,000.

SECTION 2.¹ Section 383-123, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Administrative use. Moneys credited to the account of this State in the unemployment trust fund by the Secretary of the Treasury of the United States pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of benefits and for the payment of expenses incurred for the administration of this State’s unemployment compensation law and public employment offices pursuant to a specific appropriation of the legislature; provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law ~~[which:]~~ that:

- (1) ~~[specifies]~~ Specifies the purposes for which the moneys are appropriated and the amounts appropriated therefor~~;~~;
- (2) ~~[limits]~~ Limits the period within which the moneys may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law~~;~~; and
- (3) ~~[limits]~~ Limits the amount ~~[which]~~ that may be obligated ~~[during a twelve-month period beginning on July 1 and ending on the next June 30]~~ to an amount ~~[which]~~ that does not exceed the amount by which ~~[(A)]~~ the aggregate of the amounts credited to the account of this State pursuant to section 903 of the Social Security Act, as amended, ~~[during the same twelve-month period and the thirty-four preceding twelve-month periods]~~ exceeds ~~[(B)]~~ the aggregate of the amounts obligated pursuant to this subsection and charged against the amounts credited to the account of this State ~~[during such thirty-five twelve-month periods. For the purposes of this subsection, amounts which are obligated for administration or paid out for benefits shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during a twelve-month period specified herein may be charged against any amount credited during such twelve-month period earlier than the thirty-fourth preceding such period].~~

Moneys credited to the account of this State pursuant to section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of this chapter pursuant to this subsection.

The appropriation, obligation, and expenditure or other disposition of ~~[money]~~ moneys appropriated under this subsection shall be accounted for in accordance with standards established by the United States Secretary of Labor. Moneys appropriated for the payment of expenses of administration pursuant to this subsection shall be requisitioned as needed for the payment of obligations incurred under the law appropriating the moneys and, upon requisition, shall be deposited in the employment security administration fund from which ~~[such]~~ the payments shall be made. Moneys so deposited ~~[shall]~~, until expended, shall remain a part of the unemployment compensation fund and, if ~~[it will]~~ not ~~[be]~~ expended within one

week after [it is] withdrawn from the unemployment trust fund, shall be returned at the earliest practical date to the Secretary of the Treasury of the United States for credit to this State's account in the unemployment trust fund.

(c) Notwithstanding subsection (b), moneys credited to the State's account in federal fiscal years ending in 2000, 2001, and 2002 shall be used solely for the administration of the unemployment compensation program and are not subject to the specific appropriation requirements of subsection (b)[-], except that moneys credited in calendar year 2002 with respect to P.L. 107-147 shall not be subject to the conditions of this subsection or the two-year limitation requirement specified in subsection (b)."

SECTION 3. Act 249, Session Laws of Hawaii 2005, is repealed.

SECTION 4. There is appropriated from the unemployment insurance trust fund from moneys deposited pursuant to section 383-123(b) the sum of \$10,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the purposes specified in this Act as follows:

(1) The sum of:

- (A) \$5,070,557 shall be allocated to the Oahu workforce investment board, which shall work in collaboration with the city and county of Honolulu;
- (B) \$1,528,331 shall be allocated to the Maui workforce investment board, which shall work in collaboration with the county of Maui;
- (C) \$1,275,556 shall be allocated to the Kauai workforce investment board, which shall work in collaboration with the county of Kauai; and
- (D) \$1,925,556 shall be allocated to the Hawaii workforce investment board, which shall work in collaboration with the county of Hawaii,

to improve employer outreach and services, labor force pool expansion, capacity building, and to fund some shared costs for the operations of the one-stop career centers within each county; and

(2) The sum of \$200,000 shall be allocated to the department of labor and industrial relations to be used by the workforce development council for the funding of positions to identify additional funds and resources to support state-wide activities under this act, with the goal of being self sufficient.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act; provided that each county workforce investment board shall be required to submit a workforce development plan that shall be approved by the workforce development council prior to the release of funds by the department of labor and industrial relations.

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, 2006.

(Approved June 14, 2006.)

Note

1. The amendments made by Section 2 of Act 249, Session Laws of Hawaii 2005, are restated in this section.

A Bill for an Act Relating to Standardized Forms for Workers' Compensation Health Care Providers.

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

SECTION 1. Section 386-21, Hawaii Revised Statutes, is amended to read as follows:

“§386-21 Medical care, services, and supplies. (a) Immediately after a work injury sustained by an employee and so long as reasonably needed the employer shall furnish to the employee all medical care, services, and supplies as the nature of the injury requires. The liability for the medical care, services, and supplies shall be subject to the deductible under section 386-100.

(b) Whenever medical care is needed, the injured employee may select any physician or surgeon who is practicing on the island where the injury was incurred to render [such] medical care. If the services of a specialist are indicated, the employee may select any [such] physician or surgeon practicing in the State. The director may authorize the selection of a specialist practicing outside the State where no comparable medical attendance within the State is available. Upon procuring the services of [such] a physician or surgeon, the injured employee shall give proper notice of the employee's selection to the employer within a reasonable time after the beginning of the treatment. If for any reason during the period when medical care is needed, the employee wishes to change to another physician or surgeon, the employee may do so in accordance with rules prescribed by the director. If the employee is unable to select a physician or surgeon and the emergency nature of the injury requires immediate medical attendance, or if the employee does not desire to select a physician or surgeon and so advises the employer, the employer shall select the physician or surgeon. [Such] The selection, however, shall not deprive the employee of the employee's right of subsequently selecting a physician or surgeon for continuance of needed medical care.

(c) The liability of the employer for medical care, services, and supplies shall be limited to the charges computed as set forth in this section. The director shall make determinations of the charges and adopt fee schedules based upon those determinations. Effective January 1, 1997, and for each succeeding calendar year thereafter, the charges shall not exceed one hundred ten per cent of fees prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services, except as provided in this subsection. The rates or fees provided for in this section shall be adequate to ensure at all times the standard of services and care intended by this chapter to injured employees.

If the director determines that an allowance under the medicare program is not reasonable, or if a medical treatment, accommodation, product, or service existing as of June 29, 1995, is not covered under the medicare program, the director [may], at any time, may establish an additional fee schedule or schedules not exceeding the prevalent charge for fees for services actually received by providers of health care services to cover charges for that treatment, accommodation, product, or service. If no prevalent charge for a fee for service has been established for a given service or procedure, the director shall adopt a reasonable rate that shall be the same for all providers of health care services to be paid for that service or procedure.

The director shall update the schedules required by this section every three years or annually, as required. The updates shall be based upon:

- (1) Future charges or additions prescribed in the Medicare Resource Based Relative Value Scale system applicable to Hawaii as prepared by the United States Department of Health and Human Services; or
- (2) A statistically valid survey by the director of prevalent charges for fees for services actually received by providers of health care services or based upon the information provided to the director by the appropriate state agency having access to prevalent charges for medical fee information.

When a dispute exists between an insurer or self-insured employer and a medical ~~[service]~~ services provider regarding the amount of a fee for medical services, the director may resolve the dispute in a summary manner as the director may prescribe; provided that a provider shall not charge more than the provider's private patient charge for the service rendered.

(d) The director, with input from stakeholders in the workers' compensation system, including but not limited to insurers, health care providers, employers, and employees, shall establish standardized forms for health care providers to use when reporting on and billing for injuries compensable under this chapter. The forms may be in triplicate, or in any other configuration so as to minimize, to the extent practicable, the need for a health care provider to fill out multiple forms describing the same workers' compensation case to the department, the injured employee's employer, and the employer's insurer.

~~(d)~~ (e) If it appears to the director that the injured employee has wilfully refused to accept the services of a competent physician or surgeon selected as provided in this section, or has wilfully obstructed the physician or surgeon, or medical, surgical, or hospital services or supplies, the director may consider such refusal or obstruction on the part of the injured employee to be a waiver in whole or in part of the right to medical care, services, and supplies, and may suspend the weekly benefit payments, if any, to which the employee is entitled so long as ~~[such]~~ the refusal or obstruction continues.

~~(e)~~ (f) ~~[Such]~~ Any funds as are periodically necessary to the department to implement the foregoing provisions may be charged to and paid from the special compensation fund provided by section 386-151.

~~(f)~~ (g) In cases where the compensability of the claim is not contested by the employer, the medical services provider shall notify or bill the employer, insurer, or the special compensation fund for services rendered relating to the compensable injury within two years of the date services were rendered. Failure to bill the employer, insurer, or the special compensation fund within the two-year period shall result in the forfeiture of the medical ~~[service]~~ services provider's right to payment. The medical service provider shall not directly charge the injured employee for treatments relating to the compensable injury."

SECTION 2. Notwithstanding the moratorium imposed under Act 11, Special Session Laws of Hawaii 2005, on the director of labor and industrial relations' rulemaking authority, the director of labor and industrial relations shall adopt, pursuant to chapter 91, Hawaii Revised Statutes, the standardized forms required under section 1 of this Act and, at no cost to health care providers, shall make the forms available to the health care providers of the State.

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, 2006.

(Approved June 14, 2006.)

A Bill for an Act Relating to Notice to Foster Parents for Chapter 587, Hawaii Revised Statutes, Child Protective Act Hearings.

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

SECTION 1. The legislature recognizes that the safety, permanency, and well-being of a child can best be achieved through sharing information pertaining to the child under the provisions of general confidentiality of proceedings under the Child Protective Act, chapter 587, Hawaii Revised Statutes. The legislature also recognizes that the foster parents for a child in an out-of-home placement are critical to the success of the placement and well-being of the child. As such, foster parents have an important role to play in providing the court with information and recommendations pertaining to a child who is the subject of a court hearing.

The intent of the legislature is to provide foster parents with notice so they are aware of the opportunity to attend and participate in all Child Protective Act family court hearings pertaining to a foster child in their care that occur subsequent to a disposition hearing.

The purpose of this Act is to clarify that foster parents have the authority to attend and participate in all Child Protective Act hearings that occur subsequent to a disposition hearing.

SECTION 2. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§587- Notice of hearings. (a) Notice of all hearings shall be served upon the parties and upon the parents. Notice of hearings shall be served by the department upon the parties no less than forty-eight hours before the scheduled hearing. No hearing shall be held until the parties are served.

(b) Notice of all hearings subsequent to the section 587-71 disposition hearing shall be served upon the current foster parent or parents, each of whom shall be entitled to participate in the proceedings as a party. Notice of hearings shall be served by the department upon the current foster parent or parents no less than forty-eight hours before the scheduled hearing, subject to a shortening of time when a hearing is set within a shorter time frame. No hearing shall be held until the current foster parent or parents are served. For purposes of this subsection, notice to foster parents may be effected by hand delivery, regular mail, or by facsimile or electronic mail if receipt may be confirmed, and may consist of the last court order, if it includes the date and time of the hearing.

(c) For purposes of this section, “party” or “parties” shall include the current foster parents.”

SECTION 3. Section 587-72, Hawaii Revised Statutes, is amended to read as follows:

“§587-72 Review hearings. (a) Except for good cause shown, the court shall set each case for review hearing not later than six months after the date that a service plan is ordered by the court and, thereafter, the court shall set subsequent review hearings at intervals of no longer than six months until the court’s jurisdiction has been terminated or the court has ordered a permanent plan and has set the case for a permanent plan review hearing[; ~~the~~]. The court may set a case for a review hearing upon the motion of a party at any time if the hearing is deemed by the court to be in the best interests of the child.

~~[(b) Notice of review hearings shall be served upon the parties and upon the present foster parent or parents, each of whom shall be entitled to participate in the proceedings as a party. Notice of the review hearing shall be served by the department upon the present foster parent or parents no less than forty-eight hours before the scheduled hearing. No hearing shall be held until the foster parent or parents are served. For purposes of this subsection, notice to foster parents may be effected by hand delivery or by regular mail; and may consist of the last court order, if it includes the date and time of the hearing.]~~

~~(e)]~~ (b) Upon each review hearing, the court shall consider fully all relevant prior and current information pertaining to the safe family home guidelines, as set forth in section 587-25, including but not limited to the report submitted pursuant to section 587-40, and:

- (1) Determine whether the child's family is presently willing and able to provide the child with a safe family home without the assistance of a service plan and, if so, the court shall terminate jurisdiction;
- (2) Determine whether the child's family is presently willing and able to provide the child with a safe family home with the assistance of a service plan and, if so, the court shall return the child or continue the placement of the child in the child's family home under the family supervision of the appropriate authorized agency;
- (3) If the child's family home is determined, pursuant to ~~[subsection (e)(2)]~~ paragraph (2) not to be safe, even with the assistance of a service plan, order that the child remain or be placed under the foster custody of the appropriate authorized agency;
- (4) Determine whether the parties have complied with, performed, and completed every term and condition of the service plan that was previously court ordered;
- (5) Order revisions to the existing service plan, after satisfying section 587-71(h), as the court, upon a hearing that the court deems to be appropriate, determines to be in the best interests of the child; provided that a copy of the revised service plan shall be incorporated as part of the order;
- (6) Enter further orders as the court deems to be in the best interests of the child;
- (7) Determine whether aggravated circumstances are present and, if so, the court shall set the case for a show cause hearing as the court deems appropriate within thirty days. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing; and
- (8) If the child has been residing outside the family home for twelve consecutive months from the initial date of entry into out-of-home care, set the case for a show cause hearing as deemed appropriate by the court. At the show cause hearing, the child's family shall have the burden of presenting evidence to the court regarding the reasons and considerations as to why the case should not be set for a permanent plan hearing.

~~[(d)]~~ (c) In any case that a permanent plan hearing is not deemed to be appropriate, the court shall:

- (1) Make a finding that the parties understand that unless the family is willing and able to provide the child with a safe family home, even with the assistance of a service plan, within the reasonable period of time specified in the service plan, their respective parental and custodial duties and rights shall be subject to termination; and

ACT 193

(2) Set the case for a review hearing within six months.

[~~(e)~~] (d) If the child has been residing outside of the family home for an aggregate of fifteen out of the most recent twenty-two months from the initial date of entry into out-of-home care, the department shall file a motion to set the matter for a permanent plan hearing unless:

(1) The department has documented in the safe family home guidelines prepared pursuant to section 587-25(a), a compelling reason why it would not be in the best interests of the child to file a motion; or

(2) The State has not provided to the family of the child, consistent with the time period in the service plan, such services as the department deems necessary for the safe return of the child to the family home;

provided that nothing in this section shall prevent the department from filing such a motion to set a permanent plan hearing if the department has determined that the criteria in section 587-73(a) are present.”

SECTION 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 14, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 193

S.B. NO. 2327

A Bill for an Act Relating to Child Abuse or Neglect Reporting.

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

SECTION 1. The intent of the legislature is to ensure the safety of children through the timely reporting of child abuse and neglect.

The purpose of this bill is to strengthen the child abuse reporting statute to ensure that instances of known or suspected child abuse or neglect are reported without delay by requiring the staff at any public or private school, agency, or institution, who observe signs of the abuse or neglect, to report the abuse or neglect directly to the department of human services or the police. This direct reporting will also ensure that the best evidence of abuse or neglect is obtained.

SECTION 2. Section 350-1.1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Whenever a person designated in subsection (a) is a member of the staff of any public or private school, agency, or institution, that staff member shall immediately report the known or suspected child abuse or neglect directly to the department or to the police department and also shall immediately notify the person in charge[,] or a designated delegate[, who shall immediately report, or cause reports to be made,] of the report made in accordance with 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 June 14, 2006.)

ACT 194

S.B. NO. 2323

A Bill for an Act Relating to Federal Revenue Maximization in the Judiciary.

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

SECTION 1. The state judiciary, through its district and family courts, provides important services to children in Hawaii who have been placed in foster care or are deemed to be at risk of removal from their homes because of:

- (1) Abuse or neglect; or
- (2) Serious acting-out or delinquent behavior that constitutes harm to themselves or the community.

Many of the activities that court staff engage in are eligible for partial reimbursement under the provisions of Title IV-E of the Social Security Act and Public Law No. 96-272, the Adoption Assistance and Child Welfare Act of 1980.

The judiciary recently has begun to explore innovative uses of Title IV-E moneys by developing student internships for law students and social workers serving these families. The internship program is through the department of human services and the University of Hawaii. This project has received support from the family court judges and establishes the foundation for continued collaboration between the department of human services and the University of Hawaii.

However, this internship project represents only a fraction of the potential for enhanced services. Currently, the services available through the district and family courts in Hawaii are funded overwhelmingly by state revenues. Through the pursuit and optimal use of available federal funds, the judiciary should increase the moneys available for services to the children under its care and supervision by a factor of thirty to thirty-five per cent.

Title IV-E very likely will be converted to a block grant program from its current status as a federal entitlement program. This would eliminate federal financial participation, instead capping federal funding at the block grant appropriation amount. This means that Hawaii's allocation would be capped based on current reimbursement levels. It is therefore critical that the State submit claims for all federal reimbursements to which it is entitled before the block grant conversion occurs.

A block grant, which would freeze allocations at current reimbursement levels, would have a devastating impact on the State, particularly in light of the projected rapid increase in Hawaii's youth population. In 2002, the last full year for which complete data is available, Hawaii received \$17,045,476 in Title IV-E reimbursements. This figure put the State of Hawaii in thirty-eighth place among the fifty states, the District of Columbia, and the Commonwealth of Puerto Rico in terms of total reimbursements. Hawaii's youth population, on the other hand, is increasing at a faster rate than in most of the rest of the country. In 1995, Hawaii ranked twenty-fourth in the nation in the percentage of its population under twenty years of age, and it is estimated by the United States Census Bureau to rank sixth in the nation by 2025.

It is imperative, therefore, that the State increase its federal reimbursements as quickly as possible, to ensure that the baseline upon which a future block grant would be based accurately reflects the amount for which the State is entitled to be reimbursed.

The purpose of this Act is to authorize the judiciary to establish and implement, in collaboration with the department of human services, a federal revenue maximization program for all services that may be eligible for federal financial participation to establish a maximum baseline before the Title IV-E program is converted to a block grant by the federal government.

SECTION 2. (a) The judiciary, in collaboration with the department of human services, may work to establish a federal revenue maximization program to:

- (1) Identify services provided through the district and family courts, either directly or indirectly through contracted providers, to children under their care that are eligible for federal reimbursement; and
- (2) Submit claims for federal reimbursement through the department of human services for all eligible services.

(b) In establishing the federal revenue maximization program, the chief justice of the supreme court and the director of human services may work to execute a memorandum of agreement to develop and implement a federal revenue maximization program for all services provided by the district and family courts to children in their care that are eligible for federal reimbursement.

(c) The judiciary may contract with a third party to administer this program or may elect to participate in the current contract between the department of human services and its federal revenue maximization consultants. Any third-party contract shall be established either at no cost to the State or on a contingency-fee basis with no up-front costs to the State, including but not limited to costs to train staff, adapt data collection systems, or comply with relevant federal regulations.

(d) The federal revenue maximization program shall, if implemented, capture at least the following information:

- (1) The service recipient and the recipient's eligibility for Title IV-E or other federal reimbursements;
- (2) The service provider; and
- (3) The total of eligible reimbursement claims generated by the judiciary that the department of human services shall submit to the relevant federal authorities.

(e) The judiciary may:

- (1) Procure and contract for the development, implementation, and maintenance of the federal revenue maximization program, including an information technology system or any required interfaces with the judiciary's existing system;
- (2) Consider whether standardized modifications to initial court orders and judicial determinations are appropriate to establish eligibility standards for Title IV-E reimbursements for all children in the care of the court; and
- (3) File retroactive claims for federal reimbursement for the preceding eight quarters, as permitted by available documentation or other supporting information that can reasonably be obtained.

(f) The department of human services shall provide technical assistance and support to the judiciary in its efforts to obtain federal reimbursements under this Act.

SECTION 3. The judiciary shall, if the program is implemented, submit a report to the legislature no later than twenty days prior to the convening of each of the 2007 to 2010 regular sessions that shall include but not be limited to:

- (1) The amount of federal reimbursements received for the prior federal fiscal year;
- (2) The amount of additional federal funding that has been secured;
- (3) The amount of claims pending;

- (4) The amount of additional federal funding that is projected to be secured over the next five years; and
- (5) Plans for the reinvestment of additional federal funds to expand needed services to the State's children.

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved June 14, 2006.)

ACT 195

S.B. NO. 2603

A Bill for an Act Relating to Motor Vehicle Insurance.

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

SECTION 1. Section 431:10C-117, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a)(1) Any person subject to this article in the capacity of the operator, owner, or registrant of a motor vehicle operated in this [State,] state, or registered in this [State,] state, who violates any applicable provision of this article, shall be subject to citation for the violation by any county police department in a form and manner approved by the traffic violations bureau of the district court of the first circuit;
- (2) Notwithstanding any provision of the Hawaii Penal Code:
- (A) Each violation shall be deemed a separate offense and shall be subject to a fine of not less than \$100 nor more than \$5,000 which shall not be suspended except as provided in subparagraph (B); and
 - (B) If the person is convicted of not having had a motor vehicle insurance policy in effect at the time the citation was issued, the fine shall be \$500 for the first offense and a minimum of \$1,500 for each subsequent offense that occurs within a five-year period from any prior offense; provided that the judge:
 - (i) Shall have the discretion to suspend all or any portion of the fine if the defendant provides proof of having a current motor vehicle insurance policy; provided further that upon the defendant's request, the judge may grant community service in lieu of the fine, of not less than seventy-five hours and not more than one hundred hours for the first offense, and not less than two hundred hours nor more than two hundred seventy-five hours for the second offense; and
 - (ii) May grant community service in lieu of the fine for subsequent offenses at the judge's discretion;
- (3) In addition to the fine in paragraph (2), the court shall either:
- (A) Suspend the driver's license of the driver or of the registered owner for:
 - (i) Three months for the first conviction; and
 - (ii) One year for any subsequent offense within a five-year period from a previous offense;
 provided that the driver or the registered owner shall not be required to obtain proof of financial responsibility pursuant to section 287-20; or

- (B) Require the driver or the registered owner to keep a nonrefundable motor vehicle insurance policy in force for six months;
- (4) Any person cited under this section shall have an opportunity to present a good faith defense, including but not limited to lack of knowledge or proof of insurance. The general penalty provision of this section shall not apply to:
 - (A) Any operator of a motor vehicle owned by another person if the operator's own insurance covers such driving;
 - (B) Any operator of a motor vehicle owned by that person's employer during the normal scope of that person's employment; or
 - (C) Any operator of a borrowed motor vehicle if the operator holds a reasonable belief that the subject vehicle is insured; [and]
- (5) In the case of multiple convictions for driving without a valid motor vehicle insurance policy within a five-year period from any prior offense, the court, in addition to any other penalty, shall impose the following penalties:
 - (A) Imprisonment of not more than thirty days;
 - (B) Suspension or revocation of the motor vehicle registration plates of the vehicle involved;
 - (C) Impoundment, or impoundment and sale, of the motor vehicle for the costs of storage and other charges incident to seizure of the vehicle, or any other cost involved pursuant to section 431:10C-301; or
 - (D) Any combination of those penalties[-]; and
- (6) Any violation as provided in subsection (a)(2)(B) shall not be deemed to be a traffic infraction as defined by chapter 291D."

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 June 14, 2006.)

ACT 196

S.B. NO. 2984

A Bill for an Act Making an Appropriation to the Kikala-Keokea Housing Revolving Fund.

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

SECTION 1. Beginning in 1983, and continuing into the following decade, lava erupting from Kilauea volcano repeatedly invaded communities along the southern coast of the island of Hawaii, destroying more than one hundred eighty homes. The lava invasion culminated with the destruction of Kalapana in 1990 and 1991.

The lava flows destroyed one of the last native Hawaiian settlements on the island of Hawaii, a tightly-knit community whose rights to occupy the land under

homestead leases and to fish in surrounding waters have been recognized by the federal government since 1938 under the Kalapana Extension Act.

In recognition of this tragedy, the legislature enacted Act 314, Session Laws of Hawaii 1991, as amended, authorizing the department of land and natural resources to negotiate long-term leases with qualified, displaced Kalapana families to allow them to maintain their heritage on ceded lands in the Kikala-Keokea homestead area adjacent to the Kalapana-Kapoho Beach road. This site allows the Kalapana families to maintain their traditional cultural practices, including:

- (1) Speaking the Hawaiian language;
- (2) Raising small animals;
- (3) Planting sustenance crops;
- (4) Growing herbal medicines; and
- (5) Gathering additional food resources from the nearby ocean and uplands.

In 2001, the legislature enacted Act 144, Session Laws of Hawaii 2001, which established the infrastructure development fund to finance the construction of roads, water lines, and other infrastructure, and the Kikala-Keokea housing revolving fund to provide low-interest loans to Kikala-Keokea lessees for home construction.

The purpose of this Act is to appropriate funds to the Kikala-Keokea housing revolving fund.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2006-2007 for deposit into the Kikala-Keokea housing revolving fund established under section 201G-170.5, Hawaii Revised Statutes, to provide low-interest home construction loans for Kikala-Keokea leaseholders and to fund related activities.

The sum appropriated shall be expended by the Hawaii housing finance and development administration for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 14, 2006.)

ACT 197

S.B. NO. 2901

A Bill for an Act Relating to Highway Impact Fees.

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

SECTION 1. Section 264-121, Hawaii Revised Statutes, is amended by deleting the definition of “county”.

[~~“‘County’ means a county having a population in excess of five hundred thousand.”~~]

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 14, 2006.)

A Bill for an Act Relating to Motor Vehicle Insurance.

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

SECTION 1. The legislature notes that section 431:10C-308.5, Hawaii Revised Statutes, limits the charges for and frequency of medical treatment covered by personal injury protection (PIP) benefits. In accordance with this limitation on charges, the motor vehicle insurer has an obligation to limit payment of the insured’s benefits for treatment.

The legislature finds that, as a result of the Hawaii Supreme Court’s ruling in Orthopedic Associates of Hawaii, Inc. v. Hawaiian Insurance & Guaranty Co., Ltd., No. 24634, slip. op. (Dec. 7, 2005), insurers have implemented a process of issuing denials of benefits on all payments that are less than the amount billed. Some of the larger insurers are issuing several thousand denials each month. Copies of these denials are given to both the provider and the insured. This has prompted many calls from insureds who do not understand the process and are concerned that the insurer might be denying them access to medical treatment.

This Act is intended to clarify the process to be followed in any billing adjustment or dispute where an insurer receives and does not dispute the treatment rendered but finds the billing to exceed the permissible charges. This Act is not intended to affect the merits of the amount billed or the amount owed under PIP. Specifically, this Act clarifies that any adjustments to payment of the amount billed is an acceptance of the treatment and not a denial of benefit. Therefore, section 431:10C-304(3), which requires a written denial of benefit, is not applicable to an adjustment to the amount payable under PIP benefits. Rather than issue a denial, this Act clarifies that the insurer’s obligation is to “pay all undisputed charges” and “negotiate in good faith with the provider on the disputed charges.”

SECTION 2. Section 431:10C-308.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) In the event of a dispute between the provider and the insurer over the amount of a charge or the correct fee or procedure code to be used under the workers’ compensation supplemental medical fee schedule, the insurer shall:

- (1) Pay all undisputed charges within thirty days after the insurer has received reasonable proof of the fact and amount of benefits accrued and demand for payment thereof; and
- (2) Negotiate in good faith with the provider on the disputed charges for a period up to sixty days after the insurer has received reasonable proof of the fact and amount of benefits accrued and demand for payment thereof.

If the provider and the insurer are unable to resolve the dispute[;] after a period of sixty days pursuant to paragraph (2), the provider, insurer, or claimant may submit the dispute to the commissioner, arbitration, or court of competent jurisdiction. The parties shall include documentation of the efforts of the insurer and the provider to reach a negotiated resolution of the dispute. This section shall not be subject to the requirements of section 431:10C-304(3) with respect to all disputes about the amount of a charge or the correct fee and procedure code to be used under the workers’ compensation supplemental medical fee schedule. An insurer who disputes the amount of a charge or the correct fee or procedure code under this section shall not be deemed to have denied a claim for benefits under section 431:10C-304(3); provided that the insurer shall pay what the insurer believes is the amount owed and

shall furnish a written explanation of any adjustments to the provider and to the claimant at no charge, if requested. The provider, claimant, or insurer may submit any dispute involving the amount of a charge or the correct fee or procedure code to the commissioner, to arbitration, or to a court of competent jurisdiction.”

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 14, 2006.)

ACT 199

H.B. NO. 3259

A Bill for an Act Making an Appropriation for Dental Health.

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

SECTION 1. The legislature finds that inadequate dental care is a serious matter and has been identified as one of the major health concerns for low-income adults and children, people with developmental disabilities, and the uninsured. These individuals continually face great challenges in accessing dental care services in an appropriate and timely manner. The lack of dental care for this population is profound and unacceptable.

The legislature further finds that federally qualified health centers are the appropriate and most efficient entities to establish community-based dental clinics statewide that will provide a continuum of dental care based on best practices for QUEST-eligible adults and children, people with developmental disabilities, and the uninsured.

The purpose of this Act is to increase the State’s ability to address the dental-health crisis it faces regarding QUEST-eligible adults and children, people with developmental disabilities, and the uninsured by:

- (1) Appropriating funds for the department of health to contract with federally qualified health centers to help the greatest number of individuals who need dental care and maximizing the potential for this assistance by minimizing administrative costs; and
- (2) Allowing greater flexibility in the provision of this care by establishing community-based dental health clinics that are operated by federally qualified health centers or other community-based organizations.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$90,000 or so much thereof as may be necessary for fiscal year 2006-2007 for:

- (1) A school of dentistry accredited by the American Dental Association to perform an assessment of the status of the continuum of dental care; and
- (2) Equipment and service delivery to establish community-based dental health clinics operated by federally qualified health centers or other community-based organizations to provide a continuum of dental care to QUEST-eligible adults and children, people with developmental disabilities, and the uninsured.

SECTION 3. The continuum of dental care shall consist of but not be limited to:

- (1) A lead primary care dentist who is trained by an accredited dental school in the treatment of underserved populations and individuals with disabilities;
- (2) Faculty supervision from dentists of an accredited dental school to provide appropriate sedation training; and
- (3) Hospital-based care for anesthesia services.

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

SECTION 5. This Act shall take effect on July 1, 2006.

(Approved June 14, 2006.)

ACT 200

S.B. NO. 965

A Bill for an Act Relating to Electronic Surveillance.

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

SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§28- Surveillance review unit.** There is established in the department of the attorney general a surveillance review unit, which shall be responsible for reviewing all applications for interception of wire, oral, or electronic communications under chapter 803 prior to their submittal to a designated judge, regardless of whether submitted by county or state investigative or law enforcement officers. A surveillance review unit deputy attorney general shall review the application in a timely manner to ensure it meets the requirements of part IV of chapter 803 and applicable law and recommend any necessary additions or changes to the application. Thereafter, the surveillance review unit deputy attorney general shall prepare a written memorandum recommending approval or disapproval of the application, which shall be submitted to the district court judge or designated judge with the application. The attorney general shall establish standards and procedures for the timely review of these applications to ensure continuity and conformity with applicable law.”

SECTION 2. Chapter 803, part IV, is amended by adding a new section to be appropriately designated and to read as follows:

“**§803-48.5 Injunction against illegal interception.** Whenever it appears that any person is engaged or is about to engage in any act that constitutes or will constitute a felony violation of this part, the attorney general may initiate a civil action in a circuit court of this State to enjoin the violation. The court shall proceed as soon as practicable to the hearing and make a determination of the action; provided that at any time before final determination, the court may enter a restraining order or take any other action that is warranted to prevent a continuing and substantial injury to the State or to any person or class of persons for whose protection the action is brought. A proceeding under this section is governed by the Hawaii rules of civil procedure; except that, if an indictment, information, or

criminal complaint has been returned against the respondent, discovery shall be governed by the Hawaii rules of penal procedure.”

SECTION 3. Section 641-13, Hawaii Revised Statutes, is amended to read as follows:

“**§641-13 By State in criminal cases.** An appeal may be taken by and on behalf of the State from the district or circuit courts to the supreme appellate¹ court, subject to chapter 602, in all criminal [eases] matters, in the following instances:

- (1) From an order or judgment quashing, setting aside, or sustaining a motion to dismiss[;] any indictment, information, or complaint or any count thereof;
- (2) From an order or judgment[;] sustaining a special plea in bar[;] or dismissing the case where the defendant has not been put in jeopardy;
- (3) From an order granting a new trial;
- (4) From an order arresting judgment;
- (5) From a ruling on a question of law adverse to the State, where the defendant was convicted and appeals from the judgment;
- (6) From the sentence, on the ground that it is illegal;
- (7) From a pretrial order granting a motion for the suppression of evidence, including a confession or admission, or the return of property,² in which case the intermediate appellate court or the supreme court, as the case may be, shall give priority to ~~[such an]~~ the appeal and the order shall be stayed pending the outcome of the appeal;
- (8) From an order denying a request by the State for protective order for nondisclosure of witness for ~~[their]~~ reason of personal safety under Rule 16(e)(4) of the Hawaii Rules of Penal Procedure, in which case the intermediate appellate court¹ shall give priority to ~~[such]~~ the appeal and the order shall be stayed pending outcome of ~~[such]~~ the appeal; ~~[or]~~
- (9) From a judgment of acquittal following a jury verdict of guilty[;] and
- (10) From a denial of an application for an order of approval or authorization of the interception of a wire, oral, or electronic communication pursuant to section 803-44.”

SECTION 4. Chapter 803, part IV, Hawaii Revised Statutes, is amended to read as follows:

“PART IV. ELECTRONIC EAVESDROPPING

§803-41 Definitions. As used in [It] this part, unless the context clearly requires otherwise:

“Aggrieved person” means a person who was party to any intercepted wire, oral, or electronic communication or a person against whom the interception was directed.

“Aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

“Bait vehicle” means any vehicle used by law enforcement to further an investigation of and deter unauthorized entry into a motor vehicle or unauthorized control of propelled vehicles.

~~“Aural transfer” means a transfer containing the human voice at any point between and including the point of origin and the point of reception.]~~

“Communication common carrier” means any person engaged as a common carrier for hire in interstate or foreign communication by wire or radio or in intrastate, interstate, or foreign radio transmission of energy, except where reference

is made to communication common carriers not subject to this part; provided that a person engaged in radio broadcasting, to the extent the person is so engaged, shall not be deemed a communication common carrier.

“Contents” when used with respect to any wire, oral, or electronic communication, includes any information concerning the substance, purport, or meaning of that communication.

“Designated judge” means a circuit court judge designated by the chief justice of the Hawaii supreme court to issue orders under this part.

“Electronic communication” means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or ~~[photooptical]~~ photo-optical system that affects intrastate, interstate, or foreign commerce. The term “electronic communication” includes, but is not limited to, “display pagers” which can display visual message as part of the paging process, but does not include:

- (1) ~~[The radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit;~~
- (2) Any wire or oral communication;
- ~~[(3)]~~ (2) Any communication made through a tone-only paging device; ~~[or]~~
- ~~[(4)]~~ (3) Any communication from a tracking device[-]; or
- (4) Electronic funds transfer information stored by financial institution in a communications system used for the electronic storage and transfer of funds.

“Electronic communication service” means any service that provides to users thereof the ability to send or receive wire or electronic communications.

“Electronic communication system” means any wire, radio, electromagnetic, ~~[photooptical]~~ photo-optical, or photoelectronic facilities for the transmission of electronic communications, and any computer facilities or related electronic equipment for the electronic storage of ~~[such]~~ these communications.

“Electronic, mechanical, or other device” means any device or apparatus ~~[which]~~ that can be used to intercept a wire, oral, or electronic communication other than:

- (1) Any telephone or telegraph instrument, equipment or facility, or any component thereof, (A) furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business or furnished by ~~[such]~~ the subscriber or user for connection to the facilities of ~~[such]~~ the services and used in the ordinary course of its business; or (B) being used by a provider of wire or electronic communication service in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of the officer’s duties; or
- (2) A hearing aid or similar device being used to correct subnormal hearing to a level not better than ~~[normal-]~~ average.

“Electronic storage” means:

- (1) Any temporary, intermediate storage of a wire or electronic communication incidental to the electronic transmission thereof; and
- (2) Any storage of ~~[such]~~ the communication by an electronic communication service for purposes of backup protection of ~~[such]~~ the communication.

“Intercept” means the aural or other acquisition of the contents of any wire, electronic, or oral communication through the use of any electronic, mechanical, or other device.

“Investigative or law enforcement officer” means any officer of the State or political subdivision thereof, who is empowered by the law of this State to conduct investigations of or to make arrests for offenses enumerated in this part.

“Oral communication” means any ~~[oral communication uttered]~~ utterance by a person exhibiting an expectation that ~~[such communication]~~ the utterance is not subject to interception under circumstances justifying ~~[such]~~ that expectation, but ~~[such]~~ the term does not include any electronic communication.

“Organized crime” means any combination or conspiracy to engage in criminal activity.

“Pen register” means a device ~~[which]~~ that records or decodes electronic or other impulses ~~[which]~~ that identify the numbers dialed or otherwise transmitted on the telephone line to which such device is attached, but ~~[such]~~ the such¹ term does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communication services provided by ~~[such]~~ the provider or any device used by a provider or customer of a wire communication service² for cost accounting or other ~~[like]~~ similar purposes in the ordinary course of its business.

“Person” means any official, employee, or agent of the United States or this State or political subdivision thereof, and any individual, partnership, association, joint stock company, trust, or corporation.

“Readily accessible to the general public” means, with respect to radio communication, that ~~[such]~~ the communication is not:

- (1) Scrambled or encrypted;
- (2) Transmitted using modulation techniques whose essential parameters have been withheld from the public with the intention of preserving the privacy of ~~[such]~~ the communication;
- (3) Carried on a subcarrier or other signal subsidiary to a radio transmission;
- (4) Transmitted over a communication system provided by a common carrier, unless the communication is a tone-only paging system communication; or
- (5) Transmitted on frequencies allocated under part 25, subpart D, E, or F of part 74, or part 94 of the Rules of the Federal Communications Commission, unless in the case of a communication transmitted on a frequency allocated under part 74 that is not exclusively allocated to broadcast auxiliary services, the communication is a two-way voice communication by radio.

“Remote computing service” means the provision to the public of computer storage or processing services by means of an electronic communication system.

“Tracking device” means an electronic or mechanical device ~~[which]~~ that permits the tracking of the movement of a person or object, but does not include ~~[such]~~ a device when installed:

- (1) In a motor vehicle or other vehicle by or with the permission of the owner or person in lawful possession of the motor vehicle or other vehicle for the purpose of tracking the movement of ~~[such]~~ the motor vehicle or other vehicle; or
- (2) By or at the request of a police department or law enforcement agency in a “bait vehicle”.

“Trap and trace device” means a device ~~[which]~~ that captures the incoming electronic or other impulses ~~[which]~~ that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

“User” means any person or entity ~~[who]~~ that:

- (1) Uses an electronic communication service; and

- (2) Is duly authorized by the provider of [such] the service to engage in such use.

“Wire communication” means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception (including the use of such connection in a switching station) furnished or operated by any person engaged in providing or operating such facilities for the transmission of intrastate, interstate, or foreign communications. The term “wire communication” includes, but is not limited to, cellular telephones, cordless telephones, ~~[except for the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit,]~~ “tone and voice” pagers which transmit a voice message along with a paging signal, and any electronic storage of a wire communication.

§803-42 Interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device, and mobile tracking device prohibited. (a) Except as otherwise specifically provided in this part,² any person who:

- (1) Intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept, any wire, oral, or electronic communication;
- (2) Intentionally uses, endeavors to use, or procures any other person to use or endeavor to use any electronic, mechanical, or other device to intercept any wire, oral, or electronic communication[;] when:
 - (A) Such a device is affixed to, or otherwise transmits a signal through, a wire, cable, or other similar connection used in wire communication; or
 - (B) Such a device transmits communications by radio, or interferes with the transmission of such communication;
- (3) Intentionally discloses, or endeavors to disclose, to any other person the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this part;
- (4) Intentionally uses, or endeavors to use, the contents of any wire, oral, or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral, or electronic communication in violation of this part;
- (5)
 - (A) Intentionally accesses without authorization a facility through which an electronic communication service is provided; or
 - (B) Intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage;
- (6) Intentionally discloses, or attempts to disclose, to any other person the contents of any wire, oral, or electronic communication, intercepted by means authorized by subsection (b)(1), (2), or (3), or section 803-44 or 803-46; and
 - (A) Either:
 - (i) Knowing or having reason to know that the information was obtained through the interception of the communication in connection with a criminal investigation; or
 - (ii) Having obtained or received the information in connection with a criminal investigation; and

(B) With the intent to improperly obstruct, impede, or interfere with a duly authorized criminal investigation.

- ~~[(6)]~~ (7) Intentionally installs or uses a pen register or a trap and trace device without first obtaining a court order; or
- ~~[(7)]~~ (8) Intentionally installs or uses a mobile tracking device without first obtaining a search warrant or other order authorizing the installation and use of such device~~[-]~~, unless the device is installed by or with consent of the owner of the property on which the device is installed;

shall be guilty of a class C felony.

- (b)(1) It shall not be unlawful under this part for an operator of a switchboard, or an officer, employee, or agent of a provider of wire or electronic communication services, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication in the normal course of the officer's, employee's, or agent's employment while engaged in any activity ~~[which]~~ that is either a necessary incident to the rendition of the officer's, employee's, or agent's service or to the protection of the rights or property of the provider of that service; provided that ~~[such]~~ providers of wire communication service to the public shall not utilize service observing or random monitoring except for mechanical or service quality control checks.
- (2) It shall not be unlawful under this part for an officer, employee, or agent of the Federal Communications Commission, in the normal course of the officer's, employee's, or agent's employment and in discharge of the monitoring responsibilities exercised by the Commission in the enforcement of ~~[chapter 5 of]~~ title 47, chapter 5, of the United States Code, to intercept a wire or electronic communication, or oral communication transmitted by radio, or to disclose or use the information thereby obtained.
- (3) (A) It shall not be unlawful under this part for a person not acting under color of law to intercept a wire, oral, or electronic communication ~~[where such]~~ when the person is a party to the communication or ~~[where]~~ when one of the parties to the communication has given prior consent to ~~[such]~~ the interception unless ~~[such]~~ the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States or of this State~~[-]; provided that installation].~~
- ~~(B) It shall not be unlawful for a person acting under color of law to install in any private place, without consent of the person or persons entitled to privacy therein, [of] any device for recording, amplifying, or broadcasting sounds or events in that place, or use of any such unauthorized installation, or installation or use outside a private place of such device to intercept 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 is prohibited].~~
- (4) It shall not be unlawful under this part for a person acting under color of law to intercept a wire, oral, or electronic communication, when ~~[such]~~ the person is a party to the communication or one of the parties to the communication has given prior consent to ~~[such]~~ the interception.
- (5) It shall not be unlawful under this part for any person to intercept a wire, oral, or electronic communication or to disclose or use the contents of an intercepted communication, when such interception is pursuant to a valid court order under this chapter or as otherwise authorized by law; provided that a communications provider with

knowledge of an interception of communications accomplished through the use of the communications provider's facilities shall report the fact and duration of the interception to the administrative director of the courts of this State.

- (6) Notwithstanding any other law[;] to the contrary, providers of wire or electronic communication service, their officers, employees, and agents, landlords, custodians, or other persons, are authorized to provide information, facilities, or technical assistance to persons authorized by law to intercept or access wire, oral, or electronic communications, to conduct electronic surveillance, or to install a pen register or trap and trace device if such provider, its officers, employees, or agents, landlord, custodian, or other specified person, has been provided with:
- (A) A court order directing such assistance signed by ~~[an authorizing]~~ the designated judge; or
- (B) A certification in writing from the Attorney General of the United States, the Deputy Attorney General of the United States, the Associate Attorney General of the United States, the attorney general of the State of Hawaii, or the prosecuting attorney for each county that no warrant or court order is required by law, that all statutory requirements have been met, and that the specific assistance is required, setting forth the period of time during which the providing of the information, facilities, or technical assistance is authorized and specifying the information, facilities, or technical assistance required.

No provider of wire or electronic communication service, officer, employee, or agent thereof, or landlord, custodian, or other specified person shall disclose the existence of any access, interception, or surveillance or the device used to accomplish the interception or surveillance for which the person has been furnished a court order or certification under this part, except as may otherwise be required by legal process and then only after prior notification to the party that provided the court order or certification.

No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, or agents, landlord, custodian, or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order or certification under this part.

- (7) It shall not be unlawful under this part for any person:
- (A) To intercept or access an electronic communication made through an electronic communication system configured so that ~~[such]~~ the electronic communication is readily accessible to the general public.
- (B) To intercept any radio communication ~~[which]~~ that is transmitted:
- (i) By any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;
- (ii) By any governmental, law enforcement, civil defense, private land mobile, or public safety communications system, including police and fire, readily accessible to the general public;
- (iii) By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band, or general mobile radio services; or

- (iv) By any marine or aeronautical communications system.
 - (C) To engage in any conduct [~~which~~] that:
 - (i) Is prohibited by section 633 of the Communications Act of 1934 (47 U.S.C. §553); or
 - (ii) Is excepted from the application of section 705(a) of the Communications Act of 1934 by section 705(b) of that Act (47 U.S.C. §605).
 - (D) To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment to the extent necessary to identify the source of [~~sueh~~] the interference;
 - (E) For other users of the same frequency to intercept any radio communication made through a system that uses frequencies monitored by individuals engaged in the providing or the use of [~~sueh~~] the system, if [~~sueh~~] the communication is not scrambled or encrypted.
- (8) It shall not be unlawful under this part:
- (A) To use a pen register or a trap and trace device as specified in this part.
 - (B) For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect [~~sueh~~] the provider, another provider furnishing service toward the completion of the wire or electronic communication, or a user of that service, from the fraudulent, unlawful, or abusive use of such service.
 - (C) For a provider of electronic or wire communication service to use a pen register or a trap and trace device for purposes relating to the operation, maintenance, and testing of the wire or electronic communication service or to the protection of the rights or property of [~~sueh~~] the provider, or to the protection of users of that service from abuse of service or unlawful use of service.
 - (D) To use a pen register or a trap and trace device where consent of the user of the service has been obtained.
- (9) Good faith reliance upon a court order shall be a complete defense to any criminal prosecution for illegal interception, disclosure, or use.
- (10) Except as provided in this section, a person or entity providing an electronic communication service to the public shall not intentionally divulge the contents of any communication (other than a communication to the person or entity or an agent thereof) while in transmission on that service to any person or entity other than an addressee or intended recipient of the communication or an agent of the addressee or intended recipient.
- (11) A person or entity providing electronic communication service to the public may divulge the contents of any such communication:
- (A) As otherwise authorized by a court order[;] or under this part;
 - (B) With the lawful consent of the originator, addressee, [~~originator~~³] or intended recipient[;] of the communication;
 - (C) To a person employed or authorized, or whose facilities are used, to forward [~~sueh~~] the communication to its destination; or
 - (D) [~~Which were~~] That was inadvertently obtained by the service provider and [~~which appear~~] that appears to pertain to the commission of a crime, if divulged to a law enforcement agency.

§803-43 Devices to intercept wire, oral, or electronic communications and advertising of same prohibited; penalty; forfeiture. Any person, other than a provider of wire or electronic communication service and its duly authorized officers, employees, and agents, or any person acting under color of law, who, in this State, intentionally manufactures, assembles, possesses, or distributes, or who attempts to distribute, any electronic, mechanical, or other device, knowing or having reason to know that the device or the design of the device renders it primarily useful for the purpose of surreptitious interception of wire, oral, or electronic communications, or who intentionally places an advertisement of any such device or promotes the use of any such device in any newspaper, magazine, handbill, or other publication, shall be guilty of a class C felony. Any such electronic, mechanical, or other device in violation of this section shall be subject to seizure and forfeiture under ~~[title 37-]~~ chapter 712A.

§803-44 Application for court order to intercept wire, oral, or electronic communications. The attorney general of this State, or a designated deputy attorney general in the attorney general's absence or incapacity, or the prosecuting attorney of each county, or a designated deputy prosecuting attorney in the prosecuting attorney's absence or incapacity, may make application to a ~~[circuit court judge,]~~ designated judge ~~[by the chief justice of the Hawaii supreme court,]~~ or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, in the county where the interception is to take place, for an order authorizing or approving the interception of wire, oral, or electronic communications, and such court may grant in conformity with section 803-46 an order authorizing, or approving the interception of wire, oral, or electronic communications by investigative or law enforcement officers having responsibility for the investigation of the offense as to which the application is made, ~~[when such]~~ if the interception ~~[may]~~ might provide or has provided evidence of:

- (a) ~~[murder,]~~ Murder;
- (b) ~~[kidnapping,]~~ Kidnapping; ~~[or]~~
- (c) ~~[felony]~~ Felony criminal property damage involving the danger of ~~[serious]~~ bodily injury as defined in section 707-700~~[,];~~
- (d) Distribution of dangerous, harmful, or detrimental drugs; or
- (e) Conspiracy to commit one or more of the above;

or involving

- (f) ~~[organized]~~ Organized crime and any of the following felony offenses:
 - (1) ~~[extortion;]~~ Extortion;
 - (2) ~~[bribery]~~ Bribery of a juror, of a witness, or of a police officer;
 - (3) ~~[receiving]~~ Receiving stolen property; and
 - (4) ~~[gambling;]~~ Gambling; and ~~[distribution of dangerous, harmful, or detrimental drugs-]~~
 - (5) Money laundering.

[E]§803-44.5 Application for a pen register or a trap and trace device.

(a) The attorney general of this State or the prosecuting attorney for each county, or a subordinate designated to act in either's absence or incapacity, may apply in writing under oath or equivalent affirmation to a ~~[circuit court judge]~~ designated judge ~~[by the chief justice of the Hawaii supreme court]~~ or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, for an order or an extension of an order to authorize the installation and use of a pen register or a trap and trace device.

(b) The application shall include:

- (1) The identity of the official making the application and the law enforcement agency conducting the investigation; and
- (2) The facts and circumstances relied upon by the applicant to conclude that there is probable cause to believe that information will be obtained through the installation and use of a pen register or trap and trace device ~~[which]~~ that will constitute the fruits, instrumentalities, or evidence of a crime covered under this part.

[§803-44.6] **Issuance of an order for a pen register or a trap and trace device.** (a) Upon an application for an order authorizing the installation and use of a pen register or a trap and trace device, the ~~[reviewing]~~ designated judge shall satisfy itself that there are sufficient facts and circumstances contained within the application that there is probable cause to believe that the information ~~[will]~~ to be obtained through the installation and use of a pen register or a trap and trace device ~~[which]~~ will constitute the fruits, instrumentalities, or evidence of a crime or is relevant to an ongoing criminal investigation.

(b) If the ~~[reviewing]~~ designated judge is so satisfied, the order issued shall specify:

- (1) The identity, if known, of the person to whom is leased or in whose name is listed the telephone line to which the pen register or trap and trace device is to be attached;
- (2) The identity, if known, of the person who is the subject of the criminal investigation;
- (3) The number and, if known, the physical location of the telephone line to which the pen register or the trap and trace device is to be attached, and, in the case of a trap and trace device, the geographical limits of the trap and trace order;
- (4) A statement of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and
- (5) Upon the request of the applicant, the information, facilities, and technical assistance necessary to accomplish the installation of the pen register or trap and trace device that the provider of wire communication service is directed to furnish to the applicant.

(c) An order authorizing installation and use of a pen register or a trap and trace device shall ~~[not]~~ be for a period ~~[exceeding]~~ not to exceed sixty days. Extension of ~~[such]~~ an order may be granted, but only upon a reapplication for an order and a finding of probable cause to justify continuing use of a pen register or trap and trace device. The period of the extension shall be for a period not to exceed sixty days.

(d) An order authorizing the installation and use of a pen register or a trap and trace device shall direct that:

- (1) The order be sealed until otherwise ordered by the court; and
- (2) The person owning or leasing the line to which the pen register or trap and trace device is attached, or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber~~[,]~~ or to any other person, unless otherwise ordered by the court.

[§803-44.7] **Application for authorization to install and use a mobile tracking device.** (a) A search warrant or court order must be obtained from the ~~[circuit court judge]~~ designated judge ~~[by the chief justice of the Hawaii supreme court]~~ or any other circuit court judge or district court judge, if a circuit court judge has not been designated by the chief justice of the Hawaii supreme court, or is

otherwise unavailable, to install a mobile tracking device. [Such] The order may authorize the use of that device within the jurisdiction of the court and outside that jurisdiction, if the device is installed in that jurisdiction.

(b) [Upon] If, upon application to the [reviewing] designated judge for a court order, the [reviewing] designated judge should satisfy itself that there are sufficient facts and circumstances contained within the application to establish probable cause to believe that the use of a mobile tracking device will discover the fruits, instrumentalities, or evidence of a crime or is relevant to an ongoing criminal investigation.

(c) If the designated judge is so satisfied, it shall issue an order specifying:

- (1) The identity, if known, of the person who is the subject of the investigation;
- (2) The number of mobile tracking devices to be used and the geographical location(s) where the devices are to be installed; and
- (3) The identity, if known, of any person who may have a privacy interest in the point of installation of the mobile tracking device.

(d) An order authorizing installation and use of a mobile tracking device shall not exceed sixty days. Extensions of [such] the orders may be granted only upon reapplication establishing probable cause to justify the continued use of a mobile tracking device. The period of the extension shall not exceed sixty days.

(e) The order shall direct that the order be sealed until otherwise directed by the court.

§803-45 Authorization for disclosure and use of intercepted wire, oral,

or electronic communications. (a) Any investigative or law enforcement officer, who, by any means authorized by this part, has obtained knowledge of the contents of any wire, oral, or electronic communication, or evidence derived therefrom, may disclose [such] the contents to another investigative or law enforcement officer to the extent that [such] the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) Any investigative or law enforcement officer, who by any means authorized by this part, has obtained knowledge of the contents of any wire, oral, or electronic communication or evidence derived therefrom may use [such] the contents to the extent [such] the use is appropriate to the proper performance of the officer's official duties.

(c) Any person who has received, by any means authorized by this part, any information [concerning] from a wire, oral, or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this part may disclose the contents of that communication or [such] any derivative evidence while giving testimony under oath or affirmation in any proceeding in any court or before the grand jury in this State.

(d) No otherwise privileged wire, oral, or electronic communication intercepted in accordance with, or in violation of, the provisions of this part shall lose its privileged character.

(e) When an investigative or law enforcement officer, while engaged in [intercepting] authorized interception, intercepts wire, oral, or electronic communications [~~in the manner authorized, intercepts communications~~] relating to offenses other than those specified in the order of authorization or approval, the contents thereof, and evidence derived therefrom, may be disclosed or used as provided in subsections (a) and (b) of this section. [Such] The contents and any evidence derived therefrom may be used under subsection (c) of this section when authorized or approved by the designated [circuit court] judge where [such court] the judge finds on subsequent application, made as soon as practicable, that the contents were otherwise intercepted in accordance with the provisions of this part.

(f) ~~[No testimony or evidence relating to]~~ Evidence obtained pursuant to an order issued under this part for the interception of a wire, oral, or electronic communication [or any evidence derived therefrom intercepted in accordance with the provisions of] pursuant to an order issued under this part shall not be admissible as evidence in the state's case in chief in a criminal case where the highest grade of offense charged is a [in support of any] misdemeanor [charge].

(g) No part of the contents of any wire, oral, or electronic communication and no evidence derived therefrom may be received into evidence at any trial, hearing, or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of the State or a county, or be included in any information used to charge a criminal offense under chapter 806, if the disclosure would be in violation of this part.

§803-46 Procedure for interception of wire, oral, or electronic communication. (a) Each application for an order authorizing or approving the interception of a wire, oral, or electronic communication shall be made in writing upon oath or affirmation to a designated ~~[circuit court]~~ judge and shall be accompanied by a written memorandum recommending approval or disapproval by the department of attorney general. The application shall state the applicant's authority to make [such] the application. The [terms] term [“designated circuit,”] “designated judge[;]” [“authorized circuit court,” “designated circuit court,” “issuing judge,” and the “court”] as used in this section shall not only mean a circuit court judge specifically designated by the chief justice of Hawaii supreme court, but shall also mean any circuit court judge or district court judge if no circuit court judge has been designated by the chief justice, or is otherwise unavailable. Each application shall include the following information:

- (1) The identity of the investigative or law enforcement officer(s) requesting the application, the official(s) applying for an order;
- (2) A full and complete statement of the facts and circumstances relied upon by the applicant, to justify the applicant's belief that an order should be issued, including (A) details as to the particular offense that has been, is being, or is about to be committed, (B) except as provided in subsection (j), a particular description of the nature and location of the facilities from which or the place where the communication is to be intercepted, (C) a particular description of the type of communications sought to be intercepted, (D) the identity or descriptions of all persons, if known, committing the offense and whose communications are to be intercepted, and where appropriate (E) the involvement of organized crime;
- (3) A full and complete, but not unduly technical or complex, statement of the facts concerning how the interception is to be accomplished, and if physical entry upon private premises is necessary, facts supporting such necessity;
- (4) A full and complete statement of facts as to whether or not other investigative procedures have been tried and failed or why they reasonably appear to be unlikely to succeed if tried or to be too dangerous;
- (5) A statement of facts indicating the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will occur thereafter;

- (6) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application, made to any [court] designated judge for authorization to intercept, or for approval of interceptions of, wire, oral, or electronic communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the [court] designated judge on each [such] application; and
- (7) [Where] When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain [such] any results.

(b) ~~[An in camera adversary hearing shall be held on any interception application or application for extension. Upon receipt of the application the designated judge shall appoint an attorney to oppose the application. The attorney shall be appointed and compensated in the same manner as attorneys are appointed to represent indigent criminal defendants. The appointed attorney shall be given at least twenty-four hours notice of the hearing and shall be served with copies of the application, proposed order, if any, and supporting documents with the notice. At the hearing, the attorney appointed may cross-examine witnesses and present arguments in opposition to the application. The affiant supporting the application shall be present at the hearing. If an interlocutory appeal is taken by the State from the denial of an application, the appointed attorney shall be retained to answer the appeal or another attorney shall be appointed for the appeal.]~~ The designated [circuit court] judge may require the applicant to furnish [additional] testimony or documentary evidence under oath or affirmation in support of the application. A transcript of the [hearing] testimony shall be made and kept with the application and orders.

(c) Upon [such] an application [~~and after such adversary hearing,~~] the [court] designated judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire, oral, or electronic communications within the county in which the [court] designated judge is sitting, if the [court] designated judge determines on the basis of the facts submitted by the applicant that:

- (1) There is probable cause [~~for belief~~] to believe that an individual is committing, has committed, or is about to commit
 - (A) [~~murder,~~] Murder;¹
 - (B) [~~kidnapping,~~] Kidnapping; [or]
 - (C) [~~felony~~] Felony criminal property damage involving the danger of [serious] bodily injury;
 - (D) Distribution of dangerous, harmful or detrimental drugs; or
 - (E) Conspiracy to commit one or more of the above;
 or that an individual is committing, has committed, or is about to commit one of the other offenses specified in section 803-44 and that organized crime is involved;
- (2) There is probable cause [~~for belief~~] to believe that particular communications concerning that offense will be obtained through [such] the interception;
- (3) Normal investigative procedures have been tried and have failed or reasonably appear to be either unlikely to succeed if tried or to be too dangerous; and
- (4) Except as provided in subsection (j), there [There] is probable cause [~~for belief~~] to believe that the facilities from which, or the place where, the wire, oral, or electronic communications are to be intercepted are being used, or are about to be used, in connection with the commission of such offense, or are leased to, listed in the name of, or commonly used by [such] that person.

If the order allows physical entry to accomplish the interception, the issuing judge shall ~~find that the interception could not be accomplished by means other than~~ state why physical entry[-] is appropriate.

(d) Each order authorizing or approving the interception, of any wire, oral, or electronic communication shall specify:

- (1) The identity or description of all persons, if known, whose communications are to be intercepted;
- (2) The nature and location of the communications facilities as to which, or the place where, authority to intercept is granted, and the means by which such interceptions shall be made;
- (3) A particular description of the type of communication sought to be intercepted, and a statement of the particular offense to which it relates;
- (4) The identity of the agency authorized to intercept the communications and the persons applying for the application;
- (5) The period of time during which ~~[such] the~~ the interception is authorized, including a statement as to whether or not the interception ~~[shall automatically] is to terminate automatically [when] upon~~ the described communication ~~[has been] first being obtained; and~~
- (6) ~~[How the authorization is to be accomplished. An]~~ Who shall be served with the order and by what means.

Upon request of the applicant, an order authorizing the interception of a wire, oral, or electronic communication shall[-, upon request of the applicant,] direct that a provider of wire or electronic communication service, landlord, custodian, or other person shall furnish the applicant [forthwith] as soon as practicable all information, facilities, and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that ~~[such] the~~ the provider of wire or electronic communication service, landlord, custodian, or other person is according the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian, or other person furnishing ~~[such] the~~ the facilities or technical assistance shall be compensated ~~[therefor] by the applicant [at the prevailing rates]~~ for reasonable expenses incurred in providing the facilities or assistance.

(e) No order entered under this section shall authorize or approve the interception of any wire, oral, or electronic communication for any period longer than is necessary to achieve the objective of the authorization, ~~[nor] and in [any] no~~ event for longer than thirty days. The thirty-day period begins on the earlier of the day on which the investigative or law enforcement officer first begins to conduct an interception under the order or ten days after the order is entered. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsections (a) and (b) of this section and the court making the findings required by subsection (c) of this section. The period of extension shall be no longer than the ~~[authorizing circuit court] designated judge~~ deems necessary to achieve the purposes for which it was granted and in no event for longer than ~~[fifteen] thirty~~ days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this part, and shall terminate upon attainment of the authorized objective, or in any event in thirty days ~~[or in fifteen days in case of an extension. In the event].~~ If the intercepted communication is in a code or a foreign language, and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after ~~[such] the~~ the interception.

An interception may be conducted in whole or in part by investigative or law enforcement officer(s), or by an individual operating under a contract with the State

or a county, acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception.

- (1) The interception shall be conducted in such a way as to minimize the resulting invasion of privacy including but not limited to the following methods of minimization:
 - (A) Conversations that appear unlikely to result in incriminating conversations relating to the offense for which the order is issued shall be subject to intermittent monitoring; and
 - (B) Privileged conversations, including those between a person and the person's spouse, attorney, physician, or clergy, shall not be intercepted unless both parties to the conversation are named or described in the application and order.
- (2) In determining whether incriminating statements are likely to occur during a conversation the following factors should be considered:
 - (A) The parties to the conversation;
 - (B) The particular offense being investigated;
 - (C) The subject matter of the conversation;
 - (D) The subject matter of previous conversations between the same parties and whether any incriminating statements occurred; and
 - (E) The hour and day of conversation.

(f) Whenever an order authorizing interception is entered pursuant to this part, the order shall require reports to be made to the ~~[court which]~~ designated judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. ~~[Such]~~ The reports shall be made at such intervals as the ~~[court]~~ designated judge may require.

- (g)(1) The contents of any wire, oral, or electronic communication intercepted by any means authorized by this part shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral, or electronic communication under this subsection shall be done ~~[in such way as will]~~ to protect the recording from ~~[editing] being edited or [other alterations.] otherwise altered.~~ Immediately upon the expiration of the time period [of] provided in the order, or extensions thereof, ~~[such recordings]~~ the recording shall be made available to the [court] designated judge issuing [such] the order and sealed under the [court's] designated judge's directions. Custody of the ~~[recordings]~~ recording shall be [wherever the court orders.] determined by order of the designated judge. Recordings and other evidence of the contents of conversations and applications and orders shall not be destroyed except upon an order of the ~~[issuing or denying court]~~ designated judge and in any event shall be kept for ten years. However, upon the request of all the parties to particular conversations, evidence of conversations between those parties shall be destroyed (A) if there are no incriminating statements; (B) if any incriminating statements ~~[relate to only misdemeanor offenses;]~~ are inadmissible at trial pursuant to section 803-45(f); or (C) if the interception of the conversations is determined to have been illegal. Duplicate recordings may be made for use or disclosure pursuant to section 803-45(a) and (b) for investigations. The presence of the seal ~~[provided for]~~ required by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire, oral, or electronic communication or evidence derived therefrom under section 803-45(c).

- (2) Applications made and orders granted under this part, ~~[transcripts of hearings on applications,]~~ and evidence obtained through court-ordered

interceptions shall be sealed by the designated ~~[circuit court]~~ judge. Custody of the above shall be ~~[whenever]~~ wherever the ~~[court]~~ designated judge directs. Applications and orders shall be disclosed only upon a showing of good cause before a designated judge and shall not be destroyed, except upon order of the designated judge, and, in any event, shall be kept for ten years.

- (3) Any violation of the provisions of this subsection may be punished as contempt ~~[of]~~ by the ~~[issuing or denying court.]~~ designated judge.
- (4) Within a reasonable time but no later than ninety days after either the filing of an application for an approval under subsection (d) that is denied or the termination of the period of an order or extensions thereof, the ~~[issuing court]~~ designated judge shall cause an inventory to be served[;] on the persons named in the order, on all other known parties to intercepted communications, and to ~~[such]~~ any other persons as the court may determine is in the interest of justice~~[, an]~~. The inventory ~~[which]~~ shall include notice of:
- (A) The fact of the entry of the order;
 - (B) The date of the entry and the period of authorized, or approved interception; and
 - (C) The fact ~~[whether]~~ that during the applicable time period, wire, oral, or electronic communications were or were not intercepted; and
 - ~~(D) The fact whether any incriminating statements were intercepted.]~~

The designated ~~[circuit court]~~ judge, upon the filing of a motion, ~~[shall]~~ may make available to ~~[such]~~ the person or the person's counsel for inspection after the inventory has been served all portions of the intercepted communications ~~[which]~~ that contain conversations of that person, applications, orders, ~~[transcripts of hearing,]~~ and other evidence obtained as a result of the use of interception orders. The ~~[court]~~ designated judge may order ~~[such]~~ the additional disclosure as the ~~[court]~~ designated judge determines to be in the interest of justice. On an ex parte showing of good cause ~~[to a court]~~, the designated judge may permit the serving of the inventory required by this subsection ~~[may]~~ to be postponed.

(h) The contents of any intercepted wire, oral, or electronic communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in any court of this State unless each party, not less than thirty days before the trial, hearing or proceeding, has been furnished with copies of the documents required to be disclosed, and contents of intercepted communications or other evidence obtained as a result of interception which is sought to be admitted in evidence. This thirty-day period may be shortened or waived by the court if it finds that the party will not be prejudiced by the delay in receiving such information.

- (i)(1) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of this State, or a political subdivision thereof, may move to suppress the content of any intercepted wire, oral, or electronic communication, or evidence derived therefrom, on the grounds that:
- (A) The communication was unlawfully intercepted;
 - (B) The order of authorization or approval under which it was intercepted is insufficient on its face; or
 - (C) The interception was not made in conformity with the order of authorization or approval.

Such motion shall be made before the trial, hearing, or proceedings unless there was no opportunity to make such motion or the person was not aware of the grounds of the motion. If the motion is granted, the contents of the intercepted wire, oral, or electronic communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this part. The court, or other official before whom the motion is made, upon the filing of [such] the motion by the aggrieved person, [shall] may make available to the aggrieved person or the aggrieved person's counsel for inspection portions of the recording [which] that contain intercepted communications of the defendant or evidence derived therefrom, the applications, orders, transcript of [hearing] testimony, and such additional evidence as the court determines to be in the interest of justice.

- (2) In addition to any other right to appeal the State shall have the right to appeal:
 - (A) From an order granting a motion to suppress made under paragraph (1) of this subsection if the attorney general or prosecuting attorney of a county, or their designated representatives, shall certify to the [court] designated judge or other official granting [such] the motion that the appeal shall be taken within thirty days after the date the order of suppression was entered and shall be diligently prosecuted as in the case of other interlocutory appeals or under such rules as the supreme court may adopt;
 - (B) From an order denying an application for an order of authorization or approval, and such an appeal shall be in camera and in preference to all other pending appeals in accordance with rules promulgated by the supreme court.

(j) The requirements of subsections (a)(2)(B) and (c)(4) relating to the specification of the facilities from which, or the place where, the communication is to be intercepted do not apply if:

- (1) In the case of an application with respect to the interception of an oral communication:
 - (A) The application is by an investigative or law enforcement officer and is approved by the attorney general, a county prosecuting attorney, or one of their designees;
 - (B) The application contains a full and complete statement as to why the specification is not practical and identifies the person committing the offense and whose communications are to be intercepted; and
 - (C) The designated judge finds that the specification is not practical; or
- (2) In the case of an application with respect to a wire or electronic communication:
 - (A) The application is by an investigative or law enforcement officer and is approved by the attorney general, a prosecuting attorney, or one of their designees;
 - (B) The application identifies the person believed to be committing the offense and whose communications are to be intercepted and the applicant makes a showing of a purpose on the part of that person to thwart interception by changing facilities; and
 - (C) The designated judge finds that the purpose has been adequately shown.

An interception of a communication under an order with respect to which the requirements of subsections (a)(2)(B) and (c)(4) do not apply by reason of subsec-

tion (j) shall not begin until the facilities from which, or the place where the communication is to be intercepted, is ascertained by the person implementing the interception order. A provider of wire or electronic communications service that has received an order as provided for in subsection (d) may move the court to modify or quash the order on the ground that its assistance with respect to the interception cannot be performed in a timely or reasonable manner. The court, upon notice to the State, shall decide the motion expeditiously.

§803-47 Reports concerning intercepted wire, oral, or electronic communications; reports concerning pen registers and trap and trace devices. (a) In January of each year, the attorney general and county prosecuting attorneys of this State shall report to the administrative director of the courts of this State and to the administrative office of the United States Courts:

- (1) The fact that an order or extension was applied for;
- (2) The kind of order or extension applied for;
- (3) The fact that the order or extension was granted as applied for, was modified, or was denied;
- (4) The period of interceptions authorized by the order, and the number and duration of any extensions of the order;
- (5) The offense specified in the order or application, or extension of an order;
- (6) The identity of the investigative or law enforcement officer and agency requesting the application and the person authorizing the request for application;
- (7) The nature of the facilities from which or the place where communications were to be intercepted;
- (8) A general description of the interceptions made under such order or extension, including:
 - (A) [the] The approximate nature and frequency of incriminating communications intercepted[;];
 - (B) [the] The approximate nature and frequency of other communications intercepted[;];
 - (C) [the] The approximate number of persons whose communications were intercepted[;]; and
 - (D) [the] The approximate nature, amount, and cost of the [manpower] personnel and other resources used in the interceptions;
- (9) The number of arrests resulting from interceptions made under [such] an order or extension of the order, and the offenses for which the arrests were made;
- (10) The number of trials resulting from [such] the interceptions;
- (11) The number of motions to suppress made with respect to [such] the interceptions[;] and the number granted or denied;
- (12) The number of convictions resulting from [such] the interceptions and the offenses for which the convictions were obtained and a general assessment of the importance of the interceptions;
- (13) The information required by paragraphs (2) through (6) of this subsection with respect to orders or extensions obtained in a preceding calendar year and not yet reported; and
- (14) Other information required by the rules and regulations of the administrative office of the United States Courts.

(b) In March of each year the administrative director of the courts shall transmit to the legislature a full and complete report concerning the number of applications for orders authorizing or approving the interception of wire, oral, or electronic communications and the number of orders and extensions granted or

denied during the preceding calendar year. [Such] The report shall include a summary and analysis of the data required to be filed with the administrative director of the courts by the attorney general and prosecuting attorneys.

(c) The attorney general, at least twenty days prior to the convening of each regular session, shall annually report to the legislature on the number of pen register orders and orders for trap and trace devices applied for by law enforcement agencies of the State.

[[§803-47.5]] Disclosure of contents of communication while in electronic storage.

- (a)(1) A person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and
- (2) A person or entity providing remote computing [~~services~~] service to the public shall not knowingly divulge to any person or entity the contents of any communication [~~which~~] that is carried or maintained on that service:
 - (A) On behalf of, and is either received by means of⁴ computer processing of communications or by electronic transmission, from [~~(or created by means of computer processing of communications received by means of electronic transmissions from)~~] a subscriber or customer of [~~such~~] the service; and
 - (B) Solely for the purpose of providing storage [~~and~~] or computer processing services to [~~such~~] the subscriber or customer, if the provider is not authorized to access the contents of [~~any such~~] those communications for purposes of providing any services other than storage or computer processing.
- (b) A person or entity may divulge the contents of a communication:
 - (1) To an addressee[;] or intended recipient of the communication[;] or [~~the~~] an agent of the [~~addressee's~~] addressee or intended [~~recipient's~~ agent, of such communication] recipient;
 - (2) As otherwise authorized by a court order or search warrant;
 - (3) With the lawful consent of the originator, addressee, or intended recipient of [~~such~~] the communication, or the subscriber in the case of a remote computing service;
 - (4) To a person employed or authorized or whose facilities are used to forward [~~such~~] the communication to its destination;
 - (5) As may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service; or
 - (6) To a law enforcement agency, if [~~such~~] the contents:
 - (A) Were inadvertently obtained by the service provider; and
 - (B) Appear to pertain to the commission of a crime.

§803-47.6 Requirements for governmental access. (a) A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication that has been in electronic storage for one hundred and eighty days[;] or less, [~~from the provider of the electronic communication service~~] where storage has taken place, [~~only by means of~~] pursuant to a⁵ search warrant only. A governmental entity may require the disclosure by a provider of electronic communication service of the contents of an electronic communication [~~which~~] that has been in electronic storage for more than one hundred and eighty days by the means available under subsection (b) of this section.

(b) A governmental entity may require a provider of remote computing services to disclose the contents of any electronic communication to which this subsection is made applicable by subsection (c) of this section:

- (1) Without notice to the subscriber or customer, if a search warrant has been obtained; or
- (2) With prior notice to the subscriber or customer, if a court order for disclosure under subsection (d) of this section has been obtained; except that delayed notice may be authorized by the order.

(c) Subsection (b) of this section is applicable to any electronic communication held or maintained on a remote computing service:

- (1) On behalf of, and received by electronic transmission from (or created by computer processing of communications received by electronic transmission from), a subscriber or customer of [sueh] the remote computing service; and
 - (2) Solely for the purpose of providing storage or computer processing services to [sueh] the subscriber or customer, if the provider is not authorized to access the contents of [~~any-sueh~~] those communications for any purpose other than storage or computer processing.
- (d)(1) A provider of electronic communication service or remote computing [~~services~~] service may disclose a record or other information pertaining to a subscriber to, or customer of [sueh], the service (other than the contents of any electronic communication) to any person other than a governmental entity.
- (2) A provider of electronic communication service or remote computing [~~services~~] service shall disclose a record or other information pertaining to a subscriber to, or customer of [sueh], the service (other than the contents of an electronic communication) to a governmental entity only when:
 - (A) Presented with a search warrant;
 - (B) Presented with a court order for [sueh] the disclosure;
 - (C) The consent of the subscriber or customer to [sueh] the disclosure has been obtained; or
 - (D) Presented with an administrative subpoena [~~issued pursuant to section 28-2.5~~] authorized by statute, an attorney general subpoena, or a grand jury or trial subpoena, which seeks the disclosure of information concerning electronic communication, including but not limited to the name, address, local and long distance telephone [tøH] billing records, telephone number or other subscriber number or identity, and length of service of a subscriber to or customer of the service, and the types of [serviee utilized by] services the subscriber or customer utilized.
 - (3) A governmental entity receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(e) A court order for disclosure under subsection (b) or (c) of this section shall issue only if the governmental entity demonstrates probable cause that the contents of a wire or electronic communication, or records or other information sought, constitute or relate to the fruits, implements, or existence of a crime or are relevant to a legitimate law enforcement inquiry. An order may be quashed or modified if, upon a motion promptly made, the service provider shows that compliance would be unduly burdensome because of the voluminous nature of the information or records requested, or some other stated reason establishing such a hardship.

(f) No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees, agents, or other specified

persons for providing information, facilities, or assistance in accordance with the terms of a court order, warrant, or subpoena.

(g) A provider of wire or electronic communication services or a remote computing service, upon the request of a governmental entity, shall take all necessary steps to preserve records and other evidence in its possession pending the issuance of a court order or other process. Records shall be retained for a period of ninety days, which shall be extended for an additional ninety-day period upon a renewed request by the governmental entity.

~~[[§803-47.7]]~~ **Backup preservation.** (a) A governmental entity may include in its court order a requirement that the service provider create a backup copy of the contents of the electronic communication without notifying the subscriber or customer. The service provider shall create ~~[such]~~ the backup copy as soon as practicable, consistent with its regular business practices, and shall confirm to the governmental entity that ~~[such-a]~~ the backup copy has been made. ~~[Such]~~ The backup copy shall be created within two business days after receipt by the service provider of [a] the subpoena or court order ~~[by the service provider]~~.

(b) The governmental entity must give notice to the subscriber or customer within three days of receiving confirmation that a backup record has been made, unless notice is delayed pursuant to the procedures herein.

(c) The service provider shall not destroy ~~[such]~~ the backup copy until the later of:

- (1) The delivery of the information; or
- (2) The resolution of any proceedings, including any appeal therefrom, concerning a court order.

(d) The service provider shall release ~~[such]~~ the backup copy to the requesting governmental entity no sooner than fourteen days after the governmental entity's notice to the subscriber or customer, if ~~[such]~~ the service provider:

- (1) Has not received notice from the subscriber or customer that the subscriber or customer has challenged the governmental entity's request; and
- (2) Has not initiated proceedings to challenge the ~~[governmental entity's]~~ request of the governmental entity.

(e) Within fourteen days after notice by the governmental entity to the subscriber or customer under subsection (b) of this section, the subscriber or customer may file a motion to vacate ~~[such]~~ the court order, with written notice and a copy of the motion being served on both the governmental entity and the service provider. The motion to vacate a court order shall be filed with the ~~[circuit court judge]~~ designated judge ~~[by the chief justice of the Hawaii supreme court. Such]~~ who issued the order. The motion or application shall contain an affidavit or sworn statement:

- (1) Stating that the applicant is a customer or subscriber to the service from which the contents of electronic communications are sought; and
- (2) Setting forth the applicant's reasons for believing that the records sought does not constitute probable cause or there has not been substantial compliance with some aspect of the provisions of this part.

(f) Upon receiving a copy of the motion from the subscriber or customer, the governmental agency shall file a sworn response to the court to which the motion is assigned. The response shall be filed within fourteen days. The response may ask the court for an in camera review, but must state reasons justifying such a review. If the court is unable to rule solely on the motion or application and response submitted, the court may conduct such additional proceedings as it deems appropriate. A ruling shall be made as soon as practicable after the filing of the governmental entity's response.

(g) If the court finds that the applicant is not the subscriber or customer whose communications are sought, or that there is reason to believe that the law enforcement inquiry is legitimate and the justification for the communications sought is supported by probable cause, the application or motion shall be denied, and the court shall order the release of the backup copy to the government entity. A court order denying a motion or application shall not be deemed a final order, and no interlocutory appeal may be taken therefrom by the customer. If the court finds that the applicant is a proper subscriber or customer and the justification for the communication sought is not supported by probable cause or that there has not been substantial compliance with the provisions of this part, it shall order vacation of the order previously issued.

[§803-47.8] Delay of notification. (a) A governmental entity may as part of a request for a court order include a provision that notification be delayed for a period not exceeding ninety days if the court determines that notification of the existence of the court order may have an adverse result.

(b) An adverse result for the purpose of subsection (a) of this section is:

- (1) Endangering the life or physical safety of an individual;
- (2) Flight from prosecution;
- (3) Destruction of or tampering with evidence;
- (4) Intimidation of a potential witness; or
- (5) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(c) Extensions of delays in notification may be granted up to ninety days per application to a court. Each application for an extension must comply with subsection (e) of this section.

(d) Upon expiration of the period of delay of notification, the governmental entity shall serve upon, or deliver by registered mail to, the customer or subscriber a copy of the process or request together with notice that:

- (1) States with reasonable specificity the nature of the law enforcement inquiry; and
- (2) Informs ~~[such]~~ the customer or subscriber:
 - (A) ~~[That information]~~ Information maintained for ~~[such]~~ the customer or subscriber by the service provider or request was supplied to or requested by that governmental authority and the date on which the supplying or request took place;
 - (B) ~~[That notification]~~ Notification of ~~[such]~~ the customer or subscriber was delayed;
 - (C) ~~[What]~~ The governmental entity or court that made the certification or determination upon which the delay was made; and
 - (D) ~~[Which]~~ The provision of this part that allowed ~~[such]~~ the delay.

(e) A governmental entity may apply to the ~~[circuit court]~~ designated judge ~~[by the chief justice of the Hawaii supreme court]~~ or any other circuit judge or district court judge, if a circuit court judge has not yet been designated by the chief justice of the Hawaii supreme court, or is otherwise unavailable, for an order commanding a provider of an electronic communication service or remote computing service to whom a search warrant, or court order is directed, not to notify any other person of the existence of the search warrant, or court order for such period as the court deems appropriate not to exceed ninety days. The court shall enter ~~[such an]~~ the order if it determines that there is reason to believe that notification of the existence of the search warrant, or court order will result in:

- (1) Endangering the life or physical safety of an individual;
- (2) Flight from prosecution;
- (3) Destruction of or tampering with evidence;

- (4) Intimidation of [a] potential [~~witness;~~] witnesses; or
- (5) Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

[§803-47.9] Cost reimbursement. (a) A government entity obtaining the contents of communications, records, or other information shall ~~reimburse any~~ pay to the person or entity [reasonable fees for] providing or assembling [such] the information a fee for reimbursement or costs that are reasonably necessary and that have been directly incurred in searching for, assembling, reproducing, or otherwise providing the information. [~~Such~~] The reimbursable costs shall include any costs due to necessary disruption of normal operations of any electronic communication service or remote computing service [which] that was occasioned by the governmental needs.

(b) The amount of the fee provided by subsection (a) shall be as mutually agreed by the governmental entity and the person or entity providing the information or, in the absence of agreement, shall be as determined by the designated court that issued the order for production of the information or the court before which a criminal prosecution relating to the information would be brought, if no court order was issued for production of the information.

(c) The requirement of subsection (a) does not apply with respect to records or other information maintained by a communication common carrier that relate to telephone toll records and telephone listings obtained under section 803-47.6. However, the court may order a payment as described in subsection (a), if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

§803-48 Recovery of civil damages authorized. Any person whose wire, oral, or electronic communication is accessed, intercepted, disclosed, or used in violation of this part shall (1) have a civil cause of action against any person who accesses, intercepts, discloses, or uses, or procures any other person to access, intercept, disclose, or use [~~such~~] the communications, and (2) be entitled to recover from any such person:

- (A) The greater of (i) the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, or (ii) statutory damages of [~~whichever is~~] the greater of \$100 a day for each day of violation or \$10,000;
- (B) Punitive damages, where appropriate; and
- (C) A reasonable attorney's fee and other litigation costs reasonably incurred.

The aggrieved person may also seek and be awarded such preliminary, and other equitable or declaratory relief as may be appropriate. A good faith reliance on a court order shall constitute a complete defense to any civil action brought under this part.

§803-49 Severability. If any portion or subsection of this part or the application thereof to any person or circumstances is invalid, such invalidity shall not affect other sections or applications of the part which can be given effect without the invalid section or application, and to this end the provisions of this part are declared to be severable."

SECTION 5. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

(Approved June 15, 2006.)

Notes

1. So in original.
2. Comma should be underscored.
3. Prior to amendment “,” appeared here.
4. The “of” should not be underscored.
5. The “a” should not be underscored.
6. Edited pursuant to HRS §23G-16.5.

ACT 201

H.B. NO. 2639

A Bill for an Act Relating to Use of Intoxicants While Operating a Motor Vehicle.

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

SECTION 1. Section 291E-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Highly intoxicated driver’ means a person whose measurable amount of alcohol is 0.15 or more grams of alcohol per one hundred milliliters or cubic centimeters of the person’s blood, or 0.15 or more grams of alcohol per two hundred ten liters of the person’s breath, as measured at the time of the offense, or within three hours of the time of the offense.’”

SECTION 2. Section 291E-31, Hawaii Revised Statutes, is amended to read as follows:

“**§291E-31 Notice of administrative revocation; effect.** As used in this part, the notice of administrative revocation:

- (1) Establishes that the respondent’s license and privilege to operate a vehicle in the State or on or in the waters of the State shall be terminated:
 - (A) Thirty days after the date the notice of administrative revocation is issued in the case of an alcohol related offense;
 - (B) Forty-four days after the date the notice of administrative revocation is issued in the case of a drug related offense; or
 - (C) Such later date as is established by the director under section 291E-38,
 if the director administratively revokes the respondent’s license and privilege;
- (2) Establishes that the registration of any motor vehicle registered to a respondent who is a repeat intoxicated driver or a highly intoxicated driver shall be terminated thirty days after the date of an arrest pursuant to section 291E-33(c);
- (3) Establishes the date on which administrative revocation proceedings against the respondent were initiated; and
- (4) Serves as a temporary permit, if applicable, to operate a vehicle as provided in section 291E-33.”

SECTION 3. Section 291E-33, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Whenever a respondent under this section is a repeat intoxicated driver[;] or highly intoxicated driver, the arresting law enforcement officer shall take possession of the motor vehicle registration and, if the motor vehicle being driven by the respondent is registered to the respondent, remove the number plates and issue a temporary motor vehicle registration and temporary number plates for the motor vehicle. No temporary motor vehicle registration or temporary number plates shall be issued if the respondent’s registration has expired or been revoked. The applicable police department, upon determining that the respondent is a repeat intoxicated driver[;] or highly intoxicated driver, shall notify the appropriate county director of finance to enter a stopper on the motor vehicle registration files to prevent the respondent from conducting any motor vehicle transactions, except as permitted under this part.”

SECTION 4. Section 291E-38, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

- “(d) The director shall conduct the hearing and have authority to:
- (1) Administer oaths and affirmations;
 - (2) Examine witnesses and take testimony;
 - (3) Receive and determine the relevance of evidence;
 - (4) Issue subpoenas;
 - (5) Regulate the course and conduct of the hearing; [and]
 - (6) Impose up to the maximum license revocation period as specified under section 291E-41(b); and
- [~~(6)~~] (7) Make a final ruling.”

SECTION 5. Section 291E-41, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (b) to read:

“(b) The periods of administrative revocation with respect to a license and privilege to operate a vehicle, and motor vehicle registration if applicable, that shall be imposed under this part are as follows:

- (1) A minimum of three months up to a maximum of one year revocation of license and privilege to operate a vehicle, if the respondent’s record shows no prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
 - (2) For a respondent who is a highly intoxicated driver, a mandatory six-month revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the highly intoxicated driver; provided that the highly intoxicated driver shall not qualify for a conditional license permit under section 291E-44;
- [~~(2)~~] (3) A minimum of one year up to a maximum of two years revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent’s record shows one prior alcohol enforcement contact or drug enforcement contact during the five years preceding the date the notice of administrative revocation was issued;
- [~~(3)~~] (4) A minimum of two years up to a maximum of four years revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent, if the respondent’s

record shows two prior alcohol enforcement contacts or drug enforcement contacts during the seven years preceding the date the notice of administrative revocation was issued;

[(4)] (5) Lifetime revocation of license and privilege to operate a vehicle and of the registration of any motor vehicle registered to the respondent and a lifetime prohibition on any subsequent registration of motor vehicles by the respondent, if the respondent's record shows three or more prior alcohol enforcement contacts or drug enforcement contacts during the ten years preceding the date the notice of administrative revocation was issued; or

[(5)] (6) For respondents under the age of eighteen years who were arrested for a violation of section 291E-61 or 291E-61.5, revocation of license and privilege to operate a vehicle either for the period remaining until the respondent's eighteenth birthday or, if applicable, for the appropriate revocation period provided in paragraphs (1) to [(4)] (5) or in subsection (d), whichever is longer and such respondents shall not qualify for a conditional permit;

provided that when more than one administrative revocation, suspension, or conviction arises out of the same arrest, it shall be counted as only one prior alcohol enforcement contact or drug enforcement contact, whichever revocation, suspension, or conviction occurs later."

2. By amending subsection (d) to read:

"(d) If a respondent has refused to be tested after being informed of the sanctions of this part, the revocation imposed under subsection (b)(1), [(2)], (3), [and] (4), and (5) shall be for a period of one year, two years, four years, and a lifetime, respectively."

SECTION 6. 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:

- (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
 - (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; or
- (2) Notwithstanding any other law to the contrary, the director shall not issue a conditional license permit to:
- (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;
 - (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; [or]

- (C) A respondent who is a highly intoxicated driver; and
~~[(C)]~~ (D) A respondent who holds either a category 4 license under section 286-102(b) or a commercial driver's license under section 286-239(b).''

SECTION 7. Section 291E-61, Hawaii Revised Statutes, is amended by amending subsection (b) 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 committed by a highly intoxicated driver, prompt suspension of license and privilege to operate a vehicle for a period of six months with an absolute prohibition from operating a vehicle during the suspension period;
- ~~[(2)]~~ (3) 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)]~~ (4) 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; and
 - (E) Forfeiture under chapter 712A of the vehicle owned and operated by the person committing the offense[-]; provided that the department of transportation shall provide storage for vehicles forfeited under this subsection; and
- [(4)] (5) Any person eighteen years of age or older who is convicted under this section and who operated a vehicle with a passenger, in or on the vehicle, who was younger than fifteen years of age, shall be sentenced to an additional mandatory fine of \$500 and an additional mandatory term of imprisonment of forty-eight hours; provided that the total term of imprisonment for a person convicted under this paragraph shall not exceed the maximum term of imprisonment provided in [paragraphs] paragraph (1), (2), or (3).''

SECTION 8. Section 291E-64, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) A person who violates this section shall be sentenced as follows:
- (1) For a first violation or any violation not preceded within a five-year period by a prior alcohol enforcement contact:
 - (A) The court shall impose:
 - (i) A requirement that the person and, if the person is under the age of eighteen, the person’s parent or guardian attend an alcohol abuse education and counseling program for not more than ten hours; and
 - (ii) A one hundred eighty-day prompt suspension of license and privilege to operate a vehicle with absolute prohibition from operating a vehicle during the suspension period, or in the case of a person eighteen years of age or older, the court may impose, in lieu of the one hundred eighty-day prompt suspension of license, a minimum thirty-day prompt suspension of license with absolute prohibition from operating a vehicle and, for the remainder of the one hundred eighty-day period, a restriction on the license that allows the person to drive for limited work-related purposes and to participate in alcohol abuse education and treatment programs; and
 - (B) In addition, the court may impose any one or more of the following:
 - (i) Not more than thirty-six hours of community service work; or
 - (ii) A fine of not less than \$150 but not more than \$500[-];
 - (2) For a violation committed by a highly intoxicated driver or that occurs within five years of a prior alcohol enforcement contact:
 - (A) The court shall impose prompt suspension of license and privilege to operate a vehicle for a period of one year with absolute prohibition from operating a vehicle during the suspension period; and
 - (B) In addition, the court may impose any of the following:
 - (i) Not more than fifty hours of community service work; or

ACT 202

- (ii) A fine of not less than \$300 but not more than \$1,000[-]; and
- (3) For a violation that occurs within five years of two prior alcohol enforcement contacts:
 - (A) The court shall impose revocation of license and privilege to operate a vehicle for a period of two years; and
 - (B) In addition, the court may impose any of the following:
 - (i) Not more than one hundred hours of community service work; or
 - (ii) A fine of not less than \$300 but not more than \$1,000.”

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

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

SECTION 11. This Act shall take effect on July 1, 2007.

(Approved June 19, 2006.)

ACT 202

H.B. NO. 3242

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. The legislature finds that underage drinking is a continuing problem in Hawaii. The number of arrests by police for persons under the age of twenty-one for driving under the influence and zero tolerance has increased over the years. The Hawaii department of health 2003 student survey concluded that there has been a decrease in youth alcohol consumption in grades six, eight, ten, and twelve. Those in grades ten and twelve showed less of a decrease than those in the sixth and eighth grades. The report concluded that those surveyed in the tenth and twelfth grades showed a 59.1 and 72.5 per cent lifetime use rate in 2003. The majority of tenth and twelfth graders have tried alcohol in their lifetime and nearly half of the seniors have reported being drunk. In a monthly trend, of those having a drink in the past thirty days, the report showed that twenty-seven per cent of tenth graders and thirty-six per cent of twelfth graders had consumed alcohol. The consumption of alcohol among the young becomes a health problem because it affects the development of the brain at that young age. This effect alters the learning process in a way that may lead to behavioral problems. To protect the young, thirty-seven states have enacted laws that prohibit the consumption of alcohol by anyone under the age of twenty-one.

Accordingly, the purpose of this Act is to prohibit the consumption of intoxicating liquor by anyone under the age of twenty-one years.

SECTION 2. Section 281-101.5, Hawaii Revised Statutes, is amended to read as follows:

“§281-101.5 Prohibitions involving minors; penalty. (a) No adult shall provide or purchase liquor for consumption or use by a person under twenty-one years of age.

(b) No minor shall consume or purchase liquor and no minor shall have liquor in the minor's possession or custody in any motor vehicle on a public highway or in any public place, public gathering, or public amusement or at any public beach or public park; provided that notwithstanding any other law to the contrary, this subsection shall not apply to:

- (1) Possession or custody of liquor by a minor in the course of delivery, pursuant to the direction of the minor's employer lawfully engaged in business necessitating the delivery;
- (2) Possession ~~[or]~~, custody, or consumption of liquor by a minor in connection with the minor's authorized participation in religious ceremonies requiring ~~[the]~~ such possession ~~[or]~~, custody~~;~~, or consumption; or
- (3) Any person between the ages of eighteen and twenty, who is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health to determine the level of incidence of liquor sales to minors.

(c) No minor shall falsify any identification or use any false identification or identification of another person or of a fictitious person for the purpose of buying or attempting to buy liquor or for the purpose of obtaining employment to sell or serve liquor on licensed premises.

(d) Any person under age eighteen who violates this section shall be subject to the jurisdiction of the family court. Any person age eighteen or older who violates subsection (a) shall be guilty of a misdemeanor. Any person age eighteen to twenty-one who violates ~~[subsections]~~ subsection (b) or (c) shall be guilty of a petty misdemeanor.

(e) As used in this section, "consume" or "consumption" includes the ingestion of liquor."

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 June 19, 2006.)

ACT 203

S.B. NO. 706

A Bill for an Act Relating to Intoxicating Liquor Violations Involving Minors.

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

SECTION 1. Section 281-101.5, Hawaii Revised Statutes, is amended to read as follows:

“§281-101.5 Prohibitions involving minors; penalty. (a) ~~[No]~~ Any adult ~~[shall provide or purchase]~~ who provides or purchases liquor for consumption or use by a person under twenty-one years of age~~[-]~~ shall be guilty of the offense under section 712-1250.5.

(b) No minor shall purchase liquor and no minor shall consume or have liquor in the minor's possession or custody [~~in any motor vehicle on a public highway or~~] in any public place, public gathering, or public amusement [or], at any public beach or public park[;], or in any motor vehicle on a public highway; provided that notwithstanding any other law to the contrary, this subsection shall not apply to:

- (1) Possession or custody of liquor by a minor in the course of delivery, pursuant to the direction of the minor's employer lawfully engaged in business necessitating the delivery;
- (2) Possession or custody of liquor by a minor in connection with the minor's authorized participation in religious ceremonies requiring the possession or custody; or
- (3) Any person between the ages of eighteen and twenty, who is participating in a controlled purchase as part of a law enforcement activity or a study authorized by the department of health to determine the level of incidence of liquor sales to minors.

(c) No minor shall falsify any identification or use any false identification or identification of another person or of a fictitious person for the purpose of buying or attempting to buy liquor or for the purpose of obtaining employment to sell or serve liquor on licensed premises.

(d) Any person under age eighteen who violates this section shall be subject to the jurisdiction of the family court. [~~Any person age eighteen or older who violates subsection (a) shall be guilty of a misdemeanor.~~] Any person age eighteen to twenty-one who violates [subsections] subsection (b) or (c) shall be guilty of a petty misdemeanor. The court shall order that any person under twenty-one years of age found to be in violation of this section shall have, in addition to any other disposition or sentencing provision permitted by law, the person's license to operate a motor vehicle, or the person's ability to obtain a license to operate a motor vehicle, suspended as follows:

- (1) For licensed drivers, the driver's license shall be suspended for not less than one hundred and eighty days with exceptions to allow, at the discretion of the sentencing court, driving to and from school, school-sponsored activities, and employment;
- (2) For persons with a provisional license, the provisional license shall be suspended for not less than one hundred and eighty days with exceptions to allow, at the discretion of the sentencing court, driving to and from school, school-sponsored activities, and employment;
- (3) For persons with an instruction permit, the instruction permit shall be suspended for not less than one hundred and eighty days with exceptions to allow, at the discretion of the sentencing court, driving to and from school, school-sponsored activities, and employment; or
- (4) For persons not licensed to drive, eligibility to obtain a driver's license, provisional license, or instruction permit shall be suspended until the age of seventeen or for one hundred and eighty days, at the discretion of the court; and
- (5) Chapter 571 notwithstanding, in any case where a person under the age of eighteen violates this section, the family court judge may suspend the driver's license, provisional license, or instruction permit, or suspend the eligibility to obtain a driver's license, provisional license, or instruction permit in accordance with this section;

provided that the requirement to provide proof of financial responsibility pursuant to section 287-20 shall not be based upon a sentence imposed under paragraphs (1) and (2). In addition, all persons whether or not licensed, found to be in violation of this section shall be sentenced to seventy-five hours of community service work, and an

eight to twelve hour program of alcohol education and counseling the costs of which shall be borne by the offender or the offender's parent or guardian."

SECTION 2. Section 712-1250.5, Hawaii Revised Statutes, is amended to read as follows:

"§712-1250.5 Promoting intoxicating liquor to a [minor] person under the age of twenty-one.¹ (1) A person, including any licensee as defined in section 281-1, commits the offense of promoting intoxicating liquor to a [minor] person under the age of twenty-one if [he] the person knowingly:

- (a) Sells or offers for sale, influences the sale, serves, delivers, or gives to a person intoxicating liquor, and the person receiving the intoxicating liquor is a [minor; or] person under the age of twenty-one; or
 - (b) Permits a person to possess intoxicating liquor while on property under his control, and the person possessing the intoxicating liquor is a [minor:] person under the age of twenty-one.
- (2) It is a defense to a prosecution for promoting intoxicating liquor to a [minor that:] person under the age of twenty-one that:

- (a) The intoxicating liquor provided to the [minor] person under the age of twenty-one was an ingredient in a medicine prescribed by a licensed physician for medical treatment of the [minor;] person under the age of twenty-one; [or]
- (b) The intoxicating liquor was provided to the [minor] person under the age of twenty-one as part of a ceremony of a recognized religion; [or]
- (c) The defendant provided the intoxicating liquor to the [minor] person under the age of twenty-one with the belief, which was reasonable under the circumstances, that the [minor] person under the age of twenty-one had attained the age of twenty-one; [or]
- (d) The defendant provided the intoxicating liquor to the [minor] person under the age of twenty-one with the express consent of the parent or legal guardian and with the belief, which was reasonable under the circumstances, that the [minor] person under the age of twenty-one would not consume any portion of the substance; [or]
- (e) The defendant provided the intoxicating liquor to the [minor] person under the age of twenty-one with the express consent of the parent or legal guardian and with the belief, which was reasonable under the circumstances, that the [minor] person under the age of twenty-one would consume the substance only in the presence of the parent or legal guardian; or
- (f) The intoxicating liquor was possessed by the [minor] person under the age of twenty-one to be sold or served as allowed by law.

(3) The fact that a person engaged in the conduct specified by this section is prima facie evidence that the person engaged in that conduct with knowledge of the character, nature, and quantity of the intoxicating liquor possessed, distributed, or sold.

The fact that the defendant distributed or sold intoxicating liquor to a [minor] person under the age of twenty-one is prima facie evidence that the defendant knew the transferee was a [minor] person under the age of twenty-one, except as provided in subsection (2)(c).

[(4) For the purposes of this section, "minor" means any person below the age of twenty-one years.]

[(5)] (4) Promoting intoxicating liquor to a [minor] person under the age of twenty-one is a misdemeanor."

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

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. This Act shall take effect on January 1, 2007.

(Approved June 19, 2006.)

Note

1. Period should not be underscored.

ACT 204

H.B. NO. 2109

A Bill for an Act Relating to Health.

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

SECTION 1. The legislature finds that while fetal alcohol exposure is one of the leading known causes of mental retardation in industrialized nations, the majority of those exposed are not mentally retarded. Individuals with diagnosed or undiagnosed fetal alcohol exposure suffer substantially from secondary disabilities, such as child abuse and neglect, separation from families, multiple foster placements, school failure, juvenile detention, job instability, depression, aggression, and other serious mental disorders. These secondary disabilities come at a high cost to the individuals, their families, and society. The legislature finds that these problems can be reduced substantially by early diagnosis and appropriate, effective intervention.

Fetal alcohol spectrum disorder (FASD) is an umbrella term describing the range of effects that can occur in an individual whose mother consumed alcohol during pregnancy. These effects may include physical, mental, behavioral, and learning disabilities with possible lifelong implications.

Nationwide, the incidence of FASD is estimated to be ten per one thousand live births. Nationally, more children are born each year with FASD than those born with spina bifida, multiple sclerosis, Down Syndrome, and HIV combined. There are an estimated one hundred seventy-five children born each year in Hawaii with FASD. Human costs of prenatal alcohol exposure are great, as are the economic costs. Caring for someone with FASD may cost as much as \$5,000,000. Nationally, as many as forty thousand babies are born each year with FASD, costing the United States about \$4,000,000,000.

FASD is the most underdiagnosed developmental disability, both in Hawaii and across the United States. The effect of prenatal alcohol exposure lasts a lifetime, yet FASD is totally preventable. The effects of the known risk factors may be ameliorated with early intervention and through effective systems of care and services.

Most persons with FASD are undiagnosed or misdiagnosed and frequently do not follow treatment plans, even when properly diagnosed. Persons with FASD frequently fail in traditional treatment and other service systems and are commonly identified as being noncompliant, uncooperative, and unmotivated in all systems of services and care.

There are currently few FASD-specific services in Hawaii, and only eighty-nine cases of FASD have been documented and reported to Hawaii's birth defects registry from 1966 to 2002. Department of health data from 2002 indicated that forty per cent of pregnant women surveyed consumed alcohol prior to becoming pregnant, and almost four per cent indicated that they consumed alcohol during pregnancy, which put their infants at risk for FASD.

Information from a 2003 department of health behavioral risk prevalence survey shows that almost eighty-two per cent of the women surveyed consumed alcohol one month prior to the survey, and almost four per cent indicated that they engage in binge drinking. Because FASD can occur in any community where women consume alcohol during pregnancy, it is a statewide public health concern that has service, policy, and economic implications for virtually all state departments.

Because FASD is underdiagnosed and families as well as providers have significant problems in addressing the multiple, challenging needs of persons with this disorder, fourteen states already have state FASD coordinators. These FASD coordinators serve as a key educational, informational, and coordination link between departments and agencies dealing with persons with FASD.

Poor coordination hampers prevention, diagnosis, and service delivery. A state FASD coordinator would organize all fetal alcohol syndrome activities and would ensure that a comprehensive state strategic plan to address FASD is drafted and implemented.

The purpose of this Act is to coordinate and develop FASD information, education, policies, and support services statewide by establishing a state FASD coordinator position within the department of health's family health services division.

SECTION 2. There is established within the family health services division of the department of health one full-time equivalent permanent professional fetal alcohol spectrum disorder coordinator position. The fetal alcohol spectrum disorder coordinator shall act as a public point of contact for individuals and families affected by fetal alcohol spectrum disorder and shall help to coordinate a statewide system of services for persons with fetal alcohol spectrum disorder by:

- (1) Increasing statewide awareness of fetal alcohol spectrum disorder both in the general public and in at-risk populations;
- (2) Expanding statewide capacity to identify and intervene with at-risk pregnant and parenting women;
- (3) Advocating, mobilizing, and coordinating state and community resources to assist persons and families affected by fetal alcohol spectrum disorder to receive the support they need;
- (4) Improving statewide service delivery to individuals and families affected by fetal alcohol spectrum disorder;
- (5) Coordinating a statewide strategic plan to address the full range of cradle-to-grave fetal alcohol spectrum disorder care, treatment, education, and prevention issues;
- (6) Facilitating and coordinating state fetal alcohol spectrum disorder task force meetings; and
- (7) Facilitating development and implementation of a comprehensive, statewide system of care for the prevention, identification, surveillance, and treatment of fetal alcohol spectrum disorders.

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 2006-2007 for operating expenses and to establish a full-time equivalent permanent professional fetal alcohol spectrum disorder coordinator position in the family health services division of the department of health.

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

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved June 19, 2006.)

A Bill for an Act Relating to Substance Abuse.

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

SECTION 1. Act 213, Session Laws of Hawaii 2005, created the student substance abuse assessment and treatment advisory task force, charged with:

- (1) Reviewing the process by which a child who violates the zero tolerance policy for drugs and alcohol in public schools is referred for assessment and treatment of substance abuse and excluded from school; and
- (2) Reporting its findings and recommendations, including any proposed legislation, to the legislature prior to the convening of the regular session of 2006.

Act 213 also amended the zero tolerance policy to allow a child to return to school earlier than indicated in the original disciplinary determination, following the completion of a substance abuse assessment and any related treatment or counseling.

Although minimum insurance benefits for substance abuse treatment are statutorily required under chapter 431M, Hawaii Revised Statutes, there is little use of these benefits because insurers lack enough providers to conduct the substance abuse assessments necessary to qualify individuals for covered services. This is of particular concern in the case of children facing substance abuse-related school discipline under the zero tolerance policy.

The purpose of this Act is to improve the process by which public school students are assessed and treated for substance abuse by:

- (1) Making the zero tolerance policy for public schools, as amended by Act 213, permanent;
- (2) Further amending the public school zero tolerance policy for drugs and alcohol as recommended by the student substance abuse assessment and treatment advisory task force; and
- (3) Allowing certified substance abuse counselors to conduct assessments to qualify individuals for substance abuse-related insurance benefits.

SECTION 2. Section 431M-1, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“‘Certified substance abuse counselor’ means a person who is certified pursuant to section 321-193.”

SECTION 3. Section 431M-4, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Alcohol and drug dependence benefits shall be as follows:

- (1) Detoxification services as a covered benefit under this chapter shall be provided either in a hospital or in a nonhospital facility [which] that has a written affiliation agreement with a hospital for emergency, medical, and mental health support services. The following services shall be covered under detoxification services:
 - (A) Room and board;
 - (B) Diagnostic x-rays;
 - (C) Laboratory testing; and
 - (D) Drugs, equipment use, special therapies, and supplies.

Detoxification services shall be included as part of the covered in-hospital services, but shall not be included in the treatment episode limitation, as specified in subsection (a);

- (2) Alcohol or drug dependence treatment through in-hospital, nonhospital residential, or day treatment substance abuse services as a covered benefit under this chapter shall be provided in a hospital or nonhospital facility. Before a person qualifies to receive benefits under this subsection, a qualified physician, psychologist, licensed clinical social worker, or advanced practice registered nurse shall determine that the person suffers from alcohol or drug dependence, or both~~[-The]~~; provided that the substance abuse services covered under this paragraph shall include those services [which] that are required for licensure and accreditation[-] and shall be included as part of the covered in-hospital services as specified in subsection (a). Excluded from alcohol or drug dependence treatment under this subsection are detoxification services and educational programs to which drinking or drugged drivers are referred by the judicial system~~[-]~~ and services performed by mutual self-help groups; ~~and]~~
- (3) Alcohol or drug dependence outpatient services as a covered benefit under this chapter shall be provided under an individualized treatment plan approved by a qualified physician, psychologist, licensed clinical social worker, or advanced practice registered nurse and ~~must]~~ shall be services reasonably expected to produce remission of the patient's condition. An individualized treatment plan approved by a licensed clinical social worker or an advanced practice registered nurse for a patient already under the care or treatment of a physician or psychologist shall be done in consultation with the physician or psychologist. Services covered under this paragraph shall be included as part of the covered outpatient services as specified in subsection (a)~~[-]~~; and
- (4) Substance abuse assessments for alcohol or drug dependence as a covered benefit under this section for a child facing disciplinary action under section 302A-1134.6 shall be provided by a qualified physician, psychologist, licensed clinical social worker, advanced practice registered nurse, or certified substance abuse counselor. The certified substance abuse counselor shall be employed by a hospital or nonhospital facility providing substance abuse services. The substance abuse assessment shall evaluate the suitability for substance abuse treatment and placement in an appropriate treatment setting."

SECTION 4. Act 213, Session Laws of Hawaii 2005, is amended as follows:
1. By amending section 2 to read:

“SECTION 2. Section 302A-1134.6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

“(f) A child determined to be in violation of subsection (b) or (c) shall be subject to the department's disciplinary rules; provided that:

(1) The school shall administer a screening tool approved by the department to determine whether there is a need for the child to be referred for a substance abuse assessment;

~~[(1)]~~ (2) The child shall be allowed to return to school earlier than the department's original disciplinary determination; provided that the child gives the school evidence of the following:

- (A) A substance abuse assessment has been completed; and
(B) The child is progressing toward clinical discharge from any substance abuse treatment or substance abuse counseling recommended by the substance abuse assessment;

~~[(2)]~~ (3) If the substance abuse assessment finds that the child does not need substance abuse treatment or substance abuse counseling, the school

may allow the child to return to school earlier than originally indicated; provided that:

- (A) The child provides a certified copy of the assessment; and
- (B) The child's parent or legal guardian consents to the child and the child's family receiving follow-up counseling or other student support services to be provided by the department.

In determining whether to allow the child to return to school early, the school[, at a minimum,] administrator shall [take into consideration] review and determine the nature and severity of the offense, the impact of the offense on others, [and] the age of the offender [as well as], and whether the offender is a repeat offender; and

- (3) (4) For the child's first violation of subsection (b) or (c), if the child provides evidence of clinical discharge from the substance abuse treatment program or substance abuse counseling, all records of disciplinary action relating to the original offense shall be expunged. For the purposes of this paragraph, "expunged" means the records of substance abuse assessment shall be segregated and kept confidential but shall be destroyed upon graduation of the child."

2. By amending section 5 to read:

~~"SECTION 5. This Act shall take effect upon its approval; provided that on June 30, 2006, [sections 2 and] section 3 of this Act shall be repealed [and section 302A-1134.6(f), Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the 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 July 1, 2006; provided that section 4 of this Act shall take effect on June 29, 2006.

(Approved June 19, 2006.)

ACT 206

S.B. NO. 1223

A Bill for an Act Relating to Negotiable Instruments.

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

SECTION 1. Section 490:3-506.5, Hawaii Revised Statutes, is amended to read as follows:

~~"[**§490:3-506.5**] Charges for dishonored checks.~~ The payee or a holder in due course of any check, draft, or order for the payment of money that has been dishonored for lack of funds or credit to pay the check, draft, or order or because the maker has no account with the drawee shall be allowed to assess the maker a reasonable service charge of not more than ~~[\$20.] \$30."~~

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

SECTION 3. This Act shall take effect upon approval.

(Approved June 20, 2006.)

ACT 207

S.B. NO. 439

A Bill for an Act Relating to Administrative Fines Under the State Ethics Code.

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

SECTION 1. Chapter 84, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“~~§84-~~ **Administrative fines.** (a) Where an administrative fine has not been established for a violation of a provision of this chapter, any person, including a legislator or employee, who violates a provision of this chapter shall be subject to an administrative fine imposed by the ethics commission that shall not exceed \$500 for each violation. All fines collected under this section shall be deposited in the general fund.

(b) No fine shall be assessed under this section unless:

- (1) The commission convenes a hearing in accordance with section 84-31(c) and chapter 91; and
- (2) A decision has been rendered by the commission.”

SECTION 2. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) Failure of a legislator, a delegate to the constitutional convention, or employee to file a disclosure of financial interests as required by this section shall be a violation of this chapter. Any legislator, delegate to a constitutional convention, or employee who fails to file a disclosure of financial interests when due shall be assessed [~~a penalty~~] an administrative fine of \$50. The state ethics commission shall notify a person, by registered mail, return receipt requested, of the failure to file, and the disclosure of financial interests shall be submitted to the commission not later than 4:30 p.m. on the tenth day after notification of the failure to file has been mailed to the person. If a disclosure of financial interests has not been filed within ten days of the due date, an additional [~~penalty~~] administrative fine of \$10 for each day a disclosure remains unfiled shall be added to the [~~penalty-~~] administrative fine. All [~~penalties~~] administrative fines collected under this section shall be deposited in the State’s general fund. Any [~~monetary penalty~~] administrative fine for late filing shall be in addition to any other action the commission may take under this chapter for violations of the state ethics code. The commission may waive any [~~penalties~~] administrative fines assessed under this subsection for good cause shown.”

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.¹

SECTION 5. This Act shall take effect upon approval.

(Approved June 20, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

A Bill for an Act Making an Appropriation for Increasing Stipends for Volunteer Precinct Officials.

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

SECTION 1. The legislature finds that precinct officials have not been given stipend increases for over sixteen years. This fact, along with the dwindling number of names submitted by political parties, has adversely affected the recruitment of precinct officials. As a result, polling sites often operate with less than one hundred per cent staffing, thereby lowering the level of service to voters.

The purpose of this Act is to make an appropriation to allow the chief election officer to increase precinct official stipends.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$96,542 or so much thereof as may be necessary for fiscal year 2006-2007 to increase precinct official stipends.

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 20, 2006.)

A Bill for an Act Relating to the Convention Center Enterprise Special Fund.

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

SECTION 1. 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~~] \$33,000,000 in any calendar year, revenues collected in excess of [~~\$31,000,000~~] \$33,000,000 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 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 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, 2006; provided that the amendments made to section 237D-6.5(b), Hawaii Revised Statutes, by this Act shall remain in effect when Act 235, Session Laws of Hawaii 2005, takes effect on July 1, 2007.

(Approved June 20, 2006.)

ACT 210

H.B. NO. 2805

A Bill for an Act Relating to State Planning.

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

SECTION 1. During the 2005 special session, the legislature adopted Act 8, which created the Hawaii 2050 sustainability task force (task force) to review the Hawaii state plan and the State’s planning process, and required the office of the auditor to prepare the Hawaii 2050 Sustainability Plan.

Once all of the members of the task force were appointed, the task force held several meetings during the fall of 2005. The objectives of these meetings were to address and meet the requirements of Act 8, Special Session Laws of Hawaii 2005, and to develop and approve a process to create the Hawaii 2050 Sustainability Plan. Based on these objectives, the task force submitted a report to the legislature outlining the process for creating the Sustainability Plan and making additional recommendations.

In its recommendations, the task force noted that after reviewing the magnitude of creating the Sustainability Plan, more time is required to perform necessary research and community outreach. The purpose of this Act is to extend:

- (1) The task force’s deadline for completing the Hawaii 2050 Sustainability Plan by one year; and
- (2) The authority of the task force to June 30, 2008.

SECTION 2. Act 8, Special Session Laws of Hawaii 2005, is amended as follows:

1. By amending section 4 to read:

“SECTION 4. **Hawaii 2050 sustainability plan.** (a) After receipt of the task force’s report, the office of the auditor shall prepare the Hawaii 2050 sustainability plan. The plan shall be prepared to define and implement state goals, objectives, policies, and priority guidelines using sections 226-3 to 226-27, Hawaii Revised Statutes, as guiding principles. The auditor shall seek input from all state departments. The auditor shall also solicit public views and concerns in preparation of the plan and shall incorporate all or a portion of the recommendations reported by the Hawaii 2050 task force.

The plan shall serve as a guideline for funding and implementation by state and county agencies. The office of planning shall assist the auditor in reviewing the plan.

(b) The auditor shall submit the sustainability plan to the legislature no later than twenty days before the convening of the regular session of [2007-] 2008.

(c) The auditor, with the assistance of the office of planning, shall update the plan every ten years and report to the legislature.”

2. By amending section 7 to read:

“SECTION 7. The Hawaii 2050 task force shall cease to operate after [the adjournment sine die of the 2007 regular session of the legislature-] June 30, 2008.”

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 20, 2006.)

ACT 211

H.B. NO. 2806

A Bill for an Act Relating to Sustainability.

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

SECTION 1. During the 2005 Special Session, the legislature adopted Act 8, Special Session Laws of Hawaii 2005, (Act 8), which created the Hawaii 2050 task force (task force) to review the Hawaii state plan and the State’s planning process and required the office of the auditor to prepare the Hawaii 2050 Sustainability Plan.

Once all of the members of the task force were appointed, the task force held several meetings during the fall of 2005. The objectives of these meetings were to:

- (1) Address and meet the requirements of Act 8; and
- (2) Develop and approve a process to create the Hawaii 2050 Sustainability Plan.

Based on these objectives, the task force submitted a report to the legislature outlining the process for creating the plan and making additional recommendations.

In its recommendations, the task force noted that, after reviewing the magnitude of the task of creating the sustainability plan, it needed more time to perform necessary research and community outreach.

The legislature also finds that establishing Hawaii as a marketing brand beyond the tourism industry could prove to be economically beneficial to the state in the long term. However, prior to investing substantial state resources in such an endeavor, the legislature believes that it is prudent to conduct a comprehensive assessment of the feasibility and benefits of establishing “Hawaii” as a brand name.

The purpose of the Act is to appropriate moneys to the office of the auditor to:

- (1) Fund the continued activities of the Hawaii 2050 task force; and
- (2) Conduct a comprehensive assessment of the feasibility and benefits of establishing "Hawaii" as a brand name.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$650,000 or so much thereof as may be necessary for fiscal year 2006-2007 to provide additional funding for the Hawaii 2050 task force to:

- (1) Conduct valuable policy analyses;
- (2) Gather vital research and data;
- (3) Conduct broad community outreach and solicit input from all sectors; and
- (4) Launch an effective public education and media campaign to educate, engage, and inspire community participation.

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

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$50,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the Hawaii 2050 task force to make a comprehensive assessment of the feasibility and benefits of establishing "Hawaii" as a brand name with values that will support diverse products and services other than tourism in the United States and foreign markets.

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

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved June 20, 2006.)

ACT 212

S.B. NO. 2753

A Bill for an Act Making an Appropriation for the Operation and Maintenance of the East Kauai Irrigation System.

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

SECTION 1. Amfac Sugar Company announced in 2001 that it was ceasing operation of its ditch system, comprised of twenty-two miles of ditch and three reservoirs serving two thousand acres of land in Kapaa, Kauai. In March 2002, the East Kauai Water Users' Cooperative (Cooperative) received a revocable permit to operate this state-owned east Kauai irrigation system. Since then, the system has provided a number of benefits, including providing water to the ferns in Fern Grotto, which, prior to the involvement of the Cooperative, did not receive sufficient water to survive. Also, the continued health of the Wailua reservoir, which is part of the system, will greatly assist the State's plans for a public fishing area, campground, and educational center for children in the area.

The Cooperative is now faced with a problem of funding ongoing operations and maintenance of the system. Income from user fees is insufficient to pay for the normal operation and maintenance expense of the system. The legislature finds that reliable irrigation water is critical for the survival of agricultural crops in the Kapaa area.

The purpose of this Act is to appropriate funds for the continued operation and maintenance of the east Kauai irrigation system.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the operation and maintenance of the east Kauai irrigation system by the East Kauai Water Users' Cooperative; provided that the sum appropriated shall not supplant any other moneys appropriated to the East Kauai Water Users' Cooperative for fiscal year 2006-2007.

The sum appropriated shall be expended by the agribusiness development corporation for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 20, 2006.)

ACT 213

S.B. NO. 2484

A Bill for an Act Making an Appropriation for Vog Monitoring Stations.

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

SECTION 1. Kilauea volcano on the island of Hawaii is one of the most active volcanoes in the world. It has erupted continuously since 1983, and it emits thousands of tons of gases containing water vapor, sulfur dioxide, and carbon dioxide daily. Kilauea volcano is the nation's largest single source of sulfur dioxide. It has an output several times greater than any power plant. Once airborne, the gases react with other chemicals in the air and are converted to a particulate form of sulfuric acid mists and sulfate particles. This reaction produces a visible haze called "vog."

Volcanic emission is a serious health issue. Various studies have shown that exposure to vog may result in elevated risks of adverse health conditions. Vog often irritates the eyes, nose, throat, and lungs. It has been shown to increase the occurrence of adolescent allergies, asthma, and respiratory disease. The particles affect lung defenses and the ability to clear material out of the lungs and can cause bronchitis. Prolonged exposure may be associated with cardiac problems.

The department of health's clean air branch currently has three vog-monitoring stations that measure sulfur dioxide in Hilo, Puna, and Kona. The Hawaii Volcanoes National Park has two monitoring stations. Unfortunately, these monitoring stations do not measure vog levels in other parts of the Puna district where thousands of residents are affected.

The legislature recognized the potential health hazards of vog when it adopted Senate Concurrent Resolution No. 135 in 2005, which requested the clean air branch to report the status and findings of its vog-monitoring plan, together with legislative recommendations. The report was submitted to the legislature on December 15, 2005, and acknowledges volcanic emission as an important public health issue. The report proposes locating one additional monitoring station in Mountain View and one in Pahala. It is intended that the stations will be equipped with continuous sulfur dioxide monitors and meteorological equipment. Quality assurance of the data will be performed according to United States Environmental Protection Agency guidelines. It is further intended that near real-time data will be accessible to the public through an Internet website and a telephone hotline, similar to the system employed at the Hawaii Volcanoes National Park.

The cost of establishing the two vog-monitoring stations is \$160,000. The clean air branch is actively pursuing a federal grant for the two stations, but funding is uncertain because of federal budget cuts.

The purpose of this Act is to make an appropriation for two vog-monitoring stations, one at Mountain View and one at Pahala, or at any alternate location as determined by the Department of Health.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the installation of vog-monitoring stations, one at Mountain View and one at Pahala, or at any alternate location as determined by the Department of Health on the island of Hawaii.

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 20, 2006.)

ACT 214

S.B. NO. 819

A Bill for an Act Relating to the Hawaii Historic Preservation Special Fund.

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

SECTION 1. Section 6E-16, Hawaii Revised Statutes, is amended to read as follows:

“**§6E-16 Hawaii historic preservation special fund.** (a) There is established a Hawaii historic preservation special fund into which shall be deposited the following moneys:

- (1) Appropriations by the legislature to the special fund;
- (2) Gifts, donations, and grants from public agencies and private persons;
[and]
- (3) All proceeds collected by the department derived from historic preserve user fees, historic preserve leases or concession fees, fees charged to carry out the purposes of this chapter, or the sale of goods[-]; and
- (4) Civil, criminal, and administrative penalties, fines, and other charges collected under this chapter or any rule adopted pursuant to this chapter.

All interest earned or accrued on moneys deposited in the fund shall become part of the fund. The fund shall be administered by the department; provided that the department may contract with a public or private agency to provide the day-to-day management of the fund.

(b) [The] Subject to legislative authorization, the department may expend moneys from the fund [tø];

- (1) For permanent and temporary staff positions;
- (2) To replenish goods[-, tø];
- (3) To produce public information materials[-and tø];
- (4) To provide financial assistance to public agencies and private agencies in accordance with chapter [42D] 42F involved in historic preservation activities other than those covered by section 6E-9[-]; and
- (5) To cover administrative and operational costs of the historic preservation program.

(c) The department shall adopt rules in accordance with chapter 91 for the purposes of this section.”

ACT 215

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 21, 2006.)

ACT 215

H.B. NO. 2974

A Bill for an Act Relating to Historic Preservation.

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

SECTION 1. Act 59, Session Laws of Hawaii 2003 established the South Kona wilderness area on the island of Hawaii. Act 59 directed the department of land and natural resources to preserve the visual, cultural, and historical aspects of the land, and to develop a comprehensive management plan for the wilderness area.

The purpose of this Act is to extend the length of time allowed to acquire the lands that are designated to become part of the South Kona wilderness area on the island of Hawaii.

SECTION 2. Act 59, Session Laws of Hawaii 2003, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 2003; provided that:

- (1) This Act shall be repealed on December 31, [2006,] 2007, if the exchange transactions to acquire the lands described in section 6E-B are not consummated prior to December 31, [2006,] 2007; 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.”

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 21, 2006.)

ACT 216

S.B. NO. 1899

A Bill for an Act Relating to Agriculture.

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

SECTION 1. The legislature finds that the papaya is the second most important fruit crop in Hawaii. In 1992, ninety-five per cent of Hawaii’s papaya crop was damaged from the papaya ringspot virus, plunging the industry into a crisis. As a result of these events, a genetically engineered papaya called the “rainbow” papaya was developed to resist the aggressive ringspot virus.

Today, the rainbow papaya is an important part of Hawaii’s papaya industry and comprises the majority of the papayas exported to the mainland and Canada.

With the advent of the rainbow papaya, the industry is seeking to begin exporting the engineered papayas to Japan. Japan accounts for approximately forty per cent of Hawaii's exports; however, without proper clearances, the rainbow papaya cannot be exported to Japan. The process of introducing the genetically engineered papaya into Japan has been ongoing for over five years, and has been delayed by questions from the Japanese regulators, many of which relate to scientific concerns. The appropriations contained in this Act will support genomic sequencing of the engineered papaya, which will provide the scientific basis to accelerate Japanese approval to market the rainbow papaya both in Japan and in future markets. The legislature believes that by providing information to clear rainbow papayas for export to Japan, the papaya industry will also open doors in other countries, including China and the European Union.

The purpose of this Act is to appropriate funds to:

- (1) Provide the scientific information to support the deregulation process which will allow the genetically engineered Hawaiian rainbow papaya to be introduced into the Japanese market; and
- (2) Initiate the development and implementation of a marketing plan to promote transgenic and non-transgenic Hawaiian papaya in Japan and in future markets, including China and the European Union.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$200,000 or so much thereof as may be necessary for fiscal year 2006-2007 to:

- (1) Provide the scientific information to support the deregulation process which will allow the genetically engineered Hawaiian rainbow papaya to be introduced into the Japanese market; and
- (2) Initiate the development and implementation of a marketing plan to promote transgenic and non-transgenic Hawaiian papaya in Japan and in future markets, including China and the European Union.

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 21, 2006.)

ACT 217

S.B. NO. 3000

A Bill for an Act Relating to Housing.

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

SECTION 1. The senate and house of representatives of the twenty-third legislature of the State of Hawaii, regular session of 2005, enacted Act 196, Relating to Housing, and section 35 of that act established the joint legislative housing and homeless task force to further identify near-term solutions to Hawaii's affordable housing and homeless problem. The task force issued its report with findings and recommendations in January 2006. The task force recommended in general that the State:

- (1) Leverage more sources of financing for affordable housing;
- (2) Make available more public land for the development of affordable housing;

- (3) Streamline government approvals and permitting of affordable housing projects;
- (4) Build more offsite infrastructure to serve affordable housing;
- (5) Appropriate additional funds for transitional housing, shelters, and services for the homeless population; and
- (6) Preserve and maintain the existing public housing stock.

The specific recommendations of the task force for government approvals and permitting for affordable housing include but are not limited to:

- (1) Requiring that state agencies in the permit review process give affordable housing projects priority processing;
- (2) Amending chapter 46, Hawaii Revised Statutes, relating to the general jurisdiction and powers of the counties, to provide greater flexibility in approving affordable housing projects by waiving certain requirements for infrastructure; and
- (3) Amending section 201G-118, Hawaii Revised Statutes, to improve and further streamline the fast-track permitting process for affordable housing projects.

The purpose of this Act is to implement the recommendations of the task force with regard to government approvals and permitting for affordable housing.

SECTION 2. Section 46-14.5, Hawaii Revised Statutes, is amended to read as follows:

“~~§46-14.5~~ Land use density and infrastructure; low-income rental units. Notwithstanding any other law to the contrary, the counties are authorized to provide flexibility in land use density provisions and public facility requirements to encourage the development of any rental housing project where at least a portion of the rental units are set aside for persons and families with incomes at or below one hundred forty per cent of the area median family income, of which twenty per cent are set aside for persons and families with incomes at or below eighty per cent of the area median family income.”

SECTION 3. Section 91-13.5, Hawaii Revised Statutes, is amended to read as follows:

“§91-13.5 Maximum time period for business or development-related permits, licenses, or approvals; automatic approval; extensions. (a) Unless otherwise provided by law, an agency shall adopt rules that specify a maximum time period to grant or deny a business or development-related permit, license, or approval; provided that the application is not subject to state administered permit programs delegated, authorized, or approved under federal law.

(b) All such issuing agencies shall clearly articulate informational requirements for applications and review applications for completeness in a timely manner.

(c) All such issuing agencies shall take action to grant or deny any application for a business or development-related permit, license, or approval within the established maximum period of time, or the application shall be deemed approved; provided that a delay in granting or denying an application caused by the lack of quorum at a regular meeting of the issuing agency shall not result in approval under this subsection; provided further that any subsequent lack of quorum at a regular meeting of the issuing agency that delays the same matter shall not give cause for further extension, unless an extension is agreed to by all parties.

(d) Notwithstanding any other law to the contrary, any agency that reviews and comments upon an application for a business or development-related permit, license, or approval for a housing project under section 201G-118 shall respond

within forty-five days of receipt of the application, or the application shall be deemed acceptable as submitted to the agency.

[(d)] (e) The maximum period of time established pursuant to this section shall be extended in the event of a national disaster, state emergency, or union strike, which would prevent the applicant, the agency, or the department from fulfilling application or review requirements.

[(e)] (f) This section shall not apply to any proceedings of the public utilities commission.

[(f)] (g) For purposes of this section, “application for a business or development-related permit, license, or approval” means any state or county application, petition, permit, license, certificate, or any other form of a request for approval required by law to be obtained prior to the formation, operation, or expansion of a commercial or industrial enterprise, or for any permit, license, certificate, or any form of approval required under sections 46-4, 46-4.2, 46-4.5, 46-5, and chapters 183C, 205, 205A, 340A, 340B, 340E, 340F, 342B, 342C, 342D, 342E, 342F, 342G, 342H, 342I, 342J, 342L, and 342P.”

SECTION 4. Section 201G-118, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The administration may develop, on behalf of the State or with an eligible developer, or may assist under a government assistance program in the development of, housing projects which shall be exempt from all statutes, ordinances, charter provisions, and rules of any governmental agency relating to planning, zoning, construction standards for subdivisions, development and improvement of land, and the construction of units thereon; provided that:

- (1) The project primarily or exclusively includes housing units affordable to households with incomes at or below one hundred forty per cent of the median family income;
- (2) The administration finds the project is consistent with the purpose and intent of this chapter, and meets minimum requirements of health and safety;
- (3) The development of the proposed project does not contravene any safety standards, tariffs, or rates and fees approved by the public utilities commission for public utilities or the various boards of water supply authorized under chapter 54;
- (4) The legislative body of the county in which the project is to be situated shall have approved the project with or without modifications.
 - (A) The legislative body shall approve, approve with modifications, or disapprove the project by resolution within forty-five days after the administration has submitted the preliminary plans and specifications for the project to the legislative body. If on the forty-sixth day a project is not disapproved, it shall be deemed approved by the legislative body;
 - (B) No action shall be prosecuted or maintained against any county, its officials, or employees on account of actions taken by them in reviewing, approving, modifying, or disapproving the plans and specifications; and
 - (C) The final plans and specifications for the project shall be deemed approved by the legislative body if the final plans and specifications do not substantially deviate from the preliminary plans and specifications. The final plans and specifications for the project shall constitute the zoning, building, construction, and subdivision standards for that project. For purposes of sections 501-85

and 502-17, the executive director of the administration, or the responsible county official may certify maps and plans of lands connected with the project as having complied with applicable laws and ordinances relating to consolidation and subdivision of lands, and the maps and plans shall be accepted for registration or recordation by the land court and registrar; and

- (5) The land use commission shall approve, approve with modifications, or disapprove a boundary change within forty-five days after the administration has submitted a petition to the commission as provided in section 205-4. If on the forty-sixth day the petition is not disapproved, it shall be deemed approved by the commission.’

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, 2006.

(Approved June 21, 2006.)

ACT 218

S.B. NO. 2502

A Bill for an Act Making an Appropriation for Donated Dental Services.

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

SECTION 1. The legislature finds that the donated dental services program began as a pilot project in Colorado in 1985 and has since become operational in thirty-four states, including Hawaii, through the National Foundation for Dentistry for the Handicapped. This foundation is a charitable affiliate of the American Dental Association. The donated dental services program links eligible individuals who are elderly or disabled with volunteer dentists who provide needed dental care services.

The legislature further finds that the Hawaii program began in January 2002, and is administered by the department of health, through the state council on developmental disabilities. Since the program started, eighty-seven individuals received completed dental care services with a total value of treatment of \$230,045. The program involves sixty-one volunteer dentists and nineteen volunteer dental laboratories.

In an effort to address and support the dental care needs of elderly or disabled people in Hawaii, the legislature appropriated \$83,320 to the program for fiscal year 2001-2002 and fiscal year 2002-2003. An appropriation of \$30,765 was made by the legislature for fiscal year 2004-2005.

The donated dental services program has been extremely successful due to the legislature’s continuous support through appropriations since its inception. Without additional financial support, the donated dental services program in Hawaii will end.

The purpose of this Act is to appropriate funds to continue implementation of the donated dental services program in Hawaii.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$19,309 or so much thereof as may be necessary for fiscal year 2006-2007 for the donated dental services program in Hawaii.

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 21, 2006.)

ACT 219

S.B. NO. 2227

A Bill for an Act Relating to Health Insurance.

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

SECTION 1. The legislature finds that the use of technology to deliver effective and prompt health care is extremely important in Hawaii, particularly to individuals residing in rural communities. The legislature further finds that the need for telehealth services requires that they be reimbursed.

The purpose of this Act is to ensure that telehealth services are reimbursed.

SECTION 2. Section 431:10A-116.3, Hawaii Revised Statutes, is amended to read as follows:

“§431:10A-116.3 [H] Coverage for telehealth.[H] (a) It is the intent of the legislature to recognize the application of telehealth as a reimbursable service by which an individual shall receive medical services from a health care provider without face-to-face contact with the provider.

~~[(b) For the purposes of this section, “telehealth” means the use of telecommunications services, as defined in section 269-1, and enhanced services to deliver health and health care services and information to parties separated by distance. Standard telephone, facsimile transmissions, or both in the absence of other integrated information and data, do not constitute telehealth services.~~

~~(e) From July 1, 1998, no]~~ (b) No accident and health or sickness insurance plan that is issued, amended, or renewed shall require face-to-face contact between a health care provider and a patient as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services were provided. The coverage required in this section may be subject to all terms and conditions of the plan agreed upon among the enrollee or subscriber, the insurer, and the provider.

(c) There shall be no reimbursement for a telehealth consultation between health care providers unless a health care provider-patient relationship exists between the patient and one of the health care providers involved in the telehealth interaction.

For the purposes of this section, “health care provider” means a provider of services, as defined in 42 U.S.C. 1395x(u), a provider of medical and other health services, as defined in 42 U.S.C. 1395x(s), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

(d) In the event that a health care provider-patient relationship does not exist between the patient and the health care provider to be involved in a telehealth interaction between the patient and the health care provider, a telehealth mechanism may be used to establish a health care provider-patient relationship.

(e) For the purposes of this section, “telehealth” means the use of telecommunications services, as defined in section 269-1, including but not limited to real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital

images and laboratory results for medical interpretation and diagnosis, for the purpose of delivering enhanced health care services and information to parties separated by distance. Standard telephone contacts, facsimile transmissions, or email text, in combination or by itself, does not constitute a telehealth service for the purposes of this chapter.”

SECTION 3. Section 432:1-601.5, Hawaii Revised Statutes, is amended to read as follows:

“[H]§432:1-601.5 Coverage for telehealth.[H] (a) It is the intent of the legislature to recognize the application of telehealth as a reimbursable service by which an individual shall receive medical services from a health care provider without face-to-face contact with the provider.

~~[(b) For the purposes of this section, “telehealth” means the use of telecommunications services, as defined in section 269-1, and enhanced services to deliver health and health care services and information to parties separated by distance. Standard telephone, facsimile transmissions, or both in the absence of other integrated information and data, do not constitute telehealth services.~~

~~[(c) From July 1, 1998, no]~~ (b) No mutual benefit society plan that is issued, amended, or renewed shall require face-to-face contact between a health care provider and a patient as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services were provided. The coverage required in this section may be subject to all terms and conditions of the plan agreed upon among the enrollee or subscriber, the mutual benefit society, and the provider.

(c) There shall be no reimbursement for a telehealth consultation between health care providers unless a health care provider-patient relationship exists between the patient and one of the health care providers involved in the telehealth interaction.

For the purposes of this section, “health care provider” means a provider of services, as defined in 42 U.S.C. 1395x(u), a provider of medical or other health services, as defined in 42 U.S.C. 1395x(s), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

(d) In the event that a health care provider-patient relationship does not exist between the patient and the health care provider to be involved in a telehealth interaction between the patient and health care provider, a telehealth mechanism may be used to establish a health care provider-patient relationship.

(e) For the purposes of this section, “telehealth” means the use of telecommunications services, as defined in section 269-1, including but not limited to real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, for the purpose of delivering enhanced health care services and information to parties separated by distance. Standard telephone contacts, facsimile transmissions, or email text, in combination or by itself, does not constitute a telehealth service for the purposes of this chapter.”

SECTION 4. Section 432D-23.5, Hawaii Revised Statutes, is amended to read as follows:

“[H]§432D-23.5 Coverage for telehealth.[H] (a) It is the intent of the legislature to recognize the application of telehealth as a reimbursable service by

which an individual shall receive medical services from a health care provider without face-to-face contact with the provider.

~~[(b) For the purposes of this section, “telehealth” means the use of telecommunications services, as defined in section 269-1, and enhanced services to deliver health and health care services and information to parties separated by distance. Standard telephone, facsimile transmissions, or both in the absence of other integrated information and data, do not constitute telehealth services.~~

~~(e) From July 1, 1998, no] (b) No health maintenance organization plan that is issued, amended, or renewed shall require face-to-face contact between a health care provider and a patient as a prerequisite for payment for services appropriately provided through telehealth in accordance with generally accepted health care practices and standards prevailing in the applicable professional community at the time the services were provided. The coverage required in this section may be subject to all terms and conditions of the plan agreed upon among the enrollee or subscriber, the health maintenance organization, and the provider.~~

(c) There shall be no reimbursement for a telehealth consultation between health care providers unless an existing health care provider-patient relationship exists between the patient and one of the health care providers involved in the telehealth interaction.

For the purposes of this section, “health care provider” means a provider of services, as defined in 42 U.S.C. 1395x(u), a provider of medical or other health services, as defined in 42 U.S.C. 1395x(s), and any other person or organization who furnishes, bills, or is paid for health care in the normal course of business.

(d) In the event that a health care provider-patient relationship does not exist between the patient and the health care provider involved in a telehealth interaction between the patient and the health care provider, a telehealth mechanism may be used to establish a health care provider-patient relationship.

(e) For the purposes of this section, “telehealth” means the use of telecommunications services, as defined in section 269-1, including but not limited to real-time video conferencing-based communication, secure interactive and non-interactive web-based communication, and secure asynchronous information exchange, to transmit patient medical information, including diagnostic-quality digital images and laboratory results for medical interpretation and diagnosis, for the purpose of delivering enhanced health care services and information to parties separated by distance. Standard telephone contacts, facsimile transmissions, or email text, in combination or by itself, does not constitute a telehealth service for the purposes of this chapter.”

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 21, 2006.)

ACT 220

S.B. NO. 2343

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

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

SECTION 1. To protect the health and safety of the elderly and disabled, the legislature recognizes the need to generate timely and accurate background checks in

the form of positive fingerprint identification for persons providing care or having access to residents of skilled nursing facilities, intermediate care facilities, adult residential care homes, expanded adult residential care homes, assisted living facilities, home health agencies, hospices, adult day health centers, special treatment facilities, therapeutic living programs, intermediate care facilities for the mentally retarded, hospitals, rural health centers, and rehabilitation agencies, including applicants for licensure to any of these facilities, facility operators, prospective facility employees and facility adult volunteers, and, in the case of any facility operated in a private residence, all adults living in the home other than the clients, and service providers who have direct contact with individuals receiving services who may be frail, elderly, or disabled.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- Criminal history record checks. (a) For the purposes of this section:

“Adults” means individuals aged eighteen years or older.

“Applicant” means a person or entity seeking licensure to operate a healthcare facility. If the applicant is an entity, the term “applicant” shall also include its principals, directors, partners, managers, agents, and representatives to the extent that any of these individuals will have access to or contact with clients, their finances, assets, personal property, medical records, or individually identifiable information.

“Conviction for a relevant crime” means any federal or state conviction for any relevant crime as defined in this section.

“Criminal history record name inquiry” means a record check by name for any federal or state conviction for any relevant crime as defined in this section.

“Department” means the department of health.

“Direct patient access employee” means any individual, including a volunteer, who has access to a patient or resident of a healthcare facility, or any provider through employment or through an agreement or contract with such a facility or provider. Such individuals include but are not limited to: physicians, nurses, nursing assistants, home health aides, therapists, activities personnel, and support staff (i.e., housekeeping, dietary, etc.) who have direct access to patients or patient belongings.

“Disqualifying information” means a conviction for a relevant crime or a finding of patient or resident abuse.

“Healthcare facility” means a facility or setting where a frail, elderly, or disabled adult receives care or is provided living accommodations such as a skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care home, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center, and rehabilitation agency.

“Name inquiry” means a criminal history record check conducted by using the name and other identifying information of the individual, in lieu of a fingerprint check.

“Operator” means an individual or entity that is licensed or is seeking licensure to operate a healthcare facility and is responsible for the management and overall operations of that healthcare facility.

“Relevant crime” means:

- (1) Any offense described in 42 United States Code §1320a-7 (Section 1128(a) of the Social Security Act); or
- (2) A crime of such a serious nature or circumstance that the department finds its perpetrator to pose a risk to the health, safety, or well-being of

a patient or resident. This includes but is not limited to murder, manslaughter, assault, sex offenses, domestic violence, theft or forgery, arson, kidnapping, or possession, use, sale, manufacture, or distribution of dangerous drugs or controlled substances.

(b) The department shall adopt rules pursuant to chapter 91 to ensure the reputable and responsible character of all prospective applicants, operators, direct patient access employees, and adult volunteers of a healthcare facility, and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients. These rules, among other things, shall specify how the department may conduct criminal history record checks in accordance with section 846-2.7.

(c) All applicants and prospective operators shall:

- (1) Be subject to criminal history record checks in accordance with section 846-2.7;
- (2) Authorize the disclosure to the department of criminal history record information;
- (3) Sign a waiver form stating that the department shall not be liable to the applicant or prospective operator; and
- (4) Consent to be fingerprinted for the purpose of requesting criminal history record information from the Federal Bureau of Investigation and the Hawaii criminal justice data center.

(d) All prospective direct patient access employees and adult volunteers of healthcare facilities and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients shall:

- (1) Consent to be fingerprinted;
- (2) Provide all necessary information for the purpose of enabling the department to conduct the criminal history record checks; and
- (3) Sign a waiver form stating that the department shall not be liable to the employee or volunteer.

(e) The department may request criminal history record information which includes Federal Bureau of Investigation data through the Hawaii criminal justice data center on all prospective applicants, operators, direct patient access employees, and adult volunteers of healthcare facilities. In addition, in the case of any healthcare facility to be operated in a private residence, the department of health may request criminal history record information which includes Federal Bureau of Investigation data through the Hawaii criminal justice data center for all adults residing in the home who are not clients.

(f) The department shall make a name inquiry into the criminal history records or conduct criminal history record checks of all prospective applicants, operators, direct patient access employees, and adult volunteers at the healthcare facility, and, in the case of any healthcare facility operated in a private residence, all adults living in the home other than the clients.

(g) The department may revoke or suspend a current license, impose penalties or fines, or deny an application for a license under rules adopted pursuant to chapter 91 if the applicant, operator, employee, or adult volunteer at the healthcare facility or, in the case of any healthcare facility operated in a private residence, any adult living in the home other than the client, refuses to authorize the department to conduct a criminal history record check, obtain criminal history record information for verification, or consent to be fingerprinted. In addition, the department may revoke or suspend a current license, impose penalties or fines, or deny an application for a license if the applicant, operator, direct patient access employee, or adult volunteer at the healthcare facility, or, in the case of a healthcare facility operated in a private residence, any adult living in the home other than the client, has any disqualifying information. The department may also revoke or suspend a current license, impose penalties or fines, or deny an application for a license if the

department determines, based upon consideration of the criminal history information, that the applicant, operator, direct patient access employee, or adult volunteer at the healthcare facility, or, in the case of a healthcare facility operated in a private residence, any adult living in the home other than the client, is unsuitable to work or live in close proximity to the residents of the healthcare facility such that the health, safety, and welfare of the residents of the healthcare facility could be at risk.

(h) Notwithstanding any other law to the contrary, for purposes of this section, the department shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.

(i) The fee charged by the Federal Bureau of Investigation and the Hawaii criminal justice data center to perform criminal history record checks may be passed on to all applicants, operators, direct patient access employees, and adult volunteers at the healthcare facility and, in the case of a facility operated in a private residence, all adults living in the home other than the clients.

(j) The department, in obtaining and relying upon the criminal history record checks, is presumed to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the criminal history record information. The good faith presumption may be rebutted upon a showing by the person or entity of a lack of good faith, and proof by a preponderance of the evidence, that the department relied upon information or opinion that it knew was false or misleading.

(k) Any applicant or operator who receives information from the department relating to a criminal history record check of a direct patient access employee or adult volunteer or, in the case of a healthcare facility operated in a private residence, an adult living in the home other than the clients, is presumed to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the department's recommendation or direction. Nothing in this section shall affect rights, obligations, remedies, liabilities, or standards of proof under chapters 368 and 378.

Criminal history record information shall be used exclusively by the department for the sole purpose of determining whether an applicant, operator, direct patient access employee, or adult volunteer at a healthcare facility, or, in the case of a facility operated in a private residence, any adult living in the home other than the clients is suitable for working or living in close proximity to residents of a healthcare facility such that the health, safety, and welfare of the residents would not be at risk."

SECTION 3. Chapter 346, Hawaii Revised Statutes, is amended by adding to part IV a new section to be appropriately designated and to read as follows:

"§346- Criminal history record checks. (a) For the purposes of this section:

"Conviction for a relevant crime" means any federal or state conviction for any relevant crime as defined in this section.

"Criminal history record name inquiry" means a search by name, and other identifying information, using the state computerized criminal history record information system.

"Department" means the department of human services.

"Name inquiry" means a criminal history record check conducted by using the name and other identifying information of the individual, in lieu of a fingerprint check.

"Relevant crime" means:

- (1) Any offense described in 42 United States Code §1320a-7 (Section 1128(a) of the Social Security Act); or

- (2) A crime of such a serious nature or circumstance that the department finds its perpetrator to pose a risk to the health, safety, or well-being of a patient or resident. This includes but is not limited to murder, manslaughter, assault, sex offenses, domestic violence, theft or forgery, arson, kidnapping, or possession, use, sale, manufacture, or distribution of dangerous drugs or controlled substances.
- (b) The department shall adopt rules pursuant to chapter 91 establishing standards regarding the reputable and responsible character of service providers who have direct contact with individuals receiving services under this part, including:
 - (1) Licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers;
 - (2) Purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch;
 - (3) Foster grandparent program, senior companion program, and respite companion program participants; and
 - (4) Contracted and subcontracted service providers and their employees and new employees who provide home and community-based services under Section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)).
- (c) Individuals identified in subsection (b) shall:
 - (1) Meet the standards regarding the reputable and responsible character of service providers;
 - (2) Be subject to criminal history record checks in accordance with section 846-2.7;
 - (3) Shall sign a waiver form stating that the department shall not be liable to the individual; and
 - (4) Provide consent to the department to obtain criminal history record information for verification.

New employees and adult volunteers shall consent to be fingerprinted, shall supply the necessary information to enable the criminal history record check prior to the start of employment or volunteering, and shall sign a waiver form stating that the department shall not be liable to the employee or volunteer.

(d) The department shall obtain criminal history record information through the Hawaii criminal justice data center on individuals identified in subsection (b) for the first two years that an individual identified in subsection (b) is required to have such checks, and shall conduct a criminal history record name inquiry into the state criminal history records annually or biennially thereafter.

(e) The department may take appropriate action if it finds that the criminal history of the individual identified under subsection (a) may pose a risk to the health, welfare, and safety of service recipients. Such action may include:

- (1) Denying a certificate of approval to operate an adult day care center; or
- (2) Refusing to use an individual as a service provider.

(f) Notwithstanding any other law to the contrary, for purposes of this section, the department shall be exempt from section 831-3.1 and need not conduct investigations, notifications, or hearings under this section in accordance with chapter 91.

(g) The costs of processing fingerprints and the state criminal history record checks may be borne by the employer or by the employee or individual who is being screened.

(h) The department, in obtaining and relying upon the results of the state criminal history record checks, is presumed to be acting in good faith and shall be immune from civil liability for taking or recommending action based upon the

criminal history record information. The good faith presumption may be rebutted upon a showing by the person or entity alleging a lack of good faith, and by a preponderance of the evidence, that the department relied upon information or opinion that it knew was false or misleading.

(i) Nothing in this section shall affect the rights, obligations, remedies, liabilities, or standards of proof under chapters 368 and 378.

(j) The criminal history record information obtained under this section shall be used exclusively by the department for the purpose of establishing the reputable and responsible character of the individuals identified in subsection (b) such that the health, welfare, and safety of service recipients will not be at risk.”

SECTION 4. Section 378-2.5, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(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 78-2.7;
- (2) The department of education pursuant to section 302A-601.5;
- (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 pursuant to section 321-171.5;
- (4) The judiciary pursuant to section 571-34;
- (5) The counties pursuant to section 846-2.7;
- (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 302C-1;
- (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]~~ sections 346- and 352-5.5;
- (14) The public library system pursuant to section 302A-601.5;
- (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-12; ~~[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[-];
and
 (18) The department of health pursuant to section 321- .”

SECTION 5. Section 846-2.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(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 as provided by section 321-171.5;
 - (3) The department of health on all applicants for licensure for, operators for, and prospective employees, and volunteers at one or more of the following: skilled nursing facility, intermediate care facility, adult residential care home, expanded adult residential care homes, assisted living facility, home health agency, hospice, adult day health center, special treatment facility, therapeutic living program, intermediate care facility for the mentally retarded, hospital, rural health center and rehabilitation agency, and, in the case of any of the above-related facilities operating in a private residence, on any adult living in the facility other than the client as provided by section 321- .
 - [~~(3)~~] (4) 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 section 302A-601.5;
 - [~~(4)~~] (~~5~~) 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)~~] (~~6~~) The county liquor commissions on applicants for liquor licenses as provided by section 281-53.5;
 - [~~(6)~~] (~~7~~) 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)~~] (~~8~~) The department of human services on prospective adoptive parents as established under section 346-19.7;
 - [~~(8)~~] (~~9~~) 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 346-154;
 - [~~(9)~~] (~~10~~) 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 346-152.5;
 - [~~(10)~~] (~~11~~) 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 346-335;
 - [~~(11)~~] (~~12~~) The department of human services on staff members of the Hawaii youth correctional facility as provided by section 352-5.5;
 - [~~(12)~~] (~~13~~) The judiciary on employees and applicants at detention and shelter facilities as provided by section 571-34;

- ~~[(13)]~~ (14) 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)]~~ (15) The department of commerce and consumer affairs on applicants for private detective or private guard licensure as provided by section 463-9;
- ~~[(15)]~~ (16) 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 302C-1;
- ~~[(16)]~~ (17) The public library system on employees and prospective employees whose positions place them in close proximity to children as provided by section 302A-601.5;
- ~~[(17)]~~ (18) 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 78-2.7; [and]
- (19) The department of human services on licensed adult day care center operators, employees, new employees, subcontracted service providers and their employees, and adult volunteers as provided by section 346- ;
- (20) The department of human services on purchase of service contracted and subcontracted service providers and their employees serving clients of the adult and community care services branch, as provided by section 346- ;
- (21) The department of human services on foster grandparent program, senior companion program, and respite companion program participants as provided by section 346- ;
- (22) The department of human services on contracted and subcontracted service providers and their current and prospective employees that provide home and community-based services under Section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)), as provided by Section 346- ; and
- ~~[(18)]~~ (23) Any other organization, entity, or the State, its branches, political subdivisions, or agencies as may be authorized by state law.”

SECTION 6. There shall be established a working committee of five members with representatives from the department of health, department of human services, provider organizations and community, as appointed by the directors of the department of health and department of human services to meet minimally on a quarterly basis to review and evaluate the process undertaken by the departments in effecting criminal history record checks and provide recommendations to the directors of the departments as relevant. Members shall serve a term of two years which may be extended at the discretion of the directors of the departments and will report to departmental administrators as designated by the directors.

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 June 21, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 221

H.B. NO. 1809

A Bill for an Act Relating to Motor Vehicle Driver's License.

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

SECTION 1. Section 286-107, Hawaii Revised Statutes, is amended to read as follows:

“§286-107 License renewals; procedures and requirements. (a) The examiner of drivers may accept an application for a renewal of a driver's license made not more than six months prior to the date of expiration.

If, however, the renewal is not applied for within ninety days after the expiration of the license, the applicant for renewal shall be treated as an applicant for a new license and examined as provided in section 286-108.

(b) Except as otherwise provided in subsection (c), an applicant for a renewal of a driver's license under this section, or the reactivation of an expired license under section 286-107.5(a), shall appear in person before the examiner of drivers and the examiner of drivers shall administer such physical examinations as the state director of transportation deems necessary to determine the applicant's fitness to continue to operate a motor vehicle.

(c) Any person who holds a category (1), (2), or (3) license issued under this part who is unable to appear in person before the examiner of drivers to apply for a renewal of the driver's license, may, if the person is not disqualified from renewing the license under subsection (a), except as provided under subsection (h), apply for a renewal by mail. The applicant's request to have the license renewed by mail must be received by the examiner of drivers within ninety days after the expiration of the license or it shall be treated as an [applicant] application for reactivation of an expired license under section 286-107.5. The examiner of drivers shall, upon receipt of the request, furnish the applicant with all necessary forms and instructions. An application for renewal made pursuant to this subsection shall be accompanied by a statement from a licensed physician certifying that the applicant was examined by the licensed physician not more than six months prior to the expiration date of the applicant's license and that the applicant was found by such examination to have met the physical requirements established by the state director of transportation for the renewal of licenses. The application for renewal shall also be accompanied by:

- (1) A notarized statement of the applicant certifying that the applicant does not possess any valid license to operate the same or similar category or categories of motor vehicles, issued by another licensing authority (unless such license is concurrently surrendered); and
- (2) Such other information as may be required by the examiner of drivers that is reasonably necessary to confirm the identity of the applicant and the applicant's fitness to continue to operate a motor vehicle.

(d) An applicant for a renewal of the applicant's driver's license, whether applying pursuant to subsections (b) or (c), shall pay the fee determined by the council of the appropriate county. Payment of the fee shall be by certified check or money order, tendered together with the application.

(e) No driver's license shall be renewed by the examiner of drivers unless:

- (1) The examiner of drivers is satisfied of the applicant's fitness to continue to operate a motor vehicle;
- (2) The fee required by subsection (d) is tendered together with the application for renewal; and
- (3) The applicant complies with section 286-102.5.

(f) A driver's license renewed pursuant to subsection (c) may validly be issued without incorporating a photograph of the licensee.

(g) No driver's license shall be renewable by mail for more than two consecutive renewals, regardless of whether the license expires, as provided under section 286-106, on the sixth, fourth, or second birthday after issuance; provided that this subsection shall not apply to a resident military person or that person's immediate family if the resident military person resides outside the [State] state on official military orders.

(h) Notwithstanding subsection (a), any applicant for a renewal of a driver's license who is a member of any component of the United States armed forces and who is on active federal service outside of the state at the time the applicant's license should be renewed, may file an application for a renewal of the driver's license, which shall be accompanied by verification of federal active service outside the state as required by the examiner of drivers, within ninety days of the applicant's return to the state or discharge from hospitalization. The examiner of drivers may waive the reactivation fee otherwise required by section 286-107.5.

~~(h)~~ (i) The state director of transportation shall adopt rules and regulations pursuant to chapter 91, necessary for the purposes of this section, including rules and regulations governing the effect to be given to convictions for violations of traffic laws of a foreign jurisdiction, upon license renewal procedures.'

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 22, 2006.)

ACT 222

H.B. NO. 2708

A Bill for an Act Relating to Advertising.

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

SECTION 1. The legislature finds that vehicles displaying advertisements or other material for compensation pose a significant threat to the State's compelling interests in maintaining traffic safety, limiting traffic congestion and vehicle emissions, and protecting the outstanding natural beauty of Hawaii's islands.

Such vehicles are designed to attract the attention of drivers and pedestrians and thus, by their very nature, they increase the risks of traffic accidents by:

- (1) Distracting the attention of drivers and pedestrians;
- (2) Adding to the congestion of Hawaii's roads, thus increasing the possibility of accidents; and
- (3) Increasing emissions that degrade the quality of air.

The world-renowned aesthetic beauty of Hawaii is important to the health and happiness of Hawaii's residents and crucial to Hawaii's economy because it attracts visitors and serves as a foundation of the visitor industry. By their very

nature, vehicles displaying advertisements or other materials for compensation have the effect of obscuring and detracting from Hawaii's valuable natural scenery.

In 1978, the people of Hawaii emphasized the importance of protecting Hawaii's natural beauty by adding article XI, section 1 to the State Constitution, which states:

“For the benefit of present and future generations, the State and its political subdivisions shall conserve and protect Hawaii's natural beauty and all natural resources....”

A prohibition on paid vehicular signs carries out the mandate laid out in article XI, section 1 of the State Constitution.

The purpose of this Act is to advance the State's compelling interests in traffic safety and aesthetics by prohibiting the operation or parking of vehicles displaying advertisements or other materials for compensation.

SECTION 2. Chapter 445, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§445-A Vehicular advertising prohibited; penalty. (a) It is unlawful for any person to operate or park, or cause to be operated or parked, on any street, roadway, or other public place, or on any private property that can be seen from any street, roadway, or other public place, any vehicle or trailer carrying a vehicular advertising device for consideration or any other economic benefit if the vehicle or trailer is used primarily to display a vehicular advertising device. The phrase “for consideration or any other economic benefit” shall not include any benefit derived by the owner or operator of the vehicle or trailer from the effect of the advertising.

(b) Every day of continued violation of this section shall constitute a separate offense.

(c) Any person convicted of violating this section shall be fined:

- (1) Not less than \$200 or more than \$1,000, for the first offense;
- (2) Not less than \$500 or more than \$2,000 for the second offense; and
- (3) Not less than \$1,000 or more than \$5,000 for the third and subsequent offense.

(d) As used in this section:

“Trailer” means a vehicle or conveyance with or without motive power designed to be pulled or propelled by a vehicle or other form of power.

“Vehicular advertising device” means any sign, writing, picture, poster, painting, notice, bill, model, display, symbol, emblem, or similar device, which is so designed that it draws the attention of persons in any public street, roadway, or other public place.”

SECTION 3. 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[;], except as provided under section 445-A, relating to vehicular advertising devices;
 - (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, 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."

SECTION 4. In codifying the new section added by section 2 of this Act, the revisor of statutes shall substitute an appropriate section number for the letter used in designating the new section in this Act.

SECTION 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 22, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 223

S.B. NO. 2480

A Bill for an Act Relating to Wastewater Management.

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

SECTION 1. The county of Hawaii's department of environmental management's wastewater division shall conduct a study on the feasibility of constructing a wastewater treatment facility for the Kapoho Vacationland Estates and Farmlots and public restrooms at the Wai O Pae marine life conservation district within the Kapoho Vacationland Estates. The study shall:

- (1) Evaluate various wastewater treatment techniques used in coastal communities;
- (2) Perform a cost-benefit analysis of the different wastewater treatment technologies;
- (3) Determine which wastewater treatment technology is best suited for the Kapoho Vacationland Estates and Farmlots area;
- (4) Examine different financing methods for the wastewater treatment facility;
- (5) Determine whether shoreline certifications are required for constructing the restrooms at Wai O Pae marine life conservation district; and
- (6) Evaluate the proper design and construction for the restroom facilities at the Wai O Pae marine life conservation district.

ACT 224

The department shall establish a community-outreach process, which shall include informational meetings for the Kapoho community regarding the study.

The department shall prepare a report that includes the feasibility study's findings and recommendations and shall submit the report to the legislature no later than twenty days before the convening of the regular session of 2007.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000 or so much thereof as may be necessary for fiscal year 2006-2007 for a grant-in-aid to the county of Hawaii's department of environmental management's wastewater division to conduct a study on the feasibility of constructing a wastewater treatment facility for the Kapoho Vacationland Estates and Farmlots and public restrooms at the Wai O Pae marine life conservation district located within the Kapoho Vacationland Estates.

The sum appropriated shall be expended by the county of Hawaii for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 22, 2006.)

ACT 224

S.B. NO. 1294

A Bill for an Act Relating to Public Land Trust Revenues.

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

SECTION 1. There is appropriated out of the funds derived from the public land trust described in section 10-3, Hawaii Revised Statutes, the sum of \$180,000 or so much thereof as may be necessary for fiscal year 2006-2007, for the repair and maintenance of the royal mausoleum at Mauna' Ala.¹ The sum appropriated shall not be taken from the public land proceeds designated for the office of Hawaiian affairs pursuant to section 10-13.5, Hawaii Revised Statutes.

SECTION 2. The sum appropriated shall be expended by the office of Hawaiian affairs for the purposes of this Act.

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 22, 2006.)

Note

1. So in original.

ACT 225

S.B. NO. 2720

A Bill for an Act Relating to Education.

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

SECTION 1. After extensive deliberations, the interagency working group, which was established pursuant to part VIII of Act 51, Session Laws of Hawaii 2004 (Act 51), the "Reinventing Education Act of 2004," has recommended to the legislature that the transfer of functions from the department of budget and finance,

the department of the attorney general, and the department of human services to the department of education specified in Act 51 be repealed. The working group also recommended that the transfer of functions from the department of health to the department of education specified in Act 51 be delayed one year and take effect July 1, 2007, rather than July 1, 2006.

The interagency working group recommended to the 2006 regular session of the legislature that fiscal functions should remain with the department of budget and finance. The working group reported that the departments of education and budget and finance have agreed to improve the:

- (1) Processes related to capital improvement project allotments;
- (2) Fiscal processes affecting the calculation of employee benefits; and
- (3) Expenditures of federal funds.

The departments will work together to prepare memorandums or memorandums of understanding to set forth the new processes, mutually agreed upon, between the two departments.

The interagency working group also recommended against transferring the functions relating to workers' compensation and labor-management relations from the department of the attorney general to the department of education at this time. Instead, the departments shall prepare memorandums of agreement or service level agreements that clarify the scope of relevant responsibilities, procedures, and protocols for the respective departments.

The working group noted that the department of education is required by statute to conduct criminal history record checks on employees that work in close proximity to children. Therefore, it is not necessary that the department of human services perform this service for the department of education.

The interagency working group further recommended that the transfer of the school health aides and the public health nurses who supervise the school health aides be delayed one year from July 1, 2006, to July 1, 2007. The department of education requested the delay due to the number of other requirements of Act 51 that are scheduled to be implemented during the 2006-2007 school year. In addition, both the department of education and the department of health desire to have a smooth transition and additional time would make this possible.

Although the working group recommended the repeal of certain specific provisions of Act 51 relating to the transfer of functions from the department of budget and finance and the department of the attorney general, they noted that the provisions did serve a useful purpose in helping to focus the departments on areas of concern. The recommendations to repeal certain statutory provisions reflected mutual decisions the departments reached after extensive discussion and review. The function of Act 51 as a critical catalyst for analysis and discussion of issues and problems has been, and continues to be, fulfilled.

The departments involved will not continue to do "business as usual". The legislature fully expects the departments to remain committed to continuous improvement and that the memorandums, memorandums of understanding, and service level agreements, when completed and implemented in accordance with the departments' agreements, are a critical step toward improving the educational system for our community.

Therefore, based on the interagency working group's recommendations contained in its report to the 2006 regular session of the legislature, the purpose of this Act is to amend Act 51, Session Laws of Hawaii 2004, to reflect some of those recommendations.

SECTION 2. Act 51, Session Laws of Hawaii 2004, is amended by amending sections 47 and 48 to read as follows:

of: “SECTION 47. (a) All the rights, powers, functions, duties, and resources

- (1) The department of budget and finance relating to the:
 - (A) Funding of collective bargaining agreement increases; and
 - (B) Securing, administering use, and expending of federal funds and other aid, including their custodial supervision; and¹
- ~~[(2) The department of the attorney general relating to:

 - (A) The negotiating of workers’ compensation claims; and
 - (B) Labor-management relations within the department of education;~~
- ~~(3) The department of human services relating to the conducting of employment background checks for the after-school plus program, private vendors, and other employees and trainees who work with public school students; and~~
- (4) (2) The department of health relating to school health aides and public health nurses who supervise school health aides;

are transferred to the department of education effective July 1, [2006,] 2007, subject to repeal by subsequent legislation.

(b) All moneys budgeted in support of each position to be transferred to the department of education, including moneys for direct and indirect employee benefits, are transferred to the department of education effective July 1, [2006,] 2007, subject to repeal by subsequent legislation.

SECTION 48. All resources, appropriations, records, equipment, databases, software, programming, machines, files, supplies, contracts, books, papers, documents, maps, and other personal property heretofore made, used, acquired, or held by the department of accounting and general services, department of budget and finance, ~~[department of human services,]~~ and the department of health relating to the functions transferred to the department of education shall be transferred with the functions to which they relate.”

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, 2006.

(Approved June 22, 2006.)

Note

- 1. “And” should be underscored.

ACT 226

S.B. NO. 2887

A Bill for an Act Relating to Education.

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

SECTION 1. The legislature finds that vocational, technical, and career pathway education classes provide students with opportunities to apply knowledge and skills to real-life work experiences. These classes also help students develop the technical, academic, employability, and life skills needed for a career or post-secondary education. Required core classes and specific area classes currently offered in the public school system encompass six major career pathways:

- (1) Industrial and educational technology;

- (2) Arts and communication;
- (3) Natural resources;
- (4) Human services;
- (5) Health; and
- (6) Business.

For the 2004 school year, there were forty thousand public school students from grades nine to twelve enrolled in vocational, technical, and career pathway education classes in their schools. The legislature finds that there is a need to provide an adequate number of highly-qualified vocational, technical, and career pathway education teachers to improve the delivery of instruction in these classes.

The purpose of this Act is to increase the number of vocational, technical, and career pathway education teachers by directing the Hawaii Teachers Standards Board to set alternative criteria and establish other measures of qualification necessary for these types of teachers to meet licensing standards.

SECTION 2. Section 302A-802, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The board shall adopt policies, exempt from chapters 91 and 92, to initiate the following:

- (1) Develop ~~[a plan]~~ criteria [for licensing] allowing more individuals with [practical] trade or industry experience [for teaching] to teach in vocational[,], technical, and career pathway programs[;], and criteria for the issuance of permits allowing qualified individuals to teach when recommended by the superintendent. The department shall be responsible for the review and acceptance of the relevant licenses, certificates, or other qualifications related to an individual’s vocational, technical, or career pathway education-related experience that the department deems necessary for a permit. The department shall have the authority to waive the requirement of a bachelor’s degree to teach in a vocation, technical, or career pathway education program;
- (2) Develop a plan to accept teachers from any state as long as they have completed state-approved teacher education programs and pass relevant Hawaii teacher examinations or their equivalent;
- (3) Clarify the requirements, on a state-by-state basis, for out-of-state licensed teachers to obtain a license in Hawaii;
- (4) Develop a plan to facilitate licensing for those who intend to teach in Hawaii immersion programs, the island of Niihau, or any other ~~[[extraordinary]]~~ situation as defined by the ~~[[superintendent]]~~ or the superintendent’s designee; and
- (5) Pursue full teacher license reciprocity with the mid-Atlantic states, California, Colorado, Illinois, Michigan, New York, Oregon, and Washington.”

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, 2006.

(Approved June 22, 2006.)

A Bill for an Act Relating to Intoxicating Liquor.

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

SECTION 1. Chapter 281, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§281- Direct shipment of wine by wineries. (a) Any person holding:

- (1) A general excise tax license from the department of taxation; and
- (2) Either:

- (A) A class 1 license to manufacture wine under section 281-31; or
- (B) A license to manufacture wine issued by another state,

may pay any applicable fees and obtain a direct wine shipper permit from the liquor commission of the county to which the wine will be shipped authorizing the holder to directly ship wine to persons in the county pursuant to this section.

(b) The holder of a direct wine shipper permit may sell and annually ship to any person twenty-one years of age or older in the county that issued the permit, no more than six nine-liter cases of wine per household for personal use only and not for resale, and shall:

- (1) Ship wine directly to the person only in containers that are conspicuously labeled with the words:

“CONTAINS ALCOHOL: SIGNATURE OF PERSON AGE 21 YEARS OR OLDER REQUIRED FOR DELIVERY.”;

- (2) Require that the carrier of the shipment obtain the signature of any person twenty-one years of age or older before delivering the shipment;
- (3) Report no later than January 31 of each year to the liquor commission in each county where a direct wine shipper permit is held, the total amount of wine shipped to persons in the county during the preceding calendar year;
- (4) Pay all applicable general excise and gallonage taxes. For gallonage tax purposes, all wine sold under a direct wine shipper permit shall be deemed to be wine sold in the state; and
- (5) Be subject to audit by the liquor commission of each county in which a permit is held.

(c) The holder of a license to manufacture wine issued by another state may annually renew a direct wine shipper permit by providing the liquor commission that issued the permit with a copy of the license and paying all required fees. The holder of a class 1 license to manufacture wine under section 281-31 may renew a direct wine shipper permit concurrently with the class 1 license by complying with all applicable laws and paying all required fees.

(d) The sale and shipment of wine directly to a person in this state by a person that does not possess a valid direct wine shipper permit is prohibited. Knowingly violating this law is a misdemeanor.

(e) The liquor commissions in each county may adopt rules and regulations necessary to carry out the intent and purpose of this section.”

SECTION 2. Section 281-33.1, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(i) An unlicensed adult¹ shall not be required to obtain a permit under this section to receive shipments of liquor pursuant to section [281-33.5.] 281-__.”

SECTION 3. Section 281-33.5, Hawaii Revised Statutes, is repealed.

SECTION 4. The liquor commissions in each county shall begin issuing direct wine shipper permits no later than January 1, 2007.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 6. This Act shall take effect on July 1, 2006.

(Approved June 22, 2006.)

Notes

1. Prior to amendment "person" appeared here.
2. Edited pursuant to HRS §23G-16.5.

ACT 228

H.B. NO. 2315

A Bill for an Act Relating to the Code of Financial Institutions.

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

SECTION 1. Chapter 412, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§412: - Request for information by the commissioner. The commissioner, for good cause, may at any time request records, documents, information, and reports from any financial institution regulated by the division of financial institutions.”

SECTION 2. Section 241-1, Hawaii Revised Statutes, is amended by amending the definition of “building and loan association” to read as follows:

““Building and loan association” means any corporation [~~or mutual association which~~] that has been authorized to operate as a savings bank or savings and loan association pursuant to chapter 412, and any federal savings and loan association.”

SECTION 3. Section 412:1-104, Hawaii Revised Statutes, is amended to read as follows:

“§412:1-104 Names. (a) Unless authorized to engage in business as a financial institution in this State of the type indicated by the name or as otherwise approved by the commissioner, no person may use any of the terms “financial [~~institution,~~²] institution”, [~~“bank,”~~²] “bank”, “savings [~~bank,~~²] bank”, “savings and [~~loan,~~²] loan”, “savings [~~association,~~²] association”, “financial services loan [~~company,~~²] company”, “credit [~~union,~~²] union”, “trust [~~company,~~²] company”, “intra-Pacific [~~bank,~~²] bank”, “international banking [~~corporation,~~²] corporation”, words of similar import, or translations of such words, in a manner that might suggest or tend to lead others into believing that the person is a financial institution of the character indicated by the name.

(b) No financial institution may use words designating another type of financial institution, [~~or~~] words of similar import, or translations of [~~such~~] these

words, in a manner that suggests or ~~[might tend]~~ tends to lead others into believing that it is that type of financial institution.

(c) No financial institution may use a name except in accordance with section 412:3-101.”

SECTION 4. Section 412:1-109, Hawaii Revised Statutes, is amended by amending the definitions of “capital”, “capital stock”, “Hawaii financial institution”, and “stock financial institution” to read as follows:

““Capital” means:

- (1) ~~[the]~~ The aggregate par value or other amount received and allocated to the issued and outstanding capital stock of a financial institution; or
- (2) ~~[the]~~ The total amount of ~~[a mutual savings and loan association or]~~ a credit union’s outstanding and unimpaired membership shares or share accounts.

“Capital stock” means the units of interest, whether or not having a par value, common or preferred, legally issued by a financial institution or other corporation, which represents a fractional ownership interest in the institution or corporation. The term does not include shares or membership in a ~~[mutual savings and loan association or]~~ credit union.

“Hawaii financial institution” means:

- (1) A corporation or credit union ~~[which]~~ that holds a charter or license under this chapter or under prior Hawaii law, authorizing it to accept deposits, to make loans in excess of the rates permitted in chapter 478, or to engage in the business of a trust company; or
- (2) A resulting bank as defined in article 12,

and includes a corporation~~[- mutual savings and loan association,]~~ or credit union existing and chartered as a Hawaii financial institution or licensed to transact business in this State on July 1, 1993. A Hawaii financial institution may be a bank, resulting bank as defined in article 12, savings bank, savings and loan association, depository financial services loan company, nondepository financial services loan company, trust company, credit union, or intra-Pacific bank.

“Stock financial institution” means a financial institution ~~[which]~~ that issues shares of capital stock as evidence of fractional ownership in the institution. The term does not include ~~[mutual savings and loan associations or]~~ credit unions.”

SECTION 5. Section 412:2-104, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) The commissioner and all employees, contractors, attorneys retained or employed by the State, and appointees of the division of financial institutions shall not divulge or furnish any information in their possession or obtained by them in the course of their official duties to persons outside the division of financial institutions, except to the director of [the department of] commerce and consumer affairs[;] or unless otherwise permitted by this section or any other law regulating financial institutions or financial institution holding companies, in which case ~~[such]~~ that disclosure shall not authorize or permit any further disclosure of ~~[such]~~ that information. The disclosures prohibited by this ~~[section]~~ subsection shall include without limitation information that is:

- (1) Privileged or exempt from disclosure under any federal or state law;
- (2) Related to an examination performed by or on behalf of the commissioner or contained in any report of examination;
- (3) Contained in any report submitted to or for the use of the commissioner, except for the nonproprietary portions of applications;

- (4) Related to the business, personal, or financial affairs of any person [and] that is furnished to or for the use of the commissioner in confidence;
- (5) Related to trade secrets and commercial or financial information obtained from a person [and] that is privileged or confidential;
- (6) Obtained pursuant to any lawful investigation for the purpose of enforcing the laws regulating financial institutions and financial institution holding companies in an action or proceeding under parts III, IV, V, and VI of this article;
- (7) Related solely to the internal personnel rules or other internal practices of the commissioner;
- (8) Contained in personnel, medical, and similar files (including financial files), the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or
- (9) Contained in inter-agency and intra-agency communications, whether or not contained in written memoranda, letters, tapes, or records that would not be routinely available by law to a private party, including but not limited to memoranda, reports, and other documents prepared by the staff of the commissioner.

Any information identified in paragraphs (1) through (9) is confidential and shall not be subject to subpoena or other legal process.

(b) The commissioner shall furnish a copy of each report of examination to the financial institution or financial institution holding company examined. The report and its contents shall remain the property of the commissioner and shall not be disclosed to any person who is not an officer, director, employee, or authorized auditor, attorney, or other consultant or advisor of the financial institution or financial institution holding company. Any person [which] who has received the report from the financial institution or financial institution holding company shall be bound by the confidentiality provisions of this part. ~~[Subpoenas of or other legal process to obtain reports of examination or information contained therein shall be directed to the commissioner and not to the financial institution or financial institution holding company that is the subject of the examination. Upon receipt of such a subpoena or other legal process requiring disclosure of such information the commissioner may file a statement of objections or a motion with a court of competent jurisdiction for a protective order and, in any event, shall immediately notify the financial institution that is the subject of the report of examination of the subpoena or other legal process and all relevant circumstances pertaining to the same. Upon receipt of such notification, the financial institution may itself file a statement of objections or a motion with a court of competent jurisdiction for a protective order.]~~ The report and its contents shall not be subject to subpoena or other legal process requiring disclosure.”

SECTION 6. Section 412:2-109, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) ~~[Each year before July 2,]~~ The commissioner may annually charge each financial institution subject to examination by the commissioner [shall pay a] the sum of \$500 plus \$100 for each office, agency, and branch office maintained by the financial institution, [to the commissioner to be] payment of which shall be made before July 2 and thereafter credited to the compliance resolution fund. The commissioner may establish, increase, decrease, or repeal this fee when necessary pursuant to rules adopted in accordance with chapter 91.”

SECTION 7. Section 412:2-306, Hawaii Revised Statutes, is amended to read as follows:

“§412:2-306 Removal or prohibition of institution-affiliated party¹. (a) The commissioner may order the removal of any institution-affiliated party from office or employment with a Hawaii financial institution and the prohibition of the party’s affiliation or participation in the affairs of the financial institution or any other Hawaii financial institution if the commissioner determines that all three of the following circumstances exist:

- (1) The institution-affiliated party has violated this chapter or any rules [issued] adopted pursuant to this chapter, violated a cease and desist order [which] that has become effective, engaged or participated in an unsafe or unsound practice in connection with the financial institution, or breached a fiduciary duty owed to the financial institution;
- (2) By reason of such violation, practice, or breach the financial institution has suffered or will probably suffer financial loss or other damage, the interests of the financial institution’s depositors have been or may be prejudiced, or the institution-affiliated party has received financial gain or other benefit as a result of the violation, practice, or breach; and
- (3) The violation, practice, or breach involves the institution-affiliated party’s personal dishonesty[;] or demonstrates the party’s wilful or continuing disregard for the safety or soundness of the financial institution.

(b) The commissioner may also order the removal of any institution-affiliated party from office or employment with a Hawaii financial institution and the prohibition of the party’s affiliation or participation in the affairs of the financial institution or any other Hawaii financial institution if the commissioner determines that:

- (1) The institution-affiliated party has been charged in any information, indictment, or complaint authorized by a United States attorney, state attorney general, or similar legal officer, with the commission of, or participation[;] in, a crime involving dishonesty or breach of trust that is punishable by imprisonment for a term exceeding one year under state or federal law; and
- (2) The continued service by the institution-affiliated party may pose a threat to the interests of the financial institution’s depositors or may threaten to impair public confidence in the institution.”

SECTION 8. Section 412:2-307, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The notice of charges and the proposed order of removal or prohibition shall be in writing and served upon the institution-affiliated party and the affiliated Hawaii financial institution. The notice of charges shall state the alleged violations, wrongful practices, or breaches and a summary of the facts upon which [sueh] the allegations are based. The notice shall be accompanied by a proposed order stating the commissioner’s intention to remove [sueh] the party from office, or prohibit [sueh] the party’s affiliation with the financial institution[;] or any other Hawaii financial institution, or both. The notice of charges shall set forth a time and place for a hearing to determine whether the removal or prohibition order shall be issued.”

SECTION 9. Section 412:2-308, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In order to act with the utmost speed, the commissioner may issue an order immediately suspending an institution-affiliated party upon a determination that:

- (1) ~~[the]~~ The grounds specified in section 412:2-306 are present; and
- (2) ~~[the]~~ The protection of depositors or the financial institution ~~[warrant]~~ warrants the immediate suspension and prohibition of the institution-affiliated party from further participation in the conduct of the affairs of the financial institution~~[-]~~ or any other Hawaii financial institution.

The order shall be accompanied by a notice of charges ~~[which]~~ that states the alleged violation, wrongful practice, or breach, and a summary of the facts in support of ~~[such]~~ the allegation. The notice of charges shall set forth a time and place for a hearing to determine whether the temporary order shall be ~~[made permanent.]~~ converted to a permanent removal or prohibition order. Any order of immediate suspension issued to an institution-affiliated party shall also be served upon the affiliated Hawaii financial institution.”

SECTION 10. Section 412:2-310, Hawaii Revised Statutes, is amended to read as follows:

“**§412:2-310 Removal, prohibition, or suspension; effect of order.** No institution-affiliated party whose removal, prohibition, or suspension has been ordered shall thereafter participate in any manner in the conduct of the affairs of the affiliated Hawaii financial institution or any other Hawaii financial institution as long as ~~[such]~~ the order is in effect. Any violation of ~~[such]~~ the order shall constitute a violation of law, and shall constitute sufficient grounds for the issuance of a cease and desist order to the affiliated financial institution.”

SECTION 11. Section 412:3-101, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-101 Name of financial institution.** (a) The name of every Hawaii financial institution shall be subject to the approval of the commissioner and shall conform with the provisions of section 414-51 or any successor thereto, whether or not the Hawaii financial institution is a corporation. If the Hawaii financial institution is incorporated, its name may, but need not, contain the word “corporation”, “incorporated”, or “limited”, or an abbreviation of ~~[one]~~ any of the words.

(b) Prior to using a trade name or a fictitious name, a Hawaii financial institution shall provide written notification to the commissioner.”

SECTION 12. Section 412:3-102, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-102 Change of name.** To change its name, a Hawaii financial institution shall file an application with the commissioner and pay ~~[such]~~ the fees as the commissioner may establish. The application shall be approved if the commissioner is satisfied that the new name complies with this chapter and chapter 414. Any change of name of a stock financial institution ~~[or mutual savings and loan association]~~ pursuant to this section shall be effected in accordance with chapter 414. Any change of name shall not affect a financial institution’s rights, liabilities, or obligations existing prior to the effective date thereof, and no documents of transfer shall be necessary to preserve ~~[such]~~ the rights, liabilities, or obligations; provided that the commissioner may require notice to be given to the public and other governmental agencies.”

SECTION 13. Section 412:3-111, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The following records or files of a Hawaii financial institution shall not be destroyed except in accordance with rules of the commissioner ~~[promulgated]~~ adopted under chapter 91:

- (1) Minute books of meetings of shareholders, directors, and executive ~~[committee;]~~ committees;
- (2) Articles of incorporation or association and bylaws, and any amendments thereto;
- ~~[(2)]~~ (3) Capital stock ~~[ledger;]~~ ledgers; and
- ~~[(3)]~~ (4) General ledgers and trust ledgers.

These records and files may be maintained in original form or in the form of a photographic, photostatic, microfilm, microcard, miniature photographic, or other reproduction by a durable medium for reproducing the original.”

SECTION 14. Section 412:3-114, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-114 Duty to report illegal acts.** A Hawaii financial institution shall immediately notify the commissioner in writing of any act of robbery, embezzlement, or fraud committed in connection with its affairs whenever the concerned act involves a sum in excess of ~~[\$10,000.]~~ \$100,000.”

SECTION 15. Section 412:3-201, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-201 Application for preliminary approval to organize a financial institution.** (a) Three~~;~~ or more individuals, of whom at least three are residents of the State, or any company ~~[which] that~~ seeks to become a financial institution holding company may file an application with the commissioner for preliminary approval to organize a Hawaii financial institution under this part. Banks seeking authority to engage in the trust business through a division or department of the bank, or through a subsidiary, shall apply for such authority under section 412:5-205.

(b) The application shall contain the following information, unless waived by the commissioner:

- (1) The proposed name of the financial institution~~[-the];~~
- (2) The specific location of its principal office, branches, agencies, and support facilities, and any lease agreements for such principal office~~[-];~~, branches, agencies, and support facilities;
- ~~[(2)]~~ (3) Financial statements, employment history, education, management experience, and other biographical information for all applicants, organizers, proposed executive officers, and directors of the financial institution;
- ~~[(3)]~~ (4) The name and address of each proposed subscriber of capital stock in the financial institution ~~[and if capital has not been fully raised, a];~~
- (5) The proposed capital plan [including a], if capital has not been fully raised, that shall include:
 - (A) A description of any stock options, debentures, and stock warrants offered or proposed to be offered to any person; and
 - (B) Any stock option plan;
- (6) The proposed capital stock solicitation plan, if subscriptions for capital stock will be solicited, that shall include:

- (A) Information regarding the solicitation plan by which the applicant and the proposed financial institution propose to conduct the solicitation of subscribers;
 - (B) Information regarding the classes of shares, respective quantities of shares for each class, and the subscription price of each class of stock;
 - (C) A specimen subscription contract or purchase agreement and other related documents to be executed by subscribers;
 - (D) Any underwriting agreement or other agreement for the purchase or distribution of the capital stock;
 - (E) Any escrow agreements or other agreement for the holding of the purchase proceeds of the capital stock;
 - (F) Proposed advertising materials;
 - (G) If the offer and sale of the capital stock is subject to the Securities Act of 1933 and regulations thereunder, a copy of the registration statement most recently filed with the federal Securities and Exchange Commission or any other notices or other filings in lieu of registration required or permitted by that Act or regulation and any subsequent amendments thereto;
 - (H) If the offer and sale of the capital stock is subject to chapter 485, a copy of the registration or qualification statement most recently filed with the commissioner of securities and any subsequent amendments thereto; and
 - (I) If the offer and sale of the capital stock is not subject to the Securities Act of 1933 or chapter 485, whether exempted by law or regulation or otherwise, a copy of the most recent version of any prospectus, offering memorandum, offering circular, or other offering document proposed to be delivered to prospective subscribers to the capital stock, and any subsequent amendments thereto;
- [(4)] Proposed] (7) The financial [institution] institution's proposed policies concerning loans[;] and concentrations of credit, asset and liability management, conflicts of interest, investments, [~~operations, and~~] community reinvestment[;], bank secrecy, anti-money laundering, and customer identification;
- [(5)] (8) The financial institution's business plan[;] for the first three years of operations;
- [(6)] (9) Financial projections regarding the financial institution's profitability[;] for the first three years of operations;
- [(7)] (10) A market study or letters of support evidencing the need and advisability of granting authority to organize a financial institution;
- [(8)] (11) Except for trust companies, evidence that the financial institution has applied for federal deposit insurance from the Federal Deposit Insurance Corporation or other appropriate federal deposit insurer;
- (12) Evidence that the financial institution has applied for fidelity bonds and other insurance appropriate to its size and operations, including the types and the amounts of coverage, and the respective deductible amounts, from insurance companies licensed in the United States;
- [(9)] (13) Evidence that the proposed directors and executive officers of the financial institution have the financial ability, responsibility, and experience to engage in the business of a financial institution;
- (14) The employment agreements for all proposed executive officers of the financial institution;

(15) The proposed articles of incorporation and bylaws of the financial institution;

~~[(10)]~~ (16) A description of any existing or proposed service corporation, affiliate, or subsidiary; and

~~[(11)]~~ (17) Any other information that the commissioner may require.

(c) The application shall be submitted in a form prescribed by the commissioner. The commissioner may accept application forms ~~[which]~~ that are utilized by any federal regulatory agency in processing similar applications. The application shall be accompanied by an application fee of \$9,000, or such greater amount as the commissioner shall establish by rule pursuant to chapter 91. The application fee shall not be refundable.

(d) The identity of each applicant and organizer, and any information ~~[which]~~ that is not confidential, shall be available to the public. The applicant may request in writing that information be kept confidential. The applicant shall designate and separate any matter ~~[which]~~ that the applicant claims is confidential and shall submit a separate statement providing the reasons and authority for the request for confidential treatment. The failure by the applicant to request confidential treatment and to designate and separate the confidential matter shall preclude any objection or claim for wrongful disclosure of the ~~[same-]~~ information. Information determined by the commissioner to be confidential, pursuant to an applicant's request or otherwise, shall not be available to the public.

(e) The commissioner shall review the application, may conduct an examination of the proposed financial institution, and may interview any proposed director or executive officer."

SECTION 16. Section 412:3-202, Hawaii Revised Statutes, is amended to read as follows:

"§412:3-202 Additional requirements for holding company. ~~[(a)]~~ An applicant for the organization of a Hawaii financial institution ~~[which]~~ that will be a subsidiary of a holding company shall furnish the commissioner with the following additional information regarding the holding company, unless waived by the commissioner:

- (1) If the holding company is a corporation, a certificate from the incorporating jurisdiction indicating that the corporation was properly organized under applicable corporate law, and that it is otherwise in good standing;
- (2) Its existing and proposed affiliates and subsidiaries, and the extent and nature of its control over the operations of the proposed financial institution;
- (3) Financial statements, employment history, education, management experience, and other biographical information for all of its executive officers and directors;
- (4) The name and address of each shareholder or each proposed subscriber of capital stock ~~[-, and if capital has not been fully raised, a];~~
- (5) The proposed capital plan [including a], if capital has not been fully raised, that shall include:
 - (A) A description of any stock options, debentures, and stock warrants offered or proposed to be offered to any person; and
 - (B) Any stock option plan;
- (6) The proposed capital stock solicitation plan, if subscriptions for capital stock will be solicited, that shall include:

- (A) Information regarding the solicitation plan by which the applicant and the proposed holding company propose to conduct the solicitation of subscribers;
 - (B) Information regarding the classes of shares, respective quantities of shares for each class, and the subscription price of each class of stock;
 - (C) A specimen subscription contract or purchase agreement and other related documents to be executed by subscribers;
 - (D) Any underwriting agreement or other agreement for the purchase or distribution of the capital stock;
 - (E) Any escrow agreements or other agreement for the holding of the purchase proceeds of the capital stock;
 - (F) Proposed advertising materials;
 - (G) If the offer and sale of the capital stock is subject to the Securities Act of 1933 and regulations thereunder, a copy of the registration statement most recently filed with the federal Securities and Exchange Commission or any other notices or other filings in lieu of registration required or permitted by that Act or regulation and any subsequent amendments thereto;
 - (H) If the offer and sale of the capital stock is subject to chapter 485, a copy of the registration or qualification statement most recently filed with the commissioner of securities and any subsequent amendments thereto; and
 - (I) If the offer and sale of the capital stock is not subject to the Securities Act of 1933 or chapter 485, whether exempted by law or regulation or otherwise, a copy of the most recent version of any prospectus, offering memorandum, offering circular, or other offering document proposed to be delivered to prospective subscribers to the capital stock, and any subsequent amendments thereto;
 - (7) The articles of incorporation and bylaws of the holding company;
 - [(5)] (8) Evidence that it has or will have the financial ability, responsibility, and experience to engage in the business of a financial institution holding company; [and]
 - (9) The employment agreements for all executive officers of the holding company; and
 - [(6)] (10) Any other information that the commissioner may require.
- [(b) ~~The commissioner may issue a preliminary decision regarding the qualifications of the holding company.~~”]

SECTION 17. Section 412:3-203, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-203 Deferral of application requirements.** For good cause, the commissioner may defer specific application requirements until the filing of an application for a charter or [a] license.”

SECTION 18. Section 412:3-204, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-204 Publication of notice.** (a) Once the application to organize a Hawaii financial institution is complete and has been accepted by the commissioner, the applicant shall publish a notice at least once a week for three successive weeks in

a newspaper of general circulation in each county in this State where the proposed financial institution intends to establish a principal office, branch, or agency.

(b) The notice shall be in a form prescribed by the commissioner and shall state the fact that an application has been filed, the names of the applicant and organizers, the location of the financial institution's proposed [place] places of business, and the amount of its proposed capital. The notice shall also state that within fifteen days after the last publication of the notice any person may file with the commissioner written comments on the application or a request for an informational and comment proceeding to present information and comments to the commissioner. Any request for an informational and comment proceeding shall be accompanied by a brief statement of the person's interest in the application, the matters to be discussed at the informational and comment proceeding, and the reasons why written comments will not suffice in lieu of an informational and comment proceeding."

SECTION 19. Section 412:3-206, Hawaii Revised Statutes, is amended to read as follows:

"§412:3-206 Grant of preliminary approval to organize a financial institution. (a) Following the expiration of the time for the submission of written comments or the completion of an informational and comment proceeding, the commissioner shall issue a written decision and order on the application for preliminary approval to organize. If the commissioner approves the application, the applicant shall become an "applicant in [organization,²²] organization", and may take all steps necessary to complete organization and file an application for a charter or license.

(b) An application for preliminary approval to organize shall be approved only if the commissioner finds that:

- (1) The proposed activities of the financial institution will comply with the requirements of this chapter;
- (2) If the financial institution will be a subsidiary of a holding company, the holding company is or will be properly organized, in good standing, and financially sound, and is not or will not be engaging directly or indirectly through any subsidiary or affiliate in business prohibited by this chapter;
- (3) The qualifications, character, financial responsibility, experience, and general fitness of the proposed directors and executive officers of the financial institution and any holding company are such as will warrant public confidence and a belief that the business of the financial institution will be honestly and efficiently conducted. For purposes of this section, the commissioner may presume that in the absence of credible evidence to the contrary, a director, officer, or controlling person is of good character and sound financial standing. [Sueh] The presumption may be rebutted by evidence to the contrary, including without limitation a finding that [sueh] the director, officer, or controlling person has:
 - (A) Been convicted of, or has pleaded nolo contendere to, any crime involving an act of fraud or dishonesty;
 - (B) Consented to or suffered a judgment in any civil action based upon conduct involving an act of fraud or dishonesty;
 - (C) Consented to or suffered the suspension or revocation of any professional, occupational, or vocational license based upon conduct involving an act of fraud or dishonesty;
 - (D) Wilfully made or caused to be made in any application or report filed with the commissioner, or in any proceeding before the

commissioner, any statement [~~which~~] that was at the time and in the light of the circumstances under which it was made false or misleading with respect to any material fact, or has wilfully omitted to state in any application or report any material fact [~~which~~] that was required to be stated therein; or

(E) Wilfully committed any violation of, or has wilfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of, any provision of this chapter or of any rule or order issued under this chapter; ~~[and]~~

(4) The proposed operations of the financial institution will be conducted in a safe and sound manner[-];

(5) The articles of incorporation of the financial institution comply in all respects with this chapter and chapter 414; and

(6) The capital stock solicitation submission is complete and the solicitation will not affect the safety or soundness of the proposed financial institution or harm the public interest.

(c) In granting preliminary approval to organize, the commissioner may impose any conditions and restrictions that are in the public interest, including but not limited to requiring the applicant to fulfill representations contained in its application and agreements made with the commissioner during the application process.

(d) Upon the issuance of a written decision and order granting the application for preliminary approval to organize, the articles of incorporation may be delivered by the applicant in organization to the director of commerce and consumer affairs for filing and, if accepted for filing, the financial institution shall have corporate existence. Although the proposed financial institution may have corporate existence, it may not transact any financial institution business until it has received a financial institution charter or license under this article; provided that the financial institution may conduct any transaction that is incidental and necessary to prepare to do a financial institution business and obtain a charter or license.

(e) The applicant and the proposed Hawaii financial institution shall not solicit subscriptions for the capital stock of the Hawaii financial institution until the written decision and order granting the application for preliminary approval to organize has been issued and the articles of incorporation have been accepted for filing by the director of commerce and consumer affairs. The approval shall not constitute a determination that the applicant has complied with chapter 485 or any other state or federal law.”

SECTION 20. Section 412:3-211, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A proposed Hawaii financial institution shall obtain its required capital and surplus, complete its organization, and obtain a charter or license from the commissioner within one year from the date of [~~incorporation;~~] issuance of the decision and order granting the application for preliminary approval to organize; provided that for good cause shown by the applicant in organization, the commissioner may by written order extend the deadline for a period not to exceed six months.”

SECTION 21. Section 412:3-212, Hawaii Revised Statutes, is amended to read as follows:

“**§412:3-212 Final application for charter or license.** (a) After completing its organization of the Hawaii financial institution, the applicant in organization may

file with the commissioner an application for a charter or license to engage in the business of a Hawaii financial institution. The application shall be in a form prescribed by the commissioner and, unless waived by the commissioner, shall contain the following information:

- (1) A sworn statement by the applicant in organization that it has complied with all requirements of law concerning the organization of the proposed financial institution, including but not limited to the requirement that the full amount of its required capital and surplus has been paid in or deposited in escrow under terms satisfactory to the commissioner;
- (2) The names and addresses of all common and preferred shareholders, and elected or appointed directors and executive officers of the proposed financial institution and any holding company of the financial institution, and the number of shares owned by each;
- (3) A description of any material changes ~~[which]~~ that have occurred in the financial institution's organizers or the applicant in organization, its business plan, and its financial condition since the issuance of the preliminary approval to organize, accompanied by updated financial statements of the financial institution, any holding company of the financial institution, the applicant in organization, and all executive officers and directors of the financial institution and any holding company of the financial institution;
- (4) Evidence that all federal deposit insurance, fidelity bonds, and any other insurance ~~[required by the order of preliminary approval]~~, as represented in the application for preliminary approval to organize, have been or will be obtained[;] and in effect prior to opening;
- (5) A description of the financial institution's disaster recovery policies and programs, security programs, and all vending contractors for electronic data processing and servicing[;] that are or will be in effect prior to opening; and
- (6) Any other information that the commissioner may require.

(b) The commissioner shall review the application, may conduct an examination of the financial institution, and may interview any proposed director or executive officer.

(c) If the commissioner is satisfied that the financial institution and, if applicable, its holding company have fulfilled all the requirements of law[;] and the grounds for preliminary approval, and that the financial institution is qualified to engage in the business of a financial institution, the commissioner shall issue a written decision and order approving the application. The order may restrict the payment of dividends for a period of up to three years, and may contain any other conditions and restrictions on the financial institution that are in the public interest, including but not limited to the divestment of any contractual arrangement with an affiliate or subsidiary involving any type of business not permitted under this chapter. Upon [approving the application] the satisfactory fulfillment by the financial institution and, if applicable, its holding company of the conditions in the written decision and order approving the application and upon the payment by a depository financial services loan company of an initial license fee established by rule pursuant to chapter 91, the commissioner shall issue to the financial institution a charter or license to engage in the business of a financial institution under this chapter."

SECTION 22. Section 412:3-506, Hawaii Revised Statutes, is amended to read as follows:

“§412:3-506 Opening or relocating ~~[automatic teller machine or]~~ a support facility. A Hawaii financial institution ~~[which]~~ that opens or relocates ~~[an automatic teller machine or]~~ a support facility shall within thirty days thereafter submit a letter to the commissioner containing the following information:

- (1) The location of the ~~[automatic teller machine or]~~ support facility;
- (2) A description of the type of functions which the ~~[automatic teller machine or]~~ support facility will perform; and
- (3) The date or anticipated date of opening or relocation.”

SECTION 23. Section 412:3-508, Hawaii Revised Statutes, is amended to read as follows:

“§412:3-508 Closing ~~[automatic teller machine or]~~ a support facility. A Hawaii financial institution shall provide notice to the commissioner of its closure of ~~[an automatic teller machine or]~~ a support facility within thirty days of the closing. The notice shall contain the location of the ~~[automatic teller machine or]~~ support facility closed and the date of closing.”

SECTION 24. Section 412:3-604, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For any transaction covered by this part ~~[which]~~ that requires approval of the shareholders or members of the financial institution, the voting requirements shall be:

- (1) If a Hawaii financial institution is a stock institution, the holders of two-thirds of each class of the issued and outstanding capital stock of the financial institution entitled to vote, or such greater majority as may be provided by the articles of incorporation of the Hawaii financial institution, shall be required to approve any action under this part;
- ~~[(2) If a Hawaii financial institution is a mutual savings and loan association, a majority of members present in person or by proxy at any meeting shall be required to approve any action under this part;]~~ or
- ~~[(3)]~~ (2) If a Hawaii financial institution is a credit union, a majority of members present in person at any meeting shall be required to approve any action under this part.”

SECTION 25. Section 412:3-605, Hawaii Revised Statutes, is amended to read as follows:

“§412:3-605 Notice to ~~[mutual savings and loan or]~~ credit union member ~~[; no right of dissent].~~ [(a)] Wherever the approval of a transaction is required by this part by the members of a ~~[mutual savings and loan association or a]~~ credit union, notice of a ~~[]meeting[]~~ of its members, which may be an annual or a special ~~[]meeting, []~~ shall be given to each member entitled to vote. The notice shall be provided not less than twenty days before the date of the meeting. The notice shall state that the purpose or one of the purposes of the meeting is to vote upon a transaction covered by this part and shall be accompanied by a detailed description of the proposed transaction or a summary of the transaction and a copy of the plan of conversion, merger, consolidation, sale of assets or assumption of liabilities, or voluntary cessation of business and dissolution approved by the board of directors.

~~[(b) A member of a mutual savings and loan association or credit union shall have no right of dissent under chapter 414 for any of the transactions governed by this part.]”~~

SECTION 26. Section 412:3-608, Hawaii Revised Statutes, is amended to read as follows:

“§412:3-608 Conversion to another type of financial institution. (a) A financial institution of any type, whether federal or State, may convert to a Hawaii financial institution of any other type if the institution and its holding company or holding companies, if any, shall have complied with all requirements, conditions, and limitations imposed by this part and by federal law, if applicable.

(b) If the converting institution is a Hawaii financial institution, its shareholders or members shall approve a conversion to another type of financial institution at a meeting duly called and noticed and upon a vote which satisfies the requirements of section 412:3-604.

(c) The financial institution shall file an application with the commissioner pursuant to section 412:3-603 for a charter or license to engage in the business of the type of financial institution to which it will convert. The application shall be accompanied by:

- (1) A certificate signed by two executive officers of the financial institution, verifying the validity of the meeting of the shareholders or members, that the requisite vote [has] had been obtained, and that the attached copy of the resolution to convert adopted at the meeting is true and correct, or that the applicant has complied with all federal laws and regulations regarding the conversion, as the case may be;
- (2) The information required from applicants for approval to organize a Hawaii financial institution of the type into which it will convert; and
- (3) Any other information that the commissioner may require.

(d) The commissioner may require notice to be given to the public as may be deemed appropriate. The commissioner may conduct an examination of the financial institution as provided under article 2, part II. The cost of any examination shall be assessed against and paid by the financial institution pursuant to section 412:2-105.

(e) The charter or license shall be granted only if the commissioner is satisfied that the granting of the charter or license will not impair the safety or soundness of the financial institution or any other financial institution, and that the applicant meets all the requirements set forth in this chapter for the type of financial institution for which the application has been filed. The requirements shall include[;] but not be limited to[;] the appropriate location of offices, capital structure, business experience, the character of its executive officers and directors, and compliance with all applicable provisions of chapter 414. If the resulting Hawaii financial institution is a new corporation to be formed under chapter 414, the director of commerce and consumer affairs shall not file the articles of incorporation until the application for a charter or license to engage in the business of the type of financial institution to which it will convert shall have been approved by the commissioner in writing. The commissioner may impose any restrictions and conditions on the operation of the resulting financial institution as the commissioner deems appropriate and consistent with federal law.

(f) If the resulting Hawaii financial institution is an existing corporation formed under chapter 414, the conversion shall be effective upon the effective date of the new charter or license granted by the commissioner after all provisions of this section and of federal law shall have been complied with in full. If the resulting Hawaii financial institution is a new corporation to be formed under chapter 414, the effective date of the new charter or license shall be the date of filing of the articles of incorporation by the director of commerce and consumer affairs.

~~[(g) Nothing in this section shall be construed as permitting the conversion of any financial institution to a state-chartered mutual savings and loan association.]”~~

SECTION 27. Section 412:3-609, Hawaii Revised Statutes, is amended to read as follows:

“§412:3-609 Merger or consolidation of Hawaii financial institutions. (a)

Any one or more financial institutions may merge into another financial institution and any two or more financial institutions other than credit unions may consolidate into a new financial institution if the institutions shall have complied with all requirements, conditions, and limitations imposed by this chapter and by federal law, if applicable. A merger or consolidation in which one or more of the participating financial institutions is a financial institution chartered or licensed under the laws of or whose operations are conducted principally in any state other than Hawaii, in any possession or territory of the United States or in any foreign country shall be authorized only in accordance with subsection (d), in accordance with part IV, article 5, of this chapter or in accordance with article 12.

(b) Any merger or consolidation of Hawaii stock financial institutions shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more corporations pursuant to chapter 414; except that the vote by the shareholders of each of the participating institutions to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604 and that the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing.

(c) One or more federal financial institutions whose operations are conducted principally in this State and one or more Hawaii financial institutions may be merged or consolidated, with the federal financial institution, the Hawaii financial institution, or a new consolidated financial institution being the resulting institution, if the merger or consolidation is permitted by federal law. The federal financial institution shall comply with all requirements, conditions, and limitations imposed by federal law or regulation with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and chapter 414, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604. The resulting financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter 414.

(d) One or more financial institutions chartered or licensed under the laws of or whose operations are conducted principally in any state other than this State, in any possession or territory of the United States, or in any foreign country and one or more Hawaii depository financial institutions or trust companies may be merged or consolidated, but only where the depository financial institution or trust company resulting from any merger or consolidation pursuant to this subsection is chartered or licensed under the laws of and conducts its operations principally in this State, is a federal financial institution that conducts its operations principally in this State, or is an out-of-state bank authorized to establish interstate branches in this State pursuant to section 412:12-104. A nondepository financial services loan company licensed pursuant to article 9 may be merged or consolidated with another corporation, but only where the nondepository financial institution resulting from any merger or consolidation is licensed under the laws of this State. The financial institution chartered or licensed under the laws of any state other than this State, any possession or territory of the United States, or any foreign country shall comply with all requirements, conditions, and limitations imposed by the law of the jurisdiction under which the financial institution is chartered or licensed with respect to the merger or consolidation. The Hawaii financial institution shall comply with all of the provisions of this chapter and

chapter 414, except that the vote by shareholders or members of the Hawaii financial institution to approve the plan of merger or consolidation shall satisfy the requirements of section 412:3-604. If the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing. If the resulting institution is a federal financial institution, the director of commerce and consumer affairs shall not file the articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing and the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter 414.

~~[(e) A Hawaii mutual savings and loan association may merge into a Hawaii stock financial institution or a federal financial institution whose operations are principally conducted in this State, or may consolidate with a Hawaii stock financial institution or a federal financial institution whose operations are conducted principally in this State into a new resulting institution; provided that the resulting institution shall be a Hawaii stock financial institution or a federal financial institution, and shall not be a Hawaii mutual savings and loan association. The merger or consolidation shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger or consolidation of two or more stock financial institutions pursuant to this section and to chapter 414, as though the Hawaii mutual savings and loan association was a stock financial institution; except that the members of the participating Hawaii mutual savings and loan association shall approve the plan of merger or consolidation at a meeting duly called and noticed and upon a vote which satisfies the requirements of sections 412:3-604 and 412:3-605. If the resulting institution is a Hawaii financial institution, the director of commerce and consumer affairs shall not file articles of merger or consolidation until the plan of merger or consolidation shall have been approved by the commissioner in writing. If the resulting institution is a federal financial institution, the resulting federal financial institution shall file with the director of commerce and consumer affairs a confirmation in writing by the commissioner of the date and time of the merger or consolidation, together with the appropriate filing fee pursuant to chapter 414.~~

~~[(f)]~~ (e) A Hawaii credit union may merge with a Hawaii credit union or federal credit union. The merger shall be effected pursuant to the procedures, conditions, and requirements for, and with the effect of, the merger of two or more stock financial institutions pursuant to this section and to chapter 414, as though the credit unions were stock financial institutions; except that the plan of merger shall be approved by a majority of the members of the board of directors of each participating credit union and by the members of the participating credit unions at a meeting duly called and noticed and upon a vote ~~[which]~~ that satisfies the requirements of sections 412:3-604 and 412:3-605.

~~[(g)]~~ (f) Prior to or after the vote of the shareholders or members upon the plan of merger or consolidation, but prior to delivery of articles of merger or consolidation and plan of merger or consolidation to the director of commerce and consumer affairs, the participating financial institutions shall file an application with the commissioner pursuant to section 412:3-603 for approval of the proposed merger or consolidation. The application shall be accompanied by:

- (1) The plan of merger or consolidation;
- (2) A certificate signed by two executive officers of each of the participating institutions, verifying that the plan of merger or consolidation has been approved by the board of directors of ~~[the]~~ each participating financial institution and that the attached copy of the resolution approving the proposed merger or consolidation is true and correct;

- (3) If any participating financial institution is a federal financial institution or a financial institution chartered or licensed under the laws of any state other than this State, any possession or territory of the United States, or any foreign country, a certificate signed by two executive officers verifying that the financial institution has complied, or will comply, with all federal laws and regulations or all laws and regulations of the jurisdiction under which it is chartered or licensed relating to the merger or consolidation;
- (4) If the resulting financial institution is to be a Hawaii financial institution, the information required from applicants for approval to organize a Hawaii financial institution of the same type as the proposed resulting Hawaii financial institution;
- (5) If a Hawaii financial institution is seeking to merge or consolidate with a financial institution of another type, the information required from applicants for approval to convert to another type of financial institution; and
- (6) Any other information that the commissioner may require.

~~[(h)]~~ (g) The commissioner may require notice to be given to the public as may ~~seem~~ be deemed appropriate. The commissioner may conduct an examination of the financial institution as provided under article 2, part II. The cost of any examination shall be assessed against and paid by the institution pursuant to section 412:2-105.

~~[(i)]~~ (h) The commissioner shall approve the plan of merger or consolidation if it appears that:

- (1) Any resulting Hawaii financial institution would meet all the requirements under this chapter for a charter or license to the same extent that it would if it were applying for a new charter or license;
- (2) Any resulting financial institution would be adequately capitalized;
- (3) The plan of merger or consolidation is fair to creditors and the shareholders or members of all participating institutions;
- (4) The participating institutions have complied, or will comply, with all requirements, conditions, and limitations imposed by federal [law] laws or [regulation] regulations or by the [law] laws or [regulation] regulations of the jurisdiction under which an institution is chartered or licensed with respect to the merger or consolidation;
- (5) The overall experience, moral character, or integrity of the proposed directors and executive officers of the resulting financial institution is consistent with the interests of the depositors, beneficiaries, creditors, shareholders, or members of the financial institution, or in the public interest;
- (6) The merger or consolidation will not jeopardize the safety or soundness of any participating financial institutions or the resulting financial institution, and is not otherwise contrary to the public interest;
- (7) The merger or consolidation will not substantially lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, or that any anti-competitive effects are clearly outweighed in the public interest by the probable effect of the merger or consolidation in meeting the convenience and needs of the community to be served;
- (8) The merger or consolidation will promote the convenience, needs, and advantage of the general public particularly in the communities in which the participating and resulting financial institutions conduct or will conduct their business;
- (9) The grounds for approval of a conversion to another type of financial institution pursuant to section 412:3-608 have been met in the case of a

participating Hawaii financial institution seeking to merge or consolidate with a financial institution of a different type; and

- (10) The plan meets any other criteria as the commissioner may deem appropriate.

[(+)] (i) In the case of a merger, the charter or license of the participating depository financial institution or trust company [which] that is the resulting institution shall continue as the charter or license of the resulting depository financial institution or trust company upon the effective date of the merger. In the case of a consolidation, when the commissioner is satisfied that the participating depository financial institutions or trust companies have complied with all state and federal law with regard to the consolidation, the commissioner shall issue a charter or license to the consolidated resulting Hawaii depository financial institution or trust company. A nondepository financial services loan company license may be issued to the resulting financial institution in conjunction with a merger or consolidation upon compliance with all applicable laws regarding the issuance of a license to a nondepository financial services loan company.”

SECTION 28. Section 412:3-610, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If a converting or participating institution is a trust company or a bank [which] that is authorized to do a trust business, the resulting institution, by operation of law and without further court order, transfer, substitution, act, or deed shall succeed to the rights, properties, assets, investments, deposits, demands, agreements, and trusts of the converting or participating institutions under all trusts, personal representations, executorships, administrations, guardianships, agencies, and all other fiduciary or representative capacities as though the resulting institution had originally assumed the same and shall succeed to and be entitled to take and execute the appointment to all trusteeships, personal representations, executorships, guardianships, conservatorships, and other fiduciary and representative capacities to which the converting or participating institution may be named or is thereafter named in wills, whether probated before or after the conversion, merger, or consolidation, or to which it is or may be named or appointed by any other instrument.”

SECTION 29. Section 412:3-611, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the commissioner shall have given prior approval or shall have waived the requirement for approval pursuant to subsection [(e);] (e), no financial institution holding company shall merge or consolidate with any other corporation if the effect of the merger or consolidation shall be to change the direct or indirect control of any Hawaii financial institution.”

SECTION 30. Section 412:3-612, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) [The] Approval may be denied by the commissioner [may disapprove the proposed acquisition of control] for the proposed acquisition of control if it appears that:

- (1) The overall experience, moral character, or integrity of any person who would acquire control of a Hawaii financial institution or financial institution holding company or become a financial institution holding company indicates that it would not be in the interest of the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company, or in the public

- interest, to permit the person to control the Hawaii financial institution or the financial institution holding company or to become a financial institution holding company;
- (2) The acquisition will not promote the convenience, needs, and advantage of the general public, particularly in the community in which the affected institution conducts its business;
 - (3) The effect of the proposed acquisition may be substantially to lessen competition or tend to create a monopoly or restraint of trade in any section of the country that includes this State or a part thereof, and that these anti-competitive effects are not clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;
 - (4) The financial condition of any person who would acquire control of a Hawaii financial institution or a financial institution holding company or become a financial institution holding company may jeopardize the safety and soundness of the Hawaii financial institution or the financial institution holding company or prejudice the interests of the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company;
 - (5) Any plan or proposal to liquidate, merge, or consolidate, or make any other major change in the business, corporate structure, or management of the Hawaii financial institution or the financial institution holding company or any of its significant subsidiaries is not fair and reasonable to the depositors, beneficiaries, creditors, or shareholders of the Hawaii financial institution or the financial institution holding company or any of its significant subsidiaries; or
 - (6) The acquiring person has failed or refused to furnish information requested by the commissioner.’’

SECTION 31. Section 412:5-203, Hawaii Revised Statutes, is amended to read as follows:

“**§412:5-203 Operating subsidiaries.** (a) ‘‘Operating subsidiary’’ means a corporation other than a corporation referred to in section 412:5-305(g)(2) to (8) of which more than eighty per cent of the voting securities is held by a bank.

(b) An operating subsidiary may engage in activities [~~which~~] that are authorized for a bank or [~~which~~] that are usual or incidental to the business of a bank.

(c) No bank may acquire, establish, or hold the voting securities of an operating subsidiary without the commissioner’s prior written approval; provided[⁵] that such approval shall not be required so long as the bank’s aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the bank’s capital and surplus; provided further[⁵] that the bank shall comply with the notification requirements of subsection (f). Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent bank shall [~~be applicable~~] apply to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:5-302.

(d) The bank shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

- (1) The name and date for commencement of operations;
- (2) The specific location;

- (3) The activities and nature of business;
- (4) The ownership, amount, and nature of the investment; and
- (5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment, or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve [sueh] the application in writing, with [sueh] conditions as the commissioner may deem appropriate.

(f) The bank shall notify the commissioner in writing within five days of acquiring or establishing an operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a bank shall be maintained independently of the accounts of all of the bank's other operating subsidiaries, and independently of the accounts of the bank itself. At least at the end of every quarter of its fiscal year the bank shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

(h) The bank shall notify the commissioner in writing within five days of closing an operating subsidiary. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the operating subsidiary were disposed."

SECTION 32. Section 412:5-305, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) To the extent specified herein, a bank may invest its own assets in limited partnerships, limited liability partnerships, limited liability companies, or corporations formed to invest in residential properties [whieh] that will qualify for the low income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended, and under chapters 235 and 241; provided that the total amount invested by a bank under this subsection in any one limited partnership, limited liability partnership, limited liability company, or corporation shall not, without the prior approval of the commissioner, exceed two per cent of the bank's capital and surplus and the aggregate amount invested under this subsection shall not, without the prior approval of the commissioner, exceed five per cent of the bank's capital and surplus. In no case shall the aggregate amount invested by a bank under this subsection exceed ten per cent of the bank's capital and surplus."

SECTION 33. Section 412:5-402, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) In order to obtain prior approval of the commissioner, the applicant shall file the application required by and comply with the provisions of article 3. [~~In addition to any information required under article 3, the~~] The application shall contain the following information:

- (1) The applicant's articles of incorporation and bylaws, or other basic governing documents; ~~and~~
- (2) A certificate from the appropriate regulatory body where its home office is located, indicating that the applicant is in good standing in that jurisdiction[-]; ~~and~~
- (3) Any other information required by the commissioner."

SECTION 34. Section 412:6-203, Hawaii Revised Statutes, is amended to read as follows:

“§412:6-203 Service corporations. (a) “Service corporation” means a corporation whose stock is owned entirely by one or more state or federally chartered savings banks or savings and loan associations.

(b) Subject to the approval of the commissioner, a savings bank may form and own a service corporation only if the institution or institutions participating in the formation of the service corporation are in a safe and sound condition, and the amount of stock to be owned by each will not adversely affect their capital or solvency.

(c) A savings bank may not own or invest in any capital stock, securities, or other interest of a service corporation if, together with its investment in the capital stock, securities, or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed six per cent of the savings bank’s assets.

(d) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written ~~[acknowledgement]~~ acknowledgment by the applicant that the service corporation shall be subject to:

- (1) ~~[the]~~ The supervision of the commissioner;
- (2) ~~[examination]~~ Examination pursuant to this section; and
- (3) ~~[such]~~ Any other terms and conditions as the commissioner deems appropriate.

(e) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a savings bank in ~~[such]~~ the service corporation and whether the activities of the service corporation pose a significant risk of loss to the parent savings bank. The service corporation shall pay the entire cost of ~~[such]~~ the examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner.

(f) A service corporation may engage in activities permitted for a service corporation of a federally chartered savings bank or savings and loan association and ~~[such]~~ other activities as the commissioner may approve.

(g) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures.

(h) Whenever a service corporation engages in an activity ~~[which]~~ that is not permitted under this section, and because of ~~[such]~~ this activity a savings bank’s investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the savings bank:

- (1) ~~[the]~~ The improper activity shall be discontinued; or
- (2) ~~[the]~~ The savings bank shall divest itself of its ownership or investment in the service corporation.

The service corporation or the savings bank may appeal the commissioner’s decision and request a hearing in accordance with chapter 91.

(i) The savings bank shall notify the commissioner in writing within five days of closing a service corporation. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the service corporation were disposed.”

SECTION 35. Section 412:6-204, Hawaii Revised Statutes, is amended to read as follows:

“§412:6-204 Operating subsidiaries. (a) “Operating subsidiary” means a corporation other than a corporation referred to in section 412:6-306(g)(2) to (7) of which more than fifty per cent of the voting securities is held by a savings bank.

(b) An operating subsidiary may engage in activities [~~which are~~] authorized for a savings bank or [~~which~~] that are usual or incidental to the business of a savings bank.

(c) No savings bank may acquire, establish, or hold the voting securities of an operating subsidiary without the commissioner's prior written approval; provided^[,] that [~~such~~] approval shall not be required so long as the savings bank's aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the savings bank's capital and surplus; provided further^[,] that the savings bank shall comply with the notification requirements of subsection (f). Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent savings bank shall [~~be applicable~~] apply to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent savings bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:6-303.

(d) The savings bank shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee, the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

- (1) The name and date for commencement of operations;
- (2) The specific location;
- (3) The activities and nature of business;
- (4) The ownership, amount, and nature of the investment; and
- (5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment, or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve [~~such~~] the application in writing, with [~~such~~] conditions as the commissioner may deem appropriate.

(f) The savings bank shall notify the commissioner in writing within five days of acquiring or establishing any operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a savings bank shall be maintained independently of the accounts of all of the savings bank's other operating subsidiaries and independently of the accounts of the savings bank itself. At least at the end of every quarter of its fiscal year the savings bank shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

(h) The savings bank shall notify the commissioner in writing within five days of closing an operating subsidiary. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the operating subsidiary were disposed."

SECTION 36. Section 412:6-306, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

"(h) To the extent specified herein, a savings bank may invest its own assets in limited partnerships, limited liability partnerships, limited liability companies, or corporations formed to invest in residential properties [~~which~~] that will qualify for the low income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended, and under chapters 235 and 241; provided that the total amount invested by a savings bank under this subsection in any one limited partnership, limited liability partnership, limited liability company, or corporation shall not,

without the prior approval of the commissioner, exceed two per cent of the savings bank's capital and surplus and the aggregate amount invested under this subsection shall not, without the prior approval of the commissioner, exceed five per cent of the savings bank's capital and surplus. In no case shall the aggregate amount invested by a savings bank under this subsection exceed ten per cent of the savings bank's capital and surplus."

SECTION 37. Section 412:7-100, Hawaii Revised Statutes, is amended to read as follows:

"**§412:7-100 Definition.** In this article, "savings and loan association" means a corporation [~~or mutual association~~] [~~which~~] that has the authority to operate as a savings and loan association under this chapter."

SECTION 38. Section 412:7-203, Hawaii Revised Statutes, is amended to read as follows:

"**§412:7-203 Service corporations.** (a) "Service corporation" means a corporation whose stock is owned entirely by one or more state or federally chartered savings and loan associations or savings banks.

(b) Subject to the approval of the commissioner, a savings and loan association may form and own a service corporation only if the institution or institutions participating in the formation of the service corporation are in a safe and sound condition, and the amount of stock to be owned by each will not adversely affect their capital or solvency.

(c) A savings and loan association may not own or invest in any capital stock, securities, or other interest of a service corporation if, together with its investment in the capital stock, securities, or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed six per cent of the savings and loan association's assets.

(d) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written [~~acknowledgement~~] acknowledgment by the applicant that the service corporation shall be subject to:

- (1) [~~the~~] The supervision of the commissioner;
- (2) [~~examination~~] Examination pursuant to this section; and
- (3) [~~such~~] Any other terms and conditions as the commissioner deems appropriate.

(e) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a savings and loan association in [~~such~~] the service corporation and whether the activities of the service corporation pose a significant risk of loss to the parent savings and loan association. The service corporation shall pay the entire cost of [~~such~~] the examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner.

(f) A service corporation may engage in activities permitted for a service corporation of a federally chartered savings and loan association and [~~such~~] other activities as the commissioner may approve.

(g) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures.

(h) Whenever a service corporation engages in an activity [~~which~~] that is not permitted under this section, and because of [~~such~~] the activity a savings and loan

association's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the savings and loan association:

- (1) ~~[the]~~ The improper activity shall be discontinued; or
- (2) ~~[the]~~ The savings and loan association shall divest itself of its ownership or investment in the service corporation.

The service corporation or the savings and loan association may appeal the commissioner's decision and request a hearing in accordance with chapter 91.

(i) The savings and loan association shall notify the commissioner in writing within five days of closing a service corporation. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the service corporation were disposed."

SECTION 39. Section 412:7-204, Hawaii Revised Statutes, is amended to read as follows:

"§412:7-204 Operating subsidiaries. (a) "Operating subsidiary" means a corporation other than a corporation referred to in section 412:7-306(g)(2) to (7) of which more than fifty per cent of the voting securities is held by a savings and loan association.

(b) An operating subsidiary may engage in activities ~~[which are]~~ authorized for a savings and loan association or ~~[which]~~ that are usual or incidental to the business of a savings and loan association.

(c) No savings and loan association may acquire, establish, or hold the voting securities of an operating subsidiary without the commissioner's prior written approval; ~~provided[;]~~ that ~~[such approval]~~:

- (1) Approval shall not be required so long as the savings and loan association's aggregate net contributions to the capital of the operating subsidiary remain less than ten per cent of the savings and loan association's capital and surplus; ~~[provided further, that the]~~ and
- (2) The savings and loan association shall comply with the notification requirements of subsection (f).

Unless otherwise provided by law or rule, all provisions of this chapter applicable to the operations of the parent savings and loan association shall ~~[be applicable]~~ apply to the operations of its operating subsidiary. Unless otherwise provided by law or rule, pertinent accounts of the parent savings and loan association and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations such as contained in section 412:7-303.

(d) The savings and loan association shall file an application with the commissioner in a form approved by the commissioner. The application shall be accompanied by a fee, the amount of which shall be prescribed by rule. The application shall contain the following information concerning the proposed operating subsidiary:

- (1) The name and date for commencement of operations;
- (2) The specific location;
- (3) The activities and nature of business;
- (4) The ownership, amount, and nature of the investment; and
- (5) Any other information that the commissioner may require.

(e) If after appropriate examination and investigation, the commissioner is satisfied that the acquisition, establishment, or holding the voting securities of the operating subsidiary will comply with this section, the commissioner shall approve ~~[such]~~ the application in writing, with ~~[such]~~ conditions as the commissioner may deem appropriate.

(f) The savings and loan association shall notify the commissioner in writing within five days of acquiring or establishing any operating subsidiary or performing new activities in the operating subsidiary. The notification shall provide the information specified in subsection (d).

(g) The accounts of each operating subsidiary of a savings and loan association shall be maintained independently of the accounts of all of the savings and loan association's other operating subsidiaries and independently of the accounts of the savings and loan association itself. At least at the end of every quarter of its fiscal year the savings and loan association shall consolidate or recognize its proportionate share of the profit and loss from each operating subsidiary.

(h) The savings and loan association shall notify the commissioner in writing within five days of closing an operating subsidiary. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the operating subsidiary were disposed.'

SECTION 40. Section 412:7-306, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) To the extent specified herein, a savings and loan association may invest its own assets in limited partnerships, limited liability partnerships, limited liability companies, or corporations formed to invest in residential properties [~~which~~] that will qualify for the low income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended, and under chapters 235 and 241; provided that the total amount invested by a savings and loan association under this subsection in any one limited partnership, limited liability partnership, limited liability company, or corporation shall not, without the prior approval of the commissioner, exceed two per cent of the savings and loan association's capital and surplus and the aggregate amount invested under this subsection shall not, without the prior approval of the commissioner, exceed five per cent of the savings and loan association's capital and surplus. In no case shall the aggregate amount invested by a savings and loan association under this subsection exceed ten per cent of the savings and loan association's capital and surplus.”

SECTION 41. Section 412:8-201, Hawaii Revised Statutes, is amended to read as follows:

“**§412:8-201 Fiduciary powers.** Every trust company shall have the power and authority to serve as a trustee, personal representative, conservator, assignee for the benefit of others, or receiver, subject to the duties imposed by the instrument or by law. As used herein, the term “instrument” means any trust agreement, declaration, or other agreement, any valid will, or any court order or decree in any probate, guardianship, conservatorship, or receivership. Pursuant thereto, a trust company is authorized and empowered to exercise powers as provided by law, including[.] but not limited to:

- (1) Perform such acts as may be prudent, consistent with, and reasonably necessary to carry out the legitimate purposes of [~~such~~] the instrument;
- (2) Administer, fulfill, and discharge all lawful duties imposed by the instrument or by law, for such remuneration as may be agreed upon or provided by law;
- (3) Acquire principal and income on behalf of the estate administered by the trust company, including without limitation real property, insurance proceeds, rents, interest, dividends, mortgages, bonds, bills, notes, and securities;

- (4) Buy, sell, issue, negotiate, register, transfer, or countersign certificates of stock, bonds, or other obligations of any corporation, association, or municipality;
- (5) Lease, purchase, hold, and convey real and personal property to the extent authorized by the instrument or by law, or consistent with the purposes thereof; and
- (6) Execute and issue on behalf of the estate any documents necessary to the prudent administration thereof, including without limitation any receipts, certificates, papers, and contracts which shall be signed by an appropriate trust officer designated by the trust company.’’

SECTION 42. Section 412:9-403, Hawaii Revised Statutes, is amended to read as follows:

“§412:9-403 **Service corporations.** Subject to the approval of the commissioner, one or more depository financial services loan companies[;] may form and own a service corporation only under the following conditions:

- (1) The depository financial services loan company or companies participating in the formation of the service corporation are in and will remain in a safe and sound condition, and the depository financial services loan company’s or companies’ solvency will not be adversely affected by the formation or ownership of the service corporation;
- (2) A depository financial services loan company may not own or invest in any capital stock, securities, or other interest of a service corporation if, together with its investment in the capital stock, securities, or other interest of any other service corporations, its aggregate outstanding investment in all service corporations will exceed fifty per cent of the depository financial services loan company’s capital and surplus;
- (3) No service corporation may be formed except upon written approval by the commissioner of an application submitted in a form satisfactory to the commissioner. The approval shall be subject to the written acknowledgment by the applicant that the service corporation shall be subject to:
 - (A) ~~[the]~~ The supervision of the commissioner;
 - (B) ~~[examination]~~ Examination pursuant to this section; and
 - (C) ~~[such]~~ Any other terms and conditions as the commissioner deems appropriate;
- (4) Every service corporation shall permit the commissioner to examine its books, records, and activities from time to time, to the extent and whenever the commissioner deems necessary to determine the propriety of any investment by a depository financial services loan company in ~~[such]~~ the service corporation and whether the activities of the service corporation pose a significant risk of loss to the parent depository financial services loan company. The service corporation shall pay the entire cost of the examination. In addition, a service corporation, at its sole expense, shall cause an independent audit to be made of its books, records, and activities if and when deemed necessary by the commissioner;
- (5) A service corporation may engage in any activity permitted to its parent depository financial services loan company and any other activity as the commissioner may approve;
- (6) A service corporation may engage in permitted activities directly or through one or more subsidiaries or joint ventures; ~~[and]~~

- (7) Whenever a service corporation engages in an activity [~~which~~] that is not permitted under this section, and because of [~~such~~] the activity a depository financial services loan company's investment in the service corporation would be improper, within ninety days following written notice from the commissioner to the depository financial services loan company:
- (A) [~~the~~] The improper activity shall be discontinued; or
- (B) [~~the~~] The depository financial services loan company shall divest itself of its ownership or investment in the service corporation.
- The service corporation or the depository financial services loan company may appeal the commissioner's decision and request a hearing in accordance with chapter 91[-]; and
- (8) The depository financial services loan company shall notify the commissioner in writing within five days of closing a service corporation. The notification shall provide the date of closing, the reasons for the closure, and the means by which the assets and liabilities of the service corporation were disposed."

SECTION 43. Section 412:9-409, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

"(i) To the extent specified herein, a depository financial services loan company may invest its own assets in limited partnerships, limited liability partnerships, limited liability companies, or corporations formed to invest in residential properties [~~which~~] that will qualify for the low income housing tax credit under section 42 of the Internal Revenue Code of 1986, as amended, and under chapters 235 and 241; provided that the total amount invested by a depository financial services loan company under this subsection in any one limited partnership, limited liability partnership, limited liability company, or corporation shall not, without the prior approval of the commissioner, exceed two per cent of the depository financial services loan company's capital and surplus and the aggregate amount invested under this subsection shall not, without the prior approval of the commissioner, exceed five per cent of the depository financial services loan company's capital and surplus. In no case shall the aggregate amount invested by a depository financial services loan company under this subsection exceed ten per cent of the depository financial services loan company's capital and surplus."

SECTION 44. Section 412:11-103, Hawaii Revised Statutes, is amended to read as follows:

"§412:11-103 Use of state or federal examinations. The commissioner may accept, adopt, or use in lieu of an examination prescribed by section 412:11-102 or otherwise, all or any part of the results of an examination conducted by an appropriate state or federal regulatory agency of a financial institution or a financial institution holding company for the same period or subject matter that would be covered by an examination required or permitted under this article."

SECTION 45. Section 412:3-103, Hawaii Revised Statutes, is repealed.

SECTION 46. Section 412:3-113, Hawaii Revised Statutes, is repealed.

SECTION 47. Section 412:3-115, Hawaii Revised Statutes, is repealed.

SECTION 48. Section 412:3-208, Hawaii Revised Statutes, is repealed.

SECTION 49. Section 412:3-210, Hawaii Revised Statutes, is repealed.

SECTION 50. Chapter 412, article 7, part IV, Hawaii Revised Statutes, is repealed.

SECTION 51. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 52. This Act shall take effect on January 1, 2007.

(Approved June 22, 2006.)

Notes

- 1. Prior to amendment “; grounds” appeared here.
- 2. Edited pursuant to HRS §23G-16.5.

ACT 229

S.B. NO. 743

A Bill for an Act Relating to the Uniform Securities 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 SECURITIES ACT

PART I. GENERAL PROVISIONS

§ -101 Short title. This chapter shall be known and may be cited as the Uniform Securities Act (2002).

§ -102 Definitions. As used in this chapter, unless the context otherwise requires:

“Agent” means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer’s securities. A partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions, is an agent only if the individual otherwise falls within this definition. The definition shall not include an individual excluded by rule adopted or order issued under this chapter.

“Bank” means:

- (1) A banking institution organized under the laws of the United States;
- (2) A member bank of the Federal Reserve System;
- (3) Any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; or

- (4) A receiver, conservator, or other liquidating agent of any institution or firm included in paragraph (1), (2), or (3).

“Broker-dealer” means a person engaged in the business of effecting transactions in securities for the accounts of others or for the person’s own account. The term shall not include:

- (1) An agent;
- (2) An issuer;
- (3) A depository institution;
- (4) Any person licensed as a real estate broker or real estate salesperson under the laws of this State while effecting transactions in a security exempted by sections 202(24) and 202(25);
- (5) An international banking institution; or
- (6) A person excluded by rule adopted or order issued under this chapter.

“Commissioner” means the commissioner of securities of this State.

“Depository institution” means:

- (1) A bank; or
- (2) A savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term shall not include:
 - (A) An insurance company or other organization primarily engaged in the business of insurance;
 - (B) A Morris Plan bank; or
 - (C) An industrial loan company.

“Director” means the director of commerce and consumer affairs.

“Federal covered investment adviser” means a person registered under the Investment Advisers Act of 1940.

“Federal covered security” means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. 77r(b)), or rules or regulations adopted pursuant to that provision.

“Filing” means the receipt of a record required under this chapter by the commissioner or a designee of the commissioner.

“Fraud”, “deceit”, and “defraud” are not limited to common law deceit.

“Guaranteed” means guaranteed as to payment of all principal and all interest.

“Institutional investor” means any of the following, whether acting for itself or for others in a fiduciary capacity:

- (1) A depository institution or international banking institution;
- (2) An insurance company;
- (3) A separate account of an insurance company;
- (4) An investment company as defined in the Investment Company Act of 1940;
- (5) A broker-dealer registered under the Securities Exchange Act of 1934;
- (6) An employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of

- 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;
- (7) A plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;
 - (8) A trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in paragraph (6) or (7), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;
 - (9) An organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;
 - (10) A small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. 681(c)) with total assets in excess of \$10,000,000;
 - (11) A private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(22)) with total assets in excess of \$10,000,000;
 - (12) A federal covered investment adviser acting for its own account;
 - (13) A "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);
 - (14) A "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);
 - (15) Any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000, not organized for the specific purpose of evading this chapter; or
 - (16) Any other person specified by rule adopted or order issued under this chapter.

"Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

"Insured" means insured as to payment of all principal and all interest.

"International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

"Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial

planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term shall not include:

- (1) An investment adviser representative;
- (2) A lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;
- (3) A broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;
- (4) A publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;
- (5) A federal covered investment adviser;
- (6) A bank or savings institution;
- (7) Any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or
- (8) Any other person excluded by rule adopted or order issued under this chapter.

“Investment adviser representative” means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds oneself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term shall not include an individual who:

- (1) Performs only clerical or ministerial acts;
- (2) Is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;
- (3) Is employed by or associated with a federal covered investment adviser, unless the individual has a “place of business” in this State as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a) and is:
 - (A) An “investment adviser representative” as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3a); or
 - (B) Not a “supervised person” as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(25)); or
- (4) Is excluded by rule adopted or order issued under this chapter.

“Issuer” means a person that issues or proposes to issue a security, subject to the following:

- (1) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of a depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued;
- (2) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or condi-

tionally sold or that is otherwise contractually responsible for assuring payment of the certificate; and

- (3) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

“Nonissuer transaction” or “nonissuer distribution” means a transaction or distribution not directly for the benefit of the issuer.

“Offer to purchase” includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term shall not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78n(d)).

“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.

“Place of business” of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

- (1) An office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or
- (2) Any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

“Predecessor act” means chapter 485, Hawaii Revised Statutes.

“Price amendment” means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

“Principal place of business” of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

“Record” except in the phrases “of record”, “official record”, and “public 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.

“Sale” includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value; and “offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value. Both terms include:

- (1) A security given or delivered with, or as a bonus on account of, a purchase of securities or any other thing constituting part of the subject of the purchase, and having been offered and sold for value;
- (2) A gift of assessable stock involving an offer and sale; and
- (3) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, including an offer of the other security.

“Securities and Exchange Commission” means the United States Securities and Exchange Commission.

“Security” means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; variable annuity contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; in general, an interest or instrument commonly known as a “security”; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

- (1) Includes both a certificated and an uncertificated security;
- (2) Does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed sum of money either in a lump sum or periodically for life or other specified period;
- (3) Does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;
- (4) Includes any contractual or quasi-contractual arrangement pursuant to which:
 - (A) A person furnishes value, other than services, to an offeror;
 - (B) A portion of that value is subjected to the risk of the offeror’s enterprise;
 - (C) The furnishing of that value is induced by the representations of an offeror which gives rise to a reasonable understanding that a valuable benefit will accrue to the offeree as a result of the operation of the enterprise; and
 - (D) The offeree does not intend to be actively involved in the management of the enterprise in a meaningful way; and
- (5) Includes as an “investment contract”, among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement.

“Self-regulatory organization” means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

“Sign” means, with present intent to authenticate or adopt a record:

- (1) To execute or adopt a tangible symbol; or
- (2) To attach or logically associate with the record an electronic symbol, sound, or process.

“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.

§ -103 References to federal statutes. “Securities Act of 1933” (15 U.S.C. 77a et seq.), “Securities Exchange Act of 1934” (15 U.S.C. 78a et seq.), “Public Utility Holding Company Act of 1935” (15 U.S.C. 79 et seq.), “Investment Company Act of 1940” (15 U.S.C. 80a-1 et seq.), “Investment Advisers Act of

1940” (15 U.S.C. 80b-1 et seq.), “Employee Retirement Income Security Act of 1974” (29 U.S.C. 1001 et seq.), “National Housing Act” (12 U.S.C. 1701 et seq.), “Commodity Exchange Act” (7 U.S.C. 1 et seq.), “Internal Revenue Code” (26 U.S.C. 1 et seq.), “Securities Investor Protection Act of 1970” (15 U.S.C. 78aaa et seq.), “Securities Litigation Uniform Standards Act of 1998” (112 Stat. 3227), “Small Business Investment Act of 1958” (15 U.S.C. 661 et seq.), “National Securities Markets Improvement Act of 1996” (Pub. L. No. 104-290, 110 Stat. 3416 (1996)), and “Electronic Signatures in Global and National Commerce Act” (15 U.S.C. 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter, or as later amended.

§ -104 **References to federal agencies.** A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

§ -105 **Electronic records and signatures.** This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. 7003(b)). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with Section 104(a) of that act (15 U.S.C. 7004(a)).

PART II. EXEMPTIONS FROM REGISTRATION OF SECURITIES

§ -201 **Exempt securities.** The following securities are exempt from the requirements of sections -301 to -305 and -504:

- (1) A security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of more than one state; or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by Congress; or a certificate of deposit for any of the foregoing;
- (2) A security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;
- (3) A security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:
 - (A) An international banking institution;
 - (B) A bank organized under the law of the United States, or any bank, savings institution or trust company organized and supervised under the laws of any state or territory or any investment certificate issued by a financial services loan company duly licensed under the financial services loan law of the State; any savings and loan association or any building and loan or similar association organized under the laws of any state or territory and authorized to do business in this State; any banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial

portion of its business consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. 92a); or

- (C) Any other depository institution, unless by rule or order, the commissioner proceeds under section -204;
- (4) A security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this State;
- (5) A security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:
 - (A) Regulated in respect to its rates and charges by the United States or a state;
 - (B) Regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or
 - (C) A public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of a registered holding company within the meaning of that act;
- (6) A federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)) or by rule adopted under that provision, or a security listed or approved for listing on any exchange registered or exempted under the Securities Exchange Act of 1934 or on another securities market specified by rule under this chapter (including any security of the same issuer which is of senior or substantially equal rank, any security called for by subscription rights or warrants so listed or approved, or any warrant or right to purchase or subscribe for any of the foregoing); a put or a call option contract; a warrant; a subscription right on or with respect to such securities; an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b));
- (7) A security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, where no part of the net earnings inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(c)(10)(B)); except that with respect to the offer or sale of a note, bond, debenture, or other evidence of indebtedness issued by such a person, a rule may be adopted under this chapter limiting the

availability of this exemption by classifying securities, persons, and transactions, imposing different requirements for different classes, specifying with respect to subparagraph (B), the scope of the exemption and the grounds for denial or suspension, and requiring an issuer to:

- (A) File a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used and provide that the exemption becomes effective if the commissioner does not disallow the exemption within the period established by the rule;
 - (B) File a request for exemption authorization for which a rule under this chapter may specify the scope of the exemption, the requirement of an offering statement, the filing of sales and advertising literature, the filing of consent to service of process under section -610, and grounds for denial or suspension of the exemption; or
 - (C) Register under section -303;
- (8) A member's or owner's interest in, or a retention certificate or like security given in lieu of a cash patronage dividend issued by, a cooperative organized and operated as a nonprofit membership cooperative under the cooperative laws of a state, but not a member's or owner's interest, retention certificate, or like security sold to persons other than bona fide members of the cooperative; except any cooperative association membership stock, membership certificates or shares, or membership capital, pursuant to section 421C-36 and chapters 421 and 421C; and
 - (9) An equipment trust certificate with respect to equipment leased or conditionally sold to a person, if any security issued by the person would be exempt under this section or would be a federal covered security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)); or
 - (10) Any security for which a registration statement has been filed under the Securities Act of 1933; provided that no sale shall be made until the registration statement has become effective.

§ -202 **Exempt transactions.** (a) The following transactions are exempt from the requirements of sections -301 to -305 and -504:

- (1) An isolated nonissuer transaction, whether or not effected by or through a broker-dealer;
- (2) A nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least ninety days, if, at the date of the transaction:
 - (A) The issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
 - (B) The security is sold at a price reasonably related to its current market price;

- (C) The security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;
- (D) A nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available and contains:
 - (i) A description of the business and operations of the issuer;
 - (ii) The names of the issuer's executive officers and the names of the issuer's directors, if any;
 - (iii) An audited balance sheet of the issuer as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and
 - (iv) An audited income statement for each of the issuer's two immediate previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and
- (E) Any one of the following requirements is met:
 - (i) The issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers' Automated Quotation System;
 - (ii) The issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;
 - (iii) The issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or
 - (iv) The issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within eighteen months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;
- (3) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;
- (4) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d));
- (5) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:

- (A) Is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or
- (B) Has a fixed maturity or a fixed interest or dividend, if:
 - (i) A default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and
 - (ii) The issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous twelve months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;
- (6) A nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;
- (7) A nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;
- (8) A nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000, acting in the exercise of discretionary authority in a signed record for the account of others;
- (9) A transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;
- (10) A transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:
 - (A) The note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;
 - (B) A general solicitation or general advertisement of the transaction is not made; and
 - (C) A commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;
- (11) A transaction by an executor, administrator of an estate, personal representative, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;
- (12) A sale or offer to sell to:
 - (A) An institutional investor;
 - (B) A federal covered investment adviser; or
 - (C) Any other person exempted by rule adopted or order issued under this chapter;
- (13) Any transaction pursuant to a sale or an offer to sell securities of an issuer, if the transaction is part of an issue in which:
 - (A) There are no more than twenty-five purchasers (other than those designated in paragraph (12)), wherever located, during any twelve consecutive months;
 - (B) The issuer reasonably believes that all purchasers (other than those designated in paragraph (12)), wherever located, are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. The

- purchase shall be presumed to be made with a view to distribute and not to invest if any resale of a security sold in reliance on this exemption is within twelve months of sale, except a resale pursuant to a registration statement effective under section -301, or to an accredited investor pursuant to an exemption available under this chapter;
- (C) No commission, discount, or other remuneration is paid or given, directly or indirectly, to a person, other than a broker-dealer or agent registered under this chapter, for soliciting a prospective purchaser in this State; and
 - (D) The securities of the issuer are not offered or sold by general solicitation or any general advertisement or other advertising medium;
- (14) A transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this State;
- (15) (A) A transaction involving the offer or sale of a security by an issuer to an accredited investor that meets the following requirements:
- (i) The issuer reasonably believes that the sale is to persons who are accredited investors;
 - (ii) The issuer is not in the development stage, without specific business plan or purpose;
 - (iii) The issuer has not indicated that the issuer's business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entity or person; and
 - (iv) The issuer reasonably believes that all purchasers are purchasing for investment purposes and not with the view to, or for sales in connection with, a distribution of the security. The purchase shall be presumed to be made with a view to distribute and not to invest if any resale of a security sold in reliance on this exemption is within twelve months of sale, except a resale pursuant to a registration statement effective under section -301, or to an accredited investor pursuant to an exemption available under this chapter;
- (B) The exemption under this paragraph shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:
- (i) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the Securities and Exchange Commission;
 - (ii) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (iii) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or

- (iv) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security;
- (C) Subparagraph (B) shall not apply if:
 - (i) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (ii) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
 - (iii) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph; and
- (D) An issuer claiming the exemption under this paragraph, within fifteen days after the first sale in this State, shall file with the commissioner a notice of transaction, a consent to service of process, a copy of the offering circular or similar document provided to the accredited investor and a \$200 filing fee.
 For the purposes of this paragraph, "accredited investor" shall have the same meaning as provided in Rule 501(a) adopted under the Securities Act of 1933 (17 C.F.R. 230.501(a));
- (16) An offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:
 - (A) A registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and
 - (B) A stop order of which the offeror is aware has not been issued against the offeror by the commissioner or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;
- (17) An offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:
 - (A) A registration statement has been filed under this chapter, but is not effective;
 - (B) A solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the commissioner under this chapter; and
 - (C) A stop order of which the offeror is aware has not been issued by the commissioner under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;
- (18) A transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

- (19) A rescission offer, sale, or purchase under section -510;
- (20) An offer or sale of a security to a person not a resident of this State and not present in this State if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;
- (21) Employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees, including offers or sales of such securities to:
- (A) Directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;
 - (B) Family members who acquire the securities from those persons through gifts or domestic relations orders;
 - (C) Former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and
 - (D) Insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than fifty per cent of their annual income from those organizations;
- (22) A transaction involving:
- (A) A stock dividend or equivalent equity distribution, whether or not the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;
 - (B) An act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or
 - (C) The solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162);
- (23) A nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than one hundred eighty days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and the Toronto Stock Exchange, Inc.,

is a designated securities exchange. After an administrative hearing in accordance with chapter 91, the commissioner, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the commissioner finds that revocation is necessary or appropriate in the public interest and for the protection of investors;

- (24) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of this State, of a security issued on or after July 1, 1961, by a corporation organized under the laws of this State, the holder of which is entitled solely by reason of the holder's ownership thereof, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation; provided that the issuer of the security shall apply for the exemption to the commissioner on such form and containing such information as the commissioner may prescribe. If the commissioner finds that the business applicant's proposed plan and the proposed issuance of securities are fair, just, and equitable, that the applicant intends to transact its business fairly and honestly, and that the securities that the applicant proposes to issue and the method to be used by the applicant in issuing or disposing of the securities will not, in the opinion of the commissioner, work a fraud upon the purchaser thereof, the commissioner shall issue to the applicant a permit authorizing the applicant to issue and dispose of the securities in this State in the manner provided herein and in such amounts and for such consideration as the commissioner may provide in the permit. Otherwise, the commissioner shall deny the application and refuse the permit and notify the applicant of the decision in writing, subject to appeal as provided in section 609. In any permit issued under this paragraph, the commissioner may require the deposit in escrow or impoundment of any or all securities, the proceeds from the sale thereof, approval of advertising material, and any of the conditions as set forth in section 304(f). The commissioner may act as escrow holder for securities required to be deposited in escrow by the commissioner's order or as a necessary signatory on any account in which impounded proceeds from the sale of escrowed securities are deposited;
- (25) Any offer or sale by or through a real estate broker or real estate salesperson licensed under the laws of this State of an apartment in a condominium project, and a rental management contract relating to the apartment, including an interest in a partnership formed for the purpose of managing the rental of apartments if the rental management contract or the interest in the partnership is offered at the same time as the apartment is offered.

For the purposes of this paragraph, the terms "apartment", "condominium", and "project" shall have the meanings prescribed in section 514A-3; and

- (26) Any transaction not involving a public offering within the meaning of Section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d), but not including any transaction specified in the rules and regulations thereunder.
- (b) With respect to the exemption under paragraph (a)(13):
- (1) The exemption shall not apply to an issuer if the issuer; any affiliated issuer; any beneficial owner of ten per cent or more of any class of the issuer's equity securities; any issuer's predecessor, director, officer, general partner, or promoter presently connected in any capacity with

the issuer; and any underwriter or partner, director, or officer of the underwriter of the securities to be offered:

- (A) Within the last five years has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the United States Securities and Exchange Commission;
 - (B) Within the last five years has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;
 - (C) Is currently subject to any state or federal administrative enforcement order or judgment entered within the last five years, finding fraud or deceit in connection with the purchase or sale of any security; or
 - (D) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the last five years, temporarily, preliminarily, or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security; and
- (2) Paragraph (1) shall not apply if:
- (A) The party subject to the disqualification is licensed or registered to conduct securities-related business in the state in which the order, judgment, or decree creating the disqualification was entered against such party;
 - (B) Before the first offer under this exemption, the commissioner, or the court or regulatory authority that entered the order, judgment, or decree waives the disqualifications; or
 - (C) The issuer establishes that the issuer did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under this paragraph.

§ -203 **Additional exemptions and waivers.** A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of sections -301 to -305 and -504; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections -201 and -202.

§ -204 **Denial, suspension, revocation, condition, or limitation of exemptions.** Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under section -201(3)(C), -201(7), -201(8), or -202, or an exemption or waiver created under section -203 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in section -305(d) or -604, and only prospectively.

PART III. REGISTRATION OF SECURITIES AND NOTICE FILING OF FEDERAL COVERED SECURITIES

§ -301 **Securities registration requirement.** It is unlawful for a person to offer or sell a security in this State unless:

- (1) The security is a federal covered security;

- (2) The security, transaction, or offer is exempted from registration under sections -201 to -203; or
- (3) The security is registered under this chapter.

§ -302 **Notice filing.** (a) With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. 77r(b)(2)), that is not otherwise exempt under sections -201 to -203, the following records shall be filed with the commissioner:

- (1) Initial offers.
 - (A) Before the initial offer of a federal covered security in this State, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with section -610 signed by the issuer; or
 - (B) After the initial offer of the federal covered security in this State, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and
- (2) Report. To the extent necessary or appropriate to compute fees, the commissioner may by rule or order require a report of the value of the federal covered securities sold or offered to persons present in this State, if the sales data are not included in records filed with the Securities and Exchange Commission, and payment of a fee of \$50.

(b) The fee for an initial notice filing for investment company securities shall be \$200 per portfolio or series.

(c) A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this chapter to be filed and by paying a renewal fee of \$50. A previously filed consent to service of process complying with section -610 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(d) With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)), a rule adopted under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with section -610 signed by the issuer not later than fifteen days after the first sale of the federal covered security in this State, and the payment of a fee of \$200.

(e) Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. 77r(b)(1)), if the commissioner finds that there is a failure to comply with a notice or fee requirement of this section, the commissioner may issue a stop order suspending the offer and sale of a federal covered security in this State. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the commissioner.

§ -303 **Securities registration by qualification.** (a) A security may be registered by qualification under this section.

(b) A registration statement under this section shall contain the information or records specified in section -304, a consent to service of process complying with section -610, and, if required by rule adopted or order issued under this chapter, the following information or records:

- (1) With respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;
- (2) With respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the thirtieth day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;
- (3) With respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous twelve months and estimated to be paid during the next twelve months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;
- (4) With respect to a person owning of record or owning beneficially, if known, ten per cent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) other than the person's occupation;
- (5) With respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;
- (6) With respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected; and a statement of the reasons for making the offering;
- (7) The capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;
- (8) The kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finder's fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their

- maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;
- (9) The estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;
 - (10) A description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold ten per cent or more in the aggregate of those options;
 - (11) The dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;
 - (12) A description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;
 - (13) A copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section -202(17)(B); provided that the prospectus required for registration by qualification under paragraph (13) may be satisfied by the Small Corporate Offerings Registration Form (Form U-7) adopted by the North American Securities Administrators Association; provided further that all of the qualifications in the instructions for use of the form are fulfilled;
 - (14) A specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;
 - (15) A signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;
 - (16) A signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a state-

ment made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

- (17) A balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and
- (18) Any additional information or records required by rule adopted or order issued under this chapter.

(c) A registration statement under this section becomes effective forty-five days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if:

- (1) A stop order is not in effect and a proceeding is not pending under section -305;
- (2) The commissioner has not issued an order under section -305 delaying effectiveness; or
- (3) The applicant or registrant has not requested that effectiveness be delayed.

(d) The commissioner may delay effectiveness once for not more than ninety days if the commissioner determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The commissioner may also delay effectiveness for a further period of not more than thirty days if the commissioner determines that the delay is necessary or appropriate.

(e) A rule adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

- (1) The first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;
- (2) The confirmation of a sale made by or for the account of the person;
- (3) Payment pursuant to a sale under paragraph (2); or
- (4) Delivery of the security pursuant to a sale under paragraph (2).

§ -304 Securities registration filings. (a) A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) A person filing a registration statement shall pay a filing fee of one-tenth of one per cent of the aggregate offering price of the securities to be offered in the State with a minimum fee of \$250 and a maximum fee of \$2,500.

(c) A registration statement filed under section -303 shall specify:

- (1) The amount of securities to be offered in this State;
- (2) The states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) Any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or any court.

(d) A record filed under this chapter or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(e) In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or section -303, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(f) A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and that the proceeds from the sale of the registered security in this State be impounded until the issuer receives a specified amount from the sale of the security either in this State or elsewhere. The conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the commissioner may not reject a depository institution solely because of its location in another state.

(g) A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than five years.

(h) Except while a stop order is in effect under section -305, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the commissioner.

(i) While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(j) A registration statement shall be amended after its effective date if there are material changes in information or documents in the registration statement, or if there is an increase in the aggregate amount of securities offered or sold in this State. The posteffective amendment becomes effective when the commissioner provides written notice that the amendment has been accepted. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee based upon the increase in such price calculated in accordance with the rate and fee specified in subsection (b). If a posteffective amendment for registration of additional securities and payment of additional fees is not filed in a timely manner, there shall be no penalty assessed if

the amendment is filed and the additional registration fee is paid within one year after the date the additional securities are sold in this State.

§ -305 Denial, suspension, and revocation of securities registration.

(a) The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the commissioner finds that the order is in the public interest and that:

- (1) The registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section -304(j) as of its effective date, or a report under section -304(i), is incomplete in a material respect or contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;
- (2) This chapter, or a rule adopted or order issued under this chapter, or a condition imposed under this chapter has been wilfully violated in connection with the offering by the person filing the registration statement; by the issuer, a partner, officer, or director of the issuer or a person having a similar status or performing a similar function; by a promoter of the issuer; or by a person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, by an underwriter;
- (3) The security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering; provided that the commissioner may not institute a proceeding against an effective registration statement under this paragraph:
 - (A) More than one year after the date of the order or injunction on which it is based; or
 - (B) On the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;
- (4) The issuer's enterprise or method of business includes or would include activities that are unlawful where performed;
- (5) The applicant or registrant has not paid the filing fee; provided that the commissioner shall void the order if the deficiency is corrected; or
- (6) The offering:
 - (A) Will work or tend to work a fraud upon purchasers;
 - (B) Has been or would be made with unreasonable amounts of underwriters' and sellers' discounts, commissions, or other compensation, or promoters' profits or participations, or unreasonable amounts or kinds of options; or
 - (C) Is being made on terms that are unfair, unjust, or inequitable.

(b) The commissioner may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the commissioner when the registration statement became effective unless the proceeding is instituted within thirty days after the registration statement became effective.

(c) The commissioner may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the commissioner shall promptly notify each person specified in subsection (d) that the order has been issued, the reasons for the revocation, denial, postponement, or suspension, and that

within fifteen days after the receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination. During the pendency of any hearing requested under this subsection, the order shall remain in effect unless vacated or modified by the commissioner; provided that any penalty shall not take effect until the final order is issued.

(d) A stop order shall not be issued under this section without:

- (1) Appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;
- (2) An opportunity for hearing; and
- (3) Findings of fact and conclusions of law in a record in accordance with chapter 91.

(e) The commissioner may modify or vacate a stop order issued under this section if the commissioner finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors. The modification or vacation shall not be subject to a hearing or chapter 91.

§ -306 **Waiver and modification.** The commissioner, in the commissioner's sole discretion, may waive or modify, in whole or in part, any or all of the requirements of sections -302 and -303(b) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section -304(i).

PART IV. BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS

§ -401 **Broker-dealer registration requirement and exemptions.** (a) It is unlawful for a person to transact business in this State as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) The following persons are exempt from the registration requirement of subsection (a):

- (1) A broker-dealer without a place of business in this State if its only transactions effected in this State are with:
 - (A) The issuer of the securities involved in the transactions;
 - (B) A broker-dealer registered as a broker-dealer under this chapter or not required to be registered as a broker-dealer under this chapter;
 - (C) An institutional investor;
 - (D) A nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;
 - (E) A bona fide preexisting customer whose principal place of residence is not in this State and the person is registered as a broker-dealer under the Securities Exchange Act of 1934, or not required to be registered under the Securities Exchange Act of 1934, and is registered under the securities act of the state in which the customer maintains a principal place of residence;

- (F) A bona fide preexisting customer whose principal place of residence is in this State but was not present in this State when the customer relationship was established, if:
- (i) The broker-dealer is registered under the Securities Exchange Act of 1934, or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and
 - (ii) Within forty-five days after the customer's first transaction in this State, the person files an application for registration as a broker-dealer in this State and a further transaction is not effected more than the earlier of seventy-five days after the date on which the application is filed, or the date on which the commissioner notifies the person that the commissioner has denied the application for registration or has stayed the pendency of the application for good cause;
- (G) Not more than three customers in this State during the previous twelve months, in addition to those customers specified in subparagraphs (A) to (F) and (H), if the broker-dealer is registered under the Securities Exchange Act of 1934, or not required to be registered under the Securities Exchange Act of 1934, and is registered under the securities act of the state in which the broker-dealer has its principal place of business; or
- (H) Any other person exempted by rule adopted or order issued under this chapter; and
- (2) A person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision.
- (c) It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this State, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the commissioner under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.
- (d) A broker-dealer that is registered in Canada and has no office or other physical presence in this State may effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by an individual who is a resident of Canada, and:
- (1) 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;

- (2) Is a member of a duly authorized self-regulatory organization or stock exchange in Canada;
- (3) Maintains the provincial or territorial registration and membership in a self-regulatory organization or stock exchange of the person in good standing; and
- (4) Discloses to the person's clients in this State that the person is not subject to the full regulatory requirements of this chapter; provided that a notice is filed with the commissioner in the form of the individual's current securities registration together with a consent to service of process.

(e) A rule adopted or order issued under this chapter may permit:

- (1) A broker-dealer that is registered in any other foreign jurisdiction and that has no office or other physical presence in this State to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:
 - (A) An individual from any other foreign jurisdiction who is temporarily present in this State and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;
 - (B) An individual from any other foreign jurisdiction who is present in this State and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or
 - (C) An individual who is present in this State, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in the other foreign jurisdiction.

An agent who represents a broker-dealer that is exempt under this subsection may effect transactions in securities or attempt to effect the purchase or sale of securities in this State as permitted for a broker-dealer described in this subsection.

§ -402 Agent registration requirement and exemptions. (a) It is unlawful for an individual to transact business in this State as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

- (1) An individual who represents a broker-dealer in effecting transactions in this State limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. 78(o)(2));
- (2) An individual who represents a broker-dealer that is exempt under section -401(b) or -401(d);
- (3) An individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent company or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

- (4) An individual who represents an issuer and who effects transactions in the issuer's securities exempted by section -202, other than section -202(11) and (14);
- (5) An individual who represents an issuer that effects transactions solely in federal covered securities of the issuer; provided that an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;
- (6) An individual who represents a broker-dealer registered in this State under section -401(a) or exempt from registration under section -401(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;
- (7) An individual who represents an issuer in connection with the purchase of the issuer's own securities;
- (8) An individual who represents an issuer and who restricts participation to performing clerical or ministerial acts; or
- (9) Any other individual exempted by rule adopted or order issued under this chapter.

(c) The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this State.

(d) It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this State, to employ or associate with an agent who transacts business in this State on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) If an individual acts as an agent for more than one broker-dealer or one issuer at a time, the broker-dealers and issuers for which the agent acts shall be jointly and severally liable for the acts of the agent unless otherwise agreed to between the agent, broker-dealers, and issuers.

§ -403 Investment adviser registration requirement and exemptions.

(a) It is unlawful for a person to transact business in this State as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) The following persons are exempt from the registration requirement of subsection (a):

- (1) A person without a place of business in this State that is registered under the securities act of the state in which the person has its principal place of business if its only clients in this State are:
 - (A) Federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;
 - (B) Institutional investors;
 - (C) Bona fide preexisting clients whose principal places of residence are not in this State if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or
 - (D) Any other client exempted by rule adopted or order issued under this chapter;

- (2) A person without a place of business in this State if the person has had, during the preceding twelve months, not more than five clients that are residents of this State in addition to those specified under paragraph (1); or
- (3) Any other person exempted by rule adopted or order issued under this chapter.

(c) It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this State if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the commissioner, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

(d) It is unlawful for an investment adviser to employ or associate with an individual required to be registered under this chapter as an investment adviser representative who transacts business in this State on behalf of the investment adviser unless the individual is registered under section -404(a) or is exempt from registration under section -404(b).

§ -404 Investment adviser representative registration requirement and exemptions. (a) It is unlawful for an individual to transact business in this State as an investment adviser representative unless the individual is registered under this chapter as an investment adviser representative or is exempt from registration as an investment adviser representative under subsection (b).

(b) The following individuals are exempt from the registration requirement of subsection (a):

- (1) An individual who is employed by or associated with an investment adviser that is exempt from registration under section -403(b) or a federal covered investment adviser that is excluded from the notice filing requirements of section -405; or
- (2) Any other individual exempted by rule adopted or order issued under this chapter.

(c) The registration of an investment adviser representative is effective only while the investment adviser representative is employed by or associated with an investment adviser registered under this chapter or a federal covered investment adviser that has made or is required to make a notice filing under section -405.

(d) If an individual transacts business as an investment adviser representative for more than one investment adviser or federal covered investment adviser, the investment advisers and federal covered investment advisers shall be jointly and severally liable for the business transactions of the investor adviser representative unless otherwise agreed to between the investment adviser representative, investment-advisers, and federal covered investment adviser.

(e) It is unlawful for an individual acting as an investment adviser representative, directly or indirectly, to conduct business in this State on behalf of an investment adviser or a federal covered investment adviser if the registration of the individual as an investment adviser representative is suspended or revoked or the individual is barred from employment or association with an investment adviser or a federal covered investment adviser by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. Upon request from a federal covered investment adviser and for good cause, the commissioner, by order

issued, may waive, in whole or in part, the application of the requirements of this subsection to the federal covered investment adviser.

§ -405 Federal covered investment adviser notice filing requirement.

(a) Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this State as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) The following federal covered investment advisers are not required to comply with subsection (c):

- (1) A federal covered investment adviser without a place of business in this State if its only clients in this State are:
 - (A) Federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;
 - (B) Institutional investors;
 - (C) Bona fide preexisting clients whose principal places of residence are not in this State; or
 - (D) Other clients specified by rule adopted or order issued under this chapter;
- (2) A federal covered investment adviser without a place of business in this State if the person has had, during the preceding twelve months, not more than five clients that are residents of this State in addition to those specified under paragraph (1); or
- (3) Any other person excluded by rule adopted or order issued under this chapter.

(c) A person acting as a federal covered investment adviser not excluded under subsection (b) shall file a notice on a form designated by the commissioner, a consent to service of process complying with section -610, and records that have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940, as required by rule adopted or order issued under this chapter, and pay the fees specified in section -410(e).

(d) The notice under subsection (c) becomes effective upon its filing.

§ -406 Registration by broker-dealer, agent, investment adviser, and investment adviser representative. (a) A person shall register as a broker-dealer, agent, investment adviser, or investment adviser representative by filing an application and a consent to service of process complying with section -610, and paying the fee specified in section -410 and any reasonable fees charged by the commissioner for processing the filing. The application shall contain:

- (1) The information required for the filing of a uniform application; and
- (2) Upon request by the commissioner, any other financial or other information that the commissioner determines is appropriate.

(b) If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) If an order is not in effect and a proceeding is not pending under section -412, registration becomes effective at noon on the forty-fifth day after a completed application is filed, unless the registration is denied or the commissioner has given written notice of deficiencies that are unresolved. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the forty-fifth day after the filing of any amendment completing the application.

(d) A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section -412, a registration may be automatically renewed each year by filing records that are required by rule adopted or order issued under this chapter to be filed, by paying the fee specified in section -410, and by paying costs charged by the commissioner for processing the filings.

(e) A rule adopted or order issued under this chapter may impose other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

§ -407 Succession and change in registration of broker-dealer or investment adviser. (a) A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to section -401 or -403 or a notice pursuant to section -405 for the unexpired portion of the current registration or notice filing.

(b) A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization shall be a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within forty-five days after filing its amendment to effect succession.

(c) A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration statement and providing any other information that the commissioner determines is appropriate by rule adopted or order issued under this chapter. The amendment becomes effective when filed or on a date designated by the registrant.

(d) A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

§ -408 Termination of employment or association of agent and investment adviser representative; transfer of employment or association. (a) If an agent registered under this chapter terminates employment or association with a broker-dealer or issuer; or if an investment adviser representative registered under this chapter terminates employment or association with an investment adviser or federal covered investment adviser; or if either registrant terminates activities that require registration as an agent or investment adviser representative, the broker-dealer, issuer, investment adviser, or federal covered investment adviser shall promptly file a notice of termination with the commissioner. If the registrant learns that the broker-dealer, issuer, investment adviser, or federal covered investment adviser has not filed the notice, the registrant shall promptly notify the broker-dealer, issuer, investment adviser or federal covered investment adviser, to do so.

(b) If an agent registered under this chapter terminates employment or association with a broker-dealer registered under this chapter and begins employ-

ment or association with another broker-dealer registered under this chapter; or if an investment adviser representative registered under this chapter terminates employment or association with an investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section -405 and begins employment by or association with another investment adviser registered under this chapter or a federal covered investment adviser that has filed a notice under section -405; then upon the filing by or on behalf of the registrant, within thirty days after the termination, of an application for registration that complies with the requirement of section -406(a) and payment of the filing fee required under section -410, the registration of the agent or investment adviser representative shall be:

- (1) Immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record does not contain any new or amended disciplinary actions or proceedings within the previous twelve months; or
- (2) Temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record or the investment adviser representative's Investment Adviser Registration Depository record or successor record contains any new or amended disciplinary actions or proceedings within the preceding twelve months.

(c) The commissioner may withdraw a temporary registration if there are or were grounds for discipline as specified in section -412 and the commissioner does so within thirty days after the filing of the application. If the commissioner does not withdraw the temporary registration within the thirty day period, registration becomes automatically effective on the thirty-first day after filing.

(d) The commissioner may prevent the effectiveness of a transfer of an agent or investment adviser representative under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) If the commissioner determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, investment adviser, or investment adviser representative, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The commissioner may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

§ -409 Withdrawal of registration of broker-dealer, agent, investment adviser, and investment adviser representative. The withdrawal of registration by a broker-dealer, agent, investment adviser, or investment adviser representative becomes effective sixty days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a revocation or suspension proceeding is pending, withdrawal becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The commissioner may institute a revocation or suspension proceeding under section -412 within one year after the withdrawal became effective and issue a revocation or suspension order as of the last date on which registration was effective.

§ -410 Filing fees. (a) A person shall pay a fee of \$200 when initially filing an application for registration as a broker-dealer and a fee of \$200 when filing a renewal of registration as a broker-dealer.

(b) The fee for an individual is \$50 when filing an application for registration as an agent, a fee of \$50 when filing a renewal of registration as an agent, and a fee of \$50 when filing for a transfer of registration as an agent.

(c) A person shall pay a fee of \$100 when filing an application for registration as an investment adviser and a fee of \$100 when filing a renewal of registration as an investment adviser.

(d) The fee for an individual is \$50 when filing an application for registration as an investment adviser representative, a fee of \$50 when filing a renewal of registration as an investment adviser representative, and a fee of \$50 when filing for a transfer of registration as an investment adviser representative.

(e) A federal covered investment adviser required to file a notice under section -405 shall pay an annual fee of \$100.

(f) A person required to pay a fee under this section may transmit the fee through or to a designee of the commissioner as provided in a rule adopted or order issued under this chapter.

(g) The fee for copies of documents filed in the office of the commissioner shall be 25 cents per page.

§ -411 Postregistration requirements. (a) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-22), a rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

(b) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-22), a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-22):

- (1) A broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain for a period of three years after the close of the calendar or fiscal year to which they pertain, the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter;
- (2) Broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)) if they are readily accessible to the commissioner; and
- (3) Investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

(d) The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other

audits or inspections by a representative of the commissioner, within or without this State, as the commissioner considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The commissioner may copy, and remove for audit or inspection copies of, all records the commissioner reasonably considers necessary or appropriate to conduct the audit or inspection. The commissioner may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-22), a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security. The commissioner may determine the requirements of the insurance, bond, or other satisfactory form of security. The insurance, bond, or other satisfactory form of security shall permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in section -509(j)(2).

(f) Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer, and on an investment adviser regarding custody of securities or funds of a client.

(g) Except as otherwise provided in this subsection, the commissioner may by rule adopted or order issued under this chapter require a minimum capital requirement for registered broker-dealers, which shall not be less than \$5,000 in the case of broker-dealers, and prescribe a ratio between net capital and aggregate indebtedness; provided that this subsection shall not apply to any broker-dealer that is registered under the Securities Exchange Act of 1934. The commissioner may by rule adopted or order issued under this chapter require a net worth requirement which shall not be less than \$5,000 for investment advisers; provided that this subsection shall not apply to any investment adviser that maintains its principal place of business in a state other than this State, and the investment adviser is registered in the state where it maintains its principal place of business and is in compliance with that state's net worth or net capital requirements, if any.

(h) With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or records be furnished or disseminated to clients or prospective clients in this State as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(i) A rule adopted or order issued under this chapter may require an individual registered under sections -402 or -404 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under section -404.

§ -412 Denial, revocation, suspension, withdrawal, restriction, condition, or limitation of registration. (a) If the commissioner finds that it is in the public interest and subsection (d) authorizes the action, the commissioner, under this chapter may deny an application, or may condition or limit the registration of an

applicant to be a broker-dealer, agent, investment adviser, or investment adviser representative, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(b) If the commissioner finds that it is in the public interest and subsection (d) authorizes the action, the commissioner, under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser; provided that the commissioner shall not:

- (1) Institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the commissioner or a designee of the commissioner more than one year after the date of the order on which it is based; or
- (2) Under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this State.

(c) If the commissioner finds that it is in the public interest and subsection (d)(1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (12), (13), (14), or (15), authorizes the action, the commissioner, under this chapter may censure, impose a bar, or impose a civil penalty in an amount not to exceed a maximum of \$50,000 for each violation on a registrant, and, if the registrant is a broker-dealer or investment adviser, on a partner, officer, director, or person having a similar status or performing similar functions, or on a person directly or indirectly in control, of the broker-dealer or investment adviser.

(d) A person may be disciplined under subsections (a) to (c) if the person:

- (1) Has filed an application for registration in this State under this chapter or the predecessor act within the previous ten years which as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;
- (2) Wilfully violated or wilfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten years;
- (3) Has been convicted of any felony, or within the previous ten years has been convicted of a misdemeanor, involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;
- (4) Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the commissioner under this chapter or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;
- (5) Is the subject of an order, issued after notice and opportunity for hearing by:
 - (A) The securities or other financial services regulator of a state or the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-

- dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;
- (B) The securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;
 - (C) The Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;
 - (D) A court adjudicating a United States Postal Service fraud order;
 - (E) The insurance regulator of a state denying, suspending, or revoking registration as an insurance agent; or
 - (F) A depository institution or financial services regulator suspending or barring the person from the depository institution or other financial services business;
- (6) Is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person wilfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;
 - (7) Is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature; provided that the commissioner may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;
 - (8) Refuses to allow or otherwise impedes the commissioner from conducting an audit or inspection under section 411(d) or refuses access to a registrant's office to conduct an audit or inspection under section 411(d);
 - (9) Has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten years of the violation;
 - (10) Has not paid the proper filing fee within thirty days after having been notified by the commissioner of a deficiency; provided that the commissioner shall vacate an order under this paragraph when the deficiency is corrected;
 - (11) After notice and opportunity for a hearing, has been found within the previous ten years:
 - (A) By a court of competent jurisdiction to have wilfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;
 - (B) To have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent,

investment adviser, investment adviser representative, or other similar person; or

- (C) To have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;
- (12) Is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;
- (13) Has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years;
- (14) Has demonstrated unworthiness to transact the business of broker-dealer, investment adviser, agent, or investment adviser representative;
- (15) Has not complied with an order of child support or has failed to comply with a subpoena or warrant relating to a paternity or child support order pursuant to chapter 576D; or
- (16) Is not qualified on the basis of factors such as training, experience, and knowledge of the securities business; provided that in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e). The commissioner may require an applicant for registration under section 402 or 404 who has not been registered in a state within the two years preceding the filing of an application in this State to successfully complete an examination.

(e) A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals to be registered under this chapter. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the commissioner determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) The commissioner may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the commissioner shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within fifteen days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the commissioner within thirty days after the date of service of the order, the order shall become final by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until a final determination is made. During the pendency of any hearing requested under this subsection, the order shall remain in effect unless vacated or modified by the commissioner; provided that any penalty shall not take effect until the final order is issued.

(g) An order issued under this section, except under subsection (f), shall include:

- (1) Appropriate notice to the applicant or registrant;
- (2) Opportunity for hearing; and
- (3) Findings of fact and conclusions of law in accordance with chapter 91.

(h) A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the commissioner under subsections (a) to (c) to the same extent as the noncomplying person, unless the controlling person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct that is a ground for discipline under this section.

(i) The commissioner may not institute a proceeding under subsection -412(a), -(b), or -(c) based solely on material facts actually known by the commissioner unless an investigation or the proceeding is instituted within one year after the commissioner actually acquires knowledge of the material facts.

PART V. FRAUD AND LIABILITIES

§ -501 **General fraud.** (a) It shall be unlawful for a person, in connection with the offer, sale, or purchase of a security, directly or indirectly:

- (1) To employ a device, scheme, or artifice to defraud;
- (2) To make an untrue statement of a material fact or to fail to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading;
- (3) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person;
- (4) To issue, circulate, or publish any prospectus, circular, advertisement, printed matter, document, pamphlet, leaflet, or other literature (in this chapter collectively referred to as "advertising matter"), which contains an untrue statement or a material fact or fails to state a material fact necessary to make the statements therein made, in light of the circumstances under which they are made, not misleading;
- (5) To issue, circulate, or publish any advertising matter or make any written representation, unless the name of the person issuing, circulating, publishing, or making the same and the fact that the person is issuing, circulating, or making the same shall be clearly indicated thereon;
- (6) To make any statement or representation or issue, circulate, or publish any advertising matter containing any statement, to the effect that the security has been in any way approved or endorsed by the commissioner; or
- (7) To issue, circulate, or publish any advertising matter unless a copy thereof has been previously filed with the office of the commissioner, or unless the commissioner has by rule adopted or order issued under this chapter exempted the filing of any advertising material.

(b) Subsections (a)(5) and (7) shall not apply to any advertising matter that is covered by Section 18(a) of the Securities Act of 1933 (15 U.S.C. 77), and that relates to or is used in connection with the offer or sale of a federal covered security.

§ -502 **Prohibited conduct in providing investment advice.** (a) It shall be unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities, or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

- (1) To employ a device, scheme, or artifice to defraud another person;
- (2) To engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) It shall be unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract, if the contract, in writing:

- (1) Provides for compensation to the investment adviser on the basis of a share of capital gains upon or capital appreciation of the funds or any portion of the funds of the client;
 - (2) Fails to provide that no assignment, as defined in Section 202(a)(1) of the Investment Advisers Act of 1940, of the contract shall be made by the investment adviser without the consent of the other party to the contract; or
 - (3) Fails to provide that the investment adviser, if a partnership, will notify the other party to the contract of any change in the membership of the partnership within a reasonable time after the change.
- (c) Notwithstanding subsection (b)(1), an investment adviser may enter into, extend, or renew an investment advisory contract that:
- (1) Provides for compensation based upon the total value of a fund averaged over a definite period, or as of definite dates, or taken as of a definite date; or
 - (2) Provides for compensation to the investment adviser on the basis of a share of capital gains or capital appreciation of the funds of the client; provided that the conditions and requirements as defined and set forth in Rule 205-3 under the Investment Company Act of 1940 (17 C.F.R. 275.205-3) shall be met; and provided further that before entering into the advisory contract, and in addition to the requirements of Form ADV, the investment adviser shall disclose in writing to the client or the client's independent agent all material information concerning the proposed advisory arrangement, including the following:
 - (A) That the fee arrangement may create an incentive for the investment adviser to make investments that are riskier or more speculative than would be the case in the absence of a performance-based fee;
 - (B) Where relevant, that the investment adviser may receive increased compensation with regard to unrealized appreciation as well as realized gains in the client's account;
 - (C) The periods that will be used to measure investment performance throughout the contract and their significance in the computation of the fee;
 - (D) The nature of any index that will be used as a comparative measure of investment performance, the significance of the index, and the reason the investment adviser believes that the index is appropriate; and
 - (E) Where the investment adviser's compensation is based in part on the unrealized appreciation of securities for which market quotations are not readily available within the meaning of Rule 2a-4(a)(1) under the Investment Company Act of 1940 (17 C.F.R. 270.2a-4(a)(1)), how the securities will be valued and the extent to which the valuation will be independently determined.
- (d) It shall be unlawful for any investment adviser or investment adviser representative to:
- (1) Fail to disclose to the client in a separate disclosure statement the capacity in which the investment adviser and investment adviser representative are acting and the compensation to be received in situations in which:
 - (A) The investment adviser is acting as principal for the investment adviser's own account and knowingly sells any security to or purchases any security from a client for whom the investment adviser is acting as investment adviser; or

(B) The investment adviser is acting as a broker-dealer for a person other than the client and knowingly effects any sale or purchase of securities, real estate, insurance contracts, annuities contracts, or any types of real or personal property for the account of the client; and

(2) Fail to provide the disclosure statement described in paragraph (1) and obtain the written consent of the client to the transactions described in the disclosure statement prior to the closing of the transactions.

(e) A rule adopted or order issued under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business that are fraudulent, deceptive, or manipulative.

(f) A rule adopted or order issued under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

(g) It shall be unlawful for any investment adviser to use any scheme, device, or artifice to circumvent or attempt to circumvent the prohibitions or limitations in subsection (b).

(h) Nothing in this section shall be deemed to relieve any person of any fiduciary or other obligation to which such person may be subject under any law.

§ -503 Evidentiary burden. (a) In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion shall have the burden to prove the applicability of the claim.

(b) In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion shall have the burden of going forward with evidence of the claim.

§ -504 Filing of sales and advertising literature. (a) Except as otherwise provided in subsection (b) and section -501(7), a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular, form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) This section shall not apply to sales and advertising literature specified in subsection (a) that relate to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by section -201, -202, or -203, except as required pursuant to section -201(7).

§ -505 Misleading filings. It shall be unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter, a statement that, at the time and in light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to fail to state a material fact necessary to make the statement made, in light of the circumstances under which it was made, not false or misleading.

§ -506 Misrepresentations concerning registration or exemption. (a) The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the

registration of a security under this chapter shall not constitute a finding by the commissioner that the record filed under this chapter is true, complete, and not misleading.

(b) The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the commissioner has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction.

(c) It shall be unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client, a representation that is inconsistent with this section.

§ -507 Qualified immunity. A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative shall not be liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by or filed with the commissioner or a designee of the commissioner, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

§ -508 Criminal penalties. (a) Whoever violates this chapter shall be punished as follows:

- (1) An offense in which the total value of all money and anything else of value paid by or lost by the victims pursuant to the same scheme, plan, or representations, or to the same entity, amounts to under \$5,000 shall be a class C felony;
- (2) An offense in which the total value of all money and anything else of value paid by or lost by the victims pursuant to the same scheme, plan, or representations, or to the same entity, amounts to \$5,000 but less than \$100,000 shall be a class B felony; and
- (3) An offense in which the total value of all money and anything else of value paid or lost by the victims pursuant to the same scheme, plan, or representations, or to the same entity, amounts to \$100,000 or more shall be a class A felony.

In addition to the above, whoever violates this chapter shall forfeit to the State any interest or property the person has acquired or maintained in violation of this chapter and any interest in, security of, claim against, or property or contractual right of any kind affording a source of influence over any enterprise which the person has established, operated, controlled, conducted, or participated in the conduct of, in violation of this chapter.

(b) The value of all money and anything else of value paid or lost by various victims pursuant to the same scheme, plan, or representations or to the same entity may be aggregated in determining the class or grade of the offense.

(c) Upon conviction of a person under this chapter, the circuit court shall authorize the county attorney or prosecutor, or the attorney general, to seize all property or other interest declared forfeited under this chapter upon such terms and conditions as the court shall deem proper. The State shall dispose of all property or other interest seized under this chapter as soon as feasible making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the State, it shall not revert to the convicted person and the commissioner shall dispose of the property as deemed proper by the commissioner.

(d) Notwithstanding any other law to the contrary, a person convicted of a felony under this chapter who has a prior conviction for a felony under this chapter or a prior conviction for a crime which would constitute a felony under this chapter shall be sentenced to a mandatory minimum period of imprisonment of one year without possibility of parole. Nothing in this subsection shall be construed to in any way limit the maximum term of imprisonment imposed pursuant to chapter 706.

(e) Notwithstanding any other law to the contrary, the following period of limitations shall apply to prosecutions for felony violations of this chapter:

- (1) Prosecution for a felony under this chapter shall be commenced within five years after the offense is committed; and
- (2) If the period prescribed in paragraph (1) has expired, prosecution for a felony under this chapter may be commenced within two years after the discovery of the offense by an aggrieved party who is not a party to the offense, but in no event more than seven years after the offense is committed.

(f) The attorney general or the proper county attorney or prosecutor, may institute criminal proceedings with or without a referral from the commissioner under this chapter.

(g) This chapter shall not limit the power of the State to punish a person for conduct that constitutes a crime under other laws of the State.

§ -509 **Civil liability.** (a) Enforcement of civil liability under this section shall be subject to the Securities Litigation Uniform Standards Act of 1998.

(b) A person is liable to the purchaser if the person sells a security in violation of section -301 or, by means of an untrue statement of a material fact or an omission of a material fact necessary to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection shall be governed by the following:

- (1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest at the legal rate of interest, from the date of the purchase, costs, and reasonable attorney's fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3);
- (2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3); and
- (3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest, from the date of the purchase, costs, and reasonable attorney's fees determined by the court.

(c) A person shall be liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission of a material fact necessary to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection shall be governed by the following:

- (1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorney's fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3);
- (2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3); and
- (3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest at the legal rate of interest, from the date of the sale of the security, costs, and reasonable attorney's fees determined by the court.

(d) A person acting as a broker-dealer or agent that sells or buys a security in violation of section -401(a), -402(a), or -506 shall be liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsection (b), or, if a seller, for a remedy as specified in subsection (c).

(e) A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section -403(a), -404(a), or -506 shall be liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest at the legal rate of interest, from the date of payment, costs, and reasonable attorney's fees determined by the court.

(f) A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, shall be liable to the other person. An action under this subsection shall be governed by the following:

- (1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest at the legal rate of interest from the date of the fraudulent conduct, costs, and reasonable attorney's fees determined by the court, less the amount of any income received as a result of the fraudulent conduct; and
 - (2) This subsection shall not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.
- (g) The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) to (f):
- (1) A person that directly or indirectly controls a person liable under subsections (b) to (f), unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;
 - (2) An individual who is a managing partner, executive officer, or director of a person liable under subsections (b) to (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know

and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

- (3) An individual who is an employee of or associated with a person liable under subsections (b) to (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and
 - (4) A person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) to (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.
- (h) Person liable under this section has a right of contribution as in cases of contract against any other person liable under this section for the same conduct.
- (i) A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.
- (j) A person may not obtain relief:
- (1) Under subsection (b) for violation of section -301, or under subsection (d) or (e), unless the action is instituted within one year after the violation occurred; or
 - (2) Under subsection (b), other than for violation of section -301, or under subsection (c) or (f), unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.
- (k) A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.
- (l) A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.
- (m) The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist.

§ -510 Rescission offers. A purchaser, seller, or recipient of investment advice may not maintain an action under section -509 if:

- (1) The purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:
 - (A) An offer stating the respect in which liability under section -509 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of the purchase, sale, or investment advice;
 - (B) If the basis for relief under this section may have been a violation of section -509(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest at the legal rate of interest, from the date of the purchase, less the amount of any income received on the

- security; or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest at the legal rate of interest, from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection;
- (C) If the basis for relief under this section may have been a violation of section -509(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest at the legal rate of interest, from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest at the legal rate of interest, from the date of the sale;
 - (D) If the basis for relief under this section may have been a violation of section -509(d); and if the customer is a purchaser, an offer to pay as specified in subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C);
 - (E) If the basis for relief under this section may have been a violation of section -509(e), an offer to reimburse in cash the consideration paid for the advice and interest at the legal rate of interest, from the date of payment; or
 - (F) If the basis for relief under this section may have been a violation of section -509(f), an offer to reimburse in cash the consideration paid for the advice, the amount of any actual damages that may have been caused by the conduct, and interest at the legal rate of interest, from the date of the violation causing the loss;
- (2) The offer under paragraph (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within thirty days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the commissioner, by order, specifies;
 - (3) The offeror has the present ability to pay the amount offered or to tender the security under paragraph (1);
 - (4) The offer under paragraph (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and
 - (5) The purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) in a record within the period specified under paragraph (2) is paid in accordance with the terms of the offer.

PART VI. ADMINISTRATION AND JUDICIAL REVIEW

§ -601 **Commissioner of securities.** (a) The administration of this chapter shall be vested in the commissioner. The director, with the approval of the governor, shall appoint the commissioner who shall not be subject to chapter 76. The commissioner shall hold the commissioner's office at the pleasure of the director and shall be responsible for the performance of the duties imposed under this chapter.

(b) The commissioner shall employ from time to time such other officers, deputies, attorneys, clerks, and employees, as are necessary for the administration of this chapter. They shall perform such duties as the commissioner assigns to them, and their compensation, and the compensation of the deputies herein provided for, shall be fixed by the commissioner with the approval of the governor, subject to chapter 76. The commissioner, deputies, or any person appointed or employed by the commissioner under this subsection shall be paid, in addition to their salary or compensation when required to travel on official duties, the transportation cost, board, lodging, and other traveling expenses necessary and actually incurred by each of them in the performance of the duties required by this chapter or performed by the direction of the commissioner.

(c) Notwithstanding any other law to the contrary, the commissioner, by contract, may retain the services of attorneys for the enforcement of this chapter. The attorneys shall serve at the pleasure of the commissioner. At the option of the commissioner, attorneys retained by contract under this subsection may be compensated on a fixed-price basis, an hourly rate basis, with or without a fixed cap, or through a contingent fee arrangement to be specified in the contract and payable out of all sums the attorney recovers for the State by judgment, order, or settlement.

(d) Upon the filing of the application for registration of securities as provided in section -302 or -303, the applicant, in writing, may request that the registration be reviewed by a private consultant and, when requested, the commissioner may contract with private consultants for such review. The cost of the review shall be borne by the applicant; provided that upon payment of the cost of review, the applicant shall be reimbursed one-half of the respective filing fee.

(e) The governor shall cause the commissioner to be furnished with such quarters, stationery, furniture, office equipment, and other supplies as may be necessary for the efficient execution of the functions vested in the commissioner by this chapter.

(f) The commissioner shall report to the governor annually upon a date as the governor shall establish. The report shall contain an account of the work of the commissioner during the period covered and data and information deemed necessary or appropriate.

(g) The commissioner may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the commissioner may collaborate with public and nonprofit organizations with an interest in investor education. The commissioner may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives.

(h) It shall be unlawful for the commissioner or an officer, employee, or designee of the commissioner to use for personal benefit or the benefit of others records or other information obtained by or filed with the commissioner that are not public under section -607(b). This chapter does not authorize the commissioner or an officer, employee, or designee of the commissioner to disclose the record or information, except in accordance with section -602, -607(c), or -608.

§ -602 Investigations and subpoenas. (a) The commissioner may:

- (1) Conduct public or private investigations within or outside of this State which the commissioner considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

- (2) Require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and
- (3) Publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter if the commissioner determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) For the purpose of an investigation under this chapter, the commissioner or its designee may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the commissioner considers relevant or material to the investigation.

(c) If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the commissioner under this chapter, the commissioner may apply to a court of competent jurisdiction to enforce compliance. The court may:

- (1) Hold the person in contempt;
- (2) Order the person to appear before the commissioner;
- (3) Order the person to testify about the matter under investigation or in question;
- (4) Order the production of records;
- (5) Grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;
- (6) Impose a civil penalty not greater than \$100,000 for each violation; and
- (7) Grant any other necessary or appropriate relief.

(d) This section shall not preclude a person from applying to a court of competent jurisdiction for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) An individual shall not be excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the commissioner under this chapter or in an action or proceeding instituted by the commissioner under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement, or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the commissioner may apply to a court of competent jurisdiction to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) At the request of the securities regulator of another state or a foreign jurisdiction, the commissioner may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The commissioner may provide the assistance by using the authority to investigate and the powers conferred by this chapter as the commissioner determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this State if occurring in this State. In deciding whether to provide the assistance, the commissioner may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its

state or foreign jurisdiction to the commissioner when requested; whether compliance with the request would violate or prejudice the public policy of this State; and the availability of resources and employees of the commissioner to carry out the request for assistance.

(g) The commissioner shall, in its discretion, cooperate, coordinate, consult, and, subject to section -607, share records and information with the securities regulator of another state, a foreign jurisdiction, the Securities and Exchange Commission, the Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and any other governmental law enforcement agency among the federal government, self-regulatory organizations, states, and foreign governments. Chapter 92F shall apply to records and information.

§ -603 Civil enforcement. (a) If the commissioner believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may maintain an action in a court of competent jurisdiction to enjoin the act, practice, or course of business, and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(b) In an action under this section and on a proper showing, the court may:

- (1) Issue a permanent or temporary injunction, restraining order, or declaratory judgment;
- (2) Order other appropriate or ancillary relief, which may include:
 - (A) An asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the commissioner, for the defendant or the defendant's assets;
 - (B) Ordering the commissioner to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;
 - (C) Imposing a civil penalty up to \$50,000 for a single violation;
 - (D) Ordering rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act; and
 - (E) The payment of prejudgment and postjudgment interest;
- (3) Order the payment of costs and reasonable attorney's fees; and
- (4) Order such other relief as the court considers appropriate.

(c) The commissioner shall not be required to post a bond in an action or proceeding under this chapter.

(d) In an action under this section, the commissioner may apply for and on due showing be entitled to have issued by the court, a subpoena requiring forthwith the appearance of any defendant and the defendant's employees, salespersons, or agents and the production of documents, books, and records as may appear necessary for the hearing of such petition to testify and give evidence concerning the acts or conduct or things complained of in the application for the injunction.

§ -604 **Administrative enforcement.** (a) If the commissioner determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the commissioner may:

- (1) Issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;
- (2) Issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section -401(b)(1)(D) or (F), or for an investment adviser under section -403(b)(1)(C); or
- (3) Issue an order under section -204.

(b) An order under subsection (a) shall be effective on the date of issuance. Upon issuance of the order, the commissioner shall promptly serve each person subject to the order with a copy of the order. The order shall include a statement of any civil penalty or costs of investigation the commissioner will seek, a statement of the reasons for the order, and notice that, within fifteen days after receipt of a request in a record from the person, the matter shall be scheduled for a hearing in accordance with chapter 91. The order may include rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act. If a person subject to the order does not request a hearing and none is ordered by the commissioner within thirty days after the date of service of the order, the order, including the imposition of a civil penalty or requirement for payment of the costs of investigation sought in a statement in the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until a final determination is made. During the pendency of any hearing requested under this subsection, the cease and desist order shall remain in effect unless vacated or modified by the commissioner; provided that any penalty shall not take effect until the final order is issued.

(c) If a hearing is requested or ordered pursuant to subsection (b), a hearing shall be held pursuant to chapter 91. A final order may not be issued unless the commissioner makes findings of fact and conclusions of law in a record in accordance with chapter 91. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) In a final order under subsection (c), the commissioner may impose a civil penalty of not more than \$50,000 for each violation. The order may include rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act.

(e) In a final order, the commissioner may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(f) If a petition for judicial review of a final order is not filed in accordance with section -609, the commissioner may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) If a person does not comply with an order under this section, the commissioner may petition a court of competent jurisdiction to enforce the order. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the commissioner's order, the court may find the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount not to exceed \$2,000 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

§ -605 **Venue.** Any action brought by the commissioner under this chapter may be brought in any circuit in the State at the commissioner's discretion. Any other action under this chapter shall be brought in the circuit of the plaintiff's residence or in the circuit in which the commissioner has the commissioner's office.

§ -606 **Rules, forms, orders, interpretive opinions, and hearings.** (a) The commissioner may adopt, amend, and repeal, pursuant to chapter 91, such rules as may be necessary to carry out the purposes of this chapter. Notwithstanding this subsection, the commissioner may adopt, amend, and repeal forms and orders necessary to implement this chapter without regard to chapter 91. No form or order shall be adopted, amended, or repealed without regard to chapter 91, unless the commissioner finds that the action is in the public interest, necessary or appropriate for the protection of investors, and consistent with the purposes of this chapter.

(b) Subject to Section 15(h) of the Securities Exchange Act (15 U.S.C. 780) and Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 806-18a), the commissioner may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish:

- (1) Subject to Section 15(h) of the Securities Exchange Act (15 U.S.C. 780) and Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. 806-18a), the form and content of financial statements required under this chapter;
- (2) Whether unconsolidated financial statements must be filed; and
- (3) Whether required financial statements must be audited by an independent certified public accountant.

(c) The commissioner may provide interpretative opinions or issue determinations that the commissioner will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the commissioner will not institute an action or a proceeding under this chapter.

(d) A hearing in an administrative proceeding under this chapter shall be conducted in public unless the commissioner for good cause consistent with this chapter determines that the hearing will not be so conducted.

§ -607 **Administrative files and opinions.** (a) The commissioner shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter.

(b) The commissioner shall make all rules, forms, interpretative opinions, and orders available to the public in accordance with chapter 92F.

(c) The commissioner shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests in accordance with chapter 92F. A copy of the record certified or a certificate by the commissioner of a record's nonexistence is prima facie evidence of a record or its nonexistence.

§ -608 Public records; confidentiality. (a) Except as otherwise provided in subsection (b) or chapter 92F, records obtained by the commissioner or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) The following records are not public records and are not available for public examination under subsection (a):

- (1) A record obtained by the commissioner in connection with an audit or inspection under section -411(d) or an investigation under section -602;
- (2) A part of a record filed in connection with a registration statement under sections -301 and -303 to -305, or a record under section -411(c) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;
- (3) A record that is not required to be provided to the commissioner or filed under this chapter and is provided to the commissioner only on the condition that the record will not be subject to public examination or disclosure;
- (4) A nonpublic record received from a person specified in section -602(g);
- (5) Any social security number, residential address unless used as a business address, and residential telephone number unless used as a business telephone number, contained in a record that is filed; and
- (6) A record obtained by the commissioner through a designee of the commissioner that a rule or order under this chapter determines has been:
 - (A) Expunged from the commissioner's records by the designee; or
 - (B) Determined to be nonpublic or nondisclosable by that designee if the commissioner finds the determination to be in the public interest and for the protection of investors.

(c) If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section -602(g), the commissioner may disclose a record obtained in connection with an audit or inspection under section -411(d) or a record obtained in connection with an investigation under section -602.

§ -609 Appeals to court, first circuit; time; bonds; costs; decree; further appeal. (a) An appeal may be taken by any aggrieved person from any final order of the commissioner to the circuit court of the first circuit in the manner provided in chapter 91. The appellant shall execute a bond in the penal sum of \$1,000 to the State, with sufficient surety, to be approved by the commissioner or the court, conditioned upon the faithful prosecution of the appeal to final judgment, and the payment of all such costs as shall be adjudged against the appellant.

(b) The appeal shall be conducted without a jury and confined to the record, and it may be given precedence by the court over other matters pending in the court.

(c) If the order of the commissioner is reversed the court shall by its mandate specifically direct the commissioner as to the commissioner's further action in the matter, including the making and entering of any order or orders in connection therewith, and the conditions, limitations, or restrictions to be therein contained; provided that the commissioner shall not thereby be barred from thereafter revoking or altering the order for any proper cause which may thereafter accrue or be discovered.

(d) If the order is affirmed, the appellant shall not be barred after thirty days from filing a new application; provided the application is not otherwise barred or limited.

(e) The appeal shall not in any way suspend the operation of the order appealed from during the pendency of the appeal unless upon proper order of the commissioner or the court.

(f) An appeal may be taken from the decree of the circuit court to the supreme court.

§ -610 Service of process. (a) A consent to service of process complying with this section shall be signed and filed in the form required by a rule or order under this chapter. A consent appointing the commissioner the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) If a person, including a nonresident of this State, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the commissioner as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the commissioner; provided that it shall not be effective unless:

- (1) The plaintiff, which may be the commissioner, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and
- (2) The plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the commissioner in a proceeding before the commissioner, allows.

(d) Service pursuant to subsection (c) may be used in a proceeding before the commissioner or by the commissioner in a civil action in which the commissioner is the moving party.

(e) If process is served under subsection (c), the court, or the commissioner in a proceeding before the commissioner, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

(f) If any process or pleadings mentioned in this chapter are served upon the commissioner, it shall be by duplicate copies, one of which shall be filed in the office

of the commissioner and another immediately forwarded by the commissioner by registered mail to the principal office of the issuer against which the process or pleadings are directed.

PART VII. TRANSITION

§ -701 Application of act to existing proceeding and existing rights and duties. (a) The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this chapter or may be instituted on the basis of conduct occurring before the effective date of this chapter; provided that a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five years after the effective date of this chapter, whichever is earlier.

(b) All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no-action determinations, and conditions imposed on the registrations under the predecessor act shall remain in effect for the period that they would have remained in effect if this chapter had not been enacted. The registration orders, rules, statements, opinions, rulings, determinations, and conditions, shall be deemed to have been filed, issued, or imposed under this chapter, but shall be exclusively governed by the predecessor act.”

SECTION 2. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

“(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to chapter [485] _____ or registered under chapter 467B¹ shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section [485-6(15)] _____-202(26) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director’s designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy

fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium management education fund, section 514A-131. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers, investigators, attorneys, accountants, and other necessary personnel to implement this subsection. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter [485] _____ has complied with that chapter;
- (3) Any person submitting any filing required by chapter 514E or section [485-6(15)] _____-202(26) has complied with chapter 514E or section [485-6(15)] _____-202(26);²
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce; or³
- (5) Any person subject to chapter 467B has complied with that chapter;⁴ and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses."

SECTION 3. Section 26-14.6, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) Effective July 1, 1990, the functions, authority, and obligations, together with the limitations imposed thereon and the privileges and immunities conferred thereby, exercised by a "sheriff", "sheriffs", a "sheriff's deputy", "sheriff's deputies", a "deputy sheriff", "deputy sheriffs", or a "deputy", under sections 21-8, 47-18, 88-51, 105-4, 134-11, 134-51, 183D-11, 187A-14, 201G-55, 201G-74, 231-25, 281-108, 281-111, 286-52, 286-52.5, 321-1, 322-6, 325-9, 325-80, 353-11, 383-71, 438-5, 445-37, 482E-4, [485-6,] _____-202, 501-42, 501-171, 501-218, 521-78, 578-4, 584-6, 587-33, 603-29, 604-6.2, 606-14, 607-2, 607-4, 607-8, 633-8, 634-11, 634-12, 634-21, 634-22, 651-33, 651-37, 651-51, 654-2, 655-2, 657-13, 660-16, 666-11, 666-21, 803-23, 803-34, 803-35, 804-14, 804-18,

804-41, 805-1, 806-71, and 832-23 shall be exercised to the same extent by the department of public safety.’’

SECTION 4. 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, 415A, 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431, 438, 439, 440, 442, 447, 448, 452, 453, 455, 456, 457, 458, 459, 460, 461, 463, 464, 466, 467, 469, 471, 482, 482E, [485,] _____, 501, 502, 505, 572, 574, and 846 (part II);
- (2) The authority to increase or decrease fees or nontax revenues under the chapters listed in paragraph (1) that are established by the department of commerce and consumer affairs shall apply to fees or nontax revenues established by statute or rule;
- (3) 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;
- (4) This section shall not apply to judicial fees as may be set by any chapter cited in this section;
- (5) 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
- (6) 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 5. Section 303-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department of education and the University of Hawaii, on behalf of any employee of the respective institutions, may enter into a written agreement with any employee to purchase for the employee:

- (1) An annuity contract under section 403(b) of the Internal Revenue Code of 1986, as amended, from an insurer who holds a certificate of authority under section 431:3-201 or certificate of registration of dealer in securities under chapter [485,] _____, or both, and who complies with the requirements established by the respective institution and agrees to abide by the terms, conditions, rules, or regulations of the respective institution; or

- (2) An annuity contract qualified under section 401(k) of the Internal Revenue Code of 1986, as amended, which provides a nationwide retirement trust for a group of college or university football coaches who, due to the nature of their jobs, change employers frequently.”

SECTION 6. Section 412:3-210, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) An application under this section may be filed before or after the applicant’s articles of incorporation and bylaws have been approved by the commissioner; provided that the applicant in organization and the proposed financial institution shall not solicit subscriptions for capital stock until the articles of incorporation and bylaws of the proposed financial institution shall have been approved by the commissioner. An applicant in organization seeking approval of a capital stock solicitation shall pay a fee established by the commissioner pursuant to section 412:2-105, and shall file an application which contains the following:

- (1) Information regarding the solicitation plan by which the applicant in organization and the proposed financial institution proposes to conduct the solicitation of subscribers;
- (2) Information regarding the classes of shares, respective quantities of shares for each class, and the subscription price of each class of stock;
- (3) A specimen subscription contract or purchase agreement, suitability certificates and other related documents to be executed by subscribers;
- (4) Any underwriting agreement or other agreement for the purchase or distribution of the capital stock;
- (5) Any escrow agreements or other agreement for the holding of the purchase proceeds of the capital stock;
- (6) Proposed advertising materials;
- (7) If the offer and sale of the capital stock is subject to the Securities Act of 1933 and regulations thereunder, a copy of the registration statement most recently filed with the federal Securities and Exchange Commission or any other notices or other filings in lieu of registration required or permitted by that Act or regulation and any subsequent amendments thereto;
- (8) If the offer and sale of the capital stock is subject to chapter [485;] _____, a copy of the registration or qualification statement most recently filed with the commissioner of securities and any subsequent amendments thereto;
- (9) If the offer and sale of the capital stock is not subject to the Securities Act of 1933 or chapter [485;] _____, whether exempted by law or regulation or otherwise, a copy of the most recent version of any prospectus, offering memorandum, offering circular, or other offering document proposed to be delivered to prospective subscribers to the capital stock, and any subsequent amendments thereto; and
- (10) Any other information that the commissioner may require.

(c) Upon being satisfied that the application for approval of the capital stock solicitation is complete and that the solicitation will not affect the safety or soundness of the proposed financial institution or harm the public interest, the commissioner shall approve the application. The approval shall not constitute a determination that the applicant has complied with chapter [485] _____ or any other state or federal law.”

SECTION 7. Section 412:5-205.7, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (a) and (b) to read:

“(a) With the prior written approval of the commissioner, and subject to the limitations set forth in this section 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, either directly in any department or division of the bank or through a subsidiary or affiliate of the bank, may engage in the following securities activities and in any related or incidental activity, within the State:

- (1) Sale or purchase of any security on the order of and for the account of customers, either alone or in conjunction with the rendering of investment advice to customers, through the operations, respectively, of a discount or full service brokerage;
- (2) Organization, sponsorship, operation, control, and distribution of one or more investment companies, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) or in the laws of the jurisdiction in which [the] investment company operates;
- (3) Provision of portfolio advice to customers;
- (4) Provision of investment and financial advice to government agencies; and
- (5) Service as dealer-manager or financial advisor to corporations, partnerships, or other persons, including but not limited to [the] provision of valuation advice and opinions with respect to sales or purchases of assets, corporate restructurings, issuances of securities, mergers, and other acquisitions.

The exercise of authority conferred in this subsection shall be governed by and comply with chapter [485] _____ and any securities administrative rules adopted under chapter [485.] _____. Administration of chapter 485 and any securities administrative rules shall be vested with the commissioner of securities.

(b) With the prior written approval of the commissioner, and subject to the limitations set forth in this section 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, either directly in any department or division of the bank or through a subsidiary or affiliate thereof, may engage in the following securities activities and in any related or incidental activities, in any place outside this State, including any other state of the United States, dependencies or insular possession of the United States, or any foreign countries:

- (1) Sale or purchase of any security, as defined under applicable law, on the order of and for the account of customers, either alone or in conjunction with the rendering of investment advice to customers, through the operations, respectively, of a discount or full service brokerage;
- (2) Organization, sponsorship, operation, control, and distribution of one or more investment companies, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3) or as otherwise defined under applicable law;
- (3) Provision of portfolio advice to customers;
- (4) Provision of investment and financial advice to government agencies; and
- (5) Service as dealer-manager or financial advisor to corporations, partnerships, or other persons, including but not limited to, the provision of valuation advice and opinions with respect to sales or purchases of assets, corporate restructurings, issuances of securities, mergers, and other acquisitions.

The exercise of authority conferred in this subsection shall be governed by and comply with chapter [485] _____ and any securities rules adopted under chapter [485] _____ or the laws and administrative rules of the state, dependency, insular possession, or foreign country applicable to the conduct of such securities activities within that jurisdiction.”

2. By amending subsection (d) as to read:

“(d) Upon receipt of the commissioner’s approval under this section, the bank or its subsidiary or affiliate shall obtain any necessary approvals required under chapter [485] _____ and any securities administrative rules adopted under chapter [485] _____, or the applicable securities and banking laws of the jurisdiction in which it will be conducting its securities activities.”

SECTION 8. Section 412:10-502, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) To the extent specified herein, a credit union may invest its own assets in securities that are rated within the four highest grades by a nationally-recognized rating service and which represent ownership of one or more promissory notes, certificates of interest, or participation in such notes, or which are secured by one or more promissory notes, certificates of interest, or participation in such notes, which notes:

- (1) Are directly secured by a first lien on residential real estate or a residential manufactured home as defined under Title 42 of the United States Code, whether or not such manufactured home is considered real or personal property under state law; and
- (2) Were originated by a credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or by a mortgagee approved by the Secretary of Housing and Urban Development. Notes secured by a lien on a manufactured home may also originate from a credit union approved for insurance by the Secretary of Housing and Urban Development. The total amount invested in such securities by a credit union shall not exceed twenty per cent of its capital and surplus.

The term “securities” in this [{}]subsection[{}] shall have the same meaning as given in chapter [485-] _____.”

SECTION 9. Section 417E-1, Hawaii Revised Statutes, is amended by amending the definition of “commissioner” to read as follows:

“Commissioner” means the commissioner of securities as provided for in chapter [485-] _____.”⁵

SECTION 10. Section 417E-5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

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

SECTION 11. Section 417E-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In administering this chapter, the commissioner may exercise all powers granted to the commissioner under chapter [485;] _____, which are not inconsistent with this chapter.”

SECTION 12. Section 417E-11, Hawaii Revised Statutes, is amended to read as follows:

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

SECTION 13. Section 421C-36, Hawaii Revised Statutes, is amended to read as follows:

“**[§421C-36] Exemption of voting stock from registration.** Membership stock or membership certificates under section 421C-3(a), or share or membership capital of any association organized under or existing prior to passage of this chapter shall be included as exempt securities under section [485-4.] _____-201.”

SECTION 14. Section 431:4-113, Hawaii Revised Statutes, is amended to read as follows:

“**§431:4-113 Organization solicitor’s license.** Solicitation for sale of securities to members of the public under a solicitation permit shall be made only by individuals registered therefor pursuant to chapter [485-] _____.”

SECTION 15. Section 514E-19, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A time share interest in any time share plan which satisfies the escrow and blanket lien protection requirements of this chapter shall not be deemed a risk capital security under chapter [485;] _____, and the offer or sale of a time share interest therein shall not be deemed the offer or sale of a security.”

SECTION 16. Section 806-83, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Criminal charges may be instituted by written information for a felony when the charge is a class C felony under section 19-3.5 (voter fraud); section 128D-10 (knowing releases); section 132D-14(1), (2)(a), and (3),⁶ (penalties for failure to comply with requirements of sections 132D-7, 132D-10 and 132D-16); section 134-6 (carrying or use of firearm in the commission of a separate felony); section 134-7(a) and (b) (ownership or possession prohibited); section 134-8 (prohibited ownership); section 134-9 (licenses to carry); section 134-17(a) (relating to false information or evidence concerning psychiatric or criminal history); section 134-51 (deadly weapons); section 134-52 (switchblade knives); section 134-53 (butterfly knives); section 188-23 (possession or use of explosives, electrofishing devices, and poisonous substances in state waters prohibited); section 231-34 (attempt to evade or defeat tax); section 231-36 (false and fraudulent statements); section 245-37 (sale or purchase of packages of cigarettes without stamps); section 245-38 (vending unstamped cigarettes); section 245-51 (sale of export cigarettes prohibited); section 245-52 (alteration of packaging prohibited); section 291C-12.5 (accidents involving substantial bodily injury); section 291E-61.5 (habitually operating a vehicle under the influence of an intoxicant); section 329-41 (prohibited acts B); section 329-42 (prohibited acts C); section 329-43.5 (prohibited acts related to

drug paraphernalia); section 329C-2 (manufacture, distribution, or possession with intent to distribute an imitation controlled substance to a person under eighteen years of age); section 346-34(d)(2) and (e) (fraud involving food stamps or coupons with a value exceeding \$300); section 346-43.5 (medical assistance fraud); section 383-141 (falsely obtaining benefits); section 431:10C-307.7 (insurance fraud); section 482D-7 (violation of fineness standards and stamping requirements); section [485-8 (registration of securities);] -301 (registration of securities); section [485-14 (registration of dealers, investment advisers, salespersons, and investment adviser representatives);] -401 (registration of broker-dealers); section -402 (registration of agents); section -403 (registration of investment advisors); section -404 (registration of investment advisor representatives); section -405 (registration of federal covered investment advisors); section [485-25 (fraudulent and other prohibited practices);] -501 (general fraud); section -502 (prohibited conduct in providing investment advice); section 707-703 (negligent homicide in the second degree); section 707-705 (negligent injury in the first degree); section 707-711 (assault in the second degree); section 707-713 (reckless endangering in the first degree); section 707-721 (unlawful imprisonment in the first degree); section 707-726 (custodial interference in the first degree); section 707-757 (electronic enticement of a child in the second degree); section 707-766 (extortion in the second degree); section 708-811 (burglary in the second degree); section 708-821 (criminal property damage in the second degree); section 708-831 (theft in the second degree); section 708-833.5 (shoplifting); section 708-835.5 (theft of livestock); section 708-836 (unauthorized control of propelled vehicle); section 708-836.5 (unauthorized entry into motor vehicle); section 708-839.5 (theft of utility services); section 708-839.8 (identity theft in the third degree); section 708-852 (forgery in the second degree); section 708-854 (criminal possession of a forgery device); section 708-858 (suppressing a testamentary or recordable instrument); section 708-875 (trademark counterfeiting); section 708-891.5 (computer fraud in the second degree); section 708-892.5 (computer damage in the second degree); section 708-895.6 (unauthorized computer access in the second degree); section 708-8100 (fraudulent use of a credit card); section 708-8102 (theft/forgery of credit cards); section 708-8103 (credit card fraud by a provider of goods or services); section 708-8104 (possession of unauthorized credit card machinery or incomplete cards); section 708-8200 (cable television service fraud in the first degree); section 708-8202 (telecommunication service fraud in the first degree); section 709-903.5 (endangering the welfare of a minor in the first degree); [{}section{}] 709-906 (abuse of family or household members); section 710-1016.3 (obtaining a government-issued identification document under false pretenses in the first degree); section 710-1016.6 (impersonating a law enforcement officer in the first degree); section 710-1017.5 (sale or manufacture of deceptive identification document); section 710-1018 (securing the proceeds of an offense); section 710-1021 (escape in the second degree); section 710-1023 (promoting prison contraband in the second degree); section 710-1024 (bail jumping in the first degree); section 710-1029 (hindering prosecution in the first degree); section 710-1060 (perjury); section 710-1072.5 (obstruction of justice); section 711-1103 (riot); section 711-1109.3 (cruelty to animals/fighting dogs); section 711-1110.9 (violation of privacy in the first degree); section 711-1112 (interference with the operator of a public transit vehicle); section 712-1221 (promoting gambling in the first degree); section 712-1222.5 (promoting gambling aboard ships); section 712-1224 (possession of gambling records in the first degree); section 712-1243 (promoting a dangerous drug in the third degree); section 712-1246 (promoting a harmful drug in the third degree); section 712-1247 (promoting a detrimental drug in the first degree); section 712-1249.6 (promoting a controlled substance in, on, or near schools or school vehicles); section 803-42 (interception, access, and disclosure of wire, oral, or electronic communications, use of pen register, trap and trace device,

ACT 230

and mobile tracking device prohibited); or section 846E-9(a)(2) (penalty for failure to comply with requirements of chapter 846E).”

SECTION 17. Chapter 485, Hawaii Revised Statutes, is repealed.

SECTION 18. 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 that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

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

SECTION 20. This Act shall take effect on July 1, 2008.

(Approved June 22, 2006.)

Notes

1. “Or registered under chapter 467B” should be underscored.
2. Prior to amendment, “or” appeared here.
3. “Or” should be underscored.
4. “(5) Any person subject to chapter 467B has complied with that chapter;” should be underscored.
5. Period should be underscored.
6. Prior to amendment “[132D-14(a)(1), (2)(A), and (3)]” appeared here. Comma should be underscored.

ACT 230

H.B. NO. 3256

A Bill for an Act Relating to the Penal Code.

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

SECTION 1. Chapter 706, part II, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§706- Sentencing for first-time property offenders; expungement.

(1) Notwithstanding section 706-620(3), a person convicted for the first time of any class C felony property offense under chapter 708 who has not previously been sentenced under section 706-606.5, section 706-622.5, or this section is eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:

- (a) The court has determined that the person is nonviolent after reviewing the person’s criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;
- (b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index;
- (c) The court has determined that the offense for which the person is being sentenced is related to the person’s substance abuse dependency or addiction;
- (d) The court has determined that the person is genuinely motivated to obtain and maintain substance abuse treatment, based upon consideration of the person’s history, including whether substance abuse treat-

ment has previously been afforded to the person, and an appraisal of the person's current circumstances and attitude; and

- (e) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.

(2) A person eligible under subsection (1) may be sentenced to probation to undergo and complete a substance abuse treatment program if the court determines that the person can benefit from substance abuse treatment and, notwithstanding that the person would be subject to sentencing as a repeat offender under section 706-606.5, the person should not be incarcerated to protect the public. If the person fails to complete the substance abuse treatment program and the court determines that the person cannot benefit from any other suitable substance abuse treatment program, the person shall be sentenced as provided in this part. As a condition of probation under this subsection, the court may direct the person to undergo and complete substance abuse treatment under the supervision of the drug court if the person has a history or relapse in treatment programs. The court may require other terms and conditions of probation, including requiring that the person contribute to the cost of the substance abuse treatment program and comply with deadlines for entering into the substance abuse treatment program.

(3) The court, upon written application from a person sentenced under this part, shall issue a court order to expunge the record of conviction for that particular offense; provided that a person has successfully completed the substance abuse treatment program and complied with other terms and conditions of probation. A person sentenced to probation under this section shall be eligible for expungement under this subsection only if the person has not been previously convicted of a felony offense in this or another jurisdiction.

(4) Nothing in this section shall be construed to give rise to a cause of action against the State, a state employee, or a treatment provider.

(5) For the purposes of this section, "substance abuse treatment program" means drug or substance abuse treatment services provided outside a correctional facility by a public, private, or nonprofit entity that specializes in treating persons who are diagnosed with having substance abuse or dependency and preferably employ licensed professionals or certified substance abuse counselors."

SECTION 2. Chapter 708, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§708- Burglary offenses; intent to commit therein a crime against a person or against property rights. A person engages in conduct “with intent to commit therein a crime against a person or against property rights” if the person formed the intent to commit within the building a crime against a person or property rights before, during, or after unlawful entry into the building.

§708- Unauthorized entry in a dwelling. (1) A person commits the offense of unauthorized entry in a dwelling if the person intentionally or knowingly enters unlawfully into a dwelling with reckless disregard of the risk that another person was lawfully present in the dwelling, and another person was lawfully present in the dwelling.

(2) Unauthorized entry in a dwelling is a class C felony.

(3) It is an affirmative defense that reduces this offense to a misdemeanor that at the time of the unlawful entry:

- (a) There was a social gathering of invited guests at the dwelling the defendant entered;
- (b) The defendant intended to join the social gathering; and
- (c) The defendant had no intent to commit any unlawful act other than the entry.”

SECTION 3. Chapter 708, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§708- Unauthorized entry into motor vehicle in the second degree.

(1) A person commits the offense of unauthorized entry into a motor vehicle in the second degree if the person intentionally or knowingly enters into a motor vehicle without being invited, licensed, or otherwise authorized to do so.

(2) Unauthorized entry into a motor vehicle in the second degree is a misdemeanor.”

SECTION 4. Chapter 712, part IV, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“§712-A Methamphetamine trafficking in the first degree. (1) A person commits the offense of methamphetamine trafficking in the first degree if the person knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing methamphetamine or any of its salts, isomers, and salts of isomers;
- (b) Distributes one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-eighth ounce or more containing methamphetamine or any of its salts, isomers, and salts of isomers;
- (c) Distributes methamphetamine in any amount to a minor; or
- (d) Manufactures methamphetamine in any amount.

(2) Methamphetamine trafficking in the first degree is a class A felony for which the defendant shall be sentenced as provided in subsection (3).

(3) Notwithstanding sections 706-620(2), 706-640, 706-641, 706-659, 706-669, and any other law to the contrary, a person convicted of methamphetamine trafficking in the first degree shall be sentenced to an indeterminate term of imprisonment of twenty years with a mandatory minimum term of imprisonment of not less than two years and not greater than eight years and a fine not to exceed \$20,000,000; provided that:

- (a) If the person has one prior conviction for methamphetamine trafficking pursuant to this section or section 712-B, the mandatory minimum term of imprisonment shall be not less than six years, eight months and not greater than thirteen years, four months;
- (b) If the person has two prior convictions for methamphetamine trafficking pursuant to this section or section 712-B, the mandatory minimum term of imprisonment shall be not less than thirteen years, four months and not greater than twenty years; or
- (c) If the person has three or more prior convictions for methamphetamine trafficking pursuant to this section or section 712-B, the mandatory minimum term of imprisonment shall be twenty years.

§712-B Methamphetamine trafficking in the second degree. (1) A person commits the offense of methamphetamine trafficking in the second degree if the person knowingly distributes methamphetamine in any amount.

(2) Methamphetamine trafficking in the second degree is a class B felony for which the defendant shall be sentenced as provided in subsection (3).

(3) Notwithstanding sections 706-620, 706-640, 706-641, 706-660, 706-669, and any other law to the contrary, a person convicted of methamphetamine trafficking in the second degree shall be sentenced to an indeterminate term of imprisonment of ten years with a mandatory minimum term of imprisonment of not less than one year and not greater than four years and a fine not to exceed \$10,000,000; provided that:

- (a) If the person has one prior conviction for methamphetamine trafficking pursuant to this section or section 712-A, the mandatory minimum term of imprisonment shall be not less than three years, four months and not greater than six years, eight months;
- (b) If the person has two prior convictions for methamphetamine trafficking pursuant to this section or section 712-A, the mandatory minimum term of imprisonment shall be not less than six years, eight months and not greater than ten years; or
- (c) If the person has three or more prior convictions for methamphetamine trafficking pursuant to this section or section 712-A, the mandatory minimum term of imprisonment shall be ten years.

§712-C Methamphetamine trafficking; restitution and reimbursement.

When sentencing a defendant convicted of methamphetamine trafficking pursuant to section 712-A or 712-B, the court may order restitution or reimbursement to the State or appropriate county government for the cost incurred for any cleanup associated with the manufacture or distribution of methamphetamine and to any other person injured as a result of the manufacture or distribution of methamphetamine.”

SECTION 5. Section 704-401, Hawaii Revised Statutes, is amended to read as follows:

“§704-401 Evidence of physical or mental disease, disorder, or defect admissible when relevant to state of mind. Evidence that the defendant [~~suffered from~~] was affected by a physical or mental disease, disorder, or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind [~~which~~] that is required to establish an element of the offense.”

SECTION 6. Section 704-404, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (1) to (4) to read:

“(1) Whenever the defendant has filed a notice of intention to rely on the defense of physical or mental disease, disorder, or defect excluding responsibility, or there is reason to doubt the defendant’s fitness to proceed, or reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case, the court may immediately suspend all further proceedings in the prosecution. If a trial jury has been empanelled, it shall be discharged or retained at the discretion of the court. The [~~dismissal~~] discharge of the trial jury shall not be a bar to further prosecution.

(2) Upon suspension of further proceedings in the prosecution, the court shall appoint three qualified examiners in felony cases and one qualified examiner in nonfelony cases to examine and report upon the physical and mental condition of the defendant. In felony cases the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be [~~either~~] a psychiatrist, licensed

psychologist, or qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. In nonfelony cases the court may appoint either a psychiatrist or a licensed psychologist. All examiners shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners. The examination may be conducted on an out-patient basis or, in the court's discretion, when necessary the court may order the defendant to be committed to a hospital or other suitable facility for the purpose of the examination for a period not exceeding thirty days, or such longer period as the court determines to be necessary for the purpose. The court may direct that one or more qualified physicians or psychologists retained by the defendant be permitted to witness ~~[and participate in]~~ the examination. As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

(3) ~~[In such examination any method may be employed which]~~ An examination performed under this section may employ any method that is accepted by the professions of medicine or psychology for the examination of those alleged to be ~~[suffering from]~~ affected by a physical or mental disease, disorder, or defect; provided that each examiner shall form and render diagnoses and opinions upon the physical and mental condition of the defendant independently from the other examiners, and the examiners ~~[may]~~, upon approval of the court, may secure the services of clinical psychologists and other medical or paramedical specialists to assist in the examination and diagnosis.

(4) The report of the examination shall include the following:

- (a) A description of the nature of the examination;
- (b) A diagnosis of the physical or mental condition of the defendant;
- (c) An opinion as to the defendant's capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;
- (d) An opinion as to the extent, if any, to which the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was impaired at the time of the conduct alleged;
- (e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind ~~[which]~~ that is required to establish an element of the offense charged; and
- (f) Where more than one examiner is appointed, a statement that the diagnosis and opinion rendered were arrived at independently of any other examiner, unless there is a showing to the court of a clear need for communication between or among the examiners for clarification. A description of the communication shall be included in the report. After all reports are submitted to the court, examiners may confer without restriction."

2. By amending subsection (6) to read:

"(6) ~~[The]~~ Three copies of the report of the examination, including any supporting documents, shall be filed ~~[in triplicate]~~ with the clerk of the court, who shall cause copies to be delivered to the prosecuting attorney and to counsel for the defendant."

3. By amending subsection (8) to read:

"(8) The court shall obtain all existing, medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statutes, and make such records available for inspection by the examiners."

SECTION 7. Section 704-406, Hawaii Revised Statutes, is amended to read as follows:

“§704-406 Effect of finding of unfitness to proceed. (1) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant shall be suspended, except as provided in section 704-407, and the court shall commit the defendant to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment. If the court is satisfied that the defendant may be released on condition without danger to the defendant or to the person or property of others, the court shall order the defendant’s release, which shall continue at the discretion of the court[;] on conditions the court determines necessary. A copy of the report filed pursuant to section 704-404 shall be attached to the order of commitment or order of [~~conditional~~] release[.] on conditions.

(2) When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the penal proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment or [~~conditional~~] release on conditions of the defendant that it would be unjust to resume the proceeding, the court may dismiss the charge and [~~may order~~]:

(a) Order the defendant to be discharged [~~or, subject~~];

(b) Subject to the law governing the involuntary [~~hospitalization or conditional release~~] civil commitment of persons [~~suffering from~~] affected by physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; or

(c) Subject to the law governing involuntary outpatient treatment, order the defendant to be released on conditions the court determines necessary.

(3) Within a reasonable time following any commitment under subsection (1), the director of health shall report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. The court, in addition, may appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to make a report. If, following a report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and [~~release~~]:

(a) Release the defendant; or [~~subject the defendant~~]

(b) Subject to the law governing involuntary civil commitment [~~procedures.~~], order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.

(4) Within a reasonable time following any [~~conditional~~] release under subsection (1), the court shall appoint a panel of three qualified examiners in felony cases or one qualified examiner in nonfelony cases to report to the court on whether the defendant presents a substantial likelihood of becoming fit to proceed in the future. If, following the report, the court determines that the defendant probably will remain unfit to proceed, the court may dismiss the charge and [~~release~~]:

(a) Release the defendant; or [~~subject the defendant~~]

(b) Subject to the law governing involuntary civil commitment [~~procedures.~~], order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment.”

SECTION 8. Section 704-407, Hawaii Revised Statutes, is amended to read as follows:

“§704-407 Special [post-commitment or post-conditional-release] hearing[.] following commitment or release on conditions. (1) At any time after commitment as provided in section 704-406, the defendant or the defendant’s counsel or the director of health may apply for a special post-commitment or post-release hearing. If the application is made by or on behalf of a defendant not represented by counsel, the defendant shall be afforded a reasonable opportunity to obtain counsel, and if the defendant lacks funds to do so, counsel shall be assigned by the court. The application shall be granted only if the counsel for the defendant satisfies the court by affidavit or otherwise that, as an attorney, the counsel has reasonable grounds for a good faith belief that the counsel’s client has an objection based upon legal grounds to the charge.

(2) If the motion for a special post-commitment or post-release hearing is granted, the hearing shall be by the court without a jury. No evidence shall be offered at the hearing by either party on the issue of physical or mental disease, disorder, or defect as a defense to, or in mitigation of, the offense charged.

(3) After the hearing, the court shall rule on any legal objection raised by the application and [may], in an appropriate case, may quash the indictment or other charge, [or] find it to be defective or insufficient, or otherwise terminate the proceedings on the law. In any such case, unless all defects in the proceedings are promptly cured, the court shall terminate the commitment or [conditional] release ordered under section 704-406 and [order]:

- (a) Order the defendant to be discharged [or, subject];
- (b) Subject to the law governing [the] involuntary [hospitalization or conditional-release] civil commitment of persons [suffering from] affected by a physical or mental disease, disorder, or defect, order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for detention, care, and treatment; or
- (c) Subject to the law governing involuntary outpatient treatment, order the defendant to be released on such conditions as the court deems necessary.”

SECTION 9. Section 704-408, Hawaii Revised Statutes, is amended to read as follows:

“§704-408 Determination of irresponsibility. If the report of the examiners filed pursuant to section 704-404, or the report of examiners of the defendant’s choice under section 704-409, states that the defendant at the time of the conduct alleged [suffered from] was affected by a physical or mental disease, disorder, or defect [which] that substantially impaired the defendant’s capacity to appreciate the wrongfulness of the defendant’s conduct or to conform the defendant’s conduct to the requirements of law, the court shall submit the defense of physical or mental disease, disorder, or defect to the jury or the trier of fact at the trial of the charge against the defendant.”

SECTION 10. Section 704-411, Hawaii Revised Statutes, is amended to read as follows:

“§704-411 Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing. (1) When a defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court [shall], on the basis of the report made

pursuant to section 704-404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall make an order as follows:

- (a) The court shall order the defendant to be committed to the custody of the director of health to be placed in an appropriate institution for custody, care, and treatment if the court finds that the defendant [presents]:
 - (i) Is affected by a physical or mental disease, disorder, or defect;
 - (ii) Presents a risk of danger to [oneself] self or others [and that the defendant is]; and
 - (iii) Is not a proper subject for conditional release; provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant's treatment needs and the need to prevent harm to the person confined and others; [ø]
- (b) The court shall order the defendant to be released on such conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to [oneself] self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition; or
- (c) The court shall order the defendant discharged [~~from custody~~] if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect[;] or, if so affected, that the defendant no longer presents a danger to [oneself] self or others and is not in need of care, supervision, or treatment.

(2) The court [~~shall~~], upon its own motion or on the motion of the prosecuting attorney or the defendant, shall order a separate post-acquittal hearing for the purpose of taking evidence on the issue of physical or mental disease, disorder, or defect and the risk of danger [which] that the defendant presents to [oneself] self or others.

- (3) When ordering a hearing pursuant to subsection (2):
 - (a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The court may appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners[-]; and
 - (b) In felony cases, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be [~~either~~] a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or such longer period as the court determines to be necessary for the purpose upon written findings for good cause shown. The court may direct that qualified physi-

cians or psychologists retained by the defendant be permitted to witness ~~[and participate in]~~ the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

(4) Whether the court's order under subsection (1) is made on the basis of the medical or psychological evidence given at the trial, or on the basis of the report made pursuant to section 704-404, or the medical or psychological evidence given at a separate hearing, the burden shall be upon the State to prove, by a preponderance of the evidence, that the defendant is affected by a physical or mental disease, disorder, or defect and may not safely be discharged and that the defendant should be either committed or conditionally released as provided in subsection (1).

(5) In any proceeding governed by this section, the defendant's fitness shall not be an issue."

SECTION 11. Section 704-412, Hawaii Revised Statutes, is amended to read as follows:

"§704-412 Committed person; application for conditional release or discharge; by the director of health; by the person. (1) After the expiration of at least ninety days following the order of commitment pursuant to section 704-411, if the director of health is of the opinion that the person committed to ~~[his]~~ the director's custody is still affected by a physical or mental disease, disorder, or defect and may be released on condition or discharged without danger to ~~[himself]~~ self or to the person or property of others~~[-he]~~ or that the person is no longer affected by a physical or mental disease, disorder, or defect, the director shall make application for the discharge or conditional release of [such] the person in a report to the court [by] from which ~~[such]~~ the person was committed and shall transmit a copy of the application and report to the prosecuting attorney of the county from which the [defendant] person was committed. The [defendant] person shall be given notice of such application.

(2) After the expiration of ninety days from the date of the order of commitment pursuant to section 704-411, the person committed may apply to the court ~~[by]~~ from which ~~[he]~~ the person was committed for an order of discharge [or conditional release] upon the ground that the [same may be ordered] person is no longer affected by a physical or mental disease, disorder, or defect. The person committed may apply for discharge or conditional release upon the ground that, though still affected by a physical or mental disease, disorder, or defect, the person may be released without danger to ~~[himself]~~ self or to the person or property of others. A copy of the application shall be transmitted to the prosecuting attorney of the county from which the defendant was committed. If the determination of the court is adverse to the application, ~~[such]~~ the person shall not be permitted to file a further application until one year has elapsed from the date of any preceding hearing on an application for [his] the person's discharge or conditional release."

SECTION 12. Section 704-413, Hawaii Revised Statutes, is amended to read as follows:

"§704-413 Conditional release; application for modification or discharge; termination of conditional release and commitment. (1) Any person released ~~[on condition]~~ pursuant to section 704-411 shall continue to receive mental health or other ~~[appropriate]~~ treatment and care deemed appropriate by the director of health until discharged from conditional release. The person shall follow all

prescribed treatments and take all prescribed medications according to the instructions of the person's treating mental health professional. If any mental health professional treating any conditionally released person believes either the person is ~~[either]~~ not complying with the requirements of this section[,] or there is other evidence that hospitalization is appropriate, the mental health professional shall report the matter to the probation officer of the conditionally released person. The probation officer may order the conditionally released person to be hospitalized for a period not to exceed seventy-two hours if the probation officer has probable cause to believe the person has violated the requirements of this subsection. No person shall be hospitalized beyond the seventy-two hour period, as computed pursuant to section 1-29, unless a hearing has been held pursuant to subsection (3).

(2) Any person released ~~[on condition]~~ pursuant to section 704-411 may apply to the court ordering the conditional release for discharge from, or modification of, the order granting conditional release on the ground that ~~[he]~~ the person is no longer affected by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to ~~[himself]~~ the person or to others. The application shall be accompanied by a letter from or supporting affidavit of a qualified physician or licensed psychologist. A copy of the application and letter or affidavit shall be transmitted to the prosecuting attorney of the [county in which the person is confined] circuit from which the order issued and to any persons supervising [his] the release, and the hearing on the application shall be held following notice to such persons. If the determination of the court is adverse to the application, ~~[such]~~ the person shall not be permitted to file further application until one year has elapsed from the date of any preceding hearing on an application for modification of conditions of release or for discharge.

(3) If, at any time after the order pursuant to section 704-411 granting conditional release, the court ~~[shall determine,]~~ determines, after hearing evidence, that:

- (a) The person is still affected by a physical or mental disease, disorder, or defect, and the conditions of release have not been fulfilled, or [that for]
- (b) For the safety of [such] the person or others [his], the person's conditional release should be revoked,

the court may forthwith modify the conditions of release or order the person to be committed to the custody of the director of health, subject to discharge or release only in accordance with the procedure prescribed in section 704-412."

SECTION 13. Section 704-414, Hawaii Revised Statutes, is amended to read as follows:

"§704-414 Procedure upon application for discharge, conditional release, or modification of conditions of release. Upon filing of an application pursuant to section 704-412 for discharge or conditional release, or upon the filing of an application pursuant to section 704-413 for discharge or for modification of conditions of release, the court shall appoint three qualified examiners in felony cases and one qualified examiner in nonfelony cases to examine and report upon the physical and mental condition of the defendant. In felony cases the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be ~~[either]~~ a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The examiners shall be appointed from a list of certified examiners as determined by the department of health. To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of the examination and may direct that qualified

physicians or psychologists retained by the defendant be permitted to witness [and participate in] the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3)."

SECTION 14. Section 704-415, Hawaii Revised Statutes, is amended to read as follows:

"§704-415 Disposition of application for discharge, conditional release, or modification of conditions of release. (1) If the court is satisfied [by] from the report filed pursuant to section 704-414, and such testimony of the reporting examiners as the court deems necessary, that:

- (a) The person is affected by a physical or mental disease, disorder, or defect and the discharge, conditional release, or modification of conditions of release applied for may be granted without danger to the committed or conditionally released person or to the person or property of others[;]; or
- (b) The person is no longer affected by a physical or mental disease, disorder, or defect.

the court shall grant the application and order the relief. If the court is not so satisfied, it shall promptly order a hearing [~~to determine whether such person may safely be discharged or released~~].

(2) Any such hearing shall be deemed a civil proceeding and the burden shall be upon the applicant to prove that the person is no longer affected by a physical or mental disease, disorder, or defect or may safely be either released on the conditions applied for or discharged. According to the determination of the court upon the hearing, the person shall [thereupon] be [~~discharged, or released~~]:

- (a) Discharged;
- (b) Released on such conditions as the court determines to be necessary[;]; or [shall be recommitted]
- (c) Recommitted to the custody of the director of health, subject to discharge or release only in accordance with the procedure prescribed in section 704-412."

SECTION 15. Section 704-416.5, Hawaii Revised Statutes, is amended to read as follows:

"[E]§704-416.5[] Supervision of person on conditional release. (1) Any person hospitalized under this chapter who is subsequently placed on conditional release shall be subject to the supervision of a probation officer until such time as that supervision is terminated by order of the court.

(2) The probation officer shall report [~~from time to time~~], as the court may order, [~~as to~~] whether the conditionally released person is complying with the conditions of the release."

SECTION 16. Section 706-604, Hawaii Revised Statutes, is amended as follows:

- 1. By amending subsection (2) to read:

"(2) The court shall furnish to the defendant or the defendant's counsel and to the prosecuting attorney a copy of the report of any pre-sentence diagnosis or psychological, psychiatric, or other medical examination and afford fair opportunity,

if the defendant or the prosecuting attorney so requests, to controvert or supplement them. The court shall amend or order the amendment of the report upon finding that any correction, modification, or addition is needed and, where appropriate, shall require the prompt preparation of an amended report in which material required to be deleted is completely removed or other amendments, including additions, are made.”

2. By amending subsection (4) to read:

“(4) If the defendant is sentenced to imprisonment, a copy of the report of any pre-sentence diagnosis or psychological, psychiatric, or other medical examination, which shall incorporate any amendments ordered by the court, shall be transmitted immediately to the department of public safety ~~[or, when the defendant is committed to the custody of a specific institution, to that institution].~~”

SECTION 17. Section 706-605, Hawaii Revised Statutes, is amended to read as follows:

“**§706-605 Authorized disposition of convicted defendants.** (1) Except as provided in parts II and IV ~~[of this chapter]~~ or in section 706-647 and subsections (2), ~~[and] (6), and (7) [of this section]~~, and subject to the applicable provisions of this Code, the court may sentence a convicted defendant to one or more of the following dispositions:

- (a) To be placed on probation as authorized by part II ~~[of this chapter]~~;
- (b) To pay a fine as authorized by part III and section 706-624 ~~[of this chapter]~~;
- (c) To be imprisoned for a term as authorized by part IV ~~[of this chapter]~~;
or
- ~~[(d) To make restitution in an amount the defendant can afford to pay; provided that the court may order any restitution to be paid to victims pursuant to section 706-646 or to the crime victim compensation special fund in the event that the victim has been given an award for compensation under chapter 351 and, if the court orders, in addition to restitution, payment of fine in accordance with paragraph (b), the payment of restitution and a compensation fee shall have priority over the payment of the fine; payment of restitution shall have priority over payment of a compensation fee; or~~
- (e) (d) To perform services for the community under the supervision of a governmental agency or benevolent or charitable organization or other community service group or appropriate supervisor; provided that the convicted person who performs such services shall not be deemed to be an employee of the governmental agency or assigned work site for any purpose. All persons sentenced to perform community service shall be screened and assessed for appropriate placement by a governmental agency coordinating public service work placement as a condition of sentence.

(2) The court shall not sentence a defendant to probation and imprisonment except as authorized by part II ~~[of this chapter]~~.

(3) In addition to any disposition authorized in subsection (1) ~~[of this section]~~, the court may sentence a person convicted of a misdemeanor or petty misdemeanor to a suspended sentence.

(4) The court may sentence a person who has been convicted of a violation to any disposition authorized in subsection (1) ~~[of this section]~~ except imprisonment.

(5) The court shall sentence a corporation or unincorporated association ~~[which] that~~ has been convicted of an offense in accordance with section 706-608.

(6) The court shall impose a compensation fee upon every person convicted of a criminal offense pursuant to section 351-62.6; provided that the court shall waive the imposition of a compensation fee if it finds that the defendant is unable to pay the compensation fee. When a defendant is ordered to make payments in addition to the compensation fee, payments by the defendant shall be made in the following order of priority:

- (a) Restitution;
- (b) Crime victim compensation fee;
- (c) Probation services fee;
- (d) Other fees; and
- (e) Fines.

(7) The court shall order the defendant to make restitution for losses as provided in section 706-646. In ordering restitution, the court shall not consider the defendant's financial ability to make restitution in determining the amount of restitution to order. The court, however, shall consider the defendant's financial ability to make restitution for the purpose of establishing the time and manner of payment.

[(7)] (8) This chapter does not deprive the court of any authority conferred by law to decree a forfeiture of property, suspend or cancel a license, remove a person from office, or impose any other civil penalty. Such a judgment or order may be included in the sentence.”

SECTION 18. Section 706-622.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Notwithstanding section 706-620(3), a person convicted for the first time for any offense under section 329-43.5 involving the possession or use of drug paraphernalia or any felony offense under part IV of chapter 712 involving the possession or use~~[, not including to distribute or manufacture as defined in section 712-1240,] of any dangerous drug, detrimental drug, harmful drug, intoxicating compound, marijuana, or marijuana concentrate, as defined in section 712-1240, [unlawful methamphetamine trafficking as provided in section 712-1240.6, or involving possession or use of drug paraphernalia under section 329-43.5,] but not including any offense under part IV of chapter 712 involving the distribution or manufacture of any such drugs or substances and not including any methamphetamine trafficking offenses under sections 712-A and 712-B, is eligible to be sentenced to probation under subsection (2) if the person meets the following criteria:~~

- (a) The court has determined that the person is nonviolent after reviewing the person's criminal history, the factual circumstances of the offense for which the person is being sentenced, and any other relevant information;
- (b) The person has been assessed by a certified substance abuse counselor to be in need of substance abuse treatment due to dependency or abuse under the applicable Diagnostic and Statistical Manual and Addiction Severity Index; and
- (c) Except for those persons directed to substance abuse treatment under the supervision of the drug court, the person presents a proposal to receive substance abuse treatment in accordance with the treatment plan prepared by a certified substance abuse counselor through a substance abuse treatment program that includes an identified source of payment for the treatment program.”

SECTION 19. Section 706-623, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) When the court has sentenced a defendant to be placed on probation, the period of probation shall be as follows, unless the court enters the reason therefor on the record and sentences the defendant to a shorter period of probation:

- (a) Ten years upon conviction of a class A felony;
- (b) Five years upon conviction of a class B or class C felony;
- (c) One year upon conviction of a misdemeanor; except that upon a conviction under section 586-4, 586-11, or 709-906, the court may sentence the defendant to a period of probation not exceeding two years; or
- (d) Six months upon conviction of a petty misdemeanor[-]; provided that up to one year may be imposed upon a finding of good cause.

The court, on application of a probation officer, on application of the defendant, or on its own motion, may discharge the defendant at any time. Prior to granting early discharge, the court shall afford the prosecuting attorney an opportunity to be heard. The terms of probation provided in this part, other than in this section, shall not apply to sentences of probation imposed under section 706-606.3.”

SECTION 20. Section 706-624, Hawaii Revised Statutes, is amended to read as follows:

“**§706-624 Conditions of probation.** (1) Mandatory conditions. The court shall provide, as an explicit condition of a sentence of probation:

- (a) That the defendant not commit another federal or state crime or engage in criminal conduct in any foreign jurisdiction or under military jurisdiction that would constitute a crime under Hawaii law during the term of probation;
- (b) That the defendant report to a probation officer as directed by the court or the probation officer;
- (c) That the defendant remain within the jurisdiction of the court, unless granted permission to leave by the court or a probation officer;
- (d) That the defendant notify a probation officer prior to any change in address or employment;
- (e) That the defendant notify a probation officer promptly if arrested or questioned by a law enforcement officer; ~~and~~
- (f) That the defendant permit a probation officer to visit the defendant at the defendant’s home or elsewhere as specified by the court[-]; and
- (g) That the defendant make restitution for losses suffered by the victim or victims if the court has ordered restitution pursuant to section 706-646.

(2) Discretionary conditions. The court may provide, as further conditions of a sentence of probation, to the extent that the conditions are reasonably related to the factors set forth in section 706-606 and to the extent that the conditions involve only deprivations of liberty or property as are reasonably necessary for the purposes indicated in section 706-606(2), that the defendant:

- (a) Serve a term of imprisonment not exceeding ~~[one year in felony cases, and not exceeding]~~ two years in class A felony cases under part IV of chapter 712, eighteen months in class B felony cases, one year in class C felony cases, six months in misdemeanor cases[;], and five days in petty misdemeanor cases; provided that notwithstanding any other provision of law, any order of imprisonment under this subsection that provides for prison work release shall require the defendant to pay thirty per cent of the defendant’s gross pay earned during the prison work release period to satisfy any restitution order. The payment shall be handled by the adult probation division and shall be paid to the victim on a monthly basis;

- (b) Perform a specified number of hours of services to the community as described in section ~~[706-605(1)(e);]~~ 706-605(1)(d);
 - (c) Support the defendant's dependents and meet other family responsibilities;
 - (d) Pay a fine imposed pursuant to section 706-605(1)(b);
 - ~~[(e) Make restitution as specified in section 706-605(1)(d);~~
 - ~~(f)~~ (e) Work conscientiously at suitable employment or pursue conscientiously a course of study or vocational training that will equip the defendant for suitable employment;
 - ~~[(g)~~ (f) Refrain from engaging in a specified occupation, business, or profession bearing a reasonably direct relationship to the conduct constituting the crime or engage in the specified occupation, business, or profession only to a stated degree or under stated circumstances;
 - ~~[(h)~~ (g) Refrain from frequenting specified kinds of places or from associating unnecessarily with specified persons, including but not limited to the victim of the crime, any witnesses, regardless of whether they actually testified in the prosecution, law enforcement officers, co-defendants, or other individuals with whom contact may adversely affect the rehabilitation or reformation of the person convicted;
 - ~~[(i)~~ (h) Refrain from use of alcohol or any use of narcotic drugs or controlled substances without a prescription;
 - ~~[(j)~~ (i) Refrain from possessing a firearm, ammunition, destructive device, or other dangerous weapon;
 - ~~[(k)~~ (j) Undergo available medical~~[-, psychiatric, or psychological]~~ or mental health treatment, including treatment for ~~[drug or alcohol]~~ substance abuse dependency, and remain in a specified ~~[institution]~~ facility if required for that purpose;
 - ~~[(l)~~ (k) Reside in a specified place or area or refrain from residing in a specified place or area;
 - ~~[(m)~~ (l) Submit to periodic urinalysis or other similar testing procedure;
 - ~~[(n)~~ Satisfy other reasonable conditions as the court may impose;
 - ~~(o)~~ (m) Refrain from entering specified geographical areas without the court's permission; ~~or~~
 - ~~(p)~~ (n) Refrain from leaving the person's dwelling place except to go to and from the person's place of employment, the office of the person's physician or dentist, the probation office, or ~~[as may be granted]~~ any other location as may be approved by the person's probation officer pursuant to court order. As used in this paragraph, "dwelling place" includes the person's yard or, in the case of condominiums, the common elements~~[-];~~
 - (o) Comply with a specified curfew;
 - (p) Submit to monitoring by an electronic monitoring device; or
 - (q) Satisfy other reasonable conditions as the court may impose.
- (3) Written statement of conditions. The court shall order the defendant at the time of sentencing to sign a written acknowledgement of receipt of conditions of probation. The defendant shall be given a written copy of any requirements imposed pursuant to this section, stated with sufficient specificity to enable the defendant to [guide the defendant's self] comply with the conditions accordingly."

SECTION 21. Section 706-643, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) The defendant shall pay a fine or any installment thereof to the cashier or clerk of the [sentencing] district or circuit court. In the event of default in

payment, the clerk shall notify the prosecuting attorney and, if the defendant is on probation, the probation officer.”

SECTION 22. Section 706-646, Hawaii Revised Statutes, is amended by amending subsections (2) and (3) to read as follows:

“(2) The court [may] shall order the defendant to make restitution for reasonable and verified losses suffered by the victim or victims as a result of the defendant’s offense[.] when requested by the victim. The court [may] shall order restitution to be paid to the crime victim compensation commission in the event that the victim has been given an award for compensation under chapter 351. If the court orders payment of a fine in addition to restitution or a compensation fee, or both, the payment of restitution and compensation fee shall have priority over the payment of the fine, and payment of restitution shall have priority over payment of a compensation fee.

(3) In ordering restitution, the court shall not consider the defendant’s financial ability to make restitution in determining the amount of restitution to order. The court, however, shall consider the defendant’s financial ability to make restitution for the purpose of establishing the time and manner of payment. The court shall specify the time and manner in which restitution is to be paid. Restitution shall be a dollar amount that is sufficient to reimburse any victim fully for losses, including but not limited to:

- (a) Full value of stolen or damaged property, as determined by replacement costs of like property, or the actual or estimated cost of repair, if repair is possible;
- (b) Medical expenses; and
- (c) Funeral and burial expenses incurred as a result of the crime.”

SECTION 23. Section 706-661, Hawaii Revised Statutes, is amended to read as follows:

“~~§706-661 [Sentence of imprisonment for felony; extended]~~ **Extended terms[.] of imprisonment.** ~~[In the cases designated in section 706-662,] The court may sentence a person who [has been convicted of a felony may be sentenced] satisfies the criteria for any of the categories set forth in section 706-662 to an extended [indeterminate] term of imprisonment[. When ordering such a sentence, the court shall impose the maximum length of imprisonment which shall be as follows:], which shall have a maximum length as follows:~~

- (1) For murder in the second degree—life without the possibility of parole;
- (2) For a class A felony—indeterminate life term of imprisonment;
- (3) For a class B felony—indeterminate twenty-year term of imprisonment; and
- (4) For a class C felony—indeterminate ten-year term of imprisonment.

In exercising its discretion on whether to impose the extended term of imprisonment or to use other available sentencing options, the court shall consider whether the extended term is necessary for the protection of the public and whether the extended term is necessary in light of the other factors set forth in section 706-606.

When ordering an extended term sentence, the court shall impose the maximum length of imprisonment. The minimum length of imprisonment for an extended term sentence under [{}paragraphs{}] (2), (3), and (4) shall be determined by the Hawaii paroling authority in accordance with section 706-669.”

SECTION 24. 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] who has been convicted of a felony qualifies for 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~~] in that 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~~] in that:
 - (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~~] in that 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~~] in that:
 - (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~~] in that:
 - (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~~[-];~~ or
- (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:]~~ in that:
 - (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.”

SECTION 25. Section 706-667, Hawaii Revised Statutes, is amended to read as follows:

“§706-667 Young adult defendants. (1) Defined. A young adult defendant is a person convicted of a crime who, at the time of ~~[sentencing,]~~ the offense, is less than twenty-two years of age and who has not been previously convicted of a felony as an adult or adjudicated as a juvenile for an offense that would have constituted a felony had the young adult defendant been an adult.

(2) Specialized correctional treatment. A young adult defendant who is sentenced to a term of imprisonment ~~[which may exceed]~~ exceeding thirty days may be committed by the court to the custody of the department of public safety~~[-]~~ and shall receive, as far as practicable, such special and individualized correctional and rehabilitative treatment as may be appropriate to the young adult defendant’s needs.

(3) Special term. A young adult defendant convicted of a felony ~~[may]~~, in lieu of any other sentence of imprisonment authorized by this chapter, may be sentenced to a special indeterminate term of imprisonment if the court is of the opinion that such special term is adequate for the young adult defendant’s correction and rehabilitation and will not jeopardize the protection of the public. When ordering a special indeterminate term of imprisonment, the court shall impose the maximum length of imprisonment, which shall be eight years for a class A felony, five years for a class B felony, and four years for a class C felony. The minimum length of imprisonment shall be set by the Hawaii paroling authority in accordance with section 706-669. During this special indeterminate term, the young adult ~~[will]~~ shall be incarcerated separately from career criminals, when practicable.

This section shall not apply to the offenses of murder or attempted murder.”

SECTION 26. Section 707-700, Hawaii Revised Statutes, is amended by amending the definition of “mentally incapacitated” and “sexual penetration” to read:

““Mentally incapacitated” means a person rendered temporarily incapable of appraising or controlling the person’s conduct ~~[owing to]~~ as a result of the influence of a substance administered to the person without the person’s consent.

“Sexual penetration” means:

- (1) Vaginal intercourse, anal intercourse, fellatio, deviate sexual intercourse, or any intrusion of any part of a person's body or of any object into the genital or anal opening of another person's body; it occurs upon any penetration, however slight, but emission is not required~~;~~. As used in this definition, "genital opening" includes the anterior surface of the vulva or labia majora; or
- (2) Cunnilingus or anilingus, whether or not actual penetration has occurred.

For purposes of this chapter, each act of sexual penetration shall constitute a separate offense."

SECTION 27. Section 707-701, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of murder in the first degree if the person intentionally or knowingly causes the death of:

- (a) More than one person in the same or separate incident;
- (b) A law enforcement officer, judge, or prosecutor arising out of the performance of official duties;
- (c) A person known by the defendant to be a witness in a criminal prosecution~~;~~ and the killing is related to the person's status as a witness;
- (d) A person by a hired killer, in which event both the person hired and the person responsible for hiring the killer shall be punished under this section; or
- (e) A person while the defendant was imprisoned."

SECTION 28. Section 707-702, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of manslaughter if:

- (a) ~~[He]~~ The person recklessly causes the death of another person; or
- (b) ~~[He]~~ The person intentionally causes another person to commit suicide."

SECTION 29. Section 707-711, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of assault in the second degree if:

- (a) The person intentionally or knowingly causes substantial bodily injury to another;
- (b) The person recklessly causes serious or substantial bodily injury to another person;
- (c) The person intentionally or knowingly causes bodily injury to a correctional worker, as defined in section 710-1031(2), who is engaged in the performance of duty or who is within a correctional facility;
- (d) The person intentionally or knowingly causes bodily injury to another person with a dangerous instrument; or
- (e) The person intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this ~~[section,]~~ paragraph, "educational worker" means: any administrator, specialist, counselor, teacher, or employee of the department of education~~[-or]~~; a person who is a volunteer in a school program, activity, or function that is established, sanctioned, or approved by the department of education;

or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function.”

SECTION 30. Section 707-714, Hawaii Revised Statutes, is amended to read as follows:

“**§707-714 Reckless endangering in the second degree.** (1) A person commits the offense of reckless endangering in the second degree if the person ~~engages~~:

(a) Engages in conduct [which] that recklessly places another person in danger of death or serious bodily injury[-:]; or

~~[(2) For the purposes of this section and in addition to other applications, a person engages in conduct which recklessly places another person in danger of death or serious bodily injury when that person intentionally]~~

(b) Intentionally discharges a firearm in a populated area, in a residential area, or within the boundaries or in the direction of any road, street, or highway; provided that the provisions of this paragraph shall not apply to any person who discharges a firearm upon a target range for the purpose of the target shooting done in compliance with all laws and regulations applicable thereto.

~~[(3)]~~ (2) Reckless endangering in the second degree is a misdemeanor.”

SECTION 31. Section 707-716, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of terroristic threatening in the first degree if the person commits terroristic threatening:

(a) By threatening another person on more than one occasion for the same or a similar purpose; [or]

(b) By threats made in a common scheme against different persons; [or]

(c) Against a public servant[-, including] arising out of the performance of the public servant’s official duties. For the purposes of this paragraph, “public servant” includes but is not limited to an educational worker[-, who for the purposes of this section shall mean an administrator, specialist, counselor, teacher, or other employee of the department of education, or a volunteer as defined by section 90-1, in a school program, activity, or function that is established, sanctioned, or approved by the department of education, or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function; or]. “Educational worker” has the same meaning as defined in section 707-711; or

(d) With the use of a dangerous instrument.”

SECTION 32. Section 707-730, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of sexual assault in the first degree if:

(a) The person knowingly subjects another person to an act of sexual penetration by strong compulsion;

(b) The person knowingly engages in sexual penetration with another person who is less than fourteen years old; [or]

(c) The person knowingly engages in sexual penetration with a person who is at least fourteen years old but less than sixteen years old; provided that:

(i) The person is not less than five years older than the minor; and

- (ii) The person is not legally married to the minor[-];
- (d) The person knowingly subjects to sexual penetration another person who is mentally defective; or
- (e) The person knowingly subjects to sexual penetration another person who is mentally incapacitated or physically helpless as a result of the influence of a substance that the actor knowingly caused to be administered to the other person without the other person's consent.

Paragraphs (b) and (c) shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices.’’

SECTION 33. Section 707-731, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

- “(1) A person commits the offense of sexual assault in the second degree if:
- (a) The person knowingly subjects another person to an act of sexual penetration by compulsion;
 - (b) The person knowingly subjects to sexual penetration another person who is [~~mentally defective,~~] mentally incapacitated[;] or physically helpless; or
 - (c) The person, while employed:
 - (i) In a state correctional facility;
 - (ii) By a private company providing services at a correctional facility;
 - (iii) By a private company providing community-based residential services to persons committed to the director of public safety and having received notice of this statute;
 - (iv) By a private correctional facility operating in the State of Hawaii; or
 - (v) As a law enforcement officer as defined in section 710-1000(13), knowingly subjects to sexual penetration an imprisoned person, a person confined to a detention facility, a person committed to the director of public safety, a person residing in a private correctional facility operating in the State of Hawaii, or a person in custody; provided that paragraph (b) and this paragraph shall not be construed to prohibit practitioners licensed under chapter 453, 455, or 460, from performing any act within their respective practices; and further provided that this paragraph shall not be construed to prohibit a law enforcement officer from performing a lawful search pursuant to a warrant or exception to the warrant clause.’’

SECTION 34. Section 708-801, Hawaii Revised Statutes, is amended to read as follows:

“**§708-801 Valuation of property[-] or services.** Whenever the value of property or services is determinative of the class or grade of an offense, or otherwise relevant to a prosecution, the following shall apply:

- (1) Except as otherwise specified in this section, value means the market value of the property or services at the time and place of the offense, or the replacement cost ~~[[if[]]]~~ the market value of the property or services cannot be determined.
- (2) Whether or not they have been issued or delivered, certain written instruments, not including those having a readily ascertained market value, shall be evaluated as follows:

- (a) The value of an instrument constituting an evidence of debt, such as a check, traveler's check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof [~~which~~] that has been satisfied;
 - (b) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss [~~which~~] that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.
- (3) When property [~~has~~] or services have value but that value cannot be ascertained pursuant to the standards set forth above, the value shall be deemed to be an amount not exceeding \$100.
 - (4) When acting intentionally or knowingly with respect to the value of property or services is required to establish an element of an offense, the value of property or services shall be prima facie evidence that the defendant believed or knew the property or services to be of that value. When acting recklessly with respect to the value of property or services is sufficient to establish an element of an offense, the value of the property or services shall be prima facie evidence that the defendant acted in reckless disregard of the value.
 - (5) When acting intentionally or knowingly with respect to the value of property or services is required to establish an element of an offense, it is a defense, which reduces the class or grade of the offense to a class or grade of offense consistent with the defendant's state of mind, that the defendant believed the valuation of the property or services to be less. When acting recklessly with respect to the value of property or services is required to establish an element of an offense, it is a defense that the defendant did not recklessly disregard a risk that the property was of the specified value.
 - (6) Amounts involved in thefts committed pursuant to one scheme or course of conduct, whether the property taken be of one person or several persons, may be aggregated in determining the class or grade of the offense. Amounts involved in offenses of criminal property damage committed pursuant to one scheme or course of conduct, whether the property damaged be of one person or several persons, may be aggregated in determining the class or grade of the offense."

SECTION 35. Section 708-822, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of criminal property damage in the third degree if:

- (a) The person recklessly 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 \$500."

SECTION 36. Section 708-823, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

"(1) A person commits the offense of criminal property damage in the fourth degree if the person intentionally or knowingly damages the property of another without the other's consent."

SECTION 37. Section 708-830, Hawaii Revised Statutes, is amended to read as follows:

“§708-830 **Theft.** A person commits theft if the person does any of the following:

- (1) Obtains or exerts unauthorized control over property. A person obtains^[.] or exerts unauthorized control over^[.] the property of another with intent to deprive the other of the property.
- (2) Property obtained or control exerted through deception. A person obtains, or exerts control over, the property of another by deception with intent to deprive the other of the property.
- (3) Appropriation of property. A person obtains, or exerts control over, the property of another that the person knows to have been lost or mislaid or to have been delivered under a mistake as to the nature or amount of the property, the identity of the recipient, or other facts, and, with the intent to deprive the owner of the property, the person fails to take reasonable measures to discover and notify the owner.
- (4) Obtaining services by deception. A person intentionally obtains services, known by the person to be available only for compensation, by deception, false token, or other means to avoid payment for the services. When compensation for services is ordinarily paid immediately upon the rendering of them, absconding without payment or offer to pay is prima facie evidence that the services were obtained by deception.
- (5) Diversion of services. Having control over the disposition of services of another to which a person is not entitled, the person intentionally diverts those services to the person’s own benefit or to the benefit of a person not entitled thereto.
- (6) Failure to make required disposition of funds.
 - (a) A person intentionally obtains property from anyone upon an agreement, or subject to a known legal obligation, to make specified payment or other disposition, whether from the property or its proceeds or from the person’s own property reserved in equivalent amount, and deals with the property as the person’s own and fails to make the required payment or disposition. It does not matter that it is impossible to identify particular property as belonging to the victim at the time of the defendant’s failure to make the required payment or disposition. A person’s status as an officer or employee of the government or a financial institution is prima facie evidence that the person knows the person’s legal obligations with respect to making payments and other dispositions. If the officer or employee fails to pay or account upon lawful demand, or if an audit reveals a falsification of accounts, it shall be prima facie evidence that the officer or employee has intentionally dealt with the property as the officer’s or employee’s own.
 - (b) A person obtains personal services from an employee upon agreement or subject to a known legal obligation to make a payment or other disposition of funds to a third person on account of the employment, and the person intentionally fails to make the payment or disposition at the proper time.
- (7) Receiving stolen property. A person intentionally receives, retains, or disposes of the property of another, knowing that it has been stolen, with intent to deprive the owner of the property. It is prima facie

evidence that a person knows the property to have been stolen if, being a dealer in property of the sort received, the person acquires the property for a consideration that the person knows is far below its reasonable value.

(8) Shoplifting.

- (a) A person conceals or takes possession of the goods or merchandise of any store or retail establishment, with intent to defraud.
- (b) A person alters the price tag or other price marking on goods or merchandise of any store or retail establishment, with intent to defraud.
- (c) A person transfers the goods or merchandise of any store or retail establishment from one container to another, with intent to defraud.

The unaltered price or name tag or other marking on goods or merchandise, duly identified photographs or photocopies thereof, or printed register receipts[,] shall be prima facie evidence of value and ownership of such goods or merchandise. Photographs of the goods or merchandise involved, duly identified in writing by the arresting police officer as accurately representing such goods or merchandise, shall be deemed competent evidence of the goods or merchandise involved and shall be admissible in any proceedings, hearings, and trials for shoplifting[,] to the same extent as the goods or merchandise themselves.”

SECTION 38. Section 708-832, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of theft in the third degree if the person commits theft:

- (a) Of property or services the value of which exceeds \$100; or
- (b) Of gasoline, diesel fuel, or other related petroleum products used as propellants of any value not exceeding [~~\$200.~~] \$300.”

SECTION 39. Section 708-835.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of theft of livestock if the person commits theft by [~~having~~]:

- (a) Having in the person’s possession a live animal of the bovine, equine, swine, [~~or~~] sheep, or goat species, or its carcass or meat, while in or upon premises [~~which~~] that the person knowingly entered or remained unlawfully in or upon, and [~~which~~] that are fenced or enclosed in a manner designed to exclude intruders[.]; or [~~by having~~]
- (b) Having in the person’s possession a live animal, carcass, or meat in any other location.”

SECTION 40. Section 708-836.5, Hawaii Revised Statutes, is amended to read as follows:

“[~~§708-836.5~~] **Unauthorized entry into motor vehicle[.] in the first degree.** (1) A person commits the offense of unauthorized entry into motor vehicle in the first degree if the person intentionally or knowingly enters or remains unlawfully in a motor vehicle, without being invited, licensed, or otherwise authorized to enter or remain within the vehicle, with the intent to commit a crime against a person or against property rights.

(2) Unauthorized entry into motor vehicle in the first degree is a class C felony.”

SECTION 41. Section 708-840, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of robbery in the first degree if, in the course of committing theft[;] or non-consensual taking of a motor vehicle:

- (a) The person attempts to kill another[;] or intentionally or knowingly inflicts or attempts to inflict serious bodily injury upon another; or
- (b) The person is armed with a dangerous instrument and:
 - (i) The person uses force against the person of anyone present with intent to overcome that person’s physical resistance or physical power of resistance; or
 - (ii) The person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property.”

SECTION 42. Section 708-841, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of robbery in the second degree if, in the course of committing theft[;] or non-consensual taking of a motor vehicle:

- (a) The person uses force against the person of anyone present with the intent to overcome that person’s physical resistance or physical power of resistance;
- (b) The person threatens the imminent use of force against the person of anyone who is present with intent to compel acquiescence to the taking of or escaping with the property; or
- (c) The person recklessly inflicts serious bodily injury upon another.”

SECTION 43. Section 708-842, Hawaii Revised Statutes, is amended to read as follows:

“**§708-842 Robbery; “in the course of committing a theft.”** An act shall be deemed “in the course of committing a theft or non-consensual taking of a motor vehicle” if it occurs in an attempt to commit theft[;] or non-consensual taking of a motor vehicle, in the commission of theft[;] or non-consensual taking of a motor vehicle, or in the flight after the attempt or commission.”

SECTION 44. Section 708-8100, Hawaii Revised Statutes, is amended by amending subsection (2) to read as follows:

“(2) Fraudulent use of a credit card is a class C felony if the value of all money, goods, services, and other things of value obtained or attempted to be obtained exceeds \$300 in any six-month period. For purposes of this section, each separate use of a credit card that exceeds \$300 constitutes a separate offense.”

SECTION 45. Section 709-904, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) Endangering the welfare of a minor in the second degree is a misdemeanor.”

SECTION 46. Section 709-906, Hawaii Revised Statutes, is amended to read as follows:

“§709-906 Abuse of family or household members; penalty. (1) It shall be unlawful for any person, singly or in concert, to physically abuse a family or household member or to refuse compliance with the lawful order of a police officer under subsection (4). The police, in investigating any complaint of abuse of a family or household member, upon request, may transport the abused person to a hospital or safe shelter.

For the purposes of this section, “family or household member” means spouses or reciprocal beneficiaries, former spouses or reciprocal beneficiaries, persons who have a child in common, parents, children, persons related by consanguinity, and persons jointly residing or formerly residing in the same dwelling unit.

(2) Any police officer, with or without a warrant, may arrest a person if the officer has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member and that the person arrested is guilty thereof.

(3) A police officer who has reasonable grounds to believe that the person is physically abusing, or has physically abused, a family or household member shall prepare a written report.

(4) Any police officer, with or without a warrant, may take the following course of action where the officer has reasonable grounds to believe that there was physical abuse or harm inflicted by one person upon a family or household member, regardless of whether the physical abuse or harm occurred in the officer’s presence:

- (a) The police officer may make reasonable inquiry of the family or household member upon whom the officer believes physical abuse or harm has been inflicted and other witnesses as there may be;
- (b) Where the police officer has reasonable grounds to believe that there is probable danger of further physical abuse or harm being inflicted by one person upon a family or household member, the police officer lawfully may order the person to leave the premises for a period of separation of twenty-four hours, during which time the person shall not initiate any contact, either by telephone or in person, with the family or household member; provided that the person is allowed to enter the premises with police escort to collect any necessary personal effects;
- (c) Where the police officer makes the finding referred to in paragraph (b) and the incident occurs after 12:00 p.m. on any Friday, or on any Saturday, Sunday, or legal holiday, the order to leave the premises and to initiate no further contact shall commence immediately and be in full force, but the twenty-four hour period shall be enlarged and extended until 4:30 p.m. on the first day following the weekend or legal holiday;
- (d) All persons who are ordered to leave as stated above shall be given a written warning citation stating the date, time, and location of the warning and stating the penalties for violating the warning. A copy of the warning citation shall be retained by the police officer and attached to a written report which shall be submitted in all cases. A third copy of the warning citation shall be given to the abused person;
- (e) If the person so ordered refuses to comply with the order to leave the premises or returns to the premises before the expiration of the period of separation, or if the person so ordered initiates any contact with the abused person, the person shall be placed under arrest for the purpose of preventing further physical abuse or harm to the family or household member; and
- (f) The police officer may seize all firearms and ammunition that the police officer has reasonable grounds to believe were used or threatened to be used in the commission of an offense under this section.

(5) Abuse of a family or household member and refusal to comply with the lawful order of a police officer under subsection (4) are misdemeanors and the person shall be sentenced as follows:

- (a) For the first offense the person shall serve a minimum jail sentence of forty-eight hours; and
- (b) For a second offense that occurs within one year of the first conviction, the person shall be termed a "repeat offender" and serve a minimum jail sentence of thirty days.

Upon conviction and sentencing of the defendant, the court shall order that the defendant immediately be incarcerated to serve the mandatory minimum sentence imposed; provided that the defendant may be admitted to bail pending appeal pursuant to chapter 804. The court may stay the imposition of the sentence if special circumstances exist.

(6) Whenever a court sentences a person pursuant to subsection (5), it also shall require that the offender undergo any available domestic violence intervention programs ordered by the court. However, the court may suspend any portion of a jail sentence, except for the mandatory sentences under subsection (5)(a) and (b), upon the condition that the defendant remain arrest-free and conviction-free or complete court-ordered intervention.

(7) For a third or any subsequent offense that occurs within two years of a second or subsequent conviction, the person offense shall be charged with a class C felony.

(8) Where the physical abuse consists of intentionally or knowingly impeding the normal breathing or circulation of the blood of the family or household member by applying pressure on the throat or the neck, abuse of a family or household member is a class C felony.

~~(8)~~ (9) Any police officer who arrests a person pursuant to this section shall not be subject to any civil or criminal liability; provided that the police officer acts in good faith, upon reasonable belief, and does not exercise unreasonable force in effecting the arrest.

~~(9)~~ (10) The family or household member who has been physically abused or harmed by another person may petition the family court, with the assistance of the prosecuting attorney of the applicable county, for a penal summons or arrest warrant to issue forthwith or may file a criminal complaint through the prosecuting attorney of the applicable county.

~~(10)~~ (11) The respondent shall be taken into custody and brought before the family court at the first possible opportunity. The court may dismiss the petition or hold the respondent in custody, subject to bail. Where the petition is not dismissed, a hearing shall be set.

~~(11)~~ (12) This section shall not operate as a bar against prosecution under any other section of this Code in lieu of prosecution for abuse of a family or household member.

~~(12)~~ (13) It shall be the duty of the prosecuting attorney of the applicable county to assist any victim under this section in the preparation of the penal summons or arrest warrant.

~~(13)~~ (14) This section shall not preclude the physically abused or harmed family or household member from pursuing any other remedy under law or in equity.

~~(14)~~ (15) When a person is ordered by the court to undergo any domestic violence intervention, that person shall provide adequate proof of compliance with the court's order. The court shall order a subsequent hearing at which the person is required to make an appearance, on a date certain, to determine whether the person has completed the ordered domestic violence intervention. The court may waive the subsequent hearing and appearance where a court officer has established that the person has completed the intervention ordered by the court."

SECTION 47. Section 710-1040, Hawaii Revised Statutes, is amended to read as follows:

“**§710-1040 Bribery.** (1) A person commits the offense of bribery if:

- (a) The person confers, or offers or agrees to confer, directly or indirectly, any pecuniary benefit upon a public servant with the intent to influence the public servant’s vote, opinion, judgment, exercise of discretion, or other action in the public servant’s official capacity; or
- (b) While a public servant, the person solicits, accepts, or agrees to accept, directly or indirectly, any pecuniary benefit with the intent that the person’s vote, opinion, judgment, exercise of discretion, or other action as a public servant will thereby be influenced.

(2) It is a defense to a prosecution under subsection (1) that the accused conferred or agreed to confer the pecuniary benefit as a result of extortion or coercion.

(3) For purposes of this section, “public servant” includes in addition to persons who occupy the position of public servant as defined in section 710-1000(15), persons who have been elected, appointed, or designated to become a public servant although not yet occupying that position.

(4) Bribery is a class [C] B felony. A person convicted of violating this section, notwithstanding any law to the contrary, shall not be eligible for a deferred acceptance of guilty plea or nolo contendere plea under chapter 853.’’

SECTION 48. Section 711-1111, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(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;
- (b) Peers or peeps into a window or other opening of a dwelling or other structure adapted for sojourn or overnight accommodations for the purpose of spying on the occupant thereof or invading the privacy of another person with a lewd or unlawful purpose, under circumstances in which a reasonable person in the dwelling or other structure would not expect to be observed;
- (c) Trespasses on property for the sexual gratification of the actor;
- [(b)] (d) Installs or uses, or both, in any private place, without consent of the person or persons entitled to privacy therein, any means or device for observing, recording, amplifying, or broadcasting sounds or events in that place [other than], including another person in a stage of undress or sexual activity;
- [(e)] (e) 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;
- [(d)] (f) Covertly records or broadcasts an image of another person’s intimate area underneath clothing, by use of any device, and that image is taken while that person is in a public place and without that person’s consent;
- [(e)] (g) Intercepts, without the consent of the sender or receiver, a message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately; but this paragraph 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;
- [(f)] (h) Divulges, without the consent of the sender or the receiver, the existence or contents of any message or photographic image by telephone, telegraph, letter, electronic transmission, or other means of communicating privately, if the accused knows that the message or photographic image was unlawfully intercepted or if the accused learned of the message or photographic image in the course of employment with an agency engaged in transmitting it; or
- [(g)] (i) Knowingly possesses materials created under circumstances prohibited in section 711-1110.9.”

SECTION 49. Section 712-1241, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) A person commits the offense of promoting a dangerous drug in the first degree if the person knowingly:

- (a) Possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (i) One ounce or more, containing [~~methamphetamine,~~] heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
 - (ii) One and one-half ounce or more, containing one or more of any of the other dangerous drugs[;] ~~except methamphetamine;~~ or
- (b) Distributes, except for methamphetamine [~~as provided in section 712-1240.6~~]:
 - (i) Twenty-five or more capsules, tablets, ampules, dosage units, or syrettes containing one or more dangerous drugs; or
 - (ii) One or more preparations, compounds, mixtures, or substances of an aggregate weight of:
 - (A) One-eighth ounce or more, containing heroin, morphine, or cocaine or any of their respective salts, isomers, and salts of isomers; or
 - (B) Three-eighths ounce or more, containing any other dangerous drug;
- (c) Distributes any dangerous drug in any amount to a minor except for methamphetamine [~~as provided in section 712-1240.6~~]; or
- (d) Manufactures a dangerous drug in any amount, except for methamphetamine [~~as provided in section 712-1240.6~~]; provided that this subsection shall not apply to any person registered under section 329-32.”

SECTION 50. Section 712-1240.6, Hawaii Revised Statutes, is repealed.

SECTION 51. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 52. 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 53. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 54. This Act shall take effect upon its approval; provided that on June 30, 2007, sections 23 and 24 of this Act shall be repealed and sections 706-661 and 706-662, Hawaii Revised Statutes, shall be reenacted in the form in which they read on the day before the effective date of this Act.

(Approved June 22, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 231

S.B. NO. 3105

A Bill for an Act Relating to Deposit Beverage Container Program.

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

SECTION 1. Section 342G-102.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§342G-102.5]~~ **Reverse vending machine rebate program; standards.** (a) The department shall provide a rebate~~[, not to exceed \$3,000,000 in the aggregate in any fiscal year,]~~ of fifty per cent of the actual cost of [purchasing a] each reverse vending machine, including shipping and general excise tax, purchased by a [dealer:] person:

- (1) ~~[That is a certified redemption center and that]~~ That agrees to maintain operations as a certified redemption center for a minimum period of two years; or
- (2) That is serviced by a recycler that is a certified redemption center~~[: provided that the dealer]; and~~
- (3) That has entered into a service agreement with the recycler for a minimum period of two years~~[-];~~

provided that rebates shall not exceed \$3,000,000 in the aggregate in any fiscal year.

(b) ~~[The]~~ A rebate provided under this section shall be granted for a reverse vending [machines] machine that:

- (1) ~~[Are]~~ Is installed and operational by December 31, ~~[2005;]~~ 2007;
- ~~[2] Are located on the dealer's premises;~~
- ~~[3] Are]~~ (2) Is accessible to the general public; and
- ~~[4] Tender]~~ (3) Tenders vouchers or receipts for the returned containers that are redeemable by the ~~[dealer] person~~ at a location on the ~~[dealer's] person's~~ premises that is accessible to the general public.

~~[(c) Each dealer may receive a rebate of not more than:~~

- ~~(1) \$30,000 per retail site over five thousand square feet but less than ten thousand square feet;~~
- ~~(2) \$60,000 per retail site over ten thousand square feet but less than seventy-five thousand square feet; or~~
- ~~(3) \$90,000 per retail site over seventy-five thousand square feet.~~

~~(d) Prior to the purchase of a reverse vending machine, an]~~ (c) An application for a rebate shall be made to the department on forms provided by the department to certify eligibility for a rebate. The application shall contain information determined by the department to be required~~[: provided that at a minimum, the application shall require the applicant to provide the following¹], including:~~

ACT 231

- (1) The applicant's name;
- (2) The location where each reverse vending machine will be installed and operated;
- (3) A projection of the number of customers expected to use each reverse vending machine;
- (4) The requested rebate amount;
- (5) Proof of certification of the applicant's redemption center or, in the case of a [dealer] person that is serviced by a recycler, the executed service agreement between the recycler and [dealer;] the person; and
- (6) The projected installation date of each reverse vending machine.

~~[(e)]~~ (d) ~~The [dealer or recycler] person or contracted recycler providing the certified redemption service shall comply with all rules of the department. [If any dealer or recycler is] A person or contracted recycler found by the department to be not in compliance with the department's rules[; the dealer]~~ shall reimburse the department for the full amount of the rebate. The department may institute an action pursuant to chapter 91 to recover any rebate paid under this section if the [dealer;] person, or the recycler that has a contract with the [dealer] person to service the reverse vending machine, fails to comply with the requirements of this part or any rule adopted pursuant to it.

~~[(f)]~~ (e) Amounts received under this section shall not be treated as income for purposes of chapter 235 or gross proceeds or gross income for purposes of chapter 237.

~~[(g)]~~ (f) A reverse vending machine shall not be considered a depreciable asset and no person may claim depreciation therefor, at least to the extent that the reverse vending machine has been purchased with rebate funds.

~~[(h)]~~ (g) ~~Any [dealer participating in the rebate program shall not be eligible to participate in the] person receiving funding to cover the cost of purchase for reverse vending machines through the redemption center and recycling infrastructure improvement program under section 342G-114.5[;] shall not be eligible for this rebate.~~

~~[(i)]~~ (h) The director shall include in the deposit beverage container program annual report to the legislature, a report on the reverse vending machine rebate program."

SECTION 2. Act 228, Session Laws of Hawaii 2005, is amended by amending section 6 to read as follows:

- “SECTION 6. This Act shall take effect upon its approval; provided that:
- (1) This Act shall be repealed on ~~[June 30, 2006;] June 30, 2009,~~ and section 342G-104, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act; and
 - (2) Any action initiated by the department of health pursuant to section 342G-A(e), Hawaii Revised Statutes, shall be allowed to continue until final resolution of the action is achieved.”

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, 2006.

(Approved June 23, 2006.)

Note

1. Prior to amendment “:” appeared here.

ACT 232

S.B. NO. 2188

A Bill for an Act Relating to a Commission on Fatherhood.

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

SECTION 1. Act 156, Session Laws of Hawaii 2003, as amended by Act 148, Session Laws of Hawaii 2005, is amended by amending section 2 to read as follows:

“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 department of human services 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,~~ director of public safety, 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 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 23, 2006.)

ACT 233

H.B. NO. 2179

A Bill for an Act Relating to Agriculture.

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

SECTION 1. Chapter 167, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§167- Irrigation repair and maintenance special fund. (a) There is established in the state treasury the irrigation repair and maintenance special fund that shall be administered by the board.

(b) Moneys in the irrigation repair and maintenance special fund shall be used to fund repair and maintenance of the following irrigation systems:

- (1) East Kauai irrigation system;
- (2) Kekaha ditch;
- (3) Kokee ditch;
- (4) Maui Land/Pioneer Mill irrigation system;
- (5) Waiahole ditch;
- (6) Lower Hamakua irrigation system;
- (7) Molokai irrigation system;
- (8) Upcountry Maui irrigation system;
- (9) Waimanalo irrigation system;
- (10) Waimea irrigation system;
- (11) East Maui irrigation system;
- (12) Kauai coffee irrigation system;
- (13) West Maui irrigation system;
- (14) Kau irrigation system;
- (15) Honomalino irrigation system;
- (16) Wahiawa reservoir and ditch system; and
- (17) Other privately-owned irrigation systems on former sugarcane and pineapple plantation lands that have been converted to diversified agriculture.

(c) The irrigation repair and maintenance special fund shall be funded by legislative appropriations, including general obligation bond funds and federal funds.

(d) Landowners may apply for funding assistance from the irrigation repair and maintenance special fund; provided that the landowner:

- (1) Provides matching funding equal to the amount received from the irrigation repair and maintenance special fund;
- (2) Agrees to file a petition for declaratory ruling pursuant to section 205-45 designating a majority of all land served by the water produced by the irrigation system as important agricultural lands as defined under section 205-42 and notifies the board and county of the petition and designation for the purpose of inclusion on maps; and

- (3) Agrees to use, or provide for the use of, all lands owned or controlled by the landowner and served by the water produced by the irrigation system for agricultural production.

The board shall develop processes, policies, standards, and criteria for selecting the landowners that are to receive funding and the amount of such funding. The board shall also develop processes, policies, standards, and criteria for determining the amount of funding provided to irrigation systems in subsection (b) owned by the State.

(e) As used in this section:

“Diversified agriculture” means agricultural operations that produce diversified agricultural products, including flowers, nursery products, vegetables, herbs, melons, seed crops, macadamia nuts, aquaculture, coffee, milk, cattle, eggs, hogs, and fruit.

“Irrigation system” means the agricultural system of intakes, diversions, wells, ditches, siphons, pipes, reservoirs, and accessory facilities established to provide water for agricultural production.

“Landowner” means a private entity that:

- (1) Owns agricultural land, formerly used as a sugarcane or pineapple plantation, that contains a privately-owned irrigation system that is necessary for the sustained production of diversified agriculture on the land served by the irrigation system; or
- (2) Owns, or partially owns, an irrigation system listed in subsection (b)(1) through (17).”

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Vocational agriculture education program. (a) The department shall establish and administer a vocational agriculture education program. The program shall include adequate staffing of individuals trained or experienced in the field of vocational agriculture to coordinate the program and to provide assistance to school districts for the coordination of the activities of student agricultural organizations and associations.

(b) The vocational agriculture education program shall be administered by a director who shall:

- (1) Assess the agricultural needs of the state and devise methods of meeting those needs with the vocational agriculture education program;
- (2) Assist school districts in establishing vocational agriculture programs;
- (3) Review school district applications for approval of vocational agriculture programs;
- (4) Evaluate existing programs;
- (5) Plan research and studies for the improvement of curriculum materials for specialty areas of vocational agriculture;
- (6) Ensure that the standards and criteria developed under this section satisfy the mandates of federally-assisted vocational education;
- (7) Develop in-service programs for teachers and administrators of vocational agriculture;
- (8) Review applications for vocational agriculture teacher certification;
- (9) Assist in teacher recruitment and placement in vocational agriculture programs;
- (10) Serve as a liaison with the Future Farmers of America, representatives of business, industry, appropriate public agencies, and institutions of higher education to facilitate dissemination of information;
- (11) Promote improvement of vocational agriculture programs;

- (12) Assist in the development of adult and continuing education programs in vocational agriculture; and
- (13) Establish an advisory task force of agriculturists, who represent the diverse areas of the agricultural industry in the state, that shall make annual recommendations on the development of curriculum, staffing, and strategies to establish a source of trained and qualified individuals in agriculture and strategies for developing the state program in vocational agriculture education, including youth leadership throughout the public schools.

(c) The department may adopt rules pursuant to chapter 91 to effectuate this section.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000 or so much thereof as may be necessary for fiscal year 2006-2007 to be deposited into the irrigation repair and maintenance special fund and used for the repair and maintenance of the irrigation systems specified under section 167- (b), Hawaii Revised Statutes; provided that \$1,500,000 in federal matching funds are also deposited into the irrigation repair and maintenance special fund.

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 irrigation repair and maintenance special fund the sum of \$3,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 to be expended for the repair and maintenance of the irrigation systems specified under section 167- (b), Hawaii Revised Statutes.

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

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$11,886,000 or so much thereof as may be necessary for fiscal year 2006-2007 for repair and maintenance of irrigation systems as follows:

- (1) \$2,336,000 for the East Kauai irrigation system;
- (2) \$500,000 for the Waimanalo irrigation system;
- (3) \$2,500,000 for the Molokai irrigation system;
- (4) \$4,850,000 for the Waimea irrigation system; and
- (5) \$1,700,000 for the Lower Hamakua irrigation system.

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 general revenues of the State of Hawaii the sum of \$100,000 or so much thereof as may be necessary for fiscal year 2006-2007 to carry out the purposes of section 2 of this Act.

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

SECTION 7. The appropriations made for the capital improvement irrigation repair and maintenance projects authorized in this Act shall not lapse at the end of the fiscal year for which the appropriations are made; provided that all moneys from the appropriations unencumbered as of June 30, 2008, shall lapse as of that date.

SECTION 8. New statutory material is underscored.¹

ACT 234

SECTION 9. This Act shall take effect on July 1, 2006.

(Approved June 23, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 234

S.B. NO. 2980

A Bill for an Act Relating to Education.

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

SECTION 1. The legislature finds that the State of Hawaii is currently experiencing an estimated \$10,000,000,000 boom in new construction that has created a critical shortage of qualified workers in the trades. Over the next several years, projections indicate that Hawaii will need between ten thousand and twenty-six thousand more construction workers to meet industry demand. Moreover, some believe the labor shortage will only become more severe nationwide as the need for skilled workers increases on the hurricane-ravaged Gulf Coast and in regions with housing booms. Officials at organizations representing the construction trades note that the United States Bureau of Labor Statistics estimates that the industry will need to add one hundred thousand jobs each year through 2012, while also filling an additional ninety thousand openings vacated largely by retiring baby boomers.

To meet the critical labor shortfall, the State needs a multi-pronged strategy. The first part of the strategy is to develop awareness and interest in the construction industry while providing a foundational education for students. This awareness can be established through a pre-apprenticeship program. The second part of the strategy involves ensuring that a larger base of candidates can enter post-secondary professional construction training programs. This portion of the strategy can be accomplished through expansion of the State's apprenticeship training programs.

A pre-apprenticeship program is highly attractive for two reasons: First, it provides students with a head-start on two-year post-secondary degrees, while at the same time allowing them to enter a professional apprenticeship program at a more qualified skill level. A candidate who enters an apprenticeship program at a higher skill level is more likely to complete apprenticeship training, and to graduate better qualified to enter the work force.

Second, pre-apprenticeship training programs are of enormous benefit to the State by generating interest and awareness among young students who may not even have known certain career options existed. Through a pre-apprenticeship program, trade organizations bolster the notion that becoming a plumber, carpenter, or an electrician can provide students with a successful, satisfying, and lucrative career.

The construction academy was created with these goals in mind. Honolulu community college and the department of education launched the construction academy in the fall of 2005 in partnership with eight Hawaii public high schools: Kailua, Radford, Waipahu, Mililani, Kahuku, McKinley, Pearl City, and Waialua. The program allows high school students to take classes in various construction trades at their respective high schools and, at the same time, earn credits toward an associate degree at an affiliated community college. The 2005 construction academy class was comprised of two hundred thirty-two high school students, eighteen teachers, and two traveling instructors. This first class has generated such excitement and promise on the high school campuses that the construction academy organizers hope to expand the program to include other public high schools and community colleges, particularly on the neighbor islands.

The purpose of the construction academy is to develop interest in the industry and to build a foundation of general construction skills that prepares students for more in-depth professional trades training.

At present, the apprenticeship training programs at the University of Hawaii train approximately three thousand apprentices each semester in the construction trades. An expansion of the construction academy will allow for a larger number of interested candidates to begin the process, and grow the State's apprenticeship training programs. Funding for the program and any expansion at the high school or community college level shall be appropriated through the general budgetary process. This year, an appropriation has been made to the program via House Bill No. 1900.¹

Accordingly, the purpose of this Act is establish statutorily a construction academy program within the community college system of the University of Hawaii.

SECTION 2. Chapter 305, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . CONSTRUCTION ACADEMY

§305- Purpose. The purpose of the construction academy is to develop student interest in the construction industry and to build a foundation for general construction skills that prepares students at the pre-apprenticeship level for more in-depth professional trades training and workforce development.

§305- Program; establishment. There is established within the community college system a construction academy pre-apprenticeship program to meet the critical shortfalls in qualified construction labor projected over the next decade.

§305- Administration. The community college system may plan and administer the construction academy under this part with the advice of the workforce development council, the department of education, and the construction industry.

§305- Annual report. The office of the vice president for community colleges shall prepare an annual report to the legislature on the status of the program. This annual report shall include data on the development of the construction academy curriculum and content, teaching standards throughout the system, and overall achievement. The annual report shall be submitted no later than twenty days prior to the convening of each regular legislative session.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved June 23, 2006.)

Notes

1. Act 160.

2. No bracketed or underscored material.

A Bill for an Act Relating to Business Registration.

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

SECTION 1. Chapter 425, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§425- **Activities not constituting transacting business.** (a) The activities of a foreign general partnership that do not constitute transacting business in this State within the meaning of this chapter include:

- (1) Maintaining, defending, or settling an action or proceeding;
- (2) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;
- (3) Maintaining bank accounts;
- (4) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign partnership’s own securities, or maintaining trustees or depositories with respect to those securities;
- (5) Selling through independent contractors;
- (6) Soliciting or obtaining orders, whether by mail or through employees, agents, or otherwise, if the orders require acceptance outside this State before they become contracts;
- (7) Creating or acquiring indebtedness, 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 chapter, the ownership in this State of income-producing real property or income-producing 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 contracts or activities that may subject a foreign general partnership to service of process, taxation, or regulation under any other law of this State.”

SECTION 2. Section 414-274, Hawaii Revised Statutes, is amended to read as follows:

“§414-274 **Effect of conversion.** When a conversion becomes effective:

- (1) The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity;
- (2) All rights, title, and interest in all real estate and other property owned by the converting entity shall automatically be owned by the converted entity without reversion or impairment, subject to any existing liens or other encumbrances thereon;
- (3) All liabilities and obligations of the converting entity shall automatically be liabilities and obligations of the converted entity without impairment or diminution due to 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, in the converted entity as provided in the plan of conversion shall be converted, and if the converting entity is a domestic corporation, the former shareholders of the domestic corporation shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 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 the shareholder, partner, member, or other owner:
 - (A) Agreed in writing to be liable for the debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for the debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity;
- (8) If the converted entity is a foreign corporation or other business entity[,] incorporated, formed, or organized under a law other than the law of this State, the converted entity shall file with the director:
 - (A) An agreement that the [surviving] converted 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;~~] the converting domestic corporation;
 - (B) An irrevocable appointment of a resident of this State including the street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting [~~member,~~] shareholder, [~~or~~] partner, member, or other owner to receive payment for their interest against the [surviving] converted entity; and
- (9) If the converting entity is a domestic corporation, part XIV shall apply as if the converted entity were the survivor of a merger with the converting entity.”

SECTION 3. Section 414-403, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation administratively dissolved under section 414-402 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application [~~must;~~] shall:

- (1) Recite the name of the corporation and the effective date of its administrative dissolution;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation [~~reciting~~] indicating that all taxes owed by the corporation have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 4. Section 414-433, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 414-436;
- (2) The name of the state or country under whose law it is incorporated;
- (3) Its date of incorporation and period of duration;
- (4) The 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[;] in this State; and
- (5) The names and usual business addresses of its current directors and officers.”

SECTION 5. Section 414D-207, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) A domestic corporation may adopt a plan of conversion and convert to a foreign corporation or any other business entity if:

- (1) The board of directors and members of the domestic corporation approve a plan of conversion in the manner prescribed by section 414D-202 and if the conversion is treated as a merger to which the converting entity is a party and not the surviving entity;
- (2) The conversion is permitted by and complies with the laws of the state or country in which the converted entity is to be incorporated, formed, or organized; and the incorporation, formation, or organization of the converted entity complies with [such] those laws;
- (3) At the time the conversion becomes effective, each member of the converting entity, unless otherwise agreed to by the member or directors, owns an equity interest or other ownership interest in, and is a shareholder, partner, member, [owner,] or other [security holder] owner of, the converted entity;
- (4) The members of the domestic corporation, as a result of the conversion, shall not become personally liable without the members’ consent, for the liabilities or obligations of the converted entity; and
- (5) The converted entity is incorporated, formed, or organized as part of or pursuant to the plan of conversion.

(b) Any foreign corporation or other business entity may adopt a plan of conversion and convert to a domestic corporation if the conversion is permitted by and complies with the laws of the state or country in which the foreign corporation or other business entity is incorporated, formed, or organized.”

SECTION 6. Section 414D-210, Hawaii Revised Statutes, is amended to read as follows:

“[H]§414D-210[.] Effect of conversion. When a conversion becomes effective:

- ~~[(a)]~~ (1) ~~[Upon an effective conversion, t]~~ The converting entity shall continue to exist without interruption, but in the organizational form of the converted entity[-];

- [(b)] (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[-];
- [(c)] (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[-];
- [(d)] (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[-];
- [(e)] (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[-];
- [(f)] (6) The shares and other forms of ownership in the converting entity that are to be converted into shares, or other forms of ownership, in the converted entity[-] as provided in the plan of conversion[-] shall be converted[-];
- [(g)] (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; provided that the shareholder, partner, member, or other owner:
 - [(1)] (A) Agreed in writing to be liable for [sueh] the debts or obligations;
 - [(2)] (B) Was liable under applicable law prior to the effective date of the conversion for [sueh] the debts or obligations; or
 - [(3)] (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity.
- (8) If the converted entity is a foreign corporation or other business entity incorporated, formed, or organized under a law other than the law of this State, the converted entity shall file with the director:
 - (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic corporation;
 - (B) An irrevocable appointment of a resident of this State, including the street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity.”

SECTION 7. Section 414D-241, Hawaii Revised Statutes, is amended to read as follows:

“~~[(H)]~~**§414D-241**~~[(H)]~~ **Dissolution by incorporators, initial directors, and third persons.** ~~[(a)]~~ A majority of the incorporators or initial directors of a corporation that has no members[-] and has not commenced business, subject to any approval required by the articles or bylaws, may dissolve the corporation by delivering to the department director articles of dissolution[-]

~~(b) The corporation shall give notice of any meeting at which dissolution will be approved. The notice shall be in accordance with section 414D-145(c). The notice~~

must also state that the purpose, or one of the purposes, of the meeting is to consider dissolution of the corporation:

(e) ~~The incorporators or directors in approving dissolution shall adopt a plan of dissolution indicating to whom the assets owned or held by the corporation will be distributed after all creditors have been paid.]~~ that set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation;
- (3) That the corporation has no members and that the corporation has not commenced business;
- (4) That a plan of dissolution, indicating to whom the assets owned or held by the corporation shall be distributed after all creditors have been paid, has been adopted; and
- (5) That a majority of the incorporators or initial directors authorized the dissolution.”

SECTION 8. Section 414D-250, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A corporation administratively dissolved under section 414D-249 may apply to the department director for reinstatement within two years after the effective date of dissolution. The application shall:

- (1) State the name of the corporation and the effective date of its administrative dissolution;
- (2) State that the ground or grounds for dissolution either did not exist or have been eliminated; and
- (3) Contain a certificate from the department of taxation ~~[reciting]~~ indicating that all taxes owed by the corporation have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 9. Section 415A-16.8, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~**§415A-16.8** **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 shares and other forms of ownership in the converting entity that are to be converted into shares or other forms of ownership in the converted entity as provided in the plan of conversion shall be con-

- verted, and if the converting entity is a professional corporation, the former shareholders of the professional corporation shall be entitled only to the rights provided in the plan of conversion or to the rights to dissent under section 415-80;
- (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] the shareholder, partner, member, or other owner:
- (A) Agreed in writing to be liable for [such] the debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion for [such] the debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other business¹ owner of the converted entity;
- (8) If the converted entity is a foreign corporation or other business entity, incorporated, formed, or organized under a law other than the laws of this State, the converted entity shall[:] file with the director:
- (A) ~~[Appoint a resident of this State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of the converting domestic corporation; and]~~ An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic corporation;
 - (B) ~~[Promptly pay the dissenting shareholders of the converting domestic corporation the amount, if any, to which they are entitled under section 415-81;]~~ An irrevocable appointment of a resident of this State, including the street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity; and
- (9) If the converting entity is a professional corporation, ~~[sections 415-80 and 415-81]~~ part XIV of chapter 414 shall apply as if the converted entity were the survivor of a merger with the converting entity.’’

SECTION 10. Section 415A-18, Hawaii Revised Statutes, is amended to read as follows:

“**§415A-18 Administrative dissolution; reinstatement.** (a) The director may commence a proceeding to dissolve a professional corporation administratively if the corporation fails to:

- (1) Pay any fees prescribed by law;
- (2) File its annual report 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 under this chapter.

Before the director may declare a corporation dissolved, the director shall give notice of the ground or grounds for dissolution by mailing the notice to the professional corporation at its last known address appearing in the records of the director.

(b) If the corporation does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the director that each ground determined by the

director does not exist within sixty days after the date of mailing of the director's written notice, the 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 director's office. The administrative dissolution of a corporation ~~[does]~~ shall not terminate the authority of its registered agent.

(c) Parties of interest may petition a court of competent jurisdiction to appoint a trustee to settle the affairs of any professional 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 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 professional corporation with full powers to settle its affairs.

(d) In each case where the director has given a professional corporation notice of intention to dissolve the corporation on the grounds that its articles of incorporation have been procured through fraud, the corporation shall be entitled to petition for an administrative hearing under chapter 91 and shall give written notice to the director thereof, before the director may declare the corporation dissolved under subsection (a) ~~[of this section]~~.

(e) Within two years after the ~~[involuntary]~~ administrative dissolution of a professional corporation under this section, the corporation may be reinstated by the director upon a written application executed by ~~[any two officers]~~ an officer of the corporation setting forth such information as the director may require, and contain a certificate from the department of taxation indicating that all taxes owed by the corporation have been paid, a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation, the payment of all delinquent fees[,] and penalties ~~[-, assessments, taxes, costs of involuntary dissolution,]~~ and the filing of all reports due and unfiled. Within the applicable reinstatement period, should the name of the professional corporation, or a name substantially identical thereto, be registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or should the name or a name substantially identical thereto be registered as a trade name, trademark, or service mark, then reinstatement shall be allowed only upon the registration of a new name by the involuntarily dissolved professional corporation pursuant to the amendment provisions of this chapter.

(f) A professional corporation whose articles of incorporation have expired shall cease to exist by operation of law.

(g) If a professional corporation was dissolved due to the expiration of its period of duration, the professional 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 professional corporation or a name substantially identical thereto is registered or reserved by another corporation, partnership, limited liability company, or limited liability partnership, or if the name or a name substantially identical thereto is registered as a trade name, trademark, or service mark, then the extension of corporate existence shall be allowed only upon the registration of a new name by the professional corporation pursuant to the amendment provisions of this chapter."

SECTION 11. Section 425-1, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) Whenever any general partnership is formed under the laws of this State to do business in this State, or any general partnership formed under the laws of any other jurisdiction shall do business in this State, ~~[such]~~ the partnership shall file in the office of the director of commerce and consumer affairs the registration and annual

statements [~~hereinafter provided.~~] prescribed in this chapter. A registration statement shall be filed by a partnership formed under the laws of this State within thirty days after the partnership is formed and by a partnership formed under the laws of any other jurisdiction within thirty days after the commencement of business in this State. Every [~~sueh~~] registration statement shall contain the following information:

- (1) The name of the partnership;
- (2) The name and address of each partner;
- (3) The mailing address of the partnership's [~~initial~~] principal office, the street address of the partnership's [~~initial~~] registered office in [~~the~~] this State, and the name of its [~~initial~~] registered agent at its [~~initial~~] registered office in [~~the~~] this State; provided that if the partnership is one formed under the laws of any other jurisdiction, the name of the jurisdiction shall also be [~~set forth;~~] specified;
- (4) The date the partnership was formed and, if the partnership is one formed under the laws of any other jurisdiction, the date the partnership commenced business in this State; and
- (5) The fact that none of the partners is either a minor or an incompetent person.

(b) Every domestic and foreign partnership shall file an annual statement with the director which shall contain the information specified in subsection (a)(1), (2), (3), [~~(4);~~] and (5) and a listing of the names of any partner admitted, withdrawn, or who has died during the year; provided that the information provided to satisfy the requirements of subsection [~~(a)(4)~~] (a)(3) shall indicate the current registered office and agent. A domestic or foreign partnership that has filed with the department director a statement of qualification or statement of foreign qualification to register as a limited liability partnership or foreign limited liability partnership shall file the annual report prescribed in section 425-163 in lieu of the annual statement required in this section. The annual statement shall be filed within the time periods prescribed in subsections (c) and (d)."

SECTION 12. Section 425-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) Within two years after the [~~involuntary~~] administrative 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. The application shall:

- (1) Recite the name of the general partnership and the effective date of its [~~involuntary~~] administrative 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~~] indicating that all taxes owed by the general partnership have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation."

SECTION 13. Section 425-158, Hawaii Revised Statutes, is amended to read as follows:

"**§425-158 Statement of foreign qualification.** A statement of foreign qualification shall contain:

- (1) The name of the foreign limited liability partnership, which name complies with:

- (A) The law of the state or other jurisdiction under which the foreign limited liability partnership is formed; and
- (B) Section 425-151;
- (2) A statement that the partnership elects to be a foreign limited liability partnership; and
- (3) The mailing address of the partnership's [initial] principal office, the street address of the partnership's [initial] registered office in [the] this State, and the name of its [initial] registered agent at its [initial] registered office in [the] this State."

SECTION 14. Section 425-163, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Every limited liability partnership and foreign limited liability partnership authorized to transact business in this State shall file an annual report in the office of the director that contains:

- (1) The name of the limited liability partnership or foreign limited liability partnership;
- (2) The mailing address of the partnership's principal office, the street address of the partnership's registered office in [the] this State, and the name of its registered agent at its registered office in [the] this State[-]; provided that if the partnership is formed under the laws of any other jurisdiction, the name of the other jurisdiction shall also be specified;
- (3) The name and address of each partner; and
- (4) The fact that none of the partners is either a minor or an incompetent person.”

SECTION 15. Section 425-164, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) A partnership whose statement of qualification or statement of foreign qualification has been administratively revoked may apply to the director for reinstatement within two years after the effective date of the revocation. The application shall:

- (1) Recite the name of the partnership and the effective date of the revocation;
- (2) Contain all reports due and unfiled;
- (3) Contain the payment of all delinquent fees and penalties; and
- (4) Contain a certificate from the department of taxation [~~reciting~~] indicating that all taxes owed by the partnership have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.”

SECTION 16. Section 425-195, Hawaii Revised Statutes, is amended to read as follows:

- “**§425-195 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 general partnership, limited liability partnership, or other business entity[;] incorporated, formed, or organized under a law other than the law of this State, the converted entity shall [appoint a resident of the State as its agent, for service of process in a proceeding to enforce any obligation or rights of dissenting partners of the converting domestic partnership or limited liability partnership; and] file with the director:
 - (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic general partnership;
 - (B) An irrevocable appointment of a resident of this State including the resident's street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity; and
- (9) If the converting partnership is a domestic general partnership, or limited liability partnership, section 425-203 shall apply as if the converted entity were the survivor of a merger with the converting entity.”

SECTION 17. Section 425-204, Hawaii Revised Statutes, is amended to read as follows:

“**§425-204 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 general partnership [~~or limited liability 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 [sueh] proceeding[;] pursuant to this paragraph, 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.
- (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.

~~[(e) Articles of merger shall operate as an amendment to the general partnership's or limited liability 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 general partnership or domestic or foreign limited liability partnership that is not the surviving entity in the merger.]”~~

SECTION 18. Section 425E-810, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(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 425E-108; and
- (4) Include a certificate from the department of taxation [reciting] indicating that all taxes owed by the limited partnership have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation."

SECTION 19. Section 425E-902, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(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 425E-108, an alternate name adopted pursuant to section 425E-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[;] in this State;
- (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."

SECTION 20. Section 425E-1105, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~425E-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[;]² 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 conversion³ 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] the 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 business entity[;]³ incorporated, formed, or organized under a law other than the law of this State, 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]~~ file with the director:
 - (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic limited partnership;
 - (B) An irrevocable appointment of a resident of this State including the resident's street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity; and
- (9) If the converting partnership is a domestic limited partnership, section 425E-1106 shall apply as if the converted entity were the survivor of a merger with the converting entity.’’

SECTION 21. Section 428-811, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A limited liability company administratively terminated may apply to the director for reinstatement within two years after the effective date of termination. The applicant shall:

- (1) Recite the name of the company and the effective date of its administrative termination;
- (2) State that all delinquent annual reports have been filed and that all delinquent fees, penalties, assessments, and costs have been paid; and
- (3) Contain a certificate from the director of taxation reciting that all taxes owed by the company have been paid[-], a payment arrangement has been entered into, or the unpaid tax liabilities are being contested in an administrative or judicial appeal with the department of taxation.’’

SECTION 22. Section 428-903, Hawaii Revised Statutes, is amended to read as follows:

“**§428-903 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 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 former 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 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 [sueh] the debts or obligations;
 - (B) Was liable under applicable law prior to the effective date of the conversion, for [sueh] the debts or obligations; or
 - (C) Becomes liable under applicable law for existing debts and obligations of the converted entity by becoming a shareholder, partner, member, or other owner of the converted entity; and
- (8) If the converted entity is a foreign limited liability company or other business entity[;] incorporated, formed, or organized under a law other than the law of this State, 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.] file with the director:
 - (A) An agreement that the converted entity may be served with process in this State in any action or proceeding for the enforcement of any liability or obligation of the converting domestic limited liability company;
 - (B) An irrevocable appointment of a resident of this State, including the resident's street address, as its agent to accept service of process in any such proceeding; and
 - (C) An agreement for the enforcement, as provided in this chapter, of the right of any dissenting shareholder, partner, member, or other owner to receive payment for their interest against the converted entity.”

ACT 236

SECTION 23. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁴

SECTION 24. This Act shall take effect on January 1, 2007.

(Approved June 23, 2006.)

Notes

1. Should be underscored.
2. Prior to amendment, no comma appeared here.
3. Prior to amendment, a comma appeared here.
4. Edited pursuant to HRS §23G-16.5.

ACT 236

S.B. NO. 3254

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. Act 273, Session Laws of Hawaii 2001, as amended by Act 95 and Act 98, Session Laws of Hawaii 2003, as amended by Act 153, Session Laws of Hawaii 2004, 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, 2006].~~”

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

SECTION 3. This Act shall take effect on June 29, 2006.

(Approved June 23, 2006.)

ACT 237

S.B. NO. 2774

A Bill for an Act Relating to Housing.

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

SECTION 1. The legislature finds that the closure of Del Monte Fresh Produce will result in significant negative impacts to Kunia pineapple workers. Housing ranks among their primary concerns. Currently, many employees and their families live in plantation homes owned by the company at Kunia Camp. With the closure of Del Monte Fresh Produce, many of these families face the possibility of losing their homes. Housing is a fundamental need, to which every person should have access.

With the loss of their jobs, many employees will undergo a transition period as they seek new employment, participate in job training programs, or seek other opportunities. During this stressful period of transition, these employees must be assured that their homes are secure and protected from any action that might declare them to be an impermissible or illegal land use, in the event that those units may require permits for renovation or reconstruction at some time in the future.

The purpose of this Act is to make plantation community subdivisions such as Kunia Camp a permitted rather than nonconforming use within the state agricultural land use district.

SECTION 2. Section 46-4, Hawaii Revised Statutes, is amended to read as follows:

“§46-4 County zoning. (a) This section and any ordinance, rule, or regulation adopted in accordance with this section shall apply to lands not contained within the forest reserve boundaries as established on January 31, 1957, or as subsequently amended.

Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner. Zoning in the counties of Hawaii, Maui, and Kauai means the establishment of districts of such number, shape, and area, and the adoption of regulations for each district to carry out the purposes of this section. In establishing or regulating the districts, full consideration shall be given to all available data as to soil classification and physical use capabilities of the land to allow and encourage the most beneficial use of the land consonant with good zoning practices. The zoning power granted herein shall be exercised by ordinance which may relate to:

- (1) The areas within which agriculture, forestry, industry, trade, and business may be conducted;
- (2) The areas in which residential uses may be regulated or prohibited;
- (3) The areas bordering natural watercourses, channels, and streams, in which trades or industries, filling or dumping, erection of structures, and the location of buildings may be prohibited or restricted;
- (4) The areas in which particular uses may be subjected to special restrictions;
- (5) The location of buildings and structures designed for specific uses and designation of uses for which buildings and structures may not be used or altered;
- (6) The location, height, bulk, number of stories, and size of buildings and other structures;
- (7) The location of roads, schools, and recreation areas;
- (8) Building setback lines and future street lines;
- (9) The density and distribution of population;
- (10) The percentage of a lot that may be occupied, size of yards, courts, and other open spaces;
- (11) Minimum and maximum lot sizes; and
- (12) Other regulations the boards or city council find necessary and proper to permit and encourage the orderly development of land resources within their jurisdictions.

The council of any county shall prescribe rules, regulations, and administrative procedures and provide personnel it finds necessary to enforce this section and any ordinance enacted in accordance with this section. The ordinances may be enforced by appropriate fines and penalties, civil or criminal, or by court order at the suit of the county or the owner or owners of real estate directly affected by the ordinances.

Any civil fine or penalty provided by ordinance under this section may be imposed by the district court, or by the zoning agency after an opportunity for a hearing pursuant to chapter 91. The proceeding shall not be a prerequisite for any injunctive relief ordered by the circuit court.

Nothing in this section shall invalidate any zoning ordinance or regulation adopted by any county or other agency of government pursuant to the statutes in effect prior to July 1, 1957.

The powers granted herein shall be liberally construed in favor of the county exercising them, and in such a manner as to promote the orderly development of each county or city and county in accordance with a long-range, comprehensive general plan to [insure] ensure the greatest benefit for the State as a whole. This section shall not be construed to limit or repeal any powers of any county to achieve these ends through zoning and building regulations, except insofar as forest and water reserve zones are concerned and as provided in subsections (c) and (d).

Neither this section nor any ordinance enacted pursuant to this section shall prohibit the continued lawful use of any building or premises for any trade, industrial, residential, agricultural, or other purpose for which the building or premises is used at the time this section or the ordinance takes effect; provided that a zoning ordinance may provide for elimination of nonconforming uses as the uses are discontinued, or for the amortization or phasing out of nonconforming uses or signs over a reasonable period of time in commercial, industrial, resort, and apartment zoned areas only. In no event shall such amortization or phasing out of nonconforming uses apply to any existing building or premises used for residential (single-family or duplex) or agricultural uses. Nothing in this section shall affect or impair the powers and duties of the director of transportation as set forth in chapter 262.

(b) Any final order of a zoning agency established under this section may be appealed to the circuit court of the circuit in which the land in question is found. The appeal shall be in accordance with the Hawaii rules of civil procedure.

(c) Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted.

(d) Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities with eight or fewer residents and that are licensed by the State as provided for under section 321-15.6, or in an intermediate care facility/mental retardation-community for persons, including mentally ill, elder, disabled, developmentally disabled, or totally disabled persons, who are not related to the home operator or facility staff; provided that those group living facilities meet all applicable county requirements not inconsistent with the intent of this subsection and including building height, setback, maximum lot coverage, parking, and floor area requirements.

(e) No permit shall be issued by a county agency for the operation of a halfway house, a clean and sober home, or a drug rehabilitation home unless a public informational meeting is first held in the affected community. The State shall provide notification and access to relevant information, as required, under chapter 846E.

A clean and sober home shall be considered a residential use of property and shall be a permitted or conditional use in residentially designated zones, including but not limited to zones for single-family dwellings.

(f) For purposes of this section:

“Clean and sober home” means a house that is operated pursuant to a program designed to provide a stable environment of clean and sober living conditions to sustain recovery and that is shared by unrelated adult persons who:

- (1) Are recovering from substance abuse;
- (2) Share household expenses; and
- (3) Do not require twenty-four-hour supervision, rehabilitation, or therapeutic services or care in the home or on the premises. The home shall meet all applicable laws, codes, and rules of the counties and State.

“Developmentally disabled person” means a person suffering from developmental disabilities as defined under section 333F-1.

“Disabled person” means a person with a disability as defined under section 515-2.

“Drug rehabilitation home” means:

- (1) A residential treatment facility that provides a therapeutic residential program for care, diagnosis, treatment, or rehabilitation for socially or emotionally distressed persons, mentally ill persons, persons suffering from substance abuse, and developmentally disabled persons; or
- (2) A supervised living arrangement that provides mental health services, substance abuse services, or supportive services for individuals or families who do not need the structure of a special treatment facility and are transitioning to independent living;

provided that drug rehabilitation homes shall not include halfway houses or clean and sober homes.

“Elder” means an elder as defined under section 201G-1.

“Halfway house” is defined as a group living facility for people who:

- (1) Have been released or are under supervised release from a correctional facility;
- (2) Have been released from a mental health treatment facility; or
- (3) Are receiving substance abuse or sex offender treatment; and

are housed to participate in programs that help them readjust to living in the community.

“Intermediate care facility/mental retardation-community” [~~is defined~~] means as an identifiable unit providing residence and care for eight or fewer mentally retarded individuals. Its primary purpose is the provision of health, social, and rehabilitation services to the mentally retarded through an individually designed active treatment program for each resident. No person who is predominantly confined to bed shall be admitted as a resident of such a facility.

“Mental health treatment facility” means a psychiatric facility or special treatment facility as defined under section 334-1.

“Mentally ill person” [~~means a mentally ill person~~] has the same meaning as defined under section 334-1.

“Totally disabled person” means a “person totally disabled” as defined under section 235-1.

“Treatment program” means a “substance abuse program” or “treatment program”, as those terms are defined under section 353G-2.

(g) Neither this section nor any other law, county ordinance, or rule shall prohibit the use of land for employee housing and community buildings in plantation community subdivisions as defined in section 205-4.5(a)(12); in addition, no zoning ordinance shall provide for elimination, amortization, or phasing out of plantation community subdivisions as a nonconforming use.”

SECTION 3. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Agricultural districts shall include activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses related to animal husbandry, aquaculture, and game and fish propagation; aquaculture, which means the production of aquatic plant and animal life for food and fiber within ponds and other bodies of water; wind generated energy production for public, private, and commercial use; bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing,

farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, [and] roadside stands for the sale of products grown on the premises[;], and plantation community subdivisions as defined in section 205-4.5(a)(12); wind machines and wind farms; small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land[;]; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings; agricultural parks; and open area recreational facilities. For the purposes of this chapter, golf courses and golf driving ranges are prohibited in agricultural districts, except as provided in section 205-4.5(d).

These districts may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.”

SECTION 4. Section 205-4.5, Hawaii Revised Statutes, is amended to read as follows:

“§205-4.5 Permissible uses within the agricultural districts. (a) Within the agricultural district, all lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry. Farm dwelling, as used in this paragraph, means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other [like] similar structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the above mentioned uses and are permitted under section 205-2(d);

- (11) Agricultural parks; [or]
- (12) Plantation community subdivisions, which as used in this paragraph means a subdivision or cluster of employee housing, community buildings, and acreage established on land currently or formerly owned, leased, or operated by a sugar or pineapple plantation and in residential use by employees or former employees of the plantation; provided that the employees or former employees shall have a property interest in the land; or
- (13) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.

(b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless the [said] A and B lands within the subdivision shall be made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section that [{}the{}] restriction and condition shall be encumbrances running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee from obtaining mortgage financing from any of the mortgage lending agencies set forth hereinbelow, and the requirement is the sole reason for failure to obtain mortgage financing, then such requirement of encumbrances shall, insofar as the mortgage financing is so jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that the conditional waiver shall thereafter become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies mentioned hereinabove are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

(c) Within the agricultural district, all lands[;] with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).

(d) Notwithstanding any other provision of this chapter to the contrary, golf courses and golf driving ranges approved by a county before July 1, 2005, for development within the agricultural district shall be permitted uses within the agricultural district.

(e) Notwithstanding any other provision of this chapter to the contrary, plantation community subdivisions as defined in this section shall be permitted uses within the agricultural district, and section 205-8 shall not apply."

SECTION 5. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural districts shall be determined by each county by zoning ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than one acre, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot[,] which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for plantation community subdivisions as defined in section 205-4.5(a)(12), for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements.”

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

SECTION 7. This Act shall take effect upon approval.

(Approved June 23, 2006.)

ACT 238

S.B. NO. 2930

A Bill for an Act Relating to Cruelty to Animals.

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

SECTION 1. Section 711-1110.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[§711-1110.5]~~ **Surrender or forfeiture of animals.** Upon conviction, guilty plea, or plea of nolo contendere for any violation of section 711-1109 or 711-1109.3:

- (1) The court may order the defendant to surrender or forfeit the animal whose treatment was the basis of the conviction or plea to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for ~~[such]~~ the time and under ~~[such]~~ the conditions as the court shall order[-]; and
- (2) The court also may order the defendant to surrender or forfeit any other animals under the possession, custody, or control of the defendant to the custody of a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for ~~[such a]~~ the time and

under [such] the conditions as the court shall order, if there is substantial evidence that [such] the animals are being abused or neglected. The court shall order the defendant to reimburse the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals for reasonable costs incurred to care, feed, and house any animal that is surrendered or forfeited pursuant to this section.”

SECTION 2. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

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

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

(Approved June 23, 2006.)

ACT 239

S.B. NO. 2924

A Bill for an Act Relating to Cruelty to Animals.

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

SECTION 1. Chapter 711, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“§711-A Authority to enter premises; notice of impoundment of animal; damage resulting from entry. (1) If there is probable cause to believe that a pet animal is being subjected to treatment in violation of section 711-1109 or 711-1109.3, a law enforcement officer, after obtaining a search warrant or in any other manner authorized by law, may enter the premises where the pet animal is located to provide the pet animal with food, water, and emergency medical treatment or to impound the pet animal. If after reasonable effort, the owner or person having custody of the pet animal cannot be found and notified of the impoundment, an impoundment notice shall be conspicuously posted on the premises and within seventy-two hours after posting, the notice shall be sent by certified mail to the address, if any, from which the pet animal was removed.

(2) A law enforcement officer is not liable for any damage resulting from an entry under subsection (1), unless the damage resulted from intentional or reckless behavior on behalf of the law enforcement officer.

(3) A court may order a pet animal impounded under subsection (1) to be held at a duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals. A facility receiving the pet animal shall provide adequate food and water and may provide veterinary care.

(4) For purposes of this section, “law enforcement officer” shall have the same meaning as section 710-1000.

§711-B Forfeiture of animal prior to disposition of criminal charges. (1) If any pet animal is impounded pursuant to section 711-A, prior to final disposition of the criminal charge under section 711-1109 or 711-1109.3 against the pet animal’s owner, any duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals that is holding the pet animal may file a

petition in the criminal action requesting that the court issue an order for forfeiture of the pet animal to the county or to the duly incorporated humane society or duly incorporated society for the prevention of cruelty to animals prior to final disposition of the criminal charge. The petitioner shall serve a true copy of the petition upon the defendant and the prosecuting attorney.

(2) Upon receipt of a petition pursuant to subsection (1), the court shall set a hearing on the petition. The hearing shall be conducted within fourteen days after the filing of the petition, or as soon as practicable.

(3) At a hearing conducted pursuant to subsection (2), the petitioner shall have the burden of establishing probable cause that the pet animal was subjected to a violation of section 711-1109 or 711-1109.3. If the court finds that probable cause exists, the court shall order immediate forfeiture of the pet animal to the petitioner, unless the defendant, within seventy-two hours of the hearing:

- (a) Posts a security deposit or bond with the court clerk in an amount determined by the court to be sufficient to repay all reasonable costs incurred, and anticipated to be incurred, by the petitioner in caring for the pet animal from the date of initial impoundment to the date of trial; or
- (b) Demonstrates to the court that proper alternative care has been arranged for the pet animal.

Notwithstanding subsection (3)(a), a court may waive, for good cause shown, the requirement that the defendant post a security deposit or bond.

(4) If a security deposit or bond has been posted in accordance with subsection (3)(a), the petitioner may draw from the security deposit or bond the actual reasonable costs incurred by the petitioner in caring for the pet animal until the date of final disposition of the criminal action. If the trial is continued to a later date, any order of continuance shall require the defendant to post an additional security deposit or bond in an amount determined by the court that shall be sufficient to repay all additional reasonable costs anticipated to be incurred by the petitioner in caring for the pet animal until the date of final disposition of the criminal action, and the petitioner may draw from the additional security deposit or bond as necessary.

(5) No pet animal may be destroyed by a petitioner under this section prior to final disposition of the criminal charge under section 711-1109 or 711-1109.3 against the pet animal's owner, except in the event that the pet animal is so severely injured that there is no reasonable probability that its life can be saved.

(6) Forfeiture of a pet animal under this section shall not be subject to the provisions of chapter 712A."

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. 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 4. New statutory material is underscored.¹

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

(Approved June 23, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 240

S.B. NO. 2957

A Bill for an Act Relating to Energy.

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

PART I

SECTION 1. The legislature finds that Hawaii's dependence on petroleum for about ninety per cent of its energy needs is more than any other state in the nation. This makes the State extremely vulnerable to any oil embargo, supply disruption, international market dysfunction, and many other factors beyond the control of the State. Furthermore, the continued consumption of conventional petroleum fuel negatively impacts the environment. At the same time, Hawaii has among the most abundant renewable energy resources in the world, in the form of solar, geothermal, wind, biomass, and ocean energy assets.

The legislature also finds that increased energy efficiency and use of renewable energy resources would increase Hawaii's energy self-sufficiency, achieving broad societal benefits, including increased energy security, resistance to increases in oil prices, environmental sustainability, economic development, and job creation.

Over the years, the legislature has worked steadily to encourage the deployment of renewable energy resources and energy efficiency initiatives. This includes:

- (1) Establishing a net energy metering program, interconnection standards, and renewable energy tax credits;
- (2) Establishing greenhouse gas and energy consumption reduction goals for state facilities and requiring the use of energy efficient products in state facilities; and
- (3) Providing incentives for the deployment of solar energy devices.

The legislature also established an enforceable renewable energy portfolio standard under which twenty per cent of Hawaii's electricity is to be generated from renewable resources by the end of 2020.

There now exists an unprecedented, historical opportunity for Hawaii to emerge as a leader in the hydrogen economy.

Hydrogen technology development is already attracting billions of dollars in investment capital not only in the United States, but also in other countries in Europe, and Japan. On a national level, federal initiatives are resulting in the development of hydrogen and fuel cell technologies in partnership with automakers and major energy companies. Analysts predict that these initiatives, along with efforts in other countries, will lead to the development of markets for hydrogen and supportive hydrogen fuel cell technologies and infrastructure. The question is no longer "if", but "when."

Locally, the historic confluence of the State's desire for energy self-sufficiency through development of renewable energy with the global opportunity of the emerging hydrogen economy calls for a major, far-sighted initiative, sustainable over the long-term, to develop Hawaii's renewable energy resources and, ultimately, to transition Hawaii to an indigenous-resource-based energy economy.

Right now, the greatest immediate opportunity to achieve this vision resides on the island of Hawaii.

On the island of Hawaii, more electricity is produced from renewable resources than can currently be used. Several wind projects are expected to be completed in the near term, exacerbating this problem. Furthermore, the Puna geothermal project is planning to increase its energy contribution only if the electric utility can take and use the energy. This provides an opportunity to use excess

geothermal and other renewable energy resources to produce hydrogen using water electrolysis. This clean, renewable hydrogen would then be used as an energy carrier for stationary power and transportation fuels, making the island self-sufficient.

Hydrogen could also be exported to Oahu and other islands as the clean fuel of choice for power generation and transportation fuels, achieving greater self-sufficiency for the State of Hawaii.

To shape Hawaii’s energy future and achieve the goal of energy self-sufficiency for the State of Hawaii, our efforts must continue on all fronts, integrating new and evolving technologies, seizing upon economic opportunities to become more energy efficient and economically diversified, and providing incentives and assistance to address barriers.

The purpose of this Act is to provide a one¹ segment of a larger comprehensive approach to achieving energy self-sufficiency for the State by:

- (1) Increasing the renewable energy technologies income tax credit for certain solar-thermal, wind-powered, and photovoltaic energy systems and removing the tax credits’ 2008 sunset date;
- (2) Establishing a program and strategy for increased hydrogen and biofuel research and use in the State;
- (3) Establishing state support for achieving alternate fuels standards; and
- (4) Establishing the pay as you save pilot project to provide a financing mechanism to make purchases of residential solar hot water heater systems more affordable.

PART II
RENEWABLE ENERGY TECHNOLOGIES INCOME TAX CREDIT

SECTION 2. Section 235-12.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(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 during the taxable year. This credit shall be available for systems installed and placed in service 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,~~] \$2,250, 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;
- (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,~~] \$500,000, 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,~~] \$5,000, 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;~~] \$500,000, 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.

In the case of a partnership, S corporation, estate, or trust, the tax credit allowable is for every eligible renewable energy technology system that is installed and placed in service by the entity. The cost upon which the tax credit is computed shall be determined at the entity level. Distribution and share of credit shall be determined pursuant to section 235-110.7(a).”

2. By amending subsection (c) to read:

“(c) [~~The~~] For taxable years beginning after December 31, 2005, 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.”

SECTION 3. Act 207, Session Laws of Hawaii 2003, is amended by amending section 4 to read as follows:

“SECTION 4. This Act shall take effect on July 1, 2003[~~, and shall be repealed January 1, 2008.~~].”

PART III RENEWABLE ENERGY RESEARCH AND DEVELOPMENT AND TRANSITION INTO A RENEWABLE HYDROGEN ECONOMY

SECTION 4. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§103D- Biofuel preference.** (a) Notwithstanding any other law to the contrary, contracts for the purchase of diesel fuel or boiler fuel shall be awarded to the lowest responsible and responsive bidders, with preference given to bids for biofuels or blends of biofuel and petroleum fuel.

(b) When purchasing fuel for use in diesel engines, the preference shall be five cents per gallon of one hundred per cent biodiesel. For blends containing both biodiesel and petroleum-based diesel, the preference shall be applied only to the biodiesel portion of the blend.

(c) When purchasing fuel for use in boilers, the preference shall be five cents per gallon of one hundred per cent biofuel. For blends containing both biofuel and petroleum based boiler fuel, the preference shall be applied only to the biofuel portion of the blend.

(d) As used in this section, “biodiesel” means a vegetable oil-based fuel that meets ASTM International standard D6751, “Standard Specification for Biodiesel (B100) Fuel Blend Stock for Distillate Fuels”, as amended.

(e) As used in this section, “biofuel” means fuel from non-petroleum plant or animal based sources that can be used for the generation of heat or power.”

SECTION 5. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

“§196-A State support for achieving alternate fuels standards. The State shall facilitate the development of alternate fuels and support the attainment of a statewide alternate fuel standard of ten per cent of highway fuel demand to be provided by alternate fuels by 2010, fifteen per cent by 2015, and twenty per cent by 2020. For purposes of the alternate fuels standard, ethanol produced from cellulosic materials shall be considered the equivalent of 2.5 gallons of noncellulosic ethanol. “Alternate fuels” shall have the same meaning as contained in 10 Code of Federal Regulations Part 490; provided that it shall also include liquid or gaseous fuels produced from renewable feedstocks such as organic wastes, or from water using electricity from renewable energy sources.”

SECTION 6. Chapter 196, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§196-B Hawaii renewable hydrogen program. There is established, within the department of business, economic development, and tourism, a Hawaii renewable hydrogen program to manage the State’s transition to a renewable hydrogen economy. The program shall design, implement, and administer activities that include:

- (1) Strategic partnerships for the research, development, testing, and deployment of renewable hydrogen technologies;
- (2) Engineering and economic evaluations of Hawaii’s potential for renewable hydrogen use and near-term project opportunities for the State’s renewable energy resources;
- (3) Electric grid reliability and security projects that will enable the integration of a substantial increase of electricity from renewable energy resources on the island of Hawaii;
- (4) Hydrogen demonstration projects, including infrastructure for the production, storage, and refueling of hydrogen vehicles;
- (5) A statewide hydrogen economy public education and outreach plan focusing on the island of Hawaii, to be developed in coordination with Hawaii’s public education institutions;
- (6) Promotion of Hawaii’s renewable hydrogen resources to potential partners and investors;
- (7) A plan, for implementation during the years 2007 to 2010, to more fully deploy hydrogen technologies and infrastructure capable of supporting the island of Hawaii’s energy needs, including:
 - (A) Expanded installation of hydrogen production facilities;
 - (B) Development of integrated energy systems, including hydrogen vehicles;
 - (C) Construction of additional hydrogen refueling stations; and
 - (D) Promotion of building design and construction that fully incorporates clean energy assets, including reliance on hydrogen-fueled energy generation;
- (8) A plan, for implementation during the years 2010 to 2020, to transition the island of Hawaii to a hydrogen-fueled economy and to extend the application of the plan throughout the State; and
- (9) Evaluation of policy recommendations to:
 - (A) Encourage the adoption of hydrogen-fueled vehicles;
 - (B) Continually fund the hydrogen investment capital special fund; and
 - (C) Support investment in hydrogen infrastructure, including production, storage, and dispensing facilities.”

SECTION 7. Chapter 211F, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§211F- Hydrogen investment capital special fund.** (a) There shall be established the hydrogen investment capital special fund, into which shall be deposited:

- (1) Appropriations made by the legislature to the fund;
 - (2) All contributions from public or private partners;
 - (3) All interest earned on or accrued to moneys deposited in the special fund; and
 - (4) Any other moneys made available to the special fund from other sources.
- (b) Moneys in the fund shall be used to:
- (1) Provide seed capital for and venture capital investments in private sector and federal projects for research, development, testing, and implementation of the Hawaii renewable hydrogen program, as set forth in section 196-B; and
 - (2) For any other purpose deemed necessary to carry out the purposes of section 196-B.”

SECTION 8. 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 2006-2007, to conduct a statewide multi-fuel biofuels production assessment of potential feedstocks and technologies, the economics of the various renewable fuels pathways, and the potential for ethanol, biodiesel, and renewable hydrogen production to contribute to Hawaii’s near-, mid-, and long-term energy needs.

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

SECTION 9. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2006-2007, to provide assistance to the agricultural community interested in developing energy projects, especially for the production of biodiesel from energy crops and cellulosic ethanol from agricultural waste streams, and to seek funding that may be available from the United States Departments of Agriculture and Energy, and other external sources.

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

SECTION 10. There is appropriated out of the general revenues of the State of Hawaii the sum of \$10,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, to be deposited into the hydrogen investment capital special fund.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of section 211F- (b), Hawaii Revised Statutes.

SECTION 11. There is appropriated out of the hydrogen investment capital special fund the sum of \$10,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, to be used for the purposes of the hydrogen investment capital special fund established pursuant to section 211F- , Hawaii Revised Statutes.

The sum appropriated shall be expended by the department of business, economic development, and tourism for the purposes of section 211F- (b), Hawaii Revised Statutes.

SECTION 12. 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 2006-2007, for the Hawaii natural energy institute to hire one full-time hydrogen system program manager position.

The sum appropriated shall be expended by the University of Hawaii through a contract with the Hawaii natural energy institute for the purposes of this part.

PART IV
SOLAR WATER HEATING PAY AS YOU SAVE

SECTION 13. **Solar water heating pay as you save program; purpose; establishment; tariff filing.** (a) Solar water heating systems are a renewable energy technology that uses solar collectors placed on roofs to heat water. These systems decrease reliance on imported oil used to generate electricity to heat water because they use less energy than the electric hot water heating systems replaced.

The legislature finds that the up-front cost of installation is a barrier preventing many Hawaii residents from installing solar water heating systems. The legislature further finds that the renewable energy technologies income tax credit and electric utility rebates have not been enough of an incentive to overcome these up-front costs, especially for rental housing and homes in need of retrofit for these important energy-saving devices.

The purpose of this section is to authorize the public utilities commission to implement a pilot project to be called the "solar water heating pay as you save program".

(b) The public utilities commission shall implement a pilot project to be called the "solar water heating pay as you save program", which shall:

(1) Allow a residential electric utility customer to purchase a solar water heating system:

(A) With no upfront payments; and

(B) By paying the cost of the system over time on the customer's electricity bill;

provided that the estimated life cycle electricity savings from the solar water heating system exceeds the cost of the system;

(2) Provide for billing and payment of the solar water heating system on the utility bill;

(3) Provide for disconnection of utility service for non-payment of solar water heating system pay as you save payments; and

(4) Allow for assignment of system repayment costs attached to the meter location.

(c) The public utilities commission shall determine the time frame of the pilot program and shall gather and analyze information to evaluate the pilot program.

(d) No later than June 30, 2007, each electric utility shall implement by tariff a pay as you save model system program for residential consumers that is consistent with this section. Each utility shall provide at least six months prior notice of its proposed tariff to the public utilities commission as prescribed in section 269-12(b), Hawaii Revised Statutes. Within the prescribed notice period, the public utilities commission shall review the proposed tariff and after a hearing may require modifications to the proposed tariff as necessary to comply with or effectuate the purposes of this section.

(e) The commission shall ensure that all reasonable costs incurred by electric utilities to start up and implement the pay as you save model system are recovered as part of the utility's revenue requirement, including necessary billing system adjustments and any costs for pay as you save model system efficiency measures that are

not recovered via participating residential consumers' pay as you save model system bill payments or otherwise.

**PART V
MISCELLANEOUS PROVISIONS**

SECTION 14. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 15. In codifying the new sections added by 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; provided that section 2 of this Act shall apply to taxable years beginning after December 31, 2005; provided further that the increased tax credits established in section 2 of this Act shall be available only to eligible renewable energy technology systems installed after July 1, 2006; and provided further that sections 8, 9, 10, 11, and 12 shall take effect on July 1, 2006.

(Approved June 26, 2006.)

Notes

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

ACT 241

S.B. NO. 2501

A Bill for an Act Relating to Fishing.

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

SECTION 1. The purpose of this Act is to create and amend fishing provisions that affect the communities of Ha'ena, Kauai and Kahului, Maui. Specifically, part I of this Act establishes a community-based subsistence fishing area for the ahupua'a of Ha'ena to protect the fish stocks and coral reef habitats. Part II of this Act extends the effective date of Act 218, Session Laws of Hawaii 2005, to allow the department of land and natural resources time to adopt necessary rules regulating user conflicts in Kahului harbor.

PART I

SECTION 2. The ahupua'a of Ha'ena is the westernmost land in the moku of Halele'a on the northwest coast of Kauai. The public highway ends in this ahupua'a, a land filled with many wahi pana or storied places, sites that are sacred to native Hawaiians and important to the whole state. The ahupua'a of Ha'ena and its offshore waters, since time immemorial, have been an important subsistence fishery resource for native Hawaiians and local families of the ahupua'a. However, the beauty of the land and sea and the proximity to the end of the public highway in the ahupua'a of Ha'ena attract hundreds of thousands of visitors to the area every year. As a result of this influx of visitors and a growing problem of indiscriminate fishing practices,

there has been an adverse impact to the fish stocks and the integrity of the coral reef habitats in the area.

The legislature finds that a traditionally managed fishery wherein the inhabitants of the ahupua'a develop and assist in development and enforcement of traditional regulations for the maintenance of the fishery is needed for the ahupua'a of Ha'ena.

The purpose of this Act is to establish a community-based subsistence fishing area in the ahupua'a of Ha'ena.

SECTION 3. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§188- Ha'ena community-based subsistence fishing area; restrictions; regulations. (a) There is designated the Ha'ena community-based subsistence fishing area on the northwestern coast of Kauai, which shall consist of all state waters and submerged lands bounded by:

- (1) The shoreline of the Haena district;
- (2) A line that follows an imaginary extension of the boundary between Hae'na state park and Na Pali state park that extends seaward for one mile from the shoreline;
- (3) An irregular line one mile offshore that is parallel to the contours of the shoreline; and
- (4) A line that follows an imaginary extension of the boundary between Hae'na and Wainiha, as specified in the tax map of the county of Kauai, that extends seaward for one mile from the shoreline.

(b) In addition to the provisions of this chapter, the following uses or activities shall be regulated in the Ha'ena community-based subsistence fishing area:

- (1) Any activities with a commercial purpose, as defined in section 187A-1;
- (2) The issuance of any commercial marine license, as defined in section 187A-1;
- (3) The issuance of any aquarium fish permits, pursuant to section 188-31;
- (4) Fishing with the use of gill nets;
- (5) Fishing with self-contained underwater breathing apparatus and spears; and
- (6) Any other use or activity that the department of land and natural resources, in consultation with the inhabitants of the ahupua'a of Ha'ena and other interested parties, deems appropriate.

(c) The department of land and natural resources, as soon as practical, shall consult with as broad a base as possible, group of inhabitants of the ahupua'a of Ha'ena and other interested parties to establish rules for the Ha'ena community-based subsistence fishing area, to include but not be limited to:

- (1) A determination of fishing practices that are customarily and traditionally exercised for purposes of native Hawaiian subsistence, culture, and religion in the fishing area;
- (2) A management plan recognizing existing marine activities permitted by the department of land and natural resources and containing a description of specific activities to be conducted in the fishing area, including evaluation and monitoring processes and methods of funding and enforcement;
- (3) Limits on the harvest of aquatic life, as those terms are defined in section 187A-1, in the fishing area;

- (4) The establishment of no harvesting zones within the fishing area without depriving ahupua'a inhabitants of access to traditional sources of subsistence; and
- (5) A process for the expansion of the fishing area to include other ahupua'a. The department of land and natural resources shall adopt rules pursuant to chapter 91 necessary for the purpose of this section."

PART II

SECTION 4. The legislature finds that the department of land and natural resources is in the process of adopting rules regulating user conflicts in Kahului harbor and upon the adoption of the rules, the provision of Act 218, Session Laws of Hawaii 2005, will be unnecessary. The legislature further finds that the rule making process should be completed prior to June 2007.

The purpose of this part is to extend the effective date of Act 218, Session Laws of Hawaii 2005, to allow the department of land and natural resources time to adopt necessary rules prior to June 2007.

SECTION 5. Act 218, Session Laws of Hawaii 2005, is amended by amending section 3 to read as follows:

"SECTION 3. This Act shall take effect on ~~[December 31, 2006.]~~ June 30, 2007; provided that this Act shall be repealed upon the effective date of administrative rules adopted by the department of land and natural resources regarding user conflicts at Kahului harbor; and provided further that upon repeal of this Act, section 188-34, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act."

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 its approval.

(Approved June 26, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 242

H.B. NO. 2153

A Bill for an Act Relating to Health.

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

SECTION 1. The legislature finds that West Maui has a de facto population of fifty thousand, and its resident population is projected to double within ten years. The area lacks twenty-four-hour, seven-days-a-week, urgent and extended medical care. Urgent care is required for any episode of illness or injury that is not immediately life-threatening and not elective but is brought on unexpectedly. Extended care services refer to the provision of appropriate medical care after normal physician work hours, or clinic hours on weekdays and whole or partial days on weekends and holidays.

The legislature finds that West Maui patients who need urgent care after hours must drive over twenty-five miles one way to central Maui for care. Providing

outpatient, urgent, and extended medical care in West Maui could reduce the costs of health care and provide needed medical services to residents of the area. The purpose of this Act is to appropriate funds to provide outpatient, urgent, and extended after-hours medical care in West Maui.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the department of health to contract with a private health care provider or a nonprofit health care provider pursuant to chapter 103F, Hawaii Revised Statutes, to:

- (1) Provide outpatient, urgent, and extended after hours medical care to any patient in West Maui; and
- (2) Fund expenses related to the delivery of direct services, including staff salaries for medical and administrative personnel, and operating expenses, including equipment purchases.

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 28, 2006.)

ACT 243

S.B. NO. 2461

A Bill for an Act Relating to Grants.

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

PART I

SECTION 1. The legislature finds that the Hui Malama Learning Center provides alternative education programs for at-risk youths. Its programs include GED foundations and academic tutorials.

The purpose of this part is to appropriate or authorize moneys for a grant to Hui Malama Learning Center for alternative education programs.

SECTION 2. There is appropriated or authorized from temporary assistance for needy families funds the sum of \$75,000, or so much thereof as may be necessary for fiscal year 2006-2007, for a grant to Hui Malama Learning Center for programs pursuant to this part; provided that funds shall be used only for purposes authorized under federal guidelines.

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

PART II

SECTION 3. The legislature finds that Maui Economic Opportunity, Inc. is a private, nonprofit community action agency. Its mission is to help the low-income elderly, children, and youth; people with disabilities; immigrants; other disadvantaged people; and the general public to help themselves become self-sufficient. Maui Economic Opportunity, Inc. also provides transitional services to inmates at the Maui Community Correctional Center.

The purpose of this part is to appropriate or authorize moneys for a grant to Maui Economic Opportunity, Inc. for transitional programs for inmates at the Maui Community Correctional Facility.

SECTION 4. There is appropriated or authorized from temporary assistance for needy families funds the sum of \$175,000, or so much thereof as may be necessary for fiscal year 2006-2007, for a grant to Maui Economic Opportunity, Inc., for programs pursuant to this part; provided that funds shall be used only for purposes authorized under federal guidelines.

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

PART III

SECTION 5. The legislature finds that the Adult Friends for Youth is a private, nonprofit organization dedicated to redirecting youth from delinquent gang behaviors into pro-social behaviors, allowing them to merge successfully with the social and economic mainstream.

The purpose of this part is to appropriate or authorize moneys for a grant to Adult Friends for Youth for its drug and youth gang prevention and rehabilitation program.

SECTION 6. There is appropriated or authorized from temporary assistance for needy families funds the sum of \$100,000, or so much thereof as may be necessary for fiscal year 2006-2007, to Adult Friends for Youth for programs pursuant to this part; provided that funds shall be used only for purposes authorized under federal guidelines.

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

PART IV

SECTION 7. The legislature finds that the Baby Hui provides low-income and teenaged parents with a positive support network through its positive parenting support groups, including neighborhood- and high school-based support groups for parents and children from birth to age three.

The purpose of this part is to appropriate funds for the Baby Hui for fee waiver subsidies for low-income and teen parents participating in its positive parenting support groups.

SECTION 8. There is appropriated or authorized from the temporary assistance for needy families funds the sum of \$24,800, or so much thereof as may be necessary for fiscal year 2006-2007, to the Baby Hui for programs pursuant to this part; provided that funds shall be used only for purposes authorized under federal guidelines.

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

PART V

SECTION 9. The legislature finds that Maui Youth and Family Services provides adolescent mental health programs, including components for pregnancy prevention and family strengthening.

The purpose of this part is to appropriate or authorize moneys for a grant to Maui Youth and Family Services for adolescent residential behavioral health programs.

SECTION 10. There is appropriated or authorized from the temporary assistance for needy families funds the sum of \$600,000, or so much thereof as may be

necessary for fiscal year 2006-2007, to Maui Youth and Family Services, Inc. for programs pursuant to this part; provided that funds shall be used only for purposes authorized under federal guidelines.

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

PART VI

SECTION 11. The legislature finds that the Oral Health Institute of the Pacific program was opened in 2004 to increase access to oral health services by providing clinical dental services and case management to special needs patients, and underserved children and adults. These underserved children and adults are medicaid, QUEST, or SCHIP recipients or are uninsured, and have not had access to oral health services in many years. The underserved population includes geriatric patients, children with special needs, adult mental health patients, renal dialysis patients, heart transplant patients, persons with HIV/AIDS, former inmates, and the homeless.

The underserved population by and large cannot access dental services in their communities. This is due to dentist non-participation with Med-QUEST, low medicaid program reimbursement rates for dental services at only twenty-five per cent of the cost of treatment, and excessive paperwork for billing medicaid. Accordingly, the number of dental providers who actively treat these patients is alarmingly small. On Maui, there are fewer than five dentists who see these 14,765 patients. Approximately half are children under age twenty-one. One pediatric dentist who practices on Maui participates with Med-QUEST. Sometimes children are flown to Oahu, accompanied by a parent or guardian, for dental treatment. This requires extensive coordination and case management and can be very traumatic for the patient, and costly to the State.

The purpose of this part is to make an appropriation for a grant to Global Medilink Technology Inc. for the Oral Health Institute of the Pacific program so it can continue to operate dental clinics and provide dental services to low income and uninsured people.

SECTION 12. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000, or so much thereof as may be necessary for fiscal year 2006-2007, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, to Global Medilink Technology Inc. for programs pursuant to this part.

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

PART VII

SECTION 13. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,500,000, or so much thereof as may be necessary for fiscal year 2006-2007, as grants pursuant to chapter 42F, Hawaii Revised Statutes, to:

- | | |
|----------------------------------|-----------|
| (1) Molokai General Hospital | \$500,000 |
| (2) Kahuku Hospital | \$500,000 |
| (3) Hana Community Health Center | \$500,000 |

The sum appropriated shall be expended by the department of health for the purposes of this section.

SECTION 14. There is appropriated out of the general revenues of the State of Hawaii \$500,000, or so much as may be necessary for fiscal year 2006-2007, as a grant pursuant to chapter 42F, Hawaii Revised Statutes, for emergency room subsidy

at the Waianae District Comprehensive Health and Hospital Board, Inc., doing business as Waianae Coast Comprehensive Health Center.

The sum appropriated shall be expended by the department of health for the purposes of this section.

PART VIII

SECTION 15. This Act shall take effect on July 1, 2006.

(Approved June 28, 2006.)

ACT 244

H.B. NO. 2961

A Bill for an Act Relating to Education.

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

SECTION 1. The legislature finds that the department of education federal revenue maximization program was established to develop a claiming process for all medicaid-eligible health services that it provides to Hawaii's school-aged children.

The legislature also finds that current moneys generated from the department of education revenue maximization program are deposited into the general fund. However, the deposit of generated revenue into the general fund does not guarantee the moneys would be dedicated to the school-based claiming program. Thus, a revolving fund for the department of education federal revenue maximization program should be established to provide a clear nexus between the revenue generated from the school-based claiming program and the provision of those services.

Accordingly, the purpose of this Act is to create a revolving fund for the collection and disbursement of generated revenue to support the administration and operations of the department of education federal revenue maximization program.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§302A- Department of education federal revenue maximization program revolving fund; established. (a) There is established in the state treasury the department of education federal revenue maximization program revolving fund to be administered by the department. Moneys from the revolving fund shall be expended by the department for medicaid-eligible services provided by the department and administrative costs related to the department of education federal revenue maximization program.

(b) The department of education federal revenue maximization program revolving fund shall consist of:

- (1) Federal revenue collected by the department for administering and operating the department of education federal revenue maximization program;
- (2) Legislative appropriations;
- (3) All interest earned on the deposit or investment of moneys in the department of education federal revenue maximization program revolving fund; and
- (4) Any other moneys made available to the department of education federal revenue maximization program revolving fund from other sources.”

ACT 245

SECTION 3. Section 29-24, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury an interagency federal revenue maximization revolving fund into which shall be deposited all funds and proceeds collected from the federal government and third-party payors for costs not previously claimed by the State, with the exception of proceeds collected for services provided by the Hawaii health systems corporation, for reimbursement ~~[by] of~~ federally-funded state programs. For purposes of this chapter, federally-funded state programs include but shall not be limited to those federally-funded programs within the departments of human services~~[-, education,-]~~ and health~~[-]~~, and shall not include the federally-funded program within the department of education as provided in 302A- . Expenditures and transfers from the fund shall be made by the comptroller in proportional allocations established by the comptroller and the director of finance. Transfers shall be made to the department claiming the reimbursement for expenses incurred related to federal fund reimbursement claims and to the general fund of the State. Moneys in the fund may be expended for consultant services rendered under subsection (b).”

SECTION 4. There is appropriated out of the department of education federal revenue maximization program revolving fund the sum of \$2,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 for medicaid-eligible services provided by the department of education and administrative costs related to the department of education federal revenue maximization program.

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

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 July 1, 2006.

(Approved June 28, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 245

S.B. NO. 2704

A Bill for an Act Relating to Education.

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

SECTION 1. As a result of implementing the weighted student formula required by Act 51, Session Laws of Hawaii 2004, as amended by Act 221, Session Laws of Hawaii 2004, a number of programs with line item budget appropriations are included in the weighted funds available for principals and school community councils to budget and expend. The school-level minor repairs and maintenance accounts constitute one such program. Accordingly, the purpose of this Act is to clarify that the account established for the school-level minor repairs and maintenance program is no longer funded by general funds.

SECTION 2. Section 302A-1504, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1504 School-level minor ~~[repairs]~~ repair and maintenance ~~[accounts,]~~ account. (a) The department shall establish ~~[two]~~ a school-level minor ~~[repairs]~~ repair and maintenance ~~[accounts]~~ account for the use ~~[of]~~ by each public school~~[-, which]~~ that shall not exceed \$25,000 each per school. The ~~[first]~~ account shall be comprised of ~~[general funds appropriated to the department and the second account shall be comprised of]~~ funds appropriated out of the school-level minor repairs and maintenance special fund pursuant to section 302A-1504.5 for school-level minor repairs and maintenance and shall not be used for any other purpose, nor shall any other funds be deposited into the ~~[accounts. The department shall allocate funds based on the number of students at the school multiplied by a factor which recognizes the age and condition of the school.]~~ account.

(b) Funds in ~~[these accounts]~~ the account shall be expended at the direction of the school principal to contract for minor repairs and maintenance. Notwithstanding any other law to the contrary, ~~[general or]~~ special funds appropriated for this purpose that are unencumbered at the close of each fiscal year in ~~[these accounts]~~ the account shall not lapse until June 30 of the first fiscal year of the next fiscal biennium. The department ~~[of education]~~ shall submit:

- (1) A report to the director of finance, ninety days after the close of each fiscal year, which shall be prepared in the form prescribed by the director of finance and shall identify the total amount of funds in ~~[each]~~ the account that shall carry over to the next fiscal year; and
- (2) A copy of this report to the legislature at least twenty days prior to the convening of each regular session of the legislature.

~~[(c) Each school principal, through the superintendent, shall submit a report annually to the department of accounting and general services in the form prescribed by the comptroller on expenditures made from each account.]”~~

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, 2006.

(Approved June 28, 2006.)

ACT 246

S.B. NO. 2956

A Bill for an Act Relating to Education.

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

SECTION 1. This Act shall be known as the “Fix Our Schools Act of 2006.”

SECTION 2. The legislature finds that Hawaii’s future depends on our youth, and the investments we make in our young people today will determine the course of our state in the years to come. One of the greatest investments we can make is to provide our youth with the best possible opportunities in education.

It has been proven that a proper scholastic environment—one that is safe, secure, well-maintained, and clean—is a key contributor to a child’s capacity to learn.

However, the legislature finds that there is a continuing backlog of repair and maintenance projects for Hawaii’s public schools. In 2001, the Hawaii Opinion Poll on Public Education found that rundown, poorly kept, or inadequate facilities ranked third in the ten biggest problems facing our schools. Student leaders at the 2005

Hawaii Secondary Student Conference passed a resolution supporting the expenditure of funds to relieve the backlog.

Hence, the purpose of this Act is to provide resources for the repair, maintenance, and renovation of Hawaii's public schools.

SECTION 3. In accordance with section 9 of article VII, of the Constitution of the State of Hawaii and sections 37-91 and 37-93, Hawaii Revised Statutes, the legislature has determined that the appropriations contained in this Act will cause the state general fund expenditure ceiling for fiscal year 2006-2007 to be exceeded by \$111,841,598 or 2.1 per cent. The reasons for exceeding the general fund expenditure ceiling are that the appropriations made in this Act are necessary to serve the public interest and to meet the needs provided for by this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$160,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the renovation of classrooms statewide in the department of education.

The appropriation made by this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all moneys from the appropriation unencumbered as of June 30, 2008, shall lapse as of that date.

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

SECTION 5. The director of finance is authorized to issue general obligation bonds in the sum of \$40,000,000 or so much thereof as may be necessary, and the same sum or so much thereof as may be necessary is appropriated for fiscal year 2006-2007 for repair and maintenance of department of education school facilities.

The appropriation made by this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all moneys from the appropriation unencumbered as of June 30, 2008, shall lapse as of that date.

The appropriation made by this section shall be deposited in the state educational facilities special fund.

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

SECTION 6. There is appropriated out of the state educational facilities special fund the sum of \$40,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the repair and maintenance of department of education school facilities.

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

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$35,000,000 or so much thereof as may be necessary for fiscal year 2006-2007 for repair and maintenance of department of education school facilities.

The appropriation made by this section shall not lapse at the end of the fiscal year for which the appropriation is made; provided that all moneys from the appropriation unencumbered as of June 30, 2008, shall lapse as of that date.

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

SECTION 8. This Act shall take effect on July 1, 2006.

(Approved June 28, 2006.)

ACT 247

H.B. NO. 2626

A Bill for an Act Relating to State Bonds.

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

SECTION 1. Declaration of findings with respect to the general obligation bonds authorized by this Act. Pursuant to the clause in Article VII, Section 13 of the State Constitution which states: "Effective July 1, 1980, the legislature shall include a declaration of findings in every general law authorizing the issuance of general obligation bonds that the total amount of principal and interest, estimated for such bonds and for all bonds authorized and unissued and calculated for all bonds issued and outstanding, will not cause the debt limit to be exceeded at the time of issuance," the legislature finds and declares as follows:

- (1) Limitation on general obligation debt. The debt limit of the state is set forth in Article VII, Section 13 of the State Constitution, which states in part: "General obligation bonds may be issued by the State; provided that such bonds at the time of issuance would not cause the total amount of principal and interest payable in the current or any future fiscal year, whichever is higher, on such bonds and on all outstanding general obligation bonds to exceed: a sum equal to twenty percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance until June 30, 1982; and thereafter, a sum equal to eighteen and one-half percent of the average of the general fund revenues of the State in the three fiscal years immediately preceding such issuance." Article VII, Section 13 also provides that in determining the power of the State to issue general obligation bonds, certain bonds are excludable, including "reimbursable general obligation bonds issued for a public undertaking, improvement or system but only to the extent that reimbursements to the general fund are in fact made from the net revenue, or net user tax receipts, or combination of both, as determined for the immediately preceding fiscal year" and bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor, but only to the extent the principal amount of such bonds does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under 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 2005-2006 and estimated for each fiscal year from 2006-2007 to 2008-2009, is as follows:

<u>Fiscal Year</u>	<u>Net General Fund Revenues</u>	<u>Debt Limit</u>
2002-2003	3,766,052,192	
2003-2004	3,894,091,730	
2004-2005	4,471,460,582	
2005-2006	4,781,446,000	748,115,611
2006-2007	5,071,922,000	810,731,563
2007-2008	5,421,156,000	883,364,429
2008-2009	(not applicable)	941,928,980

For fiscal years 2005-2006, 2006-2007, 2007-2008, and 2008-2009, respectively, the debt limit is derived by multiplying the average of the net

general fund revenues for the three preceding fiscal years by eighteen and one-half per cent. The net general fund revenues for fiscal years 2002-2003, 2003-2004, and 2004-2005 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, 2005, dated November 30, 2005. The net general fund revenues for fiscal years 2005-2006 to 2007-2008 are estimates, based on general fund revenue estimates made as of March 6, 2006, 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, 2006, is as follows for fiscal year 2006-2007 to fiscal year 2012-2013:

<u>Fiscal Year</u>	<u>Principal and Interest</u>
2006-2007	526,455,126
2007-2008	529,312,730
2008-2009	533,619,676
2009-2010	503,603,627
2010-2011	478,227,749
2011-2012	423,945,601
2012-2013	424,802,447

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 2013-2014 to fiscal year 2025-2026 when the final installment of \$20,486,031 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, 2006, adjusted for:
 - (i) Appropriations to be funded by general obligations bonds or reimbursable general obligation bonds as provided in Act 178, Session Laws of Hawaii 2005 (the General Appropriations Act of 2005), to be expended in fiscal year 2006-2007, adjusted for reductions provided in House Bill No. 1900, H.D. 1, S.D. 1, C.D. 1st (the Supplemental Appropriations Act of 2006);

- (ii) Lapses as provided in House Bill No. 1900, H.D. 1, S.D. 1, C.D. 1¹ (the Supplemental Appropriations Act of 2006);
 - (iii) Lapses as provided in House Bill No. 2500, H.D. 2, S.D. 2, C.D. 1² (the Judiciary Supplemental Appropriations Act of 2006); and
 - (iv) The issuance of \$350,000,000 General Obligation Bonds of 2006, Series DI,
 the total amount of authorized but unissued general obligation bonds or reimbursable general obligation bonds is \$890,291,924. The total amount of general obligation bonds authorized by this Act is \$556,489,000. The total amount of general obligation bonds previously authorized and unissued and the general obligation bonds authorized in this Act is \$1,446,780,924.
- (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 2006-2007, 2007-2008, and 2008-2009, the State proposed to issue \$250,000,000 in general obligation bonds during the first half of fiscal year 2006-2007, \$275,000,000 in general obligation bonds during the second half of fiscal year 2006-2007, \$275,000,000 in general obligation bonds during the first half of fiscal year 2007-2008, \$250,000,000 in general obligation bonds during the second half of fiscal year 2007-2008, and \$200,000,000 in general obligation bonds semi-annually during fiscal year 2008-2009. 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 2006-2007 to 2007-2008 is \$1,050,000,000. An additional \$400,000,000 is proposed to be issued in fiscal year 2008-2009. The total amount of \$1,050,000,000 which is proposed to be issued through fiscal year 2007-2008 is sufficient to meet the requirements of the authorized and unissued bonds, as adjusted, the total amount of which is \$1,446,780,924, as reported in paragraph (4), except for \$396,780,924. It is assumed that the appropriations to which an additional \$396,780,924 in bond issuance needs to be applied will have been encumbered as of June 30, 2008. The \$400,000,000 which is proposed to be issued in fiscal year 2008-2009 will be sufficient to meet the requirements of the June 30, 2008, encumbrances in the amount of \$396,780,924. The amount of assumed encumbrances as of June 30, 2008, 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 proposed to be issued by June 30, 2008, and the amount of June 30, 2008, encumbrances versus the amount of bonds proposed to be issued in fiscal year 2008-2009, the legislature finds that in the aggregate, the amount of bonds 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 2.19 per cent for the ten years from fiscal year 2006-2007 to fiscal year 2015-2016. For the purpose of this declaration, the assumption is made that one per cent of each bond issue will be excludable from the debt limit, an assumption the legislature finds to be reasonable and conservative.

(B) Bonds constituting instruments of indebtedness under which the State incurs a contingent liability as a guarantor can be excluded but only to the extent the principal amount of such guaranties does not exceed seven per cent of the principal amount of outstanding general obligation bonds not otherwise excluded under subparagraph (A) of this paragraph (7) and provided that the State shall establish and maintain a reserve in an amount in reasonable proportion to the outstanding loans guaranteed by the State as provided by law. According to the department of budget and finance and the assumptions presented herein, the total principal amount of outstanding general obligation bonds and general obligation bonds proposed to be issued, which are not otherwise excluded under Article VII, Section 13 of the State Constitution for the fiscal years 2005-2006, 2006-2007, 2007-2008, and 2008-2009 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>
2005-2006	4,239,835,266
2006-2007	4,442,352,138
2007-2008	4,630,160,647
2008-2009	4,700,716,578

Based on the foregoing and based on the assumption that the full amount of a guaranty is immediately due and payable when such guaranty changes from a contingent liability to an actual liability, the aggregate principal amount of the portion of the outstanding guaranties and the guaranties proposed to be incurred, which does not exceed seven per cent of the average amount set forth in the last column of the above table and for which reserve funds have been or will have been established as heretofore provided, can be excluded in determining the power of the State to issue general obligation bonds. As it is not possible to predict with a reasonable degree of certainty when a guaranty will change from a contingent liability to an actual liability, it is assumed in conformity with fiscal conservatism and prudence, that all guaranties not otherwise excluded pursuant to Article VII, Section 13 of the State Constitution will become due and payable in the same fiscal year in which the greatest amount of principal and interest on general obligation bonds, after exclusions, occurs. Thus, based on such assumptions and on the determination in paragraph (8), all of the outstanding guaranties can be excluded.

- (8) Determination whether the debt limit will be exceeded at the time of issuance. From the foregoing and on the assumption that all of the bonds identified in paragraph (5) will be issued at an interest rate of not more than 6.0 per cent, it can be determined from the following schedule that the bonds which are proposed to be issued, which include all authorized and unissued bonds previously authorized, as adjusted, general obligation bonds, and instruments of indebtedness under which the State incurs a contingent liability as a guarantor authorized in this Act, will not cause the debt limit to be exceeded at the time of such issuance:

<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>
1 st half FY 2006-2007 \$247,500,000	810,731,563	548,469,676 (2008-2009)
2 nd half FY 2006-2007 \$272,250,000	810,731,563	564,804,676 (2008-2009)
1 st half FY 2007-2008 \$272,250,000	883,364,429	572,972,176 (2008-2009)
2 nd half FY 2007-2008 \$247,500,000	883,364,429	587,822,176 (2008-2009)
1 st half FY 2008-2009 \$198,000,000	941,928,980	577,853,627 (2009-2010)
2 nd half FY 2008-2009 \$198,000,000	941,928,980	589,733,627 (2009-2010)

- (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. 1900, H.D. 1, S.D. 1, C.D. 1¹ (the Supplemental Appropriations Act of 2006), House Bill No. 2500, H.D. 2, S.D. 2, C.D. 1² (the Judiciary Supplemental Appropriations Act of 2006), and Senate Bill No. 2956, S.D. 2, H.D. 2, C.D. 1³ (Relating to Education), passed by this regular session of 2006, 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 \$556,489,000.

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 28, 2006.)

Notes

1. Act 160.
2. Act 120.
3. Act 246.

ACT 248

H.B. NO. 2045

A Bill for an Act Relating to Perinatal Care.

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

SECTION 1. Since mid-1980, Hawaii has been gripped by an epidemic of methamphetamine use. Females in Hawaii, in particular, have been adversely affected. In the year 2000, child welfare services (CWS) received reports of two hundred eight drug-exposed infants on the island of Oahu, seventy-nine per cent of whom (one hundred sixty-four infants) were reportedly exposed to methamphetamine. In 2002, the criminal justice system reported that one-half of adult female arrestees in Honolulu tested positive for methamphetamine. In 2004, CWS reported that methamphetamine use was involved in over eighty per cent of its active cases.

While methamphetamine use receives a great deal of attention, little is known about its adverse effects during pregnancy. More is known about the harmful nature of legal drugs such as tobacco and alcohol, which are much more widely used before and during pregnancy. Approximately sixty-five per cent of reproductive-aged women use alcohol and unfortunately, despite strong warnings about harmful effects, many women do not stop using alcohol during pregnancy. One University of Hawaii study showed that twenty per cent of women used alcohol during pregnancy. Fetal alcohol syndrome is the number one cause of preventable birth defects. In addition, nineteen per cent of pregnant women in Hawaii smoke. Smoking during pregnancy is associated with pre-term labor, low birth weight, abruption, and other serious pregnancy complications. Studies have shown that treating smoking addiction during pregnancy works, and offering treatment for nicotine addiction provides an excellent opportunity to enroll women who would otherwise be too afraid to seek care in methamphetamine addiction treatment programs.

In 2004, the legislature enacted a law requiring health providers involved in the delivery or care of a drug-affected infant to notify CWS. The law also requires CWS to implement and operate a statewide program, including:

- (1) A plan of safe care for drug-addicted infants; and
- (2) Triage procedures for appropriate referral to a community organization or voluntary preventive services for a child not at risk of imminent harm as well as for the child's family.

A cornerstone of programs that address perinatal drug abuse has been the prevention of infant abandonment or placement into out-of-home care. Many studies have shown better outcomes when children are raised by their biological parents. This knowledge has led to interventions designed to maintain the family structure while preventing or treating substance abuse during pregnancy and providing prenatal care.

However, women who suffer from substance abuse have difficulty using traditional systems of care. Services are not accessed for a number of reasons, such as:

- (1) Fear of losing custody of children;
- (2) Fear of forced treatment;
- (3) Lack of transportation to treatment sites;
- (4) Stigmatization due to substance abuse; and
- (5) Fear of criminal prosecution.

Fear of losing custody is the primary reason why women do not seek prenatal care. In addition, rather than serving as a deterrent to drug use during pregnancy, policies such as criminal prosecution serve as a hindrance to obtaining prenatal care. In South Carolina, Cornelia Whitner was tested without her knowledge or consent for the use of crack cocaine during her pregnancy and was prosecuted. Subsequently, the Supreme Court upheld the ruling that made it mandatory in South Carolina to report suspected drug abuse in pregnant women. After implementation of the mandatory reporting laws and the prosecution of Cornelia Whitner, there was a precipitous drop in admissions to drug treatment programs for pregnant women and a subsequent increase in infant mortality as well as a twenty per cent increase in the number of abandoned babies.

In addition to women's fear of detection and criminal prosecution, treatment services may not be accessed for reasons such as unreadiness for treatment or a coexisting mental illness. Other system-related barriers to prenatal care are the stigmatization due to substance abuse and negative attitudes of health care providers.

Further, the importance of comprehensive, coordinated, and individualized service provided by an interdisciplinary team of professionals who are supportive, nonjudgmental, and nurturing has been widely acknowledged. However, separate

service delivery systems have traditionally been provided for prenatal care and substance abuse treatment.

Women with high-risk pregnancies, such as drug-exposed pregnancies, have been shown to adapt to pregnancy and motherhood differently and less easily than women with low-risk pregnancies, and require specialized services to create a nurturing and caring environment. Health care workers in a traditional, separate service delivery system might lack not only the knowledge and skill to identify substance abuse but also familiarity with available resources and therapeutic management. In contrast, workers in a separate substance abuse treatment delivery system are unlikely to have the capacity to adequately address needs specific to pregnant women.

The purpose of this Act is to establish a pilot clinic to address Hawaii's current lack of facilities equipped to provide comprehensive prenatal, delivery, and postpartum care to women who have a history of methamphetamine and other substance abuse, including alcohol and tobacco. The pilot clinic will provide care at one location, and the care will include nonjudgmental substance abuse counseling, parenting classes, social service resources, and legal services. The goals of the comprehensive care and services provided by the clinic will be to:

- (1) Facilitate the patient's transition from a troubled, pregnant woman to a coping, capable parent;
- (2) Assess the safety of the home environment for the child; and
- (3) Prevent outplacement and keep families together whenever possible.

SECTION 2. (a) There is established within the John A. Burns school of medicine university clinical educational and research associates program at the University of Hawaii department of obstetrics, gynecology, and women's health, a pilot perinatal clinic, which in collaboration with the departments of pediatrics and psychiatry, shall provide:

- (1) Prenatal, delivery, and postpartum care for women with a history of substance abuse on the island of Oahu;
- (2) Substance abuse counseling;
- (3) Pediatric care with appropriate developmental interventions;
- (4) Psychiatric care for patients with dual diagnoses; and
- (5) Case management, including social services and coordination with child welfare services to ensure that the home environment is safe and to prevent the abandonment of children, and keep families intact whenever possible, as long as the safety of the children can be assured.

In addition to state funding of the pilot perinatal clinic, funding for perinatal and pediatric services of the clinic shall be pursued through the state medicaid program.

- (b) The pilot perinatal clinic shall cease operations on June 30, 2009.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2006-2007 to establish a pilot perinatal clinic and provide case management services.

The sum appropriated shall be expended by the John A. Burns school of medicine university clinical educational and research associates program at the University of Hawaii department of obstetrics, gynecology, and women's health for the purposes of this Act.

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved June 29, 2006.)

ACT 249

H.B. NO. 1995

A Bill for an Act Relating to Endangering the Welfare of a Minor.

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

SECTION 1. Section 709-903.5, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Except as provided in subsection (2), a person commits the offense of endangering the welfare of a minor in the first degree if, having care or custody of a minor, the person [~~intentionally~~]:

- (a) Intentionally or knowingly allows another person to inflict serious or substantial bodily injury on the minor[-]; or
- (b) Intentionally or knowingly causes or permits the minor to ingest methamphetamine.”

SECTION 2. Section 709-904, Hawaii Revised Statutes, is amended by amending subsection (1) to read as follows:

“(1) Except as provided in section 709-903.5(2), a person commits the offense of endangering the welfare of a minor in the second degree if, having care or custody of a minor, the person [~~recklessly~~]:

- (a) Recklessly allows another person to inflict serious or substantial bodily injury on the minor[-]; or
- (b) Recklessly causes or permits the minor to ingest methamphetamine.”

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 July 1, 2006.

(Approved June 29, 2006.)

ACT 250

H.B. NO. 2145

A Bill for an Act Relating to Agricultural Tourism.

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

SECTION 1. Section 205-2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) Agricultural districts shall include [~~activities~~]:

- (1) Activities or uses as characterized by the cultivation of crops, orchards, forage, and forestry; [~~farming~~]
- (2) Farming activities or uses related to animal husbandry, [~~aquaculture,~~] and game and fish propagation; [~~aquaculture,~~]
- (3) Aquaculture, which means the production of aquatic plant and animal life [~~for food and fiber~~] within ponds and other bodies of water; [~~wind~~]

- (4) Wind generated energy production for public, private, and commercial use; [~~bona~~]
- (5) Bona fide agricultural services and uses that support the agricultural activities of the fee or leasehold owner of the property and accessory to any of the above activities, whether or not conducted on the same premises as the agricultural activities to which they are accessory, including but not limited to farm dwellings as defined in section 205-4.5(a)(4), employee housing, farm buildings, mills, storage facilities, processing facilities, vehicle and equipment storage areas, and roadside stands for the sale of products grown on the premises; [~~wind~~]
- (6) Wind machines and wind farms; [~~small-scale~~]
- (7) Small-scale meteorological, air quality, noise, and other scientific and environmental data collection and monitoring facilities occupying less than one-half acre of land[;]; provided that these facilities shall not be used as or equipped for use as living quarters or dwellings; [~~agricultural parks; and open~~]
- (8) Agricultural parks;
- (9) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; and
- (10) Open area recreational facilities.

[For the purposes of this chapter,] Agricultural districts shall not include golf courses and golf driving ranges [~~are prohibited in agricultural districts,]~~ except as provided in section 205-4.5(d). [~~These~~] Agricultural districts [~~may~~] include areas [~~which~~] that are not used for, or [~~which~~] that are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics.”

SECTION 2. Section 205-4.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Within the agricultural district, all lands with soil classified by the land study bureau’s detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or [~~activity~~] activities or uses related to farming and animal husbandry. [~~Farm dwelling~~] “Farm dwelling” as used in this paragraph means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including

- dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, or treatment plants, or corporation yards, or other like structures;
 - (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
 - (9) Roadside stands for the sale of agricultural products grown on the premises;
 - (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the abovementioned uses and are permitted under section 205-2(d);
 - (11) Agricultural parks; [œ]
 - (12) Agricultural tourism conducted on a working farm, or a farming operation as defined in section 165-2, for the enjoyment, education, or involvement of visitors; provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations; and provided further that this paragraph shall apply only to a county that has adopted ordinances regulating agricultural tourism under section 205-5; or
 - [12] (13) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.”

SECTION 3. Section 205-5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Within agricultural districts, uses compatible to the activities described in section 205-2 as determined by the commission shall be permitted; provided that accessory agricultural uses and services described in sections 205-2 and 205-4.5 may be further defined by each county by zoning ordinance. Each county shall adopt ordinances setting forth procedures and requirements, including provisions for enforcement, penalties, and administrative oversight, for the review and permitting of agricultural tourism uses and activities as an accessory use on a working farm, or farming operation as defined in section 165-2; provided that agricultural tourism activities shall not be permissible in the absence of a bona fide farming operation. Ordinances shall include but not be limited to:

- (1) Requirements for access to a farm, including road width, road surface, and parking;
- (2) Requirements and restrictions for accessory facilities connected with the farming operation, including gift shops and restaurants; provided that overnight accommodations shall not be permitted;
- (3) Activities that may be offered by the farming operation for visitors;
- (4) Days and hours of operation; and
- (5) Automatic termination of the accessory use upon the cessation of the farming operation.

Each county may require an environmental assessment under chapter 343 as a condition to any agricultural tourism use and activity. Other uses may be allowed by special permits issued pursuant to this chapter. The minimum lot size in agricultural

districts shall be determined by each county by zoning ordinance, subdivision ordinance, or other lawful means; provided that the minimum lot size for any agricultural use shall not be less than one acre, except as provided herein. If the county finds that unreasonable economic hardship to the owner or lessee of land cannot otherwise be prevented or where land utilization is improved, the county may allow lot sizes of less than the minimum lot size as specified by law for lots created by a consolidation of existing lots within an agricultural district and the resubdivision thereof; provided that the consolidation and resubdivision do not result in an increase in the number of lots over the number existing prior to consolidation; and provided further that in no event shall a lot, which is equal to or exceeds the minimum lot size of one acre be less than that minimum after the consolidation and resubdivision action. The county may also allow lot sizes of less than the minimum lot size as specified by law for lots created or used for public, private, and quasi-public utility purposes, and for lots resulting from the subdivision of abandoned roadways and railroad easements.”

SECTION 4. Section 343-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as otherwise provided, an environmental assessment shall be required for actions that:

- (1) Propose the use of state or county lands or the use of state or county funds, other than funds to be used for feasibility or planning studies for possible future programs or projects that the agency has not approved, adopted, or funded, or funds to be used for the acquisition of unimproved real property; provided that the agency shall consider environmental factors and available alternatives in its feasibility or planning studies; provided further that an environmental assessment for proposed uses under section 205-2(d)(9) or 205-4.5(a)(12) shall only be required pursuant to section 205-5(b);
- (2) Propose any use within any land classified as a conservation district by the state land use commission under chapter 205;
- (3) Propose any use within a shoreline area as defined in section 205A-41;
- (4) Propose any use within any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966, Public Law 89-665, or chapter 6E;
- (5) Propose any use within the Waikiki area of Oahu, the boundaries of which are delineated in the land use ordinance as amended, establishing the “Waikiki Special District”;
- (6) Propose any amendments to existing county general plans where the amendment would result in designations other than agriculture, conservation, or preservation, except actions proposing any new county general plan or amendments to any existing county general plan initiated by a county;
- (7) Propose any reclassification of any land classified as a conservation district by the state land use commission under chapter 205;
- (8) Propose the construction of new or the expansion or modification of existing helicopter facilities within the State, that by way of their activities, may affect:
 - (A) Any land classified as a conservation district by the state land use commission under chapter 205;
 - (B) A shoreline area as defined in section 205A-41; or
 - (C) Any historic site as designated in the National Register or Hawaii Register, as provided for in the Historic Preservation Act of 1966,

Public Law 89-665, or chapter 6E; or until the statewide historic places inventory is completed, any historic site that is found by a field reconnaissance of the area affected by the helicopter facility and is under consideration for placement on the National Register or the Hawaii Register of Historic Places; and

- (9) Propose any:
- (A) Wastewater treatment unit, except an individual wastewater system or a wastewater treatment unit serving fewer than fifty single-family dwellings or the equivalent;
 - (B) Waste-to-energy facility;
 - (C) Landfill;
 - (D) Oil refinery; or
 - (E) Power-generating facility.”

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 29, 2006.)

ACT 251

S.B. NO. 2090

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

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

SECTION 1. Chapter 206E, Hawaii Revised Statutes, is amended by adding two new sections to part I to be appropriately designated and to read as follows:

“§206E- Community and public notice requirements; posting on the authority’s website; required. (a) The authority shall adopt community and public notice procedures pursuant to chapter 91 that shall include at a minimum:

- (1) A means to effectively engage the community in which the authority is planning a development project to ensure that community concerns are received and considered by the authority;
 - (2) The posting of the authority’s proposed plans for development of community development districts, public hearing notices, and minutes of its proceedings on the authority’s website; and
 - (3) Any other information that the public may find useful so that it may meaningfully participate in the authority’s decision-making processes.
- (b) The authority shall notify the president of the senate and speaker of the

house:

- (1) Of any public hearing upon posting of the hearing notice; and
- (2) With a report detailing the public’s reaction at the public hearing, within one week after the hearing.

§206E- Public hearing for decision making; separate hearing required. (a) When rendering a decision regarding:

- (1) An amendment to any of the authority’s community development rules established pursuant to chapter 91 and section 206E-7; or
- (2) The acceptance of a developer’s proposal to develop lands under the authority’s control,

the authority shall render its decision at a public hearing separate from the hearing that the proposal under paragraph (1) or (2) was presented.

(b) The authority shall issue a public notice in accordance with section 1-28.5 and post the notice on its website; provided that the decision-making hearing shall not occur earlier than five business days after the notice is posted. Prior to rendering a decision, the authority shall provide the general public with the opportunity to testify at its decision-making hearing.

(c) The authority shall notify the president of the senate and speaker of the house:

- (1) Of any public hearing upon posting of the hearing notice; and
- (2) With a report detailing the public's reaction at the public hearing, within one week after the hearing."

SECTION 2. New statutory material is underscored.¹

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

(Approved June 29, 2006.)

Note

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

ACT 252

S.B. NO. 2487

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

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

SECTION 1. Section 206E-3, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The authority shall consist of [eleven] thirteen voting members. The director of finance, the director of business, economic development, and tourism, the comptroller, and the director of transportation, or their respective designated representatives shall serve as ex officio, voting members. One member shall be appointed by the governor from a list of not less than three prospective appointees submitted by the president of the senate, and one member shall be appointed by the governor from a list of not less than three prospective appointees submitted by the speaker of the house of representatives. Seven members shall be appointed by the governor for staggered terms pursuant to section 26-34; provided that four members shall be appointed at large and, initially, three members, hereinafter referred to as county members, shall be selected from a list of ten prospective appointees recommended by the local governing body of the county in which the initial designated district is situated; and provided further that when vacancies occur in any of the three positions for which the members were selected from a list of county recommendations, the governor shall fill such vacancies on the basis of one from a list of four recommendations, two from a list of seven recommendations, or three from a list of ten recommendations. The list of recommendations shall be made by the local governing body of the county. If an additional district is designated by the legislature, the total membership of the authority shall be increased as prescribed above by the appointment of three additional members, except as provided for in section 206E-191. Notwithstanding section 92-15, a majority of all members shall constitute a quorum to do business, and the concurrence of a majority of all members shall be necessary to make any action of the authority valid; except that, on any matter

relating solely to a specific community development district, the members representing districts other than that specific community development district shall neither vote, nor shall they be counted to constitute a quorum, and concurrence shall be required of a majority of that portion of the authority made up of all ex officio voting members, members at large, and county and district members representing the district for which action is being proposed in order for such action to be valid. All members shall continue in office until their respective successors have been appointed and qualified. Except as herein provided, no member appointed under this subsection shall be an officer or employee of the State or its political subdivisions.”

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 29, 2006.)

ACT 253

S.B. NO. 2430

A Bill for an Act Relating to Election.

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

SECTION 1. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§353- Reports to county clerk.** Whenever the paroling authority grants or revokes parole for any citizen of eighteen years of age or over, the paroling authority, in each case, shall make and promptly transmit to the clerk of the county in which the citizen resides, a certificate showing the fact of the granting or revoking of parole within twenty days after the granting or revoking of parole. The certificate shall include:

- (1) The name, date of birth, and social security number of the citizen and any known aliases;
- (2) The citizen’s address or last known address; and
- (3) The date of the grant or revocation of parole.”

SECTION 2. Section 806-76, Hawaii Revised Statutes, is amended to read as follows:

“**§806-76 Court proceedings; reports to county clerk.** Whenever in any circuit court, family court, or district court any citizen of eighteen years of age or over is:

- (1) Convicted of any felony[;] and sentenced to a term of imprisonment; or
- ~~(2) By reason of insanity acquitted of any such crime; or~~
- ~~(3)] (2) Adjudged insane or feeble-minded or otherwise legally incompetent,~~

the clerk of the court [shall], in each case within [ten] twenty days thereafter [make and promptly transmit], shall report to the clerk of [each county a certificate showing] the county in which the citizen is located the fact of the conviction or adjudication and [a sufficient identifying description of the citizen:] the citizen’s name, any known aliases, date of birth, social security number, and to the extent readily ascertainable by the clerk of the court, the residence address or last known

residence address. For a citizen convicted of any felony and sentenced to a term of imprisonment, copies of the judgment of conviction and sentence and mittimus (warrant of commitment) shall be provided to the clerk of the county.”

SECTION 3. Section 831-2, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A person sentenced for a felony, from the time of the person’s sentence until the person’s final discharge, may not:

- (1) Vote in an election, but if [~~execution of sentence is suspended with or without~~] the defendant [~~being~~] is placed on probation or the defendant is paroled after commitment to imprisonment, the defendant may vote during the period of the [~~suspension~~] probation or parole; or
- (2) Become a candidate for or hold public office.”

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 30, 2006.)

Note

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

ACT 254

S.B. NO. 3077

A Bill for an Act Relating to Conservation.

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

SECTION 1. Chapter 173A, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“**§173A-A Legacy land conservation commission.** (a) There is established within the department of land and natural resources a legacy land conservation commission. The commission shall consist of nine members, with at least one member from each of the counties, who shall be appointed in the manner and serve for the term set forth in section 26-34 as follows:

- (1) Four of the members of the commission shall be persons possessing scientific qualifications as evidenced by an academic degree in wildlife or marine biology, botany, forestry, ecology, resource management, biogeography, zoology, or geology;
- (2) One member shall be a person possessing membership in an environmental organization organized in the State;
- (3) One member shall be a person possessing membership in a land conservation organization organized in the State;
- (4) One member shall be a person possessing membership in a statewide agricultural association; and
- (5) One member shall be a person knowledgeable about native Hawaiian culture.

The chairperson of the natural area reserves system commission shall serve as an ex officio voting member and the chairperson of the commission. The members shall receive no compensation for their services on the commission but shall be entitled to

reimbursement for necessary expenses, including travel expenses, incurred in the discharge of their duties.

(b) Any action taken by the commission shall be by a simple majority of its members. Five members of the commission shall constitute a quorum.

(c) Except as otherwise provided in this chapter, the commission shall be subject to sections 26-34, 26-35, 26-35.5, and 26-36.

(d) The commission may adopt rules pursuant to chapter 91 to carry out its duties.

§173A-B Responsibilities of the legacy land conservation commission.

The responsibilities of the commission shall include, but not be limited to:

- (1) Advising the department and the board on any proposal, public or private, for the acquisition of any interest or rights in land having value as a resource to the State;
- (2) Advising the department and the board on any requests for grants from the fund to a qualifying state or county agency or nonprofit land conservation organization for the preservation of lands having value as a resource to the State;
- (3) Recommending to the board the acquisition of interests or rights in certain lands having value as a resource to the State; and
- (4) Reviewing and adopting rules relating to the criteria it applies in advising the department and the board and making recommendations to the board regarding land acquisitions and grants made pursuant to this chapter.

§173A-C Land acquisition priorities. In advising the department and the board, the commission shall give the following lands priority in its recommendations for acquisitions:

- (1) Lands having exceptional value due to the presence of:
 - (A) Unique aesthetic resources;
 - (B) Unique and valuable cultural or archaeological resources; or
 - (C) Habitats for threatened or endangered species of flora, fauna, or aquatic resources;
- (2) Lands that are in imminent danger of development;
- (3) Lands that are in imminent danger of being modified, changed, or used in a manner to diminish its value;
- (4) Lands providing critical habitats for threatened or endangered species that are in imminent danger of being harmed or negatively impacted;
- (5) Lands containing cultural or archaeological sites or resources that are in danger of theft or destruction; and
- (6) Lands that are unique and productive agricultural lands.”

SECTION 2. Section 173A-3, Hawaii Revised Statutes, is amended to read as follows:

“~~[§173A-3]~~ **Resource land acquisition plan.** ~~[The]~~ In consultation with the senate president and speaker of the house of representatives, the department ~~[may]~~ shall prepare and, from time to time, revise a plan for the acquisition of land having value as a resource to the State. This plan shall guide the board in acquiring such land in the exercise of its powers under this chapter. In preparing this plan, the department may institute studies relating to the need for such land~~;~~ and shall consider any plan relating to the acquisition of such land ~~[which]~~ that has been prepared by any state or county agency.”

SECTION 3. Section 173A-4, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~**§173A-4** Authority to acquire and convey. (a) ~~[Subject to the approval of the governor,]~~ In consultation with the senate president and speaker of the house of representatives, the board may acquire, by purchase, gift, or the exercise of the power of eminent domain as authorized by chapter 101, any land having value as a resource to the State. Such acquisition is hereby declared to be for a public use.

(b) The board may, subject to chapter 171, in consultation with the senate president and speaker of the house of representatives, and with the approval of the governor, sell, lease, or otherwise convey any such land subject to terms and conditions [which] that it deems appropriate and [which] that will [insure] ensure that the transferee [will] shall not use the land in a manner [which] that is inconsistent with the purposes for which it was acquired by the board. [Such] The terms and conditions shall run with the land and shall be binding on the transferee's heirs, successors, and assigns. The board may seek enforcement of [such] the terms and conditions in any court of appropriate jurisdiction.”

SECTION 4. Section 173A-5, Hawaii Revised Statutes, is amended by amending subsection (h) to read as follows:

“(h) Based on applications from state agencies, counties, and nonprofit land conservation organizations, the department, in consultation with the senate president and speaker of the house of representatives, shall recommend to the board specific parcels of land to be acquired, restricted with conservation easements, or preserved in similar fashion. The board shall review the selections and approve or reject the selections according to the availability of moneys in the fund. To be eligible for grants from the fund, state and county agencies and nonprofit land conservation organizations shall submit applications to the department that contain:

- (1) Contact information for the project;
- (2) A description of the project;
- (3) The request for funding;
- (4) Cost estimates for acquisition of the interest in the land;
- (5) Location and characteristics of the land; and
- (6) Other similar, related, or relevant information as may be determined by the department.”

SECTION 5. Section 173A-9, Hawaii Revised Statutes, is amended to read as follows:

“**§173A-9 Grants to state agencies, counties, and nonprofit land conservation organizations.** ~~[Subject]~~ After consultation with the senate president and speaker of the house of representatives, and subject to the approval of the governor, the board may make grants to state agencies, counties, and nonprofit land conservation organizations from available funds for the purchase or acquisition of interests or rights in land having value as a resource to the State, whether in fee title or through the purchase of permanent conservation easements under chapter 198, and approved for purchase or acquisition by the board. Any land so acquired by any state agency or county may be sold, leased, or otherwise disposed of, subject to chapter 171, with the prior written approval of the board. Any land acquired by any nonprofit land conservation organization under this chapter may be sold, leased, or otherwise disposed of with the prior written approval of the board. Any permanent conservation easement established under this section that includes partnership with a federal

land conservation program may be transferred only as provided by rules of the federal program.”

SECTION 6. There is appropriated out of the land conservation fund of the State of Hawaii the sum of \$1,100,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the purchase of agriculture easements to protect farm and ranch lands throughout the state. This appropriation shall use and preserve federal farm and ranch land protection program funding for agricultural and cultural lands in Hawaii.

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

SECTION 7. 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 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on July 1, 2006.

(Approved June 30, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 255

S.B. NO. 2036

A Bill for an Act Making an Appropriation for an International Business and Technology Incubator.

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

SECTION 1. The high technology development corporation provides assistance and resources to technology industry entrepreneurs, start-up companies, employers, and job seekers in Hawaii. Start-up companies have an opportunity to enroll in the high technology development corporation’s tech center program and benefit from the facilities and support services offered at several incubation centers located statewide. Start-up companies may operate their businesses from one of the incubation centers and share access to advanced connectivity, conference rooms, and office equipment. Companies may also participate in workshops, seminars, networking opportunities, and the professional service providers program.

The high technology development corporation wants to expand its business and technology-based incubation services to foreign technology companies seeking to gain a presence in Hawaii by first targeting existing technology companies in the People’s Republic of China, Japan, the Republic of Korea, and Singapore. During the summer of 2005, the high technology development corporation entered into cooperative agreements with incubator programs in Beijing and Shanghai to share resources and offices in the People’s Republic of China and Hawaii. Hawaii is an attractive alternative to other technology incubator programs on the mainland because of its closer proximity to Asia and the State’s culturally diverse population. International expansion of the incubator program will create more business and technology-based jobs, economic diversification, and new external sources of tax revenues for the State.

The purpose of this Act is to provide the necessary start-up funding to operate an international business and technology incubator program and to enable state residents to acquire the bilingual language skills, technology, and marketing necessary to implement an incubator program in China, Japan, and Hawaii.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000, or so much thereof as may be necessary for fiscal year 2006-2007 for the high technology development corporation to establish an international business and technology incubator program in Hawaii.

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved June 30, 2006.)

ACT 256

S.B. NO. 3215

A Bill for an Act Relating to Children.

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

SECTION 1. Senate Concurrent Resolution No. 128, Regular Session 2005, requested the department of public safety and the department of human services to jointly establish a task force to examine issues affecting the children of incarcerated parents and to propose solutions to those issues, as well as methods to break the cycle of crime and violence in these families. Specifically, the task force was requested to:

- (1) Develop a system to identify children of incarcerated parents;
- (2) Develop programs and support services for these children;
- (3) Provide support for incarcerated parents, where appropriate; and
- (4) Develop programs to strengthen these families.

During the interim period following the 2005 regular session, the department of public safety and the department of human services established the children of incarcerated parents task force as requested. The task force met three times, but there was insufficient time to adequately research, discuss, and prepare feasible proposals for programs to address the needs of children of incarcerated parents.

The purpose of this Act is to extend the term of the children of incarcerated parents task force so it can continue to develop programs to aid children of incarcerated parents, to strengthen these families, and to break the cycle of crime and violence within them.

SECTION 2. (a) The children of incarcerated parents task force, which was established by Senate Concurrent Resolution No. 128, regular session 2005, shall continue to operate through December 31, 2007. The task force shall be attached to the department of human services for administrative purposes.

- (b) The task force shall include members as follows:
- (1) The director of public safety or a designee;
 - (2) The deputy director of the corrections division of the department of public safety or a designee;
 - (3) The institutions division administrator of the community correctional centers and the correctional facilities or a designee;
 - (4) The director of health or a designee;

- (5) The director of human services or a designee;
 - (6) The executive director of the office of youth services or a designee;
 - (7) The chief justice of the supreme court or a designee;
 - (8) A member of the board of trustees of the office of Hawaiian affairs or a designee;
 - (9) A representative of the family court of the first circuit;
 - (10) The superintendent of education or a designee;
 - (11) The attorney general or a designee;
 - (12) The prosecuting attorney of each county or a designee;
 - (13) A representative of child protective services;
 - (14) The director of the Children's Justice Center of Oahu or a designee;
 - (15) A representative from the adult probation division;
 - (16) A member representing each of the county police departments appointed by the respective police chiefs;
 - (17) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by Blueprint for Change;
 - (18) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by Child and Family Services;
 - (19) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by the Community Alliance on Prisons;
 - (20) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by the Good Beginnings Alliance;
 - (21) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by the Hawaii Juvenile Justice Project;
 - (22) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by Keiki O Ka Aina Family Learning Centers;
 - (23) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by Neighborhood Place of Puna;
 - (24) A public member with advocacy experience working on behalf of children of incarcerated parents to be selected by Neighborhood Place of Wailuku;
 - (25) Public members with experience working with children of incarcerated parents to be selected by the Children's Justice Center;
 - (26) A representative of the Queen Liliuokalani Children's Center;
 - (27) A faculty member of the University of Hawaii department of sociology or a designee; and
 - (28) The administrator of the intake service centers of the department of public safety or a designee.
- (c) The task force shall:
- (1) Develop a system to identify children of incarcerated parents in Hawaii and to make referrals as appropriate;
 - (2) Determine the impact that parental incarceration has on children of incarcerated parents;
 - (3) Identify the needs of children of incarcerated parents and develop responsive programs;
 - (4) Identify local programs and models, including neighbor island programs and models; and

- (5) Review other jurisdictions' activities, policies, directives, and laws relating to children of incarcerated parents and derive best practices models therefrom.

(d) The members of the task force shall select the chairperson of the task force from among themselves and shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(e) The department of public safety and the department of human services shall each provide support services necessary to assist the task force in achieving its purpose as required under this Act.

(f) This task force shall cease to exist after December 31, 2007.

(g) The task force shall publish and present a final report to the legislature and the general public no later than twenty days prior to the convening of the regular session of 2008. The report shall be available in printed form and on a website accessible to the public over the Internet.

The final report shall include:

- (1) A summary of significant findings regarding children of incarcerated parents;
- (2) Statistics indicating the number of children with incarcerated parents in the State, including data on age, educational, financial, geographic, and socioeconomic demographics of incarcerated parents;
- (3) Data and analysis to determine the relationship between specific variables and frequency of parental incarceration;
- (4) Data and analysis to determine the relationship between parental incarceration and various adverse outcomes for children of incarcerated parents;
- (5) Case studies of children of incarcerated parents;
- (6) Recommendations as to whether the task force should be further extended;
- (7) Multiple theoretical models for improving the welfare and general well-being of children of incarcerated parents; and
- (8) Proposed legislation, if any.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000, or so much thereof as may be necessary for fiscal year 2006-2007, for reimbursement for expenses, including travel expenses, incurred by members of the children of incarcerated parents task force and for any administrative costs of the task force.

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

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved June 30, 2006.)

ACT 257

S.B. NO. 3120

A Bill for an Act Relating to the University of Hawaii.

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

SECTION 1. The legislature recognizes that, according to the national center for public policy and higher education, net college costs for low- and middle-income students to attend Hawaii's public four-year colleges and universities represent a

third of their families' annual income. In 2004, the national non-profit independent organization gave Hawaii a "D" for affordability. The organization also noted that "over the past few years, Hawaii has had among the steepest declines in the nation in the percentage of first-time, full-time college students earning their bachelor's degree within six years of enrolling in college."

During the 2005 legislative session, recognizing the need to provide financial support to Hawaii's residents in attaining a post secondary degree, the legislature appropriated \$1,500,000 in general funds for the fiscal biennium 2005-2007 to provide merit-based scholarships for Hawaii's low-income public school graduates wishing to attend the University of Hawaii. Despite this appropriation, the legislature finds that the increases in the tuition and fee schedule, which take effect in the fall of 2006, will continue to make it difficult for Hawaii's residents to attend the university. The legislature also finds that the initial appropriation of \$1,500,000 is not sufficient to enroll a significant proportion of the estimated number of eligible applicants.

Given the State's current financial surplus, and based on input from the university, the purpose of this Act is to encourage Hawaii residents to pursue post secondary school education by:

- (1) Amending section 57 of Act 178, Session Laws of Hawaii 2005, to clarify the financial eligibility guidelines;
- (2) Establishing a workforce development scholarship program at the community colleges based on need;
- (3) Establishing the Hawaii state scholars program; and
- (4) Placing funds for all scholarship programs in a separate account in the student scholarship and assistance special fund.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- Hawaii state scholars program. (a) There is established the Hawaii state scholars program to be administered by the University of Hawaii. This program shall be used to provide financial assistance in the form of scholarships for up to four years to any qualified student enrolled at any campus of the University of Hawaii with the possibility of renewal for a fifth year in exceptional circumstances.

(b) Appropriations for the state scholars program shall be deposited into the University of Hawaii student scholarship and assistance special fund established pursuant to section 304-16.6. The number of scholarships awarded and amount of each scholarship shall be determined by the university subject to the availability of funds.

The University of Hawaii shall offer scholarships to pay for educational costs, such as tuition, fees, books, housing, and other educational costs; provided that the scholarship applicant:

- (1) Is a bona fide resident of the State, for tuition purposes, at the time of admission to the university;
- (2) Presents evidence of academic excellence by meeting one or more of the following:
 - (A) Graduation from a public or private high school in the State as a valedictorian of the applicant's class;
 - (B) Has a cumulative high school grade point average of 4.0 as determined for admission to the university; or
 - (C) Has achieved a test score on a standardized college admission test recognized and accepted by the university for admission consideration, such as SAT or ACT, that places the student among the top ten percentile of students taking the test nationwide;

- (3) Enrolls at a University of Hawaii system campus within eighteen months of graduating from high school; and
- (4) Maintains satisfactory progress toward degree completion and a cumulative 3.0 grade point average.”

SECTION 3. Chapter 305, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§305- **Workforce development scholarship program.** (a) There is established the workforce development scholarship program to be administered by the University of Hawaii to address projected shortfalls in and needs of the workforce. The program shall be used to provide financial assistance for up to three years to any qualified student enrolled at a community college campus of the University of Hawaii.

(b) The number of scholarships awarded and the amount of each scholarship shall be determined by the university and shall be subject to the availability of funds. The University of Hawaii shall offer scholarships to pay for educational costs, such as tuition, fees, books, housing, and other educational costs; provided that the scholarship applicant:

- (1) Qualifies for Hawaii resident tuition;
- (2) Earned a high school diploma or passed the general educational development test; and
- (3) Is eligible for need-based aid according to federal financial aid guidelines.

The scholarship may be renewed annually for up to three years; provided that the student maintains satisfactory academic progress.”

SECTION 4. Section 304-16.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Revenues deposited into this fund shall include but not be limited to state, federal, and private funds, [and] funds transferred by the university from the tuition and fees special fund pursuant to section 304-16.5[-], and appropriations for the state scholars program; provided that state funds appropriated for any scholarship program, including but not limited to the B Plus scholarship program, the Hawaii state scholars program, and the workforce development scholarship program, shall be kept in a separate and distinct account.”

SECTION 5. Act 178, Session Laws of Hawaii 2005, is amended by amending section 57 to read as follows:

“SECTION 57. Provided that of the general fund appropriation for the University¹ of Hawaii systemwide (UOH 900), the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2005-2006[;] and the sum of \$1,000,000 or so much thereof as may be necessary for fiscal year 2006-2007[;]; provided further that the amounts shall be used to fund the [B-Plus Scholarship] B Plus scholarship program; provided further that the university shall offer [full] scholarships to any Hawaii resident [applying to] who:

- (1) Enrolls in any campus within the university system [provided that the individual has];
- (2) Has graduated from a Hawaii public high school with a cumulative grade point average of 3.0 or better; and [is considered low income according to the state of Hawaii department of education's guidelines for students qualifying for the free and reduced lunch program.]

(3) Is eligible for need-based financial aid based on federal financial aid guidelines;
and provided further that the scholarship may be renewed annually if the student maintains satisfactory academic progress and continues to meet financial aid guidelines.’’

SECTION 6. The university of Hawaii shall transfer the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2006-2007, from the University of Hawaii tuition and fees special fund for deposit into the student scholarship and assistance special fund for the purposes of funding the workforce development scholarship program.

The sum transferred shall be expended by the University of Hawaii for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.²

SECTION 8. This Act shall take effect on July 1, 2006.

(Approved June 30, 2006.)

Notes

1. Prior to amendment “university” appeared here.
2. Edited pursuant to HRS §23G-16.5.

ACT 258

S.B. NO. 467

A Bill for an Act Relating to Corrections.

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

SECTION 1. In recent years, the number of incarcerated women has increased at an alarming rate. Nationally, women compose 6.9 per cent of the prison population. In Hawaii, however, women form 11.99 per cent of the prison population. While the male prison population doubled between 1985 and 1995, the female population tripled, largely due to sentencing and incarcerating female nonviolent first-time drug offenders.

The department of public safety reports that the number of female parole violators rose thirty per cent between January 1, 2001, and January 19, 2004, and that the number of male parole violators rose 18.3 per cent during the same period.

Research establishes that female offenders have different needs from male offenders, resulting in part from female offenders’ disproportionate victimization from sexual or physical abuse and their responsibility for children. Women offenders are more likely than male offenders to be addicted to drugs, suffer from a mental illness, and have been unemployed before incarceration.

Research establishes that the majority of women in prison are nonviolent and could be serving their prison terms in gender-responsive, community-based programs.

Research also indicates that correctional strategies that are gender-responsive and community-based are needed to give offenders the necessary life skills to extricate themselves from the criminal justice system and to make positive healthy choices for themselves and their families.

In the 1990s, the movement to develop programs for girls gained momentum as girls accounted for an increasing proportion of the youth entering the juvenile

justice system and because most juvenile justice programs were developed to serve boys.

There is a growing body of research dedicated to examining the differences in the developmental pathways to delinquency for girls versus boys and developing gender-specific services for girls. As of the late 1990s, states and local jurisdictions were in the early stages of understanding girls' needs, developing and modifying services for girls, and making policy changes to better serve girls.

Careful attention must be paid to the classification of programs as gender-specific. Those working on the development of programs for girls maintain that a gender-specific program should not simply be a program that serves girls exclusively but also one that addresses the particular issues and problems that affect girls.

Girls and boys in the juvenile justice system share some common traits but also have some distinct needs and issues. Research has found that girls' risks for delinquency are amplified by the presence of: sexual and/or physical abuse, substance abuse, teen pregnancy, poor academic performance, and mental health needs. To strengthen their resistance against delinquency, girls need physical and emotional security, positive female role models, and a sense of belonging and competency that may differ from what boys need.

A study entitled "Criminal Neglect: Substance Abuse, Juvenile Justice and The Children Left Behind," released in October 2004 by the National Center on Addiction and Substance Abuse at Columbia University, concluded that at least thirty per cent of adults in prison for felony crimes were incarcerated as juveniles. A recent local study, entitled "Motherhood on the Margins," examined women with at least one child who are currently on parole in Hawaii. This study revealed that thirty-six per cent of the women interviewed for this research started their interaction with the criminal justice system in the juvenile justice system.

Female offenders need gender-responsive services that address substance abuse, family relationships, vocational education, work, prior victimization, and domestic violence. They also need transitional housing and aftercare services to help them adjust to living in the community and reuniting with their children and families.

For children, the most devastating effect of incarceration is the loss of contact with their primary caregiver. Half of these children never visit their primary caregiver in prison, and the other half visit infrequently, with geographical distance posing the biggest barrier to visitation.

Because regular visits are the best indicator of a family's successful reunification after release, it is critical that gender-responsive, community-based programs for offenders be geographically close to children and family. Many of Hawaii's inmates are incarcerated outside of Hawaii, making visitation with family and children either impossible or extremely difficult. Other problems associated with female offenders in Hawaii include:

- (1) A lack of female correctional officers;
- (2) The lack of availability of rehabilitation programs; and
- (3) A paucity of gender-responsive, community-based programs.

The legislature recognizes that the needs of incarcerated women differ from the needs of incarcerated men and require approaches tailored to their specific characteristics and situations. This Act is the legislature's answer to this urgent need to enforce the equal protection clause of our Constitution.

The purpose of this Act is to appropriate funds to provide immediate additional gender-responsive, community-based program beds for community-status female offenders and for female adjudicated youth classified by the office of youth services as minimum control.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
PARITY FOR FEMALE OFFENDERS**

§ **-1 Female prisoners; parity programs.** Adult women convicted of crimes and juvenile females adjudicated for offenses that would be crimes if committed by an adult or who are adjudicated delinquents shall be provided a range and quality of programming substantially equivalent to the range and quality of programming offered to male persons who are similarly situated. Programs for female offenders shall be based upon the psychosocial developmental needs of female offenders.

§ **-2 Model programs; department of public safety.** Subject to funding by the legislature, the director of public safety shall foster a gender-responsive environment by providing model gender-responsive programs for female offenders that are responsive to statewide needs and geographical areas and shall award contracts for the programs. The gender-responsive environment and programs shall:

- (1) Respond in a rehabilitative way to the type of offenses female offenders generally commit and address pathways to crime;
- (2) Respond to the problems of female offenders with dependent children;
- (3) Respond to the importance of developing self-determination through independent living and marketable job skills;
- (4) Assist female offenders in overcoming their own extreme degree of dependency by developing and fostering strong and healthy relationships without losing self-esteem;
- (5) Respond appropriately to the specific health care needs of women, including but not limited to mental health and substance abuse services;
- (6) Offer transitional support for female offenders and their families to promote successful reentry into their families and communities; and
- (7) Offer technical assistance and training toward the implementation of other similar programs.

§ **-3 Contracts.** To encourage cooperation and assist private agencies that have existing programs designed specifically for female offenders and to encourage private agencies to develop and implement new programs, the director of public safety shall make contracts available to private agencies electing to participate in the contract program, subject to chapter 103F, Hawaii Revised Statutes.

§ **-4 Agency programs; proportionate costs.** Where several private agencies combine to provide one or more of the programs under this chapter, the cost of each program shall be borne proportionately by the participating agencies on the basis of need or use as determined by rules adopted by the director of public safety pursuant to chapter 91.

§ **-5 Duties of the director of public safety.** The director of public safety shall:

- (1) Review all plans for programs for female offenders;
- (2) Review contract applications or proposals for model programs for female offenders and award contracts for programs;
- (3) Monitor the delivery of services provided under contract programs for female offenders;

- (4) Establish, by rule, a method of determining the amount or percentage of local contribution to receive a contract under this chapter; and
- (5) Collaborate with the Community Alliance on Prisons or other advocacy group in Hawaii as a resource on women's issues for the department.

§ -6 **Female adjudicated youth.** The office of youth services shall collaborate with the departments of human services, health, labor and industrial relations, and education, as well as with representatives of the private sector, to develop a comprehensive continuum of care to address the gender-responsive needs of female adjudicated youth.

§ -7 **Model programs; office of youth services.** Subject to funding by the legislature, the director of the office of youth services shall foster a gender-responsive environment by providing model gender-responsive programs for female adjudicated youth that are responsive to statewide needs and geographical areas and shall award contracts for the programs. The gender-responsive environment and programs shall:

- (1) Respond in a rehabilitative way to the type of offenses female adjudicated youth generally commit and address pathways to crime;
- (2) Respond to the problems of female adjudicated youth with dependent children;
- (3) Respond to the importance of developing self-determination through education; employment training; special education to the learning disabled; and social, cognitive, communication, and life skills training;
- (4) Assist female adjudicated youth in overcoming their own extreme degree of dependency by developing and fostering strong and healthy relationships without losing self-esteem;
- (5) Respond appropriately to the specific health care needs of girls and women, including but not limited to mental health and substance abuse services;
- (6) Offer transitional support for female adjudicated youth and their families to promote successful reentry into their families, schools, and communities; and
- (7) Offer technical assistance and training toward the implementation of other similar programs.

§ -8 **Annual report.** The department of public safety and the office of youth services shall submit an annual report to the legislature no later than twenty days before the convening of each regular session on the following areas: program descriptions, type and costs of contracts made, name of the private agency awarded each contract, and the success of each contract in meeting program specifications. The report shall detail the development of the comprehensive continuum of care to address the gender-responsive needs of Hawaii's female offenders and female adjudicated youth both in-state and abroad. The report shall also highlight the existing gaps in the system and include recommendations for resources needed to reach a seamless continuum of care and other relevant information concerning the creation of a gender-responsive environment for female offenders and female adjudicated youth. The first report shall be submitted no later than twenty days before the convening of the regular session of 2006."

SECTION 3. Chapter 352, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§352- Gender-responsive, community-based programs for female adjudicated youth. Subject to funding by the legislature, the office of youth services shall develop and make available gender-responsive, community-based programs for female adjudicated youth by providing female adjudicated youth the appropriate range of opportunities to ensure that their needs are met. Program models designed to address the needs of female adjudicated youth shall include but are not limited to:

- (1) Appropriate treatment, including mental health and substance abuse treatment;
- (2) Individualized case management to help female juvenile offenders set and achieve goals;
- (3) Life skills development workshops, including budgeting, money management, nutrition, and exercise;
- (4) Development of self-determination through education; employment training; special education for the learning disabled; and social, cognitive, communication, and life skills training;
- (5) Family-focused programming, including issues relating to pregnancy and single parenthood;
- (6) Peer support and the development of peer networks;
- (7) Transitional support for female adjudicated youth and their families to promote successful reentry into their families, schools, and communities;
- (8) Highly skilled staff experienced in working with female adjudicated youth and their concerns;
- (9) Formal recognition of participant achievement;
- (10) Ongoing attention to building community-based support;
- (11) Assistance for female adjudicated youth who need to develop a marketable job skill and a career plan;
- (12) Geographical proximity to children and family;
- (13) Preparation of female adjudicated youth for the resumption of their education; and
- (14) The goal of providing a gender-responsive continuum of care.”

SECTION 4. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§353- Gender-responsive, community-based programs for female offenders. Subject to funding by the legislature, the department of public safety shall develop and make available gender-responsive, community-based programs for female offenders by providing female offenders the appropriate range of opportunities to ensure that their needs are met. Program models designed to address female offender needs shall include but are not limited to:

- (1) Appropriate treatment, including substance abuse and mental health treatment;
- (2) Individualized case management to help female offenders set and achieve goals;
- (3) Life skills development workshops, including budgeting, money management, nutrition, and exercise;
- (4) Development of self-determination through education; employment training; special education for the learning disabled; and social, cognitive, communication, and life skills training;
- (5) Family-focused programming, including issues relating to pregnancy and single parenthood;
- (6) Peer support and the development of peer networks;

- (7) Transitional support for female offenders and their families to promote successful reentry into their families and communities;
- (8) Highly skilled staff experienced in working with female offenders and their concerns;
- (9) Formal recognition of participant achievement;
- (10) Ongoing attention to building community-based support;
- (11) Assistance for female offenders who need to develop a marketable job skill and a career plan;
- (12) Geographical proximity to children and family; and
- (13) The goal of providing a gender-responsive continuum of care.”

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$175,000 or so much thereof as may be necessary for fiscal year 2006-2007 for gender-responsive, community-based programs for women.

The sums appropriated shall be expended by the department of public safety for the purposes of this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000 or so much thereof as may be necessary for fiscal year 2006-2007 for gender-responsive, community-based programs for female adjudicated youth.

The sums appropriated shall be expended by the office of youth services for the purposes of this Act.

SECTION 7. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on July 1, 2006.

(Approved June 30, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 259

S.B. NO. 3101

A Bill for an Act Relating to Early Childhood Education.

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

SECTION 1. As stated in Act 51, Session Laws of 2004, the legislature finds that “although many responsibilities are laid upon education, ultimately education must do no less than advance the endowment of human culture itself, so that each succeeding generation finds itself further along the road towards peace, social justice, and environmental sustainability in a society guided by creativity, compassion, and curiosity.” While Act 51 serves as a road map for public education in a critical phase of the ongoing journey during which our children prepare to take on their civil role in society, the legislature finds that children are born ready-to-learn, with minds that are shaped significantly by experiences and environments in the first five years of life. This period sets the foundation in which a person forms his or her behavioral, emotional, social, and decision-making skills, values, self-esteem, and lifelong learning ability. In short, this period paves the way for a child’s healthy, successful development.

Neglect and inadequate care in the early years can hold a child back from achieving full potential, and can instead place the child in jeopardy of poor outcomes

later in life, at considerable cost to society. Research and studies have shown that providing children with culturally responsive, proper early childhood care and education has a far-reaching, long-term impact on their development. Thus, the legislature recognizes the importance of providing children with early learning opportunities of the highest quality. Early learning programs, both public and private, should meet professionally-accepted standards, be staffed by well-trained, appropriately-compensated educators, reflect the cultural needs and diversity unique to Hawaii, and be available to all children from birth to entry into kindergarten.

During a child's first five years, a family may need a variety of child care settings or programs—family child care, home visiting, play and learn groups, or center-based care—sometimes simultaneously, to meet their child care needs or to enhance their child's learning and experiences. All of these settings should be of the highest quality to ensure optimal outcomes.

Accordingly, the legislature created the temporary early childhood education task force in 2005 to:

- (1) Develop plans and proposals to increase access to early learning programs for all children;
- (2) Increase participation in these programs by promoting their value; and
- (3) Improve the quality of programs, including the professional development and compensation of practitioners.

The legislature also finds that forty per cent of four-year-old children are already being served by public schools through the kindergarten program. Having recognized this fact, the legislature, through Act 219, Session Laws of Hawaii 2004 (Act 219), established junior kindergarten in public elementary schools for children who are at least five years old after August 1 and before January 1 of the school year, beginning with the 2006-2007 school year. The intent of Act 219 was to implement a flexible, developmentally appropriate program, with curricula aligned with the Hawaii Preschool Content Standards, to ensure a child's school-readiness.

The benefits of early learning programs have already been proven in states such as Oklahoma, which has provided state funding for voluntary pre-kindergarten or junior kindergarten programs since 1998 through its Early Childhood Four-Year-Old Program, which has since bridged the achievement gap among its students. Of the students enrolled in the program, the test scores of low-income students improved by twenty-six per cent, and those of Hispanic students by fifty-four per cent.

Furthermore, research shows that the top indicator of a child's success in school is the mental health of the primary caregiver, most often the child's mother. This suggests that it is critical to educate children within the family context, and with sensitivity to the family's socio-emotional well-being.

The legislature acknowledges the significant milestones achieved thus far in promoting young children's development and school readiness through public and private efforts. The currently available array of services forms the basis for further development and integration into a system that better serves all of Hawaii's young children and their families. The process of system development will engage representatives of various constituencies across the community to firmly and collectively enhance services so that young children will succeed in reaching their highest potential.

The purpose of this Act is to build a comprehensive early learning system by further developing and refining the recommendations of the temporary early childhood education task force, while acknowledging the important role of parent education and family strengthening in the overall education of young children. Specifically, this bill:

- (1) Establishes and appropriates funds for an early learning educational task force; and

- (2) Builds upon the existing framework and services for early childhood learning.

SECTION 2. (a) There is established the early learning educational task force, to be attached to the department of education for administrative purposes only. The task force shall develop a five-year plan with annual increments for a coherent, comprehensive, and sustainable early learning system that shall ensure a continuum of quality early learning opportunities for young children in the State from birth up to age five, and which maximizes public and private resources.

The plan for the early learning system shall include:

- (1) An implementation and financing schedule that begins with services to four-year-old children and proceeds to younger age groups;
- (2) Mechanisms to ensure cross-sector and interdepartmental collaboration;
- (3) Measures to ensure the continuing professional development of teachers and administrators; and
- (4) Provisions for the promotion of the importance of early learning to families, policymakers, and the general public.

The task force shall be composed of working groups as needed, including an interdepartmental resources working group, to address the program and workforce development portions of the plan.

(b) The interdepartmental resources working group shall develop plans to maximize public and private resources to provide early learning opportunities for all young children in the State, beginning with those who will be four years old by January 1 of that school year. Plans shall strive to optimize existing government resources, including the following:

- (1) Within the department of education: title I – education for the disadvantaged; early reading first; individuals with disabilities education act part b; even start; migrant education; 21st century learning centers; and adult education and family literacy;
- (2) Within the department of human services: temporary assistance to needy families; social services block grant; child care development fund; welfare to work; and open doors;
- (3) Within the department of health: individuals with disabilities education act part c; title V maternal and child health services block grant; women infants and children; child abuse prevention and treatment act funds; healthy start; and parenting support; and
- (4) Within the department of labor and industrial relations: community services block grant and workforce investment act funds.

(c) The program portion of the plan shall:

- (1) Delineate a continuum of early learning services for children from birth to age five, beginning with those who will be four years old by January 1 of that school year;
- (2) Consider best practice models offered through both early childhood education and parenting education programs;
- (3) Address the quality components of standards, curriculum, assessments, instructional approaches, and transitions;
- (4) Explore and define the roles and responsibilities of the departments of education, human services, health, and labor and industrial relations, in providing early learning opportunities for all young children from birth to age five;
- (5) Identify and ensure maximum use of public facilities, whether the program is publicly or privately run;

- (6) Recognize a variety of early learning approaches and service deliveries; and
- (7) Ensure sustainability by various types of funding, including federal, state, and private funds.
- (d) The workforce development portion of the plan shall address:
 - (1) Early childhood educator preparation, including credentials, certifications, and licensing;
 - (2) Fair compensation for early childhood educators in various settings;
 - (3) Recruitment and retention of the early childhood workforce for all learning settings;
 - (4) Access to higher education and community-based training; and
 - (5) Quality and alignment of community-based training and higher education.
- (e) The members of the early learning educational task force shall serve as representatives of a particular organization or community and are therefore responsible for engaging, informing, and receiving input from their constituency in the planning process. The task force shall be composed of twenty-two members as follows:
 - (1) For the interdepartmental resources working group:
 - (A) The chairperson of the board of education or the chairperson's designee;
 - (B) The superintendent of education or the superintendent's designee;
 - (C) The director of human services or the director's designee;
 - (D) The director of health or the director's designee;
 - (E) The director of labor and industrial relations or the director's designee;
 - (F) The director of the city and county of Honolulu department of community services, or the director's designee;
 - (G) The director of the county of Kauai office of community assistance, or the director's designee;
 - (H) The director of the county of Maui department of housing and human concerns, or the director's designee;
 - (I) The director of the county of Hawaii department of parks and recreation, or the director's designee;
 - (J) The director of the head start state collaboration office or the director's designee;
 - (K) A representative of the Hawaii Business Roundtable;
 - (L) A representative of the Child Care Business Coalition;
 - (M) The chief executive officer of the Kamehameha Schools or the chief executive officer's designee;
 - (N) The executive director of the Good Beginnings Alliance or the executive director's designee; and
 - (O) A representative of the organization of native Hawaiian community-based programs for early childhood education; and
 - (2) Additional members to focus on the program and workforce development portions of the plan:
 - (A) The executive director of the Hawaii Association of Independent Schools or the executive director's designee;
 - (B) The executive director of the Hawaii Association for the Education of Young Children or the executive director's designee;
 - (C) The executive director of PATCH Hawaii or the director's designee;

- (D) The president of the Head Start Association or the president's designee;
 - (E) A representative designated by the chancellors of the University of Hawaii community colleges;
 - (F) The president of Chaminade University or the president's designee; and
 - (G) The dean of the college of education of the University of Hawaii at Manoa, or the dean's designee.
- (f) A chairperson of the task force shall be selected from among a majority of members appointed to the task force.
- (g) The early learning educational task force may form subcommittees to:
- (1) Obtain resource information from early education professionals and any other individuals as may be determined necessary by the task force; and
 - (2) Perform any other function as may be deemed necessary by the task force for the fulfillment of its functions.
- (h) The subcommittees shall be exempt from chapter 92, Hawaii Revised Statutes.
- (i) The task force shall have support for facilitation, coordination of working groups, engaging technical assistance, and to provide resource information to its members as needed. The department of education may enter into a contract with any agency or organization to implement any part of this Act.
- (j) The members of the early learning educational task force shall serve without compensation but shall be reimbursed for expenses necessary for the performance of their duties, including travel expenses.

SECTION 3. The early learning educational task force shall submit reports to the governor and legislature as follows:

- (1) An interim report of its progress in planning early learning programs for four-year-old children with optimal use of public resources, including any proposed legislation to be submitted no later than twenty days prior to the convening of the 2007 regular session; and
- (2) A final report of its progress, findings, and recommendations, including any additional proposed legislation, no later than twenty days prior to the convening of the 2008 regular session.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$250,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the operations of the early learning educational task force.

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

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$350,000 or so much thereof as may be necessary for fiscal year 2006-2007 to enhance junior kindergarten services to ensure children are provided with learning experiences that promote the skills they need to be successful in kindergarten or first grade.

Specifically, these funds shall be used as follows:

- (1) For the creation of a full-time equivalent (1.00 FTE) permanent educational specialist who shall focus on early childhood education and is responsible for policies, curriculum, and assessment relating to kindergarten, junior kindergarten, and other pre-kindergarten programs. The early childhood education specialist shall report directly to the superintendent of education;

- (2) For ongoing, professional development of teachers and administrators; and
- (3) For classroom resources.

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

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$400,000 or so much thereof as may be necessary for fiscal year 2006-2007 to expand to four new sites the department of education's Families for R.E.A.L. early childhood program, which fosters interaction between parents and their children; provided that each site shall receive \$100,000; provided further that priority for new sites shall be in areas not currently served by head start programs.

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

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000 or so much thereof as may be necessary for fiscal year 2006-2007 to increase the number of low-income children and families served through the Early Head Start and Head Start Programs. Children and families served through this expansion shall be based upon findings of underserved areas within a head start program's annual community assessment.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this section.

SECTION 8. This Act shall take effect on July 1, 2006, and shall be repealed on July 1, 2008.

(Approved June 30, 2006.)

ACT 260

H.B. NO. 2051

A Bill for an Act Relating to Protection for Victims of Human Trafficking.

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

SECTION 1. The legislature finds that existing legislation and law enforcement activities in Hawaii are inadequate to deter human trafficking and bring traffickers to justice. Hawaii law does not penalize the full range of offenses involved in the trafficking scheme. Instead, even the most brutal instances of trafficking are punished under laws that also apply to lesser offenses, allowing traffickers to escape deserved punishment.

The legislature also finds that the United States Congress passed the Victims of Trafficking and Violence Protection Act, the first comprehensive piece of legislation aimed at addressing the range of injustices perpetrated by traffickers. Likewise, to deter human trafficking, Hawaii must recognize that trafficking is a serious offense. This is done, in the first instance, by prescribing appropriate punishment and ensuring that state anti-trafficking laws are compatible with the Victims of Trafficking and Violence Protection Act.

The purpose of this Act is to establish a task force to determine how Hawaii can best combat and deter human trafficking, which is a contemporary manifestation of slavery, to ensure just and effective punishment of traffickers, prevent or reduce human trafficking, and protect the rights of trafficked persons.

SECTION 2. (a) There is established the Hawaii anti-trafficking task force. The anti-trafficking task force shall be comprised of the following:

- (1) The attorney general, or the attorney general's designees;
- (2) The directors of health, human services, and labor, or their designees;
- (3) The chief of police of each county or the chief's designee;
- (4) The prosecuting attorney of each county, or the prosecutor's designee;
- (5) The director of the victim and witness assistance program of the department of the prosecuting attorney, city and county of Honolulu;
- (6) The Salvation Army;
- (7) Sisters Offering Support;
- (8) The Sex Abuse Treatment Center;
- (9) GirlFest;
- (10) Na Loio Immigrant Rights and Public Interest Legal Center;
- (11) The Domestic Violence Clearinghouse and Legal Hotline; and
- (12) The Hawaii State Coalition Against Sexual Assault.

The Task Force members shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(b) The task force shall carry out the following activities:

- (1) Compile and review statutes, rules, and information relating to programs adopted in other states to combat human trafficking and to provide services to its victims;
- (2) Recommend further changes to Hawaii law necessary to assist in the prevention of human trafficking and to provide support to victims;
- (3) Develop protocols and training for individuals within designated state agencies, nongovernmental organizations, and private entities regarding provision of services to trafficked persons;
- (4) Develop interagency procedures to collect and organize data, including research and resource information on domestic trafficking, and to measure the extent of the need for protection and assistance to victims of trafficking; and
- (5) Engage in consultation with governmental and nongovernmental organizations, among other entities, to advance the purposes of this Act.

(c) The anti-trafficking task force is authorized to seek federal grants available to states, local government, and nonprofit organizations for personnel, training, services, and programs that are related to the task force's activities.

(d) Not less than twenty days prior to the convening of the regular sessions of 2007 and 2008, the task force shall provide to the legislature a report on its activities.

(e) The task force shall cease to exist on June 30, 2008.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$5,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the purpose of supporting the work of the anti-trafficking task force established by section 2, including the payment of reasonable travel expenses for task force members to attend meetings.

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

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved July 3, 2006.)

ACT 261

S.B. NO. 2630

A Bill for an Act Making an Appropriation for Developmental Disabilities.

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

SECTION 1. Developmental disabilities residential service providers provide important residential care services for individuals with developmental disabilities or mental retardation. Presently, the providers of these services are not being adequately reimbursed by the State for the high-quality, community-based residential services they provide to these individuals. As a result, in the last several years providers were forced to close at least nine community-based developmental disabilities residences due to a lack of funding. It is probable that many more of these residential options will be closed if adequate funding is not provided. This situation would deny hundreds of persons with developmental disabilities viable and proven successful community-based residential options. Furthermore, it would aggravate the severe shortage of housing for low-income persons, especially those with developmental disabilities. Without the necessary funding, many viable residential options now operating are likely to close and be lost to the State.

The legislature enacted Act 168, Session Laws of Hawaii 2005, authorizing the department of health to enter into contracts for additional payments for residential services to the providers of developmental disabilities domiciliary homes and operators of developmental disabilities apartment complexes. Act 236, Session Laws of Hawaii 2005, appropriated \$485,000 for fiscal year 2005-2006 to implement Act 168; however, no funds have been appropriated for fiscal year 2006-2007 for this purpose.

The purpose of this Act is to appropriate funds for the maintenance and operations of developmental disabilities domiciliary homes and apartment complexes.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,200,000 or so much thereof as may be necessary for fiscal year 2006-2007 to provide for continued operation of developmental disabilities domiciliary homes and apartment complexes for persons with developmental disabilities.

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved July 3, 2006.)

ACT 262

S.B. NO. 3252

A Bill for an Act Relating to Caregiving.

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

PART I

SECTION 1. On July 1, 1999, the department of health, executive office on aging launched its statewide long-term care program called kupuna care. Kupuna care was developed in partnership with the county area agencies on aging to address the growing numbers of elders with long-term care needs.

Services provided by kupuna care are intended to help meet the needs of older adults who cannot live at home without adequate help from family or formal services and includes services such as adult day care, assisted transportation, attendant care, case management, chore, home delivered meals, homemaker, transportation, and personal care.

Kupuna care was designed to assist, not totally support, Hawaii's older adults to live independently, safely, and healthy for as long as possible. United States citizens or legal aliens sixty years or older who are not receiving other comparable government assistance, who need help with activities of daily living (eating, dressing, bathing, toileting, transferring, mobility) or because they have reduced mental capacity, and who are not residing in an institution, may qualify for the program.

State funds cover the cost of services for those who cannot afford to pay. Kupuna care offers a reduced rate for those who can afford to pay only a portion of the service. Voluntary donations to the service provider are welcomed for any service provided and are used to support the cost of care of additional clients.

The purpose of part I is to ensure that this worthwhile program continues to maintain the quality of life of Hawaii's older adults and their family caregivers by appropriating funds to expand kupuna care services.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$500,000, or so much thereof as may be necessary for fiscal year 2006-2007, to expand the kupuna care services program.

SECTION 3. The sum appropriated in section 2 shall be expended by the department of health, executive office on aging for the purposes of part I of this Act.

PART II

SECTION 4. The legislature finds that families, rather than institutions, are the primary providers of long-term care for older adults in the State. According to the executive office on aging, in 2003, approximately twenty-one per cent of Hawaii's adult population were providing care or assistance to a person age sixty or older, with twenty-nine per cent caring for a parent. Caregivers are motivated to provide care to family members because of their values, the preference of the elderly to remain at home with their families, and the high cost of institutional long-term care.

In Hawaii, the likelihood of becoming a caregiver is similar across different demographic groups and among persons with varied socioeconomic characteristics. Adults of any household income have a similar likelihood of providing care to an elderly person. Married persons in Hawaii are just as likely to provide care to an older adult as their unmarried counterparts.

Among the different ethnic groups in Hawaii, native Hawaiians are most likely to provide regular care to an older adult, followed by Filipinos, Japanese, and Caucasians. Twelve per cent of men and sixteen per cent of women provide care or assistance to someone age sixty or older, according to the executive office on aging. In national studies, women are more likely than men to be primary caregivers, providing higher intensity and frequency of care.

According to the executive office on aging, sixty-five per cent of Hawaii's caregivers are employed. To balance their employment and elder care roles, working caregivers take leaves of absence, report to work late or leave early, change from full-time to part-time employment, change to less demanding jobs, retire early, or give up work completely. As a consequence, caregiving may reduce a caregiver's retirement income since reduced hours on the job or fewer years in the workforce may mean fewer contributions to pensions, social security, and other retirement savings.

By 2020, more than one in four individuals will be sixty years old or older. The need for personal care due to physical, sensory, cognitive, and self-care disabilities increase with age. As Hawaii's population ages, many more families will be providing higher levels of long-term care to frail and disabled older adults at home.

The purpose of part II is to provide for the coordination and development of family caregiver support services.

SECTION 5. The executive office on aging shall coordinate a statewide system of caregiver support services by, among other things:

- (1) Integrating family caregiver support with the aging and disability resource center demonstration project;
- (2) Analyzing the long-term care needs of older adults and the capacity of family and informal caregivers to help them remain safely at home;
- (3) Advocating, mobilizing, and coordinating employer and community resources to enable and augment family caregiver support;
- (4) Establishing and maintaining protocols and standards for federal and state caregiver services administered by state, county, or other local agencies on aging;
- (5) Establishing and supervising the alignment of long-term care advocacy assistance staff caregiver support objectives with the planning, resource development, grants management, data management, and evaluation functions of the executive office on aging; and
- (6) Coordinating statewide support for grandparents and other aging relative caregivers of children eighteen and under.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$80,000, or so much thereof as may be necessary for fiscal year 2006-2007, for the executive office on aging to coordinate a statewide system of family caregiver support services.

SECTION 7. The sum appropriated in section 6 shall be expended by the department of health, executive office on aging for the purposes of part II this¹ Act.

SECTION 8. This Act shall take effect on July 1, 2006.

(Approved July 3, 2006.)

Note

1. So in original.

ACT 263

S.B. NO. 3197

A Bill for an Act Relating to Substitute Teachers.

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

SECTION 1. In 2005, the legislature enacted Act 70, Session Laws of Hawaii 2005 (Act 70), which required the department of education to develop a recommendation for a classification and compensation schedule for public school substitute teachers, to be reported to the 2006 legislature. Pursuant to Act 70, the department of education created a substitute teacher task force (task force), which included representatives from the Hawaii State Teachers Association, Hawaii Government Employees Association, the department of education's office of human resources, substitute teachers, and parents. The task force recognized the important

role that substitute teachers play in providing quality education to students when regular classroom teachers are absent or unable to perform their duties.

On any given day, about one thousand substitute teachers are employed by the department of education to carry out the duties of Hawaii's ten thousand regular, full-time teachers. In the task force's final report entitled "A Report to the Legislature on the Department of Education's Response to Act 70," it was noted that there were approximately 4,568 substitute teachers employed by the department of education during school year 2004-2005. The significant role of public school substitute teachers cannot be underestimated.

In its report, the department of education recommended that salary increases for substitute teachers should be across-the-board, regardless of class, and reflect current negotiated rates by various bargaining units. To be consistent with the 1996 law, which established the salary schedules for regular, full-time teachers, the legislature finds that rate increases for substitute teachers should be based on rate increases for licensed class II teachers as determined through collective bargaining.

The legislature further finds that an increase in substitute teacher pay will contribute to the provision of the highest quality teaching and work environment for Hawaii's substitute teachers and students. The per diem rate of class I, II, and III teachers are to be adjusted upward to match the salary or wage increases that are provided to licensed class II teachers in bargaining unit 5 in the collective bargaining agreement between the Hawaii State Teachers Association and the department of education.

The purpose of this Act is to set and provide moneys for classification and compensation rates for substitute teachers that are consistent with the compensation rates determined by the legislature in 1996.

SECTION 2. Section 302A-624, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

~~“(e) Effective July 1, [2005,] 2006, the minimum hourly or minimum per diem rate for substitute teachers shall be determined by the legislature[; provided that the department shall develop a classification and compensation schedule that is not restricted to the minimum compensation rates but may exceed them;] as follows; provided [further] that any individual in class I, II, or III who works less than a full seven-hour work day shall be compensated on a pro-rated, hourly basis [as follows]:~~

- ~~(1) Class I: other individuals who do not possess a bachelor's degree shall be compensated at a rate of not less than [\$119.80] \$125 for a full work day;~~
- ~~(2) Class II: individuals with a bachelor's degree shall be compensated at a rate of not less than [\$130] \$136 for a full work day; and~~
- ~~(3) Class III: department of education teachers, or licensed or highly qualified teachers, shall be compensated at a rate of not less than [\$140] \$147 for a full work day.”~~

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$800,000, or so much thereof as may be necessary for fiscal year 2006-2007, to carry out the purpose of this Act.

SECTION 4. The sum appropriated shall be expended by the department of education for the purposes 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 July 1, 2006.

(Approved July 3, 2006.)

ACT 264

S.B. NO. 3003

A Bill for an Act Relating to the State Pharmacy Assistance Program.

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

SECTION 1. Section 346-343, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) All residents of the State shall be eligible to participate in the state pharmacy assistance program; provided that the applicant:

- (1) Is a resident of Hawaii;
- (2) Is sixty-five years or older, or is disabled and receiving a social security benefit;
- (3) Has a household income at or below one hundred fifty per cent of the federal poverty level;
- (4) Meets the asset test; and
- (5) Is not a member of a retirement plan who is receiving a benefit from the Medicare Modernization Act.

(b) State pharmacy assistance program applicants who are enrolled in any other public assistance program providing pharmaceutical benefits, other than the Medicare Modernization Act[;] and medicaid, shall be ineligible for the state pharmacy assistance program as long as they receive pharmaceutical benefits from that other public assistance program, unless the applicant is eligible for medicare. Residents who qualify for, or are enrolled in, the Hawaii ~~[Rx plus program]~~ shall be eligible for the state pharmacy assistance program; provided that they meet all other state pharmacy assistance program requirements.”

SECTION 2. Section 346-344, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) For persons meeting the eligibility requirements in section 346-343, the state pharmacy assistance program may pay all or some of the co-payments required under the federal medicare part D pharmacy benefit program, subject to ~~[receipt of sufficient rebates pursuant to section 346-342(g);]~~ the sufficiency of funds in the state pharmacy assistance program special fund, as determined by the department.

(b) The state pharmacy assistance program is the payor of last resort¹ subject to ~~[receipt of sufficient rebates pursuant to section 346-342(g);]~~ the sufficiency of funds in the state pharmacy assistance program special fund, as determined by the department.”

SECTION 3. Section 346-344, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The state pharmacy assistance program shall be funded with state appropriations, including funds derived from revenues to the State from rebates paid by pharmaceutical manufacturers pursuant to section 346-342(g), ~~[which may affect the level of benefits to program enrollees pursuant to subsection (a) depending on the amount of the rebates received by the State to cover all program benefits and costs of administering the program]~~ and with savings resulting from medicare prescription drug coverage for the medicaid dual eligible population.”

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$600,000, or so much thereof as may be necessary for fiscal year 2006-2007, for the state pharmacy assistance program.

The sum appropriated shall be expended by the department of human services for the purposes 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 July 1, 2006; provided that section 3 shall take effect on July 1, 2007.

(Approved July 3, 2006.)

Note

1. Prior to amendment “;” appeared here.

ACT 265

H.B. NO. 1821

A Bill for an Act Relating to Care Homes.

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

SECTION 1. Section 346-53, Hawaii Revised Statutes, is amended to read as follows:

“**§346-53 Determination of amount of assistance.** (a) This subsection does not apply to general assistance to households without minor dependents. The standard of need for families of given sizes shall equal the poverty level established by the federal government in 1993, prorated over a twelve-month period.

The assistance allowance provided shall be based on a percentage of the standard of need. For exempt households and households in which all caretaker relatives are minors, living independently with minor dependents and attending school, the assistance allowance shall be set at sixty-two and one-half per cent of the standard of need. For all other households, the assistance allowance shall be set no higher than sixty-two and one-half per cent of the standard of need and set no lower than fifty per cent of the standard of need. The standard of need shall be determined by dividing the 1993 federal poverty level by twelve and rounding down the quotient. The remaining quotient shall be multiplied by the per cent as set by the director by rules pursuant to chapter 91 and the final product shall be rounded down to determine the assistance allowance; provided that:

- (1) The department may increase or reduce the assistance allowance as determined in this subsection for non-exempt households for the purpose of providing work incentives or services under part XI of this chapter;
- (2) No reduction shall be allowed that jeopardizes eligibility for or receipt of federal funds;
- (3) Reductions in the assistance allowance shall be limited to no more than one per year; and
- (4) No non-exempt household, which includes an adult who has received sixty cumulative months of temporary assistance to needy families with minor dependents, shall be eligible for an assistance allowance, unless authorized by federal regulations.

(b) The director shall determine the allowance for general assistance to households without minor dependents based upon the total amount appropriated for general assistance to households without minor dependents, among other relevant factors.

(c) The director, pursuant to chapter 91, shall determine the rate of payment for domiciliary care provided to recipients eligible either for Federal Supplementary Security Income, or public assistance in accordance with state standards, or both. The director shall provide for level of care payment as follows:

- (1) For those adult residential care homes classified as facility type I, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, and adult foster homes as defined under section 321-11.2, the state supplemental payment shall not exceed \$521.90; and
- (2) For those adult residential care homes classified as facility type II, the state supplemental payment shall not exceed \$629.90.

If the operator does not provide the quality of care consistent with the needs of the individual to the satisfaction of the department, the department may remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection allows the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator is agreeable to the recipient remaining, except where the recipient requires a higher level of care than provided, or where the recipient no longer requires any domiciliary care.

(d) On July 1, 2006, and thereafter, as the department determines a need, the department shall authorize a payment, as allowed by federal law, for resident clients receiving supplemental security income in adult residential care home type I and type II facilities, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, community care foster family homes as defined under section 346-331, and certified adult foster homes as defined under section 321-11.2, when state funds appropriated for the purpose of providing payments under subsection (c) for a specific fiscal year are not expended fully within a period that meets the requirements of the department's maintenance of effort agreement with the Social Security Administration.

The payment shall be made with that portion of state funds identified in this subsection that has not been expended.

The department shall determine the rate of payment to ensure compliance with its maintenance of effort agreement with the Social Security Administration.

~~[(d)]~~ (e) The department shall pay rental and utility (to include gas, electricity, and water only) deposits once only for any person eligible for financial assistance by the department. However, under extraordinary circumstances as determined by the department, an additional rental deposit, utility deposit, or both, may be granted.

~~[(e)]~~ (f) Any recipient may petition the department for additional assistance when the recipient's need is due to emergencies caused by seismic wave, tsunami, hurricane, volcanic eruption, typhoon, earthquake, flood, or fire determined by the director to have caused losses as to require and justify additional assistance from the State. In addition, any recipient may petition the department for additional assistance for the replacement or repair of household appliances. ~~[Such]~~ The additional assistance shall be paid on an emergency basis, as determined by the department, to meet the cost of replacing or repairing household appliances. If the cost of repairs of household appliances is less than one-half the unit cost of the item, the department shall pay for the cost of repairs. If the cost of repairs of household appliances is ~~[more than]~~ one-half the unit cost of the item~~[,]~~ ~~or more,~~ the department shall replace the household appliance; provided that the replacement cost shall not exceed \$350. For the purposes of this subsection, "household appliances" means a refrigerator or a range.

The department shall establish an emergency fund, not to exceed one per cent of total financial assistance from state funds required by this chapter in the previous fiscal year. The director shall adopt rules pursuant to chapter 91 for determining in which cases to grant lump sum payments to recipients petitioning for additional assistance.

~~[(f)]~~ (g) The department shall include protective child care payment as a special needs item in the financial assistance standard for cases of child neglect or abuse requiring placement of a child in child care. The referral for protective child care payment shall be from the department’s child welfare program and the rate of payment shall be set by the department.

~~[(g)]~~ (h) The director shall adopt rules pursuant to chapter 91 to implement this section.”

SECTION 2. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The director, pursuant to chapter 91, shall determine the rate of payment for domiciliary care, including care provided in licensed developmental disabilities domiciliary homes, community care foster family homes, and certified adult foster homes, provided to recipients eligible either for Federal Supplementary Security Income, ~~[(ø)]~~ public assistance in accordance with state standards, or both. The director shall provide for level of care payment as follows:

- (1) For those adult residential care homes classified as facility type I, licensed developmental disabilities domiciliary homes as defined under section 321-15.9, community care foster family homes as defined under section 346-331, and certified adult foster homes as defined under section 321-11.2, the state supplemental payment shall not exceed ~~[\$521.90;]~~ \$621.90; and
- (2) For those adult residential care homes classified as facility type II, the state supplemental payment shall not exceed ~~[\$629.90;]~~ \$729.90.

If the operator does not provide the quality of care consistent with the needs of the individual to the satisfaction of the department, the department may remove the recipient to another facility.

The department shall handle abusive practices under this section in accordance with chapter 91.

Nothing in this subsection ~~[allows]~~ shall allow the director to remove a recipient from an adult residential care home or other similar institution if the recipient does not desire to be removed and the operator is agreeable to the recipient remaining, except where the recipient requires a higher level of care than provided~~[,]~~ or where the recipient no longer requires any domiciliary care.”

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,375,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the state supplemental payments as provided in section 2 of this Act.

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

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, 2006; provided that section 2 shall take effect on January 1, 2007.

(Approved July 3, 2006.)

ACT 266

S.B. NO. 218

A Bill for an Act Relating to Health.

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

PART I

SECTION 1. The legislature finds that there is currently a shortage of at least fifty mobile intensive care technicians or paramedics in Hawaii. The Emergency Medical Services Strategic Planning for the Future conference in 2003 estimated that two hundred fifty mobile intensive care technicians will be needed within the next five years to fully staff the system. This estimate includes current shortages, attrition, and anticipated system growth (e.g., the federal firefighting agency had six mobile intensive care technicians and anticipated needing twenty-nine before the end of 2007).

The lack of local training has made the shortage even more critical, especially on the neighbor islands. Emergency medical technicians leave the industry because they are unable to advance without financial assistance. Others take correspondence classes in nursing or other related health care fields. For example, Maui currently has at least ten emergency medical technicians who wish to enter the next mobile intensive care technician training program being offered. To complete this program and be certified, these students must attend and successfully complete both the didactic and practical training clinics. The didactic training is proposed to be held in Maui in 2007. However, the mandatory practical training is offered only on Oahu. Traveling to Oahu is an enormous expense for these students who must take time off from work and away from their families to attend the training. Without financial assistance of some type, it is unlikely that many of them will be able to attend.

The prime recruiting target for the federal firefighting agency is the city and county of Honolulu mobile intensive care technician workforce, which is already critically short-staffed. All providers look increasingly to paramedics who have trained on the mainland to staff Hawaii's ambulances. These mainland recruits are rarely employed beyond two years in the Hawaii system before returning to the mainland.

It is widely recognized that the manner in which moneys distributed for mobile intensive care technician workforce development is not equitable. Unless the State can provide financial stipends to non-civil service employees who train in an accredited program, the crisis will quickly worsen.

The purpose of this part is to appropriate funds to the department of health to establish a training stipend program for emergency medical technicians who do not have access to a training stipend program and who want to advance in their chosen profession by enrolling in a state-qualified mobile intensive care technician training program.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$300,000 or so much thereof as may be necessary for fiscal year 2006-2007 to establish the emergency medical technician training stipend program to remedy the shortage of mobile intensive care technicians/paramedics in Hawaii and to assist, through a state-qualified mobile intensive care technician program, ten students per year who are public or private paramedics and who currently do not have access to a training stipend program.

The sum appropriated shall be expended by the department of health for the purposes of this part.

PART II

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,000,000, or so much thereof as is necessary for fiscal year 2006-2007, to provide funding for helicopter medical transport services for the island of Oahu; provided that the department of health shall procure helicopter medical transport services for the island of Oahu according to the following priority:

- (1) Working with the department of defense;
- (2) Working with the city and county of Honolulu; or
- (3) Purchase of service.

The sum appropriated shall be expended by the department of health for the purpose of this part.

PART III

SECTION 4. This Act shall take effect on July 1, 2006.

(Approved July 3, 2006.)

ACT 267

S.B. NO. 3078

A Bill for an Act Relating to Agriculture.

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

SECTION 1. The legislature finds that Act 264, Session Laws of Hawaii 1994, created the agribusiness development corporation. The purpose of the agribusiness development corporation is:

- (1) To administer an aggressive and dynamic agribusiness development program;
- (2) To coordinate and administer programs to assist agricultural enterprises to facilitate the transition of agricultural infrastructure from plantation operations into other agricultural enterprises;
- (3) To carry on marketing analysis to direct agricultural industry evolution; and
- (4) To provide leadership for the development, financing, improvement, or enhancement of agricultural enterprises.

One of the responsibilities the legislature tasked this new and dynamic entity with is to create the Hawaii agribusiness plan. The plan's purpose is to define and establish goals, objectives, policies, and priority guidelines for the agribusiness development corporation's agribusiness development strategy. However, this plan was never created.

The legislature finds that this plan is of utmost importance, because it will help to guide the agribusiness development corporation and its board of directors in each program it administers. The purpose of this Act is to direct the legislative reference bureau to conduct a study to assist the agribusiness development corporation in identifying elements to be included in the Hawaii agribusiness plan.

SECTION 2. The legislative reference bureau shall conduct a study to identify elements that should be included in the Hawaii agribusiness plan. In developing its report, the legislative reference bureau shall:

- (1) Identify the government agencies involved and stakeholders who may directly benefit from the agribusiness development corporation, including public and private organizations and individuals;

- (2) Consult with these agencies and stakeholders, including but not be limited to individuals from the department of agriculture, agribusiness development corporation, University of Hawaii college of tropical agriculture and human resources, Hawaii Farm Bureau Federation, and county farm bureaus, as well as organizations of individual farmers and ranchers, as feasible;
- (3) Obtain suggestions to improve the agribusiness development corporation and identify the necessary elements for developing the Hawaii agribusiness plan; and
- (4) Submit a report of its findings and recommendations, including any proposed legislation, to the legislature at least twenty days prior to the convening of the regular session of 2007.

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

(Approved July 4, 2006.)

ACT 268

S.B. NO. 2505

A Bill for an Act Makes Appropriations for School-Based Substance Abuse Treatment Programs for Adolescents.

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

SECTION 1. The use of alcohol and other drugs by Hawaii's youth can impede social and intellectual development and can lead individuals to engage in dangerous activities, such as reckless driving, premature and unprotected sex, and violence. Substance abuse treatment for students helps stop their use and abuse of alcohol and other drugs, reduces criminal behavior, increases school attendance, allows them to remain in school until graduation, and increases the likelihood of their becoming healthy, productive, contributing adults.

Part of the core continuum of care needed for adolescents is early identification followed by early treatment. School-based treatment is an effective way to intervene in a timely manner and succeed in avoiding more costly treatment, avoiding school dropouts, and producing functional adults.

Adolescent school-based substance abuse treatment programs provide services on a scheduled basis on school campuses for adolescents with substance abuse problems. Professionally directed evaluation, treatment, case management, and recovery services are provided to clients with less problematic substance abuse-related behavior than would be found in a residential or day treatment program. Services are available year-round, during the school year, and through the summer months. School-based programs also provide outreach to students through classroom presentations, networking with teachers and other school personnel, and other appropriate methods.

Adolescent school-based substance abuse treatment programs provide:

- (1) Outpatient school-based treatment for a maximum of one hundred ninety-two hours per client per year consisting of face-to-face individual sessions, including screening, assessment, treatment planning, and counseling;
- (2) Group sessions, including process, education, skill building, and recreation groups; and
- (3) Family counseling.

Agencies presently contracted by the department of health's alcohol and drug abuse division to provide adolescent school-based substance abuse treatment services are as follows:

- (1) Hina Mauka on Kauai and Oahu;
- (2) The Young Men's Christian Association on Oahu;
- (3) Aloha House, Inc., and Ohana Makamae, Inc., on Maui;
- (4) Hale Ho'okupa'a on Molokai; and
- (5) Big Island Substance Abuse Council on the island of Hawaii.

While the department of health provides services that address student alcohol and other drug abuse, programs are not available in all secondary schools. Current resources available for these services provide for programs in all high schools, but not all of the middle and intermediate schools.

The purpose of this Act is to appropriate funds to extend adolescent school-based substance abuse treatment programs to all middle and intermediate schools, with priority given to schools with the greatest need.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,817,500 or so much thereof as may be necessary for fiscal year 2006-2007 for adolescent school-based substance abuse treatment programs in middle and intermediate schools, with priority given to establishing programs in schools with the greatest need.

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved July 4, 2006.)

ACT 269

S.B. NO. 2504

A Bill for an Act Relating to Parking for Persons with Disabilities.

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

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

“§291- Reimbursement to counties. The State shall reimburse the counties for the unit cost of issuing a removable windshield placard or a temporary removable windshield placard on behalf of the State. Beginning July 1, 2006, the rate of the per unit cost reimbursement shall be \$12.”

SECTION 2. Section 291-51.6, Hawaii Revised Statutes, is amended to read as follows:

“§291-51.6 Issuance of temporary removable windshield parking placards. Each county [may] shall issue one temporary removable windshield placard and a second temporary removable windshield placard to each applicant who requests 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 windshield placard shall be designed, fabricated, and sold to the counties at a rate negotiated by the disability and communication access board.”

SECTION 3. Section 291-52, Hawaii Revised Statutes, is amended to read as follows:

“§291-52 Issuance of removable windshield placard. Each county [may] shall 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. 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 4. 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] shall 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.”

SECTION 5. Section 291-56, Hawaii Revised Statutes, is amended to read as follows:

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

- (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 placards and identification cards;
- (3) The design of the placard, identification card, and special license plates;
- (4) The establishment of fees for placards;
- (5) Signage and marking of parking spaces; and
- (6) Penalties.”

SECTION 6. The state auditor is directed to conduct an analysis of the cost to the State of reimbursing the counties for issuing removable and temporary windshield placards as provided under section 1 of this Act.

The state auditor shall report findings and recommendations to the legislature no later than twenty days before the convening of the regular session of 2007.

SECTION 7. There is appropriated out of the general revenues of the State of Hawaii the sum of \$51,190 or so much thereof as may be necessary for fiscal year 2006-2007 to assist in implementing the purposes of this Act.

The sum appropriated shall constitute the State’s share of the cost of mandated programs under article VIII, section 5 of the State Constitution.

The sum appropriated shall be expended by the department of health’s disability and communication access board.

ACT 270

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

SECTION 9. This Act shall take effect on July 1, 2006.

(Approved July 4, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 270

S.B. NO. 3247

A Bill for an Act Relating to Care Homes.

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

SECTION 1. Section 46-15.3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For the purpose of regulation under a county’s life safety code, building code, fire code, or any other ordinance of similar purpose, a licensed adult family boarding home or licensed care home ~~[which]~~ that provides living accommodations for:

- (1) The operator of the home and operator’s family; and
- (2) Up to ~~[five]~~ six other persons, not more than ~~[two]~~ three of whom are incapable of self-preservation because of age or physical or mental limitations~~[-]~~.

shall be deemed a single-family dwelling occupied by a family.”

SECTION 2. Section 321-15.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director shall adopt rules regarding adult residential care homes in accordance with chapter 91 ~~[which]~~ that shall be designed to:

- (1) Protect the health, safety, and civil rights of persons residing in facilities regulated;
- (2) Provide for the licensing of adult residential care homes; provided that the rules shall allow group living in two categories of adult residential care homes as licensed by the department of health:
 - (A) Type I allowing ~~[group living by]~~ five or fewer ~~[unrelated persons;]~~ residents; provided that up to six residents may be allowed at the discretion of the department to live in a type I home; provided that the primary caregiver or home operator is a certified nurse aide who has completed a state-approved training program and other training as required by the department; and
 - (B) Type II allowing six or more ~~[persons]~~ residents, including but not limited to the mentally ill, elders, ~~[the handicapped,]~~ persons with disabilities, the developmentally disabled, or totally disabled persons who are not related to the home operator or facility staff[-];

[For purposes of this section:

~~“Mentally ill person” means a mentally ill person as defined under section 334-1.~~

~~“Elder” means an elder as defined under sections 201G-1 and 201G-151.~~

~~“Handicapped person” means an individual with a physical handicap as defined under section 515-2.~~

~~“Developmentally disabled person” means a person with developmental disabilities as defined under section 333F-1.~~

~~“Totally disabled person” means a person totally disabled as defined under section 235-1;]~~

- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.

For the purposes of this subsection:

“Developmentally disabled” means a person with developmental disabilities as defined under section 333F-1.

“Elder” has the same meaning as defined under section 201G-1.

“Mentally ill” means a mentally ill person as defined under section 334-1.

“Persons with disabilities” means persons having a disability under section 515-2.

“Totally disabled person” has the same meaning as a person totally disabled as defined under section 235-1.”

SECTION 3. Section 321-15.62, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The director of health shall adopt rules regarding expanded adult residential care homes in accordance with chapter 91 [which] that shall implement a social model of health care designed to:

- (1) Protect the health, safety, civil rights, and rights of choice of [the persons to reside] residents in a nursing facility or in home- or community-based care;
- (2) Provide for the licensing of expanded adult residential care homes for persons who are certified by the department of human services, a physician, advanced practice registered nurse, or registered nurse case manager as requiring skilled nursing facility level or intermediate care facility level of care who have no financial relationship with the home care operator or facility staff; provided that the rules shall allow group living in the following two categories of expanded adult residential care homes as licensed by the department of health:
 - (A) [Type] A type I home shall consist of five or [less] fewer residents with no more than two nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department; and provided further that up to six residents may be allowed at the discretion of the department to live in a type I home; provided that the primary caregiver or home operator is a certified nurse aide who has completed a state-approved training program and other training as required by the department; and¹
 - (B) [Type] A type II home shall consist of six or more residents, with no more than twenty per cent of the home’s licensed capacity as nursing facility level residents; provided that more nursing facility level residents may be allowed at the discretion of the department;

provided further that the department shall exercise its discretion for a resident presently residing in a [Type] type I or [Type] type II home, to allow the resident to remain as an additional nursing facility level resident based upon the best interests of the resident. The best interests

of the resident shall be determined by the department after consultation with the resident, the resident’s family, primary physician, case manager, primary caregiver, and home operator;

- (3) Comply with applicable federal laws and regulations of Title XVI of the Social Security Act, as amended; and
- (4) Provide penalties for the failure to comply with any rule.”

SECTION 4. Section 346-331, Hawaii Revised Statutes, is amended by amending the definition of “community care foster family home” or “home” to read as follows:

““Community care foster family home” or “home” means a home that, for the purposes of this part:

- (1) Is regulated by the department in accordance with rules that are equitable in relation to rules that govern expanded adult residential care homes;
- (2) Is issued a certificate of approval by the department or its designee to provide, for a fee, twenty-four-hour living accommodations, including personal care and homemaker services, for not more than two adults at any one time, at least one of whom shall be a medicaid recipient, who are at the nursing facility level of care, who are unrelated to the foster family, and who are receiving the services of a licensed home and community-based case management agency; provided that the department, in its discretion, may certify a home for a third adult who is at the nursing level of care and a medicaid recipient; provided that the primary and substitute caregivers are certified nurse aides who have completed a state-approved training program and other training as required by the department; and
- (3) Does not include expanded adult residential care homes or assisted living facilities, which shall continue to be licensed by the department of health.”

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, 2007.

(Approved July 4, 2006.)

Note

- 1. “And” should be underscored.

ACT 271

H.B. NO. 2146

A Bill for an Act Relating to Land Use.

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

SECTION 1. Section 205-4.5, Hawaii Revised Statutes, is amended to read as follows:

“**§205-4.5 Permissible uses within the agricultural districts.** (a) Within the agricultural district, all lands with soil classified by the land study bureau’s

detailed land classification as overall (master) productivity rating class A or B shall be restricted to the following permitted uses:

- (1) Cultivation of crops, including but not limited to flowers, vegetables, foliage, fruits, forage, and timber;
- (2) Game and fish propagation;
- (3) Raising of livestock, including but not limited to poultry, bees, fish, or other animal or aquatic life that are propagated for economic or personal use;
- (4) Farm dwellings, employee housing, farm buildings, or activity or uses related to farming and animal husbandry. Farm dwelling as used in this paragraph means a single-family dwelling located on and used in connection with a farm, including clusters of single-family farm dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling;
- (5) Public institutions and buildings that are necessary for agricultural practices;
- (6) Public and private open area types of recreational uses, including day camps, picnic grounds, parks, and riding stables, but not including dragstrips, airports, drive-in theaters, golf courses, golf driving ranges, country clubs, and overnight camps;
- (7) Public, private, and quasi-public utility lines and roadways, transformer stations, communications equipment buildings, solid waste transfer stations, major water storage tanks, and appurtenant small buildings such as booster pumping stations, but not including offices or yards for equipment, material, vehicle storage, repair or maintenance, [øf] treatment plants, [øf] corporation yards, or other like structures;
- (8) Retention, restoration, rehabilitation, or improvement of buildings or sites of historic or scenic interest;
- (9) Roadside stands for the sale of agricultural products grown on the premises;
- (10) Buildings and uses, including but not limited to mills, storage, and processing facilities, maintenance facilities, and vehicle and equipment storage areas that are normally considered directly accessory to the abovementioned uses and are permitted under section 205-2(d);
- (11) Agricultural parks; or
- (12) Wind energy facilities, including the appurtenances associated with the production and transmission of wind generated energy; provided that such facilities and appurtenances are compatible with agriculture uses and cause minimal adverse impact on agricultural land.

(b) Uses not expressly permitted in subsection (a) shall be prohibited, except the uses permitted as provided in sections 205-6 and 205-8, and construction of single-family dwellings on lots existing before June 4, 1976. Any other law to the contrary notwithstanding, no subdivision of land within the agricultural district with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class A or B shall be approved by a county unless [~~the said~~] those A and B lands within the subdivision [~~shall be~~] are made subject to the restriction on uses as prescribed in this section and to the condition that the uses shall be primarily in pursuit of an agricultural activity.

Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance covering any land within the agricultural subdivision shall expressly contain the restriction on uses and the condition, as prescribed in this section that [~~the~~¹ ~~restriction and condition~~] these restrictions and conditions shall be encumbrances

running with the land until such time that the land is reclassified to a land use district other than agricultural district.

If the foregoing requirement of encumbrances running with the land jeopardizes the owner or lessee ~~[from]~~ in obtaining mortgage financing from any of the mortgage lending agencies set forth ~~[hereinbelow,]~~ in the following paragraph, and the requirement is the sole reason for failure to obtain mortgage financing, then ~~[such]~~ the requirement of encumbrances shall, insofar as ~~[the]~~ such mortgage financing is ~~[se]~~ jeopardized, be conditionally waived by the appropriate county enforcement officer; provided that the conditional waiver shall ~~[thereafter]~~ become effective only in the event that the property is subjected to foreclosure proceedings by the mortgage lender.

The mortgage lending agencies ~~[mentioned hereinabove]~~ referred to in the preceding paragraph are the Federal Housing Administration, Federal National Mortgage Association, Veterans Administration, Small Business Administration, United States Department of Agriculture, Federal Land Bank of Berkeley, Federal Intermediate Credit Bank of Berkeley, Berkeley Bank for Cooperatives, and any other federal, state, or private mortgage lending agency qualified to do business in Hawaii, and their respective successors and assigns.

(c) Within the agricultural district all lands~~[,]~~ with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class C, D, E, or U shall be restricted to the uses permitted for agricultural districts as set forth in section 205-5(b).

(d) Notwithstanding any other provision of this chapter to the contrary, golf courses and golf driving ranges approved by a county before July 1, 2005, for development within the agricultural district shall be permitted uses within the agricultural district.

(e) Notwithstanding any other law to the contrary, agricultural lands may be subdivided and leased for the agricultural uses or activities permitted in subsection (a); provided that:

- (1) The principal use of the leased land is agriculture;
- (2) No permanent or temporary dwellings or farm dwellings, including trailers and campers, are constructed on the leased area. This restriction shall not prohibit the construction of storage sheds, equipment sheds, or other structures appropriate to the agricultural activity carried on within the lot; and
- (3) The lease term for a subdivided lot shall be for at least as long as the greater of:
 - (A) The minimum real property tax agricultural dedication period of the county in which the subdivided lot is located; or
 - (B) Five years.

Lots created and leased pursuant to this section shall be legal lots of record for mortgage lending purposes and shall be exempt from county subdivision standards."

SECTION 2. Section 484-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider's subdivision, this chapter shall not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser's own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;

- (3) Where the division of lands is a leasehold agricultural lot within state agricultural districts on which no dwelling structures are constructed as provided in section 205-4.5(e);
- [(3)] (4) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly or indirectly, transferred to or otherwise imposed upon the purchaser;
- [(4)] (5) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale;
- [(5)] (6) Pursuant to court order;
- [(6)] (7) By any government or government agency;
- [(7)] (8) As cemetery lots or interests; or
- [(8)] (9) Registered as a condominium property regime pursuant to chapter [514A.] 514B.''

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, 2006.

(Approved July 4, 2006.)

Note

1. So in original.

ACT 272

S.B. NO. 3195

A Bill for an Act Making an Appropriation for Education.

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

SECTION 1. The Reinventing Education Act of 2004, Act 51, Session Laws of Hawaii 2004 (Act 51), mandated a new spending method of funding education using a weighted student formula, which allocates funds based upon student characteristics rather than based upon enrollment and particular school programs. The implementation of the weighted student formula beginning next year will cause considerable adjustments to be made by many schools, and the loss of funds for some. This year, an additional \$20,000,000 has been appropriated directly to schools to support improved student achievement. The legislature has provided these appropriations as foundational funding to ease the transition to the weighted student formula allocation method which shall be distributed uniformly among schools based upon level—whether it is an elementary, middle, high school, or combination school.

The foundation funding will prevent any school from losing funds for the school year 2006-2007, and will in fact provide additional funds to every school. However, one need that remains to be addressed is the continued teacher shortage in our State.

The legislature finds that Hawaii continues to have a critical shortage of trained teachers within the public school system. Research indicates that teacher

quality is one of the most influential factors in student achievement. Standards-based reform has a greater chance of success when teacher quality is addressed simultaneously. In an effort to provide quality education for its students, the department of education continues to recruit highly qualified teachers from within the State of Hawaii and the continental United States. As more “baby-boom” teachers in Hawaii and across the nation retire, the task of recruiting highly qualified teachers becomes more challenging each year.

One way to address the teacher shortage is with programs like the Hawaii teacher cadet program, through which high school students interested in educational careers may be specifically targeted and their skill sets enhanced towards becoming an educator. Such programs provide students with information, field experiences, and insights into teaching in Hawaii schools, and can guide and support Hawaii’s future teachers to ensure success in the profession.

The purpose of this Act is to appropriate funds to address educational needs, specifically the teacher shortage in Hawaii.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$150,000, or so much thereof as may be necessary for fiscal year 2006-2007, for teacher training and support.

The sum appropriated shall be expended by the Department of Education to carry out the purpose of this Act.

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved July 4, 2006.)

ACT 273

H.B. NO. 3225

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Section 484-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Unless the method of disposition is adopted for the purpose of evasion of this chapter, or unless the subdivider files in writing with the director that this chapter shall apply to the subdivider’s subdivision, this chapter shall not apply to offers or dispositions of an interest in land:

- (1) By a purchaser of subdivided lands for the purchaser’s own account in a single or isolated transaction;
- (2) If fewer than twenty separate lots, parcels, units, or interests in subdivided lands are offered by a person in a period of twelve months;
- (3) On which there is a residential, commercial, or industrial building, or as to which there is a legal obligation on the part of the seller to construct a building on the land within two years from the date of disposition; provided that the obligation to construct shall not be, directly or indirectly, transferred to or otherwise imposed upon the purchaser;
- (4) To persons who are engaged in, and are duly licensed to engage in, the business of construction of buildings for resale, or to persons who acquire an interest in subdivided lands for the purpose of engaging, and do engage in, and are duly licensed to engage in, the business of construction of buildings for resale;

- (5) Pursuant to court order;
- (6) By any government or government agency;
- (7) As cemetery lots or interests; or
- (8) Registered as a condominium property regime pursuant to chapter 514A[-] or 514B.”

SECTION 2. Section 514A-1.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~§514A-1.5 **Applicability of chapter.** (a) This chapter:

- (1) Shall not apply to condominiums created on or after July 1, 2006, or that are registered with the commission pursuant to part IV of chapter 514B; and
- (2) On and after July 1, 2006, shall apply only to:
 - (A) Condominiums created prior to July 1, 2006, except as provided in subsection (b) and sections 514B-22 and 514B-23; and
 - (B) A developer’s sale of condominiums in a project for which a notice of intention was filed with the commission prior to July 1, 2006, pursuant to section 514A-31, except where the developer elects to register an existing project with the commission under part IV of chapter 514B, pursuant to section 9(b) of Act 93, Session Laws of Hawaii 2005.

(b) This chapter shall not apply to any condominium project or association of apartment owners created prior to May 29, 1963, pursuant to Act 180, Session Laws of Hawaii 1961, unless all of the owners and holders of liens affecting any of the apartments in the project have expressly declared that this chapter shall apply to the property, and shall govern the rights, interests, and remedies of all persons owning interests in or liens upon the property; provided that any condominium project or association of apartment owners created prior to May 29, 1963, pursuant to Act 180, Session Laws of Hawaii 1961, having seven or more apartments shall register with the commission and comply with the requirements pursuant to sections 514A-95.1 and 514A-132, except for the fidelity bond requirement. The express declaration shall be made through the execution and recordation of a declaration in form and content required to establish a condominium property regime pursuant to this chapter.”

SECTION 3. Section 514B-3, Hawaii Revised Statutes, is amended by amending the definitions of “association,” “condominium map,” “material change,” and “structures” as follows:

““Association” means the unit owners’ association organized under section 514B-102[-] or under prior condominium property regime statutes.

“Condominium map” means, however denominated, a map or plan of the [~~building or buildings~~] condominium property regime containing the information required by section 514B-33.

“Material change” as used in parts IV and V of this chapter means any change that directly, substantially, and adversely affects the use or value of:

- (1) A purchaser’s unit or appurtenant limited common elements; or
- (2) Those amenities of the project available for the purchaser’s use.

“Structures” includes but is not limited to buildings.”

SECTION 4. Section 514B-10, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had

fully performed. ~~[Consequential, special, or punitive]~~ Punitive damages may not be awarded, however, except as specifically provided in this chapter or by other rule of law.”

SECTION 5. Section 514B-22, Hawaii Revised Statutes, is amended to read as follows:

“~~[§514B-22]~~ **Applicability to preexisting condominiums.** Sections 514B-4, 514B-5, 514B-35, 514B-41(c), 514B-46, 514B-72, and part VI, and section 514B-3 to the extent definitions are necessary in construing any of those provisions, and all amendments thereto, apply to all condominiums created in this State before July 1, 2006; ~~but~~ provided that those sections ~~apply~~:

- (1) Shall apply only with respect to events and circumstances occurring on or after July 1, 2006; and ~~de~~
- (2) Shall not invalidate existing provisions of the declaration, bylaws, condominium map, or other constituent documents of those condominiums if to do so would invalidate the reserved rights of a developer or be an unreasonable impairment of contract.

For purposes of interpreting this chapter, the terms “condominium property regime” and “horizontal property regime” shall be deemed to correspond to the term “condominium”; the term “apartment” shall be deemed to correspond to the term “unit”; the term “apartment owner” shall be deemed to correspond to the term “unit owner”; and the term “association of apartment owners” shall be deemed to correspond to the term “association”.”

SECTION 6. Section 514B-23, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) An amendment to the declaration, bylaws, condominium map or other constituent documents authorized by this section ~~[shall be adopted in conformity with any procedures and requirements for amending the instruments specified by those instruments or, if there are none, in conformity with the amendment procedures of this chapter]~~ may be adopted by the vote or written consent of a majority of the owners; provided that any amendment adopted pursuant to this section shall not invalidate the reserved rights of a developer. If an amendment grants to any person any rights, powers, or privileges permitted by this chapter, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.”

SECTION 7. Section 514B-32, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

- “(a) A declaration shall describe or include the following:
- (1) The land submitted to the condominium property regime;
 - (2) The number of the condominium ~~[property regime]~~ map filed concurrently with the declaration;
 - (3) The number of units in the condominium property regime;
 - (4) The unit number of each unit and common interest appurtenant to each unit;
 - (5) The number of buildings and projects in the condominium property regime, and the number of stories and units in each building;
 - (6) The permitted and prohibited uses of each unit;
 - (7) To the extent not shown on the condominium ~~[property regime]~~ map, a description of the location and dimensions of the horizontal and vertical boundaries of any unit. Unit boundaries may be defined by physical

- structures or, if a unit boundary is not defined by a physical structure, by spatial coordinates;
- (8) The condominium property regime's common elements;
 - (9) The condominium property regime's limited common elements, if any, and the unit or units to which each limited common element is appurtenant;
 - (10) The total percentage of the common interest that is required to approve rebuilding, repairing, or restoring the condominium property regime if it is damaged or destroyed;
 - (11) The total percentage of the common interest, and any other approvals or consents, that are required to amend the declaration. Except as otherwise specifically provided in this chapter, and except for any amendments made pursuant to reservations set forth in paragraph (12), the approval of the owners of at least sixty-seven per cent of the common interest shall be required for all amendments to the declaration;
 - (12) Any rights that the developer or others reserve regarding the condominium property regime, including, without limitation, any development rights, and any reservations to modify the declaration or condominium [property regime] map. An amendment to the declaration made pursuant to the exercise of those reserved rights shall require only the consent or approval, if any, specified in the reservation; and
 - (13) A declaration, subject to the penalties set forth in section 514B-69(b), that the condominium property regime is in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and specifying in the case of a property that includes one or more existing structures being converted to condominium property regime status:
 - (A) Any variances that have been granted to achieve the compliance; and
 - (B) Whether, as the result of the adoption or amendment of any ordinances or codes, the project presently contains any legal nonconforming conditions, uses, or structures; except that a property that is registered pursuant to section 514B-51 shall instead provide this declaration pursuant to section 514B-54. If a developer is converting a structure to condominium property regime status and the structure is not in compliance with all zoning and building ordinances and codes, and all other permitting requirements pursuant to section 514B-5, and the developer intends to use purchaser's funds pursuant to the requirements of section 514B-92 or 514B-93 to cure the violation or violations, then the declaration required by this paragraph may be qualified to identify with specificity each violation and the requirement to cure the violation by a date certain."

SECTION 8. Section 514B-33, Hawaii Revised Statutes, is amended to read as follows:

“~~[§514B-33]~~ **Condominium [property regime] map.** (a) A condominium [property regime] map shall be recorded with the declaration. The condominium [property regime] map shall contain the following:

- (1) A site plan for the condominium property regime, depicting the location, layout, and access to a public road of all buildings and projects included or anticipated to be included in the condominium property

- regime, and depicting access for the units to a public road or to a common element leading to a public road;
- (2) Elevations and floor plans of all buildings in the condominium property regime;
 - (3) The layout, location, boundaries, unit numbers, and dimensions of the units;
 - (4) To the extent that there is parking in the condominium property regime, a parking plan for ~~[a project,]~~ the regime, showing the location, layout, and stall numbers of all parking stalls included in ~~[the project and]~~ the condominium property regime;
 - (5) Unless specifically described in the declaration, the layout, location, and numbers or other identifying information of the limited common elements, if any; and
 - (6) A description in sufficient detail, as may be determined by the commission, to identify any land area that constitutes a limited common element.
- (b) The condominium ~~[property regime]~~ map may contain any additional information that is not inconsistent with this chapter.”

SECTION 9. Section 514B-34, Hawaii Revised Statutes, is amended to read as follows:

“[E]§514B-34[] Condominium ~~[property regime]~~ map; certification of architect, engineer, or surveyor. (a) The condominium ~~[property regime]~~ map shall bear the statement of a licensed architect, engineer, or surveyor certifying that the condominium ~~[property regime]~~ map is consistent with the plans of the condominium’s building or buildings filed or to be filed with the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located. If the building or buildings have been built at the time the condominium ~~[property regime]~~ map is recorded, the certification shall state that, to the best of the architect’s, engineer’s, or surveyor’s knowledge, the condominium ~~[property regime]~~ map depicts the layout, location, dimensions, and numbers of the units substantially as built. If the building or buildings, or portions thereof, have not been built at the time the condominium ~~[property regime]~~ map is recorded, within thirty days from the completion of construction, the developer shall execute and record an amendment to the declaration accompanied by a certification of a licensed architect, engineer, or surveyor certifying that the condominium ~~[property regime]~~ map previously recorded, as amended by the revised pages filed with the amendment, if any, fully and accurately depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built.

(b) If the condominium property regime is a conversion and the government official having jurisdiction over the issuance of permits for the construction of buildings in the county in which the condominium property regime is located is unable to locate the original permitted construction plans, the certification need only state that the condominium ~~[property regime]~~ map depicts the layout, location, boundaries, dimensions, and numbers of the units substantially as built. If there are no buildings, no certification shall be required.”

SECTION 10. Section 514B-38, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]~~**§514B-38**~~[H]~~ **Common elements.** Each unit owner may use the common elements in accordance with the purposes permitted under the declaration, subject to:

- (1) The rights of other unit owners to use the common elements;
- (2) Any owner’s exclusive right to use of the limited common elements as provided in the declaration;
- (3) The right of the owners to amend the declaration to change the permitted uses of the common elements ~~[or to designate any portion of the common elements as a limited common element]~~; provided that subject to subsection 514B-140(c):
 - (A) Changing common element open spaces or landscaped spaces to other uses shall not require an amendment to the declaration; and
 - (B) Minor additions to or alterations of the common elements for the benefit of individual units are permitted if the additions or alterations can be accomplished without substantial impact on the interests of other owners in the common elements, as reasonably determined by the board;
- (4) Any rights reserved in the declaration to amend the declaration to change the permitted uses of the common elements;
- (5) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are not actually used by any of the unit owners for a purpose permitted in the declaration. Unless the lease is approved by the owners of at least sixty-seven per cent of the common interest, the lease shall have a term of no more than five years and may be terminated by the board or the lessee on no more than sixty days prior written notice; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by section 514B-140(d); and
- (6) The right of the board, on behalf of the association, to lease or otherwise use for the benefit of the association those common elements that the board determines are actually used by one or more unit owners for a purpose permitted in the declaration. The lease or use shall be approved by the owners of at least sixty-seven per cent of the common interest, including all directly affected unit owners that the board reasonably determines actually use the common elements, and the owners’ mortgagees~~[-]~~; provided that the requirements of this paragraph shall not apply to any leases, licenses, or other agreements entered into for the purposes authorized by section 514B-140(d).”

SECTION 11. Section 514B-47, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Notwithstanding subsections (a) and (b), if the unit leases for a leasehold condominium property regime (including condominium conveyance documents, ground leases, or similar instruments creating a leasehold interest in the land) provide that:

- (1) The estate and interest of the unit owner shall cease and determine upon the acquisition, by an authority with power of eminent domain of title and right to possession of any part of the condominium property regime;
- (2) The unit owner shall not by reason of the acquisition or right to possession be entitled to any claim against the lessor or others for compensation or indemnity for the unit owner’s leasehold interest;

- (3) All compensation and damages for or on account of any land shall be payable to and become the sole property of the lessor;
- (4) All compensation and damages for or on account of any buildings or improvements on the demised land shall be payable to and become the sole property of the unit owners of the buildings and improvements in accordance with their interests; and
- (5) The unit lease rents are reduced in proportion to the land so acquired or possessed;

the lessor and the developer, if the developer retains any interests or reserved rights in the project, shall file and record an amendment to the declaration to reflect any acquisition or right to possession. The consent or joinder of the unit owners or their respective mortgagees shall not be required, if the land acquired or possessed constitutes no more than five per cent of the total land of the condominium property regime. Upon the recordation of the amendment, the land acquired or possessed shall cease to be the subject of a condominium property regime or subject to this chapter. The lessor shall notify each unit owner in writing of the filing of the amendment and the rent abatement, if any, to which the unit owner is entitled. The lessor shall provide the association, through its board, with a copy of the recorded amendment.”

SECTION 12. Section 514B-58, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The developer, its successor, or assign shall be relieved from filing annual reports pursuant to this section when the initial sales of all units have been completed [~~and the developer, its successor, or assign has no ownership interest in any unit in the project.~~].”

SECTION 13. Section 514B-98, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The developer may go to sale using either a chronological system or a lottery system at any time after issuance of an effective date for a developer’s public report [~~for which the effective date has not expired.~~].”

SECTION 14. Section 514B-104, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except as provided in section 514B-105, and subject to the provisions of the declaration and bylaws, the association, even if unincorporated, may:

- (1) Adopt and amend the declaration, bylaws, and rules and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves and collect assessments for common expenses from unit owners, subject to section 514B-148;
- (3) Hire and discharge managing agents and other independent contractors, agents, and employees;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium. For the purposes of actions under chapter 480, associations shall be deemed to be “consumers”;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (7) Cause additional improvements to be made as a part of the common elements;

- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property; provided that [designation]:
- (A) Designation of additional areas to be common elements or subject to common expenses after the initial filing of the declaration or bylaws shall require the approval of at least sixty-seven per cent of the unit owners; [~~provided further that if~~]
 - (B) If the developer discloses to the initial buyer in writing that additional areas will be designated as common elements whether pursuant to an incremental or phased project or otherwise, [~~this requirement~~] the requirements of this paragraph shall not apply as to those additional areas; and [~~provided further that~~]
 - (C) The requirements of this paragraph shall not apply to the purchase of a unit for a resident manager[;], which may be purchased with the approval of the board;
- (9) Subject to section 514B-38, grant easements, leases, licenses, and concessions through or over the common elements and permit encroachments on the common elements;
- (10) Impose and receive any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in section 514B-35(2) and (4), and for services provided to unit owners;
- (11) Impose charges and penalties, including late fees and interest, for late payment of assessments and[~~, after notice and an opportunity to be heard,~~] levy reasonable fines for violations of the declaration, bylaws, rules, and regulations of the association, either in accordance with the bylaws or, [~~for condominiums created after May 17, 1983,~~] if the bylaws are silent, pursuant to a resolution adopted by the board [~~and approved by sixty-seven per cent of all unit owners at an annual meeting of the association or by the written consent of sixty-seven per cent of all unit owners;~~] that establishes a fining procedure that states the basis for the fine and allows an appeal to the board of the fine with notice and an opportunity to be heard and providing that if the fine is paid, the unit owner shall have the right to initiate a dispute resolution process as provided by sections 514B-161, 514B-162, or by filing a request for an administrative hearing under a pilot program administered by the department of commerce and consumer affairs;
- (12) Impose reasonable charges for the preparation and recordation of amendments to the declaration, documents requested for resale of units, or statements of unpaid assessments;
- (13) Provide for cumulative voting through a provision in the bylaws; [~~provided that an owner shall provide notice of the owner's intent to cumulatively vote before voting commences;~~]
- (14) Provide for the indemnification of its officers, board, committee members, and agents, and maintain directors' and officers' liability insurance;
- (15) Assign its right to future income, including the right to receive common expense assessments, but only to the extent section 514B-105(e) expressly so provides;
- (16) Exercise any other powers conferred by the declaration or bylaws;
- (17) Exercise all other powers that may be exercised in this State by legal entities of the same type as the association, except to the extent inconsistent with this chapter;
- (18) Exercise any other powers necessary and proper for the governance and operation of the association; and

- (19) By regulation, subject to sections 514B-146, 514B-161, and 514B-162, require that disputes between the board and unit owners or between two or more unit owners regarding the condominium be submitted to nonbinding alternative dispute resolution in the manner described in the regulation as a prerequisite to commencement of a judicial proceeding.”

SECTION 15. Section 514B-105, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Subject to any approval requirements and spending limits contained in the declaration or bylaws, the association may authorize the board to borrow money for the repair, replacement, maintenance, operation, or administration of the common elements and personal property of the project, or the making of any additions, alterations, and improvements thereto; provided that written notice of the purpose and use of the funds is first sent to all unit owners and owners representing fifty per cent of the common interest vote or give written consent to the borrowing. In connection with the borrowing, the board may grant to the lender the right to assess and collect monthly or special assessments from the unit owners and to enforce the payment of the assessments or other sums by statutory lien and foreclosure proceedings. The cost of the borrowing, including, without limitation, all principal, interest, commitment fees, and other expenses payable with respect to the borrowing or the enforcement of the obligations under the borrowing, shall be a common expense of the project. For purposes of this section, the financing of insurance premiums by the association within the policy period shall not be deemed a loan and no lease shall be deemed a loan if it provides that at the end of the lease the association may purchase the leased equipment for its fair market value.”

SECTION 16. Section 514B-106, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Not later than the termination of any period of developer control, the unit owners shall elect a board of at least three members; provided that ~~[condominiums] projects~~ created after May [17,] 18, 1984, with one hundred or more individual units, shall have an elected board of at least nine members unless ~~[at least sixty-seven per cent of all unit owners vote by mail ballot, or at a special or annual meeting,]~~ the membership has amended the bylaws to reduce the number of directors; and provided further that [condominiums] projects with more than one hundred individual units where at least [seventy-five] seventy per cent of the unit owners do not reside [outside of the State] at the project may [have an elected board of at least three members. The board shall elect the officers. Board members and officers shall take office upon election.] amend the bylaws to reduce the board to as few as five members by the written consent of a majority of owners or the vote of a majority of a quorum at any annual meeting or special meeting called for that purpose. The association may rely on its membership records in determining whether a unit is owner-occupied. A decrease in the number of directors shall not deprive an incumbent director of any remaining term of office.”

SECTION 17. Section 514B-107, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

“(a) Members of the board shall be unit owners or co-owners, vendees under an agreement of sale, a trustee ~~[or beneficiary]~~ of a trust which owns a unit, ~~[an officer of any corporate owner including a limited liability corporation of a unit, or a representative]~~ or an officer, partner, member, or other person authorized to act

on behalf of any other legal entity which owns a unit. [The partners in a general partnership and the general partners of a limited partnership or limited liability partnership shall be deemed to be the owners of a unit for the purpose of serving on the board.] There shall not be more than one representative on the board from any one unit.”

2. By amending subsection (c) to read:

“(c) An owner shall not act as ~~[a director]~~ an officer of an association and an employee of the managing agent retained by the association. Any owner who is a board member of an association and an employee of the managing agent retained by the association shall not participate in any discussion regarding a management contract at a board meeting and shall be excluded from any executive session of the board where the management contract or the property manager will be discussed.”

SECTION 18. Section 514B-108, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The bylaws shall provide for at least the following:

- (1) The number of members of the board and the titles of the officers of the association;
- (2) Election by the board of a president, treasurer, secretary, and any other officers of the association the bylaws specify;
- (3) The qualifications, powers and duties, terms of office, and manner of electing and removing directors and officers and the filling of vacancies;
- (4) Designation of the powers the board or officers may delegate to other persons or to a managing agent;
- (5) Designation of the officers who may prepare, execute, certify, and record amendments to the declaration on behalf of the association;
- (6) The compensation, if any, of the directors;
- (7) Subject to subsection ~~[(d)]~~ (e), a method for amending the bylaws; and
- (8) The percentage, consistent with this chapter, that is required to adopt decisions binding on all unit owners; provided that votes allocated to lobby areas, swimming pools, recreation areas, saunas, storage areas, hallways, trash chutes, laundry chutes, and other similar common areas not located inside units shall not be cast at any association meeting, regardless of their designation in the declaration.”

SECTION 19. Section 514B-109, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) Subject to section 514B-23, an association at any time may restate the declaration or bylaws of the association to amend the declaration or bylaws as may be required in order to conform with the provisions of this chapter or of any other statute, ordinance, or rule enacted by any governmental authority, or to correct the percentage of common interest for the project so it totals one hundred per cent, by a resolution adopted by the board. If the restated declaration is to correct the percentage of common interest for the project so that it totals one hundred per cent, the proportion of each unit owner’s percentage of common interest shall remain the same in relation to the other unit owners. The restated declaration or bylaws shall be as fully effective for all purposes as if adopted by a vote or written consent of the unit owners.

Any declaration or bylaws restated pursuant to this subsection shall:

- (1) Identify each portion so restated;
- (2) Contain a statement that those portions have been restated solely for purposes of information and convenience;

- (3) Identify the statute, ordinance, or rule implemented by the amendment; and
- (4) Contain a statement that, in the event of any conflict, the restated declaration or bylaws shall be subordinate to the cited statute, ordinance, or rule.

(c) Upon the adoption of a resolution pursuant to subsection (a) or (b), the restated declaration or bylaws shall set forth all of the operative provisions of the declaration or bylaws, as amended, together with a statement that the restated declaration or bylaws correctly sets forth without change the corresponding provisions of the declaration or bylaws, as amended, and that the restated declaration or bylaws supersede the original declaration or bylaws and all prior amendments thereto. If the restated declaration corrects the percentage of common interest as provided in subsection (b), the restated declaration shall also amend the recorded conveyance instruments that govern the unit owner's interest in the unit.”

SECTION 20. Section 514B-123, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“(a) If only one of several owners of a unit is present at a meeting of the association, that owner is entitled to cast all the votes allocated to that unit. If more than one of the owners is present, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the owners, unless the declaration or bylaws expressly [~~provides~~] provide otherwise. There is majority agreement if any one of the owners casts the votes allocated to that unit without protest being made by any of the other owners of the unit to the person presiding over the meeting before the polls are closed.

(b) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. A unit owner may vote by mail or electronic transmission through a duly executed [~~directed~~] proxy. If a unit is owned by more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. In the absence of protest, any owner may cast the votes allocated to the unit by proxy. A unit owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the secretary of the association or the managing agent. A proxy is void if it purports to be revocable without notice.”

SECTION 21. Section 514B-132, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) If a managing agent receives a request from the commission to distribute any commission-generated information, printed material, or documents to the association, its board, or unit owners, the managing agent shall make the distribution at the cost of the association within a reasonable period of time after receiving the request. The requirements of this subsection apply to all managing agents, including unregistered managing agents.”

SECTION 22. Section 514B-137, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Except to the extent provided by the declaration or bylaws, the association is responsible for the operation of the property, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to [~~their agents or employees~~] employees, independent contractors, or agents of the association or other unit owners, during reasonable hours, access through the owner's unit reason-

ably necessary for those purposes. ~~[If]~~ Unless entry is made pursuant to subsection (b), if damage is inflicted on the common elements or on any unit through which access is taken, the unit owner responsible for the damage, or the association, if it is responsible, is liable for the prompt repair thereof; provided that the association shall not be responsible to pay the costs of removing or replacing any finished surfaces or other barriers that impede its ability to maintain and repair the common elements.”

SECTION 23. Section 514B-138, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If a unit owner fails to follow requirements imposed by the board pursuant to this section, the association, after reasonable notice, ~~[shall]~~ may enter the unit to perform the requirements with regard to such high-risk components at the sole cost and expense of the unit owner, which costs and expenses shall be a lien on the unit as provided in section 514B-146. Nothing in this section shall be deemed to limit the remedies of the association for damages, or injunctive relief, or both.”

SECTION 24. Section 514B-141, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Any statute of limitation affecting the association’s right of action against a developer ~~[under this chapter]~~ is tolled until the period of developer control terminates. A unit owner is not precluded from maintaining an action contemplated by this section because the unit owner is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by section 514B-147.”

SECTION 25. Section 514B-143, Hawaii Revised Statutes, is amended to read as follows:

“~~[[~~**§514B-143**~~]]~~ **Insurance.** (a) Unless otherwise provided in the declaration or bylaws, ~~[and to the extent reasonably available,]~~ the association shall purchase and at all times maintain the following:

- (1) Property insurance:
 - (A) On the common elements;
 - (B) Providing coverage for special form causes of loss; and
 - (C) In a total amount of not less than the full insurable replacement cost of the insured property, less deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date;
- (2) Commercial general liability insurance against claims and liabilities arising in connection with the ownership, existence, use, or management of the property in a minimum amount of \$1,000,000, or a greater amount deemed sufficient in the judgment of the board~~[-insuring the board, the association, the management agent, and their respective employees and agents and all persons acting as agents. The developer shall be included as an additional insured in its capacity as a unit owner, managing agent or resident manager, board member, or officer. The unit owners shall be included as additional insured parties but only for claims and liabilities arising in connection with the ownership, existence, use, or management of the common elements. The insurance shall cover claims of one or more insured parties against other insured parties.];~~
- (3) A fidelity bond, as follows:

- (A) An association with more than five dwelling units shall obtain and maintain a fidelity bond covering persons, including the managing agent and its employees who control or disburse funds of the association, in an amount equal to \$500 multiplied by the number of units; provided that the amount of the fidelity bond required by this paragraph shall not be less than \$20,000 nor greater than \$200,000; and
- (B) All management companies that are responsible for the funds held or administered by the association shall be covered by a fidelity bond as provided in section 514B-132(a)(3). The association shall have standing to make a loss claim against the bond of the managing agent as a party covered under the bond~~[-; and]; and~~ and
- ~~(C)~~ (4) The board shall obtain directors and officers liability coverage at a level deemed reasonable by the board, if not otherwise ~~[established]~~ limited by the declaration or bylaws. ~~[Directors and officers liability coverage shall extend to all contracts and other actions taken by the board in their official capacity as directors and officers, but shall exclude actions for which the directors are not entitled to indemnification under chapter 414D or the declaration and bylaws.]~~

(b) If a building contains attached units, the insurance maintained under subsection (a)(1), to the extent reasonably available, shall include the units, the limited common elements, except as otherwise determined by the board, and the common elements. The insurance need not cover improvements and betterments to the units installed by unit owners, but if improvements and betterments are covered, any increased cost may be assessed by the association against the units affected.

For the purposes of this section, “improvements and betterments” means all decorating, fixtures, and furnishings installed or added to and located within the boundaries of the unit, including electrical fixtures, appliances, air conditioning and heating equipment, water heaters, or built-in cabinets installed by unit owners.

(c) If a project contains detached units, then notwithstanding the requirement in this section that [associations] the association obtain the requisite coverage, if the board determines that it is in the best interest of the association to do so, the insurance to be maintained under subsection (a)(1) may be obtained separately for each unit by the unit owners; provided that the requirements of subsection (a)(1) shall be met; and provided further that evidence of such insurance coverage shall be delivered annually to the association. In such event, the association shall be named as an additional insured.

(d) The board, in the case of a claim for damage to a unit or the common elements, may:

- (1) Pay the deductible amount as a common expense;
- (2) After notice and an opportunity for a hearing, assess the deductible amount against the owners who caused the damage or from whose units the damage or cause of loss originated; or
- (3) Require the unit owners of the units affected to pay the deductible amount.

(e) The declaration ~~[or]~~, or the board may require the association to carry any other insurance, including workers’ compensation, employment practices, environmental hazards, and equipment breakdown, that the board considers appropriate to protect the association, the unit owners, or officers, directors, or agents of the association. Flood insurance shall also be maintained if the property is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency. The flood insurance policy shall comply with the requirements of the National Flood Insurance Program and the Federal Insurance Administration.

~~[(f) Insurance policies carried pursuant to subsections (a) and (b) shall include each of the following provisions:~~

- ~~(1) Each unit owner and secured party is an insured person under the policy with respect to liability arising out of the unit owner's interest in the common elements or membership in the association;~~
- ~~(2) The insurer waives its right to subrogation under the policy against any unit owner of the condominium or members of the unit owner's household and against the association and members of the board; and~~
- ~~(3) The unit owner waives the unit owner's right to subrogation under the association policy against the association and the board.~~

~~(g) If at the time of a loss under the policy there is other insurance in the name of a unit owner covering the same property covered by the policy, the association's policy shall be the primary insurance.]~~

~~[(h) (f) Any loss covered by the property policy under subsection (a)(1) shall be adjusted by and with the association. The insurance proceeds for that loss shall be payable to the association, or to an insurance trustee designated by the association for that purpose. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and secured parties as their interests may appear. [The proceeds shall be disbursed first for the repair or restoration of the damaged common elements, the bare walls, ceilings, and floors of the units, and then to any improvements and betterments the association may insure. Unit owners shall not be entitled to receive any portion of the proceeds unless there is a surplus of proceeds after the common elements and units have been completely repaired or restored or the association has been terminated as trustee.]~~

~~[(i) (g) The board, [under the declaration or bylaws,] with the vote or written consent of a majority of the owners, may require unit owners to obtain reasonable types and levels of insurance [covering their personal liability and compensatory but not consequential damages to another unit caused by the negligence of the owner or the owner's guests, tenants, or invitees, or regardless of any negligence originating from the unit]. The [personal] liability of a unit owner shall include but not be limited to the deductible of the owner whose unit was damaged, any damage not covered by insurance required by this subsection, as well as the decorating, painting, wall and floor coverings, trim, appliances, equipment, and other furnishings.~~

~~If the unit owner does not purchase or produce evidence of insurance requested by the board, the directors may, in good faith, purchase the insurance coverage and charge the reasonable premium cost back to the unit owner. In no event is the association or board liable to any person either with regard to [its] the failure of a unit owner to purchase insurance or a decision by the board not to purchase the insurance[;] for the owner, or with regard to the timing of its purchase of the insurance or the amounts or types of coverages obtained.~~

~~[(j) Contractors and vendors, except public utilities doing business with an association, shall provide certificates of insurance naming the association, its board, and its managing agent as additional insured parties.]~~

~~[(k) (h) The provisions of this section may be varied or waived in the case of a [condominium community] project in which all units are restricted to nonresidential use.~~

~~[(l) Any insurer defending a liability claim against an association shall notify the association of the terms of the settlement no less than ten days before settling the claim. The association may not veto the settlement unless otherwise provided by contract or statute.]'~~

SECTION 26. Section 514B-144, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

~~“(a) [Except as provided in section 514B-41, until the association makes a common expense assessment, the developer shall pay all common expenses. After an assessment has been made by the association, assessments] Assessments shall be made [at least annually,] based on a budget adopted and distributed or made available to unit owners at least annually by the board.”~~

2. By amending subsection (g) to read as follows:

“(g) No unit owner may exempt the unit owner from liability for the unit owner’s contribution towards the common expenses by waiver of the use or enjoyment of any of the common elements or by abandonment of the unit owner’s unit. Subject to such terms and conditions as may be specified in the declaration or bylaws, any unit owner, by conveying ~~[the unit owner’s]~~ his or her unit and common interest to the ~~[board]~~ association on behalf of all other unit owners, may exempt ~~[the unit owner’s self]~~ himself or herself from common expenses thereafter accruing.”

SECTION 27. Section 514B-145, Hawaii Revised Statutes, is amended by amending its title and subsection (a) to read as follows:

~~“[§514B-145] Association fiscal matters; collection of unpaid assessments from tenants[-] or rental agents.~~ (a) If the owner of a unit rents or leases the unit and is in default for thirty days or more in the payment of the unit’s share of the common expenses, the board, for as long as the default continues, may demand in writing and receive each month from any tenant occupying the unit~~[-]~~ or rental agent renting the unit, an amount sufficient to pay all sums due from the unit owner to the association, including interest, if any, but the amount shall not exceed the tenant’s rent due each month. The tenant’s payment under this section shall discharge that amount of payment from the tenant’s rent obligation, and any contractual provision to the contrary shall be void as a matter of law.”

SECTION 28. Section 514B-151, Hawaii Revised Statutes, is amended to read as follows:

~~“[§514B-151] Association fiscal matters; lease rent renegotiation.~~ (a) Notwithstanding any provision in the declaration or bylaws, any lease or sublease of the real estate or of a unit, or of an undivided interest in the real estate to a unit owner, whenever any lease or sublease of the real estate, a unit, or an undivided interest in the real estate to a unit owner provides for the periodic renegotiation of lease rent thereunder, the association shall represent the unit owners in all negotiations and proceedings, including but not limited to appraisal or arbitration, for the determination of lease rent; provided that the association’s representation in the renegotiation of lease rent shall be on behalf of at least two lessees. All costs and expenses incurred in such representation shall be a common expense of the association.

(b) Notwithstanding subsection (a), if some, but not all of the unit owners have already purchased the leased fee interest appurtenant to their units ~~[at the time of renegotiation,]~~ as of the earlier of any date specified in the lease or sublease for the commencement of lease rent renegotiation or nine months prior to the commencement of the term for which lease rent is to be renegotiated, all costs and expenses of the renegotiation shall be assessed to the remaining lessees whose lease rent is to be renegotiated in the same proportion that the common interest appurtenant to each lessee’s unit bears to the common interest appurtenant to all remaining lessees’ units[-] whose lease rent is to be renegotiated. The unpaid amount of this assessment shall constitute a lien upon the lessee’s unit, which may be collected in

accordance with section 514B-146 in the same manner as an unpaid common expense.

(c) In any project where the association is a lessor or sublessor, the association shall fulfill its obligations under this section by appointing independent counsel to represent the lessees in the negotiations and proceedings related to the rent renegotiation. The lessees' counsel shall act on behalf of the lessees in accordance with the vote or written consent of a majority of the lessees casting ballots or submitting written consents as determined by the ratio that the common interest appurtenant to each lessee's unit bears to the total common interest appurtenant to the units of participating lessees. Nothing in this subsection shall be interpreted to preclude the lessees from making a decision (by the vote or written consent of a majority of the lessees as described above) to retain other counsel or additional professional advisors as may be reasonably necessary or appropriate to complete the negotiations and proceedings. In the event of a deadlock among the lessees or other inability to proceed with the rent renegotiation on behalf of the lessees, the lessees' counsel may apply to the circuit court of the judicial circuit in which the condominium is located for instructions. The association shall not instruct or direct the lessees' counsel or other professional advisors. All costs and expenses incurred under this subsection shall be assessed by the association to the lessees as provided in subsection (a) or (b), as may be applicable.

(d) As used in this section, "lessees" or "remaining lessees" means all unit owners who have not purchased the leased fee interest appurtenant to their units as of the earlier of any date specified in the lease or sublease for the commencement of lease rent negotiation or nine months prior to the commencement of the term for which lease rent is to be renegotiated. The board's allocation of expenses under this section shall be final and binding in the absence of a determination that the board abused its discretion."

SECTION 29. Section 514B-154, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) An association may comply with this part by making information available to unit owners, at the option of each unit owner[;] and at no cost[;] to the unit owner for downloading the information, through an Internet site."

SECTION 30. Section 514C-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The association of apartment owners or cooperative housing corporation may purchase the leased fee interest in the land; provided that at least [seventy-five] sixty-seven per cent of the condominium unit lessees or cooperative unit lessees approve of the purchase. If the seller is also a condominium unit lessee or cooperative unit lessee, the seller's interest shall be disregarded in the computation to achieve the [seventy-five] sixty-seven per cent requirement. As used herein, [seventy-five]:

- (1) Sixty-seven per cent of the condominium unit lessees means the lessees of units to which [seventy-five] sixty-seven per cent of the common interests are appurtenant; and [seventy-five]
- (2) Sixty-seven per cent of the cooperative unit lessees means shareholders having at least [seventy-five] sixty-seven per cent of the shares in the cooperative housing corporation.

If the association of apartment owners or cooperative housing corporation accepts the seller's offer to purchase the leased fee interest in the land, the following powers, in addition to any other powers, shall be conferred upon the association of owners or cooperative housing corporation:

- (1) To purchase or otherwise acquire, own, improve, use, and otherwise deal in and with the leased fee interest to the land or any or all undivided interests therein;
- (2) To incur liabilities, borrow money, and secure any of its obligations by mortgage or pledge of all or any portion of its property, assessments, and funds;
- (3) To assess, in a fair and equitable manner, the condominium unit lessees or cooperative unit lessees for the expenses incurred in acquiring the leased fee interest to the land, or to service any debt associated therewith; and
- (4) To sell the leased fee interest appurtenant to a condominium unit to any condominium unit lessee or subsequent purchaser of such unit.”

SECTION 31. Section 514C-22, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) If some, but not all, lessees have purchased the leased fee interest in their condominium units directly from the lessor, (other than purchases by the lessor or the association of apartment owners), the association of apartment owners may undertake the purchase of all or any part of the leased fee interest in the remaining leasehold condominium units in the project in accordance with subsection (b); provided that:

- (1) [~~Seventy-five~~] Sixty-seven per cent of the remaining lessees approve an amendment to the declaration authorizing the purchase of the leased fee interest by the association consistent with the requirements of this section;
- (2) All costs and expenses and all proceeds and benefits of acquiring and holding the leased fee interest and to service any debt associated therewith shall be separately assessed or credited to the condominium units of the remaining lessees in the same ratio that the common interest appurtenant to each remaining lessees’ apartment bears to the total common interest appurtenant to all of the remaining lessees’ condominium units;
- (3) The association of apartment owners shall sell the leased fee interest in a condominium unit only to the lessee of the condominium unit or to the permitted assigns or successors of the lessee; provided that if the lessee or the lessee’s permitted assigns or successors decline to purchase the leased fee interest, the leased fee interest may be sold to other persons so long as reasonable disclosure is made of the association of apartment owners’ intent to sell the leased fee interest to the other persons and the disclosure includes a statement that the lessees may have no legal remedy if they subsequently wish to purchase the leased fee interest and the other persons refuse to sell or will sell only at a price unacceptable to the lessees; and
- (4) The association of apartment owners, through its board of directors in the exercise of its authority, may decide not to accept an offer from the lessor to sell all of the remaining portion of the lessor’s interest to the association of apartment owners on the basis that the purchase is not financially feasible or is otherwise not in the best interests of the association. In that event, the board shall adopt a resolution containing written findings as to its reasons for not accepting the offer and shall distribute the resolution to the remaining lessees.”

SECTION 32. Act 164, Session Laws of Hawaii 2004, as amended by Act 93, Session Laws of Hawaii 2005, is amended by amending section 35 to read as follows:

- “SECTION 35. This Act shall take effect on July 1, 2006; provided that:
- (1) The text of section -146 in part I of this Act shall be repealed on December 31, 2007, and reenacted in the form in which it read, as section 514A-90, Hawaii Revised Statutes, on the day before the approval of Act 39, Session Laws of Hawaii 2000, but with the amendments to section 514A-90, Hawaii Revised Statutes, made by Act 53, Session Laws of Hawaii 2003;
 - (2) Section 28 of this Act shall take effect on July 1, 2004, and shall be repealed on June 30, 2006; and
 - (3) Sections 30 to 33 of this Act shall take effect on July 1, 2004[; and
 - (4) ~~If provisions regarding the creation, alteration, termination, registration, and administration of condominiums, and the protection of condominium purchasers, are not adopted effective July 1, 2006, parts I and II of this Act shall be repealed on June 30, 2006].”~~

SECTION 33. Act 93, Session Laws of Hawaii 2005, is amended by repealing section 6.

“~~[SECTION 6. Chapter 514A, Hawaii Revised Statutes, is repealed.]”~~

SECTION 34. Chapter 16-107, subchapter 6, Hawaii Administrative Rules, shall remain in effect until the real estate commission adopts rules pursuant to section 514B-61 to implement section 514B-148, Hawaii Revised Statutes.

SECTION 35. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 36. This Act shall take effect on July 1, 2006; provided that section 33 shall take effect on June 30, 2006.

(Approved July 5, 2006.)

ACT 274

S.B. NO. 2913

A Bill for an Act Relating to Contractors.

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

SECTION 1. The purpose of this Act is to specify that half of the electrical and plumbing workers employed by an electrical or plumbing contractor on a construction job site shall be licensed in accordance with chapter 448E, rather than half of all craftsmen requiring licenses.

SECTION 2. Section 444-9.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]~~§444-9.5 ~~[E]~~ Licensing of [craftsmen.] electrical or plumbing workers. At least half of all ~~[craftsmen requiring licenses]~~ individuals performing electrical or plumbing work employed on a construction ~~[project]~~ job site by ~~[a specialty]~~ an

ACT 275

electrical or plumbing contractor [~~in the trade in which the craftsman is licensed~~] shall be licensed in accordance with [~~and to the extent required by~~] chapter 448E. The board may waive this requirement in any county when there are insufficient licensed [~~craftsmen~~] electrical or plumbing workers in that county to comply herewith.”

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 5, 2006.)

ACT 275

H.B. NO. 3100

A Bill for an Act Relating to Mortgage Foreclosures.

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

SECTION 1. Chapter 667, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“**§667- Public sale.** At any public sale pursuant to section 667-5, the successful bidder at the public sale, as the purchaser, shall not be required to make a down payment to the foreclosing mortgagee of more than ten per cent of the highest successful bid price.”

SECTION 2. Section 667-5.5, Hawaii Revised Statutes, is amended to read as follows:

“**§667-5.5 Foreclosure notice.** Notwithstanding any law or agreement to the contrary, any person who forecloses on a property within a planned community association, a condominium apartment, or an apartment in a cooperative housing project shall notify, by way of registered or certified mail, the board of directors of the planned community association, the association of apartment owners of the condominium, or [~~the board of directors of~~] the cooperative housing project in which the [~~apartment~~] property to be foreclosed is located, of the foreclosure at the time foreclosure proceedings are begun. The notice, at a minimum, shall identify the property, condominium apartment, or cooperative apartment which is the subject of the foreclosure and identify the name or names of the person or persons bringing foreclosure proceedings. This section shall not apply when the planned community association, condominium association, or cooperative housing corporation is a party in a foreclosure action. This section shall not affect civil proceedings against parties other than the planned community association, association of apartment owners, or cooperative housing corporation.”

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.¹

SECTION 5. This Act shall take effect on September 1, 2006.

(Approved July 5, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 276

H.B. NO. 1935

A Bill for an Act Relating to Planned Community Associations.

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

SECTION 1. Section 508D-1, Hawaii Revised Statutes, is amended by amending the definition of "disclosure statement" to read as follows:

““Disclosure statement” means a written statement prepared by the seller, or at the seller’s direction, that purports to fully and accurately disclose all material facts relating to the residential real property being offered for sale that:

- (1) Are within the knowledge or control of the seller;
- (2) Can be observed from visible, accessible areas; or
- (3) Are required to be disclosed under sections [~~508D-15~~] 508D-4.5 and [~~508D-4.5~~] 508D-15.

If the residential real property being offered for sale is in a planned community, “disclosure statement” includes the planned community declaration and association documents as those terms are defined in section 421J-2. Except for the disclosures required under section 508D-15, no seller shall have any duty to examine any public records when preparing a disclosure statement.”

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 July 1, 2006.

(Approved July 5, 2006.)

ACT 277

S.B. NO. 2545

A Bill for an Act Relating to Condominiums.

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

SECTION 1. Chapter 514B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514B- Hearings. (a) If a dispute is not resolved by mediation as provided in section 514B-161, in addition to any other legal remedies that may be available, any party that participated in the mediation may file a request for a hearing with the office of administrative hearings as follows:

- (1) The party requesting the hearing must be a board of directors of a registered association pursuant to section 514B-103 or a unit owner who is a member of a registered association pursuant to section 514B-103;

- (2) The request for hearing shall be filed within thirty days from the final day of mediation;
 - (3) The request for hearing shall name one or more parties that participated in the mediation as an adverse party and identify the statutory provisions in dispute; and
 - (4) The subject matter of the hearing before the hearings officer may include any matter that was the subject of the mediation pursuant to section 514B-161.
- (b) The office of administrative hearings shall accept no more than thirty requests for hearing per fiscal year under this section.
- (c) The party requesting the hearing shall pay a filing fee of \$25 to the department of commerce and consumer affairs, and the failure to do so shall result in the request for hearing being rejected for filing. All other parties shall file a response, accompanied by a filing fee of \$25, to the department of commerce and consumer affairs, within twenty days of being served with the request for hearing.
- (d) The hearings officer appointed by the director of commerce and consumer affairs pursuant to section 26-9(f) shall have jurisdiction to review any request for hearing filed under subsection (a). The hearings officer shall have the power to issue subpoenas, administer oaths, hear testimony, find facts, make conclusions of law, and issue written decisions that shall be final and conclusive, unless a party adversely affected by the decision files an appeal in the circuit court under section 91-14.
- (e) Rules of practice and procedure of the department of commerce and consumer affairs shall govern all proceedings brought under this section. The burden of proof, including the burden of producing the evidence and the burden of persuasion, shall be upon the party initiating the proceeding. Proof of a matter shall be by a preponderance of the evidence.
- (f) Hearings to review and make determinations upon any requests for hearings filed under subsection (a) shall commence within sixty days following the receipt of the request for hearing. The hearings officer shall issue written findings of fact, conclusions of law, and an order as expeditiously as practicable after the hearing has been concluded.
- (g) Each party to the hearing shall bear the party's own costs, including attorney's fees, unless otherwise ordered by the hearings officer.
- (h) Any party to a proceeding under this section who is aggrieved by a final decision of a hearings officer may apply for judicial review of that decision pursuant to section 91-14; provided that any party seeking judicial review pursuant to section 91-14 shall be responsible for the costs of preparing the record on appeal, including the cost of preparing the transcript of the hearing.
- (i) The department of commerce and consumer affairs may adopt rules and forms, pursuant to chapter 91, to effectuate the purpose of this section and to implement its provisions."

SECTION 2. The director of commerce and consumer affairs shall prepare and submit to the legislature, twenty days prior to the convening of the 2007 and 2008 regular sessions, a report containing the director's evaluation of the operation and effect of section 1 of this Act. The report shall include a summary of the requests for hearing brought under the section, the disposition of such requests for hearing, an appraisal of the effectiveness of the section, and recommendations for changes, modifications, or repeal of the section or parts thereof with accompanying reasons and data.

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on June 29, 2006, and shall be repealed on June 30, 2009.

(Approved July 5, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 278

S.B. NO. 2454

A Bill for an Act Relating to Out-of-State Sales of Time Share Interests.

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

SECTION 1. Chapter 514E, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§514E- Foreign time share plans; exemption. (a) A foreign time share plan may obtain an exemption from the requirements of this chapter as provided in this section.

(b) The developer of a foreign time share plan shall pay an exemption fee of \$100 and file the following minimum information pertaining to the foreign time share plan with the director:

- (1) The name and address of the foreign time share plan;
- (2) The name and address of the developer and seller of the foreign time share plan, if any;
- (3) The name and registration number of the time share plan located in Hawaii; provided that the registration shall be active at the time of filing under this subsection; and
- (4) The duration of the foreign time share plan.

(c) Time share interests that are part of a foreign time share plan exempt under this section shall not be resold in the United States.

(d) The developer of a foreign time share plan exempt under this section shall not subject time share interests or units in the foreign time share plan that are located in Hawaii to blanket liens.

(e) The contract to purchase an interest in a foreign time share plan exempt under this section shall contain the following disclosure in conspicuous type immediately above the space provided for the purchaser's signature:

“THE OFFERING OF THIS TIME SHARE PLAN OUTSIDE THE JURISDICTIONAL LIMITS OF THE UNITED STATES OF AMERICA IS EXEMPT FROM REGULATION UNDER HAWAII LAW, AND ANY SUCH PURCHASE IS NOT PROTECTED BY THE LAWS OF THE STATE OF HAWAII. NO RESALE OF INTERESTS IN THIS TIME SHARE PLAN MAY BE MADE BY ANY PERSON WITHIN THE JURISDICTIONAL LIMITS OF THE UNITED STATES OF AMERICA. THE MANAGEMENT AND OPERATION OF ANY ACCOMMODATIONS OR FACILITIES LOCATED IN HAWAII, HOWEVER, ARE SUBJECT TO HAWAII LAW, AND MAY GIVE RISE TO AN ENFORCEMENT ACTION REGARDLESS OF WHERE THE OFFER WAS MADE.”

(f) All promotional literature and other printed or written material used in connection with the sale of interests in a foreign time share plan exempt under this section shall include the following caption:

“This time share plan is exempt from registration under Hawaii law and, therefore, any purchase is not protected by the laws of the State of Hawaii.”

(g) For the purposes of this section, “foreign time share plan” means a time share use plan that:

- (1) Contains time share interests or units located in Hawaii that are part of a Hawaii time share plan; and
- (2) Is offered and sold solely outside the jurisdictional limits of the United States.”

SECTION 2. New statutory material is underscored.¹

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

(Approved July 5, 2006.)

Note

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

ACT 279

H.B. NO. 1706

A Bill for an Act Relating to the Uniform Environmental Covenants Act.

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

SECTION 1. The legislature finds that there has been a growing reliance on risk-based environmental cleanup of contaminated property when removal of contamination to unrestricted levels is infeasible, impracticable, or unnecessary. In such cases, certain controls are required to protect the public and the environment from the contamination that remains on the property. Currently, there exists no clear authority nor any process for ensuring that these controls remain valid and enforceable as the properties change ownership.

The purpose of this Act is to:

- (1) Ensure that land use restrictions, environmental monitoring requirements, and common engineering controls designed to control the potential environmental risk of residual contamination are reflected in the land records and effectively enforced over time as a real property servitude; and
- (2) Encourage the transfer of ownership of contaminated properties, and property re-use, by establishing a clear and objective procedure to create, modify, or terminate environmental covenants and to record these actions in instruments that will be reflected in the title abstract of the contaminated property.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
UNIFORM ENVIRONMENTAL COVENANTS ACT**

§ -1 **Short title.** This chapter may be cited as the Uniform Environmental Covenants Act.

§ -2 **Definitions.** As used in this chapter, unless the context otherwise requires:

“Activity or use limitations” means restrictions or obligations created under this chapter with respect to real property.

“Agency” means the department of health or any other state or federal agency that determines or approves the environmental response project pursuant to which the environmental covenant is created.

“Common interest community” means a condominium property regime, cooperative, planned community association, or other community with respect to which a person, by virtue of the person’s ownership of a parcel of real property within the community is obligated to pay property taxes or insurance premiums, or fees for maintenance or improvement of other real property described in a recorded covenant that creates the common interest community.

“Department” means the department of health.

“Director” means the director of health.

“Environmental covenant” means a servitude arising under an environmental response project that imposes activity and use limitations.

“Environmental response project” means a plan or work performed for environmental remediation of real property and conducted:

- (1) Under a federal or state program governing environmental remediation of real property, including chapter 128D;
- (2) Incident to closure of a solid or hazardous waste management unit; provided that the closure is conducted with approval of an agency; or
- (3) Under the state voluntary response program authorized in part II of chapter 128D.

“Holder” means a grantee of an environmental covenant as specified in section -3(a) who, by virtue of the covenant, holds an interest in the real property subject to the covenant, and who accepts certain rights and obligations as stated in the covenant.

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

“Record” means information that is inscribed on a tangible medium or that is stored in any medium and is retrievable in perceivable form.

“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.

§ -3 Nature of rights; subordination of interests. (a) Any person, the agency, or a county may be a holder. An environmental covenant may identify more than one holder. The interest of a holder shall be an interest in real property.

(b) A right of an agency under this chapter or under an environmental covenant, other than a right as a holder, shall not be an interest in real property.

(c) An agency shall be bound by any obligation the agency assumes in an environmental covenant; provided that an agency shall not assume obligations merely by signing an environmental covenant. Any other person that signs an environmental covenant shall be bound by the obligations the person assumes in the covenant; provided that signing the covenant shall not change obligations, rights, or protections granted or imposed under law other than this chapter except as provided in the covenant.

(d) The following rules apply to interests in real property in existence at the time an environmental covenant covering that real property is created or amended:

- (1) An interest that has priority under other law shall not be affected by an environmental covenant, unless the person that owns the interest subordinates that interest to the covenant;
- (2) A person that owns a prior interest shall not be required to subordinate that interest to an environmental covenant or to agree to be bound by the covenant;
- (3) A subordination agreement may be contained in an environmental covenant covering real property or in a separate record. If the environ-

mental covenant covers commonly-owned property in a common interest community, the record may be signed by any person authorized by the governing board of the common interest community; and

- (4) An agreement by a person to subordinate a prior interest to an environmental covenant shall affect the priority of that person's interest; provided that it shall not by itself impose any affirmative obligation on the person with respect to the environmental covenant.

§ **-4 Contents of environmental covenant.** (a) An environmental covenant shall:

- (1) State that the instrument is an environmental covenant executed pursuant to this chapter;
- (2) Contain a legally sufficient description of the real property subject to the covenant;
- (3) Describe the activity and use limitations on the real property;
- (4) Include at least one holder to be effective;
- (5) Identify every holder;
- (6) Be signed by the agency, every holder, and unless waived by the agency, every owner of the fee simple interest of the real property subject to the covenant; and
- (7) Identify the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

(b) In addition to the information required by subsection (a), an environmental covenant may contain other information, restrictions, and requirements agreed to by the persons who signed it, including:

- (1) Requirements for notice:
 - (A) Following transfer of a specified interest in;
 - (B) Concerning proposed changes in use of;
 - (C) Of applications for building permits for; or
 - (D) Of proposals for any site work affecting the contamination on, the property subject to the covenant;
- (2) Requirements for periodic reporting describing compliance with the covenant;
- (3) Rights of access to the property granted in connection with implementation or enforcement of the covenant;
- (4) A brief narrative description of the contamination and remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination;
- (5) Limitation on amendment or termination of the covenant in addition to those contained in sections -9 and -10; and
- (6) Rights of the holder in addition to the right to enforce the covenant pursuant to section -11.

(c) In addition to other conditions for its approval of an environmental covenant, the agency may require the persons specified by the agency who have interests in the real property to sign the covenant.

§ **-5 Validity; effect on other instruments.** (a) An environmental covenant that complies with this chapter shall run with the land.

(b) An environmental covenant that is otherwise effective shall be valid and enforceable even if:

- (1) It is not appurtenant to an interest in real property;
- (2) It can be or has been assigned to a person other than the original holder;
- (3) It is not of a character that has been recognized traditionally at common law;

- (4) It imposes a negative burden;
- (5) It imposes an affirmative obligation on a person having an interest in the real property or on the holder;
- (6) The benefit or burden does not touch or concern real property;
- (7) There is no privity of estate or contract;
- (8) The holder dies, ceases to exist, resigns, or is replaced; or
- (9) The owner of an interest subject to the environmental covenant and the holder are the same person.

(c) An instrument that creates restrictions or obligations with respect to real property that would qualify as activity or use limitations except for the fact that the instrument was recorded before the effective date of this chapter shall not be invalid or unenforceable because of any of the limitations on enforcement of interests described in subsection (b), or because it was identified as an easement, servitude, deed restriction, or other interest. This chapter shall not apply in any other respect to such an instrument.

(d) This chapter shall not invalidate or render unenforceable any interest, whether designated as an environmental covenant or other interest that is otherwise enforceable under the law of this State.

§ **-6 Relationship to other land use law.** This chapter shall not authorize a use of real property that is otherwise prohibited by zoning, by law other than this chapter regulating use of real property, or by a recorded instrument that has priority over the environmental covenant. An environmental covenant may prohibit or restrict uses of real property that are authorized by zoning or by law other than this chapter.

§ **-7 Notice.** (a) A copy of an environmental covenant shall be provided by the person determined by the agency and in the manner required by the agency to:

- (1) Each person that signed the covenant;
- (2) Each person holding a recorded interest in the real property subject to the covenant;
- (3) Each person in possession of the real property subject to the covenant;
- (4) Each county or other subdivision of county government in which real property subject to the covenant is located; and
- (5) Any other person the agency determines should receive notice.

(b) The validity of a covenant shall not be affected by failure to provide a copy of the covenant as required under this section.

§ **-8 Recording.** (a) An environmental covenant and any amendment or termination of the covenant shall be recorded by the grantor of the covenant with the registrar of conveyances. For purposes of indexing, a holder shall be treated as a grantee.

(b) Except as otherwise provided in section -9(c), an environmental covenant is subject to the laws of this State governing recording and priority of interests in real property.

(c) A holder shall provide a copy of the final recorded covenant, any amendment made to the covenant, any termination documentation, and documentation of any other matters related to the covenant to the department of health.

§ **-9 Duration; amendment by court action.** (a) An environmental covenant shall be considered perpetual unless it is:

- (1) By its terms limited to a specific duration or terminated by the occurrence of a specific event;
- (2) Terminated by consent pursuant to section -10;

- (3) Terminated pursuant to subsection (b);
- (4) Terminated by foreclosure of an interest that has priority over the environmental covenant; or
- (5) Terminated or modified in an eminent domain proceeding; provided that:
 - (A) The agency that signed the covenant is a party to the proceeding;
 - (B) All persons identified in section -10(a) and (b) are given notice of the pendency of the proceeding; and
 - (C) The court determines, after hearing, that the termination or modification will not adversely affect human health or the environment.

(b) If the agency that signed an environmental covenant determines that the intended benefits of the covenant can no longer be realized, a court, under the doctrine of changed circumstances, in an action in which all persons identified in section -10(a) and (b) have been given notice, may terminate the covenant or reduce its burden on the real property subject to the covenant. The agency's determination or its failure to make a determination upon request is subject to review pursuant to chapter 91.

(c) Except as otherwise provided in subsections (a) and (b), an environmental covenant shall not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrines of adverse possession, prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar doctrine.

§ -10 Amendment or termination by consent. (a) An environmental covenant may be amended or terminated by consent; provided that the amendment or termination is signed by:

- (1) The agency;
- (2) Unless waived by the agency, the current owner of the fee simple of the real property subject to the covenant;
- (3) Each person that originally signed the covenant, unless the person waived in a signed record the right to consent or a court finds that the person no longer exists or cannot be located or identified with the exercise of reasonable diligence; and
- (4) Except as otherwise provided in subsection (d)(2), the holder.

(b) If an interest in real property is subject to an environmental covenant, the interest shall not be affected by an amendment of the covenant unless the current owner of the interest consents to the amendment or has waived in a signed record the right to consent to amendments.

(c) Except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder shall be considered an amendment.

- (d) Except as otherwise provided in an environmental covenant:
 - (1) A holder may not assign the holder's interest without consent of the other parties specified in subsection (a); and
 - (2) A holder may be removed and replaced by agreement of the other parties specified in subsection (a).
- (e) A court of competent jurisdiction may fill a vacancy in the position of a holder.

§ -11 Enforcement of environmental covenant. (a) A civil action for injunctive or other equitable relief for violation of an environmental covenant may be maintained by:

- (1) A party to the covenant;
- (2) The department or any other agency specified in the covenant;
- (3) Any person to whom the covenant expressly grants power to enforce;

(4) A person whose interest in the real property or whose collateral or liability may be affected by the alleged violation of the covenant; or

(5) A county in which the real property subject to the covenant is located.

(b) This chapter shall not limit the regulatory authority of the department or any governmental unit under law other than this chapter with respect to an environmental response project.

(c) A person shall not be responsible for or subject to liability for environmental remediation solely because the person has the right to enforce an environmental covenant.

§ -12 **Registry.** The department shall establish a registry that contains all environmental covenants and any amendment or termination of those covenants. The registry may also contain any other information concerning environmental covenants and the real property subject to them that the department considers appropriate. The department shall make the registry available for public access electronically on its web-site or at another appropriate place. The registry is a public record for purposes of chapter 92F.

§ -13 **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, 15 U.S.C. Section 7001 et seq.; provided that it shall not modify, limit, or supersede Section 101 of that Act, 15 U.S.C. Section 7001 (a), or authorize electronic delivery of any of the notices described in Section 103 of that Act, 15 U.S.C. Section 7003(b).''

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

(Approved July 6, 2006.)

ACT 280

S.B. NO. 2909

A Bill for an Act Relating to Permit Approvals.

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

SECTION 1. The legislature finds that automatic approval is poor public policy. It can lead to negative consequences for the community. An automatic approval occurs after government agencies fail to take timely action to grant or deny an application for a business or development-related permit, license, or approval. As a result, applications for development approvals, land reclassifications, liquor licenses, and other permits, licenses, and approvals, can be granted by default.

Automatic approval eliminates the opportunity for local decision making. Applications are often complex and must be carefully reviewed, which can take significant time. In many situations, this is difficult because departments are understaffed and people serving on boards are volunteers. Any good decision requires open public input, thorough discussion, and careful consideration of various needs from the county government, environmental interests, and community groups. When a government body unjustifiably fails to take timely action on an application, the employees responsible should be held accountable, but the public should not have to suffer the consequences of having an ill-advised or harmful project go forward.

Prior to 1998, only applications to the board of land and natural resources were subject to automatic approval. In 1996, the board voted 3-2 to deny the Hawaii Electric Light Company's request to install two combustion turbines in its power plant on conservation district land in Ke'ahole. This vote took place after the

hearings officer, retired supreme court justice Frank Padgett, recommended that the permit be denied on a number of legal grounds. One board member did not vote because the member owned shares in the Hawaii Electric Light Company and had a conflict of interest. Despite the vote, the third circuit court held that since a majority of all six members of the board are needed to ratify an action, no legally binding decision was reached prior to the deadline for action and the permit was automatically approved. After the permit was issued, fourteen lawsuits ensued over the Ke'ahole power plant, which stalled the project for years.

In November 1999, the Kaua'i planning commission considered a proposal from Kaua'i Electric Company to build a new power plant on agricultural land. The community testified in force against the project. Two of the seven commissioners were absent. Three supported the power plant. Two opposed it. One of the proponents asked the corporation counsel for an opinion on the legal effect of a 3-2 vote. The answer was that the effect would be automatic approval, without any conditions at all. In order to ensure that harm caused by the plant would be mitigated a little bit by a conditional approval, one of the opponents voted for the plant, making it a 4-1 vote and eliminating an automatic approval.

The county of Hawaii has granted by default a number of zoning and subdivision variances because it could not satisfactorily review the application within the time limits.

The purpose of this Act is to allow a county to opt out of the automatic approval law by adopting an ordinance to exempt the county as a whole or any county agency from the automatic permit approval law.

SECTION 2. Section 91-13.5, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

- “(e) This section shall not apply to [any]:
 (1) Any proceedings of the public utilities commission[-]; or
 (2) Any county or county agency that is exempted by county ordinance from this section.”

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 6, 2006.)

ACT 281

S.B. NO. 486

A Bill for an Act Relating to Children and Youth.

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

SECTION 1. The legislature finds that many children are on their own in the mornings and afternoons before and after the school bell rings. Nationally, nearly two-thirds of school-age children are in homes with both parents working, yet very few communities have a comprehensive system of before and after-school care for children. While Hawaii is fortunate to have the A+ program for students in grades K-6, older children also need adult supervision. When older children are unsupervised in the morning, afternoon, evening, weekend, and holiday hours, statistics clearly show that rates of juvenile crime, drug use, and experimentation with tobacco, alcohol, and sex increase.

The legislature further finds that there is widespread agreement about the importance of establishing safe, structured learning environments for children and youth during non-school hours.

The purpose of this Act is to appropriate funds for non-school hour programs for children and youth.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$800,000, or so much thereof as may be necessary for fiscal year 2006-2007, for non-school hour programs for kindergarten through twelfth grades for the department of education.

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

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$800,000, or so much thereof as may be necessary for fiscal year 2006-2007, for the office of youth services for non-school hour programs for children and youth enrolled in school:¹

The sum appropriated shall be expended by the department of human 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 \$400,000, or so much thereof as may be necessary for fiscal year 2006-2007, for non-school hour programs for children and youth enrolled in school.

The sum appropriated shall be expended by the department of parks and recreation of each county, subject to the following allocation percentages, which are based on the number of children eighteen years of age or younger residing in each county; provided that no funds shall be disbursed unless each county provides matching funds on a dollar for dollar basis:

- (1) Seventy-one per cent, city and county of Honolulu;
- (2) Thirteen per cent, county of Hawaii;
- (3) Eleven per cent, county of Maui; and
- (4) Five per cent, county of Kauai.

SECTION 5. Moneys allocated for the purposes of this Act shall not reduce existing funding for non-school hour programs and shall be awarded by the expending agencies only to non-school hour programs that demonstrate a commitment to partnering with the public and private sectors and involve youth as active participants in all phases of program planning, implementation, and evaluation. All programs that receive those moneys shall meet each quarter with their community partners for the purposes of program evaluation and improvement.

SECTION 6. The office of youth services, the department of education, and the counties' parks and recreation departments shall convene annually to share information on the best practices and outcomes. The office of youth services shall submit to the legislature an annual report on the programs funded under this Act no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2007.

SECTION 7. This Act shall take effect on July 1, 2006.

(Approved July 6, 2006.)

Note

1. Should be a period.

A Bill for an Act Relating to High Technology.

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

SECTION 1. The legislature finds that, in 1989, the legislature created the Hawaii small business innovation research grant program under chapter 206M-15, Hawaii Revised Statutes. Prior to 1989, there were two Hawaii small business innovation research grant program-awarded companies, but since 1989, fifty-six Hawaii companies have won two hundred forty-five small business innovation research grant program awards. These grant program awards brought approximately \$56,500,000 in federal small business innovation research grant program Phase I and Phase II funds to Hawaii. In addition to these grants, \$57,500,000 in Phase III small business innovation research grant program commercialization contracts have been awarded to Hawaii companies. According to the United States Department of Agriculture, Hawaii companies have won the highest number of United States Department of Agriculture small business innovation research grant program awards per capita of any state.

The legislature also finds that Hawaii's cumulative state investment in the Hawaii small business innovation research grant program of \$3,700,000 has a return ratio of 15:1 in federal Phase I and II grants and 30:1 if the Phase III commercial contracts are included.

The legislature further finds that, currently, the federal small business innovation research grant program is a \$2,000,000,000 program that encourages small businesses to develop commercially viable technologies or innovations. Organized as a competition, the federal small business innovation research grant program allows small companies the opportunity to test high-risk theories and develop innovative technologies.

To compete for small business innovation research grant program dollars, ten participating federal agencies issue scheduled program solicitations seeking research and development in their respective areas of interests, disciplines, and missions. Federal departments and agencies, such as the Departments of Agriculture, Commerce, Defense, Education, Energy, Health and Human Services, Transportation, and Homeland Security, the Environmental Protection Agency, National Aeronautics and Space Administration, and the National Science Foundation, are required to reserve a portion of their research and development funds for small business innovation research grant programs.

With new infrastructure and projects dedicated to the development of Hawaii's biotechnology and life sciences industry, the high technology development corporation proposes to extend its existing small business innovation research grant program to include a small business technology transfer program to encourage small companies and researchers at nonprofit research institutions, including research universities and colleges, to work together to move laboratory-developed technologies to the marketplace and to foster technology-based economic development. The following five federal departments and agencies are required to reserve a portion of their research and development funds for the small business technology transfer program: the Departments of Defense, Energy, and Health and Human Services, the National Aeronautics and Space Administration, and the National Science Foundation. According to program requirements, a minimum of forty per cent of each small business technology transfer program project must be carried out by the small business, and a minimum of thirty per cent of the effort must be performed by the research institution.

The legislature also finds that the high technology development corporation proposes to increase the number of new Hawaii technology companies applying for small business innovation research and small business technology transfer federal grant funds by expanding its existing Hawaii small business innovation research program to include Phase 0 competition assistance grants. Phase 0 funds will be used to overcome obstacles faced by technology companies when developing competitive small business innovation research and small business technology transfer proposals. Typical obstacles may include:

- (1) Determining whether a concept or idea is truly innovative;
- (2) Determining whether laboratory research is appropriate; and
- (3) Access to distant collaborators, including faculty, researchers, and scientific writers.

These Phase 0 competition assistance grants will be available to Hawaii companies developing a small business innovation research or small business technology transfer program grant proposal. The results will facilitate more competitive proposals and assist Hawaii's growing high technology research and development niche.

The purpose of this Act is to:

- (1) Exempt the high technology innovation corporation from chapters 36 and 38, Hawaii Revised Statutes, which relate to the management of state funds, deposits of public funds, and state audit and accounting, respectively; and
- (2) Authorize the high technology innovation corporation to establish operational bank accounts in out-of-state locations, including foreign denomination accounts.

SECTION 2. Section 206M-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The development corporation may provide grants [~~not exceeding the lesser of:~~] as follows:

- (1) Up to the lesser of:
 - (A) Fifty per cent of the federal small business innovation research phase I award or contract; [~~or~~]
 - (B) \$25,000 to each business in Hawaii that receives a federal small business innovation research phase I award or contract from any participating federal agency[.];
- (2)¹ Up to \$25,000 to each business in Hawaii that receives a federal small business technology transfer program award or contract from any participating federal agency; or
- (3) Up to \$3,000 to each business in Hawaii that applies for a small business innovation research federal grant or small business technology transfer program federal grant,

subject to the availability of funds.”

SECTION 3. Section 206M-53, Hawaii Revised Statutes, is amended to read as follows:

“[~~§~~206M-53] **Powers of the board.** The high technology innovation corporation, under the direction of its board of directors, shall have the following general powers:

- (1) To adopt, amend, and repeal bylaws governing the conduct of its business and the exercise of the powers and performance of duties granted to or imposed upon it by law;

- (2) To sell, lease, rent, hold, maintain, use, and operate any property, real, personal, or mixed, tangible or intangible, in accordance with the conditions under which it was received;
- (3) To enter into and perform contracts, leases, cooperative agreements, or other transactions with the high technology development corporation or any other agency or political subdivision of the State, any private person, firm, partnership, association, company, or corporation, only as it may be necessary in the conduct of its business and on terms as it may deem appropriate; provided that the high technology innovation corporation shall not obligate any funds of the State except funds that have been appropriated to it by the legislature or transferred or contracted to it by the high technology development corporation or other agency or department of the state government. Notwithstanding the foregoing, the high technology innovation corporation may enter into and perform contracts, leases, cooperative agreements, or other transactions with any agency or instrumentality of the United States, a foreign nation, a state, a territory or a possession, or with any political subdivision thereof, whenever the donating or granting agency or instrumentality determines that the high technology development corporation or any other agency of the State cannot as effectively and efficiently accomplish the purposes for which the contracts, leases, cooperative agreements, or other transactions are being entered into; provided that the high technology innovation corporation shall not obligate any funds of the State except funds that have been appropriated or transferred to it or contracted for it;
- (4) To receive by gifts, grants, devises, bequests, or otherwise, from private sources only, any property, real, personal, or mixed, intangible or tangible, absolutely or in trust, to be used and disposed of, either the principal or the income therefrom, in accordance with the conditions under which it was received; provided that no gift to the high technology innovation corporation shall be accepted unless approved or confirmed by its board of directors. Notwithstanding the foregoing, the high technology innovation corporation may receive gifts, grants, or awards from any agency or instrumentality of the United States, a foreign nation, a state, a territory or a possession, or from any political subdivision thereof, whenever the donating or granting agency or instrumentality determines that the high technology development corporation or any other agency of the State cannot as effectively and efficiently accomplish the purposes for which the gifts, grants, or awards are being made; provided that no gift to the high technology innovation corporation shall be accepted unless approved or confirmed by its board of directors;
- (5) To have a corporate seal;
- (6) To sue and be sued in its own name;
- (7) To serve as trustee or beneficiary under terms of any gift, indenture, or will;
- (8) To apply for, take out, receive by purchase or gift, hold, administer, and dispose of copyrights, patent rights, licenses, assignments of inventions, discoveries, processes, and other property, rights or interests therein, and the income thereof, absolutely or subject to conditions or trusts as may be attached thereto or be imposed thereon, and to obligate itself to perform and execute any and all conditions or trusts;
- (9) To conduct programs, projects, research, studies, experiments, investigations, and tests in all fields of knowledge; to promote and develop the

- scientific and commercial value of inventions, discoveries, and processes; and to make, publish, and distribute the results thereof;
- (10) To coordinate and correlate activities and projects of the high technology innovation corporation with the work of state agencies for the purpose of relating research work to the economic development of the State whenever practical or desirable;
 - (11) To stimulate and promote cooperative research projects and activities;
 - (12) To establish and maintain, or to assist in establishing and maintaining staff positions for the purpose of aiding in technology-based economic development, and to enter into agreements or contracts with other corporations, organizations, institutions, or persons for this purpose and to pay the necessary and appropriate expenses therefor;
 - (13) To prepare, print, or publish any manuscript, research article, report, study, discussion, reference, collection, or any pictorial or schematic representation or group or collection thereof, whether the same belongs to or is the work of any state agency or its employees, or the high technology innovation corporation or its employees or a contractor of the high technology innovation corporation. The printing or publication may be accomplished through whatever person, company, or agency is deemed most appropriate by the board of directors; ~~and~~
 - (14) To establish operational bank accounts as may be necessary in the conduct of its business at its out-of-state offices, including accounts of foreign denomination in out-of-state locations, without the approval of the director of budget and finance or the comptroller of accounting and general services; and
 - ~~[(14)]~~ (15) To do any or all other acts reasonably necessary to carry out the objects and purposes of the high technology innovation corporation.”

SECTION 4. Section 206M-54, Hawaii Revised Statutes, is amended to read as follows:

“~~[(1)]~~§206M-54 **Innovation corporation; exempted from certain state laws.** ~~[To carry out the purposes and objectives of this part, the]~~ The high technology innovation corporation shall be ~~[granted flexibility in hiring its personnel and in handling and disbursing moneys by being]~~ exempt from the following state laws ~~[in the Hawaii Revised Statutes:~~

- (1) ~~Sections 36-27 and 36-30, relating to special fund reimbursements to the state general fund;]~~
- ~~[(2)]~~ (1) Section 78-1, relating to public employment; ~~[and]~~
- (2) Chapter 36, relating to the management of state funds;
- (3) Chapter 38, relating to deposits of public funds; and
- ~~[(3)]~~ (4) Chapter 76, relating to civil service.”

SECTION 5. 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 2006-2007 to increase funding levels necessary to meet the current needs of the Hawaii small business innovation research assistance program and the proposed Hawaii small businesses technology transfer grant program and phase 0 competition assistance program.

The sum appropriated shall be expended by the high technology development corporation 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, 2006; provided that on June 30, 2011, section 3 of this Act shall be repealed and section 206M-53, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

(Approved July 6, 2006.)

Note

1. Should not be underscored.

ACT 283

S.B. NO. 2898

A Bill for an Act Relating to Procurement.

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

SECTION 1. Section 103D-203, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The chief procurement officer for each of the following state entities shall be:

- (1) The judiciary—the administrative director of the courts;
- (2) The senate—the president of the senate;
- (3) The house of representatives—the speaker of the house of representatives;
- (4) The office of Hawaiian affairs—the chairperson of the board;
- (5) The University of Hawaii—the president of the University of Hawaii;
- (6) The department of education, excluding the Hawaii public library system—the superintendent of education; ~~[and]~~
- (7) The Hawaii health systems corporation—the chief executive officer of the Hawaii health systems corporation; and
- ~~[(7)]~~ (8) The remaining departments of the executive branch of the State and all governmental bodies administratively attached to them—the administrator of the state procurement office of the department of accounting and general services.”

SECTION 2. Section 103D-305, Hawaii Revised Statutes, is amended to read as follows:

“§103D-305 Small purchases; prohibition against parceling. (a) Procurements of less than ~~[\$25,000]~~ \$50,000 for goods, services, or construction shall be made in accordance with procedures set forth in rules adopted by the policy board that are designed to ensure administrative simplicity and as much competition as is practicable; provided that multiple expenditures shall not be created at the inception of a transaction or project so as to evade the requirements of this chapter; and provided further that procurement requirements shall not be artificially divided or parceled so as to constitute a small purchase under this section.

(b) Procurements of \$25,000 to less than \$50,000 shall be made in accordance with small purchase procedures; provided that small purchase procurements through an electronic system shall be required after the policy board has adopted rules for electronic procurement and provided training to the affected agency.”

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

SECTION 4. This Act shall take effect upon approval; provided that section 2(b)¹ shall take effect on July 1, 2007 or upon the adoption of rules issued by the policy board for all agencies subject to Chapter 103D, whichever occurs first. The policy board shall immediately inform the revisor of statutes upon the adoption of such rules.

(Approved July 7, 2006.)

Note

1. So in original.

ACT 284

S.B. NO. 2600

A Bill for an Act Relating to Electronic Court Records, Documents, Processes, and Certificates.

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

SECTION 1. Section 606-3, Hawaii Revised Statutes, is amended to read as follows:

“§606-3 Seal of court[;]; physical or electronic seal, signature, or attestation[-] on physical or electronic court records. (a) Each court of record shall have a seal, ~~[the device of]~~ which shall be as approved by the supreme court. The seal shall be in the custody or control of the clerk of the court[;] and ~~[shall be], when impressed, embossed, stamped, or electronically imprinted upon [all processes and official certificates,]~~ a court document, process, or certificate, shall be accompanied by the clerk’s official attestation.

(b) Any requirement that a court document, process, or certificate shall be signed, certified, acknowledged, verified, exemplified, attested, or made under oath or seal is satisfied if the document bears an electronic seal of the court and an electronic image of the signature or electronic facsimile signature of the judge, clerk, or other person authorized to perform these acts.”

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

SECTION 3. This Act shall take effect upon approval.

(Approved July 7, 2006.)

ACT 285

S.B. NO. 3253

A Bill for an Act Relating to Caregiving.

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

SECTION 1. Caregiving has always been a universal experience affecting families of all ethnicities, lifestyles, and income levels. Recently, however, family caregiving has become more than an act of love and familial responsibility. Due to a shortage of care providers in Hawaii, family caregiving has become a critical element of our health and long-term care system.

The legislature finds that families, rather than institutions, are the primary providers of long-term care for older adults in the state. Twenty-eight per cent of Hawaii’s adult population report that they provide care or assistance to a person age

sixty or older. Of these individuals, twenty-nine per cent provided care for a spouse or partner, and twenty-one per cent cared for a parent. These numbers actually may be much higher because there may be many "hidden" caregivers in Hawaii who do not identify themselves as such.

Caregivers are motivated to provide care to family members because of the preference of the elderly to remain at home with their families and the high cost of institutional long-term care.

In Hawaii, the likelihood of becoming a caregiver does not vary substantially among different demographic and socioeconomic groups. Married persons in Hawaii are equally as likely to provide care to an older adult as their unmarried counterparts. Among the different ethnic groups in Hawaii, native Hawaiians are most likely to provide regular care to an older adult, followed by Filipinos, Japanese, and Caucasians. According to national studies, women are more likely than men to be primary caregivers. Women also provide higher intensities and frequencies of care.

Sixty-five per cent of Hawaii's caregivers are employed in addition to their caretaking responsibilities. To balance their employment and elder care roles, working caregivers take leaves of absence, report to work late or leave early, change from full-time to part-time employment, switch to less demanding jobs, retire early, or give up work completely. Consequently, caregiving may reduce a caregiver's retirement income because of reduced work hours or fewer years in the workforce, resulting in reduced contributions to pensions, social security, and other retirement savings.

The legislature further finds that significant changes in the medicare and medicaid health insurance programs nationally and locally will impose greater responsibilities upon individuals and families to be well-informed and astute about long-term care planning, financing, and the options available to assist them. Consumers will need expert, one-to-one counseling in articulating their questions as they seek specific information or help. Technology may facilitate the dissemination of information, but agencies still must have the capacity to explain and clarify issues and direct people to available resources.

Hawaii is facing a growing healthcare worker shortage, while health and long-term care needs continue to rise. As a result of cost-containment policies and practices, people with ongoing healthcare needs are being discharged from hospitals and other care facilities with complex healthcare requirements. These individuals are faced with reduced home- and community-based care options, thereby placing the responsibility on families who may be inadequately prepared and trained to provide such care.

The caregiving tradition in Hawaii will continue to be challenged by changes in demographics. Birth rates, marriages, single-occupant households, the high cost of living, and family members working outside the home or moving away from Hawaii will all affect the availability of family caregivers. Hawaii must also assist older adults who migrate into the State and who lack a natural family support system.

By 2020, more than one in four individuals will be sixty years old or older. The need for personal care assistance due to physical, sensory, cognitive, and self-care disabilities increases with age. As Hawaii's population ages, many more families will be providing higher levels of long-term care to frail and disabled older adults at home.

Hawaii's long-term care system is on a collision course with the day-to-day reality of families coping with caring for loved ones with chronic conditions. Without attention to this situation, the \$875,000,000 in unpaid support services provided by Hawaii's family caregivers may be jeopardized when these caregivers suffer from the costs that impede their ability to give care. As this pattern unfolds,

the quality of care provided to the frail elderly and individuals with disabling or chronic conditions will diminish, and the costs to Hawaii's long-term care system will skyrocket. Public policy must be formulated to address these issues.

The purpose of this Act is to establish a joint legislative committee on family caregiving to address the looming care crisis.

SECTION 2. (a) There is established a joint legislative committee on family caregiving. The committee shall be composed of eight members as follows:

- (1) Four members of the house of representatives, consisting of three members from the majority party and one member from the minority party, who shall be appointed by the speaker of the house of representatives; and
- (2) Four members of the senate, consisting of three members from the majority party and one member from the minority party, who shall be appointed by the president of the senate.

The committee shall select a chairperson from its membership.

(b) The joint legislative committee shall develop comprehensive public policy to strengthen support for family caregivers who provide unpaid, informal assistance to persons age sixty and older with physical or cognitive disabilities.

(c) The joint legislative committee shall consider providing support in categories including but not limited to:

- (1) Coordinated services and policies;
- (2) Training and education;
- (3) Respite services;
- (4) Financial incentives; and
- (5) Balancing work and caregiving.

(d) The joint legislative committee shall seek input from the department of health, the department of human services, the department of taxation, the University of Hawaii, the executive office on aging, and the elderly, disability, business, and faith-based communities.

(e) The joint legislative committee shall submit its findings and recommendations to the legislature no later than twenty days prior to the convening of the regular session of 2007.

(f) The joint legislative committee shall cease to exist on June 30, 2007.

SECTION 3. This Act shall take effect on July 1, 2006.

(Approved July 7, 2006.)

ACT 286

H.B. NO. 1862

A Bill for an Act Relating to Education.

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

SECTION 1. Research indicates that teacher quality is one of the most influential factors in student achievement. Standards-based reform has a greater chance of success when teacher quality is addressed. In an effort to provide quality education for its students, the department of education continues to recruit highly-qualified teachers within the State of Hawaii and from the continental United States. However, as more "baby-boom" teachers in Hawaii and across the nation retire, the task of recruiting highly-qualified teachers is becoming more challenging each year. Consequently, finding sufficient numbers of highly-qualified teachers for shortage

areas is becoming more difficult, and teacher shortages are only expected to grow as more “baby-boom” teachers retire through the remainder of the decade.

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding a new section to part III to be appropriately designated and to read as follows:

“§302A- Rehiring of retired teachers and administrators to fill certain positions; authorized. (a) Beginning July 1, 2006, the department of education and charter schools may employ for positions up to one hundred per cent full-time equivalency:

- (1) Retired teachers to teach in teacher shortage areas identified by the department of education and charter schools and to serve as mentors for new classroom teachers; and
- (2) Retired administrators to teach or administer in teacher shortage areas identified by the department of education and charter schools and to serve as mentors for new classroom teachers,

with the prior approval of the superintendent of education or the local school board of each charter school and pursuant to collective bargaining agreements; provided that the department shall contribute thirteen and three-quarters per cent of the rehired employee’s compensation to the pension accumulation fund.

(b) Sections 88-21, 88-42.5, 88-43, 88-45, 88-46, 88-325, and 88-326, and any other law to the contrary notwithstanding, a teacher or administrator retired from the department of education or a charter school who is rehired under this section shall not earn retirement service credit, contribute to the retirement system, or gain additional retirement system benefits as a result of the teacher or administrator’s employment; provided that the retired teacher or administrator shall continue to be entitled to the teacher or administrator’s regular retirement benefits without penalty.

(c) To qualify for full-time rehiring under this section, the person shall have been retired for at least one calendar year prior to reemployment.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2006, and shall be repealed on June 30, 2011.

(Approved July 7, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 287

S.B. NO. 475

A Bill for an Act Relating to Public Assistance.

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

SECTION 1. The legislature finds that, as the cost of living increases each year, the standard of need in Hawaii, which is based on the federal poverty level for the State, is not adjusted to reflect this increase and is still based on the federal poverty level in 1993.

The purpose of this Act is to adjust the State’s standard of need by updating it to reflect the 2006 federal poverty level for Hawaii.

SECTION 2. Section 346-53, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) This subsection does not apply to general assistance to households without minor dependents. The standard of need [~~for families of given sizes~~] shall equal the poverty level established by the federal government in [~~1993,~~] 2006, prorated over a twelve-month period[.] based on family size.

The assistance allowance provided shall be based on a percentage of the standard of need. For exempt households and households in which all caretaker relatives are minors, living independently with minor dependents and attending school, the assistance allowance shall be set [at] no higher than sixty-two and one-half per cent and no lower than forty-four per cent of the standard of need. For all other households, the assistance allowance shall be set no higher than sixty-two and one-half per cent of the standard of need and set no lower than [~~fifty~~] thirty-four per cent of the standard of need. The standard of need shall be determined by dividing the [~~1993~~] 2006 federal poverty level by twelve and rounding down the quotient. The remaining quotient shall be multiplied by the per cent as set by the director by rules pursuant to chapter 91, and the final product shall be rounded down to determine the assistance allowance; provided that:

- (1) The department may increase or reduce the assistance allowance as determined in this subsection for non-exempt households for the purpose of providing work incentives or services under part XI [~~of this chapter~~];
- (2) No reduction shall be allowed that jeopardizes eligibility for or receipt of federal funds;
- (3) Reductions in the assistance allowance shall be limited to no more than one per year; and
- (4) No non-exempt household, which includes an adult who has received sixty cumulative months of temporary assistance to needy families with minor dependents, shall be eligible for an assistance allowance, unless authorized by federal regulations.”

SECTION 3. The department of human services shall reevaluate the standard of need during the interim period following the 2006 regular session and report its findings and recommendations, along with any proposed legislation, to the legislature no later than twenty days prior to the start of the 2007 regular session.

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, 2007; provided that section 3 shall take effect upon its approval.

(Approved July 7, 2006.)

ACT 288

H.B. NO. 2239

A Bill for an Act Relating to Land Acquisition.

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

SECTION 1. In its final report dated January 2006, the joint legislative housing and homeless task force expressed concern that the inventory of affordable

housing rental units may be reduced. Affordable rental housing projects built in part with government subsidies have been offered for sale at market prices as a result of the expiration of income and conveyance restrictions encumbering the property. The task force is committed to ensuring that such units remain affordable to persons at certain income levels.

In recent months, media reports have announced that several affordable housing projects may be offered for sale, such as the Kukui Gardens affordable rental housing project. Kukui Gardens was built in part with federal funds and its affordability restrictions will expire in five years.

The purpose of this Act is to preserve Kukui Gardens as an affordable housing project.

SECTION 2. The legislature finds that:

- (1) Kukui Gardens is a unique affordable housing resource on twenty-two acres in central Honolulu that provides housing for two thousand five hundred working residents and senior citizens in eight hundred fifty-seven low-income housing units, of which over fifty per cent of the units are rented to families with incomes under fifty per cent of the median family income, and over twenty per cent of the units are rented to families with incomes over one hundred ten per cent of the median family income;
- (2) Kukui Gardens supports the character of the neighborhood by being the primary source of workforce housing for all of historic Chinatown;
- (3) The eight hundred fifty-seven affordable rental units in Kukui Gardens are irreplaceable in the current Honolulu housing market;
- (4) Kukui Gardens is currently for sale, and therefore at risk of becoming a market rate rental project or condominium after 2011, when the project's affordable housing commitment period with the United States Department of Housing and Urban Development expires; and
- (5) The residents, surrounding community, and the island of Oahu would benefit from the active intervention of the State in this transaction to ensure that there is no negative impact on current and future residents.

The legislature therefore declares that it is in the public interest and is required for public use to acquire Kukui Gardens as an affordable housing project by exercise of the power of eminent domain. The legislature further declares that it is necessary to provide for the public financing of the acquisition of Kukui Gardens by condemnation through the expenditure of general funds, revenue bonds, rental housing trust funds, federal and state low-income housing tax credits, or any other public and private funds at the disposal of the State.

SECTION 3. The Hawaii housing finance and development administration or any appropriate entity of the State shall immediately initiate negotiations with Kukui Gardens Corporation, or its successor in interest, to either:

- (1) Make available, without competitive award, public financing resources to extend affordable rents at Kukui Gardens through at least 2016; provided that at least fifty per cent of the rental units at Kukui Gardens are retained at affordable rents to households whose incomes do not exceed eighty per cent of the median family income, of which five per cent of the units are set aside for households whose incomes do not exceed thirty per cent of the median family income; or
- (2) Acquire the property known as Kukui Gardens, tax map key (I) 1-7-26: 07, and may partner with private for-profit or nonprofit developers for acquisition of the property; provided that eighty per cent of the housing units on the property shall be retained in perpetuity as affordable

housing for households at or below one hundred forty per cent of the median family income as determined by the United States Department of Housing and Urban Development.

The Hawaii housing finance and development administration or the appropriate entity of the State shall submit a report to the legislature not later than twenty days prior to the convening of the regular session of 2007 regarding its efforts to acquire Kukui Gardens and its recommendations for financing the purchase of the property.

SECTION 4. If an agreement to either extend affordable rents to at least 2016 or acquire the property is not reached within a reasonable time as determined by the Hawaii housing finance and development administration or any other appropriate entity of the State, the state agency shall exercise its power of eminent domain to acquire the property. For the purposes of this Act, and notwithstanding any provision of section 201G-16, Hawaii Revised Statutes, to the contrary, condemnation of the Kukui Gardens property shall not be subject to legislative disapproval.

SECTION 5. 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 2006-2007 for the purpose of negotiating with the owner of Kukui Gardens to either extend the period of affordable rents to at least 2016, acquire Kukui Gardens, or to commence the condemnation process.

The sum appropriated shall be expended by the Hawaii housing finance and development administration for the purposes of this Act.

SECTION 6. This Act shall take effect on July 1, 2006.

(Approved July 7, 2006.)

ACT 289

S.B. NO. 2162

A Bill for an Act Relating to Foster Children.

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

SECTION 1. Chapter 587, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§587- Motor vehicle insurance.** The parents of a child under foster care who has obtained a driver’s license shall pay the costs of the child’s motor vehicle insurance, unless the court determines the parents to be financially unable to pay the costs, in which case the child’s insurance costs shall be paid pursuant to sections 431:10C-407 and 431:10C-410.”

SECTION 2. Section 286-112, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The application of any person under the age of eighteen years for an instruction permit, provisional license, or driver’s license shall be signed and verified before a person authorized to administer oaths by the appropriate one of the following:

- (1) If both the father and mother of the applicant have custody of the applicant, by both the father and mother of the applicant;

- (2) If only one parent has custody of the applicant, by the custodial parent;
- (3) If neither parent has custody of the applicant, and the applicant has a custodial guardian or has custodial guardians, by the custodial guardian or by all the custodial guardians; provided that the director of human services, or the director's designee, shall sign and verify the application of any applicant who is under foster care; provided further that the department of human services shall not have any liability in the event that the foster child is involved in a motor vehicle accident or a lawsuit arising as a result of the foster child's driving; or
- (4) If neither parent has custody of the applicant, and the applicant has no custodial guardian, by an employer of the applicant or by any responsible person who is willing to assume the obligation imposed under this part upon a person signing the application of a minor.”

SECTION 3. Section 346-17.4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Eligible former foster youths shall be eligible for higher education board allowances after reaching the age of majority and the higher education board payments for that former foster youth shall be paid to an accredited institution of higher learning, another intermediary contracted by the department, the former foster youth, or to the former foster youth's former foster parents, as appropriate[.]; provided that:

- (1) The former foster youth is twenty-one years old or younger; and
- (2) Within one school year after high school completion, the former foster youth is attending or has been accepted to attend an accredited institution of higher learning on a full-time basis, or on a part-time basis for the first academic year, if approved by the director upon such terms and conditions as the director deems appropriate.”

SECTION 4. Section 431:10C-407, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The plan shall provide all personal injury protection benefits and services and bodily injury and property damage liability coverages to the limits and coverages specified in this article for all classes of persons, motor vehicles, and motor vehicle uses specified in this part upon the payment of premiums as provided in subpart C, as follows:

- (1) The plan shall provide personal injury protection benefits and policies for each of the following classes, and each class shall be able to secure a personal injury protection and bodily injury and property damage liability policy through the plan:
 - (A) All motor vehicles owned by licensed assigned risk drivers as the commissioner, by rules, shall define. The commissioner shall regulate the class in accordance with the general practice of the industry, the applicable results, if any, of the commissioner's examination of the motor vehicle insurers' business records and experience, and any applicable and scientifically credible governmental or academic studies of the multi-accident or high-risk motor vehicle driver;
 - (B) All motor vehicles owned by licensed drivers convicted within the thirty-six months immediately preceding the date of application, in any jurisdiction of any one or more of the offenses of, or of the offenses cognate to:
 - (i) Heedless and careless driving;

- (ii) Driving while license suspended or revoked;
 - (iii) Leaving the scene of an accident;
 - (iv) Manslaughter, if resulting from the operation of a motor vehicle;
 - (v) Operating a vehicle under the influence of an intoxicant as provided in section 291E-61; or
 - (vi) Driving under the influence of an intoxicating liquor as provided in section 291-4 or any drug as provided in section 291-7, as those sections were in effect on or before December 31, 2001;
- (C) All commercial uses, first class, defined as any commercial use engaged in the transport of passengers for hire or gratuity;
- (D) All commercial uses, second class, defined as any commercial, business, or institutional use other than the transport of passengers as described in subparagraph (C) or the exclusive use of a vehicle for domestic-household-familial purposes; and
- (E) All other motor vehicles, not classified under subparagraph (A), (B), (C), or (D), owned by licensed drivers who are unable to obtain motor vehicle insurance policies and optional additional insurance through ordinary methods;
- (2) The plan shall provide personal injury protection benefits and bodily injury and property damage policies for all classes of persons, motor vehicles, and motor vehicle uses, at the premiums specified under subpart C, at the option of the owners, for the following classes, which the commissioner, by rules, shall further define and regulate:
- (A) All licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, who are receiving public assistance benefits consisting of direct cash payments, or who received public assistance benefits in the form of medical services prior to July 1, 1994, and are still receiving the benefits, through the department of human services, or benefits from the Supplemental Security Income program under the Social Security Administration; provided that the licensed drivers, or unlicensed permanently disabled individuals unable to operate their motor vehicles, are the sole registered owners of the motor vehicles to be insured; provided further that not more than one vehicle per public assistance unit shall be insured under this part, unless extra vehicles are approved by the department of human services as being necessary for medical or employment purposes; provided further that the motor vehicle to be insured shall be used strictly for personal purposes, and not for commercial purposes; [and]
- (B) Any licensed physically handicapped driver, including drivers with any auditory limitation[-]; and
- (C) Any licensed driver who is a minor under foster care and whose parents are unable to pay for the minor's motor vehicle insurance as provided in section 587- .

Each category of driver/owner under subparagraphs (A) [and], (B), and (C) may secure motor vehicle insurance coverage through the plan at the individual's option; provided any previous motor vehicle insurance policy has expired or has been canceled. Any person becoming eligible for plan coverage under subparagraph (A) shall first exhaust all paid coverage under any motor vehicle insurance policy then in force before becoming eligible for plan coverage.

Any person eligible or becoming eligible under rules adopted by the commissioner under subparagraph (B)[,;] or (C) may at any time elect coverage under the plan and terminate any prior private insurer's coverage.

A certificate shall be issued by the department of human services indicating that the person is a bona fide public assistance recipient as defined in subparagraph (A). The certificate shall be deemed a policy for the purposes of this chapter upon the issuance of a valid motor vehicle insurance identification card pursuant to section 431:10C-107; and

- (3) Under the joint underwriting plan, the required motor vehicle policy coverages as provided in section 431:10C-301 shall be offered by every insurer to each eligible applicant assigned by the bureau. In addition, uninsured motorist and underinsured motorist coverages shall be offered in conformance with section 431:10C-301, and optional additional coverages shall be offered in conformance with section 431:10C-302, for each class except the class defined in paragraph (2)(A), as the commissioner, by rules, shall provide."

SECTION 5. Section 431:10C-410, Hawaii Revised Statutes, is amended to read as follows:

"§431:10C-410 Schedules. The commissioner shall:

- (1) Set rate schedules periodically, but not less frequently than annually, for all classes in accordance with this part and the criteria in paragraph (3), so that the total premium income, from all plan motor vehicle insurance, when combined with the investment income, shall annually fund the costs of all joint underwriting plan classes, the joint underwriting assigned claims plan, and the administration of the plans;
- (2) Prior to setting rates in accordance with paragraph (1), hold a public hearing on the proposed rates to afford all interested persons an opportunity to be heard. Notice shall be published and the hearing shall be held in accordance with chapter 91;
- (3) Establish rates for the following classes within the following restrictions:
 - (A) For the licensed public assistance driver, as defined in section 431:10C-407(b)(2)(A), or the licensed foster care driver, as defined in section 431:10C-407(b)(2)(C), no premium shall be assessed for the mandatory minimum personal injury protection, bodily injury, or property damage coverages; and all policies shall conform to section 431:10C-407(b)(2); and
 - (B) For the licensed physically handicapped driver, including drivers with any auditory limitation, defined in section 431:10C-407, no rate shall be set higher than that assessed a comparable driver without limitation, except that a higher rate may be surcharged under any applicable standard conforming with section 431:10C-409(3); and
- (4) Set various systems and schedules of rates based upon the risks involved, the experience with various exposures, uses, and drivers, and may include the establishment of surcharges for specific risks, drivers, and uses for each of the enumerated classes except the classes limited under paragraph (3)."

SECTION 6. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 7. This Act shall take effect July 1, 2006.

(Approved July 7, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 290

H.B. NO. 2778

A Bill for an Act Relating to Language Access.

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

SECTION 1. Chapter 371, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . LANGUAGE ACCESS

§371-A Purpose. Most individuals living in Hawaii read, write, speak, and understand English. There are many individuals, however, who are limited English proficient. Language for limited English proficient persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by state-funded programs and activities.

The purpose of this part is to affirmatively address, on account of national origin, the language access needs of limited English proficient persons. In providing the delivery of language accessible services, it is the intent of the legislature that those services be guided by Executive Order 13166 and succeeding provisions of federal law, regulation, or guidance.

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

“Access or participate” means to be informed of, participate in, and benefit from the services, programs, and activities offered by the State and covered entities.

“State” means the executive, legislative, and judicial branches of state government, including departments, offices, commissions, boards, or other agencies within the executive, legislative, or judicial branches.

“Covered entity” means a person or organization receiving state financial assistance, including grants, purchase-of-service contracts, or any other arrangement by which the State provides or otherwise makes available assistance in the form of funds to the person or organization for the purpose of rendering services on behalf of the State. It shall not include procurement contracts, state insurance or guaranty contracts, licenses, tax credits, or loan guarantees to private businesses of general concern that do not render services on behalf of the State.

“Language” means human speech or the expression of ideas by written characters and includes systems used by nations, people, or other distinct communities.

“Limited English proficient” means individuals who, on account of national origin, do not speak English as their primary language and who identify themselves as having a limited ability to read, write, speak, or understand the English language.

“Oral language services” means the free provision of oral information necessary to enable limited English proficient persons to access or participate in services, programs, or activities.

“Vital documents”:

- (1) Means printed documents that provide important information necessary to participate in services, programs, and activities; and
- (2) Includes but is not limited to applications, outreach materials, and written notices of rights, denials, losses, or decreases in benefits or services.

§371-C Oral and written language services. (a) Each state agency and all covered entities shall take reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient persons, which will be determined by a totality of circumstances, including the following factors:

- (1) The number or proportion of limited English proficient persons served or encountered in the eligible service population;
- (2) The frequency with which limited English proficient persons come in contact with the services, programs, or activities;
- (3) The nature and importance of the services, programs, or activities; and
- (4) The resources available to the State or covered entity and the costs.

(b) Subject to subsection (a), each state agency and covered entity shall provide competent, timely oral language services to limited English proficient persons who seek to access services, programs, or activities.

(c) Subject to subsection (a), each state agency and covered entity shall provide written translations of vital documents to limited English proficient persons who seek to access services, programs, or activities, as follows:

- (1) Written translations of vital documents for each eligible limited English proficient group that constitutes five per cent or one thousand, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered; or
- (2) If there are fewer than fifty persons in a limited English proficient group that reaches the five per cent threshold in paragraph (1), written notice in the primary language to the limited English proficient language group of the right to receive competent oral interpretation of those written materials, free of cost.

(d) To the extent that the State requires additional personnel to provide language services based on the determination set forth in this section, the State shall hire qualified personnel who are bilingual to fill existing, budgeted vacant public contact positions.

§371-D Additional obligations. (a) Each state agency and covered entity shall establish a plan for language access.

(b) Each state agency’s plan for language access shall be established in consultation with the executive director of the office of language access and the state agency’s coordinator for language access. State agencies receiving federal financial assistance shall file an initial language access plan with the executive director of the office of language access no later than July 1, 2007, and every two years thereafter. All other state agencies shall file a language access plan with the executive director of the office of language access no later than July 1, 2008, and every two years thereafter.

(c) Each state agency shall designate a language access coordinator who shall establish and implement the plan for language access in consultation with the executive director of the office of language access and the language access advisory council.

§371-E Public meetings and public hearings. (a) State agencies to which this part applies shall not be required to translate meeting notices, agendas, or minutes.

(b) Subject to section 371-C, oral language services for public meetings or public hearings held by the legislature shall be provided if requested at least forty-eight hours in advance of the meeting or hearing. Where the notice of any public meeting or public hearing is posted less than forty-eight hours in advance of the meeting or hearing, oral language services shall be provided if requested at least twenty-four hours in advance of the meeting or hearing.

§371-F Executive Director of the Office of Language access; duties.

There is established within the department of labor and industrial relations, for administrative purposes only, an office of language access. The head of the office shall be known as the executive director of the office of language access, hereinafter referred to as executive director. The executive director shall be appointed by the governor without regard to chapter 76. The executive director shall:

- (1) Provide oversight, central coordination, and technical assistance to state agencies in their implementation of language access requirements under this part or under any other law, regulation, or guidance;
- (2) Provide technical assistance to covered entities in their implementation of this part;
- (3) Review and monitor each state agency's language access plan for compliance with this part;
- (4) Where reasonable access is not provided, endeavor to eliminate the barrier using informal methods such as conference, conciliation, mediation, or persuasion. Where the language access barrier cannot be eliminated by informal methods, the executive director shall submit a written report with the executive director's opinion and recommendation to the state agency or the covered entity. The executive director may request the state agency or the covered entity to notify the executive director, within a specified time, of any action taken on the executive director's recommendation;
- (5) Consult with language access coordinators, the language access advisory council, and department directors or their equivalent;
- (6) Subject to section 371-C, create, distribute to the State, and make available to covered entities multilingual signage in the more frequently encountered languages in the state, and other languages as needed, informing individuals of their right to free oral language services and inviting them to identify themselves as persons needing services; and
- (7) Adopt rules pursuant to chapter 91 to address the language needs of limited English proficient persons.

§371-G Language access advisory council. (a) There is established the language access advisory council within the department of labor and industrial relations for administrative purposes. The council shall consist of the following members to be appointed by the governor:

- (1) One representative from the state government;
- (2) One representative from a covered entity;
- (3) One bilingual case management worker, or an individual who is or has been employed by a state-funded immigrant service agency or program;
- (4) One representative of an advocacy organization that provides services to limited English proficient persons;
- (5) One member from the limited English proficient population who has an interest in the provision of oral language services;
- (6) One representative of the University of Hawaii department of language and linguistics who provides professional training in interpretation and translation;

- (7) One representative of a Hawaiian language advocacy organization;
- (8) One representative of a professional interpreter’s organization;
- (9) One representative of a bilingual referral service or program;
- (10) The executive director of the Hawaii Civil Rights Commission or authorized representative; and
- (11) The executive director, as ex-officio member.

(b) Members shall be appointed in accordance with section 26-34. The terms of the members shall be for four years; provided that the governor may reduce the terms of those initially appointed so as to provide, as nearly as can be, for the expiration of an equal number of terms at intervals of one year. The council shall select one of its members to serve as chair. No member of the council shall receive any compensation for council services, but shall be allowed necessary expenses for travel, board, and lodging incurred in the performance of council duties.

(c) The language access advisory council shall serve in an advisory capacity to the executive director, providing input on:

- (1) Implementation and compliance with this part;
- (2) The quality of oral and written language services provided under this chapter; and
- (3) The adequacy of a state agency or covered entity’s dissemination and training of its employees likely to have contact with limited or no-English proficient persons, its policies and procedures for language services, its competency in working effectively with in-person and telephone interpreters, and its understanding of the dynamics of interpretation between clients, providers, and interpreters.”

SECTION 2. Chapter 371 is amended by designating sections 371-1 to 371-18 as part I and adding a title before section 371-1 to read as follows:

“PART I. GENERAL PROVISIONS”

SECTION 3. The executive director shall submit a written report annually to the governor and to the legislature no later than twenty days prior to the convening of each regular session, beginning with the regular session of 2007, detailing compliance, complaints and resolutions, recommendations to enhance compliance, and statutory or administrative changes to further the purposes of this Act.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$440,000 or so much thereof as may be necessary for fiscal year 2006-2007 to staff and maintain positions at the department of labor and industrial relations for the office of the executive director and language access advisory council.

The sum appropriated shall be expended by the department of labor and industrial relations for the purposes of this Act.

SECTION 5. In codifying the new part added to chapter 371, Hawaii Revised Statutes, by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for letters used in designating the new sections in this Act.²

SECTION 6. This Act shall take effect upon its approval; provided that section 4 shall take effect on July 1, 2006.

(Approved July 10, 2006.)

Notes

- 1. So in original.
- 2. No Ramseyer clause.

ACT 291

H.B. NO. 3036

A Bill for an Act Relating to Contracts.

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

SECTION 1. The legislature finds that this Act is necessary to address a problem within the building industry. Materialmen and subcontractors often are at the mercy of general contractors when seeking payment due them upon completion of their work or providing materials for a government project. This problem is particularly serious for materialmen and subcontractors who are involved at the beginning of a project, where their work is completed or materials are furnished long before final completion of the project. In many instances, subcontractors must wait many months, even years, before receiving full payment for their completed work. Often, the subcontractors are small, family-owned and run businesses that lack financial resources to withstand a long delay in receiving payments owed to them for work completed. The legislature finds that there is a need to provide materialmen and subcontractors with the right to payment upon furnishing of materials or completion of their work in government projects.

The purpose of this Act is to accelerate a subcontractor's or materialman's right to payment upon completion of the subcontract or the furnishing of materials by providing for prompt payment to a subcontractor or materialman upon completion of the subcontractor's or materialman's work in government projects.

SECTION 2. Section 103-10.5, Hawaii Revised Statutes, is amended to read as follows:

“§103-10.5 Prompt payment. (a) Any money[, other than retainage,] paid to a contractor shall be [~~dispersed~~] disbursed to subcontractors within ten days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes on which the procurement [~~agency~~] officer has withheld payment.

(b) Upon final payment to the contractor, full payment to the subcontractor, including retainage, shall be made within ten days after receipt of the money; provided there are no bona fide disputes over the subcontractor's performance under the subcontract.

(c) Where a subcontractor has provided evidence to the contractor of[:] satisfactorily completing all work under their subcontract and has provided a properly documented final payment request as described in subsection (d) of this section, and:

- [1] ~~A valid union trust fund contribution bond acceptable to the contractor in an amount not less than three months of the subcontractor's trust fund contribution;~~
- (2) A] (1) Has provided to the contractor an acceptable performance and payment bond for the project executed by a surety company authorized to do business in the State[;]
- (3) ~~Any other bond acceptable to the contractor; or~~
- (4) ~~Any other form of mutually acceptable collateral;~~

~~and the contractor fails to pay in accordance with this section, a penalty of one and one-half per cent per month shall be imposed on the outstanding amounts due to the subcontractor. The penalty may be withheld from future payment due to the contractor. Where a contractor has violated subsection (b) three or more times within two years of the first violation, the contractor shall be referred to the contractor license board by the procurement agency for action under section 444-17(14).], as provided in section 103-32.1; or~~

(2) The following has occurred:

(A) A period of ninety days after the day on which the last of the labor was done or performed and the last of the material was furnished or supplied has elapsed without written notice of a claim given to contractor and the surety, as provided for in section 103D-324; and

(B) The subcontractor has provided to the contractor:

(i) An acceptable release of retainage bond, executed by a surety company authorized to do business in the state, in an amount of not more than two times the amount being retained or withheld by the contractor;

(ii) Any other bond acceptable to the contractor; or

(iii) Any other form of mutually acceptable collateral,

all sums retained or withheld from a subcontractor and otherwise due to the subcontractor for satisfactory performance under the subcontract shall be paid by the procurement officer to the contractor and subsequently, upon receipt from the procurement officer, by the contractor to the subcontractor within the applicable time periods specified in subsection (b) and section 103-10. If the procurement officer or the contractor fails to pay in accordance with this section, a penalty of one and one-half per cent per month shall be imposed upon the outstanding amounts due that were not timely paid by the responsible party. The penalty may be withheld from future payment due to the contractor, if the contractor was the responsible party. If a contractor has violated subsection (b) three or more times within two years of the first violation, the contractor shall be referred by the procurement officer to the contractor license board for action under section 444-17(14).

(d) A properly documented final payment request from a subcontractor, as required by subsection (c), shall include:

(1) Substantiation of the amounts requested;

(2) A certification by the subcontractor, to the best of the subcontractor's knowledge and belief, that:

(A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the subcontract;

(B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the subcontract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and

(C) The payment request does not include any amounts that the subcontractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract; and

(3) The submission of documentation confirming that all other terms and conditions required under the subcontract agreement have been fully satisfied.

The procurement officer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

(e) In the case of a construction contract, a payment request made by a contractor to the procurement officer that includes a request for sums that were withheld or retained from a subcontractor and are due to a subcontractor may not be approved under subsection (c) unless the payment request includes:

(1) Substantiation of the amounts requested; and

(2) A certification by the contractor, to the best of the contractor's knowledge and belief, that:

- (A) The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the contract;
- (B) The subcontractor has made payments due to its subcontractors and suppliers from previous payments received under the contract and will make timely payments from the proceeds of the payment covered by the certification, in accordance with their subcontract agreements and the requirements of this section; and
- (C) The payment request does not include any amounts that the contractor intends to withhold or retain from a subcontractor or supplier in accordance with the terms and conditions of their subcontract.

The procurement officer shall return any final payment request that is defective to the contractor within seven days after receipt, with a statement identifying the defect.

(f) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate and to include in their respective subcontracts provisions that provide for additional terms and conditions that are requested to be met before the subcontractor shall be entitled to receive final payment under subsection (c) of this section; provided that any such payments withheld shall be withheld by the procurement officer.’’

SECTION 3. Section 103-32.1, Hawaii Revised Statutes, is amended to read as follows:

“§103-32.1 Contract provision for retainage; subcontractors. (a) Any retainage provided for in this section or requested to be withheld by the contractor shall be held by the procurement officer.

(b) A dispute between a contractor and subcontractor of any tier shall not constitute a dispute to which the State or any county is a party, and there is no right of action against the State or any county. The State and a county may not be interpleaded in any judicial or administrative proceeding involving such a dispute.

[{a}] (c) Any public contract may include a provision for the retainage of a portion of the amount due under the contract to the contractor to [insure] ensure the proper performance of the contract; provided that:

- (1) The sum withheld by the procurement officer from the contractor shall not exceed five per cent of the total amount due the contractor and that, after fifty per cent of the contract is completed and progress is satisfactory, no additional sum shall be withheld; provided further that if progress is not satisfactory, the [contracting] procurement officer may continue to withhold, as retainage, sums not exceeding five per cent of the amount due the contractor; and
- (2) The retainage shall not include sums deducted as liquidated damages from moneys due or that may become due the contractor under the contract.

[{b}] (d) Where a subcontractor has provided evidence to the contractor of:

- (1) A valid performance and a payment bond for the project that is acceptable to the contractor and executed by a surety company authorized to do business in this State;
- (2) Any other bond acceptable to the contractor; or
- (3) Any other form of collateral acceptable to the contractor[;],

the retention amount withheld by the contractor from its subcontractor shall be not more than the same percentage of retainage as that of the contractor. This subsection shall also apply to the subcontractors who subcontract work to other subcontractors.

(e) This section shall not be construed to impair the right of a contractor or a subcontractor at any tier to negotiate, and to include in their subcontract, provisions that:

- (1) Permit the contractor or subcontractor to retain, without cause, a specified percentage of no more than ten per cent of each progress payment otherwise due to a subcontractor for satisfactory performance under the subcontract, without incurring any obligation to pay a late payment interest penalty, in accordance with terms and conditions agreed to by the parties to the subcontract, giving such recognition as the parties deem appropriate to the ability of a subcontractor to furnish a performance bond and a payment bond, subject however, to the limitations of subsection (d); and
 - (2) Permit the contractor or subcontractor to make a determination that part or all of the subcontractor's payment request may be withheld by the procurement officer in accordance with the subcontract agreement, without incurring any obligation to pay interest or a late payment penalty if:
 - (A) A notice conforming to the standards of subsection (f) has been previously furnished to the subcontractor; and
 - (B) A copy of any notice issued by the contractor or subcontractor pursuant to subparagraph (A) has been furnished to the procurement officer.
- (f) A written notice of any withholding shall be issued to a subcontractor, with a copy to the procurement officer, specifying the following:
- (1) The amount to be withheld;
 - (2) The specific causes for the withholding under the terms of the subcontract; and
 - (3) The remedial actions to be taken by the subcontractor to receive payment of the amounts withheld.
- (g) A contractor may not request payment from the procurement officer of any amount withheld or retained in accordance with subsection (e) until such time as the contractor has determined and certified to the procurement officer that the subcontractor is entitled to the payment of such amount.
- (h) The provisions of this section shall not be construed to require payment to subcontractors of retainage released to a contractor pursuant to an agreement entered into with the procurement officer meeting the requirements of section 103-32.2."

SECTION 4. Section 103D-501, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

- “(b) Adjustments in price permitted by rules adopted under subsection (a) shall be computed in one or more of the following ways:
- (1) By agreement on a fixed price adjustment before commencement of the pertinent performance [~~or as soon thereafter as practicable~~];
 - (2) By unit prices specified in the contract or subsequently agreed upon[;] before commencement of the pertinent performance;
 - (3) By the costs attributable to the events or situations under such clauses with adjustment of profit or fee, all as specified in the contract or subsequently agreed upon[;] before commencement of the pertinent performance;
 - (4) In [such] any other manner as the contracting parties may mutually agree[;] upon before commencement of the pertinent performance; or
 - (5) In the absence of agreement by the parties[;]:
 - (A) For change orders with value not exceeding \$50,000 by documented actual costs of the work, allowing for twenty per cent of the actual costs for overhead and profit on work done directly by the contractor and ten per cent on any subcontractor's billing to

- the contractor for the contractor's overhead and profit. There shall be no cap on the total cost of the work if this method is used. A change order shall be issued within fifteen days of submission by the contractor of proper documentation of completed force account work, whether periodic (conforming to the applicable billing cycle) or final. The procurement officer shall return any documentation that is defective to the contractor within fifteen days after receipt, with a statement identifying the defect; or
- (B) For change orders with value exceeding \$50,000 by a unilateral determination by the governmental body of the costs attributable to the events or situations under [such] clauses with adjustment of profit or fee, all as computed by the governmental body in accordance with applicable sections of the rules adopted under section 103D-601 and subject to the provisions of part VII. When a unilateral determination has been made, a unilateral change order shall be issued within ten days. Costs included in the unilateral change order shall allow for twenty per cent of the actual costs for overhead and profit on work done directly by the contractor and ten per cent on any subcontractor's billing to the contractor for the contractor's overhead and profit. Upon receipt of the unilateral change order, if the contractor does not agree with any of the terms or conditions, or the adjustment or nonadjustment of the contract time or contract price, the contractor shall file a notice of intent to claim within thirty days after the receipt of the written unilateral change order. Failure to file a protest within the time specified shall constitute agreement on the part of the contractor with the terms, conditions, amounts, and adjustment or nonadjustment of the contract time or the contract price set forth in the unilateral change order.

A contractor shall be required to submit cost or pricing data if any adjustment in contract price is subject to the provisions of section 103D-312. A fully executed change order or other document permitting billing for the adjustment in price under any method listed in paragraphs (1) through (4) shall be issued within ten days after agreement on the method of adjustment.

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, 2007.

(Approved July 10, 2006.)

ACT 292

S.B. NO. 2897

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 part is to restore or add the exemption from the State's procurement code for special purpose revenue bonds for health care facilities, manufacturing enterprises, processing enterprises, industrial enterprises, energy projects, early childhood education and care facilities serving the general public, and private nonsectarian and sectarian elementary schools, secondary

schools, colleges, and universities serving the general public, on the basis that no public moneys are involved in issuing special purpose revenue bonds.

SECTION 2. Section 39A-32, Hawaii Revised Statutes, is amended to read as follows:

“§39A-32 Department powers as to health care facilities. In addition to powers ~~[which]~~ that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7~~]~~ and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project;
- (4) As security for the payment of the principal ~~[of]~~, premium, if any, and interest of the special purpose revenue bonds issued for this project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which ~~[such]~~ the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to ~~[such]~~ the project or ~~[such]~~ the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to ~~[such]~~ the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any ~~[such]~~ renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for ~~[such]~~ the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

SECTION 3. Section 39A-72, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-72 Department powers as to manufacturing enterprises.** In addition to powers [which] that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7[5] and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project;
- (4) As security for the payment of the principal [of], premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which [such] the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to [such] the project or [such] the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to [such] the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any [such] renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for [such] the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.”

SECTION 4. Section 39A-112, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-112 Department powers as to processing enterprises.** In addition to powers [which] that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7[5] and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and

- (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project;
- (4) As security for the payment of the principal [øf], premium, if any, and interest of the special purpose revenue bonds issued for a project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which [sueh] the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to [sueh] the project or [sueh] the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to [sueh] the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any [sueh] renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for [sueh] the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.”

SECTION 5. Section 39A-152, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-152 Department powers as to industrial enterprises.** In addition to powers [whieh] that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7[;] and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or maintenance of a project;
- (4) As security for the payment of the principal [øf], premium, if any, and interest of the special purpose revenue bonds issued for a project, to:

- (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which [sueh] the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to [sueh] the project or [sueh] the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to [sueh] the project; or
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any [sueh] renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for [sueh] the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.”

SECTION 6. Section 39A-192, Hawaii Revised Statutes, is amended to read as follows:

“**§39A-192 Department powers as to energy projects.** In addition to powers [whieh] that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7[;] and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for an energy project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, or extension of an energy project;
- (4) As security for the payment of the principal of and interest on the special purpose revenue bonds issued for an energy project, to:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the energy project for which [sueh] the special purpose revenue bonds are issued;
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to [sueh] the project or [sueh] the special purpose revenue bonds;
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to [sueh] the energy project; or
 - (D) Any combination of the foregoing;

- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any [such] renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for [such] the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances an energy project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire an energy project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

SECTION 7. Section 39A-222, Hawaii Revised Statutes, is amended to read as follows:

“[H]§39A-222[H] **Department powers as to early childhood education and care facilities.** In addition to powers [which] that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include[;] but are not limited to[;] the following:

- (1) Notwithstanding and without compliance with section 103-7[;] and chapter 103D, but with the approval of the governor, to [enter]:
 - (A) Enter into and carry out a project agreement, or an amendment or supplement to an existing project agreement, with a project party[;]; and [to-enter]
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party[;];
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part[;];
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project[;];
- (4) As security for the payment of the principal [of], premium, if any, and interest of the special purpose revenue bonds issued for this project, to [pledge]:
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which [such] the special purpose revenue bonds are issued; [to-pledge]
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to [such] the project or [such] the special purpose revenue bonds; [and-to-pledge]
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to [such] the project; or [any]
 - (D) Any combination of the foregoing[;];
- (5) To extend or renew any project agreement or any other agreement related thereto; provided that any [such] renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for [such] the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor[;]; and

- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part thereof for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

SECTION 8. Section 39A-252, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§39A-252]]~~ **Department powers as to private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities.** In addition to powers that it may now have, the department shall have all powers necessary or convenient to accomplish the purposes of this part. The powers of the department include but are not limited to the following:

- (1) Notwithstanding and without compliance with section 103-7[;] and chapter 103D, but with the approval of the governor, to:
 - (A) Enter into and carry out a project agreement or an amendment or supplement to an existing project agreement with a project party; and
 - (B) Enter into and carry out any agreement, whereby the obligation of a project party under a project agreement will be unconditionally guaranteed by a person other than a project party;
- (2) To issue special purpose revenue bonds pursuant to and in accordance with this part;
- (3) To lend the proceeds of the special purpose revenue bonds issued for a project to the project party for use and application by the project party for the acquisition, purchase, construction, reconstruction, improvement, betterment, extension, or refinancing of outstanding obligations related to a project;
- (4) As security for the payment of the principal, premium, if any, and interest of the special purpose revenue bonds issued for this project, to ~~[pledge];~~
 - (A) Pledge, assign, hypothecate, or otherwise encumber all or any part of the revenues and receipts derived or to be derived by the department under the project agreement for the project for which ~~[such]~~ the special purpose revenue bonds are issued; ~~[to pledge]~~
 - (B) Pledge and assign the interest and rights of the department under the project agreement or other agreement with respect to the project or the special purpose revenue bonds; ~~[and to pledge]~~
 - (C) Pledge and assign any bond, debenture, note, or other evidence of indebtedness received by the department with respect to the project; or ~~[any]~~
 - (D) Any combination of the foregoing;
- (5) To extend or renew any project agreement or any other agreement related to the project agreement; provided that any ~~[such]~~ renewal or extension shall be subject to the approval of the governor unless made in accordance with provisions for ~~[such]~~ the extension or renewal contained in a project agreement or related agreement theretofore approved by the governor; and
- (6) To do any and all things necessary or convenient to carry out its purposes and exercise the powers given and granted in this part.

When the department finances or refinances a project by the issuance of special purpose revenue bonds as contemplated by this part, the State shall not exercise the power of eminent domain to acquire a project or any part of the project for lease or transfer to a project party, nor shall the State operate a project on behalf of a project party.”

PART II¹

SECTION 9. The purpose of this part is to provide an exemption from the State's procurement code for special facility revenue bonds for special facilities acquired, constructed, improved, and developed by the high technology development corporation solely for use by another party.

SECTION 10. Section 206M-42, Hawaii Revised Statutes, is amended to read as follows:

“§206M-42 Powers. In addition to any other powers granted to the development corporation by law, the development corporation may:

- (1) ~~[With]~~ Without compliance with chapter 103D, but with the approval of the governor, enter into a special facility lease or an amendment or supplement thereto whereby the development corporation agrees to acquire, construct, improve, install, equip, and develop a special facility solely for the use by another party to a special facility lease;
- (2) With the approval of the governor, issue special facility revenue bonds in principal amounts that may be necessary to yield the amount of the cost of any acquisition, construction, improvement, installation, equipping, and development of any special facility, including, subject to paragraph (6), the costs of acquisition of the site thereof; provided that the total principal amount of the special facility revenue bonds which may be issued pursuant to the authorization of this section shall not exceed \$100,000,000;
- (3) With the approval of the governor, issue refunding special facility revenue bonds with which to provide for the payment of outstanding special facility revenue bonds (including any special facility revenue bonds theretofore issued for this refunding purpose) or any part thereof; provided any issuance of refunding special facility revenue bonds shall not reduce the principal amount of the bonds that may be issued as provided in paragraph (2);
- (4) Perform and carry out the terms and provisions of any special facility lease;
- (5) Notwithstanding section 103-7 or any other law to the contrary, acquire, construct, improve, install, equip, or develop any special facility, or accept the assignment of any contract therefor entered into by the other party to the special facility lease;
- (6) Construct any special facility on land owned by the State; provided that no funds derived herein shall be expended for land acquisition; and
- (7) Agree with the other party to the special facility lease whereby any acquisition, construction, improvement, installation, equipping, or development of the special facility and the expenditure of moneys therefor shall be undertaken or supervised by another person.”

PART III

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 July 10, 2006.)

Note

1. No Part I.

ACT 293

S.B. NO. 895

A Bill for an Act Relating to Limu Management Area.

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

SECTION 1. The legislature finds that the natural supply of limu along the shores in Ewa beach is rapidly diminishing. This is due in part to overharvesting of limu during the past four years. As a result, many types of limu, including huluhulu waenae, lipoa, and 'a'ala 'ula, can no longer be found or are at risk of extinction in this area.

The purpose of this Act is to preserve and sustain the limu supply by establishing a limu management area along the shoreline of Ewa beach on Oahu.

SECTION 2. Chapter 188, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§188- Limu management area.** (a) There is established a limu management area from the shoreline and extending one hundred fifty feet seaward in Ewa beach from the gunnery range to the boat ramp on Muumuu street.

(b) No person, including a person with a commercial fishing license, shall pick, gather, harvest, or otherwise take limu from within the limu management area beginning no sooner than January 1, 2007; provided that this section shall not apply to a person who has obtained a special permit to pick limu for purposes of replanting.

(c) Beginning no sooner than January 1, 2010, a person, including a person with a commercial fishing license, may hand-pick limu in the limu management area from 6:00 a.m. to 6:00 p.m., only during the months of July, November, and December of each year. A maximum of one pound for all types of limu combined may be hand-picked per day by any person, including any person possessing a commercial fishing license.

(d) This section shall not apply to any person exercising native Hawaiian gathering rights and traditional cultural practices as authorized by law or as permitted by the department of land and natural resources pursuant to Article XII, Section 7 of the Hawaii State Constitution.

(e) The department of land and natural resources shall adopt rules pursuant to chapter 91 necessary for the purposes of this section.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on December 31, 2006.

(Approved July 10, 2006.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 294

S.B. NO. 2145

A Bill for an Act Relating to the Environment.

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

SECTION 1. Environmental justice is generally understood to require the fair treatment and meaningful involvement of all people regardless of race, color,

national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. In 1994, President Clinton signed Executive Order 12,898 to focus federal attention on the environmental and human health conditions of minority and low-income populations, with the goal of achieving environmental protection for all communities. Executive Order 12,898 directed federal agencies to develop environmental justice strategies to help federal agencies address the disproportionately high and adverse human health or environmental effects of their programs on minority and low-income populations. Executive Order 12,898 was intended to provide minority and low-income communities with access to public information and with meaningful public participation in matters relating to human health and the environment.

In 2005, the legislature adopted Senate Concurrent Resolution No. 140, H.D. 1, in recognition of the environmental justice concerns that may arise from effects on the natural and physical environment, such as human health or ecological effects on minority populations, low-income populations, and native Hawaiians, or from related social or economic effects. The environmental council drafted a plan to accomplish the tasks requested by the legislature.

The legislature finds that there is a need to conduct a comprehensive and scholarly review of the state environmental impact statement process to evaluate its continued efficacy, the effectiveness of the amendments made by Act 50, Session Laws of Hawaii 2000, and the possible need to revise chapter 343, Hawaii Revised Statutes. The review should include a determination of whether the environmental impact statement process includes appropriate consideration of the effects of a proposed action on the cultural practices of the State and community, as required by section 343-2, Hawaii Revised Statutes.

The legislature further finds that there is a need to develop an environmental justice guidance document to ensure that principles of environmental justice are systematically included in all phases of the environmental review process and that each agency fulfills its duty to identify and address at the earliest possible time any disproportionately adverse human health, environmental, or cultural effects on minority populations, native Hawaiians, and low-income populations that would be caused by a proposed action or the agency's policies, programs, and activities.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$82,325, or so much thereof as may be necessary for fiscal year 2006-2007, for the environmental council to contract with a consultant to facilitate and coordinate the State's environmental justice activities and for related administrative and operational costs. The environmental justice activities shall include:

- (1) Defining "environmental justice" in the unique context of this State through educational community outreach activities;
- (2) Developing and adopting a guidance document that addresses environmental justice in all phases of the environmental impact statement process;
- (3) Making recommendations to update the environmental impact statement process in chapter 343, Hawaii Revised Statutes; and
- (4) Conducting educational and community outreach activities.

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

SECTION 3. Notwithstanding chapter 103D, Hawaii Revised Statutes, the office of environmental quality control shall contract with the University of Hawaii environmental center to conduct a comprehensive review of the State's existing environmental impact statement process under chapter 343, Hawaii Revised Statutes. The comprehensive review shall include:

- (1) A review of all guidance documents for implementing chapter 343;
- (2) An evaluation of the amendments made in Act 50, Session Laws of Hawaii 2000, to determine if environmental impact statements give appropriate consideration to the effects of a proposed action on the cultural practices of the State and community; and
- (3) The conclusions, findings, and recommendations of the comprehensive review.

The University of Hawaii environmental center shall submit the comprehensive review to the legislature no later than twenty days prior to the convening of the regular session of 2008.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$108,675, or so much thereof as may be necessary for fiscal year 2006-2007, for the University of Hawaii environmental center to perform a comprehensive review of the State's current environmental impact statement process under chapter 343, Hawaii Revised Statutes, pursuant to section 3 of this Act.

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

SECTION 5. This Act shall take effect on July 1, 2006.

(Approved July 10, 2006.)

ACT 295

S.B. NO. 3262

A Bill for an Act Relating to Health.

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

SECTION 1. The legislature finds that tobacco smoke is a major contributor to many health problems. Secondhand smoke causes heart disease, stroke, respiratory disease, and lung cancer in healthy nonsmokers. Thousands of premature deaths and illnesses in Hawaii are attributed to it annually.

The legislature further finds that recent research demonstrates heightened health dangers to those exposed to secondhand smoke, since Hawaii passed a statewide anti-smoking statute seventeen years ago. In 2004, the Centers for Disease Control and Prevention issued an advisory to persons with heart disease to avoid indoor settings where smoking is allowed, which warrants increased protections in the workplace and for the public in general.

The counties in Hawaii have adopted ordinances that offer varying levels of protection to workers and the public against secondhand smoke. The legislature acknowledges that a consistent level of basic protection from secondhand smoke is needed to protect Hawaii's citizens from the health dangers of secondhand smoke.

The purpose of this Act is to protect the public health and welfare by prohibiting smoking in places open to the public and places of employment to ensure a consistent level of basic protections statewide from exposure to secondhand smoke.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
SMOKING**

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

“Bar” means an establishment that is devoted to the serving of alcoholic beverages for consumption by guests on the premises regardless of whether food is served, including but not limited to taverns, cocktail lounges, and cabarets, including outdoor areas of bars.

“Building” means any area enclosed or partially enclosed by a roof and at least three walls.

“Business” means a sole proprietorship, partnership, joint venture, corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold, professional corporations, and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.

“Department” means the department of health.

“Director” means the director of health.

“Employee” means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers the person’s services for a nonprofit entity.

“Employer” means a person, business, partnership, association, corporation, including the State or any of its political subdivisions, a trust, or nonprofit entity that employs the services of one or more individual persons, but shall not include the United States.

“Enclosed or partially enclosed” means closed in by a roof or overhang and at least two walls. Enclosed or partially enclosed areas include but are not limited to areas commonly described as public lobbies, lanais, interior courtyards, patios, and covered walkways.

“Health care facility” means an office or institution, including all waiting rooms, hallways, private rooms, semiprivate rooms, and wards, which provides care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions.

“Multifamily dwelling” means a building containing more than two dwelling units.

“Nightclub” means an establishment in which live entertainment is provided or facilities for dancing by patrons either by live entertainment or recorded music may be provided, regardless of whether alcoholic beverages are served.

“Open to the public” means enclosed or partially enclosed areas to which the public is invited or permitted and areas within any building available for use by or accessible to the general public during the normal course of business conducted therein by either private or public entities, including but not limited to bars, educational facilities, financial institutions, health care facilities, hotel and motel lobbies, lanais, laundromats, public transportation facilities, including airport areas from curb to cabin and including all areas within and immediately in front of and adjacent to passenger terminals and pick-up areas, throughout the airport facility, and up to the passenger loading gates of all state airports, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, sports arenas, theaters, and waiting rooms, but

does not include a private residence unless it is used as a child care, adult day care, or health care facility.

“Place of employment” means an area under the control of a public or private employer that employees normally frequent during the course of employment, including but not limited to auditoriums, cafeterias, classrooms, clubs, common work areas, conference rooms, elevators, employee lounges, hallways, medical facilities, meeting rooms, private offices, restrooms, and stairs. A private residence is not a “place of employment” unless it is used as a child care, adult day care, or health care facility.

“Restaurant” means an eating establishment, including but not limited to coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term “restaurant” includes a bar area within the restaurant and outdoor areas of restaurants.

“Retail tobacco store” means a retail store used primarily for the sale of tobacco products and accessories.

“Service line” means an indoor line in which one or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.

“Shopping mall” means an enclosed or partially enclosed public walkway or hall area that serves to connect retail or professional establishments.

“Smoke” or “smoking” means inhaling or exhaling the fumes of tobacco or any other plant material, or burning or carrying any lighted smoking equipment for tobacco or any other plant material.

“Sports arena” means any sports pavilion, stadium, gymnasium, health spa, boxing arena, swimming pool, roller or ice rink, bowling alley, and any other similar place where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

§ -2 Prohibition in facilities owned by the State or the counties. Smoking shall be prohibited in all enclosed or partially enclosed areas, including buildings and vehicles owned, leased, or operated by the State or any county.

§ -3 Prohibition in enclosed or partially enclosed places open to the public. Smoking shall be prohibited in all enclosed or partially enclosed areas open to the public, including but not limited to the following places:

- (1) Airports and public transportation facilities and vehicles, including buses and taxicabs, under the authority of the State or county, and ticket, boarding, and waiting areas of public transit depots, including airports from curb to cabin and including all areas within and immediately in front of and adjacent to passenger terminals and pick-up areas, throughout the airport facility, and up to the passenger loading gates of all state airports;
- (2) Aquariums, galleries, libraries, and museums;
- (3) Areas available to and customarily used by the general public, including but not limited to restrooms, lobbies, reception areas, hallways, and other common areas, in businesses and nonprofit entities patronized by the public, including but not limited to professional offices, banks, laundromats, hotels, and motels;
- (4) Bars;
- (5) Bowling alleys;
- (6) Convention facilities;
- (7) Educational facilities, both public and private;

- (8) Elevators;
- (9) Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance, except when part of the performance;
- (10) Health care facilities;
- (11) Hotel and motel lobbies, meeting rooms, and banquet facilities;
- (12) Licensed child care and adult day care facilities;
- (13) Lobbies, hallways, and other common areas in apartment buildings, condominiums, retirement facilities, nursing homes, multifamily dwellings, and other multiple-unit residential facilities;
- (14) Nightclubs;
- (15) Polling places;
- (16) Restaurants;
- (17) Retail stores;
- (18) Rooms, chambers, places of meeting or public assembly under the control of an agency, board, commission, committee or council of the State or county, to the extent the place is subject to the jurisdiction of the State or county;
- (19) Service lines; and
- (20) Shopping malls.

§ -4 **Prohibition in enclosed or partially enclosed places of employment.** Smoking shall be prohibited in all enclosed or partially enclosed areas of places of employment.

§ -5 **Prohibition in sports arenas, outdoor arenas, stadiums, and amphitheaters.** Smoking shall be prohibited in the enclosed or partially enclosed areas and in seating areas of sports arenas, outdoor arenas, stadiums, and amphitheaters.

§ -6 **Presumptively reasonable distance.** Smoking is prohibited within a presumptively reasonable minimum distance of twenty feet from entrances, exits, windows that open, and ventilation intakes that serve an enclosed or partially enclosed area where smoking is prohibited. Owners, operators, managers, employers, or other persons who own or control a place open to the public or place of employment may seek to rebut the presumption that twenty feet is a reasonable distance by submitting an application to the department. The presumption will be rebutted if the applicant can show by clear and convincing evidence that, given the circumstances presented by the location of entrances, exits, windows that open, ventilation intakes, or other factors, smoke will not infiltrate into the place open to the public or place of employment.

§ -7 **Exceptions.** Notwithstanding any other provision of this chapter to the contrary, the following areas shall be exempt from the provisions of sections -3, -4, and -5:

- (1) Private residences, except when used as a licensed child care, adult day care, or health care facility;
- (2) Hotel and motel rooms that are rented to guests and are designated as smoking rooms; provided that not more than twenty per cent of rooms rented to guests in a hotel or motel may be so designated. All smoking rooms on the same floor shall be contiguous and smoke from these rooms shall not infiltrate into areas where smoking is prohibited under this chapter. The status of rooms as smoking or nonsmoking may not be changed, except to add additional nonsmoking rooms;

- (3) Retail tobacco stores; provided that smoke from these places shall not infiltrate into areas where smoking is prohibited under this chapter;
- (4) Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places shall not infiltrate into areas where smoking is prohibited under this chapter;
- (5) Outdoor areas of places of employment except those covered by the provisions of sections -3 and -5;
- (6) All areas covered by this chapter when smoking is part of a production being filmed; and
- (7) State correctional facilities.

§ **-8 Declaration of establishment as nonsmoking.** (a) Notwithstanding any other provision of this chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that an entire establishment, facility, or outdoor area or any part thereof as a place where smoking is prohibited.

(b) Smoking shall be prohibited in any place in which a sign conforming to the requirements of section -9 is posted.

§ **-9 Signs.** Clearly legible signs that include the words "Smoking Prohibited by Law" with letters of not less than one inch in height or the international "No Smoking" symbol, consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it, shall be clearly and conspicuously posted in and at the entrance to every place open to the public and place of employment where smoking is prohibited by this chapter by the owner, operator, manager, or other person in control of that place.

§ **-10 Nonretaliation and nonwaiver of rights.** (a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this chapter or reports or attempts to prosecute a violation of this chapter.

(b) An employee who works in a setting where an employer allows smoking does not waive or otherwise surrender any legal rights the employee may have against the employer or any other party.

§ **-11 Compliance and administration.** (a) Enforcement of compliance with this chapter shall be under the jurisdiction of the department.

(b) The director shall adopt rules under chapter 91 as are appropriate to carry out the purposes of this chapter and for the efficient administration thereof.

(c) Any citizen who wants to register a complaint under this chapter may initiate an enforcement action with the department as set forth by the director.

(d) An owner, manager, operator, or employee of an establishment regulated by this chapter shall inform persons violating this chapter of its provisions.

(e) Notwithstanding any other provision of this chapter, an employee or private citizen may bring legal action to enforce this chapter.

(f) Notwithstanding any other provision of this chapter, the department, other appropriate county agency, county, or any other person aggrieved by the failure of the owner, operator, manager, or other person in control of a place open to the public or a place of employment to comply with this chapter may apply for injunctive relief to enforce this chapter in any court of competent jurisdiction.

§ -12 **Penalties.** (a) A person who smokes in an area where smoking is prohibited by this chapter shall be guilty of a violation and fined not more than \$50 to be deposited into the general fund. The district courts may assess costs not to exceed \$25 for issuing a penal summons upon any person who fails to appear at the place within the time specified in the citation issued to the person.

(b) Any authorized police officer, upon making an arrest, shall take the name and address of the alleged violator and shall issue the violator a summons or citation in writing.

(c) There shall be provided for use by an officer or employee of the respective government jurisdictions, duly authorized to issue a summons or citation, or any police officer, a form of summons or citation for use in citing a violator of this chapter that shall not provide for the physical arrest of the violator. The form and content of this summons or citation shall be as adopted or prescribed by the administrative judge of the district court. When a citation is issued, the original of the citation shall be given to the violator; provided that the administrative judge of the district court may prescribe that the violator be given a copy of the citation and provide for the disposition of the original and any other copies. Every citation shall be consecutively numbered and each copy shall bear the same number as its respective original.

(d) If any person fails to comply with a penal summons given to the person, the court shall issue a warrant for the person's arrest.

(e) Any police officer or other officer or employee of the respective government jurisdictions may eject from the premises any person to whom a citation has been issued and who continues to smoke after the person has been so cited.

(f) A person who owns, manages, operates, or otherwise controls any place or facility designated by this chapter and fails to comply with this chapter shall be guilty of a violation and fined:

- (1) Not more than \$100 for a first violation;
- (2) Not more than \$200 for a second violation within one year of the date of the first violation; and
- (3) Not more than \$500 for each additional violation within one year of the date of the preceding violation.

(g) In addition to the fines established by this section, violation of this chapter by a person who owns, manages, operates, or otherwise controls any place or facility designated by this chapter may result in the suspension or revocation of any permit or license issued to the person or the place for the premises on which the violation occurred.

(h) Each day on which a violation of this chapter occurs shall be considered a separate and distinct violation.

§ -13 **Public education.** The department shall engage in a public education program to explain and clarify the purposes and requirements of this chapter to the public, and to guide owners, operators, and managers in their compliance with it. The program may include but is not limited to publication of a brochure for affected businesses and individuals explaining this chapter.

§ -14 **Other applicable laws.** This chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

§ -15 **County ordinances.** (a) Nothing in this chapter shall be construed to supersede or in any manner affect a county smoking ordinance; provided that the ordinance is at least as protective of the rights of nonsmokers as this chapter.

(b) Nothing in this chapter shall prohibit a county from enacting ordinances more stringent than this chapter.

§ -16 Cigarette sales from vending machines and by lunch wagons prohibited. (a) The sale or distribution at no charge of cigarettes by the following methods is prohibited:

- (1) From cigarette vending machines unless the vending machine is located in a bar, cabaret, or any establishment for which the minimum age for admission is eighteen; or
- (2) From a lunch wagon engaging in any sales activity within one thousand feet of any public or private elementary or secondary school grounds.

(b) Violations of subsection (a), including placement of a cigarette vending machine in a location other than a bar, cabaret, or any establishment for which the minimum age for admission is eighteen, are subject to a fine of up to \$1,000 per day for each violation.

(c) As used in this section:

“Cigarette vending machine” means a self-service device that dispenses cigarettes, cigars, tobacco, or any other product containing tobacco.

“Lunch wagon” means a mobile vehicle designed and constructed to transport food and from which food is sold to the general public and includes but is not limited to manapua trucks.

“Sell” or “sale” means to solicit and receive an order for; to have, keep, offer, or expose for sale; to deliver for value or in any other manner than purely gratuitously; to peddle; to keep with intent to sell; or to traffic in.

§ -17 Distribution of sample cigarette or tobacco products, cigarette or tobacco promotional materials, and coupons redeemable for cigarette or tobacco products or promotional materials. (a) It is unlawful for any person to distribute samples of cigarette or tobacco products, or coupons redeemable for cigarette or tobacco products, in or on any public street, sidewalk, or park, or within one thousand feet of any elementary, middle or intermediate, or high school.

(b) It is unlawful for any person to distribute cigarette or tobacco promotional materials, or coupons redeemable for cigarette or tobacco promotional materials, within one thousand feet of any elementary, middle or intermediate, or high school.

(c) This section shall not apply:

- (1) Within private commercial establishments, such as stores and restaurants, where tobacco products are sold, as long as distribution is not visible to the public from outside the establishment; or
- (2) To commercial establishments where access to the premises by persons under eighteen years of age is prohibited by law.

(d) Any person convicted of violating this section shall be fined not more than \$1,000.

(e) As used in this section:

“Distribute” means to pass out to members of the general public free of charge for the exclusive purpose of promoting a product.”

SECTION 3. Chapter 328K, Hawaii Revised Statutes, is repealed.

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

ACT 296

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions are severable.

SECTION 6. This Act shall take effect on November 16, 2006.

(Approved July 10, 2006.)

ACT 296

S.B. NO. 2929

A Bill for an Act Relating to the Land Use Commission.

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

SECTION 1. Section 205-1, Hawaii Revised Statutes, is amended to read as follows:

“§205-1 Establishment of the commission. There shall be a state land use commission, hereinafter called the commission. The commission shall consist of nine members who shall hold no other public office and shall be appointed in the manner and serve for the term set forth in section 26-34. One member shall be appointed from each of the counties and the remainder shall be appointed at large[-]; provided that one member shall have substantial experience or expertise in traditional Hawaiian land usage and knowledge of cultural land practices. The commission shall elect its chairperson from one of its members. The members shall receive no compensation for their services on the commission, but shall be reimbursed for actual expenses incurred in the performance of their duties. Six affirmative votes shall be necessary for any boundary amendment.

The commission shall be a part of the department of business, economic development, and tourism for administration purposes, as provided for in section 26-35.

The commission may engage employees necessary to perform its duties, including administrative personnel and an executive officer. The executive officer shall be appointed by the commission and the executive officer’s position shall be exempt from civil service. Departments of the state government shall make available to the commission such data, facilities, and personnel as are necessary for it to perform its duties. The commission may receive and utilize gifts and any funds from the federal or other governmental agencies. It shall adopt rules guiding its conduct, maintain a record of its activities and accomplishments, and make recommendations to the governor and to the legislature through the governor.”

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, and shall apply to the land use commission upon its next vacancy.

(Approved July 10, 2006.)

ACT 297

S.B. NO. 3270

A Bill for an Act Relating to Public Health.

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

SECTION 1. The legislature finds that approximately ten per cent of the population of the State of Hawaii has no public or private health insurance. The legislature further finds that, according to the Kaiser Commission on Medicaid and the Uninsured:

- (1) Four out of five uninsured people are in working families;
- (2) Uninsured people are more likely than those with insurance to be hospitalized for conditions that could have been avoided;
- (3) Uninsured people with various forms of cancer are more likely to be diagnosed with late-stage cancer, resulting in higher rates of death and disability; and
- (4) Nearly forty per cent of uninsured adults skipped a recommended medical test or treatment, and twenty per cent say they needed but did not obtain care for a serious problem during the past year.

The significant number of uninsured residents has a considerable economic impact on the State's hospitals, community health centers, and other participants in the health care industry, threatening their ability to effectively serve the whole community.

It is in the best interests of the State to ensure access to primary and preventive health care for its residents. In addition to a healthier population, providing access to care reduces state expenditures attributable to hospital and emergency room services for preventable injuries or illnesses.

The legislature further finds that the most effective means to encourage access to primary health care for residents without health insurance is through Hawaii's system of federally qualified health centers, which:

- (1) Are nonprofit, community-based organizations whose purpose and expertise lie in serving people who otherwise have limited access to care;
- (2) Provide culturally and linguistically appropriate health care and a broad range of primary care and preventive services and are located in areas where people have limited access to other health care providers because of geographic and socioeconomic barriers;
- (3) Contribute greatly to the economies and livability of the communities they serve; and
- (4) Are cost-effective providers whose care results in healthier patients and decreased emergency, specialty, and in-patient services.

The legislature further finds that, while federally qualified health centers are the best system of community-based primary care for uninsured people, financial support for community health centers is inadequate to meet increasing demands.

The purpose of this Act is to provide cost-effective care for Hawaii residents who are uninsured, while at the same time ensuring that the community health center system remains financially viable and stable in the face of a growing population of uninsured residents.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Federally qualified health centers; rural health clinics; reimbursement. (a) Notwithstanding any law or waiver to the contrary, federally qualified health centers and rural health clinics, as defined in section 1905(1) of the Social

Security Act (42 U.S.C. 1396 et seq.), shall be reimbursed in accordance with section 1902(bb) of the Social Security Act, as that section was originally added in 2000 by section 702(b) of Public Law No. 106-554 and as amended in 2001 by section 2(b)(1) of Public Law 107-121, and services of federally qualified health centers and rural health clinics shall remain mandatory services as provided in sections 1902(a)(10)(A) and 1905(a)(2)(B) and (C) of the Social Security Act.

(b) Reimbursement rates paid to federally qualified health centers may be adjusted if costs exceed 1.75 per cent for changes related to the intensity, duration, or amount of service provided, facilities, regulatory requirements, or other extraordinary circumstances; provided that the federally qualified health center shall submit to the department an adjusted cost report covering a period of the previous two years. The director shall review the filing within a period of sixty days. The period may be extended by the director for an additional period not to exceed thirty days upon written notice to the filer. A filing shall be deemed to be approved unless disapproved by the director within the initial filing period or any extension thereof.

(c) The State may terminate the reimbursement methodology set forth in this section only in the event that changes in the relevant sections of the Social Security Act prohibit this reimbursement methodology.”

SECTION 3. The department of health shall provide resources to nonprofit, community-based health care providers for direct medical care for the uninsured, including primary medical, dental, behavioral health care, and ancillary services, including education, follow-up, and outreach, and pharmacy services. Distribution of funds may be on a “per visit” basis, taking into consideration need on all islands.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$2,000,000, or so much thereof as may be necessary for fiscal year 2006-2007, for direct medical care to the uninsured.

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

SECTION 5. New statutory material is underscored.¹

SECTION 6. This Act shall take effect on July 1, 2006.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 298

S.B. NO. 2719

A Bill for an Act Relating to Education.

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

PART I

SECTION 1. The charter school system is an important complement to the department of education’s school system, one that empowers local school boards and their charter schools by allowing more autonomy and flexibility and placing greater responsibility at the school level. The charter school system is made up of the board of education, the charter school administrative office, the charter school

review panel, and individual charter schools with differing visions, missions, and approaches to meeting the various needs and desires of Hawaii's communities.

The purposes of the charter school system include:

- (1) Providing administrators, parents, students, and teachers with expanded alternative public school choices in the types of schools, educational programs, opportunities, and settings, including services for underserved populations, geographical areas, and communities; and
- (2) Encouraging and, when resources and support are provided, serving as a research venue for the development, use, and dissemination of alternative and innovative approaches to educational governance, financing, administration, curricula, technology, and teaching strategies.

The purpose of this Act is to improve Hawaii's charter school system by adopting many of the priority proposals developed by the task force on charter school governance established by Act 87, Session Laws of Hawaii 2005, including:

- (1) Providing consistency and clarity for statutes relating to the charter schools by recodifying and reorganizing the statutes into a new chapter that authorizes the establishment of a charter school system and sets forth standards for the governance, administration, support, financing, autonomy, and accountability of charter schools, including start-up charter schools and conversion charter schools;
- (2) Renaming new century charter schools and new century conversion charter schools as "start-up charter schools" and "conversion charter schools", respectively;
- (3) Clarifying that conversion charter schools fall under the category of "charter schools" but distinguishing between the procedures for establishing start-up charter schools and conversion charter schools by creating separate sections for each;
- (4) Clarifying the charter authorizer role;
- (5) Expanding the charter school review panel's membership and duties;
- (6) Setting minimum and maximum limits on the amount a nonprofit organization can contribute annually per pupil, toward the operation of a conversion charter school;
- (7) Clarifying and enhancing the powers and duties of the charter school administrative office and its executive director;
- (8) Empowering the local school boards of the charter schools to negotiate memorandums of agreement of supplemental collective bargaining agreements with the exclusive representatives of their employees;
- (9) Allowing civil service employees of a conversion charter school to retain their civil service status in the department of education human resources civil service system; and
- (10) Amending other parts of the Hawaii Revised Statutes to maintain consistency with the provisions of the new chapter relating to charter schools.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to read as follows:

**“CHAPTER 302B
PUBLIC CHARTER SCHOOLS**

§302B-1 Definitions. Whenever used in this chapter, unless the context otherwise requires:

“Board” means the board of education.

“Charter school” refers to those public schools holding charters to operate as charter schools under this chapter, including start-up and conversion charter

schools, and that have the flexibility and independent authority to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, virtual education, length of the school day, week, or year, and personnel management.

“Charter school review panel” or “panel” means the panel established pursuant to section 302B-3 with the powers and duties to advise and make recommendations to the board regarding issuance and revocation of charters, detailed implementation plan revisions, and charter school evaluations.

“Conversion charter school” means:

- (1) Any existing department school that converts to a charter school and is managed and operated in accordance with section 302B-6;
- (2) Any existing department school that converts to a charter school and is managed and operated by a nonprofit organization in accordance with section 302B-6; or
- (3) A newly created school, consisting of programs or sections of existing public school populations that are funded and governed independently and may include part of a separate Hawaiian language immersion program using existing public school facilities.

“Department” means the department of education.

“Detailed implementation plan” means the document that details the charter school’s purpose, focus, operations, organization, finances, and accountability, and becomes the basis for a performance contract between the board and the charter school.

“Executive director” means the executive director of the charter school administrative office.

“Local school board” means the autonomous governing body of a charter school that receives the charter and is responsible for the financial and academic viability of the charter school, implementation of the charter, and the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws, and that has the power to negotiate supplemental collective bargaining agreements with exclusive representatives of their employees.

“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; and
- (2) Is domiciled in this state.

“Office” means the charter school administrative office.

“Organizational viability” means that a charter school:

- (1) Has been duly constituted in accordance with its charter;
- (2) Has a local school board established in accordance with law and the charter school’s charter;
- (3) Employs sufficient faculty and staff to provide the necessary educational program and support services to operate the facility in accordance with its charter;
- (4) Maintains accurate and comprehensive records regarding students and employees as determined by the office;
- (5) Meets appropriate standards of student achievement;
- (6) Cooperates with board, panel, and office requirements in conducting its functions;
- (7) Complies with applicable federal, state, and county laws and requirements;
- (8) In accordance with office guidelines and procedures, is financially sound and fiscally responsible in its use of public funds, maintains accurate and comprehensive financial records, operates in accordance

with generally accepted accounting practices, and maintains a sound financial plan;

- (9) Operates within the scope of its charter and fulfills obligations and commitments of its charter;
- (10) Complies with all health and safety laws and requirements; and
- (11) Complies with all board directives, policies, and procedures.

“Start-up charter school” means a new school established under section 302B-5.

§302B-2 Existing charter schools. Any charter school holding a charter to operate under part IV, subpart D, of chapter 302A, as that subpart existed before the effective date of this Act shall be considered a charter school for the purposes of this chapter.

§302B-3 Charter school review panel; establishment; powers and duties.

(a) There is established the charter school review panel, which shall be placed within the department for administrative purposes only. The panel shall be accountable to and report to the board.

(b) The panel shall consist of nine members, and shall include:

- (1) Two licensed teachers regularly engaged in teaching; provided that one teacher is employed at a start-up charter school, and one teacher is employed at a conversion charter school;
- (2) Two educational officers; provided that one educational officer is employed at a start-up charter school, and one educational officer is employed at a conversion charter school;
- (3) One member or former member of a charter school local school board;
- (4) The chair of the board of education or the chair’s designee;
- (5) The executive director or the executive director’s designee;
- (6) A representative of Hawaiian culture-focused schools; and
- (7) A representative of the University of Hawaii.

(c) The board shall appoint the remaining members of the panel other than the chair of the board and the executive director.

(d) Appointed panel members shall serve not more than three consecutive three-year terms, with each term beginning on July 1; provided that the initial terms of the appointed members that commence after June 30, 2006, shall be staggered as follows:

- (1) Three members to serve three-year terms;
- (2) Two members to serve two-year terms; and
- (3) Two members to serve a one-year term.

(e) Notwithstanding the terms of members, the board may add panel members at any time and replace panel members at any time when their positions become vacant through resignation, non-participation, or upon request of a majority of panel members.

(f) Panel members shall receive no compensation. When panel duties require that a panel member take leave of the panel member’s duties as a state employee, the appropriate state department shall allow the panel member to be placed on administrative leave with pay and shall provide substitutes, when necessary, to perform that panel member’s duties. Panel members shall be reimbursed for necessary travel expenses incurred in the conduct of official panel business.

(g) The panel shall establish operating procedures that shall include conflict of interest provisions for any member whose school of employment or local school board membership is before the panel.

(h) The chair of the panel shall be designated by the members of the panel for each school year beginning July 1 and whenever there is a vacancy. If the panel does

not designate its chair for the next school year by July 1, the board shall designate the panel chair. When the panel chair is vacant, the board shall designate an interim chair to serve until the panel designates its chair.

(i) The powers and duties of the panel shall be to:

- (1) Review charter applications for new charter schools in accordance with sections 302B-5 and 302B-6 and make recommendations to the board for the issuance of new charters; provided that if the board does not issue or deny the charter within sixty calendar days of the board's receipt of the recommendations, the recommendations shall automatically become effective;
- (2) Review significant amendments to detailed implementation plans to maximize the school's financial and academic success, long-term organizational viability, and accountability, and make recommendations to the board; provided that if the board does not approve or deny the amendments within sixty calendar days of receipt of the recommendations, the recommendations shall automatically become effective;
- (3) Recommend to the board reporting requirements for charter schools;
- (4) Review annual self-evaluation reports from charter schools and make recommendations to the board;
- (5) As directed by the board, evaluate any aspect of a charter school that the board may have concerns with and make recommendations to the board, which may include probation or revocation; provided that if the board does not take action on the recommendations within sixty calendar days, the recommendations shall automatically become effective;
- (6) Periodically recommend to the board improvements in the board's monitoring and oversight of charter schools;
- (7) Periodically recommend to the board improvements in the office's support of charter schools and management of the charter school system.

(j) In the case that the panel decides not to recommend the issuance of a new charter, or to recommend significant amendments to detailed implementation plans, the board shall adopt rules for an appeals process.

(k) The board shall provide for the staff support and expenses of the panel. The board shall submit to the legislature annual appropriation requests to fund the operations of the panel.

(l) The panel shall be exempt from chapter 92.

§302B-4 Limits on charter schools. Beginning July 2007, the board, with the recommendation of the panel, may authorize one new start-up charter school for each existing start-up charter school that has received a three-year or longer accreditation from the Western Association of Schools and Colleges or a comparable accreditation authority as determined by the panel, or for each start-up charter school whose charter is revoked. The total number of conversion charter schools authorized by the board, with the recommendation of the panel, shall not exceed twenty-five.

§302B-5 Start-up charter schools; establishment. (a) New start-up charter schools may be established pursuant to this section.

(b) Any community, group of teachers, group of teachers and administrators, or nonprofit organization may submit a letter of intent to the office to form a charter school, establish an interim local school board as its governing body, and develop a detailed implementation plan pursuant to subsection (d).

(c) The start-up charter school application process and schedule shall be determined by the board, and shall provide for and include the following elements:

- (1) The submission of a letter of intent to operate a start-up charter school;

- (2) The timely transmittal of the application form and completion guidelines to the interim local school board;
 - (3) The timely submission to the board of a completed application;
 - (4) The timely review of the application by the panel for completeness, and notification of the interim local school board if the application is complete or, if the application is insufficient, a written statement of the elements of the application that require completion;
 - (5) The timely resubmission of the application;
 - (6) Upon receipt of a completed application, the convening of the panel by the panel chairperson to begin review of the application;
 - (7) The timely notification of the applicant of any revisions the panel requests as necessary for a recommendation of approval to the board;
 - (8) The timely transmission of the panel's recommendation to the board for adjudication;
 - (9) Following the submission of an application, issuance of a charter or denial of the application by the board by majority vote; provided that if the board does not approve the application and issue a charter, provisions requiring the board to:
 - (A) Clearly identify in writing its reasons for not issuing the charter, which may be used as guidelines for an amended plan; and
 - (B) Allow the local school board to revise its plan in accordance with the board's guidelines, and resubmit an amended plan within ten calendar days;
 - (10) A provision for a final date on which a decision must be made, upon receipt of an amended plan;
 - (11) A provision that no start-up charter school may begin operation before obtaining board approval of its charter; and
 - (12) A requirement that upon approval of the start-up charter school, the office shall submit to the board a proposed budget for funding of the start-up school for submittal to the governor and legislature.
- (d) An application to become a start-up charter school shall include a detailed implementation plan that meets the requirements of this subsection and section 302B-9. The plan shall include the following:
- (1) A description of employee rights and management issues and a framework for addressing those issues that protects the rights of employees;
 - (2) A plan for identifying, recruiting, and retaining highly-qualified instructional faculty;
 - (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;
 - (4) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
 - (5) A 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 the educational content and performance standards developed by the department for the public school system;
 - (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;

- (6) A governance structure for the charter school that incorporates a conflict of interest policy and a plan for periodic training to carry out the duties of local school board members;
- (7) A financial plan based on the most recent fiscal year's per-pupil charter school allocation that demonstrates the ability to meet the financial obligations of one-time, start-up costs and ongoing costs such as monthly payrolls, faculty recruitment, professional development, and facilities costs; and
- (8) A facilities plan.

§302B-6 Conversion charter schools; establishment. (a) A conversion charter school may be established pursuant to this section.

(b) Any department school, school community council, group of teachers, group of teachers and administrators, or nonprofit organization may submit a letter of intent to the office to convert a department school to a charter school, establish an interim local school board as its governing body, and develop a detailed implementation plan pursuant to subsection (d).

(c) The conversion charter school application process and schedule shall be determined by the board, and shall provide for and include the following elements:

- (1) The submission of a letter of intent to convert to a charter school;
- (2) The timely transmittal of the application form and completion guidelines to the interim local school board;
- (3) The timely submission to the board of a completed application; provided that the application shall include certification and documentation that the application and the proposed detailed implementation plan was approved by a majority of the votes cast by existing administrative, support, teaching personnel, and parents of students at the proposed conversion charter school;
- (4) The timely review of the application by the panel for completeness, and notification of the interim local school board if the application is complete or, if the application is insufficient, a written statement of the elements of the application that require completion;
- (5) The timely resubmission of the application;
- (6) Upon receipt of a completed application, the convening of the panel by the panel chairperson to begin review of the application;
- (7) The timely notification of the applicant of any revisions the panel may request as necessary for a recommendation of approval to the board;
- (8) The timely transmission of the panel's recommendation to the board for adjudication;
- (9) Following the submission of an application, issuance of a charter or denial of the application by the board by majority vote; provided that if the board does not approve the application and issue a charter, provisions requiring the board to:
 - (A) Clearly identify in writing its reasons for not issuing the charter, which may be used as guidelines for an amended plan; and
 - (B) Allow the local school board to revise its plan in accordance with the board's guidelines, and resubmit an amended plan within ten calendar days;
- (10) A provision for a final date on which a decision must be made upon receipt of an amended plan;
- (11) A provision that no conversion charter school may begin operation before obtaining board approval of its charter; and

- (12) A requirement that upon approval of the conversion charter school, the office shall submit to the board a proposed budget for funding of the start-up school for submittal to the governor and legislature.

(d) An application to become a conversion charter school shall include a detailed implementation plan that meets the requirements of this subsection and section 302B-9. The plan shall include the following:

- (1) A description of employee rights and management issues and a framework for addressing those issues that protects the rights of employees;
- (2) A plan for identifying, recruiting, and retaining highly-qualified instructional faculty;
- (3) A plan for identifying, recruiting, and selecting students that is not exclusive, elitist, or segregationist;
- (4) The curriculum and instructional framework to be used to achieve student outcomes, including an assessment plan;
- (5) A 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 the educational content and performance standards developed by the department for the public school system;
 - (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;
- (6) A governance structure for the charter school that incorporates a conflict of interest policy and a plan for periodic training to carry out the duties of local school board members;
- (7) A financial plan based on the most recent fiscal year's per-pupil charter school allocation that demonstrates the ability to meet the financial obligations of one-time, start-up costs and ongoing costs such as monthly payrolls, faculty recruitment, professional development, and facilities costs; and
- (8) A facilities plan.

(e) A nonprofit organization may submit a letter of intent to the office to convert a department school to a conversion charter school, operate and manage the school, establish a local school board as its governing body, and develop a detailed implementation plan pursuant to subsection (d); provided that:

- (1) As the governing body of the conversion charter school, the local school board shall be composed of the board of directors of the nonprofit organization and not representatives of the participant groups specified in section 302B-7. The nonprofit organization may also appoint advisory groups of community representatives for each school managed by the nonprofit organization; provided that these groups 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 conversion charter school to be operated by the nonprofit organization shall be formulated, developed, and submitted by the nonprofit organization, and shall be approved by a majority of the votes cast by existing administrative, support, and teaching personnel, and parents of the students of the proposed conversion charter school;

- (3) The board of directors of the nonprofit organization, as the governing body for the conversion charter school that it operates and manages, shall have the same protections that are afforded to the board in its role as the conversion charter school governing body;
- (4) Any conversion charter school that is managed and operated by a nonprofit organization shall be eligible for the same federal and state funding as other public schools; provided that the nonprofit organization makes a minimum annual contribution of \$1 per pupil toward the operation of a conversion charter school for every \$4 per pupil allocated by the office for the operation of the conversion charter school; provided that in no event shall the nonprofit organization be required to contribute more than the total required contribution per pupil per year. As used in this section, "total required contribution" means:
 - (A) \$1,500 for school years 2006-2007 through 2010-11;
 - (B) \$1,650 for school years 2011-2012 through 2015-2016; and
 - (C) \$1,815 for school years 2016-2017 through 2020-2021; and
- (5) If, at any time, the board of directors of the nonprofit organization governing the conversion charter school votes to discontinue its relationship with the charter school, the charter school may submit an application with a revised detailed implementation plan to the panel to continue as a conversion school without the participation of the nonprofit organization.
 - (f) Any nonprofit organization that seeks to manage or operate a conversion charter school as provided in subsection (e) 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 licensure or accreditation, as applicable; 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.
 - (g) Any public school or schools, programs, or sections of existing public school populations that are part of a separate Hawaiian language immersion program using existing public school facilities may submit a letter of intent to the office to form a conversion charter school pursuant to this section.
 - (h) In the event of a conflict between the provisions in this section and other provisions in this chapter, this section shall control.

§302B-7 Charter school local school boards; powers and duties. (a) All local school boards, with the exception of those of conversion charter schools that are managed and operated by a nonprofit organization pursuant to section 302B-6(e), shall be composed of, at a minimum, one representative from each of the following participant groups:

- (1) Principals;
- (2) Instructional staff members selected by the school instructional staff;
- (3) Support staff selected by the support staff of the school;
- (4) Parents of students attending the school selected by the parents of the school;
- (5) Student body representatives selected by the students of the school; and

(6) The community at large.

(b) No chief executive officer, chief administrative officer, executive director, or otherwise designated head of a school may serve as the chair of the local school board.

(c) The local school board shall be the autonomous governing body of its charter school and shall be responsible for the financial and academic viability of the charter school, implementation of the charter, and the independent authority to determine the organization and management of the school, the curriculum, virtual education, and compliance with applicable federal and state laws. The local school board shall have the power to negotiate supplemental collective bargaining agreements with the exclusive representatives of their employees.

(d) Local school boards shall be exempt from chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. Charter schools are encouraged to use the provisions of chapter 103D wherever possible; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school to any other provision of chapter 103D.

(e) Charter schools and their local school boards shall be exempt from the requirements of chapters 91 and 92. The local school boards shall:

- (1) Make available the notices and agendas of public meetings:
 - (A) At a publicly accessible area in the local school board's office or the charter school administrative office so as to be available for review during regular business hours;
 - (B) On the local school board's or charter school's Internet web site not less than six calendar days prior to the public meeting, unless a waiver is granted by the executive director in the case of an emergency; and
 - (2) Make available the minutes from public meetings on a timely basis in:
 - (A) The local school board's office or the charter school administrative office so as to be available for review during regular business hours; and
 - (B) On the local school board's or charter school's Internet web site.
- (f) The State shall afford the local school board of any charter school the same protections as the State affords the board.

§302B-8 Charter school administrative office. (a) There is established a charter school administrative office, which shall be attached to the department 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 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 board may hire the executive director on a multi-year contract. 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 and in consultation with the charter schools, shall be responsible for the internal organization, operation, and management of the charter school system, including:

- (1) Preparing and executing the budget for the charter schools, including submission of the budget request to the board, the governor, and the legislature;
- (2) Allocating annual appropriations to the charter schools and distribution of federal funds to charter schools;

- (3) Complying with applicable state laws related to the administration of the charter schools;
- (4) Preparing contracts between the charter schools and the department for centralized services to be provided by the department;
- (5) Preparing contracts between the charter schools and other state agencies for financial or personnel services to be provided by the agencies to the charter schools;
- (6) Providing independent analysis and recommendations on charter school issues;
- (7) Representing charter schools and the charter school system in communications with the board, the governor, and the legislature;
- (8) Providing advocacy, assistance, and support for the development, growth, progress, and success of charter schools and the charter school system;
- (9) Providing guidance and assistance to charter applicants and charter schools to enhance the completeness and accuracy of information for board review;
- (10) Assisting charter applicants and charter schools in coordinating their interactions with the board as needed;
- (11) Assisting the board to coordinate with charter schools in board investigations and evaluations of charter schools;
- (12) Serving as the conduit to disseminate communications from the board and department to all charter schools;
- (13) Determining charter school system needs and communicating such needs with the board and department;
- (14) Establishing a dispute resolution and mediation panel; and
- (15) Upon request by one or more charter schools, assisting in the negotiation of a collective bargaining agreement with the exclusive representative of its employees.

(c) The executive director shall be evaluated annually by the board.

(d) The salary of the executive director and staff shall be set by the board based upon the recommendations of charter schools within the state; provided that the salaries and operational expenses of the 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.

(e) The office shall include in its annual budget request additional funds to cover the estimated costs of:

- (1) Vacation and sick leave accrued by employees transferring to a charter school from another state agency or department;
- (2) Substitute teachers needed when a teacher is out on vacation or sick leave;
- (3) Adjustments to enrollments; and
- (4) Arbitration in the grievance process.

(f) The office shall withhold funds for charter school enrollments that are inconsistent with approved detailed implementation plans.

(g) The office shall withhold funds to repay overpayments or overallocations received by charter schools when not repaid in a timely manner in accordance with rules adopted by the board.

(h) The office may carry over funds from previous year allocations. Funds distributed to charter schools shall be considered expended.

§302B-9 Exemptions from state laws. (a) Charter schools shall be exempt from chapters 91 and 92 and all other state laws in conflict with this chapter, except those regarding:

- (1) Collective bargaining under chapter 89; provided that:
 - (A) The exclusive representatives as defined in chapter 89 and the local school board of the charter school may enter into supplemental agreements that contain cost and noncost items to facilitate decentralized decision-making;
 - (B) The agreements shall be funded from the current allocation or other sources of revenue received by the charter school; provided that collective bargaining increases for employees shall be allocated by the department of budget and finance to the charter school administrative office for distribution to charter schools; and
 - (C) These supplemental agreements may differ from the master contracts negotiated with the department;
- (2) Discriminatory practices under section 378-2; and
- (3) Health and safety requirements.

(b) Charter schools and the office shall be exempt from chapter 103D, but shall develop internal policies and procedures for the procurement of goods, services, and construction, consistent with the goals of public accountability and public procurement practices. Charter schools and the office are encouraged to use the provisions of chapter 103D where possible; provided that the use of one or more provisions of chapter 103D shall not constitute a waiver of the exemption from chapter 103D and shall not subject the charter school or the office to any other provision of chapter 103D. Charter schools and the office shall account for funds expended for the procurement of goods and services, and this accounting shall be available to the public.

(c) Any charter school, prior to the beginning of the school year, may enter into an annual contract with any department for centralized services to be provided by that department.

(d) Notwithstanding any law to the contrary, as public schools and entities of the State, neither a charter school nor the office may bring suit against any other entity or agency of the State.

§302B-10 Civil service status; employee rights. (a) Civil service employees of department schools shall retain their civil service status upon the conversion of their school to a conversion charter school. Positions in a conversion charter school that would be civil service in a department public school shall be civil service positions and subject to chapter 76. An employee with civil service status at a conversion charter school who transfers, is promoted, or takes a voluntary demotion to another civil service position shall be entitled to all of the rights, privileges, and benefits of continuous, uninterrupted civil service. Civil service employees of a conversion charter school shall have civil service status in the department's civil service system and shall be entitled to all rights, privileges, and benefits as other civil service employees employed by the department. Exempt employees as provided in section 76-16(b)(11)(B) of a conversion charter school shall have support services personnel status in the department's support services personnel system and shall be entitled to all rights, privileges, and benefits as other exempt employees employed by the department in their support services personnel system.

(b) The State shall afford administrative, support, and instructional employees in charter schools full participation in the State's systems for retirement, workers' compensation, unemployment insurance, temporary disability insurance, and health benefits in accordance with the qualification requirements for each.

(c) The department, to the extent possible, shall provide its position listings to the office and any interested local school board of any charter school.

(d) The department, in conjunction with the office, shall facilitate and encourage the movement of instructional personnel between the department and charter schools; provided that:

- (1) Comparable and verifiable professional development and employee evaluation standards and practices, as determined and certified by the office, are in place in charter schools for instructional staff;
- (2) Licensed charter school teachers, as determined by the Hawaii teacher standards board, who are not yet tenured in the department and are entering or returning to the department after full-time employment of no less than one full school year at a charter school, shall be subject to no more than one year of probationary status; and
- (3) Tenured department licensed teachers, as determined by the department, who transfer to charter schools shall not be required to serve a probationary period.

§302B-11 Administration of workers' compensation. The department of human resources development shall administer workers' compensation claims for employees of charter schools, who shall be covered by the same self-insured workers' compensation system as other public employees. The department of human resources development shall process, investigate, and make payments on claims; provided that:

- (1) Charter schools shall compile the preliminary claim form and forward it to the department of human resources development; and
- (2) The department of human resources development shall receive no more than 0.07 per cent of the EDN 600 appropriation to process these workers' compensation claims.

§302B-12 Funding and finance. (a) Beginning with fiscal year 2006-2007, and each fiscal year thereafter, the office shall submit a request for general fund appropriations for each charter school based upon:

- (1) The actual and projected enrollment figures in the current school year for each charter school;
- (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 regular education 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 consolidated annual financial report; provided that the legislature may make an adjustment to the per-pupil allocation for the purposes of this section; and
- (3) Those fringe benefit costs requested shall be included in the department of budget and finance's annual budget request. No fringe benefit costs shall be charged directly to or deducted from the charter school per-pupil allocations unless they are already included in the funds distributed to the charter school.

The legislature shall make an appropriation based upon the budget request; provided that the legislature may make additional appropriations for fringe, workers' compensation, and other employee benefits, facility costs, and 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) Charter schools shall be eligible for all federal financial support to the same extent as all other public schools. The department shall provide the office with all federal grant proposals that include charter schools as potential recipients and

timely reports on federal grants received for which charter schools may apply. Federal funds received by the department for charter schools shall be transferred to the office for distribution to charter schools in accordance with the federal requirements. 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 shall not exceed six and one-half per cent of the charter school's federal grants and subsidies.

Any charter school shall be eligible to receive any supplemental federal grant or award for which any other public school may submit a proposal, or any supplemental federal grants limited to charter schools; provided that if department administrative services, including funds management, budgetary, fiscal accounting, or other related services, are provided with respect to these supplemental grants, the charter school shall reimburse the department for the actual costs of the administrative services in an amount that shall not exceed six and one-half per cent of the supplemental grant for which the services are used.

All additional funds generated by the local school boards, that are not from a supplemental grant, shall be held separate from allotted funds and may be expended at the discretion of the local school boards.

(c) To enable charter schools to access state funding prior to the start of each school year, foster their fiscal planning, and enhance their accountability, the office shall:

- (1) Provide fifty per cent of a charter school's per-pupil allocation based on the charter school's projected student enrollment no later than July 20 of each fiscal year; provided that the charter school shall submit to the office a projected student enrollment no later than May 15 of each year;
- (2) Provide an additional forty per cent of a charter school's per-pupil allocation no later than November 15 of each year; provided that the charter school shall submit to the office:
 - (A) Student enrollment as verified on October 15 of each year; provided that the student enrollment shall be verified on the last business day immediately prior to October 15 should that date fall on a weekend; and
 - (B) An accounting of the percentage of student enrollment that transferred from public schools established and maintained by the department; provided that these accountings shall also be submitted by the office to the legislature no later than twenty days prior to the start of each regular session; and
- (3) The remaining ten per cent per-pupil allocation of a charter school no later than January 1 of each year as a contingency balance to ensure fiscal accountability;

provided that the board may make adjustments in allocations based on noncompliance with office administrative procedures and board-approved accountability requirements.

(d) The department shall provide appropriate transitional resources to a 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 conversion.

(e) No start-up charter school or conversion charter school may assess tuition.

§302B-13 Weighted student formula. (a) Notwithstanding section 302B-11 and beginning September 1, 2006, charter schools shall elect whether to receive allocations according to the department's weighted student formula adopted pursuant to section 302A-1303.6; provided that:

- (1) All charter schools, as a group, with each local school board being accorded one vote, shall elect, by greater than two-thirds agreement among the local school boards, whether to receive allocations through the department's weighted student formula; provided that the nonprofit that governs more than one conversion charter school may cast one vote representing each school it governs;
- (2) Any election by charter schools to receive department allocations, or not to receive allocations, through the department's weighted student formula shall be made by September 1 of each even-numbered year, and the election shall apply to the fiscal biennium beginning July 1 of the following year; provided that the appropriate funds shall be transferred by the department to the charter school administrative office for distribution to the charter schools; and
- (3) The election to receive allocations, or not to receive allocations, through the department's weighted student formula shall be communicated to the department through the office.

(b) The charter schools, through the office, may propose to the board an alternative weighted student formula, approved of by more than two-thirds of the local school boards, with each local school board being accorded one vote, to be administered by the office and to apply to the per-pupil allocation for charter schools.

§302B-14 Accountability; probationary status; revocation of charter. (a)

Every charter school shall conduct annual self-evaluations that shall be submitted to the board 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;
- (2) The identification of any innovations or research that may assist other public schools;
- (3) The identification of any administrative and legal barriers to meeting the adopted benchmarks, and recommendations for improvements and modifications to address the barriers;
- (4) An evaluation of student achievement within the charter school;
- (5) A profile of the charter school's enrollment and the community it serves, including a breakdown of regular education and special education students; and
- (6) An evaluation of the school's organizational viability.

(b) The board shall conduct multi-year evaluations of charter schools that have been chartered for four or more years. The board shall adopt rules pursuant to chapter 91 for its evaluations.

- (c) The board may conduct special evaluations of charter schools at any time.
- (d) The board may place a charter school on probationary status; provided

that:

- (1) The panel evaluates the charter school or reviews an evaluation of the charter school and makes recommendations to the board;
- (2) The board and the office are involved in substantive discussions with the charter school regarding the areas of deficiencies;
- (3) The notice of probation is delivered to the charter school and specifies the deficiencies requiring correction, the probation period, and monitoring and reporting requirements;
- (4) For deficiencies related to student performance, a charter school shall be allowed two years to improve student performance; and

- (5) For deficiencies related to financial plans, a charter school shall be allowed one year to develop a sound financial plan.

The charter school shall remain on probationary status until the board votes to either remove the charter school from probationary status or revoke its charter.

(e) If a charter school fails to resolve deficiencies by the end of the probation period, the board may revoke the charter; provided that the vote of two-thirds of all the members to which the board is entitled shall be required to revoke the charter.

(f) The board may place a charter school on probationary status or revoke the charter for serious student or employee health or safety deficiencies; provided that:

- (1) The charter school is given notice of specific health or safety deficiencies and is afforded an opportunity to present its case to the board;
- (2) The board chair appoints a task group, which may be an investigative task group, the panel, or the office, to visit the charter school and conduct meetings with its local school board and its school community to gather input;
- (3) Based on its findings, the task group shall recommend to the board to revoke the charter, place the charter school on probation, or continue the charter;
- (4) The vote of two-thirds of all the members to which the board is entitled shall be required to revoke the charter;
- (5) The best interest of the school's students guide all decisions; and
- (6) After a decision to revoke a charter, the charter school shall be allowed to remain open until a plan for an orderly shut-down or transfer of students and assets is developed and executed, or until the school year ends, whichever comes first.

(g) If there is an immediate concern for student or employee health or safety at a charter school, the board, in consultation with the office, may adopt an interim restructuring plan that may include the appointment of an interim local school board, an interim local school board chairperson, or a principal to temporarily assume operations of the school; provided that if possible without further jeopardizing the health or safety of students and employees, the charter school's stakeholders and community are first given the opportunity to elect a new local school board which shall appoint a new interim principal.

(h) The board shall adopt rules pursuant to chapter 91 for placing charter schools on probation and for revoking a charter.

(i) If, at any time, a charter school dissolves or the charter is revoked, the State shall have first right, at no cost to the State, to all the assets and facilities of the charter school, except as otherwise provided by law.

§302B-15 Responsibilities of department of education; special education services. (a) The department shall collaborate with the 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 office shall collaborate to develop a list of central services that the department may offer for purchase by a charter school at an annual cost to be negotiated between an individual charter school and the department. The department shall enter into a contract with a charter school to provide these services, which shall be re-negotiated on an annual basis.

(b) The department shall be responsible for the provision of a free appropriate public education. Any 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 program. The programs and services for the student shall be determined collaboratively by the student's individualized education program team and the student's parents or legal guardians.

If the charter school is unable to provide all of the required services, then services to the student shall be provided by the department according to services determined by the student's individualized educational program team. The department shall collaborate with the office to develop guidelines related to the provision of special education services and resources to each charter school. The department shall review all of the current individualized education programs of special education students enrolled in a charter school and may offer staff, 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.

§302B-16 Sports. The department shall provide students at charter schools with the same opportunity to participate in athletics provided to students at other public schools. If a student at a charter school wishes to participate in a sport for which there is no program at the charter school, the department shall allow that student to participate in a comparable program of any public school in the complex in which the charter school is located."

SECTION 3. Chapter 302A, part IV, subpart D, Hawaii Revised Statutes, is repealed.

PART II

SECTION 4. The purpose of this part is to make conforming amendments to various sections of the Hawaii Revised Statutes in accordance with the provisions of the new charter school law.

SECTION 5. Chapter 89, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§89- Charter school collective bargaining; bargaining unit; employer; exclusive representative. (a) Employees of charter schools shall be assigned to an appropriate bargaining unit as specified in section 89-6; provided that if a charter school employee's job description contains the duties and responsibilities of an employee that could be assigned to more than one bargaining unit, the duties and responsibilities that are performed by the employee for the majority of the time, based on the employee's average workweek, shall be the basis of bargaining unit assignment for the employee.

(b) For the purpose of negotiating a collective bargaining agreement for charter school employees who are assigned to an appropriate bargaining unit, the employer shall be determined as provided in section 89-6(d).

(c) For the purpose of negotiating a memorandum of agreement or a supplemental agreement that only applies to employees of a charter school, the employer shall mean the local school board, subject to the conditions and requirements contained in the applicable sections of this chapter governing any memorandum of agreement or supplemental agreement.

(d) Negotiations over matters covered by this section shall be conducted between the employer and exclusive representative pursuant to this chapter. Cost items that are appropriated for and approved by the legislature and contained in a collective bargaining agreement, memorandum of agreement, or supplemental agreement covering, wholly or partially, employees in charter schools shall be allocated by the department of budget and finance to the charter school administrative office for distribution to charter schools. However, if the charter school administrative office deems it appropriate, the cost items may be funded from a

charter school's existing allocation or other sources of revenue received by a charter school.”

SECTION 6. Section 26-35.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For purposes of this section, “member” means any person who is appointed, in accordance with the law, to serve on a temporary or permanent state board, including members of the local school board of any [new century] charter school [~~established under section 302A-1182 or new century conversion charter school~~] established under [~~section 302A-1191;~~] chapter 302B, council, authority, committee, or commission, established by law or elected to the board of education or the board of trustees of the employees' retirement system under section 88-24; provided that “member” shall not include any person elected to serve on a board or commission in accordance with chapter 11 other than a person elected to serve on the board of education.”

SECTION 7. Section 89-6, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) The following individuals shall not be included in any appropriate bargaining unit or be entitled to coverage under this chapter:

- (1) Elected or appointed official;
- (2) Member of any board or commission; provided that nothing in this paragraph shall prohibit a member of a collective bargaining unit from serving on a local school board of a charter school established under chapter 302B;
- (3) Top-level managerial and administrative personnel, including the department head, deputy or assistant to a department head, administrative officer, director, or chief of a state or county agency or major division, and legal counsel;
- (4) Secretary to top-level managerial and administrative personnel under paragraph (3);
- (5) Individual concerned with confidential matters affecting employee-employer relations;
- (6) Part-time employee working less than twenty hours per week, except part-time employees included in bargaining unit (5);
- (7) Temporary employee of three months' duration or less;
- (8) Employee of the executive office of the governor or a household employee at Washington Place;
- (9) Employee of the executive office of the lieutenant governor;
- (10) Employee of the executive office of the mayor;
- (11) Staff of the legislative branch of the State;
- (12) Staff of the legislative branches of the counties, except employees of the clerks' offices of the counties;
- (13) Any commissioned and enlisted personnel of the Hawaii national guard;
- (14) Inmate, kokua, patient, ward, or student of a state institution;
- (15) Student help;
- (16) Staff of the Hawaii labor relations board;
- (17) Employee of the Hawaii national guard youth challenge academy; or
- (18) Employees of the office of elections.”

SECTION 8. Section 302A-101, Hawaii Revised Statutes, is amended as follows:

1. By adding three new definitions to be appropriately inserted and to read:

““Charter school administrative office” or “office” means the office established in section 302B-8 responsible for the internal organization, operation, and management of the charter school system.

“Charter school review panel” or “panel” means the panel established in section 302B-3 with the powers and duties to make recommendations to the board regarding charter schools.

“Charter schools” means public schools holding charters to operate as charter schools under chapter 302B, including start-up and conversion charter schools, that have the flexibility to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, length of the school day, week, or year, and personnel management.”

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

““Public schools” means all academic and noncollege type schools established and maintained by the department and [new century] charter schools chartered by the board of education, in accordance with law.”

3. By repealing the definition of “new century charter schools”.

~~[““New century charter schools” means public schools chartered by the board of education with the flexibility to implement alternative frameworks with regard to curriculum, facilities management, instructional approach, length of the school day, week, or year, and personnel management.”]~~

SECTION 9. Section 302A-411, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department shall establish and maintain junior kindergartens and kindergartens with a program of instruction as a part of the public school system; provided that:

- (1) Attendance shall not be mandatory; and
- (2) ~~[New century charter]~~ Charter schools ~~[and new century conversion charter schools]~~ shall be excluded from mandatory participation in the program.”

SECTION 10. Section 302A-1101, Hawaii Revised Statutes, is amended to read as follows:

“§302A-1101 Department of education; board of education; superintendent of education. (a) There shall be a principal executive department to be known as the department of education, which shall be headed by an elected policy-making board to be known as the board of education. The board shall have power in accordance with law to formulate statewide educational policy, adopt student performance standards and assessment models, monitor school success, and to appoint the superintendent of education as the chief executive officer of the public school system.

(b) The board shall appoint, and may remove, the superintendent by a majority vote of its members. The superintendent:

- (1) May be appointed without regard to the state residency provisions of section 78-1(b);
- (2) May be appointed for a term of up to four years; and
- (3) May be terminated only for cause.

(c) The board shall invite the senior military commander in Hawaii to appoint a nonvoting military representative to the board, who shall serve for a two-year term without compensation. As the liaison to the board, the military representa-

tive shall advise the board regarding state education policies and departmental actions affecting students who are enrolled in public schools as family members of military personnel. The military representative shall carry out these duties as part of the representative's official military duties and shall be guided by applicable state and federal statutes, regulations, and policies and may be removed only for cause by a majority vote of the members of the board.

(d) The board shall serve as the charter authorizer for charter schools, with the power and duty to issue charters, oversee and monitor charter schools, hold charter schools accountable for their performance, and revoke charters."

SECTION 11. Section 302A-1124, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The department, through the board and its superintendent, shall establish a school community council system under which each public school, excluding ~~new-century~~ charter schools ~~[and new-century conversion charter schools]~~, shall create and maintain a school community council. Each school community council shall:

- (1) Review and evaluate the school's academic plan and financial plan, and either recommend revisions of the plans to the principal, or recommend the plans for approval by the complex area superintendent;
- (2) Ensure that the school's academic and financial plans are consistent with the educational accountability system under section 302A-1004;
- (3) Participate in principal selection and evaluation, and transmit any such evaluations to the complex area superintendent; and
- (4) Provide collaborative opportunities for input and consultation."

SECTION 12. 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]~~.

(b) Beginning in fiscal year ~~[2004-2005,]~~ 2006-2007, and every year thereafter, the ~~[charter school administrative]~~ office shall distribute the 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 13. Section 302A-1303.6, Hawaii Revised Statutes, is amended to read as follows:

"[F]§302A-1303.6[F] Weighted student formula. Based upon recommendations from the committee on weights, the board of education, not less than annually, shall adopt a weighted student formula for the allocation of moneys to public schools ~~[which] that~~ takes into account the educational needs of each student. The department, upon the receipt of appropriated moneys, shall use the weighted student formula to allocate funds to public schools. Principals shall expend moneys provided to the principals' schools. This section shall only apply to ~~[new-century] charter schools [and new-century conversion charter schools]~~ for fiscal years in which the ~~[new-century] charter schools [and new-century conversion charter~~

schools] elect pursuant to section [302A-1182.5] 302B-13 to receive allocations according to the weighted student formula.”

SECTION 14. Section 302A-1505, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Prior to informing the department about the school’s repair and maintenance needs, the school’s principal shall consider the recommendations made by the school community council or the local school board, if the school is a [~~new century conversion~~] charter school.”

SECTION 15. Section 302A-1507, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established a classroom cleaning project in all public schools, excluding [~~new century~~] charter schools [~~and new century conversion charter schools~~]. Each school, through its school community council, may develop mechanisms to provide for classroom cleaning, including but not limited to having parent, student, or other community groups clean the classrooms on a regular, continuing basis.”

SECTION 16. Section 707-711, Hawaii Revised Statutes, is amended to read as follows:

“**§707-711 Assault in the second degree.** (1) A person commits the offense of assault in the second degree if:

- (a) The person intentionally or knowingly causes substantial bodily injury to another;
 - (b) The person recklessly causes serious bodily injury to another person;
 - (c) The person intentionally or knowingly causes bodily injury to a correctional worker, as defined in section 710-1031(2), who is engaged in the performance of duty or who is within a correctional facility;
 - (d) The person intentionally or knowingly causes bodily injury to another person with a dangerous instrument; or
 - (e) The person intentionally or knowingly causes bodily injury to an educational worker who is engaged in the performance of duty or who is within an educational facility. For the purposes of this section, “educational worker” means any administrator, specialist, counselor, teacher, or employee of the department of education, an employee of a charter school, or a person who is a volunteer in a school program, activity, or function that is established, sanctioned, or approved by the department of education or a person hired by the department of education on a contractual basis and engaged in carrying out an educational function.
- (2) Assault in the second degree is a class C felony.”

PART III

SECTION 17. The purpose of this part is to amend various sections of the Hawaii Revised Statutes relating to education and the department of education to further the ability of the State’s charter schools to act independently of the department of education and the public schools that the department establishes and operates.

SECTION 18. Section 302A-301, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) There is established in the state treasury a trust fund to be known as the incentive and innovation grant trust fund to provide incentive and innovation grants

to qualified schools[.], including charter schools. Expenditures from the trust fund shall be made by the department and shall be subject to the allotment and expenditure plan required under section 37-34.5. Notwithstanding any other law to the contrary, tax deductible donations may be made to, and received by, this trust fund.”

SECTION 19. Section 302A-1128, Hawaii Revised Statutes, is amended to read as follows:

“**§302A-1128 Department powers and duties.** (a) The department shall have entire charge and control and be responsible for the conduct of all affairs pertaining to public instruction[.] in the public schools the department establishes and operates, including operating and maintaining the capital improvement and repair and maintenance programs for department and school facilities. The department may establish and maintain schools for secular instruction at such places and for such terms as in its discretion it may deem advisable and the funds at its disposal may permit. The schools may include high schools, kindergarten schools, schools or classes for pregrade education, boarding schools, Hawaiian language medium education schools, and evening and day schools. The department may also maintain classes for technical and other instruction in any school where there may not be pupils sufficient in number to justify the establishment of separate schools for these purposes.

(b) The department shall regulate the courses of study to be pursued in all grades of the public schools it establishes and operates, 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 provide opportunities for all students to 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 “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.

(c) Nothing in this section shall interfere with those persons attending a summer school.”

SECTION 20. Section 302A-1403, Hawaii Revised Statutes, is amended to read as follows:

“~~[§302A-1403]~~ **Authority to secure federal funds.** The department, the charter school administrative office, director of finance, and governor may take such steps and perform such acts as may be necessary or proper ~~[in order]~~ to secure any such federal funds for the purposes specified in sections 302A-1401 and 302A-1402.”

SECTION 21. Section 302A-1404, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The department and the charter school administrative office, as appropriate, may retain and expend federal indirect overhead reimbursements for

discretionary grants in excess of the negotiated rate for such reimbursements as determined by the director of finance and the superintendent[-] or the director of finance and the executive director of the charter school administrative office.”

PART IV

SECTION 22. Public charter schools have great difficulty with leasing affordable land on which to locate schools due to prohibitive costs and zoning restrictions. As public schools and state agencies, charter schools should have access to state-held lands and buildings and enjoy comparable rates and conditions as those afforded other state agencies.

The purpose of this part is to encourage the State to enter into long-term leases of lands and buildings with charter schools for the location of school facilities.

SECTION 23. Chapter 171, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§171- Lease to public charter schools. Notwithstanding any limitations to the contrary, the board may lease to charter schools, at nominal consideration, by direct negotiation and without recourse to public auction, public lands and buildings under the control of the department. Except as provided in this section, the terms and conditions of sections 171-33 and 171-36 shall apply. The lands and buildings leased under this section shall be used by the charter schools for educational purposes only. This section shall not apply to conversion charter schools.”

PART V

SECTION 24. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 25. This Act shall take effect upon its approval; provided that the amendments made to section 89-6(g), Hawaii Revised Statutes, by section 7 of this Act shall not be repealed when sections 89-6, Hawaii Revised Statutes, is repealed and reenacted on July 1, 2008, pursuant to section 8 of Act 245, Session Laws of Hawaii 2005.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 299

H.B. NO. 1918

A Bill for an Act Relating to Commission on Salaries.

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

SECTION 1. Chapter 26, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§26- Commission on salaries. (a) Pursuant to article XVI, section , of the Constitution of the State of Hawaii, there is established a commission on salaries within the department of human resources development, for administrative purposes only.

The commission shall consist of seven members of whom:

- (1) Two members shall be appointed by the governor;
- (2) Two members shall be appointed by the president of the senate;
- (3) Two members shall be appointed by the speaker of the house of representatives; and
- (4) 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, including travel expenses, necessary for the performance of their duties.

(b) The commission shall review and recommend an appropriate salary for the governor, lieutenant governor, members of the legislature, justices and judges of all state courts, administrative director of the State or an equivalent position, and department heads or executive officers and the deputies or assistants to the department heads of the departments of:

- (1) Accounting and general services;
- (2) Agriculture;
- (3) The attorney general;
- (4) Budget and finance;
- (5) Business, economic development, and tourism;
- (6) Commerce and consumer affairs;
- (7) Defense;
- (8) Hawaiian home lands;
- (9) Health;
- (10) Human resources development;
- (11) Human services;
- (12) Labor and industrial relations;
- (13) Land and natural resources;
- (14) Public safety;
- (15) Taxation; and
- (16) Transportation.

The commission shall not review the salary of any position in the department of education or the University of Hawaii.

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.

The commission shall not recommend salaries lower than salary amounts recommended by prior commissions replaced by this section.

(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 2006, and every six years thereafter. Not later than the fortieth legislative day of the regular session of 2007, and every six 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 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 any change in salary which becomes effective shall not apply to the legislature to which the recommendation for the change in salary was submitted.

The governor shall include the salary amounts recommended by the commission and approved by the legislature for employees of the executive branch in the executive budget. If the salary amounts recommended by the commission are disapproved by the legislature, the commission shall reconvene in the November next 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 at the next regular session. The commission's reconvening following a legislative disapproval shall not toll the six-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. Effective July 1, 2007, and every six years thereafter, the salaries of the governor and lieutenant governor shall be as last recommended by the [executive salary] commission on salaries pursuant to section [26-55,] 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] Effective July 1, 2004, 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. Effective July 1, 2007, and every six years thereafter, the salaries shall be as last recommended by the commission on salaries pursuant to section [26-55,] 26-, unless rejected by the legislature; and
- (4) The salary of the adjutant general 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]. Effective July 1, 2007, and every six years thereafter, the salary of the adjutant general

shall be as last recommended by the commission on salaries pursuant to section ~~[26-55]~~ 26-___, unless rejected by the legislature, except that if 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.** ~~[The]~~ Effective July 1, 2004, 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. Effective July 1, 2007, and every six years thereafter, the salaries shall be as last recommended by the commission on salaries and specified by the appointing official, if appropriate, pursuant to section [26-55,] 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,] July 1, 2004,~~ 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,] as last recommended by the executive salary commission. Effective July 1, 2007, and every six years thereafter, the salary of the administrative director of the State shall be as last recommended by the [executive salary] commission on salaries pursuant to section [26-55,] 26-___, unless rejected by the legislature.~~”

SECTION 6. 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] 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] recommended by the judicial salary commission. Effective July 1, 2007, and every six years thereafter, the salary shall be as last recommended by the commission on salaries pursuant to section [608-1.5,] 26-___, unless disapproved by the legislature.”

2. By amending subsection (c) to read:

“(c) The administrative director ~~[shall]~~, with the approval of the chief justice, ~~shall~~ appoint a deputy administrative director of the courts without regard to chapter 76 and such assistants as may be necessary. ~~[Such]~~ The 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~~] recommended 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 7. 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~~] recommended by the judicial salary commission. Effective July 1, 2007, and every six 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 recommended by the commission on salaries pursuant to section [608-1.5,] 26-___, unless disapproved by the legislature.”

SECTION 8. 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~~] recommended by the judicial salary commission. Effective July 1, 2007, and every six years thereafter, the salary of the chief judge of the intermediate appellate court and the salary of each associate judge shall be as last recommended by the commission on salaries pursuant to section [608-1.5,] 26-___, unless disapproved by the legislature.”

SECTION 9. 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~~] recommended by the judicial salary commission. Effective July 1, 2007, and every six years thereafter, the salary of each circuit court judge of the various circuit courts of the State shall be as last recommended by the commission on salaries pursuant to section [608-1.5,] 26-___, unless disapproved by the legislature.”

SECTION 10. 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] recommended by the judicial salary commission. Effective July 1, 2007, and every six years thereafter, the salary of each district court judge of the various district courts of the State shall be as last recommended by the commission on salaries pursuant to section [608-1.5,] 26-___, 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 11. Section 26-55, Hawaii Revised Statutes, is repealed.

SECTION 12. Section 608-1.5, Hawaii Revised Statutes, is repealed.

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 14. This Act shall take effect upon ratification of a constitutional amendment establishing a commission on salaries to review and recommend salaries for the governor, lieutenant governor, legislators, justices and judges of all state courts, the administrative director of the State, and department heads or executive officers of the executive departments and their deputies or assistants.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 300

S.B. NO. 3009

A Bill for an Act Relating to Civil Service Exempt Employees.

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

SECTION 1. The purpose of this Act is to comply with Act 253, Session Laws of Hawaii 2000, which placed restrictions on the creation of civil service exempt positions and required the review of exempt positions annually to determine whether they should remain exempt or be converted to civil service status.

SECTION 2. Section 6E-3, Hawaii Revised Statutes, is amended to read as follows:

“§6E-3 Historic preservation program. There is established within the department a division to administer a comprehensive historic preservation program, which shall include but not be limited to the following:

- (1) Development of an on-going program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, and publications on the State's historical and cultural resources;
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means; preservation, restoration, administration, or transference of the property; and the charging of reasonable admissions to that property;
- (3) Development of a statewide survey and inventory to identify and document historic properties, aviation artifacts, and burial sites, including all those owned by the State and the counties;
- (4) Preparation of information for the Hawaii register of historic places and listing on the national register of historic places;
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;
- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;
- (7) Provision of technical and financial assistance to the counties and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the counties in accordance with the state plan for historic preservation;
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on or eligible for the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- (11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means, to be held in trust;
- (12) Submittal of an annual report to the governor and legislature detailing the accomplishments of the year, recommendations for changes in the state plan or future programs relating to historic preservation, and an accounting of all income, expenditures, and the fund balance of the Hawaii historic preservation special fund;
- (13) Regulation of archaeological activities throughout the State;
- (14) Employment of sufficient professional and technical staff for the purposes of this chapter [~~without regard to~~ which may be in accordance with chapter 76];
- (15) The charging of fees to at least partially defray the costs of administering sections 6E-3(13), 6E-8, and 6E-42 of this chapter;
- (16) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter; and
- (17) Development and adoption, in consultation with the office of Hawaiian affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments."

SECTION 3. Section 26-9, Hawaii Revised Statutes, is amended by amending subsection (o) to read as follows:

"(o) Every person licensed under any chapter within the jurisdiction of the department of commerce and consumer affairs and every person licensed subject to

chapter 485 shall pay upon issuance of a license, permit, certificate, or registration a fee and a subsequent annual fee to be determined by the director and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this section, do not surpass the annual operating costs of conducting compliance resolution activities required under this section. The fees may be collected biennially or pursuant to rules adopted under chapter 91, and shall be deposited into the special fund established under this subsection. Every filing pursuant to chapter 514E or section 485-6(15) shall be assessed, upon initial filing and at each renewal period in which a renewal is required, a fee that shall be prescribed by rules adopted under chapter 91, and that shall be deposited into the special fund established under this subsection. Any unpaid fee shall be paid by the licensed person, upon application for renewal, restoration, reactivation, or reinstatement of a license, and by the person responsible for the renewal, restoration, reactivation, or reinstatement of a license, upon the application for renewal, restoration, reactivation, or reinstatement of the license. If the fees are not paid, the director may deny renewal, restoration, reactivation, or reinstatement of the license. The director may establish, increase, decrease, or repeal the fees when necessary pursuant to rules adopted under chapter 91. The director may also increase or decrease the fees pursuant to section 92-28.

There is created in the state treasury a special fund to be known as the compliance resolution fund to be expended by the director's designated representatives as provided by this subsection. Notwithstanding any law to the contrary, all revenues, fees, and fines collected by the department shall be deposited into the compliance resolution fund. Unencumbered balances existing on June 30, 1999, in the cable television fund under chapter 440G, the division of consumer advocacy fund under chapter 269, the financial institution examiners' revolving fund, section 412:2-109, the special handling fund, section 414-13, and unencumbered balances existing on June 30, 2002, in the insurance regulation fund, section 431:2-215, shall be deposited into the compliance resolution fund. This provision shall not apply to the drivers education fund underwriters fee, section 431:10C-115, insurance premium taxes and revenues, revenues of the workers' compensation special compensation fund, section 386-151, the captive insurance administrative fund, section 431:19-101.8, the insurance commissioner's education and training fund, section 431:2-214, the medical malpractice patients' compensation fund as administered under section 5 of Act 232, Session Laws of Hawaii 1984, and fees collected for deposit in the office of consumer protection restitution fund, section 487-14, the real estate appraisers fund, section 466K-1, the real estate recovery fund, section 467-16, the real estate education fund, section 467-19, the contractors recovery fund, section 444-26, the contractors education fund, section 444-29, and the condominium education trust fund, section 514B-71. Any law to the contrary notwithstanding, the director may use the moneys in the fund to employ, without regard to chapter 76, hearings officers~~[-, investigators,]~~ and attorneys~~[-, accountants, and other necessary personnel to implement this subsection]~~. All other employees may be employed in accordance with chapter 76. Any law to the contrary notwithstanding, the moneys in the fund shall be used to fund the operations of the department. The moneys in the fund may be used to train personnel as the director deems necessary and for any other activity related to compliance resolution.

As used in this subsection, unless otherwise required by the context, "compliance resolution" means a determination of whether:

- (1) Any licensee or applicant under any chapter subject to the jurisdiction of the department of commerce and consumer affairs has complied with that chapter;
- (2) Any person subject to chapter 485 has complied with that chapter;

- (3) Any person submitting any filing required by chapter 514E or section 485-6(15) has complied with chapter 514E or section 485-6(15); or
- (4) Any person has complied with the prohibitions against unfair and deceptive acts or practices in trade or commerce;

and includes work involved in or supporting the above functions, licensing, or registration of individuals or companies regulated by the department, consumer protection, and other activities of the department.

The director shall prepare and submit an annual report to the governor and the legislature on the use of the compliance resolution fund. The report shall describe expenditures made from the fund including non-payroll operating expenses.”

SECTION 4. Section 28-10.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The attorney general may employ, without regard to chapter 76, and at pleasure dismiss, an administrator to oversee and carry out the resource coordination functions of the department set forth in subsection (a). In addition, the attorney general may employ, ~~[without regard to]~~ in accordance with chapter 76, ~~[and at pleasure dismiss]~~ other support staff necessary for the performance of the resource coordination functions.”

SECTION 5. Section 28-10.6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The attorney general may employ, without regard to chapter 76, and at the attorney general’s pleasure dismiss, an administrator ~~[and]~~ to oversee and carry out the programs, projects, and activities on the subject of crime, as set forth in subsection (a). The attorney general may also employ other support staff, in accordance with chapter 76, necessary for the performance or coordination of the programs, projects, and activities on the subject of crime.”

SECTION 6. Section 28-11, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The attorney general may also appoint persons whose primary function ~~[will]~~ shall be to provide security coverage for the governor and other public officials of this State, to be known as security investigators, who shall have and may exercise all the powers and authority of the investigators appointed under subsection (a). When not providing security coverage for the governor or other public officials, the security investigators ~~[will]~~ shall conduct other investigations as directed by the attorney general. The positions of security investigators ~~[shall]~~ may be exempt from chapter 76.”

SECTION 7. Section 174C-5, Hawaii Revised Statutes, is amended to read as follows:

“**§174C-5 General powers and duties.** The general administration of the state water code shall rest with the commission on water resource management. In addition to its other powers and duties, the commission:

- (1) Shall carry out topographic surveys, research, and investigations into all aspects of water use and water quality;
- (2) Shall designate water management areas for regulation under this chapter where the commission, after the research and investigations mentioned in paragraph (1), shall consult with the appropriate county council and county water agency, and after public hearing and pub-

- lished notice, finds that the water resources of the areas are being threatened by existing or proposed withdrawals of water;
- (3) Shall establish an instream use protection program designed to protect, enhance, and reestablish, where practicable, beneficial instream uses of water in the State;
 - (4) May contract and cooperate with the various agencies of the federal government and with state and local administrative and governmental agencies or private persons;
 - (5) May enter, after obtaining the consent of the property owner, at all reasonable times upon any property other than dwelling places for the purposes of conducting investigations and studies or enforcing any of the provisions of this code, being liable, however, for actual damage done. If consent cannot be obtained, reasonable notice shall be given prior to entry;
 - (6) Shall cooperate with federal agencies, other state agencies, county or other local governmental organizations, and all other public and private agencies created for the purpose of utilizing and conserving the waters of the State, and assist these organizations and agencies in coordinating the use of their facilities and participate in the exchange of ideas, knowledge, and data with these organizations and agencies. For this purpose the commission shall maintain an advisory staff of experts;
 - (7) Shall prepare, publish, and issue ~~such~~ printed pamphlets and bulletins as the commission deems necessary for the dissemination of information to the public concerning its activities;
 - (8) May appoint and remove agents ~~and employees~~, including hearings officers~~, specialists,~~ and consultants, necessary to carry out the purposes of this chapter, who may be engaged by the commission without regard to the requirements of chapter 76 and section 78-1;
 - (9) May hire employees in accordance with chapter 76;
 - ~~[(9)]~~ (10) May acquire, lease, and dispose of such real and personal property as may be necessary in the performance of its functions, including the acquisition of real property for the purpose of conserving and protecting water and water related resources as provided in section 174C-14;
 - ~~[(10)]~~ (11) Shall identify, by continuing study, those areas of the State where salt water intrusion is a threat to fresh water resources and report its findings to the appropriate county mayor and council and the public;
 - ~~[(11)]~~ (12) Shall provide coordination, cooperation, or approval necessary to the effectuation of any plan or project of the federal government in connection with or concerning the waters of the State. The commission shall approve or disapprove any federal plans or projects on behalf of the State. No other agency or department of the State shall assume the duties delegated to the commission under this paragraph; except that the department of health shall continue to exercise the powers vested in it with respect to water quality, and except that the department of business, economic development, and tourism shall continue to carry out its duties and responsibilities under chapter 205A;
 - ~~[(12)]~~ (13) Shall plan and coordinate programs for the development, conservation, protection, control, and regulation of water resources, based upon the best available information, and in cooperation with federal agencies, other state agencies, county or other local governmental organizations, and other public and private agencies created for the utilization and conservation of water;
 - ~~[(13)]~~ (14) Shall catalog and maintain an inventory of all water uses and water resources; and

~~[(14)]~~ (15) Shall determine appurtenant water rights, including quantification of the amount of water entitled to by that right, which determination shall be valid for purposes of this chapter.”

SECTION 8. Section 202-3, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The workforce development council shall appoint and fix the compensation of an executive director, who shall be exempt from chapter 76, and may employ ~~[such]~~ any other personnel as it deems advisable within chapter 76.”

SECTION 9. Section 342G-12.5, Hawaii Revised Statutes, is amended to read as follows:

“~~§342G-12.5 Recycling coordinator. There is established a position of assistant to the coordinator of the office of solid waste management to be known as the recycling coordinator. The position [shall] may be appointed by the director [without regard to] in accordance with chapter 76. [Effective July 1, 2005, the recycling coordinator shall be paid a salary set by the appointing authority that shall not exceed fifty per cent of the salary of the director of human resources development. The recycling coordinator shall be included in any benefit program generally applicable to the officers and employees of the State.]~~”

SECTION 10. Section 346D-8, Hawaii Revised Statutes, is amended to read as follows:

“~~§346D-8 Personnel exempt. The department of human services may employ civil service [and non-civil service] personnel in accordance with chapter 76 to service the waiver programs. [The personnel employed for the waiver programs may be exempt from chapter 76, as deemed appropriate by the department of human services.]~~”

SECTION 11. Section 371K-3, Hawaii Revised Statutes, is amended to read as follows:

“~~§371K-3 General functions, duties, and powers of the executive director. The executive director shall:~~

- (1) Serve as the principal official in state government responsible for the coordination of programs for the needy, poor, and disadvantaged persons, refugees, and immigrants;
- (2) Oversee, supervise, and direct the performance by subordinates of activities in such areas as planning, evaluation, and coordination of programs for disadvantaged persons, refugees, and immigrants and development of a statewide service delivery network;
- (3) Assess the policies and practices of public and private agencies impacting on the disadvantaged and conduct advocacy efforts on behalf of the disadvantaged, refugees, and immigrants;
- (4) Devise and recommend legislative and administrative actions for the improvement of services for the disadvantaged, refugees, and immigrants;
- (5) Serve as a member of advisory boards and panels of state agencies in such areas as child development programs, elder programs, social services programs, health and medical assistance programs, refugee assistance programs, and immigrant services programs;

- (6) Administer funds allocated for the office of community services; and apply for, receive, and disburse grants and donations from all sources for programs and services to assist the disadvantaged, refugees, and immigrants;
- (7) Adopt, amend, and repeal rules pursuant to chapter 91 for purposes of this chapter;
- (8) Retain such staff as may be necessary for the purposes of this chapter, who ~~shall~~ may be exempt from chapter 76;
- (9) Contract for ~~such~~ services as may be necessary for the purposes of this chapter;
- (10) Orient members of the advisory council to the goals, functions, and programs of the office; and
- (11) Seek the input of council members on all matters pertaining to the functions of the office.”

SECTION 12. Section 373C-33, Hawaii Revised Statutes, is amended to read as follows:

“**§373C-33 Personnel.** The department of labor and industrial relations may establish positions and hire necessary personnel for the purposes of this part ~~[without regard to]~~ in accordance with chapter 76.”

SECTION 13. Section 383-128, Hawaii Revised Statutes, is amended by amending subsection (k) to read as follows:

“(k) The director may establish positions and hire necessary personnel to establish and administer the employment and training fund ~~[without regard to]~~ in accordance with chapter 76.”

SECTION 14. Section 412:2-109, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The commissioner may appoint financial institution examiners, ~~[not subject to]~~ in accordance with chapter 76, who shall examine the affairs, transactions, accounts, records, documents, and assets of financial institutions. The commissioner also may appoint administrative support personnel, ~~[not subject to]~~ in accordance with chapter 76, who shall assist and support the examiners. The commissioner may pay the salaries of the financial institution examiners and administrative support personnel from the compliance resolution fund.”

SECTION 15. Section 440G-12, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The director may appoint, without regard to chapter 76, an administrator~~[, engineers, financial analysts, and other technical staff as may be necessary]~~ and ~~[may appoint]~~ one or more attorneys for purposes of enforcing this chapter. The director shall define their powers and duties and fix their compensation. The director may also appoint professional, clerical, stenographic, and other staff as may be necessary for the proper administration and enforcement of this chapter subject to chapter 76.”

SECTION 16. Section 802-12, Hawaii Revised Statutes, is amended to read as follows:

“§802-12 Organization of office; assistance. Subject to the approval of the defender council, the state public defender may employ assistant state public defenders and ~~[such]~~ other employees, including investigators, as may be necessary to discharge the function of the office. ~~[The assistant]~~ Assistant state¹ public defenders shall be qualified to practice before the supreme court of this State. ~~[They]~~ Assistant state public defenders shall be appointed without regard to chapter 76~~;~~ and shall serve at the pleasure of the state public defender. All other employees may be appointed in accordance with chapter 76. An assistant state public defender may be employed on a part-time basis, and when so employed, the assistant public defender may engage in the general practice of law, other than in the practice of criminal law.”

SECTION 17. Act 88, Session Laws of Hawaii 2001, is amended by amending section 4 to read as follows:

“SECTION 4. Effective July 1, 2003, all positions and employees of the Hawaii public employees health fund who are subject to ~~[chapters]~~ chapter 76, Hawaii Revised Statutes, shall be transferred to the Hawaii employer-union health benefits trust fund. 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.

All civil service positions and incumbents of the Hawaii public employees health fund transferred by this Act shall remain in the civil service and subject to ~~[chapters]~~ chapter 76 ~~[and 77]~~, Hawaii Revised Statutes; provided that in the event the civil service administrator position becomes vacant prior to July 1, 2003, its successor shall be appointed pursuant to section 87-28, Hawaii Revised Statutes, as amended in section 2 of this Act. ~~[When such positions are vacated on or after July 1, 2003, the positions shall be exempt from civil service and prospective appointments shall be made pursuant to section 1 of 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 the applicable civil service and compensation laws.

In the event that an office or position held by an officer or employee having tenure is abolished, the officer or employee shall not thereby be separated from public employment, but shall remain in the employment of the State with the same pay and classification and shall be transferred to some other office or position for which the officer or employee is eligible under the personnel laws of the State as determined by the head of the department or the governor.”

SECTION 18. (a) Due to the complexities of converting filled positions in multiple departments from exempt to civil service positions, the department of human resources development and Hawaii government employees association shall work collaboratively to establish a logical, workable, and fair process for converting positions in various departments, which are currently exempt from chapter 76, Hawaii Revised Statutes, to civil service positions.

(b) To establish a logical, workable, and fair process for converting positions in various departments from exempt to civil service positions, the department of human resources development and the Hawaii government employees association shall consider but not be limited to the following factors:

- (1) Whether the criteria and statutory authority used to exempt positions under section 76-16(b)(17), Hawaii Revised Statutes, from civil service are no longer needed;
- (2) Whether the position has a confidential relationship between an elected official, department head, or policy making level staff;
- (3) Whether the position directs programs defined by statute or by departmental, board, or commission policy or possesses significant authority to bind the agency to a course of action; and
- (4) Whether the position involves substantial responsibility for formulating basic departmental or executive policy or involves directing and controlling program operations of a department or division of a department.

SECTION 19. An employee who occupies an exempt position for at least one year at the time it is replaced by a civil service position through the process established by this Act shall have a one-time election to remain exempt from civil service. Once that position is vacated by the employee, the position shall be converted to civil service.

SECTION 20. (a) An employee who occupies an exempt position for at least one year at the time it is replaced by a civil service position through the process established by this Act shall be appointed to the civil service position that replaces the employee's exempt position; provided that the employee meets the minimum qualification requirements and any other applicable public employment requirements.

(b) If the employee is appointed to the civil service position, the employee's compensation shall be determined according to the applicable collective bargaining agreement or supplemental agreement covering exempt employees without loss of seniority, prior service credit, accrued vacation, accrued sick leave, or other employee benefits.

SECTION 21. The department of human resources development shall submit, no later than twenty days prior to the convening of each regular session beginning with the regular session of 2007, a report of the number of exempt positions that were converted to civil service positions during the previous twelve months. The report shall include but not be limited to:

- (1) When the position was established;
- (2) The purpose of the position;
- (3) Rationale for the conversion; and
- (4) How many exempt positions remain in each state department after the conversions.

SECTION 22. There is appropriated out of the general revenues of the State of Hawaii the sum of \$110,064, or so much thereof as may be necessary for fiscal year 2006-2007, for two personnel management specialist V positions for the department of human resources development.

SECTION 23. The sum appropriated shall be expended by the department of human resources development for the purposes of this Act.

SECTION 24. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 25. This Act shall take effect on July 1, 2006.

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

- 1. "State" should be underscored.

ACT 301

S.B. NO. 3059

A Bill for an Act Relating to Education.

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

SECTION 1. Although the State has established statewide standards and benchmarks, learner outcomes, assessments, promotion requirements, and graduation requirements, the legislature finds that Hawaii's public school system does not have an articulated and aligned standards-based curriculum to meet its goals.

In "The Link Between High School Reform and College Success for Low-Income and Minority Youth," a publication of the American Youth Policy Forum, the following two curriculum-related practices were included in the key practices most commonly cited for the success of low-income and minority high school students in college:

- (1) Access to a rigorous academic common core curriculum for all students; and
- (2) Alignment of the curriculum between various levels, such as high school and post-secondary school, and between levels within the kindergarten through twelfth grade system.

The purpose of this Act is to enable school complexes to develop and maintain an articulated and aligned standards-based curriculum to support teachers in helping all students to meet the Hawaii content and performance standards.

SECTION 2. Chapter 302A, part II, subpart B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§302A- Standards-based curriculum. (a) When developing a standards-based curriculum and implementing it in a school or complex, at the minimum, the curriculum shall:

- (1) Be specific in its standards-based scope and sequence over a school year for each grade level and course;
- (2) Be consistent in course content;
- (3) Be aligned across all grade levels;
- (4) Specifically address the state content and performance standards and related benchmark maps; and
- (5) Be implemented in all appropriate classrooms in the school or complex.

(b) School complexes may choose to develop an articulated and aligned K-12 standards-based curriculum in one or more of the following core content areas:

- (1) Language arts;
- (2) Mathematics;
- (3) Science; and
- (4) Social studies.

(c) School complexes shall provide professional development.

(d) School complexes that develop a standards-based curriculum shall use standards-based formative assessment tools to monitor student progress, not less than on a quarterly basis throughout the school year.

(e) School complexes shall develop rigorous classroom-based performance assessments.

(f) School complexes may implement software programs at the school-level to help to align school course material with Hawaii content and performance and federal educational standards.”

SECTION 3. The department of education shall submit annual progress reports to the legislature no later than twenty days prior to the convening of the 2007, 2008, and 2009 regular sessions. These progress reports shall include information on the process of aligning course materials for all grades with Hawaii content and performance standards and federal educational standards, and on any vendor selected to provide its software program or programs to assist in course material alignment. Additionally, no later than twenty days prior to the convening of the 2007, 2008, 2009 regular sessions, the department of education shall submit to the legislature a second report that includes the following:

- (1) An assessment of the implementation of articulated and aligned standards-based curricula in schools and complexes;
- (2) Performance and competency indicators of student achievement for evaluating the implementation of a standards-based curriculum;
- (3) A plan for a complex-by-complex development and implementation of a standards-based curriculum;
- (4) Resource requirements and a time line to implement specific portions of the curriculum to other school complexes or possible statewide application; and
- (5) Any need to contract with a curricula developer or consultant to carry out the purposes of this section.

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of \$900,000, or so much thereof as may be necessary for fiscal year 2006-2007, to develop and maintain an articulated and aligned standards-based curriculum within a school complex, purchase quarterly content area assessment tools, and develop rigorous classroom-based performance assessments pursuant to this Act.

SECTION 5. There is appropriated out of the general revenues of the State of Hawaii the sum of \$800,000, or so much thereof as may be necessary for fiscal year 2006-2007, to provide for software implementation and support to align school course material with Hawaii content and performance standards and federal education standards pursuant to this Act.

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$308,000, or so much thereof as may be necessary for fiscal year 2006-2007, for the contractual services of programmers, data analysts, and clerical support to lay the foundation and generate reports for longitudinal study assessments pursuant to this Act.

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

SECTION 8. New statutory material is underscored.¹

SECTION 9. This Act shall take effect on July 1, 2006.

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 302

H.B. NO. 2258

A Bill for an Act Relating to Human Services.

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

PART I

SECTION 1. Chapter 346, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§346- Expenditure of temporary assistance for needy families funds.

(a) Funds received by the State under the temporary assistance for needy families program block grant shall be subject to appropriation by the legislature and shall not be expended by the department without a legislative appropriation.

(b) No later than thirty days before the convening of each regular session, the department shall submit to the legislature:

- (1) A plan, developed in consultation with temporary assistance for needy families program heads of households and other community members familiar with such families' situations and needs, that:
 - (A) Details how the funds received under the temporary assistance for needy families program shall be expended; and
 - (B) Describes the desired outcomes from the expenditure of the funds;
- (2) A report about the continuing strategic planning process, with the assistance of the financial assistance advisory council, to:
 - (A) Involve the community in planning for the future use of temporary assistance for needy families funds; and
 - (B) Set annual goals and outcomes for existing and new programs receiving temporary assistance for needy families funds, pursuant to section 346-14.5; and
- (3) A report on the effectiveness and level of success in reaching the desired outcomes under:
 - (A) Paragraphs (1) and (2); and
 - (B) Programs from the previous two fiscal years using temporary assistance for needy families funds.

(c) During the interim following the regular session of 2006 and thereafter when the legislature is not in session, the department may receive and expend federal funds related to the temporary assistance for needy families program pursuant to chapter 346-8, subject to approval by the governor, which are supplemental to the temporary assistance for needy families block grant or are obtained competitively under the temporary assistance for needy families program. The department shall submit to the legislature a report no later than twenty days before the convening of each regular session regarding:

- (1) Any funds received and expended;
- (2) The purposes for which the funds were expended; and

(3) Outcomes achieved, pursuant to this section.”

PART II

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$1,191,058 or so much thereof as may be necessary for fiscal year 2006-2007 for the purpose of supporting and expanding the chore services program to provide high-quality elder care and services to Hawaii’s elderly and disabled populations.

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

PART III

SECTION 3. The legislature finds that the Hawaii Even Start Family Literacy Program is a human services program that assists at-risk parents and their young children in low-income communities. The program promotes literacy and assists with job preparation, education, and parenting skills.

The purpose of this part is to appropriate funds to support the Hawaii Even Start Family Literacy Program.

SECTION 4. There is appropriated out of the federal temporary assistance for needy families program funds the sum of \$600,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the Hawaii Even Start Family Literacy Program.

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

PART IV

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. New statutory material is underscored.¹

SECTION 7. This Act shall take effect on July 1, 2006.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 303

H.B. NO. 2098

A Bill for an Act Relating to Developmental Disabilities.

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

SECTION 1. Section 333F-2, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Supports and services the department shall administer include[,] but shall not be limited to:

- (1) Early identification and evaluation of persons with developmental disabilities or mental retardation;
- (2) Development, planning, and implementation in coordination with other federal, state, and county agencies, of service programs for persons with developmental disabilities or mental retardation;
- (3) Development and provision of service programs in the public or private sectors through chapter 42F or [chapter] 103F, for persons with developmental disabilities or mental retardation;
- (4) Establishment of a continuum of comprehensive services and residential alternatives in the community to allow persons with developmental disabilities or mental retardation to live in the least restrictive, individually appropriate environment;
- (5) Development and implementation of a program for single-entry access by persons with developmental disabilities or mental retardation to services provided under this chapter as well as referral to, and coordination with, services provided in the private sector or under other federal, state, or county acts, and the development of an individualized service plan by an interdisciplinary team;
- (6) Collaborative and cooperative services with public health and other groups for programs to prevent developmental disabilities or mental retardation;
- (7) Informational and educational services to the general public and to lay and professional groups;
- (8) Consultative services to the judicial branch of government, educational institutions, and health and welfare agencies whether the agencies are public or private;
- (9) Provision of community residential alternatives for persons with developmental disabilities or mental retardation, including [~~group homes and~~] homes meeting ICF/MR standards[;], and in a setting of the person's choice if the person with the help of family and friends, if necessary, determines that the person can be sustained with supports, the supports are attached to the person, and adequate consideration and recognition is given to the person's safety and well-being;
- (10) Provision of care at the skilled nursing level or in a skilled nursing facility, as individually appropriate;
- (11) Provision of other programs, services, or facilities necessary to provide a continuum of care for persons with developmental disabilities or mental retardation;
- (12) Provision of case management services independent of the direct service provider; and
- (13) Development and maintenance of respite services in the community for persons with developmental disabilities or mental retardation.”

SECTION 2. The department of health, state council on developmental disabilities shall submit a preliminary report to the legislature no later than twenty days prior to the convening of the regular session of 2007 and a final report no later than twenty days prior to the convening of the regular session of 2008. The reports shall contain but not be limited to:

- (1) The number of persons with developmental disabilities or mental retardation who choose to live independently as provided by this Act;
- (2) The financial impact this Act has had on the State; and
- (3) Any findings and recommendations, including any proposed legislation.

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, and shall be repealed on June 30, 2008; provided that section 333F-2, Hawaii Revised Statutes, shall be reenacted in the form in which it read prior to this Act taking effect.

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 304

H.B. NO. 1891

A Bill for an Act Relating to Education.

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

SECTION 1. The legislature finds that the state educational facilities improvement special fund is used to plan, design, construct, maintain, and acquire lands for public school facilities. The special fund finances projects that address classroom necessities. However, the special fund is currently overwhelmed with the demand for repairs. Years of under-funding maintenance projects have culminated in a massive school repair and renovation crisis. As recently as six months ago, asbestos was found under twelve sinks at Haleiwa elementary school, which disturbingly called to mind the incident a year ago when asbestos was again found in the exterior walls of two buildings at King intermediate school. Kailua intermediate school also made headlines last year when a roof collapsed on its campus. All of these potentially life-threatening situations required immediate attention and disrupted classes. Presently, the department of education major repair and maintenance backlog totals \$525,000,000.

The purpose of this Act is to provide additional funds to address this repair and maintenance backlog.

SECTION 2. Section 237-31, Hawaii Revised Statutes, is amended to read as follows:

“§237-31 Remittances. All remittances of taxes imposed by this chapter shall be made by money, bank draft, check, cashier's check, money order, or certificate of deposit to the office of the department of taxation to which the return was transmitted. The department shall issue its receipts therefor to the taxpayer and shall pay the moneys into the state treasury as a state realization, to be kept and accounted for as provided by law; provided that:

- (1) The sum from all general excise tax revenues realized by the State that represents the difference between [~~\$45,000,000~~] \$90,000,000 and the proceeds from the sale of any general obligation bonds authorized for that fiscal year for the purposes of the state educational facilities improvement special fund shall be deposited in the state treasury in each fiscal year to the credit of the state educational facilities improvement special fund[;] for public school capital improvement program needs; and
- (2) A sum, not to exceed \$5,000,000, from all general excise tax revenues realized by the State shall be deposited in the state treasury in each fiscal year to the credit of the compound interest bond reserve fund[;] ~~and~~
- (3) ~~A sum, not to exceed the amount necessary to meet the obligations of the integrated tax information management systems performance-based~~

~~contract may be retained and deposited in the state treasury to the credit of the integrated tax information management systems special fund. The sum retained by the director of taxation for deposit to the integrated tax information management systems special fund for each fiscal year shall be limited to amounts appropriated by the legislature. This paragraph shall be repealed on July 1, 2005].”~~

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, 2006; provided that on June 30, 2008, section 2 of this Act shall be repealed and section 237-31, Hawaii Revised Statutes, is reenacted in the form in which it read on the day before the effective date of this Act.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

ACT 305

H.B. NO. 3142

A Bill for an Act Relating to Trauma Care.

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

SECTION 1. The legislature finds that trauma care in Hawaii is in a state of crisis and recognizes that trauma care is a public health priority.

Injury is the leading cause of death for persons between the ages of one to forty-four in the State of Hawaii, causing more deaths than are caused by cancer and heart disease combined. This underscores the seriousness of traumatic injury as a public health problem in the state.

When injuries are serious, specialized equipment and prompt access to physicians and other trained health care providers make a significant difference in a trauma patient’s health outcome. A weak trauma system decreases the state’s readiness to respond not only to the normal flow of critically injured patients, but to unforeseen disasters and emergencies as well.

As the American College of Surgeons noted in its October 2005 report, “Hawaii Trauma System Consultation,” extreme isolation and limited physician re-supply capability renders Hawaii uniquely vulnerable to natural disasters that may occur in a mid-Pacific environment. A functional trauma system with the capacity to handle a surge in demand is a fundamental necessity in responding to both natural and man-made disasters.

Typically, the cost of providing care to trauma patients is far higher than the total payments received from those patients. Without additional resources, it is unlikely that Hawaii’s system will develop greater capacity and it is at risk of losing what specialized trauma care is currently available.

A January 2006 report by the legislative reference bureau entitled, “On-Call Crisis in Trauma Care: Government Responses,” noted that “the rationale for public support of uncompensated trauma services is the same as for critical police and fire services; a trauma system is a necessary public service that ought to be publicly supported.”

The purpose of this Act is to establish a trauma system special fund to ensure the availability of care for trauma patients in the state.

SECTION 2. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- Trauma system special fund. (a) There is established within the state treasury a special fund to be known as the trauma system special fund to be administered and expended by the department of health. Moneys in the trauma system special fund shall not lapse at the end of the fiscal year. Expenditures from the trauma system special fund shall be exempt from chapters 103D and 103F.

(b) The moneys in the trauma system special fund shall be used by the department to support the continuing development and operation of a comprehensive state trauma system. The trauma system special fund shall be used to subsidize the documented costs for the comprehensive state trauma system, including but not limited to the following:

- (1) Costs of under-compensated and uncompensated trauma care incurred by hospitals providing care to trauma patients; and
- (2) Costs incurred by hospitals providing care to trauma patients to maintain on-call physicians for trauma care.

The money in the trauma system special fund shall not be used to supplant funding for trauma services authorized prior to the effective date of this section and shall not be used for ambulance or medical air transport services.

(c) Interest and investment earnings attributable to the moneys in the trauma system special fund, federal funding, legislative appropriations, and grants, donations, and contributions from private or public sources for the purposes of the trauma system special fund shall be deposited into the trauma system special fund.

(d) The department shall adopt rules pursuant to chapter 91 to effectuate the purposes of this section, including the methodology for disbursements from the trauma system special fund.

(e) To receive reimbursement, a hospital providing care to trauma patients shall apply to the trauma system special fund on a form and in a manner approved by the department; provided that recipients of reimbursements from the trauma system special fund shall be subject to the following conditions:

- (1) The recipient of a reimbursement shall:
 - (A) Comply with applicable federal, state, and county laws;
 - (B) Comply with any other requirements the director may prescribe;
 - (C) Allow the director, the legislative bodies, and the state auditor access to records, reports, files, and other related documents, to the extent permissible under applicable state and federal law, so that the program, management, and fiscal practices of the recipient may be monitored and evaluated to ensure the proper and effective expenditure of public funds;
 - (D) Provide care to all injured patients regardless of their ability to pay; and
 - (E) Participate in data collection and peer review activities for the purpose of system evaluation and improvement of patient care; and
- (2) Every reimbursement shall be monitored according to rules established by the director under chapter 91 to ensure compliance with this section.

(f) Necessary administrative expenses to carry out this section shall not exceed five per cent of the total amount collected in any given year.

(g) The department shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session that outlines the receipts of and expenditures from the trauma system special fund.

(h) For the purposes of this section:

“Comprehensive state trauma system” means a coordinated integrated system providing a spectrum of medical care throughout the state designed to reduce death and disability by appropriate and timely diagnosis and specialized treatment of injuries, which includes hospitals with successive levels of advanced capabilities for trauma care in accordance with nationally accepted standards established by the American College of Surgeons Committee on Trauma.

“Hospital providing care to trauma patients” means a hospital with emergency services that receives and treats injured patients.

“Trauma care” means specialized medical care intended to reduce death and disability from injuries.”

SECTION 3. Section 36-27, Hawaii Revised Statutes, is amended to read as follows:

“**§36-27 Transfers from special funds for central service expenses.** Except as provided in this section, and notwithstanding any other law to the contrary, from time to time, the director of finance, for the purpose of defraying the prorated estimate of central service expenses of government in relation to all special funds, except the:

- (1) Special 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) Funds of the employees’ retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Hawaii health systems corporation special funds;
- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under chapter 269;
- (16) Integrated tax information management systems special fund under section 231-3.2;
- (17) Emergency and budget reserve fund under section 328L-3;
- (18) Public schools special fees and charges fund under section 302A-1130(f);
- (19) Sport fish special fund under section 187A-9.5;
- (20) Neurotrauma special fund under section 321H-4;
- (21) Deposit beverage container deposit special fund under section 342G-104;
- (22) Glass advance disposal fee special fund established by section 342G-82;
- (23) Center for nursing special fund under section 304D-5;
- (24) Passenger facility charge special fund established by section 261-5.5;
- (25) Solicitation of funds for charitable purposes special fund established by section 467B-15;
- (26) Land conservation fund established by section 173A-5; ~~and~~
- ~~[(27)]~~ Court interpreting services revolving fund under ~~[(27)]~~section 607-1.5~~[(27)]~~;
- and
- (28) Trauma system special fund under section 321- ;

shall deduct five per cent of all receipts of all other special funds, which deduction shall be transferred to the general fund of the State and become general realizations of the State. All officers of the State and other persons having power to allocate or disburse any special funds shall cooperate with the director in effecting these transfers. To determine the proper revenue base upon which the central service assessment is to be calculated, the director shall adopt rules pursuant to chapter 91 for the purpose of suspending or limiting the application of the central service assessment of any fund. No later than twenty days prior to the convening of each regular session of the legislature, the director shall report all central service assessments made during the preceding fiscal year.”

SECTION 4. Section 36-30, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Each special fund, except the:

- (1) Transportation use special fund established by section 261D-1;
- (2) Special 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) Funds of the employees’ retirement system created by section 88-109;
- (9) Unemployment compensation fund established under section 383-121;
- (10) Hawaii hurricane relief fund established under chapter 431P;
- (11) Convention center enterprise special fund established under section 201B-8;
- (12) Hawaii health systems corporation special funds;
- (13) Tourism special fund established under section 201B-11;
- (14) Universal service fund established under chapter 269;
- (15) Integrated tax information management systems special fund under section 231-3.2;
- (16) Emergency and budget reserve fund under section 328L-3;
- (17) Public schools special fees and charges fund under section 302A-1130(f);
- (18) Sport fish special fund under section 187A-9.5;
- (19) Neurotrauma special fund under section 321H-4;
- (20) Center for nursing special fund under section 304D-5;
- (21) Passenger facility charge special fund established by section 261-5.5;
- (22) ~~and~~ Court interpreting services revolving fund under ~~[H]section 607-1.5[H]~~;
- (23) Trauma system special fund under section 321- ;

shall be responsible for its pro rata share of the administrative expenses incurred by the department responsible for the operations supported by the special fund concerned.”

SECTION 5. There are established positions as are necessary to implement the provisions of this Act. These positions shall be appointed by the director of health without regard to chapter 76, Hawaii Revised Statutes. These positions shall be included in any benefit program generally applicable to the officers and employees of the State.

SECTION 6. (a) The department of health shall convene ad hoc committees to advise the department in all matters related to trauma care, including system standards, appropriate expenditure of the trauma system special fund, and system performance and evaluation criteria.

(b) Members of the ad hoc committees shall include members of the state EMS advisory committee and may invite participation statewide from practicing trauma surgeons and other trauma specialty physicians and nurses, pre-hospital personnel, hospital administrators, third party payors, and other interested parties from all counties.

SECTION 7. The department of health shall submit to the legislature an annual report on the expenditures of the trauma system special fund and the progress toward developing a fully-integrated statewide trauma system not later than twenty days prior to the convening of the regular session of 2007 and each year thereafter.

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

SECTION 9. This Act shall take effect on July 1, 2006.

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 306

H.B. NO. 1923

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

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

SECTION 1. Section 14 of Act 58, Session Laws of Hawaii 2004, as amended by section 50 of Act 22, Session Laws of Hawaii 2005, is amended to read as follows:

- “SECTION 14. This Act shall take effect upon its approval; provided that:
- (1) The amendments made to sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, by part I of this Act shall not be repealed when those sections are reenacted on June 30, [2005,] 2006, by section [24] 1 of Act [115,] 137, Session Laws of Hawaii [1998,] 2005;
 - (2) Part I shall be repealed on June 30, [2007,] 2010, and sections 28-8.3, 201B-2, and 201B-11, Hawaii Revised Statutes, shall be reenacted in the form in which they read on May 5, 2004, and sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 30, 1986; and
 - (3) Section 9 shall take effect on July 1, 2004.”

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 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 307

S.B. NO. 3066

A Bill for an Act Relating to Interest and Usury.

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

SECTION 1. Section 478-4, Hawaii Revised Statutes, is amended to read as follows:

“§478-4 Rate by written contract. (a) It shall in no case be deemed unlawful, with respect to any consumer credit transaction (except a credit card agreement) and any home business loan to stipulate by written contract, for any rate of simple interest not exceeding one per cent per month or twelve per cent a year or, in the event the creditor is a financial institution regulated under chapter 412 (other than a trust company or a credit union), for any rate of simple interest not exceeding two per cent per month or twenty-four per cent a year~~]; and it shall in no case be unlawful, with respect to any credit card agreement, to stipulate by written contract for any rate of simple interest not exceeding one and one-half per cent per month or eighteen per cent a year~~].

(b) As an alternative to the rate of interest specified in subsection (a), it shall be lawful with respect to any consumer credit transaction (except a credit card agreement) and any home business loan to stipulate by written contract for the payment and receipt of a finance charge in any form or forms at an annual percentage rate not to exceed twelve per cent, or twenty-four per cent in the event the creditor is a financial institution regulated under chapter 412 (other than a trust company or a credit union), together in either case with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act~~], and, with respect to any credit card agreement, to stipulate by written contract for the payment and receipt of a finance charge at an annual percentage rate not to exceed eighteen per cent, together with any other charges that are excluded or excludable from the determination of finance charge under the Truth in Lending Act~~]. The rates in this ~~[paragraph]~~ subsection shall be available as alternative permissible rates for any of the credit transactions referred to, whether in fact or in law the Truth in Lending Act applies to the transaction, notwithstanding the advance, fixed, or variable manner in which interest or finance charge may be computed under the contract, and whether the contract uses the terms interest, annual percentage rate, finance charge, or any combination of such terms. For rate computation purposes, with respect to any contract to which this ~~[paragraph]~~ subsection may apply, the creditor conclusively shall be presumed to have given all disclosures in the manner, form, and at the time contemplated by the Truth in Lending Act, including those necessary to exclude any charges from the finance charge.

(c) With respect to any transaction other than a consumer credit transaction, a home business loan, or a credit card agreement, it shall be lawful to stipulate by written contract for any rate of interest not otherwise prohibited by law.

(d) The rate limitations contained in subsections (a) and (b) of this section and section 478-11.5 shall not apply to any credit transaction authorized by, and entered into in accordance with the provisions of, articles 9 and 10 of chapter 412 or chapter 476.

(e) With respect to a credit card agreement, it shall be lawful to stipulate by written contract any amount of interest authorized by section 478-11.5.’’

SECTION 2. Section 478-11.5, Hawaii Revised Statutes, is amended to read as follows:

“§478-11.5 Credit cards. (a) With regard to every credit card issuer wherever located and a customer who is a resident of this [State] state and who is given the opportunity to enter into a credit card plan, every solicitation and application for the credit card plan shall set forth all of the following:

- (1) [Annual percentage rate,] The initial simple interest numerical periodic rate and any fee or charge payable by the cardholder, directly or indirectly, as an incident to or a condition of the extension of credit, or if the rate or fee may vary, a statement that it may do so and the circumstances under which it may increase and the effects of the increase;
- (2) The date or occasion upon which the [~~finance charge~~] interest begins to accrue;
- (3) Whether any annual fee is charged and the amount of the fee;
- (4) Any minimum, fixed, transaction, activity, or similar charge that could be imposed; and
- (5) That charges incurred by the use of a charge card are due and payable upon receipt of a periodic statement of charges, if applicable. For purposes of this paragraph, the term “charge card” means any card, plate, or other device pursuant to which the charge card issuer extends credit [which] that is not subject to a finance charge and where the charge cardholder cannot automatically access credit that is repayable in installments.

(b) With respect to any credit card agreement, in no case shall it be deemed unlawful to stipulate by written contract for any amount of interest, except that the simple interest numerical periodic rate shall not exceed eighteen per cent per year. Prior to charging any fee or charge, the credit card issuer shall disclose the fee or charge to the credit card holder in the credit card agreement or in an amendment to the credit card agreement.

As used in this subsection, “interest” means the simple interest numerical periodic rate and any other fee, charge, or payment, directly or indirectly charged or received as an incident to or a condition of an extension of credit under a credit card agreement, including but not limited to:

- (1) A currency exchange conversion fee;
- (2) A late fee;
- (3) A creditor-imposed “not sufficient funds” fee charged when a borrower tenders payment on a debt with a check drawn on insufficient funds;
- (4) An over-the-credit limit fee;
- (5) An annual fee or other periodic membership fee;
- (6) A balance transfer fee;
- (7) A cash advance fee; or
- (8) A minimum finance charge.”

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.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

ACT 308

H.B. NO. 3016

A Bill for an Act Relating to Unserved Arrest Warrants.

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

SECTION 1. The legislature finds that in the Oahu district court system there are over one hundred thousand outstanding bench warrants. It is unknown how many outstanding warrants there are on the neighbor islands. These numbers continue to increase because when a person is sentenced to prison, especially for a felony, and then misses an appearance in district court for a traffic case, a bench warrant is automatically issued and the case remains unresolved. Many outstanding traffic warrants also go unserved because the person is sentenced to a term of prison in an unrelated case and the underlying traffic case is never addressed.

The legislature also finds that the present practice regarding service of traffic bench warrants causes numerous problems. First, outstanding warrants clog up the court system for years. This situation is partly due to the fact that incarcerated persons are unable to appear in district court to clear up minor traffic violations. The warrants are not served upon them in prison because the backlog is so extensive that law enforcement resources devoted to service of warrants are focused on arresting persons charged with serious offenses who are at large in the community. Second, inmates are denied parole or drug treatment because they have not resolved outstanding court matters. Third, inmates, once released from prison, must immediately turn themselves back in on traffic warrants that have remained pending for three, five, ten, or even twenty years.

The purpose of this Act is to require due diligence in serving all traffic warrants issued against a defendant and to require the Hawaii paroling authority to report to the appropriate court and arresting authorities whether a parolee has any outstanding traffic warrants.

PART I

SECTION 2. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§353- Suspension or revocation; arrest warrants arising from traffic violations. In the event of suspension or revocation of parole, the Hawaii paroling authority shall inform the appropriate courts and arresting authorities of all outstanding traffic warrants issued against the parolee so that the warrants may be served on the parolee in a timely manner.”

SECTION 3. Chapter 604, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§604- Arrest warrants arising from traffic violations. In any criminal proceeding, due diligence shall be used in serving any outstanding traffic warrants on the defendant.”

PART II

SECTION 4. The judicial council, established pursuant to section 601-4, Hawaii Revised Statutes, through a review committee, shall conduct a comprehensive review of the backlog of arrest warrants waiting to be served upon persons incarcerated in the state's correctional facilities and the entire backlog of unserved

arrest warrants and recommend to the legislature action necessary so that these warrants will be served without further delay. The participants of the review committee shall consist of representatives from:

- (1) The judiciary;
- (2) The department of the attorney general;
- (3) The department of public safety;
- (4) The office of the prosecuting attorney for each of the counties;
- (5) The police department for each of the counties;
- (6) The office of the public defender; and
- (7) Private criminal law practitioners, as recommended by the Hawaii State Bar Association.

The review shall cover more than fiscal problems and shall investigate actions to be taken by the participants to permanently alleviate the problem.

The study shall be concluded and a final report submitted to the legislature, together with any proposed implementing legislation, no later than twenty days prior to the convening of the regular session of 2007.

SECTION 5. New statutory material is underscored.¹

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

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

Note

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

ACT 309

S.B. NO. 2274

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 four classes of members in the system to be known as class A, class B, class C, and class H, defined as follows:

- (1) Class A shall consist of:
 - (A) Judges, elected officials, and legislative officers;
 - (B) Investigators of the department of the attorney general, narcotics enforcement investigators, water safety officers not making the election under section 88-271, and public safety investigations staff investigators;
 - (C) Those members in service prior to July 1, 1984, including those who are on approved leave of absence, not making the election to become a class C member as provided in part VII or to become a class H member as provided in part VIII;
 - (D) The following members in service prior to July 1, 2006, including those who are on approved leave of absence, not making the election to become a class H member as provided in part VIII:
 - [members]
 - (i) Members whose salaries are set forth in sections 26-52 and 26-53 and their county counterparts, managing directors or an administrative assistant to the mayor, other county de-

- partment heads, and agency heads appointed and subject to removal by the mayor; ~~first~~
- (ii) First deputies appointed by the county attorney and prosecuting attorney; ~~the~~
 - (iii) The county clerk and deputy county clerk of each county; ~~the~~
 - (iv) The directors of the offices of council services of the county of Maui and the city and county of Honolulu;
 - (v) The administrative director of the courts; ~~the~~
 - (vi) The deputy administrative director of the courts; ~~the~~
 - (vii) The executive officer of the labor and industrial relations appeals board; and ~~the~~
 - (viii) The executive officer of the Hawaii labor relations board;
- (E) All former class A retirants who return to employment after June 30, 1984, requiring the retirant's active membership; and
 - (F) All former class B retirants who return to employment requiring the retirant's active membership, except for:
 - (i) Former retirants who return in the positions of police officer or firefighter;
 - (ii) Former retirants who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
 - (iii) Former retirants who were in positions to which coverage under Title II of the Social Security Act was not extended who entered membership after June 30, 1957, but before January 1, 2004;
- (2) Class B shall consist of:
 - (A) Police officers and firefighters, including former retirants who return to service in such capacity;
 - (B) All employees, including former retirants, who were members on July 1, 1957, who elected not to be covered by the Social Security Act; and
 - (C) All employees, including former retirants, in positions to which coverage under Title II of the Social Security Act is not extended, who enter membership after June 30, 1957, but before January 1, 2004, not making the election to become a class H member as provided in part VIII;
 - (3) Except for members described in paragraphs (1) and (2), class C shall consist of all employees, not making the election to become a class H member as provided in part VIII, who:
 - (A) First enter service after June 30, 1984, but before July 1, 2006;
 - (B) Reenter service after June 30, 1984, but before July 1, 2006, 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; and
 - (4) Except for members described in paragraphs (1) and (2), class H shall consist of all employees who:
 - (A) First enter service after June 30, 2006;
 - (B) Reenter service after June 30, 2006, without vested benefit status as provided in section 88-96(b);
 - (C) Make the election to become a class H member as provided in part VIII; or

ACT 310

- (D) Are former class H 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 on July 1, 2006.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

ACT 310

S.B. NO. 3180

A Bill for an Act Relating to the Counties.

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

SECTION 1. Section 7 of article XII of the Constitution of the State of Hawaii provides, in part, that ‘‘The State reaffirms and shall protect all rights, customarily and traditionally exercised for subsistence, cultural and religious purposes . . . by native Hawaiians.’’ Section 7-1, Hawaii Revised Statutes, further reserves the right of the people to take house-timber from lands upon which they reside. Further, chapter 36 of the Maui county code allows the use of indigenous Hawaiian architecture in the design and construction of structures in the county of Maui.

The purpose of this Act is to allow the use of the techniques, styles, and customs of indigenous Hawaiian architecture to be employed in present-day construction in the state.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

‘‘§46- Indigenous Hawaiian architecture. (a) Each county shall adopt ordinances allowing the exercise of indigenous native Hawaiian architectural practices, styles, customs, techniques, and materials historically employed by native Hawaiians, in the county’s building code, including but not limited to residential and other structures comprised of either rock wall or wood frame walls covered by thatches of different native grasses or other natural material for roofs.

(b) The application of indigenous Hawaiian architecture shall be permitted in all zoning districts; provided it is consistent with the intent and purpose of the uniquely designated, special, or historic district.’’

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2006.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 311

H.B. NO. 3105

A Bill for an Act Relating to Psychotropic Medication.

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

SECTION 1. The legislature passed Act 239, Session Laws of Hawaii 2005, in recognition of the importance of providing open access to medications used to treat mental illness. Act 239, Session Laws of 2005, applied to medicaid eligible individuals. The legislature finds that Act 239 has improved the ability of mentally ill persons to obtain treatment for mental illness.

The purpose of this Act is to improve access to psychotropic medication for Hawaii medicaid clients.

SECTION 2. Act 239, Session Laws of Hawaii 2005, is amended by amending sections 2 and 3 to read as follows:

“SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

“**§346- Psychotropic medication.** (a) The department shall not impose any restriction or limitation on the coverage for, or a recipient’s access to, psychotropic medication; provided that the psychotropic medication shall be prescribed by a licensed psychiatrist or by a [licensed] physician [in consultation with a psychiatrist] duly licensed in the State.

(b) As used in this section:

[“Consultation” means communication by telephone, electronically, or face to face by a licensed psychiatrist and a licensed physician, during which the psychiatrist concurs with the prescription made. The psychiatrist’s concurring opinion shall be documented in the recipient’s medical record.]

“Psychotropic medication” means only those agents approved by the United States Food and Drug Administration for the treatment of mental or emotional disorders.

~~(c) This section shall not apply to QUEST medical plans.~~

~~§346— Pre-authorization exemption for psychotropic medication. (a) A licensed physician may prescribe psychotropic medication pursuant to the laws of this State to an individual who is medicaid eligible without the requirement of any preauthorization procedure otherwise required by any other provision of this chapter; provided that the individual is in need of emergency psychiatric or psychological service.~~

~~(b) As used in this section:~~

~~“Emergency psychiatric or psychological service” means immediate administration or prescription of psychotropic medication not to exceed seven days by a licensed physician is required to avoid or mitigate significant adverse effects to the individual’s mental or emotional condition.~~

~~“Psychotropic medication” means only those agents approved by the United States Food and Drug Administration for the treatment of mental or emotional disorders.~~

~~(c) This section shall not apply to QUEST medical plans.’]~~

SECTION 3. The department of human services shall report to the legislature no later than twenty days before the convening of the regular session of 2007, and annually thereafter.¹ The report shall include:

ACT 312

- (1) The number of prescriptions written pursuant to this Act;
- (2) The cost and impact of psychiatrists or physicians prescribing medications pursuant to this Act that are not part of the existing formulary; and
- (3) The overall utilization under chapter 346, Hawaii Revised Statutes.’’

SECTION 3. Act 239, Session Laws of Hawaii 2005, is amended by amending section 5 to read as follows:

“SECTION 5. This Act shall take effect on July 1, 2005, and shall be repealed as it applies to QUEST plans only, on June 30, [2007-] 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 July 1, 2006.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. The ‘, and annually thereafter’ should be underscored.

ACT 312

S.B. NO. 2193

A Bill for an Act Relating to Planned Community Associations.

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

SECTION 1. The legislature finds that planned community associations can have a major impact on the planned community and its members. Members of planned communities are not only subject to the restrictions and obligations in the recorded declarations and bylaws of the association, they are also subject to the decisions and actions of the association’s board of directors and its agents. These boards and their agents may sometimes conduct the business of the association in an inconsistent manner, or without the knowledge and consent of the members of the association.

The purpose of this Act is to make the actions of board members of planned community associations more transparent, and to increase the accountability of the board to the association.

SECTION 2. Section 421J-5, Hawaii Revised Statutes, is amended to read as follows:

“~~[H]§421J-5~~ **Meetings of the board of directors[.]; committee or sub-committee.** (a) ~~[Whenever practicable, all]~~ All meetings of the board of directors, other than executive sessions, shall be open to all members to provide input on the matters being discussed. Members who are not on the board of directors may participate in any deliberation or discussion, other than during executive sessions, unless a majority of a quorum of the board of directors votes otherwise.

(b) The board of directors shall meet at least once each year.

~~(c) [Minutes of the meetings of the board of directors shall include the recorded vote of each board member on all motions except motions voted upon in executive session.~~

(d) The board of directors, with the approval of a majority of a quorum of its members, may adjourn any meeting and reconvene in executive session to discuss

and vote upon matters concerning personnel, litigation in which the association is or may become involved, or as may be necessary to protect the attorney-client privilege of the association. The general nature of any business to be considered in executive session shall be first announced in the regular session.

~~[(e)]~~ (d) No board member shall vote by proxy at board meetings.

~~[(f)]~~ (e) A director who has a conflict of interest on any issue before the board shall disclose the nature of the conflict of interest prior to a vote on that issue at the board meeting, and the minutes of the meeting shall record the fact that a disclosure was made.

(f) The board may appoint committees or subcommittees to review and consider any specific matters, and may alter or eliminate the committees or subcommittees; provided that the board in the minutes of the meeting at which the action was taken to appoint the committee or subcommittee shall:

- (1) Report that the committee or subcommittee was appointed;
- (2) Identify the members of the committee or subcommittee; and
- (3) Describe the matter that the committee or subcommittee is to review and consider.’’

SECTION 3. Section 421J-7, Hawaii Revised Statutes, is amended to read as follows:

~~“[E]§421J-7[.] Documents of the association. (a) [Upon approval by the board,]~~ Association documents, the most current financial statement of the association, and the minutes of the most recent meeting of the board of directors (other than minutes of executive sessions) shall be made available for examination by any member at no cost, on twenty-four-hour loan or during reasonable hours[.at a location designated by the board].

~~(b) [The approved minutes of other meetings of the board, other than executive sessions, and the approved meetings of the association for the current and prior year, shall be made available for examination by members during reasonable hours at a location designated by the board. Copies of those meeting minutes shall be provided to any member upon the member’s request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.]~~ The minutes of board meetings other than executive sessions, once approved, for the current and prior year shall be:

- (1) Available for examination by any member at no cost or on twenty-four-hour loan; or
- (2) Transmitted to any member requesting copies of the minutes, by the board, the managing agent, or the association’s representative, within a reasonable period of time from receipt of the request; provided that:
 - (A) The minutes shall be transmitted by mail, electronic mail transmission, or facsimile, as requested by the member, if the member indicates a preference at the time of the request; and
 - (B) Reasonable costs of duplication, postage, stationery, and other administrative costs associated with handling the request shall be borne by the requesting member; and
- (3) Maintained by the association for at least five years.

~~(c) Financial statements, general ledgers, accounts receivable ledgers, accounts payable ledgers, check ledgers, insurance policies, contracts, invoices of the association for the [current and prior year,] duration those records are kept by the association, and any documents regarding delinquencies of ninety days or more[.] shall be made available for examination by members at reasonable hours at a location designated by the board; provided that members shall pay for all costs associated with the examination of these documents. The board may require mem-~~

bers to furnish the association with an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the association, its members, or both. Copies of these documents shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(d) Members may view proxies, tally sheets, ballots, members' check-in lists, and the certificates of election, if any, for a period of thirty days following any association meeting; provided that members ~~[shall pay]~~ may be charged for ~~[all]~~ any costs associated with the examination of the documents. The board may require members to furnish to the association an affidavit stating that the foregoing information is requested in good faith for the protection of the interests of the association, its members, or both. Proxies and ballots may be destroyed following the thirty-day period. Copies of tally sheets, members' check-in lists, and the certificates of election from the most recent association meeting shall be provided to any member upon the member's request if the member pays a reasonable fee for duplication, postage, stationery, and other administrative costs associated with handling the request.

(e) Members may file a written request with the board to examine other documents of the association. The board shall give written authorization, or written refusal with an explanation of the refusal, for the examination within sixty calendar days of receipt of the request. The board may condition its approval of any such request upon payment of reasonable fees. Without limitation, books and records kept by or on behalf of an association may be withheld from inspection and copying to the extent that they concern:

- (1) Personnel records;
- (2) An individual's medical records;
- (3) Records relating to business transactions that are currently in negotiation;
- (4) Communications ~~[which]~~ that are privileged because of attorney-client privilege or any other applicable privilege of the association;
- (5) Complaints against an individual member of the association;
- (6) Any records, the release of which could be a violation of any law, ordinance, rule, or regulation; or
- (7) Similar records."

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 on July 1, 2006.

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 313

H.B. NO. 386

A Bill for an Act Relating to Courts.

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

SECTION 1. Section 612-6, Hawaii Revised Statutes, is amended to read as follows:

~~“§612-6 Exempt when. [(a) No person shall be authorized to claim an exemption from service as a juror in the courts of the first circuit from January 1, 1989, through December 31, 1990, and in the courts of all circuits, other than the first circuit from January 1, 1990, through December 31, 1991.~~

~~(b) From January 1, 1991, for the courts of the first circuit, and from January 1, 1992, for all other circuits of the State, a] A person may claim exemption from service as a juror if the person is:~~

- ~~[(1) An attorney at law;~~
- ~~(2) A head of an executive department, an]~~
- ~~(1) An elected official[;] while the legislature is in session, or a judge[;] of the United States, State, or county;~~
- ~~[(3) A minister or priest following the minister's or priest's profession;~~
- ~~(4) A] (2) An active practicing physician [or dentist];~~
- ~~[(5)] (3) A member of the armed forces or militia when on active service [; or an] and deployed out-of-state;~~
- ~~(4) An active member of a police or fire department;~~
- ~~[(6)] (5) A person who has served as a juror, either in a court of this State or the United States District Court for the District of Hawaii, within one year preceding the time of filling out the juror qualification form[-];~~
- ~~(6) An active member of an emergency medical services agency;~~
- ~~(7) A person living more than seventy miles from the court for which jury service is required; or~~
- ~~(8) A person eighty years of age or older.~~

For purposes of this section, “emergency medical services agency” means any government agency, private agency, or company that provides ambulance services, emergency medical services, or disaster medical services.”

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, 2006.

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 314

S.B. NO. 2575

A Bill for an Act Making an Appropriation for a Baseline Environmental Study of the Waianae Coast Ocean Area.

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

SECTION 1. In 2005, the legislature found that the growing population of west Oahu and the visitor industry are affecting the traditional uses of the area along the Waianae coast, and are having cumulative economic, environmental, social, and cultural effects on the many communities along that coastline.

Accordingly, through Act 6, Special Session Laws of Hawaii 2005, the legislature mandated the department of land and natural resources to prepare a baseline environmental study as an informational document to be used to establish the boundaries of an ocean recreation management area and to draft ocean recreation management area rules. However, limited state resources prohibited funding for the baseline environmental study at that time.

ACT 315

The purpose of this Act is to appropriate moneys for the completion of a baseline environmental study of the Waianae coast ocean area.

SECTION 2. There is appropriated out of the general revenues of the State of Hawaii the sum of \$120,000 or so much thereof as may be necessary for fiscal year 2006-2007 for the completion of a baseline environmental study of the Waianae coast ocean area in accordance with Act 6, Special Session Laws of Hawaii 2005.

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

SECTION 3. This Act shall take effect on July 1, 2006.

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 315

S.B. NO. 2708

A Bill for an Act Relating to School Facilities.

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

SECTION 1. Section 5 of Act 246, Session Laws of Hawaii 2005, is amended to read as follows:

“SECTION 5. This Act shall take effect ~~[on]~~ upon approval, provided that section 4 shall take effect July 1, 2005; and provided further that this Act shall be repealed on July 30, ~~[2006:] 2007.~~”

SECTION 2. The school impact fee working group shall submit supplemental findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2007.

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of \$25,000, or so much thereof as may be necessary for fiscal year 2006-2007, for the operation of the school impact fee working group.

The sum appropriated shall be expended by the office of the auditor which shall oversee and administer any consultant contracts as may be executed on behalf of the working group for the purposes of this Act.

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, 2006, and shall be repealed on July 30, 2007.

(Became law on July 11, 2006, without the Governor's signature, pursuant to Art. III, §16, State Constitution.)

ACT 316

S.B. NO. 2961

A Bill for an Act Relating to Health.

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

SECTION 1. The legislature finds that smoking is the largest cause of morbidity and mortality in the nation that can be easily prevented. Beyond harming individual health, use of tobacco in the United States costs about \$7.18 for each pack of cigarettes sold in terms of health care expenses and decreased worker productivity. In Hawaii, this amounts to \$526,000,000 in health care expenses and productivity losses.

Smoking is also associated with cancer, heart disease, stroke, emphysema, bronchitis, low birth-weight babies, sudden infant death syndrome, increased frequency of colds and ear infections, and asthma. Asthma is the largest single cause of school absenteeism in the state.

The legislature further finds that increasing the tax on cigarettes is the most effective way to prevent young people from becoming daily smokers. It has been estimated that a ten per cent increase in the price of cigarettes decreases the number of youngsters who start smoking by three to seven per cent in the long-term. The estimated decrease for adults is three per cent. Hawaii was once amongst the nation's leaders in cigarette taxes. However, as of January 2005, the State ranks only tenth in the nation in imposing \$1.40 in tax per pack of cigarettes (7.00 cents per cigarette in a twenty-cigarette pack). Rhode Island ranks first with \$2.46 per pack, New Jersey ranks second with \$2.40 per pack, Michigan ranks third at \$2.00, Montana is fourth with \$1.70, and Alaska is fifth at \$1.60 per pack. Tobacco taxes can be viewed as a user tax affecting 17.3 per cent of Hawaii adults who are smokers and who do not pay the full societal costs of their use of tobacco.

The legislature further finds that allocating a significant percentage of tobacco tax revenues to programs that strive to maintain Hawaii's health such as the cancer research center of Hawaii, Hawaii's emergency medical services, critically needed trauma centers, and the community health centers are the most appropriate and effective use of such revenues to help the greatest number of people in our island-state.

The purpose of this bill is to discourage smoking, especially by young people, by increasing the tax on cigarettes, to allocate funds to effective sources in the prevention and treatment of disease and injury, and to appropriate money for these purposes.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- **Hawaii cancer research special fund.** (a) There is established within the state treasury a special fund to be known as the Hawaii cancer research special fund to be administered and expended by the University of Hawaii.

(b) The moneys in the special fund shall be used by the University of Hawaii for the cancer research center of Hawaii's research and operating expenses.

(c) Moneys collected pursuant to section 245-15 shall be deposited into the special fund.”

SECTION 3. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§321- Community health centers special fund. (a) There is established within the state treasury a special fund to be known as the community health centers special fund to be administered and expended by the department of health.

(b) The moneys in the special fund shall be used by the department of health for the operations of federally qualified health centers.

(c) Moneys collected pursuant to section 245-15 shall be deposited into the special fund.”

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) Funds of the employees’ retirement system created by section 88-109;
- (11) Unemployment compensation fund established under section 383-121;
- (12) Hawaii hurricane relief fund established under chapter 431P;
- (13) Hawaii health systems corporation special funds;
- (14) Tourism special fund established under section 201B-11;
- (15) Universal service fund established under chapter 269;
- (16) Integrated tax information management systems special fund under section 231-3.2;
- (17) Emergency and budget reserve fund under section 328L-3;
- (18) Public schools special fees and charges fund under section 302A-1130(f);
- (19) Sport fish special fund under section 187A-9.5;
- (20) Neurotrauma special fund under section 321H-4;
- (21) Deposit beverage container deposit special fund under section 342G-104;
- (22) Glass advance disposal fee special fund established by section 342G-82;
- (23) Center for nursing special fund under section 304D-5;
- (24) Passenger facility charge special fund established by section 261-5.5;
- (25) Solicitation of funds for charitable purposes special fund established by section 467B-15;
- (26) Land conservation fund established by section 173A-5; [and]
- (27) Court interpreting services revolving fund [section 607-1.5]¹;
- (28) Hawaii cancer research special fund;
- (29) Community health centers special fund; and
- (30) Emergency medical services special fund.²⁷”

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) Funds of the employees’ retirement system created by section 88-109;
 - (9) Unemployment compensation fund established under section 383-121;
 - (10) Hawaii hurricane relief fund established under chapter 431P;
 - (11) Convention center enterprise special fund established under section 201B-8;
 - (12) Hawaii health systems corporation special funds;
 - (13) Tourism special fund established under section 201B-11;
 - (14) Universal service fund established under chapter 269;
 - (15) Integrated tax information management systems special fund under section 231-3.2;
 - (16) Emergency and budget reserve fund under section 328L-3;
 - (17) Public schools special fees and charges fund under section 302A-1130(f);
 - (18) Sport fish special fund under section 187A-9.5;
 - (19) Neurotrauma special fund under section 321H-4;
 - (20) Center for nursing special fund under section 304D-5;
 - (21) Passenger facility charge special fund established by section 261-5.5;
- [and]
- (22) Court interpreting services revolving fund [section 607-1.5]¹; and
 - (23) Hawaii cancer research special fund;
 - (24) Community health centers special fund; and
 - (25) Emergency medical services special fund.^{2”}

SECTION 6. Section 321-234, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Fees remitted pursuant to section 249-31, cigarette tax revenues designated under section 245-15, interest and investment earnings attributable to the moneys in the special fund, legislative appropriations, and grants, donations, and contributions from private or public sources for the purposes of the fund, shall be deposited into the special fund.”

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

“(a) Every wholesaler or dealer, in addition to any other taxes provided by law, shall pay for the privilege of conducting business and other activities in the State:

- (1) An excise tax equal to 5.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 1998, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (2) An excise tax equal to 6.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after September 30, 2002, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;

- (3) An excise tax equal to 6.50 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2003, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (4) An excise tax equal to 7.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer after June 30, 2004, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; ~~and~~
- (5) An excise tax equal to 8.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2006, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (6) An excise tax equal to 9.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2007, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (7) An excise tax equal to 10.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2008, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (8) An excise tax equal to 11.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2009, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (9) An excise tax equal to 12.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2010, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer;
- (10) An excise tax equal to 13.00 cents for each cigarette sold, used, or possessed by a wholesaler or dealer on and after September 30, 2011, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer; and
- ~~(8)~~³ (11) An excise tax equal to forty per cent of the wholesale price of each article or item of tobacco products sold by the wholesaler or dealer, whether or not sold at wholesale, or if not sold then at the same rate upon the use by the wholesaler or dealer.

Where the tax imposed has been paid on cigarettes or tobacco products that thereafter become the subject of a casualty loss deduction allowable under chapter 235, the tax paid shall be refunded or credited to the account of the wholesaler or dealer. The tax shall be applied to cigarettes through the use of stamps.”

SECTION 8. Section 245-15, Hawaii Revised Statutes, is amended to read as follows:

“§245-15 Disposition of revenues. All moneys collected pursuant to this chapter shall be paid into the state treasury as state realizations to be kept and accounted for as provided by law[-]; provided that, of the moneys collected under the tax imposed pursuant to section 245-3(a) that represents the difference between the 7.0 cents for each cigarette sold, used, or possessed by a wholesaler or dealer under section 245-3(a)(1) and the amount of tax imposed and collected on each cigarette sold, used, or possessed by a wholesaler or dealer under section 245-3(a) (2), (3), (4), (5), (6), and (7):

- (1) From September 30, 2006 to September 29, 2007, 1.0 cent shall be deposited to the credit of the Hawaii cancer research special fund,

- established pursuant to section 304- , for research and operating expenses;
- (2) From September 30, 2007 to September 29, 2008:
- (A) 1.5 cents shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304- , for research and operating expenses; and
- (B) 0.25 cents of the moneys shall be deposited to the credit of the trauma system special fund established pursuant to section 321- ;
- (C) 0.25 cents of the moneys shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (3) From September 30, 2008 to September 29, 2009:
- (A) 2.0 cents shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304- , for research and operating expenses; and
- (B) 0.5 cents of the moneys shall be deposited to the credit of the trauma system special fund established pursuant to section 321- ;
- (C) 0.25 cents of the moneys shall be deposited to the credit of the community health centers special fund;
- (D) 0.25 cents of the moneys shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (4) From September 30, 2009 to September 29, 2010:
- (A) 2.0 cents shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304- , for research and operating expenses; and
- (B) 0.75 cents of the moneys shall be deposited to the credit of the trauma system special fund established pursuant to section 321- ;
- (C) 0.75 cents of the moneys shall be deposited to the credit of the community health centers special fund;
- (D) 0.5 cents of the moneys shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (5) From September 30, 2010 to September 29, 2011:
- (A) 2.0 cents shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304- , for research and operating expenses; and
- (B) 1.0 cent of the moneys shall be deposited to the credit of the trauma system special fund established pursuant to section 321- ;
- (C) 1.0 cent of the moneys shall be deposited to the credit of the community health centers special fund;
- (D) 1.0 cent of the moneys shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;
- (6) From September 30, 2011 and thereafter:
- (A) 2.0 cents shall be deposited to the credit of the Hawaii cancer research special fund, established pursuant to section 304- , for research and operating expenses; and

- (B) 1.5 cents of the moneys shall be deposited to the credit of the trauma system special fund established pursuant to section 321- ;
- (C) 1.25 cents of the moneys shall be deposited to the credit of the community health centers special fund;
- (D) 1.25 cents of the moneys shall be deposited to the credit of the emergency medical services special fund established pursuant to section 321-234;

The department shall provide an annual accounting of these dispositions to the legislature.”

SECTION 9. There is appropriated out of the Hawaii cancer research special fund the sum of \$11,000,000, or so much thereof as may be necessary for fiscal year 2006-2007 for the research and operating expenses of the Cancer Research Center of Hawaii. The sum appropriated shall be expended by the University of Hawaii.

SECTION 10. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.⁴

SECTION 11. This Act shall take effect on July 1, 2006; provided that if the trauma system special fund is not established by the legislature in H.B. 3142⁵ in the regular session of 2006, the amounts designated to be paid into the trauma system special fund shall be deposited into the general fund.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Notes

- 1. So in original.
- 2. Material after this paragraph is missing.
- 3. Should be “(5)”.
- 4. Edited pursuant to HRS §23G-16.5.
- 5. Act 305.

ACT 317

H.B. NO. 2555

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

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

SECTION 1. Chapter 206E, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

“§206E- **Prohibitions.** Anything contained in this chapter to the contrary notwithstanding, the authority is prohibited from:

- (1) Selling or otherwise assigning the fee simple interest in any lands in the Kakaako community development district to which the authority in its corporate capacity holds title, except with respect to:
 - (A) Utility easements;
 - (B) Remnants as defined in section 171-52;
 - (C) Grants to any state or county department or agency; or
 - (D) Private entities for purposes of any easement, roadway, or infrastructure improvements; or
- (2) Approving any plan or proposal for any residential development in that portion of the Kakaako community development district makai of

Ala Moana boulevard and between Kewalo basin and the foreign trade zone.”

SECTION 2. New statutory material is underscored.¹

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

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

ACT 318

H.B. NO. 2595

A Bill for an Act Relating to Family Visits.

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

SECTION 1. The legislature finds the support of family members can play a key role in an incarcerated offender’s rehabilitation, transition, and successful re-entry from prison or jail to the community. By bringing together an offender and an offender’s family through positive, consistent, and mutually desirable contact, the correctional system will be improving public safety and strengthening communities.

The purpose of this Act is to ensure the right of family members to visit inmates.

SECTION 2. Chapter 353, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§353- Visits from family members. (a) Family members shall be allowed to visit an inmate at any state correctional facility during official visiting hours.

(b) A visit from a family member shall be preapproved and prescheduled. Notwithstanding any other law to the contrary, preapproved and prescheduled visits for which family members have incurred substantial costs, including but not limited to travel from a neighbor island or the mainland, shall not be cancelled due to staff absenteeism or any non-emergency situation.

(c) The department shall develop internal policies and procedures consistent with this section.

(d) For the purposes of this section, “family members” means persons who are related to each other by blood, marriage, adoption, or legal guardianship, or as reciprocal beneficiaries.”

SECTION 3. New statutory material is underscored.¹

SECTION 4. This Act shall take effect on July 1, 2006.

(Became law on July 11, 2006, without the Governor’s signature, pursuant to Art. III, §16, State Constitution.)

Note

1. Edited pursuant to HRS §23G-16.5.

PROPOSED CONSTITUTIONAL AMENDMENTS

S.B. NO. 995

A Bill for an Act Proposing an Amendment to Article VI, Section 3, of the Hawaii Constitution to Remove the Mandatory Retirement Age for State Justices and Judges.

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

SECTION 1. The legislature finds that in today's society, individuals are living longer, healthier lives, as evidenced by the growing number of older individuals throughout the country as well as the world. The legislature further finds that a benefit of our aging society is the wisdom, experience, and skills that these older individuals possess, which should be both valued and respected, particularly in the workforce.

The legislature determines that the antiquated notion that all individuals are no longer mentally or physically fit to be contributing members of the workforce once they reach a certain age must be abolished. This point is particularly striking when examining the age restriction placed upon Hawaii's justices and judges, who are highly educated individuals who have served as learned members of the bar and now the bench. The wealth of knowledge and experience in interpreting Hawaii's laws that is retained by these individuals is invaluable to the residents of Hawaii.

SECTION 2. The purpose of this Act is to propose an amendment to article VI, section 3, of the Constitution of the State of Hawaii to repeal the mandatory retirement age of seventy for all state court justices and judges.

SECTION 3. Article VI, section 3, of the Constitution of the State of Hawaii is amended to read as follows:

"APPOINTMENT OF JUSTICES AND JUDGES

Section 3. The governor, with the consent of the senate, shall fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than four, and not more than six, nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor fails to make any appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate fails to reject any appointment within thirty days thereof, it shall be deemed to have given its consent to ~~[such]~~ the appointment. If the senate ~~[shall reject]~~ **rejects** any appointment, the governor shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall be followed until a valid appointment has been made, or failing this, the commission shall make the appointment from the list, without senate consent.

The chief justice, with the consent of the senate, shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial commission. If the chief justice fails to make the appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. The senate must hold a public hearing and vote on each appointment within thirty days of any appointment. If the senate fails to do so, the nomination shall be returned to the commission and the

PROPOSED CONSTITUTIONAL AMENDMENTS

commission shall make the appointment from the list without senate consent. The chief justice shall appoint per diem district court judges as provided by law.

QUALIFICATIONS FOR APPOINTMENT

Justices and judges shall be residents and citizens of the State and of the United States, and licensed to practice law by the supreme court. A justice of the supreme court, a judge of the intermediate appellate court and a judge of the circuit court shall have been so licensed for a period of not less than ten years preceding nomination. A judge of the district court shall have been so licensed for a period of not less than five years preceding nomination.

No justice or judge shall, during the term of office, engage in the practice of law, or run for or hold any other office or position of profit under the United States, the State or its political subdivisions.

TENURE; COMPENSATION; RETIREMENT

The term of office of justices and judges of the supreme court, intermediate appellate court and circuit courts shall be ten years. Judges of district courts shall hold office for the periods as provided by law. At least six months prior to the expiration of a justice's or judge's term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of an intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew the term of office of ~~[such]~~ the justice or judge for the period provided by this section or by law.

There shall be a salary commission to review and recommend salaries for justices and judges of all state courts. Justices and judges shall have salaries as provided by law. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. ~~[They shall be retired upon attaining the age of seventy years.]~~ They shall be included in any retirement law of the State."

SECTION 4. The question to be printed on the ballot shall be as follows:

"Shall the mandatory retirement age of seventy for all state court justices and judges be repealed?"

SECTION 5. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 6. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

S.B. NO. 2246

A Bill for an Act Proposing an Amendment to Article I of the Constitution of the State of Hawaii Relating to Sexual Assault.

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

SECTION 1. The purpose of this Act is to propose an amendment to article I of the Constitution of the State of Hawaii to provide that the legislature may define what behavior constitutes a continuing course of conduct in continuous sexual

PROPOSED CONSTITUTIONAL AMENDMENTS

assault crimes against minors younger than fourteen years of age and what constitutes the jury unanimity that is required for a conviction.

Under current Hawaii law, it is difficult to prosecute those who repeatedly sexually assault a child, because of the difficulty young children have in remembering the individual dates on which they were sexually assaulted. This amendment would allow the legislature to enact a law that would permit juries to convict a person of the continuous sexual assault of a minor younger than fourteen years of age, if each member of the jury was convinced beyond a reasonable doubt that the defendant had sexually assaulted the child the required number of times (such as three), even if there were not unanimity as to the individual assaults. This would make it easier to prosecute those who repeatedly sexually assault a child.

The legislature passed such a law in 1997, but that law was invalidated by the Hawaii supreme court. An amendment similar to this amendment was proposed to the voters in 2004 and the amendment was invalidated by the Hawaii supreme court.

SECTION 2. Article I of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately designated and to read as follows:

“SEXUAL ASSAULT CRIMES AGAINST MINORS

Section . In continuous sexual assault crimes against minors younger than fourteen years of age, the legislature may define:

1. What behavior constitutes a continuing course of conduct; and
2. What constitutes the jury unanimity that is required for a conviction.”

SECTION 3. The question to be printed on the ballot shall be as follows:

“Shall the Constitution of the State of Hawaii be amended to provide that in continuous sexual assault crimes against minors younger than fourteen years of age, the legislature may define:

- (1) What behavior constitutes a continuing course of conduct; and
- (2) What constitutes the jury unanimity that is required for a conviction?”

SECTION 4. New constitutional material is underscored.¹

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note

1. Edited pursuant to HRS §23G-16.5.

S.B. NO. 2479

A Bill for an Act Proposing an Amendment to Article VII, Section 12, of the Hawaii State Constitution.

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

SECTION 1. The purpose of this Act is to propose an amendment to Article VII, section 12, of the Hawaii State Constitution, to authorize the State to issue special purpose revenue bonds and use the proceeds from the bonds to assist agricultural enterprises serving important agricultural lands.

PROPOSED CONSTITUTIONAL AMENDMENTS

SECTION 2. Article VII, section 12, of the Constitution of the State of Hawaii is amended to read as follows:

“DEFINITIONS; ISSUANCE OF INDEBTEDNESS

Section 12. For the purposes of this article:

1. The term “bonds” shall include bonds, notes and other instruments of indebtedness.

2. The term “general obligation bonds” means all bonds for the payment of the principal and interest of which the full faith and credit of the State or a political subdivision are pledged and, unless otherwise indicated, includes reimbursable general obligation bonds.

3. The term “net revenues” or “net user tax receipts” means the revenues or receipts derived from:

a. A public undertaking, improvement or system remaining after the costs of operation, maintenance and repair of the public undertaking, improvement or system, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made; or

b. Any payments or return on security under a loan program or a loan thereunder, after the costs of operation and administration of the loan program, and the required payments of the principal of and interest on all revenue bonds issued therefor, have been made.

4. The term “person” means an individual, firm, partnership, corporation, association, cooperative or other legal entity, governmental body or agency, board, bureau or other instrumentality thereof, or any combination of the foregoing.

5. The term “rates, rentals and charges” means all revenues and other moneys derived from the operation or lease of a public undertaking, improvement or system, or derived from any payments or return on security under a loan program or a loan thereunder; provided that insurance premium payments, assessments and surcharges, shall constitute rates, rentals and charges of a state property insurance program.

6. The term “reimbursable general obligation bonds” means general obligation bonds issued for a public undertaking, improvement or system from which revenues, or user taxes, or a combination of both, may be derived for the payment of the principal and interest as reimbursement to the general fund and for which reimbursement is required by law, and, in the case of general obligation bonds issued by the State for a political subdivision, general obligation bonds for which the payment of the principal and interest as reimbursement to the general fund is required by law to be made from the revenue of the political subdivision.

7. The term “revenue bonds” means all bonds payable from the revenues, or user taxes, or any combination of both, of a public undertaking, improvement, system or loan program and any loan made thereunder and secured as may be provided by law, including a loan program to provide loans to a state property insurance program providing hurricane insurance coverage to the general public.

8. The term “special purpose revenue bonds” means all bonds payable from rental or other payments made to an issuer by a person pursuant to contract and secured as may be provided by law.

9. The term “user tax” means a tax on goods or services or on the consumption thereof, the receipts of which are substantially derived from the consumption, use or sale of goods and services in the utilization of the functions or services furnished by a public undertaking, improvement or system; provided that mortgage recording taxes shall constitute user taxes of a state property insurance program.

The legislature, by a majority vote of the members to which each house is entitled, shall authorize the issuance of all general obligation bonds, bonds issued under special improvement statutes and revenue bonds issued by or on behalf of the

PROPOSED CONSTITUTIONAL AMENDMENTS

State and shall prescribe by general law the manner and procedure for such issuance. The legislature by general law shall authorize political subdivisions to issue general obligation bonds, bonds issued under special improvement statutes and revenue bonds and shall prescribe the manner and procedure for such issuance. All such bonds issued by or on behalf of a political subdivision shall be authorized by the governing body of such political subdivision.

Special purpose revenue bonds shall only be authorized or issued to finance facilities of or for, or to loan the proceeds of such bonds to assist:

1. Manufacturing, processing, or industrial enterprises;
2. Utilities serving the general public;
3. Health care facilities provided to the general public by not-for-profit corporations;
4. Early childhood education and care facilities provided to the general public by not-for-profit corporations;
5. Low and moderate income government housing programs; [øø]
6. Not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges and universities[;]; or
7. Agricultural enterprises serving important agricultural lands,

each of which is hereinafter referred to in this paragraph as a special purpose entity.

The legislature, by a two-thirds vote of the members to which each house is entitled, may enact enabling legislation for the issuance of special purpose revenue bonds separately for each special purpose entity, and, by a two-thirds vote of the members to which each house is entitled and by separate legislative bill, may authorize the State to issue special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the legislature; and provided further that the State may combine into a single issue of special purpose revenue bonds two or more proposed issues of special purpose revenue bonds to assist not-for-profit private nonsectarian and sectarian elementary schools, secondary schools, colleges, and universities, separately authorized as aforesaid, in the total amount of not exceeding the aggregate of the proposed separate issues of special purpose revenue bonds. The legislature may enact enabling legislation to authorize political subdivisions to issue special purpose revenue bonds. If so authorized, a political subdivision by a two-thirds vote of the members to which its governing body is entitled and by separate ordinance may authorize the issuance of special purpose revenue bonds for each single project or multi-project program of each special purpose entity; provided that the issuance of such special purpose revenue bonds is found to be in the public interest by the governing body of the political subdivision. No special purpose revenue bonds shall be secured directly or indirectly by the general credit of the issuer or by any revenues or taxes of the issuer other than receipts derived from payments by a person or persons under contract or from any security for such contract or contracts or special purpose revenue bonds and no moneys other than such receipts shall be applied to the payment thereof. The governor shall provide the legislature in November of each year with a report on the cumulative amount of all special purpose revenue bonds authorized and issued, and such other information as may be necessary.”

SECTION 3. The question to be printed on the ballot shall be as follows:

“Shall the State be authorized to issue special purpose revenue bonds and use the proceeds from the bonds to assist agricultural enterprises serving important agricultural lands?”

PROPOSED CONSTITUTIONAL AMENDMENTS

SECTION 4. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.

SECTION 5. This amendment shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

H.B. NO. 1917

A Bill for an Act Proposing Amendments to the Hawaii Constitution Relating to the Establishment of a Salary Commission.

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

SECTION 1. The purpose of this Act is to propose an amendment to the Constitution of the State of Hawaii to establish a salary commission responsible for reviewing and recommending changes to salaries for justices and judges, members of the state legislature, the governor and lieutenant governor, the administrative director of the State, department heads or executive officers of the executive departments, and the deputies or assistants to department heads of the executive departments, excluding the University of Hawaii and the department of education.

SECTION 2. Article XVI of the Constitution of the State of Hawaii is amended by adding a new section to be appropriately designated and to read as follows:

“SALARY COMMISSION

Section . There shall be a commission on salaries as provided by law, which shall review and recommend salaries for the justices and judges of all state courts, members of the legislature, department heads or executive officers of the executive departments and the deputies or assistants to department heads of the executive departments as provided by law, excluding the University of Hawaii and the department of education. The commission shall also review and make recommendations for the salary of the administrative director of the State or equivalent position and the salary of the governor and the lieutenant governor.

Any salary established pursuant to this section shall not be decreased during a term of office, unless by general law applying to all salaried officers of the State.

Not later than the fortieth legislative day of the 2007 regular legislative session and every six years thereafter, the commission shall submit to the legislature its recommendations and then dissolve.

The recommended salaries submitted shall become effective as provided in the recommendation, unless the legislature disapproves the entire recommendation as a whole by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the recommendation is submitted; provided that any change in salary which becomes effective shall not apply to the legislature to which the recommendation for the change in salary was submitted.”

SECTION 3. Article III, section 9, of the Constitution of the State of Hawaii is amended to read as follows:

PROPOSED CONSTITUTIONAL AMENDMENTS

~~“[SALARY; ALLOWANCES; COMMISSION ON LEGISLATIVE SALARY] LEGISLATIVE ALLOWANCE~~

Section 9. The members of the legislature shall receive allowances reasonably related to expenses as provided by law~~], and a salary prescribed by the commission on legislative salaries pursuant to this section which shall be payable in installments and at such times as provided by law.~~

~~There shall be a commission on legislative salary, which shall be appointed by the governor on or before November 30, 1978, and every eight years thereafter. Not later than the fortieth legislative day of the 1979 regular legislative session and every eight years thereafter, the commission shall submit to the legislature and the governor recommendations for a salary for members of the legislature, and then dissolve. The recommended salary submitted shall become effective as provided in the recommendation unless the legislature disapproves the recommendation by adoption of a concurrent resolution prior to adjournment sine die of the legislative session in which the recommendation is submitted or the governor disapproves the recommendation by a message of disapproval transmitted to the legislature prior to such adjournment. Any change in salary which becomes effective shall not apply to the legislature to which the recommendation for the change in salary was submitted].”~~

SECTION 4. Article VI, section 3, of the Constitution of the State of Hawaii is amended to read as follows:

“APPOINTMENT OF JUSTICES AND JUDGES

Section 3. The governor, with the consent of the senate, shall fill a vacancy in the office of the chief justice, supreme court, intermediate appellate court and circuit courts, by appointing a person from a list of not less than four, and not more than six, nominees for the vacancy, presented to the governor by the judicial selection commission.

If the governor fails to make any appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. If the senate fails to reject any appointment within thirty days thereof, it shall be deemed to have given its consent to such appointment. If the senate shall reject any appointment, the governor shall make another appointment from the list within ten days thereof. The same appointment and consent procedure shall be followed until a valid appointment has been made, or failing this, the commission shall make the appointment from the list, without senate consent.

The chief justice, with the consent of the senate, shall fill a vacancy in the district courts by appointing a person from a list of not less than six nominees for the vacancy presented by the judicial selection commission. If the chief justice fails to make the appointment within thirty days of presentation, or within ten days of the senate's rejection of any previous appointment, the appointment shall be made by the judicial selection commission from the list with the consent of the senate. The senate ~~[must]~~ shall hold a public hearing and vote on each appointment within thirty days of any appointment. If the senate fails to do so, the nomination shall be returned to the commission and the commission shall make the appointment from the list without senate consent. The chief justice shall appoint per diem district court judges as provided by law.

PROPOSED CONSTITUTIONAL AMENDMENTS

QUALIFICATIONS FOR APPOINTMENT

Justices and judges shall be residents and citizens of the State and of the United States, and licensed to practice law by the supreme court. A justice of the supreme court, a judge of the intermediate appellate court and a judge of the circuit court shall have been so licensed for a period of not less than ten years preceding nomination. A judge of the district court shall have been so licensed for a period of not less than five years preceding nomination.

No justice or judge shall, during the term of office, engage in the practice of law, or run for or hold any other office or position of profit under the United States, the State or its political subdivisions.

TENURE; [COMPENSATION;] RETIREMENT

The term of office of justices and judges of the supreme court, intermediate appellate court and circuit courts shall be ten years. Judges of district courts shall hold office for the periods as provided by law. At least six months prior to the expiration of a justice's or judge's term of office, every justice and judge shall petition the judicial selection commission to be retained in office or shall inform the commission of an intention to retire. If the judicial selection commission determines that the justice or judge should be retained in office, the commission shall renew the term of office of [sueh] the justice or judge for the period provided by this section or by law.

~~[There shall be a salary commission to review and recommend salaries for justices and judges of all state courts. Justices and judges shall have salaries as provided by law. Their compensation shall not be decreased during their respective terms of office, unless by general law applying to all salaried officers of the State. They] Justices and judges shall be retired upon attaining the age of seventy years. They shall be included in any retirement law of the State."~~

SECTION 5. Article V, section 3, of the Constitution of the State of Hawaii is repealed.

SECTION 6. Article XVIII, section 3, of the Constitution of the State of Hawaii is repealed.

SECTION 7. The question to be printed on the ballot shall be as follows:

"Shall the Constitution be amended to provide for a salary commission to review and recommend salaries for justices, judges, state legislators, the governor, the lieutenant governor, the administrative director of the State, state department heads or executive officers of the executive departments, and the deputies or assistants to department heads of the executive departments, excluding the superintendent of education and the president of the University of Hawaii?"

SECTION 8. Constitutional material to be repealed is bracketed and stricken. New constitutional material is underscored.¹

SECTION 9. This Act shall take effect upon compliance with article XVII, section 3, of the Constitution of the State of Hawaii.

Note

1. Edited pursuant to HRS §23G-16.5.

**COMMITTEE REPORTS
ON BILLS WHICH BECAME ACTS**

**TABLES SHOWING EFFECT
OF ACTS**

GENERAL INDEX

**COMMITTEE REPORTS ON BILLS ENACTED
AND ON PROPOSED CONSTITUTIONAL AMENDMENTS**

REGULAR SESSION OF 2006

<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	075	1187, 3435	61, 975	
HB0237	112	3403	119, 400, 976	86
HB0386	313 ¹	3176	651	59
HB0862	129	1094, 1448	430, 829	57
HB0877	066	3177	709, 766	
HB0957	110	1476	758	248
HB0970	118	3425	496, 1081	230
HB1021	143	3143, 3517	222, 861	95
HB1233	076 ¹	3178	652	
HB1242	035	3073, 3300	676	
HB1280	187	1226, 1603	370, 720	164
HB1706	279	2977, 3392	77, 515, 862	77
HB1809	221	2994, 3296	17, 719	63
HB1819	044	2993, 3286	426, 696	
HB1821	265	3061, 3449	352, 709	175
HB1833	054	3084, 3391	425, 847	
HB1861	126	3297	10	56
HB1862	286	3050, 3526	357, 884	151
HB1865	151	3049, 3527	4, 737	203
HB1866	161	3148, 3535	7, 576, 933	204
HB1871	138	3119, 3393	672	91
HB1878	164	3282	256	80
HB1879	121	3018, 3443	8, 720	166
HB1880	165	3102, 3494	554, 729	159
HB1889	172	3027, 3530	263, 738	165
HB1891	304 ¹	3053, 3444	14, 739	152
HB1899	063	2936, 3288	435, 749	
HB1900	160	3367	952	163
HB1918	299 ¹	3005, 3516	102, 615, 856	169
HB1920	047	3423	631	
HB1923	306 ¹	3088, 3513	80, 512, 690	154
HB1935	276	3420 ²	637	71
HB1947	070	2937, 3312	681	
HB1949	001	2001	1	
HB1955	158	2963, 3289	369, 756	61
HB1968	227	3210	73, 834	89
HB1977	146	3129, 3394	643	
HB1982	067	3041	16, 751	
HB1983	059	3009	148	
HB1984	068	3042	814	
HB1995	249	3062, 3301	644	84
HB2039	170	3125, 3468	135, 516, 894	69
HB2045	248	3415	23, 508, 864	174
HB2050	074	3026, 3290	11, 453	
HB2051	260	3054, 3486	617, 926	172
HB2057	012	3185	315, 752	
HB2075	166	3030, 3474	441, 731	158
HB2098	303 ¹	3014	641	52

<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>
HB2109	204	3075, 3469	401, 909	209
HB2133	089	3024, 3291	94, 634	
HB2145	250	3424	25, 625, 684	75
HB2146	271	3419	24, 840	85
HB2153	242	3090, 3532	496, 789	206
HB2175	096	3132, 3531	236, 534, 943	231
HB2176	100	3161, 3538	412, 790	234
HB2179	233	3107, 3495	602, 740	233
HB2192	069	3082, 3313	415, 764	
HB2207	060	3010	150	
HB2210	053	3416	632	
HB2211	176	3003, 3460	162, 377, 872	96
HB2214	142	3136, 3475	202, 492, 732	160
HB2215	037	2941, 3476	262, 857	
HB2239	288	3160, 3505	296, 801	156
HB2258	302 ¹	3097, 3452	469, 691	240
HB2271	157	3111, 3523	141, 620, 858	79
HB2273	052	2942, 3477	319	
HB2275	026	2959, 3478	320	
HB2277	098	3046, 3488	427, 742	173
HB2278	079	3015, 3489	582, 895	
HB2282	106	3179	815	53
HB2286	042	3063, 3304	142	
HB2287	043	3142, 3396	451	
HB2303	034	3006, 3490	151	
HB2309	039	2947, 3461	372, 698	
HB2311	040	2948, 3462	472, 901	
HB2313	235	3283	257	
HB2315	228	3124, 3506	258	
HB2317	041	3298	680	
HB2319	154	3139, 3507	660	
HB2331	049	3421	259	
HB2343	116	2938, 3302	600, 757	64
HB2346	051	2981, 3369	47, 802	
HB2347	033	2979, 3370	48, 699	
HB2367	131	3064, 3292	530, 835	62
HB2399	123	3413	443, 882	157
HB2400	015	3114, 3406	277, 812	
HB2410	171	3074, 3314	646	83
HB2412	124	3404	635, 818	98
HB2423	125	2958, 3479	359, 733	
HB2434	071	3211	677	
HB2443	055	3284	54, 423, 723	
HB2457	065	3417	642	
HB2476	038	3402	447	
HB2500	120	3068, 3368	616, 951	162
HB2503	147	3001	209, 623, 797	70
HB2508	062	3163	224, 903	
HB2535	141	3116, 3306	679	
HB2540	208	3016, 3491	132, 743	171
HB2555	317 ¹	3112, 3524	572, 946	72
HB2595	318 ¹	3047, 3492	338, 727	202

<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>
HB2626	247	3405	321	170
HB2637	128	2966, 3480	269, 735	161
HB2639	201	2956, 3307	439, 758	55
HB2669	209	3089, 3473	82, 883	155
HB2678	185	2950, 3515	560, 877	99
HB2708	222	2996, 3316	75, 755	88
HB2713	114	2980, 3445	49, 778	
HB2737	107	2997, 3308	549, 686	
HB2747	061	3081, 3309	440, 837	
HB2772	156	3021, 3310	64, 842	74
HB2778	290	3032, 3482	183, 624, 898	201
HB2780	058	3212	647	
HB2805	210	3103, 3499	329, 701	87
HB2806	211	3020, 3500	330, 770	242
HB2848	163	2976, 3439	365, 782	76
HB2857	045	3077, 3293	454, 759	
HB2885	032	3037, 3218	575, 760	
HB2897	094	3180	674	54
HB2898	072	3011	682	
HB2899	155	3012	649	67
HB2900	005	3013	449	
HB2901	050	3138, 3397	678	
HB2947	190	2953, 3465	476, 745	228
HB2961	244	2983, 3446	104, 853	226
HB2964	101	3162, 3508	294, 792	
HB2966	180	3157, 3440	592, 937	235
HB2974	215	3108, 3502	455, 798	66
HB2987	113	2978, 3447	50, 772	
HB2991	102	3159, 3509	220, 589, 925	73
HB3016	308 ¹	3187	817	92
HB3018	057	2964, 3400	480, 831	
HB3036	291	3158, 3537	573, 829	243
HB3037	105	2998, 3311	309, 838	
HB3060	282	3039, 3456	109, 915	246
HB3100	275	3422	670	
HB3105	311 ¹	2973, 3533	252, 567, 809	224
HB3115	078	3156, 3539	490, 945	236
HB3121	117	2999, 3483	417, 879	65
HB3126	046	2972, 3294	56, 279, 854	
HB3142	305 ¹	2967, 3534	169, 773	225
HB3194	056	3066, 3426	639	
HB3217	122	3067, 3514	431, 859	68
HB3225	273	3411	671	90
HB3235	097	3035, 3457	276, 695	168
HB3242	202	3214	450	82
HB3244	140	3019, 3401	351, 707	229
HB3250	011	3175	650	
HB3253	073	3045	683	
HB3254	048	2955, 3295	667	
HB3256	230	3215	665	94
HB3257	064	3085, 3303	310, 762	
HB3259	199	3017, 3471	499, 708	167

<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>
SB0218	266	2004, 2383, 2741 ³	996, 1662	211 ⁴
SB0427	175	92, 706	1167, 1483	12
SB0439	207	624	1162, 1622	123
SB0467	258	454, 965	1265, 1580	124
SB0475	287	148, 822	1246, 1654	176
SB0486	281	255, 823	1247, 1627	133
SB0695	083	628	1459	9
SB0696	132	133, 980	1111, 1607	108
SB0706	203	405, 708	1168, 1127	13
SB0743	229	610, 694	1091, 1657	31
SB0744	184	23, 727	1039, 1561	
SB0785	152	518, 748	1112, 1608	
SB0819	214	365, 884	1029, 1601	186
SB0826	159	108, 701	1239, 1128	32
SB0845	130	62, 991	1267, 1633	141
SB0895	293	18	1206, 1129	103
SB0951	181	338, 750	1032, 1484	50
SB0965	200	506, 987	1246, 1621	184
SB1223	206	551, 775	280, 1628	17
SB1294	224	2162, 2722	1157, 1588	125
SB1317	133	136, 842	1559	
SB1512	082	173, 646	1081, 1114, 1604	
SB1648	188	264, 792	1231, 1644	150
SB1899	216	182, 932	1118, 1595	142
SB2018	009	2666	1262	
SB2021	167	2420, 2847	1176, 1659	16
SB2036	255	2097, 2704	1026, 1642	144
SB2050	022	2618	1020, 1507	
SB2051	023	2292, 2688	1036, 1508	
SB2065	103	2142, 2689	1037, 1562	106
SB2090	251	2133, 2816	1089, 1495	117
SB2143	153	2450, 2904	1241, 1496	189
SB2145	294	2178, 2807	988, 1170, 1599	130
SB2159	139	2508, 2636	1295	111
SB2162	289	2429, 2622	973, 1149, 1637	33
SB2188	232	2213, 2593	1138, 1564	34
SB2193	312 ¹	2040	1072	112
SB2213	111	2053, 2616	1017, 1486	5
SB2214	115	2379, 2795	1000, 1243, 1678	195
SB2224	010	2655	1313	
SB2226	031	2036, 2691	1130, 1523	
SB2227	219	2478, 2692	1009, 1210, 1603	23
SB2237	173	2309, 2796	1462	15
SB2243	144	2632	999, 1487	8
SB2248	168	2488, 2906	1244, 1620	37
SB2255	099	2244	1119	
SB2259	104	2548	1558	
SB2260	081	2557	1519	49
SB2263	027	2410, 2571	1041, 1509	
SB2265	080	2558	1520	10
SB2273	169	2418, 2850	1173, 1583	183

<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>
SB2274	309 ¹	2280, 2851	1180, 1469	200
SB2283	189	2663	1125	107
SB2290	135	2532, 2624	1382	113
SB2292	136	2513, 2602	1383	114
SB2293	137	2512, 2693	1296	115
SB2295	013	2656	1040, 1385	
SB2296	030	2050, 2694	1131, 1524	
SB2297	014	2052, 2695	1090, 1386	
SB2298	186	2672	1518	29
SB2323	194	2431, 2774	974, 1162, 1638	47
SB2327	193	2216, 2613	1521	35
SB2328	192	2217, 2606	1183, 1488	36
SB2332	024	2338, 2637	1154, 1510	
SB2333	006	2219, 2775	1102, 1330	
SB2334	086	2432, 2776	1139, 1675	177
SB2337	016	2015, 2745	1049, 1615	
SB2338	017	2008, 2051	1053, 1616	
SB2339	085	2047, 2746	1050, 1661	46
SB2340	018	2006, 2747	1054, 1617	
SB2343	220	2009, 2578	1248, 1679	129
SB2347	019	2037, 2748	1051, 1634	
SB2348	084	2038, 2749	1052, 1600	149
SB2357	090	2179, 2584	968, 1163, 1655	
SB2358	174	2359, 2574	965, 1489	26
SB2360	134	2357, 2819	957, 1490	38
SB2424	002	2581	1056	
SB2430	253	2407, 2625	1120	22
SB2454	278	2682	1018, 1467	
SB2461	243	2467, 2777	1219, 1577	196 ⁵
SB2480	223	2139, 2823	1159, 1601	191
SB2484	213	2138, 2825	1199, 1643	190
SB2485	148	2493, 2826	980, 1227, 1567	39
SB2486	109	2124, 2620	1204, 1665	146
SB2487	252	2125, 2621	1184, 1471	40
SB2489	007	2559	1115	
SB2501	241	2671	1126	27
SB2502	218	2055, 2751	1091, 1660	188
SB2504	269	2470, 2752	956, 1645	192
SB2505	268	2267, 2753	953, 1097, 1597	199
SB2506	025	2262, 2561	1121	
SB2545	277	2041, 2909	1218, 1666	180
SB2570	088	2023, 2707	1019, 1586	138
SB2575	314 ¹	2129, 2829	1067, 1587	148
SB2581	028 ¹	2568	1042, 1511	
SB2591	003	2245	1116	
SB2593	020	2087, 2725	1166, 1506	
SB2597	145	2247	1454	
SB2598	021	2088, 2726	1110, 1499	
SB2599	091	2248	1455	
SB2600	284	2549	1230, 1581	19
SB2601	008	2249	1117	
SB2602	036 ¹	2250	1451	

<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>
SB2603	195	2564	1122	
SB2604	004	2251	1118	
SB2606	087	2163, 2727	1232, 1500	
SB2607	093	2252	1456	
SB2608	029	2253	1452	
SB2609	149	2254	1457	4
SB2630	261	2059, 2755	1250, 1646	212
SB2667	183	2415, 2572	982, 1491	14
SB2704	245	2118, 2876	1031, 1502	
SB2708	315 ¹	2368, 2879	1030, 1571	222
SB2719	298 ¹	2443, 2881	1259, 1656	223
SB2720	225	2369, 2882	1032, 1503	127
SB2737	077	2645	1061, 1512	
SB2753	212	2123, 2830	1206, 1473	145
SB2774	237	2034, 2674	1155, 1578	120
SB2879	127	2316, 2801	1254, 1585	147
SB2887	226	2647	1145, 1625	116
SB2897	292	2153, 2803	1004, 1186, 1667	182
SB2898	283	2324, 2760	955, 1181, 1590	126
SB2901	197	2155, 2804	1096, 1475	104
SB2909	280	2395, 2573	991, 1165, 1630	41
SB2913	274	2681	1554	
SB2924	239	2592	1123	6
SB2929	296	2644	1329	105
SB2930	238	2579	1458	7
SB2941	182	2569	1124	48
SB2948	178	2166, 2734	1158, 1626	101
SB2956	246	2343, 2890	1034, 1573	237
SB2957	240	2500, 2808	1238, 1658	131
SB2958	179	2295, 2914	1222, 1619	185
SB2961	316 ¹	2206, 2761	1234, 1636	179
SB2980	234	2344, 2891	1193, 1610	215
SB2984	196	2194, 2832	1220, 1504	143
SB3000	217	2298 ⁶	1191, 1579	119
SB3003	264	2437, 2785	1071, 1476	134
SB3009	300 ¹	2275, 2857	1217, 1611	213
SB3051	119	2400, 2720	1465	11
SB3059	301 ¹	2333, 2893	1260, 1591	217
SB3065	095	2654	1062, 1641	30
SB3066	307 ¹	2684	1073	
SB3072	198	2629	1064, 1479	128
SB3076	108	2599	1556	28
SB3077	254	2458, 2834	958, 1224, 1612	118
SB3078	267	2454, 2835	1084, 1568	139
SB3090	191	2378, 2865	1175, 1584	193
SB3101	259	2307, 2895	1257, 1574	214
SB3105	231	2499, 2809	989, 1150, 1602	44
SB3111	092	2100, 2712	1466	121
SB3119	177	2109, 2737	1095, 1592	102
SB3120	257	2347, 2715	1187, 1627	197
SB3180	310 ¹	2600	1048, 1576	20
SB3185	162	2464, 2697	1200, 1677	45

<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>
SB3192	150	2538, 2815	1141, 1605	43
SB3195	272	2444, 2899	1142, 1575	218
SB3197	263	2445, 2900	1146, 1481	216
SB3215	256	2014, 2788	1140, 1650	135
SB3247	270	2540, 2790	1025, 1580	136
SB3252	262	2236, 2791	1237, 1618	137
SB3253	285	2441, 2792	976, 1208, 1505	178
SB3254	236	2237, 2597	1024, 1482	21
SB3262	295	2182, 2567	1132, 1566	42
SB3270	297 ¹	2204, 2764	1251, 1648	194
SB3273	205	2482, 2588	1002, 1668	219

PROPOSED CONSTITUTIONAL AMENDMENTS

HB1917		3004, 3485	91, 614, 871	51
SB0995		505, 841	1107, 1468	2
SB2246		2544	1161, 1609	3
SB2479		2491, 2610	1229, 1498	1

Notes

1. Became law without the Governor's signature.
2. See also Senate Floor Amendment 11.
3. See also Senate Floor Amendment 4.
4. See also Senate Floor Amendment 13 and House Floor Amendment 5.
5. See also Senate Floor Amendment 12 and House Floor Amendment 4.
6. See also Senate Floor Amendment 1.

HRS Section No.	Effect	Affected By Act No.	HRS Section No.	Effect	Affected By Act No.
707-701, 702	Am	230			249
707-711	Am	230	709-906	Am	230
		298	710-1040	Am	230
707-714, 716, 730, 731	Am	230	711-___ (2 secs)	N	239
707-733.5	R	60	711-1110.5	Am	238
707-756, 757	Am	80	711-1111	Am	230
708-___ (2 secs)	N	116	712-___ (3 secs)	N	230
708-___	N	139	712-1240.6	R	230
708-___ (4 secs, pt ___)	N	181	712-1241	Am	230
708-___	N	182	712-1250.5	Am	203
708-___ (3 secs)	N	230	712A-4	Am	7
708-800	Am	139	802-5	Am	94
		156			133
		181	802-12	Am	300
708-801	Am	230	803-1	Am	28
708-820	Am	116	c 803 (pt IV heading)	Ree	200
		156	803-41 to 48	Am	200
		181	803-48.5	N	200
708-821	Am	156	803-49	Ree	200
		181	804-2	Am	87
708-822	Am	156	804-10.5	Am	154
		181	805-8	Am	94
		230	806-73	Am	36
708-823	Am	181	806-76	Am	253
		230	806-83	Am	66
708-823.5	Am	181			104
708-829	Am	158			229
708-830	Am	230	831-2	Am	253
708-830.5	Am	116	844D-31, 62, 111, 121	Am	144
708-831	Am	156	846-___	N	83
708-832, 835.5, 836.5	Am	230	846-1	Am	132
708-840	Am	116	846-2.7	Am	131
		230			220
708-841, 842	Am	230	846-10.5	Am	132
708-893	Am	141	846E-1	Am	60
708-8100	Am	230			106
709-903.5	Am	249	846E-2, 3, 6, 9	Am	106
709-904	Am	230	853-4	Am	80

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 Sp			Act 156	Am	232
Act 1	Am	160	Act 200	Am	53
Laws 1982			Act 207	Am	160
Act 264	Am	160	Laws 2004		240
Laws 1986			Act 10	Am	109
Act 321	Am	161	Act 41	Am	53
Laws 1987			Act 51	Am	160
Act 283	Am	161	Act 58	Am	225
Laws 1989			Act 118	Am	306
Act 371	Am	161	Act 153	Am	41
Laws 1991			Act 164	Am	236
Act 163	Am	161	Act 166	Am	273
Act 296	Am	160	Act 202	Am	31
Laws 1992			Act 230	Am	94
Act 300	Am	160	Laws 2005		21
Laws 1993			Act 22	Am	306
Act 289	Am	160	Act 33	Am	38
Act 314	Am	161	Act 65	Am	140
Laws 1993 Sp			Act 86	Am	133
Act 8	Am	161	Act 93	Am	273
Laws 1994			Act 110	Am	120
Act 252	Am	160	Act 129	Am	38
Laws 1995			Act 137	Am	161
Act 218	Am	160	Act 148	Am	232
Laws 1996			Act 178	Am	160
Act 287	Am	160	Act 185	Am	257
Laws 1997			Act 196	Am	70
Act 180	Am	161	Act 202	Am	180
Act 328	Am	160	Act 204	Am	38
Act 380	Am	90	Act 213	Am	180
Laws 1998			Act 218	Am	205
Act 115	Am	161	Act 228	Am	241
Act 116	Am	160	Act 236	Am	231
Laws 1999			Act 239	Am	38
Act 91	Am	160	Act 246	Am	311
Laws 2000			Act 249	R	315
Act 281	Am	160	Laws 2005 Sp		190
Laws 2001			Act 8	Am	210
Act 3	Am	90			
Act 88	Am	300			
Act 273	Am	236			
Laws 2001 Sp					
Act 1	Am	120			
Laws 2002					
Act 91	Am	120			
Act 227	R	180			
Laws 2003					
Act 59	Am	215			
Act 85	Am	109			
Act 95	Am	236			
Act 98	Am	236			

C. SECTIONS OF HAWAIIAN HOMES COMMISSION ACT 1920 (HHCA) AFFECTED					
HHCA Section No.	Effect	Affected By Act No.			
HHCA 213.6	Am	177			

D. SECTIONS OF STATE CONSTITUTION AFFECTED

Section No.	Proposed Effect	Bill No.	Section No.	Proposed Effect	Bill No.
ART I, §___	N	SB2246			
ART III, §9	Am	HB1917	ART VII, §12	Am	SB0995
ART V, §3	R	HB1917	ART XVI, §___	N	SB2479
ART VI, §3	Am	HB1917	ART XVIII, §3	R	HB1917

GENERAL INDEX
2006 Regular Session

ACT

ABANDONED PROPERTY

Abandoned vehicles	62; 147
Unclaimed bail money	87
Vessel run aground on beach or coral reef; removal to prevent damage to environment	134

ACCOUNTING AND GENERAL SERVICES

Departmental accounting systems and procurement procedures	161; 283; 306
Risk management	
emergency appropriation	52
settlement of claims or losses; use of proceeds	173

ACTIONS

Claims against the state	
appropriations	98
dam and reservoir failure; review of liability	118;
	160 §4(72)
highway design and maintenance	70; 112
injuries to motorsports participants	111
Court deadlines and filing requirements suspended during emergency period	59
Evidence admitted or excluded at trial; error and appeal	73
Garnishment of salary or wages to pay debts; creditor's receipt repealed	50
Money judgments	
lien on real property	155
structured settlements	146
Small claims; arbitration of disputes	72
Stay of execution on judgment; limits on supersedeas bond	11
Youth correctional facility; Department of Justice mandates	86; 160
	§4(42), 6(5)

ADVERTISING

Abandoned motor vehicles; advertisement and disposition	62; 147
Advertisements and commercial produced in Hawaii; income tax credit	88
Airport marketing and revenue-generating strategies	160 §4(11)
Billboards and advertisements on motor vehicles and trailers; prohibited	222
Electricians and plumbers; advertising by unlicensed persons	186
Gasoline and petroleum industry misrepresentations	78
Marketing plan for export of Hawaii papaya; appropriation	216
Sale of pornographic material; limiting public display of adult entertainment products	32
Time share plans sold outside the United States	278

AGED PERSONS

Caregiver support and services	
appropriation	262
comprehensive public policy development and report	285
state assistance programs	262
Chore services program; appropriation	302
Dental services by volunteer dentists; appropriation for program	218
Housing projects for elderly; development	180
Jury service exemption	313
Kupuna recognition day	122

AGED PERSONS—cont'd

Long term care facilities and services	
community caregiver support and services	262; 285
criminal history record checks of providers and volunteers	220
foster family homes and case management agencies; regulation made permanent .	236
number of residents permitted in homes	270
state supplemental payments for care	265
Prescription drugs; eligibility for state assistance program	264
Retirement income through annuities; consumer information prior to sale of annuities	71

AGRICULTURE

Agribusiness plan	267
Agricultural education in public schools	233
Agricultural lands	
agricultural tourism on working farms	250
easements to protect farm and ranch lands; appropriation for acquisition	254
important agricultural lands	
special purpose revenue bonds to assist development; authorization	148; SB 2479
use for diversified agriculture	233
public lands designated for agricultural use; lease and improvements to land	157
subdividing and leasing agricultural lands	271
sugar or pineapple plantations	
land used for diversified agriculture	233
preservation of former employee housing and community buildings	237
Animal quarantine; program needs and self-sufficiency strategies	160 §4(4)
Dams and reservoirs	
assessments, improvements, and repair	118
safety concerns and liability for dam failure	118;
	160 §4(72)
Wailua reservoir; appropriation for maintenance	212
Irrigation water	
East Kauai irrigation system; appropriation	212
projects on important agricultural lands	148; 233;
	SB 2479
repair and maintenance of private irrigation systems; funding	233
Papaya genetically engineered to resist diseases; appropriation for export and marketing	216
Vandalism to agricultural or aquacultural equipment, supplies, or products	156

AIRPORTS AND AIRCRAFT

Airport concessions	
alternative security for performance bonds	37
lease extensions and improvements to facilities	128
soliciting bids for new leases	128
Civil air patrol; appropriation	127
Financial audits of airports	160 §4(18)
Helicopter medical transport services; appropriation	85; 266
Invasive species control and eradication program; user fees	160 §4(3)
Kona international airport; mobile command vehicle and communications equipment	160 §4(10)
Marketing and revenue-generating strategies	160 §4(11)
Smoking prohibited	295

ALCOHOLIC BEVERAGES

see INTOXICATING LIQUORS

ALTERNATIVE DISPUTE RESOLUTION

Arbitration of small claims disputes	72
Condominium dispute resolution	277
International conflict resolution	172

ANIMALS

Animal quarantine program needs and self-sufficiency strategies	160 §4(4)
Cruelty to animals	
costs of animal care	238; 239
impoundment and forfeiture of pet animals	239
Endangered and threatened species (see ENVIRONMENT)	
Invasive species control and eradication	
alien marine organisms	160 §4(20)
animals harmful to environment; eradication as pests	108
appropriation	160 §4(3)
coqui frog eradication	108;
program made permanent	160 §4(25)
Pet animals at civil defense emergency shelters	109
Theft or vandalism to agricultural or aquacultural equipment, supplies, or products	117
Theft or vandalism to agricultural or aquacultural equipment, supplies, or products	156

APPROPRIATIONS

Accounting and general services	
election precinct officials	208
electricity payments for state facilities	26
risk management revolving fund	52
State of Hawaii endowment fund	97
Agribusiness development corporation	
East Kauai irrigation system	212
Agriculture	
alternate energy technologies	240
dams and reservoirs assessment and repair	118
irrigation systems	233
papaya exports	216
Attorney general	
dams and reservoirs assessment and repair	118
DNA registry	79
human trafficking task force	260
identity theft tracking system	140
sexual violence prevention	79
Budget and finance	
ceded lands revenues	178
Business, economic development, and tourism	
alternate energy technologies	240
business incubator program	255
energy efficiency in state facilities	96
energy policy forum	163
Claims against the state	98
Commerce and consumer affairs	
loss mitigation programs	115
Congresswoman Patsy T. Mink commission	92
Counties	
child and youth programs	281
emergency shelters for homeless	100
Kapoho Vacationland Estates wastewater treatment facilities	223
Defense	
civil air patrol	127

APPROPRIATIONS—cont'd

Defense—cont'd

disaster relief	115; 118; 160 §4(64)
staffing	115
veterans' newsletter	121

Education

before and after-school programs	281
agricultural education	233
chief financial officer	151
early childhood education	259
electricity payments	51
health services	244
school repair and renovation	246
solar energy pilot project and energy efficiency coordinator	96
standards-based curriculum	301
student transportation	33
teachers	263; 272

Emergency appropriations

adult mental health services	16
developmental disabilities programs	17
DNA registry	79
early intervention services	18; 19
electricity payments	26; 51
emergency medical services	85
flu pandemic preparedness	84
general assistance program	6
risk management revolving fund	52
sexual violence prevention	79
storm recovery efforts	118
student transportation	33
Waimea Valley purchase	15
youth correctional facility	86

Health

adult mental health services	16
caregiver support and services	262
dental services	199; 218
developmental disabilities programs	17; 261
disabled persons' parking placards	269
disaster relief	115
early intervention services	18; 19
emergency medical services	85; 266
environmental justice activities	294
fetal alcohol spectrum disorder	204
flu pandemic preparedness	84
healthy start services	19
hospitals and health care facilities	242; 243; 297
substance abuse services	268
vog monitoring stations	213

High technology development corporation

small business grants	282
-----------------------------	-----

Housing administration

affordable housing	100
emergency shelters for homeless	100
Kikala-Keokea home loans	196
Kukui Gardens rental housing project	288
transfer of functions	180

Human resources development

conversion of civil service exempt positions	300
--	-----

Human services	
adult residential care homes	265
child and youth programs	243; 281
children of incarcerated parents task force	256
chore services	302
female offender programs	258
general assistance program	6
homeless assistance	100
literacy program	302
pharmacy assistance program	264
youth correctional facility	86
Judiciary	
budget	120
homeless assistance	100
Labor and industrial relations	
head start programs	259
homeless assistance	100
language access	290
workforce development	190
Land and natural resources	
agricultural easements acquisition	254
ceded lands revenues	178
storm recovery efforts	118
Waianae coast ocean recreation management area	314
Waimea Valley purchase	15
Legislature	
auditor	140; 211; 315
budget	1
Office of Hawaiian affairs	
Mauna Ala repair and maintenance	224
Public safety	
female offender programs	258
homeless assistance	100
Public utilities commission	
petroleum industry monitoring	78
Supplemental appropriations act of 2006	160
Transportation	
storm recovery efforts	118
University of Hawaii	
alternate energy technologies	240
cancer research center	316
electricity payments	26
perinatal clinic	248
scholarship programs	257
watershed management plans	187

ASSAULT

Assault on emergency worker during disaster or emergency period	116
---	-----

ATTORNEY GENERAL

Civil service status for office personnel	300
Criminal justice data center fees	132
Dam and reservoir failure; review of liability issues	118;
160 §4(72)	
Deputy attorneys general; oath of office repealed	48
Drug nuisance abatement; appropriation	160 §4(71)
Honopou road and Honopou bridge, Maui; determination of agency responsible for maintenance and upkeep	107

ATTORNEY GENERAL—cont'd

Human trafficking task force	260
Identity theft; task force transferred to auditor; crime tracking system	140
National crime prevention and privacy compact	83
Professional fundraisers for charitable organizations; requirements	168
School related services; transfer of functions to education department repealed	225
Wiretapping and electronic surveillance; amendments	200

ATTORNEYS

Court-appointed attorneys for indigent criminal defendants	
attorney's fees on appeals	133
public defender's office; civil service status of employees	300
Jury service exemption repealed	313
Tourism authority attorney; position extended	306

AUDITOR

Appropriations	1; 140; 211; 315
Child support enforcement agency; audit of operations	160 §8(22)
Disabled persons' parking placards; costs to reimburse counties for issuance	269
Hawaii 2050 sustainability plan	
appropriation	211
task force and report extended	210
Identity theft task force	140
School impact fee working group; extended	315

BEACHES

Beach restoration projects and studies; appropriation	160 §4(77)
Marine patrols and boating enforcement; staffing and reports	160 §4(23)
Vessel run aground on beach or coral reef; removal to prevent damage to environment	134
Waianae coast ocean recreation management area; environmental study	314

BICYCLES

Highway fund used for bikeway construction	166
--	-----

BOARDS AND COMMISSIONS

Agricultural education advisory task force	233
Alien aquatic organism task force; report	160 §4(20)
Anti-phishing task force; renamed; membership	140
Anti-trafficking task force	260
Board meeting by videoconference; interruption of video communications	152
Charter school review panel and local school boards	298
Children of incarcerated parents task force	256
Commission for national and community service; term of office	56
Commission on fatherhood; membership	232
Congresswoman Patsy T. Mink commission	92
Domestic violence fatality review teams	82
Early learning educational task force	259
Elderly and disabled care facilities working committee	220
Energy efficiency advisory committee; membership; duties	96
Family caregiving joint legislative committee	285
Harbor task force; report	160 §4(14)
Hawaii 2050 task force; extended	210
Hawaii community development authority; membership	252
Healthy start advisory task force; recommendations	160 §4(33)

Housing and community development corporation; renamed	180
Internet access to criminal conviction data review committee	68
Invasive species council; membership; made permanent	109
Land use commission; membership	296
Language access advisory council	290
Legacy land conservation commission	254
National crime prevention and privacy compact council	83
One call center advisory committee; membership	95
Outstanding arrest warrants review committee	308
Public housing authority board of directors	179; 180
Reproductive rights protection committee; repealed; transfer of functions	25
Salary commission	299; HB 1917
School impact fee working group; extended	315
Sister state committee	150
Trauma care ad hoc committee	305

BOATS AND BOATING

Alien marine organisms from ballast water; appropriation for control	160 §4(20)
Cruise ships; Honolulu Harbor piers 1 and 2 use	165
Ferry service	
Maui county ferry service; expansion	123
site surveys and public informational briefings	160 §6(4)
Marine patrols and boating enforcement; staffing and reports	160 §4(23)
Removal of grounded vessels	134

BONDS

General obligation bonds	
authorization	247
school repair and maintenance	246
High technology special facility revenue bonds; projects exempt from procurement code requirements	292
Special purpose revenue bonds	
affordable housing projects; bonds to finance construction	102
agricultural enterprises; bonds to assist operations	148; SB 2479
Kawaiahao School	114
project development exempt from procurement code requirements	292
Saint Louis School	113

BUDGET AND FINANCE

Debt limit declaration and bond authorization	247
School related services; transfer of functions to education department delayed	225

BUREAU OF CONVEYANCES

Agricultural lease of public lands; recordation	157
Appeals to intermediate appellate court; sunset date	94
Conveyance tax funding of affordable rental housing increased	100
Environmental covenants; recordation	279
Lien on property to satisfy money judgment, order, or decree; recordation and duration	155
Registrar of conveyances; oath of office repealed	48

BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM

Energy efficiency in state facilities	96
Motion picture, digital media, and film production tax credit; amendments	88
Office of international affairs	172
Petroleum industry reporting program transferred to public utilities commission	78

BUSINESS, ECONOMIC DEVELOPMENT, AND TOURISM—cont' d

Sister-state and sister-province relationships 150

CEMETERIES

Alteration or destruction of burial sites; enforcement of mitigation plans 45

Mauna Ala royal mausoleum repair and maintenance; appropriation from public land trust proceeds 224

CHARITIES AND DONATIONS

Professional fundraisers for charitable organizations; requirements 168

CHILDREN

Alcohol consumption by minors; prohibited; penalties 202; 203

At-risk youth services

appropriations 243

criminal history record checks of service providers 131

Birth defects

fetal alcohol spectrum disorder 204

prenatal, delivery, and pediatric clinic for substance abusing mothers 248

Child abuse

appeal of child protective orders 3

continuous sexual assault of minor 60; SB 2246

court and witness fees in proceedings 20

federal reimbursement for judiciary services 194

notice of family court hearings 192

reports on suspected child abuse 159; 193

Child and youth programs during non-school hours; appropriation 281

Childbirth; release of human placenta to birth mother 12

Children of incarcerated parents

family visits 318

task force and reports 256

Child support enforcement

audit of agency operations 160 §8(22)

disclosure of information to other agencies 42

income withholding of past due support 34

license denial or suspension for failure to pay child support; procedures 43

Commission on fatherhood 232

Drugs

allowing minor to ingest methamphetamines 249

drug and youth gang prevention program; appropriation 243

forfeiture of property upon conviction of drug offenses involving children 7

school-based substance abuse assessment and treatment programs 205; 268

Early childhood education

appropriations 259

planning and development of comprehensive system 259

Early intervention services; appropriation 18; 19;

160 §4(34)

Electronic enticement of child; criminal sentencing requirements 80

Foster care

driver's licensing and insurance coverage for foster children 289

foster parents may participate in family court hearings 192

higher education board allowance payments 289

Guardianship and protection of property; effective date of provisions 29

Healthy start program

appropriation 19; 160 §4(35)

delivery of services improvement; report 160 §4(33)

Motor vehicles	
child car seats and booster seats; when use is required	175
driver's licensing of minors	
access to juvenile traffic offense records	105
foster children	289
license or permit suspended for possession or consumption of alcohol	203
mopeds; safety helmets required	63
Sale of pornographic material; limiting public display of adult entertainment products	32
Teen pregnancy prevention; funding programs	160 §8(15)
Youth correctional facility	
at-risk youth service providers; criminal history record checks	131
Department of Justice mandates	86; 160
female offender programs	§4(42), 6(5)
financial and operational audit	258
safehouse program; report	160 §4(41)

CIRCUIT COURTS

Appeals to intermediate appellate court	91; 94
Criminal charging by written information; amendments	104
Guardianship and protective proceedings; effective date of provisions	29
Jury service exemptions	313
Mandatory retirement of judges; repealed	SB 995
Probate documents under seal	8
Salary for judges	299; HB 1917

CIVIL DEFENSE

Civil air patrol; appropriation	127
Court deadlines and filing requirements suspended during emergency period	59
Crimes committed during disaster or emergency period	116
Disaster relief (see DISASTERS)	
Interstate compact for emergency assistance	55
Oath of office for civil defense workers; repealed	48
Pet animals at civil defense emergency shelters	117
Staff positions; appropriation	115

COMMERCE AND CONSUMER AFFAIRS

Compliance resolution program employees; civil service status	300
---	-----

COMMERCIAL CODE

Dishonored checks; service charge increased	206
---	-----

COMMUNITY DEVELOPMENT AUTHORITY

Board members	252
Kakaako community development district	
Honolulu Harbor piers 1 and 2 removed from jurisdiction	165
residential development restricted	317
sale or transfer of state land prohibited	317
Kalaheo community development district; temporary emergency shelters for homeless	100
Public participation in decision-making process	251

CONDOMINIUMS

Amendments	273
------------------	-----

CONDOMINIUMS—cont'd

Condominiums created prior to July 2006	273
Dispute resolution; administrative hearings	277
Time share plans sold outside the United States	278

CONSTITUTION, STATE

Continuous sexual assault crimes	SB 2246
Mandatory retirement for judges; repealed	SB 995
Salary commission	HB 1917
Special purpose revenue bonds for agricultural enterprises	SB 2479

CONSUMER PROTECTION

Annuities sold by life insurers; disclosures and consumer information	71
Gasoline price regulation; amendments	78
Identity theft	135 to 140
Money orders, checks, and electronic money transfers; licensing and regulation of money transmitters	153
Public utilities commission and consumer advocacy division; reorganization and restructuring plan	143
Structured settlements; disclosures prior to transfer of payment rights	146

CONTRACTORS

Construction industries job training and apprenticeship programs	234
Electrical and plumbing work on construction job site	274
Payment of materialmen and subcontractors on public contracts	291

CORPORATIONS

Amendments	184; 235
Financial institutions; amendments	228

CORRECTIONS

Access to correctional facilities and records; appeal of denial	91
Children of incarcerated parents; task force and reports	256
Convicted felons ineligible to vote; reports to county clerks	253
Extended prison terms for habitual violent felons	81
Family visits at correctional facilities	318
Female offenders; community-based programs	258
Halawa correctional facility; fire and safety code improvements	160 §6(7)
Mandatory prison term for electronic enticement of child	80
Maui community correctional facility; appropriation for transitional programs	243
Nursing services in correctional facilities; appropriation and report	160 §4(60)
Outstanding arrest warrants against incarcerated persons	308
Parole and probation (see CRIMES AND CRIMINAL JUSTICE)	
Youth correctional facility	
at-risk youth service providers; criminal history record checks	131
Department of Justice mandates	86; 160 §4(42), 6(5)
female offender programs	258
financial and operational audit	1
safehouse program; report	160 §4(41)

COUNTIES

Agricultural tourism activities; regulation by counties	250
Budgets and fiscal year; counties may designate when fiscal year begins	119

Building permits and approvals	
energy efficiency and environmental design in buildings	96
indigenous Hawaiian architecture	310
low-income rental housing	217
plantation community subdivisions	237
public lands designated for agricultural use	157
time limit for agency review; exemptions	280
County council services directors; pension and retirement	309
County records	
fiscal and budget records	119
protection of personal information to prevent identity theft	140
County roads	
Honopou road, Maui; jurisdictional dispute	107
liability for injuries	112
use of state highway fund for construction, maintenance, and repair	125
Disabled persons' parking placards; issuance and reimbursement for costs	269
Fireworks regulation	54; 183
Homeless persons; temporary emergency shelters	100
Impact fees on development projects	197
Raceways and motorsports facilities	
Hawaii raceway park; appropriation for purchase	160 §5
liability for injury to participants; amendments	111
Workforce development programs; appropriation	190

CRIMES AND CRIMINAL JUSTICE

Arrest warrants	28; 308
Bail money deemed abandoned property	87
Court-appointed attorneys for indigent criminal defendants	
attorney's fees on appeals	133
public defender's office; civil service status of employees	300
Court deadlines and filing requirements suspended during emergency period	59
Crimes involving deception; extension of time to prosecute offense	99
Crimes of violence; mandatory extended prison sentences for repeat offenders	81
Criminal charging by written information; amendments	104
Criminal history record checks	
after school program personnel; amendment	225
elderly and disabled care facilities and programs	220; 236
fees charged for record checks and other services	132
firearm permit applicants	27
international matchmaking organizations	74
Internet access to criminal conviction data	68
interstate and federal-state compact to share information	83
licensing and employment purposes	83
money transmitters	153
youth services office contractors	131
Deferred acceptance of guilty or no-contest plea; when special sentencing not available	80; 230
DNA testing and identification of felons	79; 144
Driving under the influence of intoxicants	64; 201
Evidence admitted or excluded at trial; error and appeal	73
Expungement of criminal records	
first time non-violent drug offenders	58
property offenders	230
Firearms and ammunition offenses	66
Forfeiture of property	
cruelty to animals cases	239
drug offenses	7
firearms offenses	66

CRIMES AND CRIMINAL JUSTICE—cont'd

Human trafficking; task force and study	260
Parole and probation	
access to adult probation records	36
first time non-violent property offenders	230
homeless parolees; appropriation for assistance programs	100
probation modification project; appropriation and report	120
reports to county clerks for election purposes	253
Repeat offenders	80; 81
Sex offender registration; amendments	106
Wiretapping and electronic surveillance; amendments	200

CULTURE AND THE ARTS

Hawaiian architectural practices, techniques, and materials used in housing and other structures	310
Hawaii-China film development projects; appropriation	160 §4(1)
Honolulu symphony endowment fund; appropriation	97
Kupuna recognition day	122
Motion picture, digital media, and film production tax credit; amendments	88
Waimea Valley; appropriation for purchase	15

DEATH

Domestic violence fatality reviews	82
Hospice services providers and volunteers; criminal history record checks	220
Medical care decisions and comfort care only directives; amendments	46
Personal information about deceased persons protected from disclosure	8
Public employees; amendments	169
Terminally ill persons; non-resuscitation directives; amendments	46

DEBTORS AND CREDITORS

Child support enforcement (see CHILDREN)	
Credit card interest rates, fees, and charges	307
Credit reporting agencies; freeze on access to consumer credit report in identity theft cases	138
Credit sales contracts; security interest or lease on trade-in property	10
Delinquent fines, restitution, and court fees; access to personal records to collect moneys	36
Dishonored checks; service charge increased	206
Eviction from federal low-rent housing projects; procedures	24
Financial literacy month	47
Garnishment of salary or wages; creditor's receipt repealed	50
Lien on property to satisfy money judgment, order, or decree	155
Mortgage foreclosures	275

DEFENSE

see also CIVIL DEFENSE; DISASTERS

Disaster assistance, homeland security, and emergency management; appropriation	115
Veterans' newsletter; appropriation	121

DENTISTRY

Adult dental care program; appropriation and report	160 §4(43)
	to (45)
Community service dentist and dental hygienist licenses	31
Dental clinics serving low-income and uninsured persons	199; 243
Donated dental services program; appropriation	218
Jury service exemption for dentists repealed	313

Oral health institute of the Pacific; appropriation for services	243
Special licenses for out-of-state professionals	31

DISABLED PERSONS

Chore services program; appropriation	302
Dental services by volunteer dentists; appropriation for program	218
Developmental disabilities (see MENTAL HEALTH)	
Education; weighted student formula, appropriation and report	160 §4(50) and (51)
Long term care facilities (see LONG TERM CARE)	
Motor vehicles	
failing road test for driver's licensing	61
parking for disabled persons; issuance of parking placards	269
Prescription drugs; eligibility for state assistance program	264
Public assistance	
appropriation for payments	6
home and community-based services; appropriation	17
Public employees	
amendments	169
disability retirement; retirement date	185
Sterilization of developmentally disabled persons; protection of person's rights	25

DISASTERS

American Red Cross; grant for disaster assistance	115
Civil air patrol; appropriation	127
Court deadlines and filing requirements suspended during emergency period	59
Crimes committed during disaster or emergency period	116
Dam and reservoir safety (see WATER RESOURCES)	
Disaster assistance, homeland security, and emergency management; appropriation	160 §4(64)
Disaster preparedness measures; appropriations	115
Flooding and storm damage	
appropriations for recovery efforts	118
flood victim income tax credit	110
watershed management plans to prevent flooding	187
Harbor expenditures; report	160 §4(15)
Interstate compact for disaster assistance	55
Major disaster fund; expenditures for major disaster or emergency increased	115
Pet animals at civil defense emergency shelters	117
Queen's Medical Center; grant for emergency backup electrical system	115

DISCRIMINATION

Disproportionate impact of development on health or environment of minority or low-income populations	294
Sexual orientation or gender identity-based discrimination in public accommodations	76

DISEASES

Bird flu pandemic; appropriation to acquire medications, supplies, etc.	84
Cancer research center; special fund; appropriation	316
Vog from volcanic eruption; appropriation for air quality monitoring stations	213

DISTRICT COURTS

Appeal of ruling or decision to intermediate appellate court; transfer sunset date	94
Arbitration of disputes	72
Federal reimbursement for services to children	194
Jury service exemptions	313

DISTRICT COURTS—cont'd

Juvenile traffic offense records; access to information for driver's licensing purposes	105
Mandatory retirement of judges; repealed	SB 995
Salary for judges	299; HB 1917

DOMESTIC ABUSE

Continuous sexual assault of minor	60
Domestic violence fatality reviews	82
Emergency housing for abused families with children; appropriation	100
International matchmaking organization disclosures	74

DRUGS

Amendments	69; 171
Controlled substances schedules; amendments	171
Firearms possession or use while selling or distributing drugs	66
Methamphetamines	
decontamination and clean-up of manufacturing sites	170; 230
forfeiture of property upon conviction of drug offenses	7
methamphetamine trafficking	230
pseudoephedrine products; sales restrictions; identification of purchasers	171
substance abuse during pregnancy	248
use by minor	249
Prescription drugs	
amendments	69; 171
state assistance program for elderly and disabled	264
Psychotropic medications for medicaid recipients	311
Substance abuse	
access to probation records by treatment providers	36
detoxification treatment	69
expungement of criminal conviction record	58
homeless persons; appropriation for assistance programs	100
pregnant women	248
school-based assessment and treatment programs	205; 268

EDUCATION

Accounting systems and fiscal autonomy; sunset extended	161
Before and after-school programs; appropriation	281
Charter schools	
amendments	298
re-employment of retired teachers and administrators	286
Chief financial officer and staff; appropriation	151
Curriculum development to meet state and federal student performance standards ...	301
Early childhood education	
appropriations	259
planning and development of comprehensive system	259
Environmental education; appropriation	160 §4(76)
Federal revenue maximization program	244
Financial statement and audit by auditor; appropriation	1
Fiscal and personnel functions	225
Hawaiian language immersion schools; charter school formation	298
Health care and services	
medicaid-eligible students	244
school nurses and health aides; transfer of personnel to education department delayed	225
Hui Malama learning center; appropriation for alternative education programs	243
Impact fees; study extended	315

Junior kindergartens; appropriations	259
Kalaheo elementary school; appropriation to repair or replace fire-damaged facilities	52
Kawaihāo School; special purpose revenue bonds	114
Literacy program; appropriation	302
Pearlridge elementary school cafeteria renovation appropriation	53
Private schools; special purpose revenue bonds	113; 114
Saint Louis School; special purpose revenue bonds	113
School facilities	
electricity use; appropriation for payments	51
energy efficiency coordinator	96
repair and maintenance	
appropriation	246
funding increased	304
special account	245
solar energy pilot project; appropriation	96
Single school calendar; appropriation for conversion	160 §4(52)
Students	
charter schools	298
substance abuse assessment and treatment programs	205; 268
weighted student formula; appropriation and report	160 §4(50), (51)
Superintendent's reports to board of education; repealed	126
Teachers	
charter schools	298
child abuse or neglect reports	193
early childhood education	259
housing projects; transfer of functions	180
re-employment of retired teachers and administrators	286
standards-based curriculum	301
substitute teachers; salary increases	263
technical, vocational, and career pathways teachers; teaching qualifications	226
training and support programs; appropriation	272
Transportation of students; appropriation	33; 160 §4(57)
Vocational education	
agricultural education programs	233
construction industries job training and apprenticeship programs	234
teacher qualifications	226

ELECTIONS

Electronic voting systems; verification of voter's selections	5
Precinct officials; appropriation to increase stipends	208
Voter registration	
convicted felons ineligible to vote; reports by courts and paroling authority	253
court jurisdiction over appeals; transfer sunset date	94

ELECTRICIANS AND PLUMBERS

Advertising or engaging in profession without a license	186
Construction industries job training and apprenticeship programs	234
Licensed electricians and plumbers on construction job site	274

EMBLEMS AND SYMBOLS

State fish	67
------------------	----

EMERGENCY RESPONSE

see also CIVIL DEFENSE; DISASTERS

Assault on emergency worker during disaster or emergency period	116
Bird flu pandemic; appropriation to acquire medications, supplies, etc.	84
Emergency medical services	
ambulance service providers; appropriation	85; 160 §4(28) to (31)
funding through tobacco taxes	316
helicopter medical transport services; appropriation	85; 266
jury service exemption for personnel	313
paramedic training programs; appropriation for stipends	266
terminally ill persons; non-resuscitation directives	46
Waianae coast comprehensive health center; appropriation	243
Trauma care	
funding services through tobacco taxes	316
statewide trauma system and reimbursement for costs of care	305

EMPLOYMENT

see also WORKERS' COMPENSATION

Construction industries job training and apprenticeship programs	234
Criminal history record checks for licensing and employment purposes; interstate compact	83
Job training programs	
appropriation	190
construction industries	234
public school vocational education	226; 233
One-stop career centers; appropriation	190
Smoking prohibited in workplace	295
Television, film, and digital media industries; tax incentives	88
Unemployment compensation; use of federal aid	190
Wages and hours	
child support income withholding; procedures	34
garnishment of salary or wages to pay debts; creditor's receipt repealed	50

EMPLOYMENT SECURITY

Unemployment trust fund; use of moneys	190
--	-----

ENERGY

Electric utility companies (see PUBLIC UTILITIES)	
Electric vehicles	
neighborhood electric vehicles	22
state purchase	96
Energy policy forum; action plan and timeline to meet long-term energy goals	163
Gasoline and petroleum products (see GASOLINE AND PETROLEUM PRODUCTS)	
Geothermal resource subzones; appeal of designation to intermediate appellate court	91
Natural energy laboratory reports	160 §4(5) to (7)
Solar water heaters and other renewable energy technologies	
assistance for purchasing systems	240
income tax credit increased and made permanent	240

ENVIRONMENT

Air pollution; appropriation for vog monitoring stations	213
Alien marine organisms from ballast water; appropriation for control	160 §4(20)

Alternate energy	
Chicago climate exchange participation; feasibility study	163
electric utility companies	162
ethanol-blended gasoline; amendments	78
hydrogen economy development	240
neighborhood electric vehicles; conformance to federal standards	22
solar energy pilot project in schools; appropriation	96
state buildings and vehicles	96; 240
tax incentives	240
Conservation enforcement	
data systems and telecommunications with field agents	160 §4(22)
forest reserves and watershed areas	174
historic preservation	214
marine patrols	160 §4(23)
staffing and risk assessment studies	160 §4(24)
Deposit beverage container redemption program	
redemption center incentives; extended	231
reverse vending machines; rebates for purchase	231
Education and outreach; appropriation	160 §4(76)
Endangered and threatened species	
destruction of habitat; assessment of costs for rehabilitation	174
safe harbor agreements and habitat conservation plans; sunset extended	90
Environmental assessments and impact statements	
agricultural tourism activities	250
disproportionate impact of development on minority or low-income populations	294
review and evaluation of procedures	294
Waianae coast ocean recreation management area	314
Forest reserves	
penalties for violations	174
watershed management plans to prevent flooding	187
Hawaii 2050 sustainability plan	
appropriation	211
task force and report extended	210
Hazardous materials	
covenants restricting future use of land	279
methamphetamine manufacturing sites	170
transportation; commercial driver's licensing	23; 130
Highway design and construction preserving environmental, scenic, and historic values; amendments	70
Invasive species	
appropriation	160 §4(3)
coqui frogs; eradication	108;
	160 §4(25)
invasive species council and eradication program; made permanent	109
Littering; fines increased	158
Marine life conservation district at Wai o Pae; wastewater treatment facilities	223
Natural area reserves system	
appropriation	160 §4(26)
fire prevention and extinguishment	160 §8(2)
Kaena Point coastal dune ecosystem; vehicle traffic prohibited	89
Plants and animals harmful to environment; eradication as pests	108
Recycling coordinator; salary; civil service status	300
Resource value lands; land acquisition criteria and priorities	254

ETHICS

Ethics commission; appropriation for operating expenses	1
Violations of ethics code; administrative fines	207

EVIDENCE

DNA testing and identification of felons
 amendments 144
 appropriation 79
 Domestic violence fatality reviews; use of personal information 82
 Error admitting or excluding evidence at trial; appeal of ruling 73
 Physical or mental illness or disorder negating criminal responsibility; amendments . 230
 Rules of evidence 73
 Wiretapping and electronic surveillance; amendments 200

FAMILY COURTS

Appeal of orders or decrees 3; 94
 Child protective proceedings
 appeals 3
 court and witness fees 20
 foster parents may participate in hearings 192
 notice of hearings 192
 Child support enforcement (see CHILDREN)
 Federal reimbursement for services to children 194
 Guardianship and protective proceedings; effective date of provisions 29
 Juvenile traffic offense records; access to information for driver's licensing
 purposes 105
 Mandatory retirement of judges; repealed SB 995
 Salary for judges 299; HB 1917
 Sterilization of developmentally disabled persons; protection of person's rights 25

FINANCIAL INSTITUTIONS

Amendments 228
 Credit card interest rates, fees, and charges 307
 Dishonored checks; service charge increased 206
 Division of financial institutions; civil service status of employees 300
 Financial literacy month 47
 Garnishment of salary or wages to pay debts; creditor's receipt repealed 50
 High technology innovation corporation; out-of-state bank accounts 282
 Money transmitters; licensing and regulation 153
 Mortgage foreclosures 275
 Protection of personal information 135 to 140
 Public employees' medicare supplement plans; direct deposit of reimbursement
 checks 39

FIREARMS

Criminal background checks on permit applicants 27
 Firearms and ammunition offenses 66
 Storage and transportation of firearms and ammunition 66

FIRES AND FIREFIGHTERS

Arson 181; 182
 Assault on firefighter during disaster or emergency period 116
 Brush fires and wildfires
 appropriation for prevention, control, and extinguishment 160 §8(2)
 liability for costs to control fire 182
 Fireworks
 permits issued by vendors 54
 regulation of importation, sale, and use; amendments 183
 Kalaheo elementary school; appropriation to repair or replace fire-damaged
 facilities 52

FISH AND FISHING

Female lobsters and crabs; killing or harvesting prohibited	77
Haena, Kauai, community-based subsistence fishing area	241
Kahului harbor fishing restrictions; administrative rulemaking	241
Limu; picking or harvesting restricted in Ewa beach, Oahu	293
State fish	67
Waianae coast ocean recreation management area; environmental study	314

FOREIGN COUNTRIES AND GOVERNMENTS

Electronic transfer of money; licensing and regulation of money transmitters	153
Firearm permit applications by non-United States citizens	27
Foreign trade zones; Honolulu Harbor piers 1 and 2 designation	165
Genetically engineered papaya; appropriation for export and marketing to Japan	216
Hawaii-China film development projects; appropriation	160 §4(1)
High technology innovation corporation; out-of-state bank accounts	282
Human trafficking; task force and study	260
Immigration and naturalization	
court interpreter services; appropriation	120
criminal history record checks	83
interpreter and translation services in state agencies, programs, and services	290
International business and technology incubator program	255
International matchmaking organizations; disclosure of domestic abuse history	74
Office of international affairs	172
Sister-state and sister-province relationships	150
Time share plans sold outside the United States	278

FRAUD

Crimes involving deception; extension of time to prosecute offense	99
Identity theft	135 to 140
Internet fraud or theft; criminal penalties	141
Securities sales; amendments	229

FUNDS

Cancer research special fund	316
Community health centers special fund	316
Convention center enterprise special fund; deposits	209
Department of education federal revenue maximization program revolving fund	244
Educational facilities improvement special fund; deposits	304
Emergency and budget reserve fund; appropriations from	118
Emergency medical services special fund; deposits	316
Forest stewardship fund; deposits	174
Hawaiian home lands trust fund; management of moneys	177
Highway fund; uses	166
Historic preservation special fund; deposits and uses	214
Housing agency funds	180
Hurricane reserve trust fund; appropriations for disaster preparedness	115
Hydrogen investment capital special fund	240
Irrigation repair and maintenance special fund	233
Major disaster fund; expenditure ceiling increased	115
Petroleum industry monitoring, analysis, and reporting special fund	78
Public benefits fund	162
Risk management trust accounts	173
School-level minor repair and maintenance account; deposits	245
Self-help housing revolving loan fund	100
State highway fund; uses	125
Trauma system special fund	305

FUNDS—cont'd

Unemployment trust fund; use of moneys	190
University of Hawaii; recodification of higher education laws	75

GASOLINE AND PETROLEUM PRODUCTS

Biofuel preferences in state procurement practices	240
Ethanol-blended gasoline; amendments	78
Fuel efficiency goals for state vehicles	96
Price regulation; amendments	78
Public utility rate increases due to fuel cost changes	162

GENERAL EXCISE TAX

Funding of school repairs and maintenance increased	304
---	-----

GOVERNOR

Ceded lands used by state agencies; transfer of revenues to office of Hawaiian affairs	178
Congresswoman Patsy T. Mink commission	92
Gasoline price cap suspension	78
Invasive species council; made permanent; transferred to land and natural resources department,	109
Major disaster fund; expenditures for major disaster or emergency increased	115
Salary set by salary commission	299; HB 1917
Sister-state and sister-province relationships	150

GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE

Affordable housing projects; appropriations	100
Budget appropriations for grants	120; 160 §5
Disaster relief and preparedness measures	115
Early intervention programs; appropriation for community-based services	18
Healthy start programs; appropriation for home visiting services	19
Homeless assistance programs; appropriations	100
Hospitals and health care facilities; appropriations	242; 243
Human services programs; appropriations	243

GROUP HOMES

Adult foster homes and community care foster family homes	236; 265; 270
Criminal history record checks of service providers and employees	220
Developmentally disabled domiciliary homes and apartment complexes	261; 265
Independent living arrangements for developmentally disabled persons	303

HARBORS

Alien marine organisms from ballast water; appropriation for control	160 §4(20)
Aloha Tower development corporation staffing needs	160 §4(8)
Disaster or emergency expenditures	160 §4(15)
Ferry service	
Maui county ferry service	123
site surveys and public informational briefings	160 §6(4)
Financial audits of harbors	160 §4(18)
Government seizure and operation of docks during strike or lockout; loyalty oath for employees repealed	48
Harbor task force and project manager	160 §4(14)
Honolulu Harbor; piers 1 and 2 designated for foreign trade zone and maritime cargo and passenger operations	165
Invasive species control and eradication program; user fees	160 §4(3)

Kahului harbor fishing restrictions; administrative rulemaking	241
Marine patrols and boating enforcement; staffing and reports	160 §4(23)
Small boat harbors	
Maui county facilities used for ferry service	123
storm damage repair; appropriation	118
HAWAIIAN HOME LANDS	
Trust fund; deposit and uses	177
HAWAIIAN PEOPLE	
Alteration or destruction of burial sites; enforcement of mitigation plans	45
Ceded lands used by state agencies; share of income and proceeds for betterment of native Hawaiians	178
Childbirth; release of human placenta to birth mother	12
Disproportionate impact of development on native Hawaiian cultural practices	294
Haena, Kauai, community-based subsistence fishing area	241
Hawaiian home lands trust fund; management of moneys	177
Hawaiian land use and cultural practices expert on land use commission	296
Hawaiian language immersion schools	
appropriation for student transportation services in Kapaa, Kauai	160 §4(57)
charter school formation	298
Indigenous architectural practices, techniques, and materials	310
Kikala-Keokea homestead lessees; appropriation for low-interest home loans	196
Kupuna recognition day	122
Mauna Ala royal mausoleum repair and maintenance; appropriation from public land trust proceeds	224
Traditional cultural practices and gathering rights	174; 293
Waimea Valley; appropriation for purchase	15
HAWAII (ISLAND)	
Ambulance service providers; appropriation for operating costs	85; 160 §4(28) to (31)
Coqui frog control and eradication; appropriation and report	160 §4(25)
Flooding and storm damage	
appropriations for recovery efforts	118
flood victim income tax credit	110
Geothermal resource subzones; appeal of designation to intermediate appellate court	91
Hydrogen-fuel development and use	240
Irrigation systems; funding repair and maintenance of privately-owned systems; appropriation	233
Kapoho Vacationland Estates and farmlots; wastewater treatment facilities	223
Kikala-Keokea homestead lessees; appropriation for low-interest home loans	196
Kona international airport mobile command vehicle and communications equipment	160 §4(10)
Mountain View and Pahala; appropriation for vog monitoring stations	213
Natural energy laboratory; security incidents, delinquent reports, and contracts	160 §4(5) to (7)
South Kona wilderness area; deadline for land acquisition extended	215
Wailoa small boat harbor; appropriation for dredging and improvements	118
Workforce investment boards; appropriation	190
HEALTH	
Bird flu pandemic; appropriation to acquire medications, supplies, etc.	84
Fetal alcohol spectrum disorder coordinator for information and services	204
Financial statement and audit by auditor; appropriation	1

HEALTH—cont'd

On-line permitting and reporting project	160 §4(19)
Reproductive rights protection committee; repealed; transfer of functions	25
School related services; transfer of functions to education department delayed	225

HIGH TECHNOLOGY

Digital media tax credits and incentives; amendments	88
High technology innovation corporation; fiscal autonomy	282
Industrial park facilities funded through special facility revenue bonds; exempt from procurement code requirements	292
Research and development	
hydrogen fuel	240
international incubator program	255
small business grants	282
Use of computer to commit fraud or theft	141

HIGHWAYS

see STREETS AND ROADS

HISTORIC PRESERVATION

Alteration or destruction of cultural and historic sites; enforcement of mitigation plans	45
Civil service status for office personnel	300
Enforcement of historic preservation laws; deposit of fines and penalties; staffing ...	214
Hana highway bridges; signage	160 §4(17)
Hawaiian architectural practices, techniques, and materials used in housing and other structures	310
Highway design and construction preserving environmental, scenic, and historic values; amendments	70
Mauna Ala royal mausoleum repair and maintenance; appropriation from public land trust proceeds	224
South Kona wilderness area; deadline for land acquisition extended	215
Waimea Valley; appropriation for purchase	15

HOLIDAYS AND CELEBRATIONS

Congresswoman Patsy T. Mink commission	92
Financial literacy month	47
Fireworks regulation	54; 183
Kupuna recognition day	122

HONOLULU

Ambulance service providers; appropriation for operating costs	85; 160 §4(28)
	to (31)
Director of council services; pension and retirement	309
Ewa beach limu management area; picking or harvesting limu restricted	293
Flooding and storm damage	
appropriations for recovery efforts	118
flood victim income tax credit	110
Hawaii raceway park; appropriation for purchase	160 §5
Honolulu Harbor; piers 1 and 2 designated for foreign trade zone and maritime operations	165
Irrigation systems; funding repair and maintenance of privately-owned systems; appropriation	233
Kaena Point; vehicle traffic prohibited in coastal dune reserve	89
Kailua reservoir and dam; appropriation to restore as flood mitigation device	118

Kakaako community development district	
boundaries	165
land use restrictions	317
Kalaeloa community development district; temporary emergency shelters for	
homeless	100
Kukui Gardens rental housing project; preservation of affordable rentals	288
Kunia Camp plantation housing; preservation of use	237
Waianae coast ocean recreation management area; environmental study	314
Waimea Valley; appropriation for purchase	15
Workforce investment boards; appropriation	190

HOSPITALS

Abortion services; hospitalization requirement repealed	35
Childbirth; release of human placenta to birth mother	12
Community health centers	
dental services	199
reimbursement for costs of care	297
special fund	316
Emergency medical services (see EMERGENCY RESPONSE)	
Hana community health center; appropriation	243
Hawaii state hospital; appropriation for services	16
Health systems corporation; procurement of goods and services	283
Kahuku hospital; appropriation	243
Molokai general hospital; appropriation	243
Queen's Medical Center; grant for emergency backup electrical system	115
Quest expansion and direct payments to hospitals program; reports	160 §8(20)
Telehealth services; insurance coverage	219
Terminally ill persons; non-resuscitation directives	46
Trauma care	
funding services through tobacco taxes	316
statewide trauma system and reimbursement for costs of care	305
Waianae coast comprehensive health center; appropriation for emergency room	
services	243
West Maui outpatient and after-hours medical care; appropriation	242

HOTELS

Discrimination based on sexual orientation or gender identity in public	
accommodations	76
Smoking prohibitions	295
Transient accommodations tax; convention center funding increased	209

HOUSING

Adult foster homes and community care foster family homes	265; 270
Affordable housing	
affordable rental housing; eligibility; incentives	100
lease of public lands	101; 179
private, nonprofit developments	101
self-help housing projects	100; 179
special purpose revenue bonds to finance construction; authorization	102
streamlining government permits and approvals for development	217
transfer of functions	180
Condominium property regimes; amendments	273
Conveyance tax funding of affordable rental housing increased	100
Criminal entry into dwelling	230
Developmentally disabled persons	261; 265; 303
Hawaiian architectural practices, techniques, and materials used in housing and	
other structures	310

HOUSING—cont'd

Highway construction and infrastructure for new development projects; funding through impact fees	197
Homeless persons	
county facilities	100
rehabilitating public housing as shelters; eligible projects	179
temporary emergency shelters	100
transfer of functions	180
Housing and community development corporation repealed; transfer of functions	180
Housing finance and development administration	
amendments	180
eviction procedures	24
renamed	180
transfer of personnel; reports	160 §8(17)
Kakaako community development district; restrictions on residential developments	317
Kikala-Keokea homestead lessees; appropriation for low-interest home loans	196
Kukui Gardens rental housing project; preservation of affordable rentals or acquisition by state	288
Kulana Nani apartments, Kaneohe; appropriation to assist in purchase	100
Kunia Camp plantation housing; preservation of use	237
Public housing authority	179; 180
Public housing projects	
decommissioned projects rehabilitated as homeless shelters; amendments	179
derelict vehicle abandoned at housing project; disposal	147
eviction from federal housing projects	24
solar water heating and energy efficiency designs	96
transfer of personnel; reports	160 §8(17)
Self-help housing projects	
lease of public lands	179
loan program; appropriation	100
Solar water heaters and other renewable energy technologies	
assistance for purchasing systems	240
income tax credit increased and made permanent	240

HUMAN RESOURCES DEVELOPMENT

Civil service exempt employees; conversion to civil service status	300
Commission on salaries	299

HUMAN SERVICES

see also PUBLIC ASSISTANCE

Child welfare services	
federal reimbursement for judiciary services	194
program goals and improvements	160 §4(39)
Commission on fatherhood; membership	232
Community care foster family homes and case management agencies; regulation made permanent	236
Financial statement and audit by auditor; appropriation	1
Public housing authority	180
School related services; transfer of functions to education department repealed	225

IMPORTS AND EXPORTS

Animal quarantine program	160 §4(4)
Fireworks; amendments	183
Foreign trade zones	165
Gasoline and crude oil imports; reporting and sales price regulations	78
Genetically engineered papaya; appropriation for export and marketing	216
“Hawaii” as brand name for products and services; study	211

International trade and commerce promotion	172; 255
Wines shipped by wineries to Hawaii residents; permit required	227

INCOME TAX

Conformance to Internal Revenue Code	124
Donations to charitable organizations; disclosure of tax-exempt status	168
Federal tax qualification for employees' retirement system benefits	40
Flood victim tax credit	110
Motion picture, digital media, and film production tax credit; increased; qualifications	88
Renewable energy technologies tax credit; increased; made permanent	240
Standard deductions; increased	110
Tax appeals court jurisdiction	91; 94
Tax returns; personal information about deceased persons protected from disclosure	8
Tax tables	110

INFORMATION

Access to personal information	
adult probation records	36
child support enforcement records	42
domestic violence fatality reviews	82
firearm permit applications	27
juvenile traffic offense records	105
parole records	253
sex offender registration; amendments	106
voter disqualifications	253
Annuities sold by life insurers; disclosures and consumer information	71
Criminal history record checks (see CRIMES AND CRIMINAL JUSTICE)	
Derelict vehicles; disposal of vehicles without notice to owner	147
Donations to charitable organizations; required disclosures	168
Environmental covenants registry	279
Ferry service; site surveys and public informational briefings	160 §(4)
Gasoline price regulation and petroleum industry reporting	78
Hawaii community development authority; public notice and participation in decision-making process	251
International matchmaking organizations; domestic abuse disclosures	74
Interpreter and translation services for limited English proficient persons	290
Investment advisers; disclosures in investment advisory contracts	164
Planned community associations; homeowner's access to association documents	312
Protection of personal information	
criminal conviction data accessible to the public on the Internet	68
destruction of records containing personal information	136
government records	140
identity theft tracking system	140
notice of security breaches and unauthorized access to information	135
probate documents	8
security freeze by consumer credit reporting agency	138
social security number protection	137
task force; extended; membership	140
unauthorized possession of personal information	139
Real property sales disclosures	276
Structured settlements; disclosures prior to transfer of payment rights	146
Time share sales disclosures	278
Veterans' newsletter; appropriation	121
Wiretapping and electronic surveillance; amendments	200

INSURANCE

Amendments	154; 189
Commercial general liability policies	189
Continuing education course providers; amendments	154
Deputy insurance commissioner; oath of office repealed	48
Health insurance	
group health plans for trade associations	41
Quest expansion program impact on reducing number of uninsured persons; report	160 §8(20)
services to uninsured; reimbursement for costs of care	297
telehealth services coverage	219
Licensing of producers, adjusters, etc.; amendments	154
Life insurer's sale of fixed deferred annuities	71
Mental health and substance abuse treatment; amendments	205
Motor vehicle insurance	
driving without insurance; penalties	195
foster children	289
insurer's billing adjustments and disputes over charges	198
Prescription drugs; state program for elderly and disabled	264
Property insurance on state properties	
appropriation for increased premiums	52
insurance proceeds used by state agency suffering loss	173
Rate regulation; judicial appeal of order or decision; court jurisdiction sunset date	94

INTERMEDIATE APPELLATE COURT

Appeal of judgment in civil action; limits on supersedeas bond	11
Appeal to supreme court; grounds; time limits	149
Appellate jurisdiction	
additional matters appealable to court	91
family court appeals	3
generally	94
sunset date	94
transfer of cases to supreme court	93
Assignment of judges to hear cases	4
Mandatory retirement of judges; repealed	SB 995
Salary for judges	299; HB 1917
Writs or orders issued by court	145

INTOXICATING LIQUORS

Alcohol consumption by minors; prohibited; penalties	202; 203
Amendments	44
Driving under the influence of alcohol or drugs	
highly intoxicated drivers	201
refusing to submit to alcohol or drug testing	64
Guests purchasing alcohol at club	44
Liquor commissions and liquor control adjudication boards	
court jurisdiction over appeals; transfer sunset date	94
oath of office repealed	48
Smoking prohibited in bars and nightclubs	295
Substance abuse during pregnancy	
fetal alcohol spectrum disorder	204
prenatal, delivery, and pediatric clinic	248
Wines shipped by wineries to Hawaii residents; permit required	227

INVESTMENTS

Financial institutions; amendments	228
--	-----

Hawaiian home lands trust fund; management of moneys	177
Hydrogen-fuel development and use	240
International business and technology incubator program	255
Investment advisers; compensation based on capital gains or capital appreciation	164
Public employees' retirement system investments; amendments	169
Small business innovation or technology grants	282
Uniform securities act	229

JUDICIARY

Appellate jurisdiction review	94
Appropriations act of 2006	120
Court costs and fees	
appellate courts; payment and processing of fees	91
child protective proceedings	20
court-appointed attorneys for indigent criminal defendants	133
electronic filing, serving, and certification of documents	21
supersedeas bonds	11
Court interpreter certification program; appropriation and report	120
Court records	
access to adult probation records	36
electronic court documents	
filing fees	21
seals and signatures	284
probate documents under seal	8
protection of personal information	140
reports to county clerks for election purposes	253
Evidence admitted or excluded at trial; error and appeal	73
Federal revenue maximization program	194
Internet access to criminal conviction data review committee	68
Judges	
error admitting or excluding evidence at trial	73
intermediate appellate court judges; assignment to panels	4
mandatory retirement age; repealed	SB 995
salaries set by salary commission	299; HB 1917
Jury service exemptions	313
Probation modification project; appropriation and report	120
Suspension or tolling of deadlines or filing requirements in civil or criminal cases	
during emergency period	59
Unclaimed bail money	87

KAUAI

Ambulance service providers; appropriation for operating costs	85; 160 §4(28)
	to (31)
East Kauai irrigation system; appropriation for operation and maintenance	212
Flooding and storm damage	
appropriations for recovery efforts	118
flood victim income tax credit	110
Haena community-based subsistence fishing area	241
Hawaiian language immersion schools; appropriation for student transportation	
services	160 §4(57)
Irrigation systems; funding repair and maintenance of privately-owned systems;	
appropriation	233
Waikea boat ramp; appropriation for dredging and improvements	118
Workforce investment boards; appropriation	190

LABOR AND INDUSTRIAL RELATIONS

Civil service status for office personnel	300
---	-----

LABOR AND INDUSTRIAL RELATIONS—cont'd

Office of language access 290

LAND AND NATURAL RESOURCES

Invasive species council; transferred to department 109

LAND USE

Agricultural lands
 agricultural easements; appropriation for acquisition 254
 agricultural tourism activities 250
 diversified agriculture 233
 important agricultural lands 148; 233;
 SB 2479
 lease and improvements to public land 157
 plantation community subdivisions 237
 subdividing and leasing of parcels 271
 Environmental covenants restricting or prohibiting use of real property 279
 Geothermal resource subzones; appeal of designation to intermediate appellate
 court 91
 Kakaako community development district; restrictions on development of parcels 317
 Land use commission; Hawaiian land use and cultural practices expert on
 commission 296
 Resource value lands; land acquisition criteria and priorities 254
 Watershed management plans and land use strategies to prevent flooding 187

LANGUAGES

Court interpreter services; appropriation 120
 Family literacy program; appropriation 302
 Hawaiian language immersion schools
 appropriation for student transportation services 160 §4(57)
 charter school formation 298
 Interpreter and translation services in state agencies, programs, and services 290

LEGISLATIVE REFERENCE BUREAU

Appropriation for operating expenses 1
 Hawaii agribusiness plan 267
 Small purchase procurement procedures; notice of adoption of rules 283
 Transfer of housing functions 180

LEGISLATURE

Appropriation for operating expenses 1
 Continuous sexual assault crimes; legislative powers to define offense SB 2246
 Family caregiving joint legislative committee 285
 Financial disclosures and ethics violations; administrative fines 207
 Salaries for legislators, justices and judges, and executive branch; set by salary
 commission; disapproval process 299; HB 1917
 Sister-state and sister-province relationships 150
 Travel allowances 1

LIEUTENANT GOVERNOR

Salary set by salary commission 299; HB 1917

LIMITED LIABILITY COMPANIES

Amendments 184; 235

LONG TERM CARE

Adult foster homes and community care foster family homes 236; 265; 270
 Criminal history record checks of service providers and employees 220
 Developmentally disabled domiciliary homes and apartment complexes 261; 265
 Family and community caregiver support and services 262; 285
 Kupuna care program; appropriation 262
 Number of residents permitted in adult residential care homes increased 270

MARRIAGE

International matchmaking organizations; domestic abuse disclosures 74

MAUI

Ambulance service providers; appropriation for operating costs 85; 160 §4(28)
 to (31) 309
 Director of council services; pension and retirement 309
 Flooding and storm damage
 appropriations for recovery efforts 118
 flood victim income tax credit 110
 Hana highway bridges; signage 160 §4(17)
 Honopou road and Honopou bridge, Maui; responsibility for maintenance and
 recommendations for repair 107
 Hospitals and health care centers; appropriations 243
 Inter-island ferry service; use of all small boat facilities in county 123
 Irrigation systems; funding repair and maintenance of privately-owned systems;
 appropriation 233
 Kahului harbor fishing restrictions; administrative rulemaking 241
 Maui community correctional facility; appropriation for transitional programs 243
 West Maui outpatient and after-hours medical care; appropriation 242
 Workforce investment boards; appropriation 190

MEDICAL RECORDS

DNA testing and identification of felons
 amendments 144
 appropriation 79
 Domestic violence fatality reviews 82
 Health care services and consultations via telecommunication systems; insurance
 coverage for telehealth services 219
 Prescription drugs; amendments 69
 Terminally ill persons; non-resuscitation directives 46

MENTAL HEALTH

Adolescent mental health programs; appropriation 243
 Adult mental health services; appropriation 16
 Developmental disabilities
 choice of residential settings 303
 dental care; appropriation 199
 domiciliary homes and apartment complexes
 appropriation 261
 state supplemental payments for care 265
 early intervention services; appropriation 18; 19;
 160 §4(34)
 fetal alcohol spectrum disorder 204
 home and community-based services; appropriation 17
 independent living arrangements 303
 sterilization of persons; protection of person's rights 25
 temporary driver's permit after failing road test 61

MENTAL HEALTH—cont'd

Drug treatment for mental illnesses; psychotropic medications for medicaid recipients	311
Hawaii state hospital; appropriation for services	16
Mental health counselor licensing; exemptions; amendments	14
Mental illness or disorder negating criminal responsibility; amendments	230
Mentally ill homeless persons; appropriation for assistance programs	100

MILITARY

Barbers Point Barracks; use for emergency housing for homeless	100
Driver's license renewal during deployment; extension of renewal deadline	221
National guard	
helicopter medical transport services; appropriation	85
interstate emergency assistance compact	55
university tuition assistance	75; 188
Public employee's service in military; pension and retirement; amendments	169
State policies and goals supporting military presence in state	65
Veterans' newsletter; appropriation	121

MOTOR VEHICLES

Abandoned vehicles	
derelict vehicles; when notice to owner may be waived	147
waiver of public auction requirement	62
Advertising on motor vehicles and trailers; prohibited	222
Child car seats and booster seats; when use is required	175
Commercial driver's licensing	23; 130
Criminal entry into vehicle	230
Derelict vehicles	147
Drivers' licenses	
access to juvenile traffic records for licensing purposes	105
commercial drivers	
amendments	130
expiration and renewal	23; 130
hazardous materials endorsement	23; 130
disabled persons; failing road test	61
foster children	289
military service member on active duty; license renewal deadline extended	221
suspension or denial	
alcohol possession or consumption by minor	203
driving under the influence	201
excessive speeding	129
failure to pay child support; procedures	43
Driving under the influence of intoxicants	
highly intoxicated drivers	201
refusing to submit to alcohol or drug testing	64
Electric vehicles	
carrying capacity and gross vehicle weight	22
state purchase	96
Firearms; carrying or possessing in vehicles	66
Gasoline price regulation; amendments	78
Insurance	
driving without insurance; penalties	195
foster children; insurance coverage	289
insurer's billing adjustments and disputes over charges	198
Liability for highway design and maintenance	70; 112
Littering from vehicles; fines increased	158
Mopeds	
age restriction for operation on public streets and roads	63

prohibited in Kaena Point coastal dune reserve	89
safety helmets required	63
Parking	
disabled person's parking placards; issuance	269
unpaid parking fines; responsibility of prior owner in sale of vehicle	103
Raceways and motorsports facilities	
Hawaii raceway park; appropriation for purchase	160 §5
liability for injury to participants; amendments	111
Rental vehicle surcharge tax exemption; recordkeeping	142
Sales	
trade-in vehicle in retail installment sale	10
unpaid parking fines not to prevent sale of vehicle	103
Speeding on roads and highways; criminal penalties for excessive speeding	129
State vehicles	
purchase of energy-efficient vehicles	96
sheriff's department	160 §4(62)
Traffic violations; serving outstanding bench warrants	308
Vehicle traffic prohibited in Kaena Point coastal dune reserve	89

NONPROFIT CORPORATIONS

Affordable housing development	
amendments	180
lease of state lands	101; 179
special purpose revenue bonds	102
Amendments	184; 235
Grants of state moneys (see GRANTS, SUBSIDIES, AND PURCHASES OF SERVICE)	
Professional fundraisers for charitable organizations; requirements	168

NURSES

Continuing education as alternative to re-examination to reactivate license	30
Inactive or forfeited licenses	30
Nursing services in correctional facilities; appropriation and report	160 §4(60)
School nurses and health aides; transfer of personnel to education department delayed	225

OCEAN AND MARINE RESOURCES

Aquacultural operations on public lands designated for agricultural use	157
Coral reefs; removal of grounded vessels to prevent damage	134
Female lobsters and crabs; killing or harvesting prohibited	77
Haena, Kauai, community-based subsistence fishing area	241
Limu; picking or harvesting restricted in Ewa beach, Oahu	293
Marine patrols and boating enforcement; staffing and reports	160 §4(23)
Theft or vandalism to aquacultural equipment, supplies, or products	156
Waianae coast ocean recreation management area; environmental study	314
Wai o Pae marine life conservation district; wastewater treatment facilities	223

OFFICE OF HAWAIIAN AFFAIRS

Hawaiian language immersion schools in Kapaa, Kauai; matching funds for student transportation services	160 §4(57)
Public land trust	
Mauna Ala royal mausoleum repair and maintenance; appropriation	224
pro rata portion of income and proceeds; transfer of moneys; appropriation	178
Strategic plan and long-range goals	2

OMBUDSMAN

Appropriation for operating expenses 1

PARENT AND CHILD

Alcohol possession or consumption by minors; liability for alcohol education and counseling costs 203
 Brush fire causes by minor; liability of parent or guardian 182
 Child abuse (see CHILDREN)
 Children of incarcerated parents; task force and reports 256
 Child support enforcement (see CHILDREN)
 Commission on fatherhood; membership 232
 Family and community caregiver support and services 262; 285
 Family literacy program; appropriation 302
 Family visits at correctional facilities 318
 Foster parents
 driver's licensing and insurance for foster child 289
 notice of family court hearings 192
 Methamphetamine use by minor; criminal liability of parent or guardian 249
 Parenting support group for low-income and teen parents; appropriation 243

PARKS AND RECREATION

Child and youth programs during non-school hours; appropriation 281
 Discrimination based on sexual orientation or gender identity in public accommodations 76
 Kaena Point coastal dune ecosystem; vehicle traffic prohibited 89
 Raceways and motorsports facilities
 Hawaii raceway park; appropriation for purchase 160 §5
 liability for injury to participants; amendments 111
 South Kona wilderness area; deadline for land acquisition extended 215

PARTNERSHIPS

Amendments 184; 235
 Foreign general partnerships; activities not constituting doing business in state 235
 Limited partnerships; personal liability of general partner 184

PENAL CODE

Arson 181; 182
 Assault against emergency worker 116
 Burglary during emergency or disaster relief period 116
 Continuous sexual assault of minor 60; SB 2246
 Crimes involving deception; statute of limitations 99
 Crimes of violence; mandatory extended prison sentences for repeat offenders 81
 Criminal littering; penalties increased 158
 Criminal offenses; amendments 230
 Criminal property damage; amendments 116; 156; 181
 Cruelty to animals 238; 239
 Electronic enticement of child; sentencing requirements 80
 Endangering welfare of a minor; drug use 249
 Expungement of records for first time non-violent offenders 58; 230
 Habitual violent felons 81
 Methamphetamine trafficking 230
 Penal responsibility and fitness to proceed; amendments 230
 Promoting intoxicating liquor to minor; amendments 203
 Sex offender registration; amendments 106
 Unauthorized entry into dwelling or motor vehicle 230
 Unauthorized possession of personal information 139

Use of computer to commit fraud or theft	141
--	-----

PHARMACISTS

Amendments	69; 171
Central fill pharmacies	69
Controlled substances schedules; amendments	171
Electronic transmission of prescription information; amendments	69
State assistance program for elderly and disabled	264

PHYSICIANS AND SURGEONS

Abortion services permitted at clinics and physician's offices	35
Health care services and consultations via telecommunication systems; insurance coverage for telehealth services	219
Motor vehicle insurance; insurer's billing adjustments and disputes over charges	198
Terminally ill persons; non-resuscitation directives	46
Trauma care	
funding services through tobacco taxes	316
statewide trauma system and reimbursement for costs of care	305
Workers' compensation reports and billings for services; standardized forms	191

PLANTS

Endangered and threatened species (see ENVIRONMENT)	
Invasive species control and eradication	
alien marine organisms	160 §4(20)
appropriation	160 §4(3)
program made permanent	109
Plants and animals harmful to environment; eradication as pests	108
Theft or vandalism to agricultural or aquacultural equipment, supplies, or products	156

POLICE

Arrest warrants	
outstanding traffic warrants	308
retired police or public safety officers may serve warrants	28
Assault on police officer during disaster or emergency period	116
Child abuse or neglect reports by school or agency staff	193
DNA testing and identification of felons	144
Driving under the influence of intoxicants; processing arrested persons	64
Methamphetamine manufacturing sites; protocols to protect first responders from hazardous chemicals	170
Sexual offender registration; procedures and requirements	106
Wiretapping and electronic surveillance; amendments	200

PRIVACY

see INFORMATION; MEDICAL RECORDS

PRIVATE DETECTIVES AND GUARDS

Principal detective or guard; number employed; qualifications	13
---	----

PROBATE CODE

Documents sealed upon filing	8
Guardianship and protective proceedings; effective date of provisions	29
Sterilization of developmentally disabled persons; protection of person's rights	25

PROFESSIONS AND OCCUPATIONS

see also specific profession

Compliance resolution program employees; civil service status	300
Criminal history record checks for licensing and employment purposes; interstate compact	83
Inactive status for licenses and conditions for reactivation	30; 49
License denial or suspension for failure to pay child support; procedures	43
Out-of-state license recognition during disaster or emergency period	55
Professional and vocational education	
dentists and dental hygienists	31
mental health counselors	14
nurses	30
paramedics	266
Professional corporations; amendments	235
Trade associations; group health insurance coverage for members	41

PROPERTY DAMAGE

see PUBLIC PROPERTY; REAL PROPERTY

PUBLIC ASSISTANCE

Adjustment to standard of need for assistance allowance	287
Adult dental care program; appropriation	160 §4(43) to (45); 199
Adult residential care homes	
number of residents permitted in homes	270
supplemental payments for care	265
General assistance payments to disabled persons; appropriation	6
Home and community-based services; appropriation	17
Medicaid waiver program; civil service status of employees	300
Medical assistance	
health centers and rural health clinics	297
prescription drugs	264; 311
Quest adult coverage expansion program; reports	160 §8(20)
Rent supplement program eligibility	100
Temporary assistance for needy families program	
appropriations	160 §8(4) to (15); 243; 302
expenditure plan, goals, and effectiveness measures	302

PUBLIC CONTRACTS

Biofuel preferences	240
Concessions on public property	
airport concessions; lease extensions	128
alternative security for performance bonds	37
Energy efficiency standards and goals for state facilities, vehicles, and fuel purchases	96; 240
Hospital equipment, supplies, etc.; procurement by health systems corporation	283
Payment of materialmen and subcontractors	291
Projects funded through revenue bonds exempt from procurement code requirements	292
Small purchases; threshold increased; electronic processing	283

PUBLIC EMPLOYMENT

Civil service exempt employees; conversion to civil service status	300
Collective bargaining for charter school employees	298

Conservation and resources enforcement; staffing	160 §4(24); 214
Ethics code violations; administrative fines	207
Health benefits plans	
financial reporting standards	57
medicare supplement plans; direct deposit of reimbursement checks	39
retiree moving out of state	167
trust administration of funds	57
Oaths of office	48
Pension and retirement systems	
amendments	169
county council legislative services heads	309
disability retirement; retirement date	185
economic hardship refund of contributions; repealed	40
federal tax qualification; amendments	40
health benefits plans	
direct deposit of reimbursement checks	39
purchase of personal health insurance policy	167
retiree moving out of state	167
trust fund administration	57
judges and justices; mandatory retirement age repealed	SB 995
post retirement allowance increase; study	160 §4(74)
teachers and school administrators; re-employment of retirees	286
Public utilities commission and consumer advocacy division; staffing plan	143
Salaries and compensation	
legislators, justices and judges, and executive branch; set by salary commission	299; HB 1917
recycling coordinator	300
substitute teachers	263

PUBLIC LANDS

Affordable housing development	101; 179
Agricultural land leases by agriculture department	157
Charter school leases	298
Forest reserves and watershed areas; penalties for violations	174
Kukui Gardens rental housing project; acquisition	288
Public land trust; pro rata portion of income and proceeds; transfer of moneys; appropriation	178
Resource value lands; land acquisition criteria and priorities	254
South Kona wilderness area; deadline for land acquisition extended	215
Waimea Valley; appropriation for purchase	15

PUBLIC PROPERTY

Concessions on public property	
airport concessions; lease extensions	128
alternative security for performance bonds	37
Damaged or destroyed state facilities	
appropriation for property insurance premiums	52
Kalaheo elementary school; appropriation for fire damage to facilities	52
settlement or insurance proceeds used by state agency suffering loss	173
Electricity used by state facilities	
appropriation for payments	26; 51
energy efficiency standards and goals	96; 160 §8(21)
solar energy pilot project in schools	96
Emergency shelters for homeless; use of state and federal buildings	100
Smoking prohibited	295

PUBLIC SAFETY

Arrest warrants; service of outstanding warrants	28; 308
Reports on suspected child abuse or neglect	159

PUBLIC UTILITIES

Electricity used by state facilities	
appropriation for payments	26; 51
energy efficiency standards and goals	96; 160 §8(21)
solar energy pilot project in schools	96
Electric utility companies	
energy efficiency measures and use of alternative fuels	162
solar water heating and other renewable energy technologies	240
One call center advisory committee; membership	95
Public utilities commission	
court jurisdiction over appeals; transfer sunset date	94
petroleum industry reporting program	78
reorganization and restructuring plan	143
staffing	143
Rates and charges	
increases due to fuel cost changes	162
new or expanded services; notice to existing customers or patrons	9
public benefits fee	162
Underground utility pipelines, cables, etc.; preventing damage during construction or dredging	95
Wiretapping and electronic surveillance; amendments	200

REAL PROPERTY

Agricultural lands (see AGRICULTURE)	
Alteration or destruction of cultural and historic sites on private lands; enforcement of mitigation plans	45
Conveyance tax funding of affordable rental housing increased	100
Hazardous materials on the land	
environmental covenants running with the land	279
methamphetamine manufacturing sites	170; 230
restricting future use of land	279
Highway construction and infrastructure for new development projects; funding through impact fees	197
Kakaako community development district; restrictions on development of parcels	317
Kukui Gardens rental housing project; preservation of affordable rentals or acquisition by state	288
Kulana Nani apartments, Kaneohe; appropriation to assist in purchase	100
Land court appeals to intermediate appellate court; transfer sunset date	94
Lien on property to satisfy money judgment, order, or decree	155
Mortgage foreclosures	
planned community units	275
sale of property; downpayment by bidder	275
Planned communities	
access to association documents	312
association board of directors; meetings; committees	312
notice of mortgage foreclosure to association	275
seller's disclosures	276
Property crimes	
amendments	230
arson	181; 182
brush fires and wildfires	160 §8(2); 182
crimes committed during disaster or emergency period	116
first time non-violent offenders	230

vandalism to agricultural or aquacultural property	156
Safe harbor agreements and habitat conservation plans; sunset date on authorizations extended	90
Sale of real property	
foreclosed property	275
seller's disclosures	276
unit in planned community	276
South Kona wilderness area; deadline for land acquisition extended	215
Time share plans sold outside the United States	278
Waimea Valley; appropriation for purchase	15

REFUSE AND GARBAGE

Abandoned vehicles	62; 147
Beverage container recycling program	231
Kapoho Vacationland Estates and farmlots; wastewater treatment facilities	223
Littering; fines increased	158
Recycling coordinator; salary; civil service status	300

RELIGION

Jury service exemption for ministers and priests repealed	313
---	-----

REPORTS OR STUDIES

Agriculture	
animal quarantine	160 §4(4)
coqui frog eradication	160 §4(25)
invasive species	160 §4(3)
Aloha Tower development corporation	
staffing	160 §4(8)
Attorney general	
drug nuisance abatement	160 §4(71)
Honopou road and bridge	107
human trafficking task force	260
pen registers and trap and trace devices	200
Budget and finance	
post retirement allowances	160 §4(74)
Budget reports	120; 160
Business, economic development, and tourism	
energy policy forum	163
housing finance and development agency	160 §8(17)
natural energy laboratory	160 §4(5) to (7)
Child support enforcement agency operations	160 §8(22)
Commerce and consumer affairs	
condominium dispute resolution	277
Congresswoman Patsy T. Mink commission	92
Defense	
disaster relief	160 §4(64)
Destruction of records with personal information	136
Disabled persons' parking placards	269
Education	
charter schools	298
early childhood education	259
solar energy pilot project	96
standards-based curriculum	301
superintendent's reports repealed	126
weighted student formula	160 §4(50), (51)

REPORTS OR STUDIES—cont'd

Energy efficiency in state facilities	96; 160 §8(21)
Family caregiving joint legislative committee	285
Flooding and storm damage recovery efforts	118
Gasoline price cap suspension	78
Hawaii 2050 sustainability plan; extended	210
Hawaii agribusiness plan	267
“Hawaii” as brand name for products and services	211
Hawaii community development authority	
public notice and participation in decision-making process	251
Health	
ambulance service providers	160 §4(28) to (31)
criminal history record checks	220
decontamination of methamphetamine manufacturing sites	170
developmentally disabled housing	303
environmental justice activities	294
healthy start program	160 §4(33)
on-line permits and reports	160 §4(19)
state laboratory equipment purchases	160 §4(37)
trauma system special fund	305
vital statistics office	160 §4(38)
Housing agency	
annual and other reports	180
emergency shelters for homeless	100
Kukui Gardens rental housing project	288
Human resources development	
conversion of civil service exempt positions	300
Human services	
adult dental care program	160 §4(43) to (45)
child and family services	160 §4(39)
child and youth programs	281
children of incarcerated parents task force	256
criminal history record checks	220
female offender programs	258
public housing authority	160 §8(17)
Quest expansion program	160 §8(20)
standard of need	287
temporary assistance for needy families	160 §8(12), (14), (15); 302
youth correctional facility	160 §4(41), (42), 6(5)
International matchmaking organizations	74
Judiciary	
appellate jurisdiction	94
court interpreter certification program	120
federal revenue maximization program	194
habitual violent felon sentencing	81
Internet access to criminal conviction data	68
outstanding arrest warrants	308
probation modification project	120
Kapoho Vacationland Estates and farmlots; wastewater treatment facilities	223
Labor and industrial relations	
language access	290
Land and natural resources	
alien aquatic organisms	160 §4(20)
beach restoration	160 §4(77)
brush fires and wildfires	160 §8(2)

ACT

ceded lands revenues	178
conservation enforcement	160 §4(22)
	to (24)
coqui frog eradication	160 §4(25)
dam inspections	118
environmental education	160 §4(76)
forest reserve violations	174
instream flow standards	160 §4(21)
Waianae coast ocean recreation management area	314
Petroleum industry reporting; amendments	78
Public safety	
capital improvement projects	160 §6(8)
female offender programs	258
fleet vehicles	160 §4(62)
habitual violent felon sentencing	81
Halawa correctional facility	160 §6(7)
nursing services in correctional facilities	160 §4(60)
Public utilities commission	
restructuring and staffing needs	143
Salary commission	299; HB 1917
School impact fee working group; extended	315
Security breaches related to protected personal information	135
Social security number disclosures	137
Taxation	
tobacco taxes	316
Transportation	
airport revenues	160 §4(11)
disaster relief at harbors	160 §4(15)
financial audits for airports and harbors	160 §4(18)
harbor task force	160 §4(14)
Honopou road and bridge	107
Kona international airport	160 §4(10)
University of Hawaii	
construction academy	234
environmental impact statements	294
watershed management plans	187

RESTAURANTS

Discrimination based on sexual orientation or gender identity in public	
accommodations	76
Smoking prohibited	295

SALES

Abandoned motor vehicles	62; 147
Adult entertainment products; limiting public display of pornographic material	32
Advertising on motor vehicles and trailers; prohibited	222
Annuities sold by life insurers; disclosures and consumer information	71
Cigarette sales	316
Concessions on public property	37; 128
Credit sales contracts; financing of negative equity	10
Discrimination based on sexual orientation or gender identity in retail	
establishments	76
Fireworks	54; 183
Gasoline price regulation; amendments	78
“Hawaii” as brand name for products and services; study	211
Money orders, checks, and electronic money transfers; licensing and regulation of	
money transmitters	153
Pseudoephedrine products; sales restrictions; identification of purchasers	171

SALES—cont'd

Real property sales	
foreclosed property	275
planned community unit	276
seller's disclosures	276
Securities; uniform securities act	229
Time share plans sold outside the United States	278
Trade associations; group health insurance coverage for members	41
Wines shipped by wineries to Hawaii residents; permit required	227

SECURITIES

Appeal of order or decision to intermediate appellate court; transfer sunset date	94
Financial institution stock solicitation; amendments	228
Investment advisers; compensation based on capital gains or capital appreciation	164
Securities commissioner and division employees; oath of office repealed	48
Uniform securities act	229

SEXUAL OFFENSES

Continuous sexual assault of minor	60; SB 2246
Electronic enticement of child; criminal sentencing requirements	80
Sale of pornographic material; limiting public display of adult entertainment products	32
Sexual offender registration; procedures and requirements; amendments	106
Sexual violence prevention and victims' services; appropriation	79

SEXUAL ORIENTATION

Discrimination based on sexual orientation or gender identity in public accommodations	76
--	----

SHERIFFS

Arrest warrants	
outstanding traffic warrants	308
retired police or public safety officers may serve warrants	28
Canine unit; appropriation	160 §4(61)
Motor vehicles; report on inventory, maintenance, and replacement costs	160 §4(62)
Reports on suspected child abuse or neglect	159

SMALL BUSINESS

Appeal of judgment in civil action; limits on supersedeas bond	11
Concessions on public property	37; 128
High technology innovation or research grants	282

SMOKING

Smoking prohibitions	295
Tobacco taxes increased; uses of moneys	316

SPORTS

Raceways and motorsports facilities	
Hawaii raceway park; appropriation for purchase	160 §5
waiver of liability for injury to participants; amendments	111
School sports programs at charter schools	298
Smoking prohibited in sports arenas and stadiums	295
Tourism sports coordinator; position extended	306
Waiānae coast ocean recreation management area; environmental study	314

STATE DEPARTMENTS

Board meeting by videoconference; interruption of video communications 152

Ceded lands used by state agencies; share of income and proceeds for betterment
of native Hawaiians 178

Department directors and deputies; salaries set by salary commission 299; HB 1917

Development-related permits and approvals

 county agencies exemption from automatic approval process 280

 low-income housing; time limits on approval or denial 217

Electricity used by state facilities

 appropriation for payments 26; 51

 energy efficiency standards and goals 96; 160 §§(21)

 solar energy pilot project in schools 96

Financial report of the state; appropriation to auditor 1

Identity theft 135 to 140

Interpreter and translation services for limited English proficient persons 290

Procurement of goods and services; small purchase procedures 283

STATE PLANNING

Agribusiness plan 267

Energy needs, goals, and implementation strategies 163; 240

Federal military presence in state 65

Hawaii 2050 sustainability plan 210; 211

Important agricultural lands; special purpose revenue bonds to assist development 148; SB 2479

Office of Hawaiian affairs; strategic planning 2

Renewable hydrogen fuel program 240

STATUTES

General technical revisions 38

Recodification of higher education laws 75

STREETS AND ROADS

Abandoned vehicles 62; 147

Advertising on motor vehicles and trailers; prohibited 222

Bikeways 166

Carrying or possessing firearms on highways 66

Child car seats and booster seats in vehicles; when use is required 175

County roads; use of state highway fund for construction, maintenance, and repair 125

Driving without motor vehicle insurance; penalties 195

Hana highway bridges; signage 160 §(17)

Highway design and maintenance

 flexible design guidelines; amendments 70

 impact fee funding 197

 liability for injuries 112

Honopou road and Honopou bridge, Maui; responsibility for maintenance and
 recommendations for repair 107

Kuahea Street; appropriation for repair 118

Littering; fines increased 158

Mopeds on public streets and roads 63

Round Top Drive; appropriation for soil stabilization measures 118

Speeding on roads and highways; criminal penalties for excessive speeding 129

Storm damage repair; appropriation 118

Underground utility pipelines, cables, etc.; preventing damage during construction
 or dredging; amendments 95

SUNSET AND REPEAL

Extension of sunset or repeal	
affordable rental housing incentives	100
deposit beverage container redemption incentives	231
electronic court documents	21
fiscal autonomy for education department and University of Hawaii	161
flexible highway design guidelines	70
Hawaii 2050 task force and report	210
identity theft task force	140
safe harbor agreements and habitat conservation plans	90
school impact fee working group	315
South Kona wilderness area land acquisition	215
tourism authority fiscal flexibility	306
Temporary programs and provisions	
airport concession lease extensions	128
appellate jurisdiction transfers	94
children of incarcerated parents task force	256
condominium dispute resolution	277
Congresswoman Patsy T. Mink commission	92
developmentally disabled housing	303
early learning educational task force	259
educational facilities improvement special fund deposits	304
extended terms of imprisonment	230
family caregiving joint legislative committee	285
film and digital media production tax credit	88
flood victim tax credit	110
funding affordable rental housing	100
habitual violent felon sentencing	81
high technology innovation corporation bank accounts	282
human trafficking task force	260
Kahului harbor fishing restrictions	241
perinatal clinic	248
re-employment of retired teachers and administrators	286
serving arrest warrants	28
Temporary provisions made permanent (sunset repealed)	
community service dental licenses	31
home and community-based case management agencies and foster family homes ...	236
invasive species council	109
psychotropic medications	311
renewable energy technologies tax credit	240
student substance abuse assessments	205
trade association health insurance	41

SUPREME COURT

Appeal of judgment in civil action; limits on supersedeas bond	11
Appellate jurisdiction	91; 94
Mandatory retirement of justices; repealed	SB 995
Salary for justices	299; HB 1917
Transfer of cases from intermediate appellate court	
grounds	93; 149
report	94
writ of certiorari	149

TAXATION

Tax appeals; court jurisdiction	91; 94
Tax returns; personal information about deceased persons protected from disclosure	8

TELECOMMUNICATIONS

Board meeting by videoconference; interruption of video communications 152
 Electronic court documents 21; 284
 Electronic enticement of child; criminal sentencing requirements 80
 Electronic transfer of money; licensing and regulation of money transmitters 153
 Health care services and consultations via telecommunication systems; insurance coverage for telehealth services 219
 Health department on-line permitting and reporting project 160 §4(19)
 High technology industrial park facilities funded through special facility revenue bonds; exempt from procurement code requirements 292
 International telecommunications and technology promotion 172; 255
 Internet access to criminal conviction data 68
 Internet fraud or theft; criminal penalties 141
 Wiretapping and electronic surveillance; amendments 200

TELEVISION AND FILM INDUSTRY

Hawaii-China film development projects; appropriation 160 §4(1)
 Tax credits and incentives; amendments 88

THEFT

Crimes involving deception; extension of time to prosecute offense 99
 Identity theft 135 to 140
 Looting and other crimes committed during disaster or emergency period 116
 Theft or vandalism to agricultural or aquacultural equipment, supplies, or products 156
 Use of computer to commit theft 141

TIME SHARING

Plans sold outside the United States 278

TOURISM

Agricultural tourism on working farms 250
 Airport concessions; lease extensions and improvements to facilities 128
 Airport marketing and revenue-generating strategies 160 §4(11)
 Convention center funding from room tax increased 209
 Cruise ships use of Honolulu Harbor piers 1 and 2 165
 ‘‘Hawaii’’ as brand name for products and services; study 211
 Office of international affairs 172
 Rental vehicle surcharge tax exemption; recordkeeping 142
 Sister-state and sister-province relationships 150
 Sports coordinator; position extended 306
 Time share plans sold outside the United States 278
 Tourism authority
 accounting systems and fiscal autonomy extended 306
 increased funding from tourism special fund; extended 306
 Waianae coast ocean recreation management area; environmental study 314

TRADE REGULATIONS

Credit card interest rates, fees, and charges 307
 Credit sales contracts; financing of negative equity 10
 Dishonored checks; service charge increased 206
 Gasoline price regulation and petroleum industry reporting; amendments 78
 Identity theft 135 to 140
 Money transmitters; licensing and regulation 153
 Securities sales; amendments 229
 Trade associations; group health insurance coverage for members 41

TRADE REGULATIONS—cont'd

Trademarks and trade names
 court jurisdiction over appeals; transfer sunset date 94
 "Hawaii" as brand name for products and services; study 211

TRANSPORTATION

Bikeway construction 166
 Financial statement and audit by auditor; appropriation 1
 Hazardous materials transportation; commercial driver's licensing 23; 130
 Highway design and maintenance
 flexible design guidelines; extended 70
 liability for injuries 112
 Inter-island ferry service123; 160 §6(4)

TREES AND TIMBER

Agricultural theft or vandalism 156
 Illegal harvesting or destruction of koa and other trees; penalties 174

TRUSTS AND TRUSTEES

Guardianship and protection of property of minors and incapacitated persons;
 effective date of provisions 29
 Hawaiian home lands trust fund; management of moneys 177
 Honolulu symphony endowment fund; appropriation 97
 Public employees' health benefits plans; trust fund administration 57
 Settlement of claims or losses by state agencies; trust administration of risk
 management funds 173
 Trust company regulations; amendments 228

UNCLAIMED PROPERTY

see ABANDONED PROPERTY

UNITED STATES

Federal low-rent housing projects 24; 180
 Federal revenue maximization programs 194; 244
 National crime prevention and privacy compact 83
 State policies and goals supporting military presence in state 65

UNIVERSITY OF HAWAII

Accounting systems and procurement of goods and services; sunset extended 161
 Cancer research center; special fund; appropriation 316
 Commission for national and community service; term of office 56
 Construction academy and apprenticeship training program 234
 Electricity used by facilities; emergency appropriation for payments 26
 Energy policy forum; action plan and timeline to meet long-term energy goals 163
 Environmental impact statement process; study 294
 Hydrogen-fuel development; appropriation 240
 Perinatal clinic and pediatric services for substance abusing pregnant women 248
 Recodification of higher education laws 75
 Tuition, fees, and scholarships
 amendments 75
 foster child's higher education board allowance 289
 national guard and military reserves service members 188
 nonresident tuition and fees waivers 188
 scholarship programs for Hawaii residents 257
 workforce development scholarship program 257

Watershed management plans and land use strategies to prevent flooding	187.
--	------

VETERANS

see MILITARY

VICTIMS OF CRIMES

Domestic violence fatality reviews	82
Human trafficking; task force and study	260
Restitution	
access to offender's personal records to enforce restitution order	36
court order as part of sentencing; amendments	230
Sexual violence prevention and victims' services; appropriation	79

VITAL STATISTICS

Computerization of operations and processing backlogs; report	160 §4(38)
Personal information about deceased persons protected from disclosure	8

VOLUNTEERS

At-risk youth services; criminal history record checks of service providers	131
Civil air patrol; appropriation	127
Civil defense workers; oath of office repealed	48
Commission for national and community service; term of office	56
Criminal history record checks of volunteers working with elderly and disabled	220
Dental services by volunteer dentists and laboratories	218

WATER RESOURCES

Ala Wai Canal; appropriation for clean up	118
Commission on water resource management; civil service status for personnel	300
Dams and reservoirs	
assessments, improvements, and repair	118
inspection reports	118
safety concerns and liability for dam failure	118;
160 §4(72)	
Wailua reservoir; appropriation for maintenance	212
Instream flow standards; field investigations	160 §4(21)
Irrigation water	
East Kauai irrigation system; appropriation	212
projects on important agricultural lands	148; 233;
SB 2479	
repair and maintenance of private irrigation systems; funding	233
Kapoho Vacationland Estates and farmlots; wastewater treatment facilities	223
Water care code; appropriation for development	160 §4(76)
Water conservation in state facilities	96
Watershed management plans; appropriation	160 §4(26);
187	

WOMEN

Childbirth and birth control	
release of human placenta to birth mother	12
right to obtain abortion reaffirmed	35
sterilization of developmentally disabled persons; protection of person's rights	25
substance abuse during pregnancy	204; 248
teen pregnancy prevention programs	160 §8(15)
Congresswoman Patsy T. Mink commission	92
Domestic violence fatality reviews	82

WOMEN—cont'd

Female offender programs in correctional facilities 258

WORKERS' COMPENSATION

Computation of time periods; change from calendar days to business days
repealed 176

Court jurisdiction over appeals; transfer sunset date 94

Health care provider's reports and billings for services; standardized forms 191

Rehabilitation specialists; exempt from licensing as mental health counselors 14